

Reforming aviation consumer policy: protecting air passenger rights

CAA Response

CAP 2333

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Introduction

1. The CAA, as the UK's aviation regulator, aims to help deliver high standards of safety, security and consumer protection for the benefit of consumers and the public. Our vision is to constantly challenge ourselves and our stakeholders to improve safety, security, and consumer protection outcomes. We are committed to uphold consumer choice, value, and fair treatment and therefore welcome the Government's consultation on measures on aviation consumer policy.
2. As consumers regain their confidence and appetite for air travel, it is essential that we are able to respond quickly and effectively to any emerging issue that could impact on the momentum of the industry's recovery and that consumers are able to easily access appropriate consumer protection measures.
3. Our current powers can take too long to deliver redress for affected consumers, and we consider that powers similar to those that other regulators have would lead to better consumer outcomes in certain cases where we have concerns that airlines are not meeting their obligations to consumers. We have long called for a stronger enforcement toolkit to allow us to act more decisively, and we have first-hand experience of the benefit to consumers of resolution services that allow consumers full access to the redress that they are entitled to.
4. The regulations we enforce on denied boarding, cancellation, and delay and on accessibility and assistance for persons with reduced mobility have significantly improved the experience of air travel for millions of consumers. We look forward to working with Government and other stakeholders to see how these may evolve.

Tools for the regulator to protect consumers and ensure fair treatment

5. The CAA relies on powers set down in Part 8 of the Enterprise Act 2002 (EA02) for enforcement of consumer law and air passenger rights. The limitations of these powers have been acknowledged by Government in its 2021 consultation on reforming competition and consumer policy, as referenced in this consultation on aviation consumer policy. Whilst we wait to see the outcome of this work, and the future of the Enterprise Act, it is encouraging that the need for enhanced powers in aviation is being specifically considered.
6. The reforming competition and consumer policy consultation makes a clear case for the Competition and Markets Authority (CMA) to have an administrative enforcement regime on the grounds that they do not have access to alternative powers available to regulators in specific sectors. These arguments also apply to the CAA, as we do not have access to any aviation specific powers for consumer enforcement and cannot utilise other levers, such as license conditions, to address breaches of consumer law in the way that other organisations can.
7. As set out in our response to the reforming competition and consumer policy consultation, we are looking for the means to act quickly when we see potential harm to consumers, to speed up the processes around information gathering and enforcement and to reduce or remove our reliance on court action and the associated long waiting times.
8. We also believe that it would be desirable to punish past behaviour, which is not possible under our current powers and for the sanctions to be sufficient to provide an effective deterrent to incentivise compliance where there is a commercial gain to be made from a breach.
9. We agree that the CAA would most benefit from a civil sanctions regime that it can enforce itself. These powers should include the ability to deliver a verdict on non-compliance with the laws that it already enforces, with the full range of sanctions currently available (undertakings etc) plus the ability to impose fines where non-compliance is particularly harmful or on-going. It would also be extremely beneficial to have access to fines for failure to respond to a request for information (where that request is appropriately justified).
10. These measures would address the speed at which we are currently able to progress enforcement projects and ensure that urgent or emerging issues are handled promptly and efficiently. Much of our enforcement work is done through collaboration with industry to improve compliance standards and to respond to events such as the pandemic to achieve the greatest gains for consumers. Although this approach often leads to appropriate outcomes, it can have limited

success with businesses who do not want to engage and for whom non-compliance is more commercially attractive.

11. It is notable that where the CAA has had access to fining powers for potential breaches of legislation, it has had a significant impact on responsiveness and compliance. The CAA were tasked with the enforcement of Covid-19 health regulations relating to entry requirements for those arriving into the UK by air. Under emergency legislation, airlines were made responsible for ensuring that their passengers had completed the correct documentation for track and trace, proof of vaccination and/or proof of exemption. The enforcement team utilised information provided by Border Force and undertook its own inspections of passengers arriving into the UK to ensure compliance. The issuing of fixed penalty notices where non-compliance was identified was an important tool in improving compliance rates and helped to drive instances of non-compliance reducing by more than half¹.
12. We have produced a separate document setting out our case for the CAA to have enhanced enforcement powers. This has been included as an annex and can be found at the end of this publication and brings together arguments previously presented with some new commentary on our existing approach to enforcement.
13. We welcome any opportunity to reform the powers available to the CAA, to provide us with an effective toolkit to make non-compliant behaviour financially unattractive to balance the commercial gains made by breaching the law, to end our reliance on reputational approaches and address the limitations of the EA02 powers so that we can tackle the risks faced by consumers, promote confidence in the market and be ready to respond to emerging issues. This would bring us in line with similar powers held by other regulators with a consumer focus.

Resolution for individual consumers

14. Alternative Dispute Resolution (ADR) provides an essential service to allow consumers to escalate a complaint or claim against an airline when dissatisfied with a business' response or where the business has not engaged.
15. As described in the consultation document, ADR is currently voluntary in aviation. The CAA, as the Competent Authority for ADR in aviation, has developed a framework that ensures consumers making use of ADR receive a binding decision and policies to encourage industry participation. Through these policies, we have achieved a high level of participation with approximately 80% of consumers travelling to and from the UK having access to ADR.

¹ A reduction in non-compliance was reported from 6% of those inspected to 2.5%. This was calculated based on the non-compliance rates identified during CAA spot checks of passengers arriving at English airports.

16. For the remaining consumers, complaints and claims can be escalated to the CAA's Passenger Advice and Complaints Team (PACT) who will provide an opinion on the case. PACT's opinion is not binding on the businesses and consumers who need to can still escalate further to the courts. Full participation in ADR is clearly desirable and, as we have stated previously², we do not believe that the objective of binding redress for all passengers can be achieved without mandatory ADR.
17. Any development of ADR to encompass more businesses or to offer advice and mediation beyond statutory protections is likely to bring benefits to consumers but these may come at a cost that will ultimately be borne by consumers, so it is important to establish what consumers actually want from these services.
18. At present, the vast majority of complaints escalated are claims for compensation following a cancellation or long delay³. The right to this compensation is set down in law and ADR's main role is to establish the facts of the case so that consumers receive what they are entitled to or to intervene when business are not responding to their customers. It is not clear whether the dominance of these types of complaints is an effect of how the schemes are currently designed or whether this reflects the reality of what consumers need from a complaints escalation and adjudication facility. The CAA recommends that detailed consumer research is conducted to establish the most appropriate direction for ADR.
19. We look forward to working with Government on these proposals as they progress and to hearing stakeholders' views on the specific issues raised. If mandatory ADR is possible for aviation, we will work closely with Government to consider how best to design such a system so that oversight, costs and remit are all fully considered and that the resultant scheme delivers benefits for all participants.

Compensation for delays and cancellations

20. The regulation that provides for refunds, compensation and assistance in the event of denied boarding, cancellation or long delays has had a significant impact on the industry since it was introduced, driving operational improvements and ensuring businesses provide support and redress to their passengers when significant disruptions occur. Whilst recognising the benefits that this legislation has delivered, we acknowledge that the current regime may not be working for consumers as well as it could and that there can be some challenges for airlines

² In response to Aviation 2050: the future of UK aviation consultation 2050 ([CAP1813](#))

³ Data on ADR and PACT cases can be found on [CAA website](#) and shows approximately 90% of escalated complaints relate to [Regulation 261/2004 establishing rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights](#)