



Richard Moriarty
Chief Executive Officer at the Civil Aviation Authority
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London
E14 4HD

14th April 2022

Dear Richard,

British Airways potential failure to comply with EC261 re-routing and compensation rules

I am writing to urge the Civil Aviation Authority (CAA) to investigate potential breaches by British Airways (BA) with regards to its re-routing and compensation obligations towards passengers under Regulation EC261/2004, as retained in UK law (the 'Regulation').

Which? has gathered evidence from passengers who had their flights cancelled at the last minute due to the latest IT meltdown and BA staff shortages which suggests that BA may be failing to comply with the Regulation and to inform passengers effectively of their rights to compensation and re-routing.

Lack of information

Many of the BA passengers affected by the above were due compensation for the cancellations and delays.

BA is legally required to inform those passengers, in writing, of their right to compensation and assistance. Yet, cancellation emails and letters BA issued to passengers, and seen by Which? make no mention of compensation rights, which we believe may be in direct contravention of the Regulation which states "*An operating air carrier denying boarding or cancelling a flight shall provide each passenger affected with a written notice setting out the rules for compensation and assistance*". Failure to provide this written notice could mean many BA customers will not claim money that they are legally due from the airline.

Which? has also seen emails from BA to its customers warning of potential cancellations of their flight. It said that the flight may not go ahead and the passenger had three options; cancel and claim a refund (if fare rules allow), rebook for another date with BA for free, or do nothing and hope the flight goes ahead.



This communication is useful in trying to give passengers some options around travel, rather than facing last minute disruption at the airport. However, based on the emails we have seen, it seems BA failed to inform passengers about their rights to compensation if the flight were to be subsequently cancelled. Nor did it tell them by cancelling their own flight, as suggested by BA in the email, they would surrender their right to compensation.

The customers Which? spoke to who received these emails subsequently had their flight cancelled by BA just a few hours later, which entitled them to £220 in compensation.

Re-routing obligations

BA is required by law to offer passengers whose flights it has cancelled re-routing to their destination at the 'earliest opportunity'. Crucially, this includes booking them with other airlines when necessary. We have seen some evidence of BA informing its customers that it will only rebook flights for them on its own jets or with carriers it has a commercial relationship with, even when this may not be available for a number of days. As a result, some passengers might be left stranded or forced to pay for expensive new flights to get home (see Annex A).

We understand these practices may be in contravention of the Regulation which places a legal duty onto the carrier to offer re-routing as close to the destination landing time of the cancelled flight as possible and on any carrier. The CAA issued guidance on this subject in 2021 stating that re-routing on other airlines should be an option even "where airlines do not have such arrangements in place, we do not accept that this should be a barrier to re-routing passengers on other airlines".¹

The CAA issued a letter to airlines on 7th April 2022 reminding them of their obligations to passengers and warning them that they must reroute passengers on any alternative service, not just using airlines which have a commercial relationship with BA.²

While this was an important reminder of airlines' responsibilities from the CAA, we are concerned that this intervention comes too late and may make little difference to the tens of thousands of would-be passengers whose flights are being cancelled at short notice.

The CAA has written letters to airlines in the past, laying out its concerns around airlines' failures to comply with their re-routing obligations under EC261³; yet, we are still seeing evidence of failures to comply.

¹ CAA guidance on re-routing, CAP2155, 2021.
[http://publicapps.caa.co.uk/docs/33/Re-routing%20Guidance%20\(CAP2155\).pdf](http://publicapps.caa.co.uk/docs/33/Re-routing%20Guidance%20(CAP2155).pdf)

² Link to CAA Letter to airlines on 07/04/2022:
<https://www.caa.co.uk/media/jur11tdf/april-2022-disruption-letter-to-airline-for-comms.pdf>

³ See Annex B for links to Which? news articles from 2017, 2018 and 2020 when we informed the CAA of re-routing problems.



As consumers return to travel this summer, many for the first time in two years, lessons should be learnt from the travel disruption this Easter. With many in the industry predicting a busy summer, there can be no excuse for a repeat of these failings. It is crucial that regulators investigate any potential breaches and take action where appropriate. It is imperative that consumer confidence in travel is restored.

