

## Regulatory Policy Group

6 December 2011

Dear Colleague



### **Open letter to the industry – winter readiness**

During October and November this year, we conducted an extensive round of bilateral meetings with major airports and airlines to identify the enhancements made, and those planned to be made, to improve industry's response to major disruption. This open letter, which has been sent to all airports in the UK and airlines operating to and from the UK, presents the findings of this work.

In summary, it is clear from the airports and airlines that we have spoken to that significant efforts have been made in a number of key areas to improve industry's response to major disruption. In particular, a number of examples of good practice that were identified as part of our review earlier in the year have been taken forward by airports and airlines into their plans for this winter. However, as has been pointed out to us by the airports and airlines that we have spoken to, improving the industry's response to major disruption is a process of continuous improvement and the industry should not be complacent. We agree and, in particular, we think that a number of airlines still have some way to go to reach best practice in terms of passenger communication and passenger welfare.

Although we recognise the significant steps that have been taken by individual operators to improve their own performance, further work is required to ensure that a more joined-up and collaborative approach exists between all parties involved to achieve greater resilience to the sorts of events that can lead to major disruption. We welcome the initiatives of a number of operators in this area and we would like to see industry take further steps to develop joint plans and capabilities to ensure that, when disruption occurs, the impacts on passengers are minimised.

On this point of collaboration, we would like to note the significant efforts made by airlines, airports and UKBA to minimise the impact of the public sector strike on 30 November. This was a truly collaborative effort on the part of all stakeholders and one which undoubtedly averted major disruption at the UK's larger airports. We would like the industry to consider how to build on the goodwill created through this successful collaboration and to extend the learning from this event into other areas where major disruption can occur.

The CAA will be monitoring performance over the winter and will take a pro-active approach to dealing with any identified problems. In particular, the CAA will be checking to ensure that airlines comply with European legislation that requires them to assist their passengers when flights are delayed or cancelled. The CAA will also

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take up with airports any identified problems in terms of their performance in maintaining airport operations.

### **The CAA's review of aviation's response to major disruption**

Following the severe weather conditions in winter 2010/2011 the CAA carried out a review into how effectively industry had dealt with the associated disruption. As our review progressed, it became clear that many of the issues that arose as a result of the severe weather, in particular in relation to passenger welfare, were not specific to that event, but rather were the result of the knock-on effects of disruption to airport and airline operations more generally. By focusing our review on the general issue of passengers' experiences during major disruption, we were able to consider the particular issues faced by passengers during periods of disruption in greater depth and breadth than had been done previously.

Following an industry seminar earlier in the year, where we presented our preliminary findings, and a number of further consultations over the summer with major airlines and airports, as well as airline trade associations, on our detailed proposals, we published our final report in August this year<sup>1</sup>. It was agreed with the Airport Operators Association (AOA) and the British Air Transport Association (BATA) that they would establish a Major Disruption Policy Development Group to take forward the findings of our report. However, this group will not have concluded its work in time for this winter.

At the same time we have been conducting our own review with major airports and airlines to identify the performance improvements made, and those planned to be made, by airports and airlines for this winter, and to determine how well the industry is placed to deal with future events that can lead to major disruption. This open letter presents the findings of our review.

### **Readiness for winter 2011/2012 – findings to date**

#### *Airports*

As part of our review, we have had detailed discussions with a number of major airports. These discussions have revealed that a significant amount of work has been undertaken in a number of key areas to improve each airport's resilience to major disruption and, in addition, has highlighted a number of areas of best practice. These are covered below:

- **Snow clearance** – Each of the airports we have spoken to has acknowledged that it is the airport operator that is responsible for snow clearance across the whole airport. Critically, the airport operators have acknowledged that the whole airport includes stands, passenger walkways and airside roads, not just the runway and taxiways. This understanding has been incorporated into each airport's snow plan and the appropriate equipment, manpower and

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<sup>1</sup> <http://www.caa.co.uk/default.aspx?catid=5&pagetype=90&pageid=12376>.

procedures have been put in place. In some cases, this has necessitated significant investment in new equipment and training.

- **Command and control** – There has been a general recognition amongst the airports that we have spoken to that snow and severe weather are not completely unforeseeable events. Each airport has taken steps to ensure that its crisis command and control structure can react in a timely way to such events, in particular by ensuring that it is set up and running before the weather event occurs. The interaction between senior management (usually at Gold Command) and the key operational decision makers (usually at Silver Command) has also been given careful thought to ensure that that senior management are given up-to-date information without diverting key resources from restoring normal operations.

