



**Report on Passenger Rights Complaints  
for year ended 31<sup>st</sup> December 2008**

1<sup>st</sup> July 2009

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## **1. INTRODUCTION.**

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2008 was a busy year for the Air Passenger Rights team within the Commission for Aviation Regulation. In January, the Commission participated in its first Holiday World exhibition at the Royal Dublin Society (RDS). With attendance levels in excess of 50,000 people, this was an excellent opportunity to promote awareness of EC Regulation No 261/2004 amongst the travelling public.

During the first half of the year queries<sup>1</sup> were received at a relatively constant rate, approximately 150 per month. However the radar malfunction which occurred at Dublin airport in early July resulted in receipt of unprecedented volumes. Indeed of the 2,894 queries which were dealt with by the Commission during 2008, approximately 70% were received from July onwards (predominantly July, August and September).

Relations between the Commission and many air carriers were tested during this time. Notwithstanding this, a significant percentage of the valid complaints submitted have already been satisfactorily concluded. Infringements of the Regulation that could not by their nature result in financial redress for the passenger, but which were reported to the Commission in the aftermath of the radar disruption, were nonetheless recorded.

In 2008, the Commission invoked the powers of enforcement given to it under the Aviation Regulation Act 2001 and issued 'Directions'<sup>2</sup> against two air carriers: Ryanair and Aer Lingus. The first of these Directions ordered the display of information prescribed under Article 14(1) of the Regulation at check-in whilst the second Direction ordered the payment of compensation to two passengers whose rights under Regulation 261 were infringed. Both Directions were complied with. Where a Direction is not complied with, the recipient commits an offence and may be liable:

- (a) on summary conviction to a fine not exceeding €5,000, or
- (b) on conviction of indictment, to a fine not exceeding €150,000.

The Commission expects to issue further Directions in the course of 2009.

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<sup>1</sup> Queries: an umbrella phrase to cover all telephone calls, emails, faxes and written correspondence.

<sup>2</sup> Directions are instructions which the Commission can issue in accordance with Article 45A of the Aviation Regulation Act 2001 (as amended) ordering compliance with Regulation 261/2004.

The latter half of 2008 also saw the introduction of EC Regulation No. 1107/2006. This Regulation, which officially came into effect on the 28<sup>th</sup> July 2008, concerns the rights of disabled persons and persons with reduced mobility when travelling by air. It essentially affords such persons opportunities to travel that are comparable with those of other passengers by protecting them against discrimination and ensuring that they receive assistance.

The Commission was designated as enforcement body for the Regulation on the 25<sup>th</sup> July 2008 by the Minister for Transport and since taking on the role, the office has actively worked to ensure compliance at all levels. Staff carried out a total of eleven airport inspections to assess compliance with both Regulation 1107/2006 and Regulation 261/2004 during 2008. The Commission plans to publish a full report on all activities undertaken during the first year of Regulation 1107/2006's implementation<sup>3</sup> in October 2009.

In December 2008 the European Court of Justice (ECJ) delivered its ruling in the case of *Friederike Wallentin Hermann –v- Alitalia – Linee Aeree Italiane SpA*. This case was referred to the ECJ by the Austrian Courts who sought clarification on the circumstances in which air carriers are exempted from paying compensation to passengers. Although Article 5(3) states that "an operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken", the Regulation does not go on to sufficiently define 'extraordinary circumstances'. This lack of definition resulted in significantly differing interpretations across the Member States.

The ECJ ruling in the *Wallentin – Hermann* case provided further guidance for air carriers and enforcement bodies going forward. It clarified that "...a technical problem in an aircraft which leads to the cancellation of a flight is not covered by the concept of 'extraordinary circumstances'.....unless that problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control...".

Throughout 2008 the Commission frequently liaised with the European Commission directly, and with the other enforcement bodies across the Member

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<sup>3</sup> It should be noted that whilst the entirety of EC Regulation No. 1107/2006 came into effect on the 26<sup>th</sup> July 2008, Articles 3 and 4 had been in effect since 26<sup>th</sup> July 2007.

States more generally, to ascertain if a common understanding existed in relation to some outstanding issues within Regulation 261. The Commission will continue to engage in these multilateral talks throughout 2009, having particular regard to the recent ECJ judgement and any difficulties it might present, to ensure that consistent implementation of Regulation 261/2004 is achieved as soon as possible.

