

# Hughes Walker Solicitors Ltd

82 Bolton Street, Bury, Greater Manchester, BL9 0LL

Office: 0161 763 3388

Email: enquiry@hughes-walker.co.uk Internet: www.hughes-walker.co.uk

Ryanair  
 Ryanair Dublin Office  
 Airside Business park  
 Swords  
 County Dublin

**Date** : 07 November 2016  
**Solicitor Ref** : 44068 / 32914 / 54985  
**Your Ref** :

Dear Sirs,

Ryanair & FCCO & HWS- new claims.  
 EC Reg 261/2004

without prejudice

We write in reply to your letter dated 20/10/16. As indicated previously we would wish to reiterate it is our fervent wish to maintain an open dialogue and resolve outstanding issues with Ryanair if at all possible.

As you have written to us directly rather than via Ince & Co, we assume it is in order for us to reply directly to your goodselves, but of course you will doubtless wish to obtain legal advice before responding to this letter. be that advice from Ince & Co, in-house or elsewhere.

Please note, we would not wish to cut-across Ince & Co's retainer should they be representing you in this matter, and if they are please forward this letter to them so they can reply on your behalf as they see fit.

## 1. Alleged Illegible letters of claim

Please be assured steps will be taken to ensure all future letters are legible and clean copies will be provided for the returned illegible copies (with of course extended time limits for your responses) We apologise for sending poor quality prints.

## 2. Service of letters of claim & Portal

We note that you wish for letters of claim to be served at the Dublin address. We confirm that all letters of claim will indeed be served at that address henceforth.

You dismiss our invitation to use our online claims portal, suggesting that your portal is sufficient. We respectfully disagree. Clearly, if claims were to be resolved via some sort of online portal, we would need transparency as to which claims are being rejected and why. Your portal would presumably not allow us to view the progress of claims submitted by our clients. We would not therefore be doing our clients much of a service unless we were able to properly monitor any rejected claims and advise whether or not the rejections were valid. In particular, we note that you continue to reject claims due to bird strikes and lightning strikes. Moreover, we have very recently received a defence rejecting a claim due to the two year time limit in your terms and conditions. We expect that a number of clients may simply accept your rejection and 'give up' at that point. Indeed, we have spoken to a number of clients who have received such rejection letters from you directly and, in

Registered in England & Wales : Registered Number 4801072

This company is authorised and regulated by the Solicitors Regulation Authority - Managing Director : Mark Walker (solicitor) SRA No. 387939

We only accept service by an electronic method if the party and representatives purporting to effect service upon us, have not themselves made any statements to suggest that they would not at all times accept service by us by the same electronic method in question

# Hughes Walker Solicitors Ltd

82 Bolton Street, Bury, Greater Manchester, BL9 0LL

Office: 0161 763 3388

Email: [enquiry@hughes-walker.co.uk](mailto:enquiry@hughes-walker.co.uk) Internet: [www.hughes-walker.co.uk](http://www.hughes-walker.co.uk)

their mind, they had given up on the claim. They were therefore surprised that our advice was to pursue their claim further, the reasons for the rejections being unlikely to succeed at court or at the very least highly controversial. You explain that your reputation and goodwill to customers is paramount. You may therefore wish to consider what impression you create with your customers when you reject a claim, bypassing solicitors in the process, only for that claim to later succeed once court proceedings are issued on the back of our advice. May we respectfully remind you that our clients are now being asked to entrust that Ryanair will be straight-dealing if claims are presented directly, when respectfully, all the evidence suggests that might not be so.

We hasten to add that we are not making a moral judgment here, Ryanair are in business to make a profit, they are not a charity or a 'law centre', and we do not expect Ryanair to act impartially, indeed Ryanair can but perceive matters from the angle of a budget airline aggrieved about the level of compensation it has to pay under the Regulation, hence Ryanair (doubtless in all sincerity) continue to reject claims which an impartial representative would consider had genuine / reasonable prospects of success; that being so, it is perfectly fair and reasonable that passengers should be entitled to avail themselves of independent legal representation to obtain their legal rights if they so choose.

