

Department for Transport: Aviation Consumer Policy Reform Response from the CAA's Consumer Panel

Background

The CAA Consumer Panel is a non-statutory critical friend, giving expert advice to the Civil Aviation Authority (CAA) as policy is being developed, and making sure the consumer interest is central.

The CAA Consumer Panel is a group of independent experts, who bring together deep consumer expertise and experience along with strategic thinking, applying these in a practical way to improve the experience for commercial air passengers

The Panel's objective is to champion the interest of consumers and we appreciate the opportunity to contribute to the development of these key consumer policy reforms.

General comments

The Panel very much welcomes this consultation and the proposals to provide the CAA with effective enforcement powers, mandate ADR and improve the ability of less mobile passengers to easily obtain the appropriate compensation for lost or damaged equipment. We are concerned that the proposals to amend the compensation rights for delayed or cancelled domestic travel will not benefit consumers in the way the DfT envisages but welcome the opportunity to consider what more can be done to help people access the redress that they are entitled to when their journeys are significantly disrupted.

We have commented extensively on the issues affecting aviation consumers, most recently in our publication on supporting consumer confidence¹. This document details our assessment of the actions needed in the aftermath of the pandemic to enable consumers to book and travel with peace of mind, from general health measures to legal protections, addressing concerns related to safety, financial security, and strength of enforcement activity.

We also provided a detailed response to the DfT's Aviation 2050 consultation² on the future of UK aviation in 2019³ and supported the direction of the DfT's consumer policy towards greater accountability from industry for important customer services including complaints handling and high-quality accessibility provisions. Whilst we are pleased to see the important issues of CAA enforcement powers and ADR being progressed, we urge the DfT to revisit the wider policy approach and consider what further measures can be delivered for the benefit of all aviation consumers.

1

<https://publicapps.caa.co.uk/docs/33/CAA%20Consumer%20Panel%20Supporting%20Consumer%20Confidence.pdf>

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/769695/aviation-2050-web.pdf

³ <https://www.caa.co.uk/media/5kldswbg/consumer-panel-response-to-aviation-2050.pdf>

Tools for the regulator to protect consumers and ensure fair treatment

1. The Panel are very pleased to see further proposals being presented by Government for the enhancement of the CAA's enforcement powers. As stated in our response to the consultation on reforming competition and consumer policy from the Department for Business, Energy and Industrial Strategy (BEIS)⁴, we believe very strongly that the time is right to reform sectoral regulators' civil consumer enforcement powers.
2. The Panel has repeatedly noted that the CAA's consumer enforcement powers are not well suited to swift action, with considerable periods of time taken for cases to come before the courts, during which businesses continue to breach the law without consequence.
3. We are concerned that the existing regime, using the powers provided by the Enterprise Act, fail on multiple fronts. They do not act as an effective deterrent, do not penalise businesses for activity already undertaken and do not allow quick action meaning that consumers are out of pocket or continue to face detriment for lengthy periods.
4. Across the consumer enforcement landscape, the CAA is almost unique in its reliance on the Enterprise Act to ensure compliance with consumer law. Providing specific regulatory powers would strengthen the position of the CAA as a consumer enforcer and rebalance this discrepancy.

Q1. What, if any, additional powers to enforce aviation consumer protection laws directly through civil sanctions should the CAA have? What specific issues would these powers address beyond the enforcement powers already available to the CAA?

5. We agree that the CAA should have the ability to decide if an aviation business has breached consumer rights law, make directions to end infringements or stop them from happening in the future, order compensation or redress for the breach and be able to impose financial penalties, where appropriate.
6. Such reforms would allow the CAA to deal more swiftly and effectively with compliance issues leading to benefits for consumers and businesses who do play by the rules. As we do not yet know the outcome of BEIS's considerations on enforcement power reforms for the CMA and other regulators, it is worth re-iterating the value of strong sectoral regulators working alongside the CMA.
7. Whilst the CMA is well placed to look across the economy, sectoral regulators including the CAA, hold deep expertise and are often the place to which consumers and consumer organisations look first to make sure rights are enforced and the playing field is level. It is right therefore that the DfT is looking at the CAA specifically and making proposals that will allow the CAA to carry out its important work effectively.

Q2. If the CAA were to have increased enforcement powers, should their enforcement remit remain as it is currently, i.e. only for cases of collective harm? What would be the advantages and disadvantages of the CAA having increased powers to enforce consumer laws in individual cases?

