Complaint handling and individual redress – Finnish (with these) perspectives!

Stakeholder Conference on Air Passenger Rights 30 May 2012
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Key features of the Finnish system:

• APR enforcement and complaint handling mechanisms are no different from other areas of consumer protection (handling of business complaints a novelty), same carefully devised protective system for all (but APR compete for priority/resources within that system)

• Access to justice in individual cases and collective enforcement are distinct, but equally important and complementary functions, entrusted to separate bodies working together towards the overall goal of seamless consumer protection
• complaint-handling mechanisms seek to rectify past wrongs in individual cases, collective enforcement is forward-looking and preventive in the interest of all, not mere sanctioning of individual infringements but influencing the practices of business branches (Ombudsman’s guidelines, negotiated contract terms)

• 3 designated NEBs in APR with a clear division of (inter-locking) tasks: Consumer Agency & Ombudsman, Transport Safety Agency Trafi and Consumer Disputes Board

• Close cooperation with each other and the ECC
Consumer Agency & Ombudsman

• monitors consumers’ position in the market and acts in the collective interest of consumers
• wide remit, supervises the lawfulness of marketing and contract terms relating to all consumer goods and services (SLO and competent authority in practically all instruments listed in the Consumer Protection Cooperation Regulation)
• Issues guidelines, negotiates model contract terms for branches, advises businesses on consumer protection on website
• as an NEB under Regulation 261/2004, duty to ensure that the contract terms and general practices of airlines are in line with their statutory obligations, does not handle individual complaints
• Provides consumer information, e.g. extensive info on website on passenger rights and how to complain, training to consumer advisers, gives guidance on topical issues and crisis situations
Transport Safety Agency Trafi

- regulates and supervises the transport system, actively improving its safety and promoting environmentally friendly traffic
- supervises flight safety and administrative aviation issues
- handles complaints filed by business travellers under Reg. 261
- gives expert statements to the Consumer Disputes Board pertaining to flight safety
- has a general duty to guide the public and give advice in questions within its own field of competence
- may also take actions against airlines for not fulfilling their obligations under Regulation 261/2004.
COMPLAINT HANDLING

Individual complaint on:
- denied boarding
- cancellation
- delay
- damages
- contractual issues etc.

Consumer Agency's website: info on APR, complaint forms

CONSUMER ADVISER
- personal advice
- settlements

Transport Safety Agency
TRAFI
Complaints of business passengers

ECC
Crossborder advice
- amicable settlements
- direction to correct body

Consumer Disputes Board
NEB

General Courts, CO's role
Consumer Disputes Board

- Neutral and independent ADR-body, issues recommendations in disputes between consumers and businesses
- Important function in creating case-law and precedents in the area of consumer law, which rarely ends up before courts
- Duties and powers laid down in the Act on the Consumer Disputes Board
- Ca. 5,000 cases and 2,000 written decisions annually
- Members nominated by the Ministry of Justice for a 5-year term, represent consumer interests as well as the business sector. Legal and other expertise is taken into account in selection.
- Members supported by a secretariat of 30 full-time employees, with about 15 lawyers.
- 13 sections, (4 members + independent chairman, typically a district court judge)
- Travel disputes belong to the 6th Section, meets once a month.
Complaint-handling procedure

- **Free** of charge, costs cannot be awarded to either party
- Proceedings based on **written documentation** (in Finnish or Swedish only, passenger rights complaints based on EU Regulation 261/2004 can be handled in English)
- **Adversarial**: all relevant material will be sent to all parties for comments before a recommendation is issued (time-consuming)
- **No oral testimony** (if witnesses required, Board refrains from decision)
- Expert statements on flight safety from Trafi
- Legally reasoned, non-binding written decisions, well abided by
- parties remain free to take matter to court, Consumer Ombudsman may assist a consumer if decision not complied with (disciplinary/precedential value)
- **All documents** related to a complaint, including whether decision was complied with, **in principle available to public > deterrence**
- Consumer advisers guided by case law when pursuing amicable settlements; regular training courses to advisers by Agency and Board
SANCTIONING IN THE COLLECTIVE INTEREST

- Unfair contract term
- Unfair commercial practice
- Need to get a precedent
- Systematic breach
- E.g. ash cloud crisis and Finnair

**CONSUMER AGENCY & OMBUDSMAN (NEB)**
- Statutory duty to negotiate first

**TRAIFI (NEB)**
- Warning
- Ban
- Fine

**Market Court**
- File for ban, backed with fine
  - Own ban, own fine (clear cut-cases)

**General Courts**
- Group action, assistance to individual consumer in court

**Group complaint before the Consumer Disputes Board**
Food for thought from the Finnish perspective

- **Enforcement** and handling of **individual complaints** should be recognized in the Regulation as **two separate functions** that may be entrusted to different bodies.

- Access to justice is not a transport mode/sector-specific thing, nor are passenger problems “regulation-oriented” - horizontal measures welcome with complementing arrangements if necessary, but excessive tailoring of redress mechanisms for regulations problematic.

- Redress has hitherto been the province of Member States-introduction of new species may affect balance of ecosystem – member states still need flexible solutions, provided they work.

- **Should business passengers get ADR at all (at public expense)?**

- **Pre-ADR filtering may be needed**: key role on clear passenger info and efficient complaint procedures for airlines, but consumer advisers and ECCs could be the port of first call after contacting the airline (advice, assistance in clear cases, amicable settlements, direction).