

Decision on the Terms of Reference for the H7 Consumer Challenge Board (CCB)

CAP 1449



Published by the Civil Aviation Authority, 2016

Civil Aviation Authority
Aviation House
Gatwick Airport South
West Sussex
RH6 0YR

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Enquiries regarding the content of this publication should be addressed to:

james.tallack@caa.co.uk

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Chapter 1

Introduction

Purpose of this document

- 1.1 This document sets out our decision on the approach to establishing a dedicated consumer challenge function for the H7 price review of Heathrow Airport. This will help ensure that the H7 review is driven by a robust understanding of what consumers value.
- 1.2 Following detailed discussions earlier this year with Heathrow Airport Limited (HAL) and the airline community at Heathrow, in July 2016 we published a consultation ([CAP 1425](#)) on our proposals for a 'Consumer Challenge Forum (CCF)¹'. The CCF – as we referred to the concept at the time – would support our strategic theme of empowering consumers as part of a wider agenda to put passengers and cargo users at the heart of our approach to airport regulation.
- 1.3 We invited comments on all aspects of the document and specifically focused our consultation questions on the draft Terms of Reference (ToR):
 - Do you agree with our proposed Role for the CCF?
 - Do you agree with our proposed membership requirements including the steps to secure the independence of the CCF?
 - Do you agree with our proposed Scope, Focus and Responsibilities for the CCF?
 - Do you agree with our proposals on the operating principles for the CCF, particularly on remuneration and transparency?

¹ In our consultation, we used the term 'Consumer Challenge Forum' (CCF) for consistency with our earlier H7 publications and other communications with stakeholders. However, as we explain in this document, we consider that the term 'Consumer Challenge Board' (CCB) better describes the body we want to see established.

- Do you agree with our proposals on the working practices of the CCF?

1.4 We thank the following stakeholders for their responses to our consultation:

- The Association of British Travel Agents (ABTA)
- British Airways (BA)
- Heathrow Airport Limited (HAL)
- The Heathrow Airline Operators Committee (AOC) and the London Airports Consultative Committee (LACC)
- The Heathrow Airport Consultative Committee (HACC)
- Star Alliance
- Virgin Atlantic Airways (VAA)

1.5 We also consulted with the CAA's Consumer Panel and sought input from consumer groups, although we did not receive written responses from these parties.

1.6 This document sets out our decision on the ToR for the CCF and provides clarification on a number of other issues that stakeholders raised in their responses. A final version of the ToR can be found at Appendix A, with a marked-up version of the draft ToR showing all changes at Appendix B. For ease of reference we have summarised the main changes to the ToR at the end of Chapter 2.

The CAA's duties

1.7 The Civil Aviation Act 2012 (The Act) gives us a single primary duty to further the interests of users of air transport services in respect of our economic regulation functions. Users are defined in the Act as present and future passengers and those with a right in property carried by the service, i.e. cargo owners.

- 1.8 The scope of our primary duty concerns the range, availability, continuity, cost and quality of airport operation services. We must carry out our functions, where appropriate, in a manner that will promote competition in the provision of airport operation services.
- 1.9 In discharging our primary duty, we must have regard to a range of other matters under the Act. These include:
- the need to secure that HAL is able to finance its licensed activities;
 - the need to ensure that all reasonable demands are met;
 - the need to promote economy and efficiency;
 - the need to secure that HAL is able to take measures to reduce, control and mitigate adverse environmental effects;
 - any guidance issued by the Secretary of State or international obligation on the UK notified by the Secretary of State; and
 - better regulation principles.

Chapter 2

Key issues

Our objectives

- 2.1 In line with our primary duty, we want the H7 review to be driven by a robust understanding of the needs of consumers regarding the services provided by HAL. This understanding should emerge from high quality consumer engagement, carried out by HAL as the regulated entity.
- 2.2 For H7 we want to put the emphasis on HAL to engage with consumers and to demonstrate that its business plan reflects their interests. Although HAL carried out some research for the Q6 review, we largely took responsibility ourselves for understanding what consumers value, supplementing this with research into customer experiences and preferences that airlines had produced to inform their commercial strategies. We used this combination of insight to help inform the design of the regulatory framework.
- 2.3 Our change of approach for H7 reflects an important trend in the theory and practice of economic regulation towards the facilitation by regulators of greater engagement between regulated entities and end consumers. Over the last few years, other economic regulators, such as Ofgem, Ofwat and the Water Industry Commission for Scotland (WICS), have made significant steps in this direction and we have sought to understand how their experiences could be applied to airport regulation. The approaches taken by Ofwat and Ofgem are documented in more detail in the report we commissioned from First Economics² on recent price review innovations, which we published alongside our discussion document on the strategic themes for H7.³

