



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Issued by the Department of Transportation
on the 1st day of June, 2023**

British Airways Plc

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 259**

Docket OST-2023-0001

Served June 1, 2023

CONSENT ORDER

The U.S. Department of Transportation's (Department or DOT) Office of Aviation Consumer Protection has determined that British Airways failed to provide timely refunds to passengers for flights to and from the United States that the carrier cancelled or significantly changed in violation of 49 U.S.C. § 41712 (Section 41712) and 14 CFR Part 259. From March to November 2020, British Airways' website instructed consumers to contact the carrier via phone to "discuss refund options," including for flights the carrier canceled or significantly changed. However, consumers were unable to get through to customer service agents when calling the carrier for several months during this period because British Airways failed to maintain adequate functionality of its customer service phone lines. There was also no way to submit a refund request through the carrier's website during this period. Also, from March to November 2020, British Airways had misleading information on its website which led consumers to inadvertently request travel vouchers instead of refunds. Since March 2020, the Department has received over 1,200 complaints alleging that British Airways failed to provide timely refunds after cancelling or significantly changing consumers' flights to or from the United States. British Airways has received thousands more complaints and refund requests directly from consumers. British Airways' failure to establish, for several months, a readily accessible method for consumers to request refunds for flights the carrier canceled or significantly changed caused significant challenges and delays in thousands of consumers receiving required refunds. This order directs British Airways to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and assesses the carrier \$1,100,000 in civil penalties.

Applicable Law

Pursuant to 49 U.S.C. § 41301, a foreign air carrier¹ may provide foreign air transportation² only if the foreign air carrier holds a permit from the Department authorizing the foreign air transportation or has a valid exemption from that section.³ A foreign air carrier that holds a foreign air carrier permit from the Department is subject to the requirements of 49 U.S.C. § 41712, which prohibits an air carrier, foreign air carrier, or a ticket agent from engaging in an unfair and deceptive practice in air transportation or the sale of air transportation. Section 41712 authorizes the Department to investigate and decide whether a carrier or ticket agent is engaging in an unfair or deceptive practice, and if so, to prohibit such a practice.⁴

In April and May 2020, in response to the high volume of air travel service complaints received, many of which concerned refunds, the Department's Office of Aviation Consumer Protection (OACP) issued notices to help consumers understand their rights and emphasize to airlines that the unprecedented impact COVID-19 has had on air travel has not changed the airlines' obligation under Section 41712 to refund passengers for flights that airlines cancel or significantly change.⁵ The May notice also stated the Department's longstanding view that an unfair practice is one that "(1) causes or is likely to cause substantial injury to consumers, (2) cannot be reasonably avoided by consumers, and (3) is not outweighed by countervailing benefits to consumers or to competition"⁶ and that a deceptive practice is one that "is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter."⁷ In December 2020, the Department published in the Federal Register a final rule titled

¹ 49 U.S.C. § 40102(a)(21) defines a "foreign air carrier" as "a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation."

² 49 U.S.C. § 40102(a)(5) defines "air transportation" as "foreign air transportation, interstate air transportation, or the transportation of mail by aircraft." 49 U.S.C. § 40102(a)(23) defines "foreign air transportation" as "the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft."

³ The authority required by section 41301 is separate and distinct from the operations specifications and approvals that such an entity must obtain from the Federal Aviation Administration (FAA) for operations to and from the United States.

⁴ The Department's regulations impose obligations on airlines that cannot be avoided through contractual provisions. See *Spirit Airlines vs. DOT*, 687 F.3d 403, 416 (D.C. Cir. 2012) (DOT may implement rule that airlines must change their policies to permit a passenger to cancel a reservation without penalty within 24 hours, based on DOT's finding that existing practices were unfair or deceptive).

⁵ "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (April 3, 2020), available at https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020; "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (May 12, 2020), available at https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.

⁶ *Id.* at 2 n.7.

⁷ *Id.*

“Defining Unfair or Deceptive Practices,”⁸ which codified both definitions.⁹ That rulemaking, among other things, also requires that the Department provide its reasoning for concluding that a certain practice is unfair or deceptive to consumers when an aviation consumer protection regulation does not apply to the practice at issue and the determination is based on the Department’s general authority to prohibit unfair or deceptive practices under section 41712.¹⁰

OACP sets forth below the reason that an airline not having a viable way for consumers to request refunds for flights it cancels or significantly changes, resulting in extreme delays in the issuance of refunds, is an unfair practice. OACP also explains below that an airline misleading a consumer, so the consumer requests a travel voucher instead of a refund, is a deceptive practice.