### 3 Time to respond to letters of claim

We do maintain that 14 days is a reasonable time frame to respond to letters of claim and specifically we do not agree it is reasonable to expect us to give Ryanair additional time in which to breach our lien on damages. We do not agree that the issue of lien is irrelevant. The issue of proceedings makes it beyond question that our solicitors' right of lien has arisen in respect of payments made thereafter, and in circumstances where a party is embarking on a course of action deliberately designed to defeat the solicitors lien, early proceedings which help to preserve that lien in our humble submission, is reasonable and justified on that ground alone- this is a reason for early issue (if 14 days is deemed to be "early" which we dispute in any event -see below), indeed in our opinion the issue of proceedings without notice would be justified. As stated previously, however, if you agree to stop sending payments for damages and costs to our clients directly, we would be only too happy to consider extended time frames as part of a wider agreement to amicably resolve as many claims as possible Pre-Action, without the need to issue proceedings wherever possible.

We do not agree that PDPAC is drafted on the basis of '1 claim at 1 time only'. Large corporations and companies such as Ryanair should expect to receive multiple claims at any one time and should have the necessary resource and infrastructure in place to handle a large volume of incoming claims, in the case of Ryanair we note that each year, Ryanair carries circa 10,800,000 passengers on 60,000 flight, so Ryanair should expect to receive at any one time, a significant and doubtless fluctuating volume of claims.

Your comment that 261 claims do not have the potential to raise complex question of law is simply wrong. We have ongoing highly complex cases with Ince & Co, we have had matters referred to the CJEU, we have a case pending in the Court of Appeal under the Regulation, we have pursued a significant number of Circuit Judge appeals on difficult points of law under the Regulation. Even something as simple as the exchange rate for calculating the GBP equivalent sum, is potentially open to legal debate of the highest complexity.

### 4. Payments

You suggest that Hughes Walker solicitors are not directly involved in the initial processing of claims. This is incorrect and is self-evident from the fact that letters of claim itself are not sent by Flight Delays, but by Hughes Walker Solicitors. Flight Delays operate [www.flightdelays.co.uk](http://www.flightdelays.co.uk) and, through that website, they receive instructions from passengers on delayed/cancelled flights looking to make claims. As soon as passengers instruct Flight Delays they are immediately invited to enter a retainer with this firm whereupon Flight Delays take a 'back seat', the claim being conducted entirely by Hughes Walker. Indeed, it would be most confusing if airlines had to simultaneously deal with two entities in relation to the claim process. Consequently, Hughes

Registered in England & Wales : Registered Number 4801072

This company is authorised and regulated by the Solicitors Regulation Authority • Managing Director : Mark Walker (solicitor) SRA No. 387939

We only accept service by an electronic method if the party and representatives purporting to effect service upon us, have not themselves made any statements to suggest that they would not at all times accept service by us by the same electronic method in question.

# Hughes Walker Solicitors Ltd

82 Bolton Street, Bury, Greater Manchester, BL9 0LL

Office: 0161 763 3388

Email: enquiry@hughes-walker.co.uk Internet: www.hughes-walker.co.uk

Walker (not Flight Delays) undertake all pre and post-action work to progress the claim. Hughes Walker investigate any claims received for example checking that we are satisfied the flight was over 3 hours late/cancelled, checking that we are satisfied that the flight date provided is correct, reviewing booking confirmations etc where necessary/ available, (for denied boarding claims) checking if the reason for the denial was 'reasonable', ensuring that the flight is 'in scope' of the Regulation, ensuring that we have jurisdiction to deal with the claim based on the principles laid out in the Rehder case, so on and so forth.

