

Editorial: The only certainties in life are death and taxes - but don't forget airline fees and charges

Some time ago I found, after having booked flights on a 'low-cost' airline, that I had to cancel the flights. As a consequence I forfeited the cost of the flights. This loss was mitigated by the fact that I had travel insurance. However the insurance company, for some reason, would not cover the taxes element of the fare – the APD. On application to the airline I was informed that I was entitled to a refund but I would have to pay an 'administration' charge which exceeded the amount I had paid in tax.

The waters were further muddied by the fact that the airline had imposed 'taxes and charges' without clearly distinguishing between the two and it took lengthy correspondence to split out the two. This was necessary because the insurance company would refund the latter but not the former.

Further enquiries elicited the fact that not only had the airline not remitted the tax to HMRC but that HMRC were not interested in collecting this tax or even requiring airlines to refund it to passengers.

So by imposing this administration charge the airline not only got to keep the full fare but also the tax. Additionally, as I had cancelled the flights many weeks in advance they were probably also able to sell the seats again – making 200% for the seat plus the tax. Not a bad return.

While I am sure that there are processing costs involved in refunding the tax I cannot believe that they amount to anything like the administration charge that is imposed. If airlines can accept booking, payment and cancellation automatically it can surely only be a small step to refunding the tax automatically. Other businesses manage to credit refunds without this fuss so why not airlines?

I wonder how much in aggregate airlines make this way every year and to what extent they regard this as just part of their income stream. How much do they make by retaining money that should either go to the Treasury or be returned to passengers?

A recent European Court of Justice case suggests however that the imposition of administration charges like this can be challenged. The facts of the *Air Berlin* case which can be found [here](#) in the 'Resources' section of the TLQ website are that the German consumer organisation, the 'Bundesverband, made a test purchase of a flight on Air Berlin. The purchase revealed two issues. First, the taxes and charges were only €3, a significant under reporting. Secondly, if a passenger cancelled a flight the airline would impose a 'handling fee' of €25 on any refund.

On the first issue the ECJ concluded that under Art. 23(1) of [Regulation \(EC\) No 1008/2008](#) on common rules for the operation of air services in the Community the various taxes and charges had not been displayed sufficiently transparently. According to the Regulation all taxes, airport charges and other charges, surcharges or fees should be specified separately and could not be consolidated into the airfare.

On the second issue, a German court had already held that the airline should remove the term in its contract that permitted it to levy the €25 handling charge in the case of cancellations, on the grounds that it contravened their domestic legislation on unfair terms because it was unfair in that it unduly disadvantaged passengers. In the ECJ the airline argued that the pricing freedom granted to airlines under Article 22 of Regulation No 1008/2008 precluded the operation of domestic legislation on unfair terms. The ECJ rejected that argument, leaving it open to the German courts to adjudicate on the unfairness of such terms.

The German legislation is based on Council Directive 93/13/EEC on unfair terms in consumer contracts and this also forms part of UK law having been transposed into our law many years ago and currently forms part of the [Consumer Rights Act 2015](#). This being so it is open to a UK court to strike down a similar term to be found in airlines operating from the UK.

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