Unfair Practice

An airline’s practice of not having a readily accessible way for consumers to request refunds for flights it cancels or significantly changes resulting in delays in consumers obtaining required refunds is “unfair” as it causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. First, the practice imposes substantial harm to consumers because they paid money to the carrier for a service that the carrier did not provide. Consumers incur harm from delays in receiving refunds, as well as from the time, effort, and expense involved in seeking a refund.

Second, the harm is not reasonably avoidable. A consumer acting reasonably would believe that he or she was entitled to a refund under U.S. law if the carrier cancelled or significantly changed the flight whatever the reason for the cancellation or significant change. Also, consumers are unable to avoid injuries because an airline not having a viable method for consumers to request and receive a refund is outside of their control.

Third, the harm is not outweighed by countervailing benefits to consumers or competition. The Department seeks to regulate practices that are injurious to consumers in their net effects.¹¹ In enforcing Section 41712, which is modeled on Section 5 of the Federal Trade Commission (FTC) Act, the Department recognizes, like the FTC, that practices may be harmful to consumers in some ways, but beneficial in others. For example, offsetting benefits may include lower prices or a wider availability of products and services resulting from competition.¹² Here, there are no offsetting benefits to consumers that would outweigh the harm of retaining passengers’ funds for lengthy periods of time and failing to provide readily accessible methods for consumers to request refunds.

⁸ 85 Fed. Reg. 78707 (December 7, 2020).

⁹ 14 CFR 399.79(b).

¹⁰ 14 CFR 399.79(e)(2).

¹¹ See <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.

¹² See *Id.*

Deceptive Practice

The practice of stating that a consumer has the option of obtaining a refund but then obfuscating the necessary steps to obtain a refund or only offering consumers vouchers for a flight the carrier canceled or significantly changed is “deceptive,” as that term is defined by regulation. A practice is “deceptive” to consumers within the meaning of section 41712 if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter. A matter is material if it is likely to have affected the consumer’s conduct or decision with respect to a product or service.¹³ Express misrepresentations, implied representations, and omissions are all potentially actionable.¹⁴ A failure to provide services as promised (whether by contract or otherwise) can also be deceptive.¹⁵

First, contradictory and false information on how to obtain refunds is likely to mislead a consumer because a statement indicating that the consumer should follow a particular method to obtain a refund would indicate to a consumer that they would receive a refund to the original form of payment if they pursued that method. Such a refund is materially different from a voucher or other non-refund option because the consumer receives the entirety of their money back, to be used as the consumer sees fit. Non-refund options typically require the consumer to use the value of the product only on specific types of future purchases (such as future flights on the carrier’s schedule). A consumer seeking a refund and relying on express refund options stated on a carrier’s website, would be misled if the carrier instead led them to a process only for requesting and accepting vouchers which could not be exchanged for a refund.

Second, a consumer would be acting reasonably to conclude that the word “refund” means what it is commonly understood to mean: their money back in cash or in the original form of payment.

Third, the misrepresentation is material because it is likely to have affected the consumer’s conduct or decision. When a carrier provides information indicating that selecting a particular option will lead to a refund, a consumer would believe that such an option will indeed provide them with a refund if pursued. When that option for a refund, as explained by the carrier, actually leads a consumer to an option to accept a voucher, a consumer that would otherwise not accept a voucher and would seek a refund might instead accept the lesser alternative because they thought they were requesting a refund. Further, when a carrier advertises an option for consumers to request refunds that instead leads them to other lesser forms of compensation, this is material as well because the carrier has hindered consumers from pursuing true options for refunds and wasted their time. This practice also leads consumers into thinking that a voucher is indeed the only remedy that they can receive from the carrier.

¹³ 14 CFR 399.79(b)(2).

¹⁴ See 85 Fed. Reg. 78707, 78708 (Dec. 7, 2020).

¹⁵ See DOT Order 2013-3-12 (airline acted deceptively when it stated on its web site that certain conditions of carriage, including EU-mandated compensation for cancelled flights, would apply to international travel to and from the U.S., but then refused to abide by those conditions).

