



**EUROPEAN CONSUMER CENTRE
IRELAND**

CAR RENTAL CONTRACTS

Business practices, contract terms
and consumer protection

CONTENTS

Foreword	3
Introduction	4
Methodology	5
Part I Trends and Statistics	6
Part II Contract Terms and Major Problem Areas	8
1. Charges for damages on return	8
2. Payment arrangements / additional charges	9
3. Customer service during the hire period	11
4. Car rental booking companies	12
5. Insurance coverage	13
6. Contract terms	14
Part III Consumer Protection	17
Part IV Recommendations	19
Conclusion	21
Annex	22

FOREWORD

The European Consumer Centre in Ireland (ECC Ireland) is part of a network of 29 centres across Europe. ECC Ireland is co-funded by the European Commission (Health and Consumer Protection Directorate General) and the National Consumer Agency. The main objective of ECC Ireland is to create consumer confidence in the Internal Market so that consumers feel protected shopping across borders. This is achieved by providing information and advice to consumers on their rights, and by assisting them with cross-border disputes.

In order to further this objective, ECC Ireland carries out awareness campaigns, publishes information material and hosts a website (www.eccdublin.ie) as well as giving presentations to interested groups. It also writes joint reports and surveys with other centres in the network. ECC Ireland also provides feedback to the National Consumer Agency and the European Commission on problem areas requiring enforcement.

As a Europe-wide network, ECCs are in a unique position to deal with cross-border complaints. Hence, all statistics and findings of this report are derived from cross-border complaints received by ECC Ireland, whether from Irish consumers against companies in other European countries or foreign consumers complaining about Irish traders.

The analysis of complaints received by ECC Ireland relating to the car rental sector should, however, be read within a wider context, as other groups also deal with consumer problems and complaints about car rental companies across Europe. These include consumer agencies and ombudsmen, Alternative Dispute Resolution bodies (ADRs) and also the courts. In Ireland, such competent bodies in this area include the National Consumer Agency and Car Rental Council of Ireland.

All the observations and conclusions in this report are based on the statistics collected by ECC Ireland in 2007.

Tina Leonard
Director

April 2008

INTRODUCTION

European integration and a growing Internal Market create new incentives and opportunities for citizens and businesses to interact on a cross border basis. A rapid growth of the car hire sector, fostered by a steady increase in the volume of consumers travelling across Europe, in addition to the growth of online bookings, has put car rental issues among the top areas of interest to the European Consumer Centre Ireland.

Such rapid growth and change within the industry has prompted the development of standard contracts. The analysis of complaints in ECC Ireland shows that standard contract terms can have positive and negative characteristics but in any case they are becoming more complicated. While car rental contracts are prepared to cover every possible contingency, consumers very often sign the papers without reading the complicated provisions and so are unaware of their rights and obligations. Therefore, one of the main objectives of this report is to look into the standard agreements used in the car rental sector and assess their efficacy from the consumer's point of view.

In addition to car rental contracts being complicated, it is worth looking at the fairness of some of the terms contained within. Many car rental contracts are designed in such a way that in case of an accident the consumer has to bear preliminary costs, sometimes even when it cannot be accurately established that he is at fault. Car rental companies can charge consumers' credit cards without protracted formalities but the customer who disputes the charges very often has no other option but to follow lengthy procedures. Furthermore, if a consumer complains from abroad the situation may become even more complex. Consequently, this report will also assess whether standard contracts respond adequately to the challenges of the car rental business without placing unfair liability on the consumer.

At present, there is no industry specific legislation relating to the car rental sector specifically. However, consumers using car hire services are protected by other legal instruments with very extensive scope. One of the most significant pieces of legislation is the Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts. In May 2007, the Consumer Protection Act came into effect in Ireland transposing the Unfair Commercial Practices Directive 2005/29/EC. The provisions of the Act are cross-sectoral and so can potentially have an impact on the car rental industry among others. Furthermore, the Act's establishment of the National Consumer Agency has resulted in the creation of a set of mechanisms to eradicate misleading and aggressive practices. Undoubtedly, the Consumer Protection Act considerably strengthens consumer protection in Ireland.

This report evaluates standard contracts in light of the new legislation and makes suggestions for improvements, where necessary.

Marcin Walkowiak
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METHODOLOGY

The report focuses on the business practices, contract terms and consumer protection in the car rental industry in Ireland. The key objectives of this study are to:

- Analyse the complaints related to the car rental sector received by ECC Ireland in 2007.
- Determine the trends and central problem areas.
- Scrutinise standard car rental contracts in light of the new legislation.
- Propose recommendations.