## **2. SUMMARY OF VALID COMPLAINTS RECEIVED**

Whilst the Commission received 2,894 queries during the twelve month period from 1<sup>st</sup> January to the 31<sup>st</sup> December, many of these did not fall to be addressed under EC Regulation 261/2007. In spite of this, Commission staff assisted complainants by referring them to the bodies of redress appropriate to their complaint, where known.

However, of the 2,894 queries received, 413 constituted valid complaints and warranted thorough investigation per the European legislation. Article 16 of Regulation 261/2004 clearly sets out how responsibility for complaint handling is determined. It states that "Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports.....".

This means that the Commission has responsibility for investigating all those complaints which relate to departures from an airport within Ireland and those complaints which result from arrivals into Ireland on a Community licensed carrier from a 'third country'<sup>4</sup>.

The 413 valid complaints received by the Commission in 2008 can be further broken down into those complaints which can be fully investigated by the Commission and those which must be forwarded to the enforcement body of another Member State. Table 1 below presents this breakdown.

**Table 1: Total number of valid complaints received by the Commission during the period 1<sup>st</sup> January – 31<sup>st</sup> December 2008**

<b>Origin of flight</b>	<b>Number of complaints</b>	<b>%</b>
Departure from an Irish airport	179	43%
Arrival into an Irish airport from a non-EU airport on a Community licensed carrier	7	2%
Departure from airport situated in another Member State	227	55%
<b>Total</b>	<b>413</b>	<b>100%</b>

<sup>4</sup> The phrase 'third country' is used extensively in the Regulation and it refers to any country to which the Treaty establishing the European Community does not apply.

### **3. TYPES OF VALID COMPLAINTS RECEIVED**

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EC Regulation No. 261/2004 established common rules on compensation and assistance to passengers in four specific areas: flight cancellations, long delays, instances of denied boarding and instances of up/down grading.

Thus these are the only types of complaint which the Commission has the remit to address and pursue on behalf of passengers under Regulation 261/2004. Of the four types most national enforcement bodies agree that the majority of complaints tend to relate to flight cancellations. Table 2 below, which contains a complete breakdown of the 413 complaints received, supports this view.

**Table 2: Analysis of all valid complaints received during the period from the 1<sup>st</sup> January 2008 to the 31<sup>st</sup> December 2008**

<b>Type of complaint</b>	<b>Number of complaints</b>	<b>%</b>
Cancellations	304	74%
Long delay	70	17%
Denied boarding	20	5%
Up/Down grading	2	0%
Other <sup>5</sup>	17	4%
<b>Total</b>	<b>413</b>	<b>100%<sup>6</sup></b>

Table 3 and Figure 1 illustrate this type of distribution in respect of those complaints which, in accordance with Article 16, fall within the remit of the Commission.

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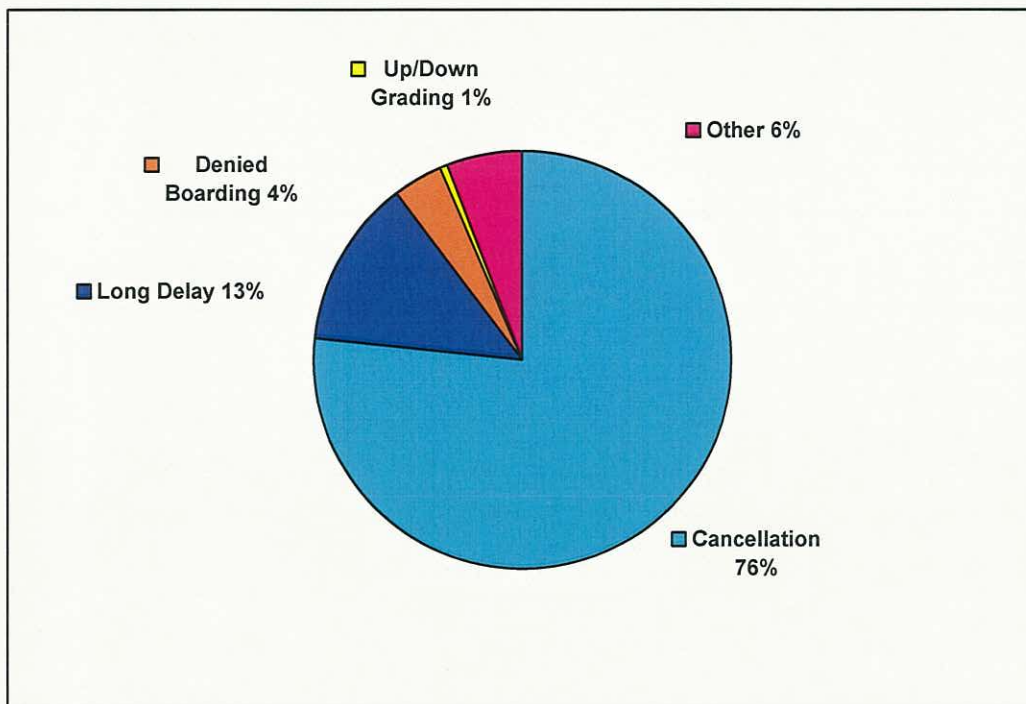
<sup>5</sup> Occasionally, complaints are received by this office, which initially appear to fall within the remit of Regulation 261/2004 but investigation later reveals that they are best dealt with in another forum. The "other" category represents this group of complaints.

