

AVIATION ALTERNATIVE DISPUTE RESOLUTION

BETWEEN:-

KATERINA DAVIES & 2 OTHERSPassengers

- and -

EASYJET AIRLINE COMPANY LIMITEDAirline

DEFENCE STATEMENT

PRELIMINARIES

1. Unless stated otherwise, all times referred to in this statement and any exhibits are in Universal Coordinated Time (“UTC”).
2. This case concerns the delay to flight EZY2230 scheduled to depart from **Manchester Airport (MAN)** at 07:05 on 04 January 2025 and scheduled to arrive at **Václav Havel Airport Prague (PRG)** at 09:15 on 04 January 2025 (the “**Flight**”).
3. The Airline will address the Passengers’ claim for compensation in accordance with the Air Passenger Rights and Air Travel Organisers’ Licensing (Amendment) (EU Exit) Regulations 2019 (the APR) which is otherwise interchangeably referred to as Regulation EC 261/2004 (the Regulation), as amended by the APR in accordance with Section 3 of the European Union (Withdrawal) Act 2018.
4. The Airline further reserves the right to plead further and/or amend its Defence submissions upon the receipt of any further evidence from the Passengers.

AGREED FACTS

5. The Airline agrees that:
 - 5.1 The claim falls within the scope of the Regulation;

5.2 For the purposes of Article 3(2) of the Regulation, the Passengers held a confirmed reservation on the Flight; and

5.3 The Flight was delayed on arrival by 3 or more hours.

POINTS OF DISPUTE

6. The Airline denies that it is liable to pay compensation pursuant to Regulation (EC) No. 261/2004 (the “**Regulation**”) or otherwise and relies on Article 5(3) of the Regulation on the basis that:


6.1 the Flight was disrupted as a result of extraordinary circumstances; and

6.2 the Airline took all reasonable measures to mitigate the disruption to the Flight or there were no such measures that could be taken by Airline in the circumstances.

7. As such, the right to compensation is excluded by reference to Article 5(3) of the Regulation if a carrier can prove that, the disruption was caused by extraordinary circumstances and that that disruption could not have been avoided even if all reasonable measures had been taken.

FACTUAL MATRIX

8. The Flight was scheduled to operate on a UK-registered Airbus A321 bearing tail registration G-UZMJ (the “**Aircraft**”).

UTC TIME	SAT 4 JAN	00:00	01:00	02:00	03:00	04:00	05:00	06:00	07:00	08:00	09:00	10:00	11:00	12:00
G-UZMJ Y235 321-321L														

9. Prior to the Flight, the Aircraft was scheduled to operate operated EYZ2229 (the **Preceding Flight**) which was delayed on departure due to fuelling discrepancies at MAN. The investigation revealed that the fuel discrepancy resulted from an error by the airport fuelling provider, and no technical defects were reported with the aircraft itself.

10. Prior to EYZ2229 there were no delays or disruptions to the original aircraft.

11. However, given the potential safety implications of these discrepancies on the Aircraft’s operation, the Captain, as the commanding officer, determined that, in the circumstance, the safest course of action was to operate with a replacement aircraft, which was positioned from the Airline's base at LGW.

12. Below please see air safety report pertaining to the situation:

Air Safety Report (asr/210532)

Reporter Details

Name	*****	Rank	Captain	Confidential Report	N
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Event Details

Reported Descriptor			Other fuel issues
Title	fuel discrepancy, 900kg unaccounted for		
Red Flag Event	N		
Event Date & Time			
Event Date	04/01/2025	Event Time	0640 UTC
Light Condition	Dawn		

Flight	
Flight Number	EZY-2229
Callsign	ezy19jy
Departure Date	04/01/2025
Departure Airport	MAN
Arrival Airport	PRG
Diverted To	-