In order to achieve these objectives the report begins with an introduction and overview of the main themes and will be divided into four sections. In the first part, the report will focus on statistical overview and analysis of major trends. In the second part the main problem areas will be illustrated with the help of case studies, and challenging contract terms will be highlighted. The third part aims to describe consumer protection mechanisms relevant to the car hire sector. It will concentrate on the available legislation and stress the role of alternative dispute resolution mechanisms. In the final part, recommendations based on the findings of this report will be made.

No specific car rental companies will be named as it is not the intention of this report to name and shame but rather to encourage businesses to review their policies.

Cases received by the ECC Network are broken down into simple complaints and normal complaints.

Simple complaints are any cross-border consumer problems, where the ECC assists consumers with legal advice and recommends further steps.

Normal complaints are any cross-border consumer problems, where ECC mediates directly with the trader on consumer's behalf.

PART I TRENDS AND STATISTICS

This section gives an overview of car rental complaints received by ECC Ireland in 2007. Consumer contacts will be broken down into normal complaints where the ECC contacted the company on the consumer's behalf and simple complaints in which the ECC provided advice to consumers.

In 2007, the European Consumer Centre in Ireland received 117 contacts pertaining to the car rental sector. In comparison with figures from 2006, showing 126 complaints, there has been slight decrease in the number of contacts. However, despite the overall drop in complaints, ECC Ireland reported a 23% increase in problems concerning Irish based companies.

When broken down, from the total number of 117 contacts, 37 represent normal complaints requiring direct involvement with the relevant company from the ECC and 80 comprise simple complaints in which advice was given to consumers.

Table 1 Complaints against car rental companies received by ECC Ireland, 2006-2007

	2006	2007
Contacts in Total	126	117
Normal Complaints (intervention)	39	37
Simple Complaints (advice)	87	80

Figures in tables 2 and 3 below, show that out of 37 interventions on consumers' behalf, 22 were against Irish based companies and 15 were related to foreign traders. This indicates that of the 37 interventions made, considerably more were made with Irish based companies than companies in other European countries.

However, the numbers of simple complaints requiring legal advice show the opposite tendency as there were 31 complaints against Irish car rental companies and 49 about traders based in other Member States. In order to explain the above observations, they should be put into a proper context.

By definition, simple complaints represent any cross-border consumer problem where the ECC provides consumers with legal advice and recommends further steps. Very often, consumers manage to resolve such complaints directly with the trader and do not require direct intervention of the ECC subsequently. However, tables 2 and 3 show that while ECC Ireland receives more complaints against foreign car rental companies, fewer of these result in unresolved disputes (normal complaints) where the ECC's intervention is required. Conversely, a comparatively small amount of simple complaints against Irish

traders can give rise to high amount of normal complaints where intervention is required. In consequence, ECC Ireland recorded that 60% of complaints requiring intervention are against Irish based traders and only 40% against foreign ones.

Table 2 Normal complaints against Irish and foreign car rental companies.

	Normal Complaints against Irish companies	Normal Complaints against foreign companies
Total	39	37
2007	22	15
2006	17	22

Table 3 Simple complaints against Irish and foreign car rental companies.

	Simple Complaints against Irish companies	Simple Complaints against foreign companies
2007	31	49

The same statistics in tables 2 and 3 above also show that Irish consumers who require legal advice with complaints against foreign traders are more successful in resolving the disputes without the need for direct intervention of the ECC-Net. This is because the number of complaints requiring direct intervention on behalf of consumers against foreign traders in ECC Ireland is not as high as the number against Irish based companies.

Table 2 above also shows that the number of disputes against Irish-based car rental companies increased by 23% in just one year, from 17 in 2006 to 22 in 2007. Accordingly, the rising trend in Ireland appears to be contrary to the general tendency showing a slight decrease in car rental complaints. Therefore, preliminary observations suggest that there is strong potential for improvements in Ireland, especially in light of the recent introduction of the Consumer Protection Act.

PART II CONTRACT TERMS AND MAJOR PROBLEM AREAS

This part summarises the main types of complaints reported to ECC Ireland in 2007. All of the 117 contacts were analysed and grouped into the categories below. Each category is supported by a case study illustrating the nature of the problem and recommendations. Table 4 below shows the most common complaints on a percentage basis.

- **Charges for damages on return:** The consumer's credit card is charged without prior notification for alleged damages.
- **Payment arrangements / additional charges:** The price quoted does not include all charges, which are not optional at the point of rental.
- **Customer service during the hire period:** Rented vehicle breaks down or is involved in a crash. Due to lack of proper assistance consumer incurs unnecessary costs.
- **Car rental distributing companies:** Information provided by the car rental distributing companies or the car rental brokers during the booking process is not in conformity with the situation at the rental desk (opening hours, type of vehicle or cost of extras).
- **Insurance coverage:** Rental agreement does not specify clearly the limits of liability.