You claim to have 'deduced' that all Pre-Action work is carried out by Flight Delays based on a paragraph taken from FDCO's terms and conditions. Your deduction is wrong, whilst the terms and conditions may give FDCO the opportunity to conduct claims if it wishes, in fact Flight Delays has not done this for many years. The reason for this is that it was found in the early day of 261 claims, that airlines did not take companies like Flight Delays seriously or outright refused to deal with them, or wholesale rejected all claims notified, arguing things like Extraordinary Circumstances, 2 year limitation or even that all flight delay was "non-compensatable". Companies like Flight Delays were simply not taken "seriously", the assumption being that if the airline stonewalled the claim, it would not be pursued as such companies would not be in a position to issue legal proceedings at all and certainly not without referring the case to solicitors who would send their own claim letter upon instruction, so that the airline would feel confident a claim received from such a company could be ignored or rejected at least in the first instance unless and until they heard from solicitors, thus simply causing delay and frustration to the clients in question. Hence a decision was quickly taken to refer all claims to ourselves as panel solicitors from the get-go. Flight Delays has not sent a letter of claim in its own name for at least 2-3 years and any such cases have either long since been resolved or referred to ourselves whereupon you would have received correspondence from ourselves notifying you that we had taken over conduct.

Flight Delays certainly retains the option to return to conducting claims themselves because nothing in life is fixed, and perhaps one day it will make commercial sense for them to resume doing so, but we stress currently all cases are dealt with by this firm and not Flight Delays.

You query the level of expertise/qualification of all persons involved in the claims process. Like any law firm, we employ a number of staff with varying levels of expertise including LLB graduates, LPC graduates, CILEX, solicitors and other experienced claims handlers. We do not believe that it is necessary for us to provide a forensic account of our internal operations save as to say that it is self-evident that:

- a) We are a firm of solicitors
- b) We are retained by our clients
- c) We are perfectly entitled to charge our clients for work undertaken by all members of our staff
- d) The charges levied are reasonable and justified contractually indeed very often trivial compared to the work actually done.
- e) If, therefore, Ryanair decide to pay a claim our clients are liable for our fees
- f) We are obliged to respect the 'indemnity principle', i.e. we do not charge our clients for fees in excess of those actually incurred contractually for which our client has a legal liability to this firm
- g) Like any business that has ever operated we expect to be paid our fees.

## 5.Clause 15.2.2

Thank you for confirming that this clause was introduced as of 26/07/16. We are not sure why you are surprised that we were not aware of this date, given that your website does not disclose historical terms and conditions. Of course hitherto not the slightest distinction was made between those bookings which pre-dated it and those which post-dated it, some might say that in this regard Ryanair was "lacking transparency" in making an argument it must have known was inapplicable to many of the cases in question? This is the same company our clients are now being asked to entrust will be straight-dealing if claims are presented directly by passengers?

Registered in England & Wales : Registered Number 4801072

This company is authorised and regulated by the Solicitors Regulation Authority • Managing Director : Mark Walker (solicitor) SRA No. 387939

We only accept service by an electronic method if the party and representatives purporting to effect service upon us, have not themselves made any statements to suggest that they would not at all times accept service by us by the same electronic method in question

# Hughes Walker Solicitors Ltd

82 Bolton Street, Bury, Greater Manchester, BL9 0LL

Office: 0161 763 3388

Email: enquiry@hughes-walker.co.uk Internet: www.hughes-walker.co.uk

On your account, the new clause therefore only affects flights booked (not departing) after 26/07/16. We are still dealing with large volumes of claims that were booked under the old terms and conditions and we expect that we will continue to do so for some time (bearing in mind there is a limitation period of 6 years). Incidentally, it is now the case that we will have to instruct our staff to check the dates the flights were booked in order to ascertain whether or not the clause applies and to then advise our client accordingly. For flights on or after 26/07/2016 this is quite a task given it is the booking date rather than flight date which needs to be checked, data which is not so easily extracted from our files, and indeed in some cases clients may be unsure when the flight was booked ie if emails have not be retained or non-lead passengers in a booked party do not have access to the lead passenger's emails etc.