		easyJet Hangar 89, London Luton Airport Bedfordshire. LU2 9PF United Kingdom		W/O 31965461 Original 1		Barcode W031965461		Registration G-UZMJ A32X A321N -251	
Type M MAINT	Origin N/A	ATA 12-11 FUEL	Position N/A	Zone N/A	Area N/A				
Type TL		Reference - NEW 116862							
Description Step 1 MAINT: CREW REPORT FUEL QTY INDICATED ON-BOARD (6040KG) IS 900KG MORE THAN CALCULATED FIGURE POST REFUEL USING QTY SUPPLIED BY [REDACTED]									
Action Step 1-1 FUEL QTY ONBOARD CHECKED USING MLI'S REF AMM 12-11-28-650-007-A REV 91 USEING PITCH 0.1 & ROLL 0.1 . LEFT & RIGHT WING CONTENTS CONFIRMED AS : LH 2950 KG RH 3085 KG TOTAL ON-BOARD CONFIRMED AS 6035 KG									
								Performed [REDACTED]	
Inspection Step 1-1-1 C/O									
								Performed ELECTRONIC SIGNATURE ON FILE David Leighton (DAVLE)	
Work Performed Workorder Closed									
Date 04.Jan.2025		Time 09:03		Place / Station MAN			Closing Signature [REDACTED]		
Released To Service Certifies that the work specified, except as otherwise specified, was carried out in accordance with PART-145 and in respect to that work the aircraft / aircraft component is considered ready for release to service. UK.145.01397								Date 04.Jan.2025 09:03 Stamp / Sign ELECTRONIC SIGNATURE ON FILE [REDACTED]	

Subject: RE: Legal Claim / Fuel issues G-UZMJ 04/01/2025

Good afternoon,

Defect

MAINT: CREW REPORT FUEL QTY INDICATED ON-BOARD (6040KG) IS 900KG MORE THAN CALCULATED FIGURE POST REFUEL USING QTY SUPPLIED BY BOWSER

Action

FUEL QTY ONBOARD CHECKED USING MLI'S (fuel tank dip stick manual measurement) REF AMM 12-11-28-650-007-A REV 91 USEING PITCH 0.1 & ROLL 0.1 .
LEFT & RIGHT WING CONTENTS CONFIRMED AS : LH 2950 KG RH 3085 KG
TOTAL ON-BOARD CONFIRMED AS 6035 KG

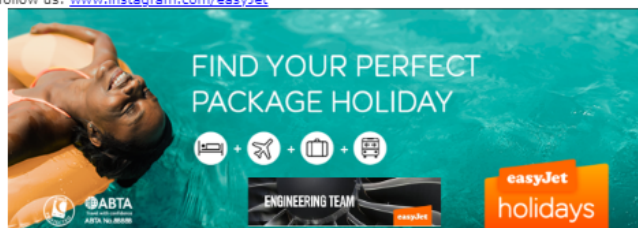
This would indicate a mistake by the refuel company adding more fuel than requested

W/O attached

Best Regards

Maintenance Operations Duty Manager
AOG Response Team Lead
Maintenance Control

fly us: www.easyJet.com
holiday with us: www.easyjet.com/holidays
tweet us: [www.twitter.com/easyJet](https://twitter.com/easyJet)
friend us: [www.facebook.com/easyJet](https://facebook.com/easyJet)
follow us: www.instagram.com/easyJet



13. As the report indicates, fuel readings indicated excessive fuel on-board, which presents a safety risk as all aircraft parameters are carefully measured in order to ensure safe flight operations in accordance with both industry standards and technical demands.
14. Consequently, in the interest of the safety of passengers and crew, and as a reasonable measure, the Preceding Flight was relocated to another aircraft, this time an Airbus A321 bearing tail registration G-UZMC (the **Replacement Aircraft**), which was positioned from London Gatwick Airport (**LGW**), arriving at MAN at 12:31.

Flight Details

U29008

04-JAN-2025

LGW - MAN

G-UZMC

321-321

F0 / J0 / Y235

P | 1

EU261

Cost Impact:1625

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UTC

LOCAL

STD 10:00

STA 11:05

SFH 00:41

EET 00:48

Sch.Blk: 01:05

Status ARVD

LGW

MAN

ATD 11:22

ATA 12:31

AFH 00:43

Act.Blk: 01:09

Movement Info

Passenger

Cargo

Crew

Flight Plan

Mvt. Source

Documents

History

Disruption

London-Gatwick / EGKK

STD 10:00

04-JAN-2025

ETD 19:18

04-JAN-2025

NI 11:22

04-JAN-2025

Take off 11:41

04-JAN-2025

Departure Delay 01:22

96

Departure SI

Delayed due to U22230 on 04012025

Gate & Baggage

Curfew & Closure

Manchester-Ringway / EGCC

STA 11:05

04-JAN-2025

ETA 12:24

04-JAN-2025

Touch Down 12:24

04-JAN-2025

EIBT 12:29

04-JAN-2025

ATA 12:31

04-JAN-2025

Arrival Delay 01:26

93

Arrival SI

Gate & Baggage

Curfew & Closure

Saleable Config. : F0/J0/Y235

Call Sign : EZY9008

Code Share :