Table 4 Types of car rental complaints received by ECC Ireland.

Type of Complaint	Contacts received
Charges for damages on return	45%
Payment arrangements / additional charges	22%
Customer service during the hire period (Mechanical Fault / Accident)	17%
Car rental distributing companies	8%
Insurance coverage	8%

1 Charges for damages on return

Charges for damages on return form the most problematic category and represent 45% of all car rental complaints received by ECC Ireland. Here, credit cards are charged for damages that the consumer did not cause. In many cases, consumers are not even notified that their credit card is debited and they are not given any chance to clarify the position.

Case Study:

An Irish Consumer travelling in France hired a car for the duration of his holidays. He did not experience any problems during the rental period. However, after the car was returned and the consumer came back to Ireland €381.15 was charged to his credit card without any explanation. When the consumer contacted the car rental company he was informed that the windscreen was cracked. The consumer disagreed as according to him the car was in perfect working order when returned. As the vehicle was brought back outside of the normal working hours of the car rental company, it was not inspected. The complaint was brought to the attention of ECC France who contacted the company on the consumer's behalf. After their intervention, the trader refunded the full amount to the consumer. However, explanations that the car was brought back in perfect condition did not resolve the case and in fact the refund was secured only because it was discovered that the consumer had contracted extra insurance coverage.

The key problems with charges to a consumer's credit card result from lack of awareness on the consumer's side that the car should be carefully inspected when picking up and upon return. Therefore, car rental companies should provide obligatory checklists to be filled out by the consumer before the actual contract is commenced with clear information on possible consequences. It is understandable that in certain circumstances cars are returned outside of the working hours of the car rental company. However, in such situations the consumer should sign a special note confirming that he is fully aware that any damages will be charged to his credit card directly. Most of the car rental contracts used today include similar information but it is in small print or on the back of the agreement making it less visible.

The contract terms used by the car rental companies in this area could in certain cases be considered unfair as they put much higher liability on the consumer than on the trader. Car rental companies should not be allowed to charge consumers' credit cards without providing an appropriate explanation of the charges. Therefore, terms allowing the trader to charge a consumer's credit card should always be accompanied by provisions confirming the consumer's right to request appropriate information within a reasonable timeframe. Otherwise, the unfair part of the rental agreement could be considered void under Directive 93/13/EEC on Unfair Terms in Consumer Contracts.

2 Payment arrangements / additional charges

Payment arrangements and additional charges represent 22% of all car rental complaints received by ECC Ireland. Most of the problems related to additional charges concern bookings online or over the phone. The essence of these complaints is that consumers are led to believe, during the booking process, that the price quoted on the website is final. However, when they arrive at the

car rental desk it appears that they have to pay more. If the additional charges are for optional extras, such as for instance Super Collision Damage Waiver, the consumer still has a chance to opt out. However, some car rental companies add costs which cannot be avoided, for example fuel charges. They require an upfront payment for fuel but they do not inform the consumer about it in advance. Therefore, the information provided to consumers can be confusing and lead them to agree to conditions that they would normally not accept if notified in advance.

Case study:

A Spanish consumer rented a car online from a company in Ireland. The price quoted was advertised as final. On arrival in Ireland the consumer was informed that according to company policy, he was required to pay for a full tank of fuel when the car was picked up and was advised to bring the vehicle back with an empty tank. The consumer considered this policy unfair as he was not informed about it when he made the booking. In addition, the charges for a full tank were well above the market price and for practical reasons it is almost impossible to bring the car back to the car rental company with an empty tank. Therefore, the consumer decided to cancel his agreement and asked for a full refund. The company agreed but the transaction was prolonged and the excess on the consumer's credit card was blocked until the end of his stay in Ireland. On top of that, the consumer had to pay much more for a vehicle from a different provider as it was not booked in advance. ECC Ireland contacted the company on the consumer's behalf requesting an explanation of the charges. The trader refused to provide any further assistance as the money had been finally refunded. As the consumer was not entitled to compensation under consumer legislation, the only option that he could consider was the Small Claims Court in Ireland.

The newly enacted Consumer Protection Act strictly prohibits unfair practices which are likely to cause the average consumer to make a transactional decision that he would not otherwise take. Therefore, the bottom line is that all charges which are not optional should be clearly marked and included in the final price of the rental. The same applies to advertising materials which should not contain inaccurate or misleading information. Some of the most common and confusing charges include: prime location (airport) surcharges; refuelling fees; excess mileage; age restrictions; no-show charges; compulsory insurance and cancellation fees.