<sup>6</sup> The percentages have been rounded to the nearest decimal place.

**Table 3: Analysis of those valid complaints received during the period from the 1<sup>st</sup> January 2008 to the 31<sup>st</sup> December 2008 which fall within the remit of the Commission**

Type of complaint	Number of complaints	%
Cancellations	141	76%
Long delay	25	13%
Denied boarding	7	4%
Up/Down grading	1	1%
Other <sup>7</sup>	12	6%
<b>Total</b>	<b>186</b>	<b>100%<sup>8</sup></b>

**Figure 1: Graphical Representation of the above information**



<sup>7</sup> Occasionally, complaints are received by this office, which initially appear to fall within the remit of Regulation 261/2004 but investigation later reveals that they are best dealt with in another forum. The "other" category represents this group of complaints.

<sup>8</sup> The percentages have been rounded to the nearest decimal place.



## **4. RESOLUTION OF COMPLAINTS**

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As of the 1<sup>st</sup> June 2008, 118 of the 186 complaints received by this office during 2008 had been investigated and brought to a conclusion.

Of the 118 cases resolved, the final outcomes varied:

- In 13 cases, the relevant air carrier paid compensation.
- In a further 46 cases the passengers received either a refund of the cost of their ticket (where appropriate) or reimbursement of expenses incurred as a result of the air carriers failure to provide the care and assistance set out in Article 9 of the Regulation.
- In 26 cases the relevant operating air carrier successfully demonstrated the existence of 'extraordinary circumstances' and that they had taken all reasonable measures to avoid the cancellation.
- In 20 cases, the Commission concluded that an infringement<sup>9</sup> of the rights of the passenger had occurred. However by virtue of the type of infringements concerned no monetary redress could be obtained for the passenger under the Regulation.
- In 2 cases, the complaints were withdrawn by the passenger.
- In 3 cases the passenger accepted an offer made by the airline (in these cases the passenger was happy to accept an offer for travel credit / vouchers made by the air carrier).
- In a further 8 cases the Commission found that the complaint was not sustainable under EC Regulation No. 261/2004.

The Commission is continuing to investigate the remaining 68 cases.

Table 4 sets out the above information in a quick reference format.

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<sup>9</sup> The Commission records all infringements in order to monitor airlines' compliance with Regulation 261/2004. The information gathered may be used by the Commission to prosecute the relevant companies for non compliance with certain provisions of the Regulation.

**Table 4: Outcome of Commission investigations to date**

<b>Resolution</b>	<b>Number of complaints</b>	<b>%</b>
Compensation paid by airline	13	7%
Refund of ticket or expenses incurred for care not provided by airline	46	25%
Extraordinary circumstances proven and reasonable measures illustrated	26	14%
Infringement noted	20	11%
Complaint withdrawn	2	1%
Complaint not sustained	8	4%
Passenger accepted offer made by airline	3	2%
Ongoing complaints	68	36%
<b>Total</b>	<b>186</b>	<b>100%</b>

## **5. ANALYSIS OF COMPLAINTS AT ALL IRISH AIRPORTS**

The Commission sought passenger and aircraft movement numbers per airline for 2008 from the six regional airports: Donegal, Galway, Kerry, Knock (Ireland West Airport Knock), Sligo and Waterford. The Commission also received the passenger movement numbers by airline for Dublin, Cork and Shannon airports from the DAA.

The following table presents the breakdown of the 179 complaints received by the Commission from the 1<sup>st</sup> January 2008 to the 31<sup>st</sup> December 2008 relating to departures from Irish airports.