In relation to the applicability of clause 15.2.2, we have already set out our position in previous correspondence and we stand by it, the client's right to compensation arises under Article 7 and not contract. By purporting to apply contractual conditions to limit or curtail the right to bring a claim for Art 7 compensation, this is a derogation from the Regulation as the Regulation does not permit an airline to introduce such stipulations or conditions or otherwise dictate how such claims may or may not be brought; and moreover it does create imbalance as passengers should be entitled to access representational services from the outset and not when Ryanair dictates. If, however, you wish to disclose the 'very strong opinions' that you have received from both Irish and English counsel we will happily reconsider our position accordingly in light of their better judgement and reasoned arguments.

In any event, we wonder whether you are genuinely confident that any such advice from counsel is correct? We assume that you have also received counsel's advice in relation to a number of other issues concerning Regulation 261, on matters that were determined in favour of the passengers. Indeed, you frequently attached advice from Irish counsel in relation to limitation defences to your defences which positively brimmed with (as it turned out) false confidence. Did you, for example, receive a 'strong opinion' from Irish and English counsel when referring the case of McDonagh to the CJEU? Or possibly in relation to the appeals made in relation to Ricky Drew and Goel & Others -v- Ryanair? In relation to the application on Kelly Barnes -v- Ryanair to stay claims pending Van Der Lans? Have you received further advice in relation to flights delayed due to bird and lightning strikes (as per your ongoing rejection of these claims) despite the AG's advice in the pending CJEU decision in Pešková and Peška? Again we must respectfully remind you, our clients are now being asked to entrust Ryanair will be straight dealing when history demonstrates time and again they have been on the wrong side of the argument.

We do not agree that the FDCO clauses you refer to are unreasonable. For example FDCO undertakes significant liabilities necessarily therefore requires some restriction in terms of clients acting reasonably in terms of settlement, otherwise clients could reject reasonable settlement with impunity which would be contrary to the proper administration of justice. In respect of matters referred to this firm, the obligation is that clients should act in accordance with our professional advice and as we give that advice with regard to client's best interests, we do not see what your objection is? Are you suggesting that clients are being advised to under settle cases? Patently they are not.

The clause in respect of assignment is a direct result of your actions in making payment direct to our clients. It has only ever been activated in respect of Ryanair cases- never for any other airline. It is perfectly reasonable that FDCO would wish to protect its position in respect of diverted payments as these undermine the economics of the service being provided, and therefore the assignment clause is fair and reasonable. It does not effect the passenger's net financial position - as the relevant terms make perfectly clear. It has of course subsequently been brought to our attention that Ryanair's T&C's now prohibit assignment Article 7 rights, as such the assignment clause is no longer being activated and steps have been taken to re-assign Art 7 entitlements back to the passengers concerned.

The stipulation of FDCO in relation to nominated solicitors is commercially justified and in our experience

Registered in England & Wales : Registered Number 4801072

This company is authorised and regulated by the Solicitors Regulation Authority • Managing Director : Mark Walker (solicitor) SRA No. 387939

We only accept service by an electronic method if the party and representatives purporting to effect service upon us, have not themselves made any statements to suggest that they would not at all times accept service by us by the same electronic method in question

# Hughes Walker Solicitors Ltd

82 Bolton Street, Bury, Greater Manchester, BL9 0LL

Office: 0161 763 3388

Email: [enquiry@hughes-walker.co.uk](mailto:enquiry@hughes-walker.co.uk) Internet: [www.hughes-walker.co.uk](http://www.hughes-walker.co.uk)

entirely normal given the nature of cases in question. If clients were left to choose their own solicitors this would cause delays, it would involve FDCO having to deal with numerous different companies, the whole situation would be unmanageable bearing in mind the high volume low value nature of these cases, it would certainly drive up costs which would make the service wholly uneconomic. It would be difficult or impossible to co-ordinate litigation in respect of common issues or efficiently manage the litigation case-load as you/ your solicitors would have to deal with multiple legal representatives.