Consumers should be able to inform themselves about the above charges in the terms and conditions at the time of booking rather than at the time of collection of the car. In many cases, the final agreement is signed at the car rental desk and complete information is provided to consumers just before the rental is

commenced. This may put consumers at a disadvantage because even if they cancel the original booking, they will be forced to look for another company, which in peak season may not be convenient. Therefore, the final quote in all advance bookings, whether they are done online, by phone or on the premises of the company, should include all charges which are not optional.

3 Customer service during the hire period (Mechanical fault / accident)

Problems relating to customer service during the hire period represent 17% of total complaints received by ECC Ireland. They refer to consumers involved in an accident or whose car broke down during the rental period. Such consumers are very often unaware of their rights and obligations. As a result, in the event of an accident or car failure, their credit cards are immediately charged with the excess or they incur extra costs.

It is understandable that consumers who cause accidents should pay the excess on their insurance. However, in many cases they are just victims of another driver's mistake. In these circumstances, the insurance of the third party should cover the excess and not the consumer's credit card. Similarly, when the car breaks down, consumers should be compensated for the time lost during which they could not use the vehicle.

Case study:

A French consumer rented a car in Ireland during holidays with his family. He was involved in an accident and the car got severely damaged due to another driver's mistake. The police issued a statement confirming that the consumer was not at fault. The car rental company charged the excess of €1,200 on the consumer's insurance and promised that they would refund it as soon as all the bureaucratic requirements with the other driver were settled. After his return to France the consumer was in constant correspondence with the car rental company for over a year but he did not get any refund. He contacted ECC France who brought this complaint to the attention of ECC Ireland. The ECC in Dublin contacted the company on the consumer's behalf requesting that this matter be finally brought to a conclusion. The trader checked the file and fully reimbursed the consumer.

The above example shows that, in certain circumstances, contracts put a lot of liability on consumers, without allowing for discussion with the company in case of doubt. This is especially important when a consumer lives in a country other than the one where the car rental occurred, as the distance and language barrier may further complicate the situation. Therefore, it is of the utmost

importance for car rental companies to ensure that consumers are treated fairly and that their questions are answered promptly.

The vast majority of consumers availing of the services of car rental companies are visitors who may not always be familiar with the local rules of the road. As a result, the likelihood that these consumers are involved in an accident is increased. Therefore, one way of reducing the possible complications could be to ensure that all rental vehicles are equipped with a sticker or leaflet explaining what to do in case of emergency. Furthermore, consumers should be provided with a 24/7 contact phone number where they could ask for assistance from a company representative. As there is no sector specific legislation regulating these matters, it is also very important that the contracts used within the industry provide efficient procedures for consumers who require clarification.

4 Car rental booking companies

ECC Ireland recorded that 8% of all complaints relating to car rental companies in 2007 were about the discrepancies between the information given at the time of booking and the reality at the rental desk. The nature of these complaints is that consumers make a booking with one company but the actual service is provided by another trader. Sometimes the exchange of information between the broker company and the actual car rental company is not accurate. Consequently, consumers may be disappointed at the car rental desk as the car provided is not in conformity with their booking, the trader's opening hours are different or there are unexpected charges. Complaints involving car rental booking companies can be very confusing from a consumer's point of view. This is because the actual car rental company, the broker company and the consumer can all be based in different Member States.

Case study:

A consumer from the UK used an Irish based car rental booking company to find the best quote to rent a car in Italy. He booked two Chrysler Voyagers for his family and friends and paid the booking fee of €130. The remaining amount was to be charged to his credit card at the car rental desk. However, on arrival in Italy, the consumer was informed that the company's records showed that he requested only one vehicle. This clearly did not correspond to the information on consumer's booking confirmation. He had no other option but to decline the car offered and decided to rent another one from a different provider at a higher cost. When the consumer returned from his holidays, he made a complaint to ECC UK who brought this matter to the attention of ECC Ireland. The European Consumer Centre in Dublin contacted the car rental booking company in Ireland with a request for clarification as to what happened and to reimburse the

consumer for the inconvenience caused. The broker company acknowledged that a mistake was made when transferring the booking information to Italy. They agreed to refund the administration fee and compensated the consumer for the difference in price between the original booking and the cost of the second car rented from a different provider. In total, the consumer was refunded €270.