**Table 5: Details of complaints received at all Irish Airports**

<b>Airport</b>	<b>Total Complaints</b>	<b>Cancellation</b>	<b>Long Delay</b>	<b>Denied Boarding</b>	<b>Down-grading</b>	<b>Other</b>
Cork	27	25	2			
Donegal	1		1			
Dublin	129	94	19	6		10
Galway	3	3				
Kerry	0					
Knock	5	5				
Shannon	14	10	2	1		1
Sligo	0					
Waterford	0					
<b>Total</b>	<b>179</b>	<b>137</b>	<b>24</b>	<b>7</b>	<b>0</b>	<b>11</b>

Table 6 below analyses the complaints made by passengers departing from Dublin, Cork and Shannon. Referring back to Table 5 you will note that in total there were 170 complaints.

The total number of passengers that used these three airports between 1<sup>st</sup> January 2008 and the 31<sup>st</sup> December 2008 (as reported to the Commission) was just under 30 million.

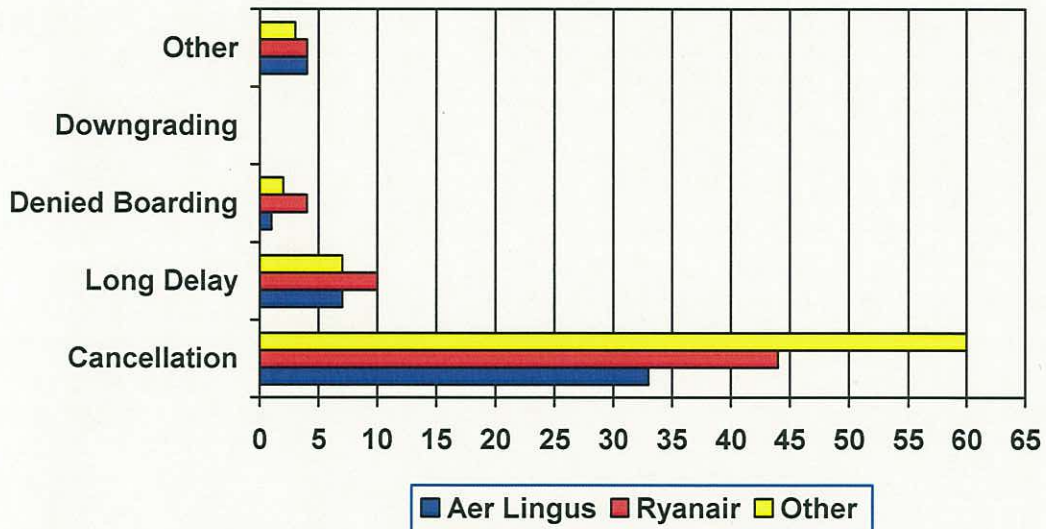
**Table 6: Complaints at Dublin, Cork and Shannon Airports**

<b>Airline</b>	<b>Total complaints</b>	<b>Total passengers at 3 airports *</b>	<b>Complaints per million passengers per annum</b>
Ryanair	62	12,735,959	4.86
Aer Lingus	45	9,787,384	4.59
Other	63	7,371,536	8.54
<b>Total</b>	<b>170</b>	<b>29,894,879</b>	<b>5.68</b>

## 6. DISTRIBUTION OF COMPLAINTS PER AIR CARRIER

The Commission received a total of 179 complaints from passengers for flights departing from all nine Irish airports<sup>10</sup> during 2008. Figure 1 below shows the total complaints for Aer Lingus and Ryanair plus an 'Other' category. The 'Other' category is the sum of all airlines that were the basis of the complaints received by the Commission during this period of time. Complaints were recorded in respect of 21 other air carriers.

**Figure 2: Total complaints for Aer Lingus, Ryanair and Other received by the Commission during 2008 in respect of all Irish Airports**



<sup>10</sup> The nine Irish airports are: Dublin, Cork, Shannon, Ireland West (Knock), Galway, Kerry, Donegal, Waterford and Sligo.

## **7. COMPLAINTS SENT TO OTHER ENFORCEMENT BODIES**

During 2008, the Commission received 227 valid complaints which related either to departures from airports located within other Member States or to arrivals from third countries into such airports on Community licensed carriers. Table 7 below shows a complete breakdown all of the 227 complaints according to the country where the incident occurred.

