

What are Extraordinary Circumstances and how might they affect my claim for flight delay compensation?

The term “Extraordinary Circumstances” is used to describe factors or circumstances that are deemed to be beyond the control of the airline, that have led to a delay or cancellation.

What constitutes “Extraordinary Circumstances” had not been clearly defined in EU regulations and as a result there have been a number of high profile causes in both the English and European courts regarding what the term covers.

The most notable of these took place in 2014 when the English Court of Appeal issued a judgement in the Jet2 v Huzar case which finally provided clarity in the UK that technical problems could not be considered as an example of “Extraordinary Circumstances”.

The European Court looked at the same issue in the case of KLM v van der Lans in September 2015 and again found that technical problems were not examples of “Extraordinary circumstance” and neither was the early failure of an aircraft component.

The ruling however, did note that there are two types of technical fault that may be considered as extraordinary:

1. Hidden manufacturing defect sand
2. Damage to an aircraft caused by sabotage or terrorism

Extraordinary Circumstances and claims for flight compensation

The significance of these judgements for those passengers trying to claim flight compensation from an airline is that ‘Technical problems’ have often been used regularly in the past by a number of airlines to incorrectly refute claims for compensation.

Examples of Extraordinary Circumstances

There are a number of different scenarios where the term ‘Extraordinary circumstances’ may apply and could be used by an airline to refute claims for flight compensation. As you will see from the list below, they are all relatively uncommon.

1. Acts of terrorism or sabotage
2. Political or civil unrest
3. Security risks
4. Strikes or industrial action (Must be unrelated to the airline e.g. airport staff, ground handlers, or air traffic control)

5. Harsh weather conditions incompatible with the safe operation of the flight (e.g. volcanic ash cloud)
6. Hidden manufacturing defects (e.g. a manufacturer recall that grounds a fleet of aircraft)

Examples of reasons for delays and cancellations that do not constitute “Extraordinary circumstances”

If any of the following led to a lengthy delay or cancellation of your flight, you may be entitled to claim flight compensation under EU law:

1. Crew arriving late or problems with understaffing
2. Bad weather affecting a previous flight, causing your flight to be delayed
3. Denied boarding due to the flight being overbooked
4. Technical problems with the aircraft (except hidden manufacturing defects or problems caused by sabotage)

Making a claim for flight compensation when the airline claims Extraordinary Circumstances

Fundamentally, the reason for a flight delay or cancellation must be within the control of the airline for the airline to be at fault. This means that if the delay was due to a security alert for example, this is not something the airline can control and so this would be a valid excuse.

Similarly, if the weather was very bad and the flight could not take off then this would also be a proper excuse that the airline could use to defend itself against a claim for flight compensation.

The problem for passengers looking to make a claim is that airlines will often state that they don't have to pay flight compensation due to an Extraordinary Circumstance, when legally they could not rely on the defence given. Their hope is of course, that the initial rebuttal will be enough to put off most claimants.

Let's take the weather again as an example. The weather might be poor at the departure airport but an airline could not claim this as a defence if other flights from the same airport were not affected. The passenger making the claim would need to check the other flights in order to validate the excuse given by the airline. They also may refer to problems with the weather on the prior flight causing the plane taking the passenger to be delayed arriving. Again, this is not a proper defence but could be depending on the airport and the circumstances.

Our service

Although claiming flight compensation may sound simple in theory, there are hundreds of legal cases which have helped clarify the law over the years and claimants often need to be aware of these in order to be able to make a successful claim.

This is where FairPlane UK can help. If you have previously made a claim for flight compensation directly to an airline, but have been informed that they have an extraordinary circumstance defence, let us know. We may still be able to make a successful claim on your behalf.

If you think you may have a claim for flight delay compensation, [visit our website](#) and check for free