The above example shows that consumers who do not have a lot of experience in dealing with car rental brokers could be confused in a similar situation. The problem arises not only because mistakes are occasionally made in transferring the booking specifications but also due to lack of clarity as to which company is responsible for the resulting complications. Therefore, consumers using car rental brokers should always be clearly informed that problems regarding the booking should be referred to the broker company, while other issues relating to the actual performance of the service (i.e. charges for damages on return) should be discussed with the actual car rental company.

5 Insurance coverage

Complaints relating to insurance coverage represent 8% of total car rental contacts reported to ECC Ireland. In many cases, problems with insurance occur because consumers are not properly informed about the coverage of the policy contracted at the car rental desk. As there is no industry specific legislation specifying the mandatory levels of insurance required during the rental, the degree of protection may differ from company to company. On the other hand, it is common practice that car rental companies include third party liability cover in their offer as this is a general legal requirement for all vehicle owners in the EU.

As the extent of protection differs from company to company, consumers have repeatedly been confused by the scope of their insurance and the amount of the excess payable in case of accident. There are different types of insurance coverage available to consumers. In basic cover packages, the excess usually varies between €500 and €1500 depending on the type of the vehicle but with most car rental companies it is also possible to extend the coverage at an extra cost and reduce or eliminate the amount of the excess.

Case study:

An Irish consumer rented a vehicle from a car rental company in the UK. At the rental desk he contracted extra insurance: the super collision damage waiver. He was informed by an employee of the car hire company that this insurance eliminates the excess he may be charged in case of damage to the car. The consumer did not experience any difficulties during the rental and returned the

vehicle outside working hours to the premises of the rental company. Two weeks later, the consumer noticed that his credit card was charged €480 for damages to the vehicle. The consumer was very surprised and contacted the company to request an explanation. After one month he still hadn't received a reply and decided to contact the European Consumer Centre in Ireland to ask for advice. He claimed that the charges for damages should not apply to him as he contracted extended coverage. ECC Ireland brought this matter to the attention of ECC UK, who contacted the company on the consumer's behalf. The company replied that the car was returned with the wrong fuel and had to be repaired. They also clarified that there are certain exceptions where even the super coverage will not eliminate the consumer's liability and that contamination with the wrong type of fuel was not covered by the insurance and so the consumer had to pay the full cost of repairs.

The above example illustrates that information about the insurance coverage at the car rental desk should be more specific. Consumers very often pay extra for extended coverage and are led to believe that they can have complete peace of mind. This is not always true. Therefore, consumers should be provided with clear and visible information about what is included in the coverage and what is not. The rental agreement should warn about the most common exceptions that will not be covered by the insurance. The excess payable for damages should also be clearly communicated to the consumer before the rental is commenced. As a result, the rental agreements and the terms and conditions applied by car rental companies should devote more attention to the issue of insurance and, above all, ensure that it is clearly presented to the consumer.

6 Contract terms

All the major problem areas mentioned in this section have their roots in the contract terms of car rental companies. Each of these problems could be avoided if car rental companies took simple steps aimed at clarifying the most controversial provisions in the contracts. Therefore, car rental companies should be encouraged to review whether contract terms used in their standard agreements are fair, transparent and above all, in conformity with the law.

ECC Ireland examined most of the car rental contracts used by companies registered in Ireland and the results are mixed. As it is not the aim of this study to name and shame particular traders, specific companies will not be named but the research shows that some contracts are satisfactory and others contain elements that require review.

While each trader has the liberty of shaping his policies in an individual manner they all face common problems defined by the nature of the business they are

in. Therefore, terms that require review concern only certain parts of the contracts and in most cases they are common to all of the car rental companies.

The problem areas that were mentioned earlier in the report reflect the most challenging issues for car rental companies and at the same time show the parts of contracts where terms could be improved in line with the prior recommendations. They include:

a) Charges for damages on return

In provisions regarding charges for damages on return, the liability on the consumer is very often much higher than on the trader. Such terms could be considered void by the Unfair Contract Terms Directive.

b) Payment arrangements / additional charges

All charges which are not optional should be included in the final quote. Otherwise, such terms could be considered to be in breach of the Unfair Commercial Practices Directive.

c) Customer service during the hire period (Mechanical Fault / Accident)

The terms and conditions as such are not the main problem in this area. Car rental companies should put more effort into making the relevant provisions more understandable so that the consumer knows exactly what to do in case of emergency.

d) Insurance coverage

Terms and conditions regarding insurance coverage should clearly state the most common exceptions which are not covered by the policy. Otherwise, they could be misleading.