Travellers are enduring yet another holiday season in which some airlines are seemingly ignoring their legal obligations to consumers. For this reason, we urge you to investigate any potential wrongdoing.

I have enclosed the evidence my team has gathered with regards to BA practices. We will also share this with the Competition and Markets Authority.

Thank you for your attention to this matter. I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rocio Concha', with a stylized flourish at the end.

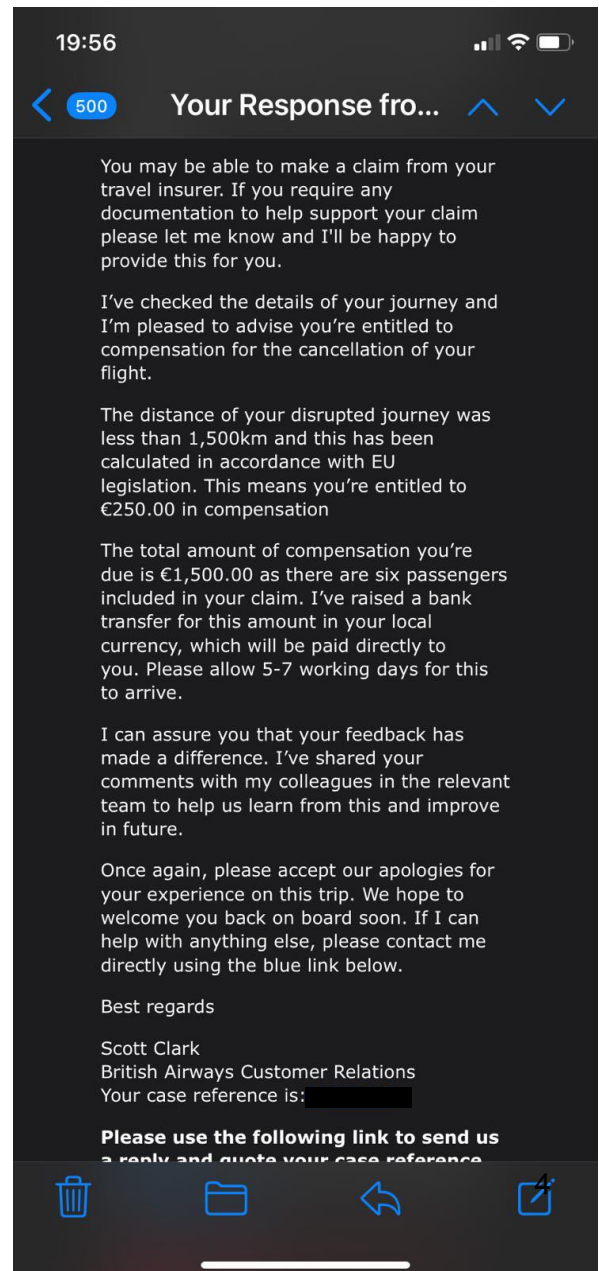
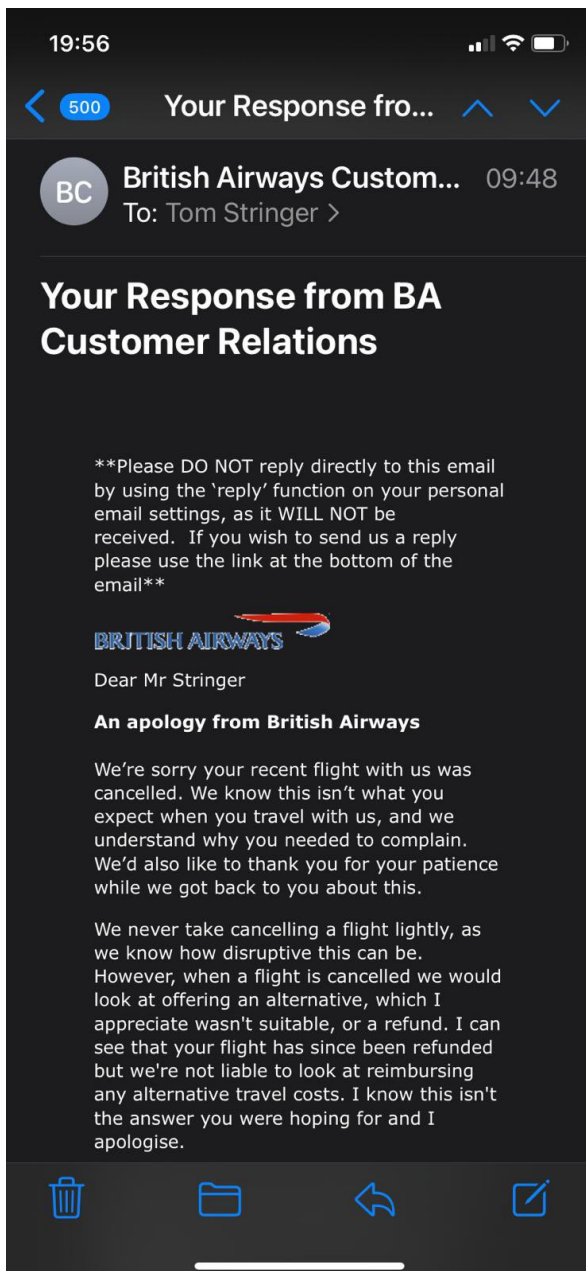
Rocio Concha
Director of Policy and Advocacy, Chief Economist
Which?

