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25 August 2021

Dear Helen,

### **Heathrow Airport: 2022 Aeronautical Charges: Consultation Obligations**

Thank you for your letter of 10 August 2021 asking whether we can give you assurances on the application of the Airport Charges Regulations 2011 (ACR2011) with regard to possible complaints about delays to the consultation process due to exceptional circumstances.

Our understanding of the position and views on the appropriate next steps are set out below.

#### ***HAL's obligations to consult and give advance notice of changes to charges***

As you are aware, under Regulation 9 of the ACR2011, if HAL intends to change the level of airport charges at Heathrow it must give a notice of that at least four months before the change unless there are exceptional circumstances making this not practicable. If HAL considers there to be exceptional circumstances, it must:

- a) explain the exceptional circumstances to the airport users and the CAA, and
- b) give a notice as soon as practicable and before the intended changes are made.

After this notice, HAL must, in so far as practicable, hold consultations with the airport users on its intended changes.

Under Regulation 13 of the ACR2011, HAL must publish details of any change to airport charges at Heathrow:

- a) if practicable, before the beginning of the period of two months ending with the day on which the change takes effect, and
- b) if not, as soon as practicable after the beginning of that period.

#### ***CAA's investigatory role and our approach***

Under Regulation 20 of the ACR2011, the CAA is under an obligation to investigate complaints as to whether an airport operator is failing to comply or has failed to comply with an obligation imposed on it by the ACR2011. If we were to receive such a complaint from a Heathrow airport user, we would have to consider all the relevant facts to the case and cannot give you assurance in relation to the outcome of any particular investigation that might arise.

Nonetheless, we would carefully consider any reasoning put forward by HAL that circumstances were exceptional, including in relation to the current unprecedented circumstances:

- the delays to the H7 price control timetable, which mean there is greater uncertainty about the charge restriction conditions that will be in place for 2022, and the steps that the CAA intends to take (described in more detail below) to bring greater clarity to these matter over the remaining months of this year; and
- the wider and very great uncertainties that have been created by the pandemic and the effects of this uncertainty on the H7 price review and the range of airport charges that may emerge from the H7 price control setting process.

#### *Next steps*

It is for HAL to decide, bearing in mind the above circumstances and having regard to the obligations under the ACR2011 and its economic licence, when to start its consultation process on changing airport charges, when to issue its decision giving notice of a new schedule of charges, when the new schedule of charges takes effect and whether exceptional circumstances justify a different approach to the normal consultation process and what is reasonably practicable given the difficult circumstances discussed above.

We note what you have said in your letter about attempting to reach agreement with airlines on an appropriate level of charges for 2022 and strongly support such negotiations. If no agreement is forthcoming HAL should ensure that its ACR2011 consultation explains the CAA's H7 process, including our intentions to (subject to final sign-off from the CAA Board in September) to:

- publish a key update for the H7 price control in our Initial Proposals at the end of September / early October;
- if no clear agreement exists between HAL and airlines at this time and we consider it necessary to the discharge our duties to protect consumers then in parallel with our Initial Proposals we intend to publish a notice consulting on a proposed licence modification to introduce a holding price cap for 2022 (that would be tried up against our final proposals in due course), based on

the analysis published in our Initial Proposals, with responses due after 4 weeks; and

- issue a notice making that licence modification by the end of November 2021 (subject to any representations made on that proposed modification and not withdrawn).

I understand that this letter does not provide all the assurances that you requested in your letter of 10 August, nonetheless I hope it provides context to the unprecedented set of circumstances we currently face and the steps we intend to take with respect to ensuring appropriate price control arrangements are in place for 2022.

I intend to arrange for a copy of this letter to be placed on our website to ensure an appropriate degree of transparency with respect to these important matters.

Yours sincerely

A handwritten signature in black ink that reads "AJ Walker". The letters are cursive and fluid.

**Andrew Walker**  
Chief Economist  
Civil Aviation Authority