DOT's Customer Service Regulation

In addition to the general prohibition on unfair and deceptive practices, pursuant to 14 CFR 259.5, U.S. and foreign air carriers operating at least one aircraft having a designed seating capacity of 30 or more seats must adopt a Customer Service Plan and adhere to the Plan's terms. Customer Service Plans represent a baseline, uniform, minimum level of service to which all covered carriers operating flights to and from the United States must comply. The Customer Service Plan must include certain commitments relating to the payment of refunds to passengers when required by Section 41712. Section 259.5(b)(5) requires: "Where ticket refunds are due, providing prompt refunds, as required by 14 CFR 374.3 and [Regulation Z, 12 CFR Part 1026] for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, including refunding fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation." OACP's position is that refunds are "due" when failure to provide them would constitute an unfair or deceptive practice under Section 41712. Regulation Z states, at 12 CFR 1026.11(a)(2), that for credit card purchases, refunds must be provided within seven business days of receipt of a written request from the consumer. Pursuant to 14 CFR 374.3(b), violations of Regulation Z constitute violations of 49 U.S.C. Subtitle VII.¹⁶

Facts and Conclusions

British Airways, a foreign air carrier, holds a foreign air carrier permit to operate flights to and from the United States pursuant to 49 U.S.C. § 41301. British Airways uses at least one aircraft having a designed capacity of more than 30 passenger seats. One condition of British Airways' foreign air carrier permit is that British Airways "comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States."¹⁷ Accordingly, British Airways is subject to the requirements in 49 U.S.C. § 41712 and 14 CFR 259.5.

Since March 1, 2020, over 1,200 consumers complained to the Department that British Airways failed to provide timely refunds for flights to or from the U.S. that the carrier cancelled or significantly changed. An investigation by OACP revealed that, from March to November 2020, certain British Airways' webpages and notifications to consumers regarding cancelled and delayed flights instructed consumers to contact the carrier via phone to "discuss refund options." However, consumers were unable to get through to customer service agents when calling the carrier during this period because British Airways failed to maintain adequate functionality of its customer service phone lines. Early in the pandemic, many consumers that attempted to call British Airways' customer service phone lines experienced significant issues. During that period, British Airways had closed some of its call centers, including a major call center in India, while

¹⁶ In enforcement orders, DOT has clarified that violations of section 259.5 are violations of Section 41712 specifically, not just 49 U.S.C. Subtitle VII generally. *See, e.g., American Airlines*, DOT Order 2017-7-9.

¹⁷ *See* DOT Order 2007-10-1 (July 23, 2007) in Docket DOT-OST-2007-28149.

leaving others open with limited operations. British Airways' call centers did not return to full capacity until approximately August 2020. Consumers state that they experienced issues including repeatedly declined calls and excessive wait times (i.e., hours), when trying to get through to an airline representative to submit refund requests. Although British Airways allowed consumers to request refunds by email and via Facebook and Twitter, this was not advertised and as such the Department believes many consumers likely were not aware of the availability of obtaining refunds in this manner. British Airways' failure to maintain adequate functionality of its customer service phone lines led to extreme delays in consumers obtaining refunds that they were entitled to receive for flights the carrier cancelled and significantly changed. We view British Airways' practice to be unfair because consumers were subjected to extreme delays in obtaining refunds and some may have been effectively denied refunds.

In addition, OACP's investigation revealed that, from March to November 2020, British Airways' website contained contradictory and false information regarding refund options for impacted consumers. Specifically, following flight cancellations and schedule changes, consumers that logged into the airline's Manage My Booking webpage would see a conspicuous "Cancel and refund flight(s)" blue button that linked to an online form. However, consumers could not request a refund by completing this form. In a bullet point on the same Manage My Booking webpage, there was a separate statement directing consumers to call British Airways to get a refund. However, as explained above, many consumers were unable to reach British Airways to request a refund if they called. Moreover, many consumers may have overlooked the bulleted statement or may not have understood it given the conspicuous "Cancel and refund flight(s)" button. If a consumer did not see or did not understand this statement, clicked on the refund button and submitted the online form with his or her information, the consumer would receive a travel voucher instead of a refund. In addition, if the consumer later contacted the airline after realizing that they had inadvertently requested a voucher instead of a refund, British Airways would deny those consumers' refund requests by asserting that their voucher requests were final and irreversible. It was not until approximately November 2020 that British Airways provided an online method on its website for consumers to request a refund. We find British Airways' practices and misrepresentations to be deceptive because consumers were led to an online option for requesting and accepting vouchers when they were trying to obtain refunds. The information was misleading to consumers acting reasonably under the circumstances and was material to consumers.