Load Summary

PAX Booked : 2

PAX Boarded : 2

Cargo Booked :

Cargo Loaded : 2

Crew Summary

Flight Crew : 2

Cabin Crew : 0

Door Close

PAX :

Cargo :

Weight

PTOW : PZFW :

ETOW : 53319

EZFW : 50000

MTOW : 89000

Cancel

FDP Enquiry

Notes

Messages

Flight Details

U22229

04-JAN-2025

MAN - PRG

G-UZMC

321-321

F0 / J0 / Y235

J | 1

EU261

Cost Impact:24375

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UTC

LOCAL

STD 07:05

STA 09:15

SFH 01:55

EET 01:33

Sch.Blk: 02:10

Status ARVD

MAN

PRG

ATD 13:32

ATA 15:21

AFH 01:28

Act.Blk: 01:49

Ind. C50

Movement Info

Passenger

Cargo

Crew

Flight Plan

Mvt. Source

Documents

History

Disruption

View By ALL

PREV NEXT

Changed On	Change Type	Change Description	Changed By	Reason Code	Reason Text
1 04-Jan-25 09:31	Tail Changed	From G-UZMJ 321-321 F0 / J0 / Y235 To G-UZMC 321-321 F0 / J0 / Y235		OTH	CHANGES IN MAN AS A RESULT OF FUEL QUANTITY ISSUES WITH GUZMJ AND CAPTAIN REFUSING TO OPERATE THE A

15. Taking into account the Replacement Aircraft's arrival time of 12:31 and a minimum ground time for an Airbus A321 in MAN of 50 minutes, the Replacement Aircraft was ready to operate the Preceding Flight at 13:21 at the earliest.

Airport Details

MAN-Manchester

United Kingdom (GB)

ICAO


EGCC

Time Zone

UTC+0

FIR Code

EGPX



06°C

Vis: 9999

Wind: 300° 05KT

General Information

Airport Name

Manchester-Ringway

Lat & Long

53 35232833333333 & -2.27167

Elevation

Slot Level

--

Avg. Taxi In & Out

00 05 - 00 10

Runway

Weather

NOTAM

Curfew & Closure

Connections

Contacts

Miscellaneous

Minimum Connection Time (MCT)

Sector Type	Passenger(mins.)	Cargo(mins.)	Crew(mins.)

Minimum Ground Time (MGT)

Aircraft Type	SubFleet	Transit(mins.)	MGT(mins.)	Reduced MGT(mins.)	MGT Crew Change Max
319			40		50
320			40		50
321			50		60

16. Taking into account the above, the Preceding Flight departed from MAN at 13:32, with a delay of 6 hours and 27 minutes and arrived at PRG at 15:21, with a delay of 6 hours and 6 minutes.

Flight Details

U22229

04-JAN-2025

MAN - PRG

G-UZMC

321-321

F0/J0/Y235

J 1

EU261

Cost Impact:24375

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UTC

LOCAL

STD 07:05

STA 09:15

SFH 01:55

EET 01:33

Sch.Blk. 02:10

Status ARVD

ATD 13:32

ATA 15:21

AFH 01:28

Act.Blk. 01:49

Ind. C50

MAN

T.1 G.6

PRG

T.1

Movement Info

Passenger

Cargo

Crew

Flight Plan

Mvt. Source

Documents

History

Disruption

Manchester-Ringway / EGCC

STD

07:05

04-JAN-2025

ETD

13:40

04-JAN-2025

ATD

13:32

04-JAN-2025

Take off

13:48

04-JAN-2025

Departure Delay

06:27

36

Sec

Sec

Sec

Departure SI

INFO B27 FIREARM0

PSM WCHRO WCHS3 WCHC3

DI NDA PDMA WCHMA WCHDA

92/100 Characters

Gate & Baggage

Curfew & Closure

Prague-Ruzyně / LKPR

STA

09:15

04-JAN-2025

ETA

15:16

04-JAN-2025

Touch Down

15:16

04-JAN-2025

ATA

15:21

04-JAN-2025

Arrival Delay

06:06

93

Sec

Sec

Arrival SI

0/100 Characters

Gate & Baggage

Curfew & Closure

Saleable Config. : F0/J0/Y235

Call Sign : EZY19JY

Code Share :