All the above topics were discussed in previous sections so they will not be mentioned again in detail. Most of them show that a lot of companies use terms and conditions which lack clarity and that ordinary consumers are unable to understand them. This means that the provisions used in these areas are not necessarily unfair or misleading but certainly they require modifications in order to meet consumers' expectations. The fact that they are not directly in breach of legislation should not mean that no action is needed as those problem areas are the source of numerous difficulties to consumers.

e) Fuel policy

Some car rental companies apply a policy requiring consumers to purchase a full tank of fuel at the beginning of the rental period and to return the car with an empty tank. The terms also state that no refunds will be offered for unused fuel.

This situation is even more detrimental to consumers when car rental companies apply this policy even where no mention of it is made in the

company's terms and conditions. Inescapable charges should be included in the final quote presented to the consumer during the booking. Otherwise, the consumer does not have complete information about the cost of the service and could be lured into a transactional decision that he/she would not otherwise take. This is strictly prohibited by the Consumer Protection Act, 2007.

Some companies only offer this fuel modality for rentals of a certain duration or mileage but, even in these cases, it is not always possible to use all the fuel paid for. Although it can be argued that this policy aims to prevent consumers from the inconveniences of re-filling just before returning the car and to avoid fuel re-filling surcharges when the tank is not returned full, this policy may contradict the Directive 93/13/EEC on Unfair Terms in Consumer Contracts, as in practice nobody returns a car with the tank completely empty, no matter how much or how little the vehicle is driven.

In addition, it has been reported that the amount charged for the fuel may be considerably higher than the cost that consumers would incur by refueling in nearby petrol stations.

This issue, therefore, raises concerns about the legality of such practice, not only in respect of the mentioned legislation but also in light of art. 3 of the Fuel Order 1947 (S.I. No. 429/1947) and the Retail Prices (Petrol) Display Order 1986 (S.I. No. 423/1986).

Upfront fuel surcharges and lack of refunds for unused petrol are still very common in Ireland. Therefore, car rental companies are urged to review their policies in this area.

PART III CONSUMER PROTECTION

The main purpose of this section is to provide an overview of the protection mechanisms available to consumers in the car rental sector. At present, there is no industry specific legislation relating to car rental companies. However, consumers are protected by other instruments with more general scope.

1 Directive 93/13/EEC on Unfair Terms in Consumer Contracts.

For a long time the Directive on Unfair Terms in Consumer Contracts has been the key mechanism that could be used with regard to car rental contracts. The Directive itself is very general in scope, but its aim is to ensure a proper balance in the rights and obligations of the parties to the contract. Therefore, it can be very helpful in eliminating specific provisions in standard contracts that put the consumer at a significant disadvantage in relation to the trader. According to the Directive, any contract term that creates a major disadvantage to the consumer's detriment shall not be binding on the consumer.

In practice, Directive 93/13/EEC can be applied against terms introducing unfair charges such as the fuel surcharge mentioned earlier in the report. It could also be useful in the situation where excessive liability is placed on the consumer. A lot of the car rental contracts make it very easy for companies to charge consumers' credit cards without even notifying them. Such terms could be considered unfair because sometimes consumers are not provided with any possibility to request an appropriate explanation.

2 Unfair Commercial Practices Directive 2005/29/EC

The Unfair Commercial Practices Directive was implemented in Ireland in May 2007 as part of the Consumer Protection Act. Simultaneously, the National Consumer Agency was established and new mechanisms were created in order to eradicate misleading and aggressive practices across different sectors. The key aim of the Directive is to increase consumer confidence in the internal market and to protect their interests. The Directive harmonises the legislation in this area of consumer protection and sets up criteria that help to determine whether a commercial practice is unfair. The Directive not only prohibits misleading and aggressive practices but it also provides a blacklist including examples, such as the prohibition of bait advertising or pyramid schemes.

As the Directive was enforced in Ireland only recently, it still remains to be seen how it improves consumer confidence. However, the scope of the legislation suggests that this could be a very useful tool that could also be helpful in problems relating to the car rental sector.

In practice, the Directive could be used with regard to problems with charges, representing as much as 22% of all car rental complaints sent to ECC Ireland. Practices in which traders do not include all mandatory charges in the final quote may lead consumers to take commercial decisions that they would not normally make and, as such, are prohibited. Therefore, Directive 2005/29/EC could be used to make sure that refuelling fees, age restrictions, location

charges and compulsory insurance fees are all included in the final booking quote if an opt out is not possible.

