

██████████
██████████

2 March 2018
Reference: F0003588

Dear ██████████

I am writing in respect of your recent request of 2 February 2017, for the release of information held by the Civil Aviation Authority (CAA).

Your request:

'We understand that Etihad gave the CAA an undertaking to pay all such claims, however they have still not paid a single claim that we have against them since, despite sending reminders reminding them of their undertaking.'

Please confirm whether you have this undertaking in writing, and, if so, whether you would be able to provide us with a copy, as this could be useful evidence to present in court to help our client's case. Please also confirm if there is any further action the CAA can take to ensure that Etihad complies with the undertaking.'

Our response:

Having considered your request in line with the provisions of the Freedom of Information Act 2000 (FOIA), we are able to provide you with the attached undertaking.

Please note that this is an undertaking provided by Etihad Airways to the CAA in connection with the CAA's statutory functions under Part 8 of the Enterprise Act 2002 ("EA02") and is 'specified information' for the purpose of Part 9 of EA02. Under Section 237(2) of the EA02, such information cannot lawfully be disclosed unless one of the gateways contained in Part 9 of the EA02 is engaged. This section provides a gateway for the release of specified information if consent is obtained from the relevant third part (i.e. Etihad Airways in this case). Therefore, the CAA has sought consent from Etihad Airways, who has consented to the release of the undertaking.

If the CAA has evidence of compliance issues regarding an undertaking it would first investigate with the business to resolve the problems. If non-compliance continued the CAA would consider seeking an Enforcement Order from the court.

Personal information

We have redacted some personal information from the undertaking in accordance with Section 40(2) of the FOIA. To release the information would be unfair to the individuals concerned and would therefore contravene the first data protection principle that personal data shall be processed fairly and lawfully. A copy of section 40(2) exemption can be found below.

If you are not satisfied with how we have dealt with your request in the first instance you should approach the CAA in writing at:-

Caroline Chalk
Head of External Information Services
Civil Aviation Authority
Aviation House
Gatwick Airport South
Gatwick
RH6 0YR

caroline.chalk@caa.co.uk

The CAA has a formal internal review process for dealing with appeals or complaints in connection with Freedom of Information requests. The key steps in this process are set in the attachment.

Should you remain dissatisfied with the outcome you have a right under Section 50 of the FOIA to appeal against the decision by contacting the Information Commissioner at:-

Information Commissioner's Office
FOI/EIR Complaints Resolution
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

<https://ico.org.uk/concerns/>

If you wish to request further information from the CAA, please use the form on the CAA website at <http://publicapps.caa.co.uk/modalapplication.aspx?appid=24>.

Yours sincerely



Rihanne Stephen
Information Rights Officer

CAA INTERNAL REVIEW & COMPLAINTS PROCEDURE

- The original case to which the appeal or complaint relates is identified and the case file is made available;
- The appeal or complaint is allocated to an Appeal Manager, the appeal is acknowledged and the details of the Appeal Manager are provided to the applicant;
- The Appeal Manager reviews the case to understand the nature of the appeal or complaint, reviews the actions and decisions taken in connection with the original case and takes account of any new information that may have been received. This will typically require contact with those persons involved in the original case and consultation with the CAA Legal Department;
- The Appeal Manager concludes the review and, after consultation with those involved with the case, and with the CAA Legal Department, agrees on the course of action to be taken;
- The Appeal Manager prepares the necessary response and collates any information to be provided to the applicant;
- The response and any necessary information is sent to the applicant, together with information about further rights of appeal to the Information Commissioners Office, including full contact details.

Freedom of Information Act: Section 40

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if-
 - (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied.
- (3) The first condition is-
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - any of the data protection principles, or
 - section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
- (4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).
- (5) The duty to confirm or deny-
 - (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
 - (b) does not arise in relation to other information if or to the extent that either-
 - the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).
- (6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.
- (7) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

Undertakings given to the Civil Aviation Authority by Etihad Airways pursuant to section 219 of the Enterprise Act 2002

WHEREAS:

1. Regulation (EC) No 261/2004 of 11 February 2004 establishes common rules for a denied boarding compensation system in air transport to protect passengers denied boarding against their will, passengers affected by cancellation without prior warning, and passengers affected by long delays (the **Denied Boarding Regulations**);
2. The Denied Boarding Regulations set out, among other things, the circumstances in which affected passengers are entitled to assistance and compensation and stipulate that relevant operating air carriers shall provide affected passengers with information on their rights under the Denied Boarding Regulations;
3. The judgment of the Court of Justice of the European Union in Case C-11/11, *Air France S.A. v Heinz-Gerke Folkerts, Luz-Tereza Folkerts*, dated 26 February 2013 clarified that the Denied Boarding Regulations applied to passengers who were delayed at least 3 hours at their final destination as the result of a missed connection (the **Folkerts Judgment**);
4. The Interpretative Guidelines (the **Guidelines**) produced by the European Commission dated 10 June 2016 (the **date of publication**) confirmed that the Folkerts Judgment applied to both EU and non-EU airlines where the originating flight departed from the EU and the passenger arrived at the final destination with a delay of at least 3 hours. The Folkerts Judgment has been further clarified by the Court of Appeal (the **Court**) in the cases of *Gahan v Emirates* and *Buckley v Emirates* [2017] EWCA Civ 1530 (the **Gahan / Buckley Judgment**).
5. The Civil Aviation Authority (**CAA**) is a designated enforcer for the purposes of Article 16 of the Denied Boarding Regulations and for the purposes of section 213 of the Enterprise Act 2002 (the **Act**);
6. Etihad Airways has co-operated with the CAA in giving these undertakings in order to provide the CAA with assurances that it will comply with the Denied Boarding Regulations and the Folkerts Judgment / the Gahan / Buckley Judgment by compensating passengers affected by long delays at their final destination.

NOW THEREFORE Etihad Airways hereby gives to the CAA the following undertakings.

1. **Compliance with the obligation to pay compensation in accordance with the Folkerts Judgment / the Gahan / Buckley Judgment**

- 1.1. Whereas Etihad Airways notes that Emirates has filed an appeal to the Gahan/Buckley Judgment, subject to paragraph 1.5 below, it nevertheless undertakes that it shall, from the date of these undertakings, assess in accordance with the Gahan / Buckley Judgment any consumer claims for compensation under Article 7 of the Denied Boarding Regulations that were submitted to Etihad Airways from 12 October 2017 (the date of the Gahan / Buckley Judgment).
- 1.2. Subject to paragraph 1.5 below, Etihad Airways undertakes that it shall, from the date of these undertakings, assess in accordance with the Gahan / Buckley Judgment any consumer claims for compensation under Article 7 of the Denied Boarding Regulations that were set aside by Etihad Airways pending the Gahan / Buckley Judgment.
- 1.3. Subject to paragraph 1.5 below, Etihad Airways undertakes that it shall, from the date of these undertakings, assess in accordance with the Gahan / Buckley Judgment any consumer claims for compensation under Article 7 of the Denied Boarding Regulations that were previously rejected by Etihad Airways prior to the date of these undertakings, and which the consumer resubmits to Etihad Airways after the date of these undertakings. Etihad Airways is not obliged to pay compensation in accordance with this paragraph in cases where the claim for compensation has already been litigated.
- 1.4. Subject to paragraph 1.5 below, Etihad Airways undertakes that it shall take steps to settle any pending litigation proceedings against it under the Denied Boarding Regulations where the claims in those litigation proceedings fall within the scope of Gahan / Buckley Judgment and have been notified to Etihad Airways.
- 1.5. Etihad Airways retains the right to raise any defences afforded to it under the Denied Boarding Regulations and in accordance with the law from time to time existing or to agree a further stay of any claim pending the outcome of the appeal to the Gahan/Buckley Judgment in cases where the Claimant has legal representation and where such further stay is agreed by either the Claimant or their legal representative acting on behalf of the Claimant.
- 1.6. Etihad Airways undertakes that it will calculate the compensation based on the distance of the flight from the originating point of departure to the final destination on the last flight taken by the passenger.
- 1.7. Etihad Airways undertakes that (for the avoidance of doubt, but always subject to paragraph 1.5 above) it will pay compensation where any missed connection is outside the EU.

1.8. Etihad Airways undertakes to provide the CAA with its policy and procedures setting out its approach to compensation for missed connections.

2. Officers, subsidiaries and agents

2.1. Etihad Airways undertakes that its employees and officers shall comply with these undertakings.

2.2. Etihad Airways undertakes to procure that its subsidiaries shall comply with these undertakings as if they had been given by those subsidiaries.

2.3. Etihad Airways undertakes to procure that its agents shall comply with these undertakings as if they had been given by those agents.

3. Interpretation / reservation

3.1. Words and expressions defined in the recitals to these undertakings shall have the same meaning in these undertakings.

3.2. The headings in these undertakings are for convenience and shall have no legal effect.

3.3. Expressions in the singular include the plural and vice versa and references to persons include corporations.

3.4. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise.

3.5. Etihad Airways reserves its right to revisit and/or terminate these undertakings in circumstances where a judgment of the UK Supreme Court rejects the Gahan / Buckley Judgment.

FOR AND ON BEHALF OF ETIHAD AIRWAYS

Name

Title

Signature

Date

[Redacted Name and Title]

19th November 2017