Load Summary

PAX Booked : 150

PAX Boarded : 130

Cargo Booked : 27 Pcs

Cargo Loaded : 27 Pcs

Crew Summary

Flight Crew : 2

Cabin Crew : 5

Door Close

PAX :

Cargo :

Weight

PTOW : PZFW :

ETOW : 68098 EZFW : 62737

MTOW : 89000

Cancel

FDP Enquiry | Notes | Messages

17. The Flight then suffered a rotational delay of 6 hours and 11 minutes due to the Preceding Flight's delayed arrival, as well as being assigned a delayed Calculated Take-Off Time (**CTOT**) of 16:27 at 15:49.

Flight Details

U22230

04-JAN-2025

PRG - MAN G-UZMC 321-321 F0 / J0 / Y235 J 1

EU261 Cost Impact:37700

UTC LOCAL

STD 09:55 STA 12:15 SFH 02:03 EET 02:14 Sch.Blk: 02:20 Status ARVD

ATD 16:06 ATA 18:32 AFH 02:07 Act.Blk: 02:26 Ind. HOT,C50

PRG T:1 G:A6

MAN T:1

Movement Info

Passenger

Cargo

Crew

Flight Plan

Mvt. Source

Documents

History

Disruption

View By ALL

PREV NEXT

	Changed On	Change Type	Change Description	Changed By	Reason Code	Reason Text
		cto				
1	04-Jan-25 16:21	CTOT Updated	CTOT: 16:27	EIXUSER		
2	04-Jan-25 16:21	CTOT Updated	CTOT: 16:27	EIXUSER		
3	04-Jan-25 15:29	CTOT Updated	CTOT: 16:17	EIXUSER		

Cancel

Notes Messages

Aircraft ID	EZY74RT	LOBT	04/01/2025 15:55:00
Event Time	04/01/2025 15:49:45	Correspondent	LKPRZTZX
ADEP	LKPR	ADES	EGCC

OMSRM
 @AFTN LTNOOCR
 -ARCID EZY74RT
 -IFPLID AA66705666
 -ADEP LKPR
 -ADES EGCC
 -EOBD 250104
 -EOBT 1607
 -IOBT 1555
 -NEWCTOT 1627
 -REGUL KNTM304A
 -TTO .PTID LOHRE -TO 1701 -FL F360
 -TAXITIME 0020
 -REGCAUSE CE 81

LKPRZTZX @AFTN
 @SITA TACTOPSB @AFTN. Message description:-TITLE SRM

AA667056660009037532025010415494500163587660000000486Sent to: LKPRZTZX @

18. The Flight pushed back from stand at 16:06, subsequently took-off at 16:21 and arrived at MAN at 18:32 with a delay of 6 hours and 17 minutes.

Flight Details

U22230

04-JAN-2025

PRG - MAN G-UZMC 321-321 F0 / J0 / Y235 J 1

EU261 Cost Impact:37700

UTC LOCAL

STD 09:55

STA 12:15

SFH 02:03

EET 02:14

Sch.Blk: 02:20

Status ARVD

ATD 16:06

ATA 18:32

AFH 02:07

Act.Blk: 02:26

Ind. HOT,C50

PRG

T:1 G:A6

MAN

T:1

Movement Info

Passenger

Cargo

Crew

Flight Plan

Mvt. Source

Documents

History

Disruption

Prague-Ruzyně / LKPR

STD 09:55 04-JAN-2025

ETD 16:01 04-JAN-2025

NI 16:01 04-JAN-2025

ATD 16:06 04-JAN-2025

Take off 16:21 04-JAN-2025

Departure Delay 06:11 93

Departure SI INF1 B53 PSM WCHR0 WCHS0 WCHC0

Manchester-Ringway / EGCC

STA 12:15 04-JAN-2025

ETA 18:27 04-JAN-2025

Touch Down 18:28 04-JAN-2025

ATA 18:32 04-JAN-2025

Arrival Delay 06:17 93

Arrival SI CTOT1627

Saleable Config. : F0J0/Y235

Call Sign : EZY74RT

Code Share :