3 Alternative Dispute Resolution (ADR)

The European Consumer Centre sees alternative dispute resolution (ADR)¹ mechanisms as a great asset for consumers and companies in general. Despite the fact that consumers always have the option of using courts, ADR systems may present certain advantages, especially in cross-border complaints, as they are cost effective for both parties as well as being fast and efficient. The Car Rental Council of Ireland is an industry association which also performs the role of an ADR body as it handles complaints concerning member car hire companies in Ireland. It must be noted however that the Car Rental Council of Ireland, as an industry association, is not an officially notified ADR body, since it does not meet the Europe-wide recommendations set up by the European Commission². Notification guarantees that the ADR body is endorsed by the European Commission and complies with the Europe-wide recommendations set up by the Commission to ensure common standards. However, the European Consumer Centre has learned through experience that the Car Rental Council of Ireland is a reliable and efficient partner in resolving consumer disputes.

4 Industry associations

Codes of conduct created within industry associations are another mechanism that could be very effective in increasing consumer protection in the car rental sector. In Ireland, this role is currently carried out by the Car Rental Council of Ireland. Although, the Car Rental Council is not an officially notified ADR body, it plays an important role in the sector in Ireland. It has a code of conduct outlining the broad standards of practice within the industry. It also facilitates a mediation process for disputes between a member company and the consumer.

However, the Car Rental Council of Ireland, as an official representative body of the industry, could increase its role even further and take steps to make sure that consumers who hire cars in Ireland are provided with a top class service. It could promote its code of conduct on a wider scale making it easily available to consumers. The possibility of mediation between a member company and the consumer should also become more accessible to consumers who are very often not aware of it. A standard complaint form could be drafted and made available at the car rental offices of the member companies. These simple steps could play a very important role in increasing consumer confidence in the industry.

¹ ADR bodies are dispute resolution mechanisms that use mediation or arbitration to resolve a dispute.

² ADRs must confirm to either of the two European Commission Recommendations 98/257/EC and 2001/310/EC.

PART IV RECOMMENDATIONS

1 Voluntary reassessment of policies and contract terms

The main objective of the European Consumer Centre in Ireland is to make sure that consumers are satisfactorily protected and that any practices used to their detriment are eliminated. In achieving this goal the use of enforcement mechanisms should be minimised. Therefore, the first recommendation is to encourage car rental companies to review their own contracts and policies. They should not only look into the terms and conditions of the contracts eliminating unfair provisions, but also make sure that the policies and practices are clear and understandable to consumers. They should pay special attention to:

- Charges for damages on return
- Payment arrangements / additional charges
- Customer service during the hire period (Mechanical Fault / Accident)
- Insurance coverage

2 Model contract

In order to promote best practices, a model contract could be created in cooperation with the industry. The aim would be to agree a common set of provisions that could serve as guidance for car rental companies. The purpose of the model contract is not to impose any rules or terms upon the companies but rather to provide a reference point that they could use if needed. A model contract could be created in cooperation with representatives of the industry and approved by enforcement authorities to make sure that all the provisions are in conformity with the legislation.

3 Standard complaint form

A lot of consumers are not aware that, in the event of a dispute with a car rental company in Ireland, they can avail of the assistance of the Car Rental Council of Ireland. Therefore, the ECC recommends the creation of a standard complaint form that could be made available online, as well as at the rental desks of all members of the Car Rental Council. If a consumer took all reasonable steps to resolve the dispute directly with the trader but did not receive a satisfactory reply, he should be able to look for assistance from the Car Rental Council by filling out the form. Companies operating in this system, as well as the Car Rental Council, would gain more trust among consumers. Ultimately companies could use this information in their promotional activities and potentially gain a larger share of the market.

4 Code of conduct

In the absence of industry specific legislation, a code of conduct could play an important role within the sector. The Car Rental Council of Ireland has already drawn up a general document outlining broad standards that should be upheld within the industry. However, following the example of the British Vehicle Rental

and Leasing Association (BVRLA), this code of conduct could be extended in scope. It could cover in detail all the challenging areas and establish industry wide standards and practices³. The code should be obligatory for all the members of the Car Rental Council. The code, which can be formally approved by the National Consumer Agency under the Consumer Protection Act, should be obligatory for all the members of the Car Rental Council.

5 Alternative Dispute Resolution

Neither companies nor consumers welcome court proceedings, nor is it practical in the resolution of cross-border disputes. Therefore, the development of Alternative Dispute Resolution mechanisms could be very beneficial to all parties. It could provide a time efficient and inexpensive platform for consumers and companies to resolve their disputes out of court. While the Car Rental Council of Ireland deals with consumer disputes very efficiently, it could follow the example of the British Vehicle Rental and Leasing Association and become officially notified by the European Commission. In order to comply with these European rules the Car Rental Council of Ireland would have to make some changes to their procedures. The Society of The Irish Motor Industry (SIMI) can also be an example of good practice in Ireland in this regard, as they nominated an independent arbitrator, the Chartered Institute of Arbitrators in Ireland, to deal impartially with complaints related to their members.⁴ As the Chartered Institute of Arbitrators is an officially nominated ADR body by the European Commission, it increases the credibility of the procedure used by SIMI. The Car Rental Council of Ireland could consider similar steps in order to become an officially nominated ADR body by the European Commission.