Response

In response, British Airways asserts that these complaints must be viewed in the context of the unprecedented global health pandemic and the resulting astronomical number of flight cancellations, which caused operational and personnel challenges. British Airways states it was forced to close two of its five call centers at the start of the pandemic because governmental restrictions forced it to—immediately and without warning. British Airways states that in response, and to meet the heightened demand, British Airways: quickly equipped employees to work from home when possible; repurposed employees and retrained them to perform customer relations functions (including refunds); lengthened the hours of employees who could do complex booking changes; and developed an automated option to process non-complex refunds. One call center reopened in April and the other in early May.

British Airways believes its hard work and efforts worked and disagrees it “failed to maintain adequate functionality of its customer service phone lines” or that there were “excessive wait times” and certainly not ones that were hours long. British Airways asserts that notwithstanding the unprecedented and severe operational impact of the pandemic, it believes that customers were, in fact, able to get through to customer service agents and did not face long hold times, and it asserts that there were only two months—March and April 2020, in the initial chaos of the pandemic—when the average telephone wait time exceeded ten minutes and none where it was “hours”. British Airways states that in May 2020, the call center that handled over 71 percent of British Airways U.S. customer call volume answered 95 percent of calls queued from U.S.-based customers, with an average wait time of only 1.8 minutes. British Airways further submits that data for all of its call centers shows that once the initial crush of the pandemic passed, average wait times were between three and seven minutes.

British Airways disagrees that its website was false and misleading regarding refund options and that its practices and statements were deceptive or misleading. British Airways asserts that it made it clear that passengers whose flights were cancelled due to Covid could obtain a refund and the voucher application on the website made clear that it applied to vouchers, rather than to refunds. British Airways does not agree reasonable customers would have been confused.

British Airways asserts that passengers were able to obtain refunds via multiple avenues, including by email and via Facebook and Twitter. In addition, beginning November 2020, a dedicated webform for passengers to claim a refund was made available to consumers.

British Airways asserts its records refute that passengers were unable to obtain refunds or were effectively denied them:

- British Airways states it issued more than 2.8 million refunds systemwide in 2020, which in British Airways’ view demonstrates that obtaining a refund was not unduly difficult and that customers were not effectively denied refunds.
- British Airways states it refunded 69 percent of tickets on cancelled flights to or from the United States between March 1, 2020 and February 28, 2021 and paid more than US\$ 763 million in refunds. In contrast, British Airways states just under 12 percent of the total number of customers whose flights were cancelled obtained vouchers. In British Airways’ view, the fact that almost 70 percent of customers were able to get refunds demonstrates that it was not unduly difficult to get refunds.
- British Airways states during the period from March 2020 through the end of December 2021, British Airways also refunded over \$40,000,000 to customers who had non-refundable tickets for flights to or from the United States who chose not to travel and for whom British Airways had no legal obligation to refund.

British Airways disputes that passengers were unable to obtain a refund; many customers selected a voucher because they wanted one, and a significant percentage of customers who

selected a voucher have now used them. British Airways asserts the rate of voucher use by passengers confirms that British Airways did not force or mislead passengers to take vouchers.

Decision

OACP views seriously British Airways' violations of 49 U.S.C. § 41712 and 14 CFR Part 259. Accordingly, after carefully considering all the facts in this case, OACP believes that enforcement action is warranted. In order to avoid litigation, and without admitting the violations described above, British Airways consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and to the assessment of \$1,100,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by British Airways and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that by effectively denying British Airways customers the ability to request refunds for several months for flights to or from the United States that British Airways cancelled or significantly changed, British Airways significantly delayed or denied the payment of required refunds and engaged in an unfair practice in violation of 49 U.S.C. § 41712;
3. We find that by failing to adhere to its customer commitment related to providing prompt refunds, British Airways violated 14 CFR 259.5(b)(5) which also constitutes a violation of 49 U.S.C. § 41712;
4. We find that by misleading consumers regarding refund options on its website following flight cancellations and significant schedule changes by the carrier, British Airways engaged in a deceptive practice in violation of 49 U.S.C. § 41712;
5. We order British Airways and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 259.5;
6. We assess British Airways \$1,100,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2, 3 and 4 above; Of this total amount, \$550,000 shall be due and payable within 60 days of the issuance of the order. The remaining \$550,000 shall be credited to British Airways for refunds that British Airways voluntarily provided to passengers with non-refundable tickets for flights

to or from the United States who chose not to travel and were not entitled to refunds under U.S. law;

7. We order British Airways to pay within 60 days of the issuance of this order the penalty assessed in ordering paragraph 6, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject British Airways to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

BLANE A. WORKIE
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for the Office of Aviation Consumer Protection

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