Load Summary

PAX Booked : 232

PAX Boarded : 220

Cargo Booked : 48 Pcs

Cargo Loaded : 52 Pcs

Crew Summary

Flight Crew : 2

Cabin Crew : 5

Door Close

PAX :

Cargo :

Weight

PTOW : PZFW :

ETOW : 76014 EZFW : 68761

MTOW : 89000

Cancel

FDP Enquiry | Notes | Messages

19. Had it not been for the fuel reading discrepancies, which presented the operating Captain with safety concerns, the Flight would have, in all likelihood, been able to operate as per the schedule.
20. Taking into account the circumstances that led to the disruption, the Airline avers that, by having sourced a rescue aircraft to operate the rotation, all adequate reasonable measures were taken to ensure the safety of the passengers and crew and the integrity of the Aircraft was prioritised, while also avoiding cancelling the Flight.

LEGAL PRINCIPLES

EXTRAORDINARY CIRCUMSTANCES

21. In respect of extraordinary circumstances, Recital 14 of the Regulation states as follows:

“As under the Montreal Convention, obligations on operating air carriers should be limited or excluded in cases where an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.”

8

22. This is also consistent with the well-established test set out by the CJEU in various leading authorities which considered the interpretation of Recital 14, namely that an event is covered by the concept of ‘extraordinary circumstances’ where it is:
 - a) not inherent in the normal exercise of the activity of the air carrier concerned; and
 - b) beyond that carrier’s actual control.
23. It is submitted that it is not inherent in the normal exercise of easyJet’s activities for meteorological conditions to be incompatible with the operation of safe flight, whether that be the flight concerned or a previous sector, nor is such an event within the actual control of easyJet. In the grand scheme of easyJet’s normal day-to-day activities, it is not a common or ordinary occurrence for meteorological conditions to be so severe that they cause a flight to be cancelled or subjected to a long delay.
24. Furthermore, the CJEU in *Pešková and Peška v Travel Service A.S* (Case C-315/15) confirmed that the collision between an aircraft and a bird is something which must be classified as ‘extraordinary circumstances’. In reaching that decision, the CJEU gave clear *ratio decidendi* in its judgment:

*“a collision between an aircraft and a bird, as well as any damage caused by that collision, **since they are not intrinsically linked to the operating system of the aircraft**, are not by their nature or origin inherent in the normal exercise of the activity of the air carrier concerned and are outside its actual control.”* [Emphasis added]
25. The Airline relies on the Touristic Aviation Services Limited (‘TAS’) and Flightright GmbH (Case C 405/23) of the Court of Justice of the European Union (the “CJEU”) which ruled:
26. By its question, the referring court asks, in essence, whether Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that the fact of there being an insufficient number of staff of the airport operator (...) may constitute an ‘extraordinary circumstance’ within the meaning of that provision.
27. In the first place, so far as concerns the condition that the event in question must not be, by its nature or origin, inherent in the normal exercise of the activity of the air carrier concerned, the Court has held, as regards aircraft refuelling operations, that, even if those operations fall, in principle, within the scope of the normal exercise of an air carrier’s activity, an issue which arises during those operations and is the result of a general failure in the refuelling system managed by the airport satisfies that condition since such an event cannot be regarded as

intrinsically linked to the operation of the aircraft which completed the delayed flight (see, to that effect, judgment of 7 July 2022, SATA International – Azores Airlines (Failure of the refuelling system), C 308/21, EU:C:2022:533, paragraphs 22 and 23).