There has also been a general recognition of the importance of involving key airport stakeholders in the command and control structure. Events last winter revealed a weakness in communications between key airport stakeholders, in particular between the airport, airlines and ground handlers. This in turn inhibited joint decision making, which is key to resuming normal operations as quickly as possible. Clearly, different solutions will apply in different circumstances depending on the nature of the airport's operations and its airline customer base. However, we welcome the focus that stakeholder communications has received in this area and we expect airports, airlines and groundhandlers to continue to improve on information sharing and joint decision making during mass disruption.

- **De-icing stocks** – In addition to investments in snow clearance equipment, the airports that we have spoken to have also invested in greater stocks of de-icing media, with some airports doubling the stocks that they hold. In addition, a number of airports have diversified the type of de-icing media that they use in order to improve the resilience of the supply chain to severe winter weather.

### *Airlines*

As part of our review, we have had detailed discussions with a number of major airlines: both scheduled and charter, and full service and low cost carriers. As with the airports that we have spoken to, these discussions have revealed improvements in a number of areas and have highlighted a number of areas of best practice. These are covered below:

- **Maintaining operations** – Each of the airlines that we have spoken to has emphasised the priority that planning for this winter has had in their organisations. Given the differences in airline business models, the airlines we spoke to often faced different challenges. However, a number of common themes emerged:
  - *Command and control* – as with the airports that we spoke to, many airlines have continued to develop their command and control

structures, emphasising the need for early decision making and clear communication across the business. A number of airlines also stressed the need to ensure that that senior management are given up-to-date information without diverting key resources from restoring normal operations.

- *De-icing* – a number of the airlines we spoke to had further developed their de-icing capabilities for this winter. Typically this included working with the relevant de-icing companies to increase the supplies of de-icing media available and to ensure that supply chains are more robust, but in some cases extended to implementing different approaches to de-icing (e.g. off-stand de-icing) and revised de-icing procedures (e.g. precautionary anti-icing to increase hold-over times).
- **Passenger communications** – As highlighted in our review earlier in the year, a lack of information was the primary issue for passengers travelling during the snow disruption last year. This issue is a recognised as a priority by all the airlines that we spoke to. A number of these airlines already have the capabilities in place to reach a substantial proportion of their passengers by sms message and have the ability to update their websites rapidly with new information. For these airlines the focus has been to build on this capability through e.g. social media and smartphone apps. Noting the significant take-up by passengers of social media channels (esp. Facebook and Twitter) during the disruption last winter, we welcome the focus on this new area.

However, in the case of a number of the airlines that we spoke to, we were not convinced that these airlines would be able to communicate accurate and up-to-date information to their passengers in the event of major disruption this winter. We are writing to these airlines separately to outline our concerns.

We remain concerned that the airline sector in general may be significantly behind ‘best in class’ performance in terms of communicating with passengers at short notice during major disruption. Based on our discussions with airlines, the challenge in this area appears to be a mix of out-dated IT systems and a high penetration of bookings via third-party agents (who are often unwilling to pass on passengers’ contact details to the airline).

Whilst we appreciate that upgrading IT systems can be difficult, expensive and time consuming, we note that one of the airlines that we spoke to had made significant efforts to overcome these issues and was now able to sms a significant proportion of its passengers. Further, we note that a number of airlines have put in place ‘work-arounds’ whereby passengers can supply the airline with their contact details after booking.

- **Passenger welfare and assistance** – Airlines have legal obligations under EU261/2004<sup>2</sup> to look after passengers who are stranded at the airport. In

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<sup>2</sup> EU261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

major disruption the key rights that apply are to provide care and assistance to passengers and to offer passengers the choice of an alternative flight or a refund. We have summarised the main obligations that apply during periods of major disruption at Annex 1. Clearly, where airlines rely on third parties (e.g. the airport or ground handlers) to fulfil their legal obligations, they should satisfy themselves that they have the necessary arrangements in place to ensure that they can deliver on their obligations.

As set out in our final report on aviation's response to last winter's major disruption, it is our view that airlines' performance in terms of looking after stranded passengers during the disruption was highly variable. The discussions that we have had with airlines revealed that, although in general some modest enhancements and improvements have been made, the main focus for this winter has been on mitigating the operational impacts of disruption rather than on ensuring that airlines are able to look after passengers once disruption occurs.