With respect, in our opinion, your reference to "client best interests" misunderstands that concept, one might as well say it would be in a client's best interest never to be charged anything for any service and that he or she should be allowed to freely withdraw from his or her contractual obligations with complete impunity at any time, looked at narrowly that would certainly be in any client's "best interests" just as it would be in a client's best interest if his solicitor agreed never to charge a penny for all work done, but the point is that any contractual relationship must balance the interests of the parties, in order to make the contractual arrangements workable.

You state that the above infringes "passenger legislation", what legislation and what sections of that legislation might you be referring to specifically? We do not think it breaches any passenger legislation but if it does then please do specify so that we can ensure any breaches are rectified immediately. We are highly committed to respecting consumer legislation in all its facets.

## 6. Correspondence to our clients directly

We note that you have now agreed to copy us in to all correspondence sent directly to our clients. Thank you. We are yet to receive any such letters; however we trust that this will follow shortly. This is a welcome step in the right direction and will at least minimise the risk of errant proceedings being issued inadvertently; however, what remains critical here is that you cease sending payments directly to our clients. Actions that interfere with our liens in our opinion give rise to a cause of action for 'dual payment' as established in the Court of Appeal authorities previously referred to.

## 7. FDCO Charging Clause

You refer to the charging clause of £200+ VAT that clients of FDCO may be liable for if they breach their terms and agreement. As you pointed out yourselves, FDCO are a separate legal entity. We are not FDCO FDCO are not Hughes Walker solicitors. The clause you refer to is completely irrelevant for the purpose of ascertaining whether or not Hughes Walker have a lien over damages and costs.

## 8. Fees charged

We disagree with your contentions about the reasonableness of FDCO's charges. The charge is perfectly reasonable for the obligations FDCO undertakes under its agreement with its clients and the charges are freely agreed by the clients in question. The charges of Bott & Co who are prominent in this market are not that far removed from the charges you are referring to, which underlines the point that the current charges are NOT excessive, and having reviewed the market, we believe this level of charge is fairly typical of what leading claims companies are charging. It must be appreciated that our clients benefit from a full end-to-end service and your reference to "claims harvesters" is thus unfair. However if Ryanair wishes to put forward proposals that for cases settled pre-issue, charges in respect of Ryanair passengers be reduced by an agreed nominal sum, that is something we could at least discuss with FDCO although we would stress that any such arrangement if FDCO were to agree to it, would be on a strictly confidential basis and exclusive to Ryanair passengers and would go for beyond any legal requirement / obligation of FDCO. This of course is posited on the basis that Ryanair would in return agree to deal with admitted claims within agreed parameters and issue payment in respect of agreed claims direct to ourselves.

Registered in England & Wales : Registered Number 4801072

This company is authorised and regulated by the Solicitors Regulation Authority • Managing Director : Mark Walker (solicitor) SRA No. 387939

We only accept service by an electronic method if the party and representatives purporting to effect service upon us, have not themselves made any statements to suggest that they would not at all times accept service by us by the same electronic method in question

# Hughes Walker Solicitors Ltd

82 Bolton Street, Bury, Greater Manchester, BL9 0LL

Office: 0161 763 3388

Email: enquiry@hughes-walker.co.uk Internet: www.hughes-walker.co.uk

It is correct that FDCO may be entitled to levy charges if a client unreasonably withdraws from his or her arrangements with FDCO, that is a perfectly normal arrangement in any contract. The option to levy a fixed fee or await the outcome of any claim mirrors the provisions of a standard Conditional Fee Agreement whereby the solicitor may well reserve the right either to charge an immediate fee or await the outcome and charge the contracted success fee.