28. This is also consistent with Touristic Aviation Services Limited (‘TAS’) and Flightright GmbH (Case C 405/23) of the Court of Justice of the European Union (the “CJEU”) which held that, *“Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that the fact of there being an insufficient number of staff of the airport operator responsible for the operations of loading baggage onto planes may constitute an ‘extraordinary circumstance’ within the meaning of that provision”*.
29. According to the Court, the concept of “extraordinary circumstances” within the meaning of Regulation No 261/2004 refers to events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. More particularly, events whose origin is internal must be distinguished from those whose origin is external to the air carrier, a concept encompassing those events which result in part from the latter’s activity and from external circumstances which are more or less frequent in practice but which an air carrier does not control because they arise from a natural event or an act of a third party. All that being said, it is for the referring court to determine, in light of the circumstances of the case in the main proceedings, whether the failures in the ground handling operations at Cologne Bonn airport were beyond TAS’s control and, if so, whether the latter has shown that those exceptional circumstances could not have been avoided even if all reasonable measures had been taken and whether it adopted measures appropriate to the situation to avoid the consequences thereof.
30. It is submitted that the airport operator provides fuelling services and equipment, and that like baggage loading, even if these operations fall, in principle, within the scope of the normal exercise of the activity of an air carrier, an issue that arises during these operations resulting, either from issues with staff or equipment managed by the airport satisfies that condition cannot be regarded as intrinsically linked to the operation of the aircraft which completed the delayed flight.

31. In light of the above, the Airline submits that the disruption to the Flight was caused by extraordinary circumstances.

Safety Of An Aircraft

32. Pursuant to the Air Navigation Order 2016, Article 75(1), before commencing take-off, the pilot in command is obligated to be satisfied that, based on the available information, the conditions do not prevent a safe take-off and departure.
33. The safety of an aircraft is paramount, and ensuring the correct amount and type of fuel is onboard is a critical aspect of flight operations. The captain, as the final authority on board, must be fully satisfied that all fuel calculations are accurate and that there are no discrepancies before departure.
34. Any discrepancy in the fuel load can compromise the aircraft's performance and jeopardise the safety of the flight. As part of their responsibility, the captain must ensure that the aircraft is properly fuelled to meet the required operational range. If any uncertainty or inconsistency arises in the fuel data, the captain is obligated to take precautionary measures to safeguard the flight, which may include delaying the departure and/or opting for a replacement aircraft to ensure the continued safety of the passengers and crew.
35. It is inconceivable that a pilot would compromise passenger safety by failing to address discrepancies in the requested fuel and actual fuel on board, all in an attempt to avoid any delay in the flight's departure..
36. Any issues with fuelling systems or providers are strictly regulated and fall entirely outside the airline's control. The priorities in these circumstances are unequivocally focused on safety, and any expectation to the contrary is wholly unreasonable.
37. In light of the above, the Airline submits that the disruption to the Flight was caused by extraordinary circumstances.

REASONABLE MEASURES

38. In *Eglitis v Latvijas Republikas Ekonomikas Ministrija* (Case C-294/10) the Court of Justice of the European Union (the “CJEU”) held that, while Article 5(3) includes a provision which requires carriers to use all reasonable measures to avoid the disruption of flights, that provision is limited to ensure that it *"does not result in the air carrier being led to make intolerable sacrifices in the light of the capacities of its undertaking at the relevant time"*.

39. Furthermore, in Wallentin-Hermann v Alitalia (Case C-549/07) the CJEU held that reasonable measures must be “*appropriate to the situation, that is to say measures which are, at the time those extraordinary circumstances arise, meet, inter alia, conditions which are technically and economically viable to the air carrier concerned*”.
40. The Airline took all reasonable measures to avoid disruption by having spare aircraft and crew within our network and utilising these assets as required to minimise disruption.
41. The Airline promptly sourced a spare aircraft from its base at LGW and positioned it to MAN at the earliest opportunity. The positioned aircraft was staffed with the necessary crew, who were called in from standby, for which the Airline has taken all steps to ensure compliance with crew requirements.
42. It would be economically unviable for easyJet to maintain fully crewed redundant aircraft at each and every airport to which it operates to or from, in sufficient number to cover any number of potential disruptions. Save for having an unlimited amount of spare aircraft and crew at all airports, an option which would amount to an “*intolerable sacrifice*” given the disproportionate cost involved, the disruption that materialised could not be avoided.
43. Accordingly, the Airline’s maintains that the measures taken were appropriate to the situation and those that were technically and economically viable at the time and which mitigated the inconvenience to the Passenger(s) as best as possible in the circumstances. There were no other reasonable measures which could have been taken to avoid the cause of the disruption to the flight or the disruption itself.