⁴ [CAP2273: CAA Consumer Panel response to BEIS RCCP consultation](#)

8. The Panel believes the CAA should continue to primarily act to address collective harm. The ability to act in this capacity is one of the CAA's main strengths and reflects their ability to recognise and prioritise the enforcement work that can have the greatest impact.
9. The CAA should also be allowed to enforce individual cases where there is a principle or precedent under consideration, or for especially egregious cases related to consumers in vulnerable circumstances⁵ or particularly significant breaches. This would only be possible with the appropriate resourcing and with clear parameters so as not to create unrealistic expectation or an excessive workload for the CAA and to ensure that the CAA can continue to respond proportionately to the most significant breaches.
10. The Panel proposes that this approach works well where there is a strong and effective alternative resolution scheme through ADR, including through an ombudsman who can investigate individual cases, escalating to the CAA where the novelty, scope or complexity of the case makes it more appropriate to be led by the regulator.

Q3. Are there any specific issues for the aviation sector that should be considered in the development of any administrative framework for the CAA?

11. The Panel would like these powers developed in such a way that all UK departing passengers benefit from the gains made. With that in mind, and given the international nature of air travel, development of these powers will require careful consideration of issues around jurisdiction and co-operation. This is particularly relevant where the CAA is seeking information from businesses whose main base is outside of the UK, which we understand has been challenging for the CAA in the past.

Resolution for individual consumers

12. Aviation consumers face a complex and confusing situation where not all passengers can access a binding decision on their case, creating the risk of weakened confidence as consumers do not feel they can trust the system.
13. The Panel's view has consistently been that mandating ADR is crucial. The current situation is that airlines are permitted to decide whether to offer their customers access to an ADR scheme, and if so, which one of the two CAA approved schemes. The CAA has consistently urged the remaining airlines to join and amend their policies to remove the stated obstacles for these businesses, yet we still do not have full participation. Around one in five consumers flies with an airline that has decided not to subscribe to either approved ADR scheme. This is a significant gap in consumer protection for aviation passengers.
14. We welcome the strongest indication to date that ADR in aviation is a priority for the DfT and urge them to make the delivery of this proposal a priority. The panel believes strongly that a single scheme, free to use with an extended remit should be pursued and welcome the recognition that an ombudsman scheme should be considered.

Q4. Should ADR be mandatory for all airlines flying to and from the UK? Please explain the reasons for your answer.

⁵ The Panel believe that, in relation to aviation, a broader range of consumers may find themselves vulnerable due to the impact of actions taken by airlines or airports and are pleased to note the CAA also accepts this definition.

15. We were surprised to see that Government was not considering mandatory ADR for aviation when BEIS consulted on this subject last year through the reforming competition and consumer policy consultation. We are therefore very pleased to see this proposal from the DfT and fully support making ADR mandatory for all airlines flying to and from the UK.
16. In the research report '*Confusion, gaps and overlaps: a consumer perspective on alternative dispute resolution between consumers and businesses*⁶' it was observed that where there is more than one scheme, ADR schemes compete, and this is not in the consumer interest. The researchers recommended that mandatory ADR should be extended across all consumer sectors. And in regulated sectors, ADR should be limited to one provider in each sector.
17. As stated in our response to BEIS, the aviation sector fits all the criteria identified as indicators that consumers needed this essential service. These included:
- “nature of consumers: vulnerability, importance (for example essential or high cost)” – we note that air travel is often costly, especially in proportion to income, and that payment for transactions is often made well in advance of travel, leaving the consumer in an exposed position.
 - “nature of the purchase: complexity, value, incidence, competitiveness” – holidays and air travel are often infrequent purchases, typically made once per year, which lowers the opportunity for consumer learning.
 - “consumer experience: consumer confidence/trust, level of complaints” – our data shows that levels of dissatisfaction with first tier complaints are high and consumer trust in the sector has suffered as a result of the Covid-19 pandemic and associated widespread cancellations and changes to travel plans. Easy access to high quality redress is an important part of boosting confidence and thus sector recovery.
 - “alternative routes: availability and effectiveness of other types of consumer protection/enforcement” – we note the CAA does not have the tools available to some other sectoral regulators (such as via licensing) to be able to mandate ADR as part of its regulatory oversight.

Q5. Should all airlines flying to and from the UK be required to register with the ADR provider, or should parent organisations be able to register on behalf of all businesses within their parent group? What are the advantages and disadvantages of each of these options?

18. The priority for the Panel is for all consumers to have access. There is an argument for the requirement to apply to the individual airline and not the parent company, in recognition that the consumer has a relationship with the airline. Either way, the development of these proposals must take into account the need for the consumer to be able to easily navigate the procedures regardless of the legal or commercial relationships of the businesses involved.

Q6. How successful are the current compliance and enforcement mechanisms for the voluntary ADR schemes, and what alternative enforcement mechanisms should be in place to ensure compliance with any determinations made by an ADR body?

19. Within the parameters of the existing ADR arrangements, the Panel is confident that the CAA, with the appropriate enforcement powers, would be well placed to ensure compliance and develop mechanisms to ensure determinations are acted upon. We are aware that there are

⁶ [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer/publications/Gaps overlaps consumer confusion 201704.pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer/publications/Gaps%20overlaps%20consumer%20confusion%201704.pdf)