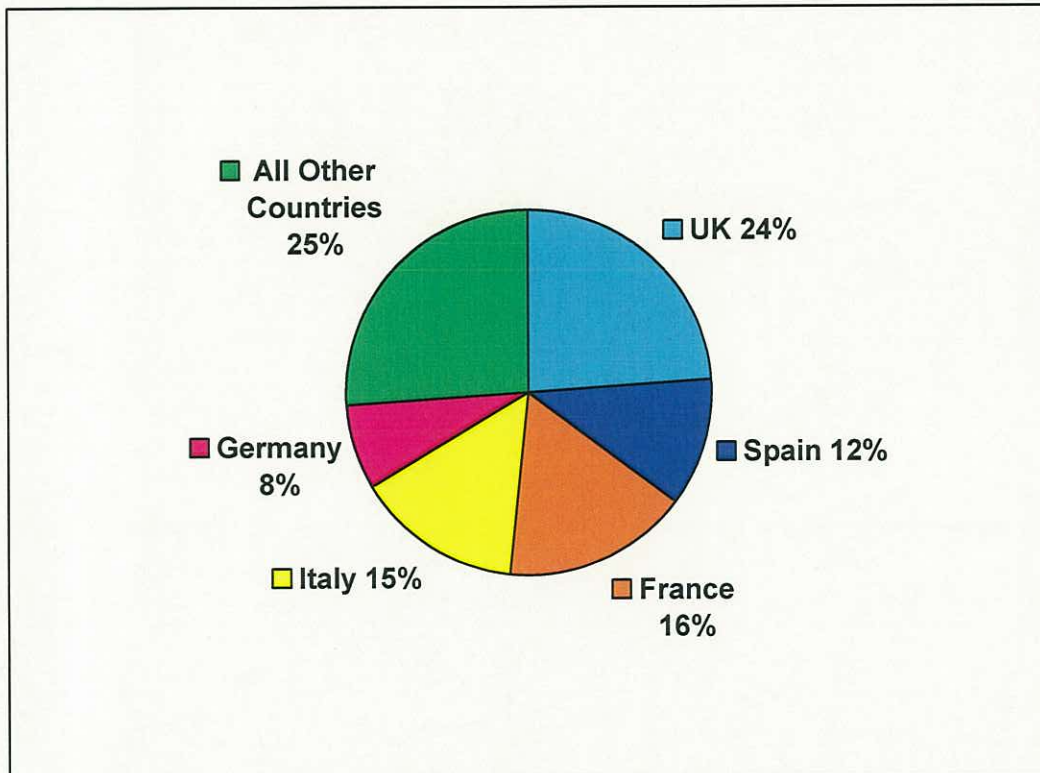
**Table 7: Breakdown of complaints by country competent to deal with same**

<b>Country</b>	<b>Total</b>	<b>%<sup>11</sup></b>
UK	55	24%
France	37	16%
Italy	33	15%
Spain	26	11.5%
Germany	17	7.5%
Poland	8	3.5%
Lithuania	8	3.5%
Belgium	7	3%
Austria	6	3%
Hungary	4	1.75%
Czech Republic	4	1.75%
Greece	3	1%
Portugal	3	1%
Norway	2	1%
Cyprus	2	1%
Netherlands	2	1%
Denmark	2	1%
Romania	2	1%
Slovakia	2	1%
Latvia	1	0.4%
Malta	1	0.4%
Sweden	1	0.4%
Estonia	1	0.4%
<b>Total</b>	<b>227</b>	<b>100%</b>

<sup>11</sup> The percentages have been rounded to the nearest decimal place and as a result the rounding may not sum to 100%

The majority (76%) of complaints received related to departures from (or arrivals from third countries on Community Licensed air carriers into) airports in the UK, Spain, France, Italy and Germany. Figure 2 below effectively illustrates this distribution.

**Figure 3: Graphical Representation of percentage complaints referred to other National Enforcement Bodies**



## **8. CONCLUSION**

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2008 was a landmark year for EC Regulation No. 261/2004 in Ireland. Indeed the total number of valid complaints received by the Commission in 2008 represented a 25% increase in the figures for the previous year<sup>12</sup>. This testifies to a growing public awareness of air passenger rights and, even more importantly, a willingness to assert those rights.

The Commission hopes to promote this awareness even further throughout the course of 2009, as consistent compliance with the Regulation will only be achieved when all passengers whose rights are infringed take measures to prevent those infringements recurring.

Further information on both EC Regulation 261/2004 and EC Regulation 1107/2006 can be found on the Commission for Aviation Regulation's website: [www.aviationreg.ie](http://www.aviationreg.ie)

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<sup>12</sup> The total number of valid complaints received by the Commission during the period commencing 1<sup>st</sup> January 2007 to the 31<sup>st</sup> December 2007 was 331.