GENERAL CONTINGENCIES

44. easyJet has a Fleet / Crew Optimisation and Allocation Team who are responsible for managing the assignment of aircraft to activities, and this includes ensuring that the necessary resilience is provided to the operation. This is to ensure that the airline has sufficient resources available at its disposal on a day-to-day basis in order to mitigate and manage normal levels of disruption in peak summer periods.
45. easyJet’s general policy is to ensure that any delay, disruption and inconvenience to passengers are minimised as much as possible, and in line with that policy, easyJet take reasonable contingency precautions by ensuring that it has a proportionate number of spare aircraft and crew available within its network. easyJet aims to have a minimum of 1 standby aircraft for every 20 – 25 aircraft within its fleet. These aircraft are generally stationed

throughout easyJet's primary aircraft bases including London Luton Airport ("LTN"), London Gatwick Airport ("LGW"), Milan Malpensa Airport ("MXP"), Berlin Schönefeld Airport ("SXF"), Geneva Airport ("GVA") and Paris Charles de Gaulle Airport ("CDG"). This minimum standby aircraft plan is not always achievable on a day-to-day basis due to overarching effects of ongoing, cumulative and unforeseeable disruption within the network (e.g. the impact of industrial action / air traffic control restrictions on crew hours). The underlying cost of maintaining these resources equates to approximately £15 – 18 million per annum (not including engineering and maintenance costs). At the relevant time, easyJet planned to have 1 standby aircraft for every 30 aircraft within its fleet which equated to approximately 6 spare aircraft within the network.

46. easyJet also has crew bases in multiple locations throughout Europe. easyJet aims to have a minimum level of crew standby resources at its disposal on a day-to-day basis. This minimum crewing standby resource is calculated to equate to approximately 21% of the total crew network (e.g. for every 100 Captains undertaking flying duties easyJet will have 21 standby Captains available within its network). The underlying cost of maintaining these resources equates to approximately £70 – 80 million per annum.
47. As is the case with standby aircraft, this minimum standby crew plan is not always achievable on a day-to-day basis due to overarching effects of ongoing, cumulative and unforeseeable disruption within the network (e.g. the impact of industrial action / air traffic control restrictions on crew hours).

Re-routing Options

48. It should be noted that, in the event of a delay, Article 6(1)(c) of the Regulation only entitles a passenger to reimbursement only under Article 8(1)(a) (see Article 6(1)(c)(iii)).
49. The Passengers, however, did travel on the Flight, thereby utilising the service pursuant to the flight contract, and as such, no refund is due.

Summary

50. The fuelling process is conducted by an independent airport service provider, either contracted by the airport authority or operating as a separate entity.
51. The Airline has no control over the operational procedures, staffing, or maintenance of equipment belonging to third-party fuelling companies. Consequently, any disruption arising

from such an external service provider constitutes an event beyond the Airline's control, akin to air traffic control restrictions or airport closures.

52. Pursuant to ECJ case law, notably C-549/07 Wallentin-Hermann, an event qualifies as an extraordinary circumstance if:

52.1 It originates externally to the airline's normal operations, and

52.2 It could not have been avoided even if all reasonable measures had been taken.

53. A fuelling error, whether due to incorrect action taken by the third party, or a failure in the refuelling system, is an unforeseeable and exceptional occurrence that the Airline cannot reasonably anticipate or prevent.

54. Any fuelling discrepancy arising from the actions of airport personnel is attributable to a third party and remains outside the airline's sphere of management and control.

55. In the present case, the Aircraft captain acted in accordance with established safety protocols, prioritising the welfare of passengers and crew. The Airline undertook all reasonable measures to mitigate the delay, including sourcing a spare aircraft while the fuelling discrepancy was being investigated.

56. Accordingly, under Article 5(3) of Regulation (EC) No 261/2004, and the established case law, the Airline is exempt from liability for compensation, as the delay resulted from extraordinary circumstances that could not have been avoided despite all reasonable efforts.

CONCLUSION

57. In short, the Flight was delayed on arrival by 3 or more hours due to extraordinary circumstances and there were no further measures that could have been taken by the Airline to mitigate the disruption.