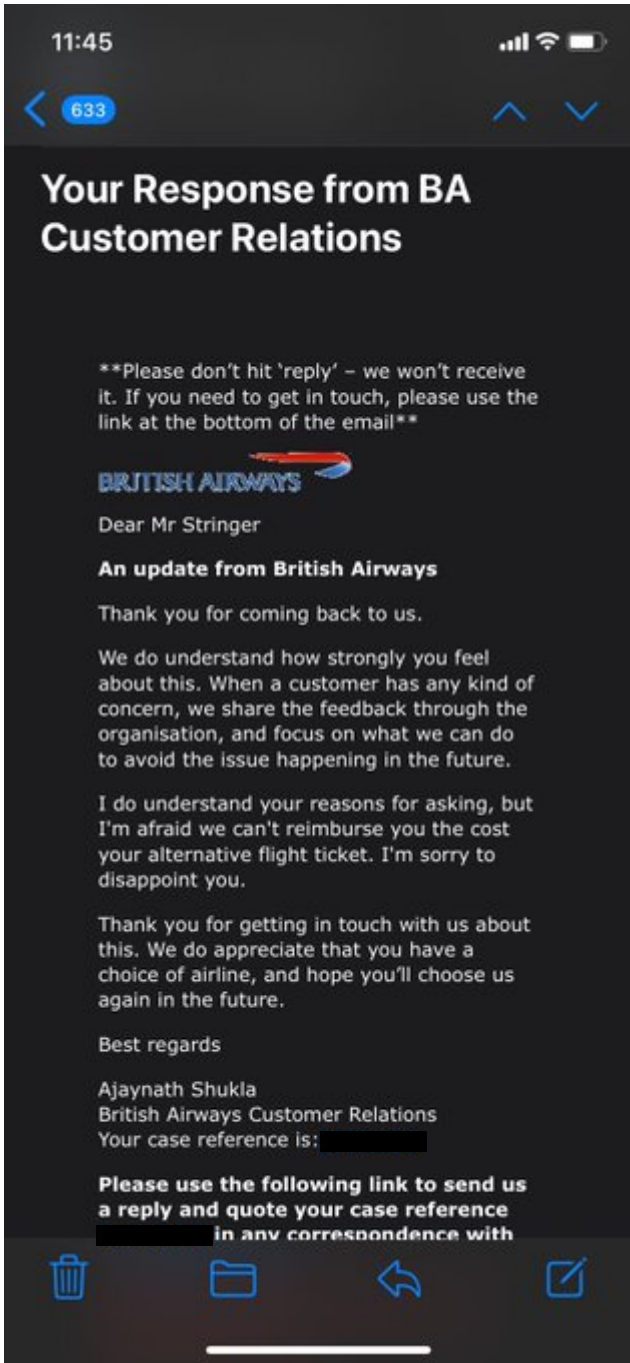


Annex A: Evidence of potential breaches by BA under Regulation EC261

A) Case Study 1: Passenger Tom Stringer (+partner and x4 kids) flight from Milan Linate to Heathrow on 26/02/22 was cancelled the day of departure. At the BA check-in counter, Tom was told that the next available flight BA could put them on was in two days. Subsequently unable to reach BA on the phone, Tom instead booked tickets on a KLM flight that got them home later the same day. Tom applied to BA for reimbursement of the KLM tickets but this was refused with British Airways informing Tom “we’re not liable to look at reimbursing any alternative travel costs”. Instead, British Airways automatically issued a refund for the British Airways cancelled flight. Tom’s alternate flights, booked at the last minute, were far more expensive than the original British Airways flights which BA refunded.

B) Screenshots of communications Tom Stringer received from BA:







C) Case study 2: Passenger Juliana Jaramillo Echeverri flight from Stockholm to London on 30/3/22 was cancelled the evening before its departure. It was due to land in London at (9.45am). BA refused to book Juliana on its next departure as it said its economy class tickets were sold out. Juliana was told she would need to pay extra to be booked onto available business class seats. She asked the BA customer service team by phone to instead book her on a Norwegian airlines flight that would have landed at 12:30 in London on the same day. The customer service agents told her this was impossible as they can only book on 'partner airlines', and Norwegian is not a partner. It later offered her rebooking on a BA flight that landed almost 12 hours after her original arrival time. Juliana ultimately booked the Norwegian flight herself. BA refused to refund her cancelled ticket cost as she had booked through a travel agent and she was told to apply through them. She was not informed of her rights to compensation for the cancellation.

D) Screenshot of BA customer service advice on Twitter:

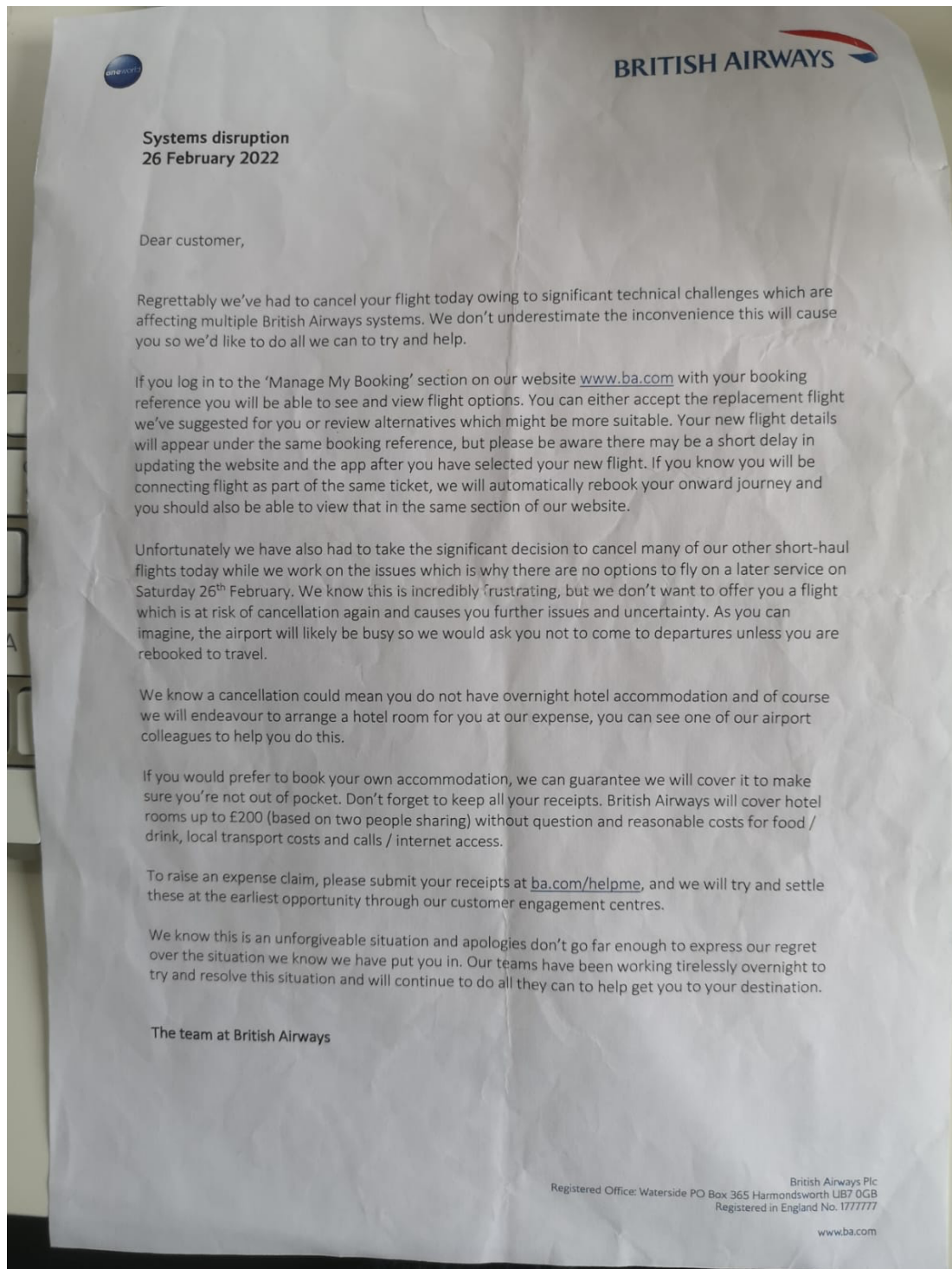
A customer is told by BA that "we can't just go and rebook you onto any other airlines, because we have an agreement in place with other airlines first".