Each of the airlines we spoke to emphasised the scale of the challenge of looking after passengers during major disruption. Whilst we acknowledge this, we would like to emphasise that the right to care and assistance granted to passengers under EU261 is not contingent on the circumstances of the disruption – airlines should plan appropriately to ensure that they can meet passengers' rights even in the most significant disruption.

As the National Enforcement Body for EU261/2004, we are currently taking forward enforcement cases against a number of airlines for non-compliance with EU261/2004. As set out in our Strategic Plan<sup>3</sup>, the objective of our compliance and enforcement work is to ensure industry's routine compliance with the law. We will continue to prioritise enforcement action against airlines that do not look after their passengers during major disruption until we are confident that these airlines have in place the necessary plans, procedures and capabilities to comply routinely with their obligations under EU261/2004.

Notwithstanding this, we welcome the support airlines have given to the principle of 'self-assistance', whereby passengers are encouraged to look after themselves in a major disruption (e.g. meals, hotel accommodation, etc). Clearly in order for this to work, passengers need to be given the confidence that they will be reimbursed for all reasonable expenses, and we acknowledge the work done by a number of airlines to make it clear when they expect passengers to look after themselves and what expenses they will reimburse.

However, we note the general resistance from airlines to the principle of self-help when applied to re-routing. Where an airline does not itself *provide* its passengers with a reasonable offer to re-route them according to their rights

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<sup>3</sup> <http://www.caa.co.uk/docs/1743/CAA%20Strategic%20Plan%202011-16%20v2.pdf>.

under Article 8(1)(b) of EU261/2004<sup>4</sup>, it is the view of the CAA that the passenger should be able to re-route themselves and claim back the costs from the airline.

Clearly there is a question of interpretation around some aspects of EU261/2004, including what constitutes the 'earliest opportunity', and indeed we found airlines to have some flexibility on these issues when considered on a case-by-case basis. However, we do not consider that there are grounds to rely on the reference to 'comparable transport conditions' to adopt a policy that re-routing will only be undertaken on the airlines' own services.

We think that airlines should have an interest in making self-help work, as unless passengers can be given the confidence that they can re-route themselves at no extra cost during periods of mass disruption, they will be unlikely to take up this option and, in many cases, will end up costing the airline more in meals, hotels, transfers, etc. We request that airlines consider further how this option can be made to work in practice during major disruption.

### *Collaboration*

One of the areas for improvement that we identified in our review of the snow disruption last year was in relation to joint planning and decision making. Fundamentally, each airport and the airlines that operate from it need to develop their major disruption plans in tandem to ensure an integrated response to major disruption. Where the efforts of other airport stakeholders are critical to resuming normal operations, in particular ground handlers, de-icing companies, fuel companies, etc, or where they are an important part of the welfare chain, for instance airport retailers, airport hoteliers, etc, they need to be involved closely in this integrated planning process. Even where airports and airlines do not have direct control, in particular in terms of snow clearance of local access roads and the operational resilience of local rail links, we would expect these risks to be identified and for airports and airlines to work with the relevant authorities to address them.

Our discussions with airports and airlines have revealed that steps are being taken in a number of areas to improve joint crisis planning and response. In general, there has been much more sharing of best practice for this winter, in particular amongst airports. Airlines have been providing greater scrutiny of airport snow plans than has taken place in previous years. Further, airports have been working more closely with other airport stakeholders in advance of this winter, in particular groundhandlers and airport retailers, to facilitate a more joined-up response to stand clearance and welfare respectively.

Clearly these initiatives are to be welcomed. However, further work is required to fully embed joint planning and decision making to ensure a collaborative response to

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<sup>4</sup> Which is given as "re-routing, under comparable transport conditions, to their final destination at the earliest opportunity" or "at a later date at the passenger's convenience, subject to availability of seats".

major disruption. Our discussions with airports and airlines have revealed a number of examples of best practice on this issue, which are covered below:

- **Joint planning / assurance** – One airline we spoke to had held a winter operations conference to which representatives from airports and winter operations suppliers across its network were invited. The key message was the adoption of a collaborative approach to ensure that all parties were working together to reduce the negative effects that bad weather can have both on the operation and passengers. In support of this work, the airline had also issued a number of questionnaires to its service providers on de-icing<sup>5</sup>, and airport and ground-handler readiness<sup>6</sup>. The questionnaire process was supported by site visits by the airline's winter operations manager to its largest winter operations stations. In addition, this airline took the step of publishing its major disruption plan for this winter.
- **Stand clearance** – As stated previously, each of the airports we spoke to acknowledged that it is the airport operator's responsibility to clear snow across the whole airport, including the stands. However, each airport also recognised the need for assistance from groundhandlers and airlines in order for clearance of stands to be effective. One airport has taken steps to clarify its relationship with airlines and groundhandlers through a Memorandum of Understanding (MoU), signed by the airport, groundhandlers, a number of airlines, including the base carriers, the AUC, and the AOC. This MoU defines the roles and responsibilities of the airport, groundhandlers and airlines and defines expectations in terms of joint working on stand snow clearance. Amongst other things, the MoU includes commitments for airlines and groundhandlers to cooperate with the airport on push back, provides clarity over self-help stand clearance and in addition it references a set of stand usability guidelines. On this last issue, we note that a number of airports have implemented procedures whereby stand status is jointly agreed between ground handlers and the airport.
- **Welfare** – One airport that we spoke to had developed a set of welfare protocols with airlines to ensure a joint response in terms of deploying care and assistance to stranded passengers. Following extensive discussions with a number of airlines to better understand their welfare plans, and discussions with the CAA on what EC261/2004 requires of airlines in terms of looking after passengers in times of major disruption, the airport, together with a number of major stakeholders, developed two welfare protocols, the first governing what airlines are expected to do in terms of looking after their passengers during a major disruption, and the second governing what the airport should do to support and enhance airlines' welfare provision. As a longer term plan, the airport operator intends to incorporate these welfare protocols into the Conditions of Use of the airport.

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<sup>5</sup> Covering the subjects of subcontracting, the post de-icing inspection and the resolution of previous audit findings as well as operational contingencies and the ability to deal with extended periods of severe weather.

<sup>6</sup> Covering stand clearance, preparation of winter equipment and its protection against freezing conditions, winter operations training and customer disruption procedures.

Recognising the differences between airports and airlines, we would like the industry to learn from, and build on, these examples of best practice, ultimately to deliver a truly joined up approach to dealing with major disruption.

### **CAA Monitoring**

The CAA will be monitoring levels of compliance and passenger complaints over the winter period and will be proactively taking up any issues it identifies with individual airlines and airports. If you have any concerns over your ability to deal with disruption this winter or to comply with your legal obligations, please get in touch with us and we can provide further advice – see the contact details in Annex 1. We would also welcome any examples of best practice that you would like to share with us

Yours sincerely

A handwritten signature in black ink, appearing to read 'Iain Osborne', written over a faint, light-colored grid background.

**Iain Osborne**  
**Group Director**

## Legal Obligations during Major Disruption

### Introduction

European law provides rights to passengers when their flights are delayed or cancelled<sup>7</sup>, which apply both during normal operations and when there is significant disruption. If airlines are to meet these legal obligations in times of significant disruption, it is likely that some preparation is needed in advance of the disruption event.

With this in mind, we have set out below a number of aspects of the requirements set down in the legislation (EC261/2004), which we consider are the most important to bear in mind when preparing for the possibility of major disruption, and when handling passengers during periods of disruption.<sup>8</sup>

### CAA Role

The CAA is the National Enforcement Body for EC261/2004. We provide advice to passengers and assist them in taking up their complaints with industry. We also have legal powers under Part 8 of the Enterprise Act to obtain information from businesses, and to seek formal undertakings to comply with the law. If businesses fail to provide undertakings or breach them, we are able to seek an Enforcement Order from the Court.

The CAA has carried out an internal re-organisation this year to support our objective to move industry to a position of routine compliance with its legal obligations. Our aim is to actively enforce legal obligations and to tackle issues of non-compliance. You can find more detail on our approach in our Strategic Plan.

<http://www.caa.co.uk/docs/1743/CAA%20Strategic%20Plan%202011-16%20v2.pdf>

We have also published a set of prioritisation principles and an Interim Consumer Enforcement Strategy. Both these documents set out our approach to tackling consumer issues and what industry can expect from us when we take forward an enforcement case.

<http://www.caa.co.uk/docs/2107/Prioritisation%20Principles.pdf>

[http://www.caa.co.uk/docs/2107/Interim\\_Consumer\\_Enforcement\\_Strategy.pdf](http://www.caa.co.uk/docs/2107/Interim_Consumer_Enforcement_Strategy.pdf)

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<sup>7</sup> Regulation EC No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights

<sup>8</sup> We have not set out all of the obligations on airlines under EC261/2004. If you have any questions about how best to comply with any aspects of this regulation, please contact the CAA.