One rationale behind the level of the fixed fee in FDCO's standard terms is that claims under the Regulation are worth up to €600 and the loss of fee in such a case is likely to be somewhere in the region of £200+VAT

As regards the alternate fee, we simply do not understand your comment about "this is essentially bringing a claim in another person's name without instructions", it is quite the opposite. All this clause is saying is that where the client has chosen to withdraw instructions, FDCO may instead choose to await the result of client's claim, it does not mean FDCO, this firm or anybody else will be pursuing any claim without instructions! If a client instructs Hughes Walker not to pursue the claim or withdraws instructions, please be assured we would not continue to act and as you say to do so would certainly be a breach of SRA principles. The clause works in favour of the passenger because in practice wherever possible FDCO charge the relevant % based fee if the compensation amount is known where that amount is lower than the fixed fee. Where the fee is paid, then that is an end to the matter entirely.

We do not agree with your description of these charges as a penalty, they are a charge which the client agrees as part of the terms and conditions and only applies in a very small number of cases and as stated it is invariably moderated. Of course all the clients in question have received cancellation rights as you correctly state, which is not the case for somebody who books a flight with Ryanair. However as this is seemingly an issue for Ryanair, then as with the Assignment Clause, it is something FDCO are more than happy to address by way of amendment to their terms and conditions, and they are equally willing to apply this retrospectively

With regard to the instrumentality clause, again this is not an unusual clause to encounter in an agreement of this type otherwise a client could renege on the agreement at any time by bringing a claim by other means and then arguing they and not FDCO was instrumental in bringing about the compensation payment. As stated however the way the agreement operates is that FDCO refer cases to ourselves immediately, we notify the claims to yourselves and when we do so thereafter you are prompted to make payment, therefore the issue is academic.

As stated in our previous letter, we intend to take legal action in relation to our liens unless matters can be resolved amicably which would be our preferred outcome. We would again urge you in your own interests not to send payments directly to our clients. Are you sure you want to keep putting more and more chips on the roulette wheel?

With regard to the last paragraph of section 8 of your letter, as stated FDCO are not opposed in principle to some arrangement for sign-posting Ryanair clients who wish to present their client directly, notwithstanding passengers who wish to deal with their claims directly would hardly sign up to a paid service in the first place?

As stated Ryanair already have it in their hands to contact passengers after a delayed flight to volunteer notification that the effected passenger is entitled to compensation and if Ryanair were so concerned about its passengers "best interest" as you suggest, then surely Ryanair would be a great deal more proactive than it is in paying out Article 7 compensation. However we will take Ryanair's protestations at face value and we look forward to the day when Ryanair starts taking a pro-active approach, and makes things so simple that all its passengers quickly and easily get paid their Art 7 awards. Of course Ryanair having made it "so easy" and "cost free" for its passengers, we rather think they might end up paying out more than they do at present, but if and when that day is ever reached, companies like FDCO will indeed doubtless be able to say "our job is done here" and or will be forced out business because there will be no market left to serve, at least in respect of Ryanair's

Registered in England & Wales : Registered Number 4801072

This company is authorised and regulated by the Solicitors Regulation Authority • Managing Director : Mark Walker (solicitor) SRA No. 387939

We only accept service by an electronic method if the party and representatives purporting to effect service upon us, have not themselves made any statements to suggest that they would not at all times accept service by us by the same electronic method in question

# Hughes Walker Solicitors Ltd

82 Bolton Street, Bury, Greater Manchester, BL9 0LL

Office: 0161 763 3388

Email: [enquiry@hughes-walker.co.uk](mailto:enquiry@hughes-walker.co.uk) Internet: [www.hughes-walker.co.uk](http://www.hughes-walker.co.uk)

---

passengers.

Please mark any correspondence in connection with this matter FAO Mark Walker or Nick Parkinson.

Yours faithfully

**HUGHES WALKER SOLICITORS LTD**