The logo for 'Which?' is displayed in white text on a red rectangular background.

E) Letters handed out by BA staff to customers whose flights were cancelled due to BA's IT systems failure in February 2022 and staff shortage in April 2022:

British Airways was legally required to inform passengers of their right to compensation. Yet, cancellation letters and emails BA sent out to passengers, and seen by Which? make no mention of compensation rights.





**Flight disruption – Heathrow Terminal 5
01st April 2022**

Dear Customer,

Unfortunately, due to the knock-on effect of the technical issue we experienced over the last 48 hours, we've had to make the difficult decision to reduce our schedule from London Heathrow today.

We know this will be incredibly frustrating and will cause disruption to your travel plans, for which we're truly sorry. We will always endeavour to select the flights which we can see will impact the fewest people possible or choose routes where we have options to offer our customers access to another flight within 24 hours.

If you log in to the 'Manage My Booking' section on our website www.ba.com with your booking reference you will be able to see and view flight options. You can either accept the replacement flight we've suggested for you or review alternatives which might be more suitable. Your new flight details will appear under the same booking reference, but please be aware there may be a short delay in updating the website and the app after you have selected your new flight. If you have a connecting flight as part of the same ticket, we will automatically rebook your onward journey and you should also be able to view that in the same section of our website.

We know a cancellation could mean you do not have overnight accommodation and if you would like to book this yourself for ease, we can guarantee we will cover it to make sure you're not out of pocket. British Airways will cover hotel rooms up to £200 (based on two people sharing) without question and reasonable costs for food / drink, local transport costs and calls / internet access. Don't forget to keep all your receipts.

To raise an expense claim, please submit your receipts at ba.com/helpme, and we will try and settle these at the earliest opportunity through our customer engagement centres.

We realise this is not the service you expect from British Airways and we hope to restore your faith in us in the future.

The team at British Airways



Annex B: Which? news articles from 2017, 2018 and 2020 informing the CAA of airlines re-routing malpractice

'Ryanair bows to CAA pressure on flight cancellations', Which?, 29 September 2017. Link: <https://www.which.co.uk/news/2017/09/ryanair-bows-to-cao-pressure-on-flight-cancellations/>

'Airlines that cancel flights must pay to get passengers home', 4 December 2018. Link: <https://www.which.co.uk/news/2018/12/airlines-that-cancel-flights-must-pay-to-get-passengers-home/>

'Coronavirus: airlines failing to reroute passengers', Which?, 3 April 2020. Link: <https://www.which.co.uk/news/2020/04/coronavirus-airlines-failing-to-reroute-passengers/>