## **Scope of legislation**

The legislation applies to all airlines, regardless of their nationality, when the flight departs from an EU airport<sup>9</sup>.

## **When the law applies**

EC261/2004 applies in circumstances when passengers are denied boarding, a flight is cancelled or there is a delay of more than 2 hours.

## **Passenger Information**

At the airport, airlines are required to display a clearly visible notice at check-in with the following wording:

“If you are denied boarding or if your flight is cancelled or delayed for at least two hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regards to compensation and assistance”

When a flight is delayed or cancelled airlines need to provide passengers with a written notice setting out their rights. The notice should include the CAA’s contact details, as passenger’s can complain to us if they are unable to resolve any issues satisfactorily. Our contact details are:

Passenger Advice & Complaints Team  
Civil Aviation Authority  
CAA House  
45-59 Kingsway  
London WC2B 6TE  
[passengercomplaints@caa.co.uk](mailto:passengercomplaints@caa.co.uk)  
020 7453 6888

## **Care and assistance**

During disruption airlines are required to look after their passengers. This applies in all cases and is not dependent upon the reason for the cancellation or delay.

Airlines cannot refuse to provide care and assistance because of “extraordinary circumstances”, as this exemption only applies to the provision of financial compensation (see below).

Airlines need to ensure they are able to provide the following types of assistance to passengers:

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<sup>9</sup> This includes both airports in the European Union as well as those in Switzerland, Iceland and Norway,

- Meals and refreshments (often provided in the form of vouchers to use in airport restaurants)
- Communication (2 telephone calls or access to e-mails)
- Hotel accommodation for overnight delays (this will also include transport to and from the hotel)

The requirement to provide assistance depends on the length of time passengers are delayed and on the flight distance. The following table sets out the timescales when these requirements come into force:

<b>Flight Length</b>	0 – 1,500km	1,500 – 3,500km	3,500km +
<b>Delay</b>	2 hrs +	3 hrs +	4 hrs +

The Regulation requires assistance to be prioritised for any passengers with mobility problems<sup>10</sup> and any unaccompanied children.

If airlines fail to provide the necessary assistance, passengers are entitled to look after themselves and to claim a refund for any reasonable expenses they incur. We recognise that it can be difficult for airlines to arrange hotel accommodation during a major disruption and that sometimes airlines will ask passengers to make their own arrangements. In these cases an airline should provide advice on what it considers to be reasonable expenditure and make sure passengers are reimbursed promptly. What is reasonable will be assessed by reference to the circumstances that passengers had to face at the time and cannot necessarily be defined by reference to an arbitrary limit imposed retrospectively.

### **Refunds and re-routeing**

When a flight is cancelled, as well as providing assistance to passengers, airlines are also obliged to offer the choice between a refund or re-routeing. This also applies for delays longer than 5 hours if the passenger decides they no longer wish to travel.

If a passenger chooses a full refund, airlines are no longer obliged to provide any assistance, however this particular consequence should be made clear in the offer made to the passenger.

If a passenger chooses to wait for an alternative flight, airlines are responsible for providing assistance until the flight departs. It can be appropriate to offer re-routeing on another airline's flight or another mode of transport, such as rail or coach, depending on the length of the journey. Some airlines have entered into arrangements to facilitate such re-routings and to reduce the overall cost of complying with these obligations. If airlines refuse to organise alternative travel, passengers may book their own travel arrangements and claim back the costs.

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<sup>10</sup> Passengers with a disability or mobility problems due to age or injury such as a broken limb

If passengers are re-routed to an alternative airport, airlines are responsible for transferring them on to their original destination.

Passengers may also wish to defer their trip and travel at a later date. In these cases, they should be allowed re-book without penalty and subject to availability.

### **Financial compensation**

In some cases airlines may have a duty to provide financial compensation to passengers. Compensation can be payable for cancellation and a ruling by the European Court has extended this duty to situations of delay. The issues raised by that case are the subject of a further ongoing case in the European Court. Airlines are not required to pay compensation if they can demonstrate that the reason the flight was cancelled was an extraordinary circumstance. For it to be considered an extraordinary circumstance it must be an event that is not inherent to the operation of an airline **and** outside the airline's control. The onus is on the airline to demonstrate that both these tests were met and we would expect passengers to be given clear information about why a flight was cancelled. The CAA will also expect information to be provided to us on request. This may include evidence from log books and operational data.

### **Contact details**

If you need advice on your legal obligations you can contact the following people:

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