² www.caa.co.uk/CAP1383b

³ www.caa.co.uk/CAP1383

- 2.4 In order to ensure that HAL engages effectively with consumers and responds appropriately to what it learns from this engagement, we will establish a body that will provide independent, consumer-focused challenge to HAL. This body will focus on the development of the H7 business plan, which HAL is required to prepare to inform our regulatory review.
- 2.5 In previous documents and other public statements, we referred to the body as the 'Consumer Challenge Forum' (CCF). However, following consultation, we now consider that the title 'Consumer Challenge Board' (CCB) better reflects the important role that we expect the group to play in the regulatory process.

Key principles

- 2.6 In our consultation we set out a number of key principles. There were no substantive objections to these and, with some minor changes to reflect stakeholders' feedback, we consider that these principles still stand.
- As a non-statutory body, the independence, role and scope of the CCB will principally be governed by the CCB's Terms of Reference (ToR). It is essential that the CCB is (and is seen to be) an independent and transparent body that is qualified to comment on the issues that we envisage it dealing with. This will help ensure that the focus of H7 continues to be on consumers and not on the measures that have been put in place as a direct or indirect result of the regulatory regime to promote their interests.
 - The objective of the CCB is to provide us with a clear view on the overall quality of HAL's consumer engagement (including its use of insight into consumer preferences provided by the airline community and other parties) and how this engagement has been reflected in the development of HAL's business plan.
 - The work of the CCB should complement and enhance the existing regulatory framework including the process of Constructive

Engagement (CE). We see the CCB particularly focusing on the consumer research and other inputs that we expect HAL to use in developing an appropriate and robust, consumer-focused outcomes framework for the H7 business plan. As such, we see it as inevitable that the CCB will have some influence over the parameters within which the detailed scrutiny of HAL's business plan by the CAA, airlines and other parties will take place during the subsequent phases of the H7 review.

- The CCB should not be expected to approve or endorse HAL's overall plan. Instead, it should comment on the key issues and highlight areas of challenge and disagreement, including how HAL has responded to the CCB's challenges.
- The determination of HAL's revenue requirement (which will include issues such as the allowed return, the scope for efficiency etc.) remains the CAA's responsibility. However, we reserve the right to consult with the CCB on specific issues if we consider that doing so would be in the interests of consumers.
- The CCB would be distinct from the CAA Consumer Panel although the challenge and scrutiny functions are similar in both. The Consumer Panel provides independent challenge to the CAA on the delivery of our consumer strategy. The CCB, on the other hand will provide independent challenge to HAL on the development of a consumer-focused H7 business plan, publicly reporting back to the CAA and other stakeholders. Given that we expect the CCB to play a key role in the regulatory regime, we would expect the Consumer Panel to take a keen interest in its work.

2.7 While some stakeholders' responses sought greater transparency of the CCB's activities, our view is that the degree of transparency prescribed in the draft ToR is appropriate for the advisory role that the group will perform (subject to some relatively small changes). The level of additional transparency proposed by airlines (see paragraph 2.16) would not only be administratively burdensome for the CCB, but would also be inimical to the

type of relationship between the CCB and HAL and other stakeholders – dynamic, open, informal and based on mutual understanding and respect – that we think would be most beneficial to the H7 process.

Clarifying the role of key stakeholders

The role of the Consumer Challenge Board

2.8 In summary, the CCB will carry out the following roles:

- The provision of independent scrutiny and challenge to HAL on the development of its business plan; and
- The provision of independent advice to us on the overall quality of HAL's H7 business plan, particularly how, and the extent to which, it has been informed by high quality consumer engagement and the extent to which the outcomes and incentives in the plan reflect the needs of consumers, as demonstrated by that engagement.

2.9 The CCB will be an advisory body focused on challenge and scrutiny activities rather than being, for example, directly responsible for undertaking consumer research or developing consumer outcomes. We note airline responses expressing concern about the CCB having any role in developing consumer outcomes and/or considering the appropriateness of any performance standards or incentives attached to those outcomes. However, our view is that it is essential that outcomes are informed by robust consumer engagement, and this issue will be important for the CCB to consider. We therefore consider it inevitable – and beneficial – that the CCB will have some involvement in the development of outcomes.

2.10 Just as HAL should not substitute engagement with the CCB as a substitute for engaging with consumers, the CCB should not substitute its views for the views of consumers. Instead, the CCB should be challenging HAL on how it has carried out engagement with consumers and how it has interpreted the results of that engagement.