6 Information campaign

Consumer awareness is one of the most important factors that can contribute to the reduction of complaints relating to the car rental sector. Therefore, the central problem areas must be brought to the attention of consumers so that they are aware of their rights and obligations. As soon as consumers' awareness is higher, companies failing to review their own policies to make them more consumer friendly will lose out. This could gradually force them to provide services of higher quality.

³ BVRLA codes of conduct www.bvrla.co.uk/public/The_BVRLA/Code_of_Conduct.cfm

⁴ SIMI codes of conduct www.simi.ie/showcontent.asp?SubsectionID=4

CONCLUSION

This report has examined the car rental sector from a cross-border consumer complaint perspective. The main observations are that despite an overall decrease in the amount of car rental complaints received by ECC Ireland, the number of disputes against Irish based companies increased.

It is apparent from analysis of the complaints that most of the difficult areas are the result of unclear, misleading or unfair contract terms. The provisions in standard contracts are not a violation of the legislation in all cases but there is a lot of space for improvements to make the contracts more transparent and customer friendly.

The analysis of contract terms used by the companies in Ireland revealed that fuel policy is still very often controversial. Upfront fuel surcharges and a lack of refunds for unused petrol is a frequently used mechanism in Ireland. Therefore, policies in this area should be reviewed to make sure they are in conformity with the Consumer Protection Act and the legislation on Unfair Terms in Consumer Contracts.

At the moment, there is no industry specific legislation but consumers can avail of instruments which are more general in scope. The Consumer Protection Act and the Directive on Unfair Terms in Consumer Contracts are very strong tools that are perfectly equipped to meet the requirements of the car rental market. However, due to the nature of the major problem areas, the role of other mechanisms should be stressed.

The role of the Alternative Dispute Resolution (ADR), voluntary codes of conduct, standard complaint forms and consumer awareness aimed at increasing the standards of service within the industry should not be underestimated. Further developments in these areas should be encouraged.

Finally, it should be pointed out that any improvements will require broad agreement between all the parties involved to become truly successful. Therefore, further cooperation must involve all the pivotal actors, including the Car Rental Council of Ireland as a representative of the industry, the National Consumer Agency as the enforcement authority, the Consumer Association of Ireland and the European Consumer Centre in Ireland as the voice of consumers.

ANNEX

GUIDE TO RENTING A CAR

1 Before hiring the car

- a) When looking for the best bargain, bear in mind that very often prices quoted online contain only the basics so make sure you check what is included in the final quote and what is not.
- b) Always check the price of extras that you will need during your rental: child seat, additional driver, extra insurance etc.
- c) Pay special attention to the fuel policy; make sure it is explained to you clearly before you confirm the booking.
- d) Check age restrictions.
- e) Make sure you are familiar with the cancellation policy.
- f) When renting abroad, familiarise yourself with the rules of the road.

2 Collecting the car

- a) Make sure you understand what is covered by your insurance and what is left out. It is also very important to know the excess amount that could be charged to your credit card in case of an accident.
- b) A staff member should check the condition of the car at the time of delivery and mark all damages to the exterior and the interior on a diagram. If you are not provided with a special check-list or diagram, make sure that you note any damages in writing and have it signed by an employee of the car rental company.
- c) Always ask about the company policy in case of the car breaking down or in case of an accident.
- d) Make sure you know the type of fuel you can use in your rental car.

3 During the rental

- a) If the car breaks down, call the car rental company and follow the instructions provided. Do not repair the vehicle yourself without prior authorisation.
- b) In case of an accident, you should always note down the names and addresses of everyone involved. If anybody is injured, or when there is a dispute over who is responsible, you should notify the police. Contact the car rental company immediately.

4 Returning the car

- a) Try to return the car during the working hours of the car rental company and have it inspected by a competent employee. The condition of the vehicle should be confirmed in writing and signed by the representative of the company and the driver.
- b) If you are returning the car outside the working hours of the car hire company, you should park it in the designated area. You can take pictures of the vehicle as confirmation that it was returned in good condition.
- c) Cars returned outside working hours are inspected for damages on the following day and therefore the excess can still be charged to consumers' credit cards.

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