

30 September 2013

Dear Colleague

### **Open Letter to Tour Operators, Intermediaries and Airlines on the Provision of Passenger Contact Information**

*Background to the CAA's work on passenger information during disruption*

1. As set out in the CAA's Strategic Plan<sup>1</sup>, the CAA is committed to "[...] work[ing] with industry to further explore and identify resilience issues and opportunities to improve performance and prevent or minimise disruptions". Over the past few years, the CAA has worked with airports and airlines to improve the ability of the civil aviation industry to deal with significant disruptions, through better anticipation and a more co-ordinated response, and to ensure that consumers are properly served, within reason, despite disruptions, whatever the original cause.
2. One of the major themes of the CAA's work to date is in relation to avoiding stranding passengers at airports. The CAA takes the view that, in the event of a flight cancellation or very long delay, most passengers would rather be at home than waiting in the airport, not least because it can sometimes be a major challenge for airlines and airports to ensure that passengers stranded at airports are properly looked after, especially during periods of mass disruption.
3. For this reason, we have stressed to airlines the importance of capturing passengers' key contact details so that, in the event of disruption, they are able to get in touch with passengers swiftly to advise them not to travel to the airport (and of course to advise them of their travel options given the disruption and their legal rights). In our discussions with airlines, they have indicated that it is difficult, and indeed sometimes impossible, to capture passengers' key contact details where passengers have booked via a tour operator or via a travel agent or intermediary selling a tour operator's product, a dynamically packaged holiday product or individual holiday components. This is because, in many cases, the tour operator, travel agent or intermediary, either via the tour operator or directly, does not pass on these details to the airline.
4. We understand, of course, that tour operators, travel agents and other intermediaries may have legitimate commercial concerns over providing passenger contact details to airlines and other businesses in the supply chain, with whom they may be competing for retail sales. However, it is the CAA's view that these concerns are not insurmountable, and indeed cannot be relied upon by tour operators, travel agents and other intermediaries as a reason not to provide airlines with the key contact details of passengers flying with them where this is required to facilitate effective transmission of essential information during disruption.

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<sup>1</sup> <http://www.caa.co.uk/docs/1743/CAA%20Strategic%20Plan%202011-16%20v2.pdf>

*The CAA's expectations on information to passengers during disruption*

5. The CAA would therefore like to set out its expectations for how tour operators, travel agents, other intermediaries and airlines should coordinate their approach to ensuring that, in the event of disruption, passengers are contacted swiftly and provided with information on the disruption, their travel options, and their legal rights:
  - It is our understanding that many of the largest tour operators, travel agents and intermediaries, and those that operate a 24/7 operation, can themselves ensure that their customers are given the appropriate information promptly in the event of disruption to their flight. Where this is the case, it is the CAA's view that there may be no need for these businesses to pass on to the airline the contact details of the passenger.
  - For those businesses that are not able to provide such a service, it is the CAA's view that, as part of the booking that they make with the airline on behalf of the passenger, either as an individual component or as part of a package, they should pass on to the airline (or, where relevant, to the tour operator, which in turn should pass on to the airline) the mobile phone number or email (ideally both, where available) of the passenger to facilitate effective transmission of essential information to the passenger in the event of disruption.
  - As stated above, the CAA recognises the legitimate commercial concerns that tour operators, travel agents and intermediaries may have in relation to doing this. However, it is the CAA's view that, in complying with the requirements of the Data Protection Act 1998, airlines are prohibited from using consumers' personal data for marketing purposes unless the consumer has specifically agreed to receive such marketing communications. It is our view that this should provide sufficient comfort for tour operators, travel agents and intermediaries that the information they provide to airlines will not be used for marketing purposes unless the consumer has specifically agreed to receive such marketing communications.

*How consumer protection law relates to providing passengers with information on their flight*

6. Together with the OFT, the CAA recently published comprehensive guidance<sup>2</sup> for the travel industry on how flights and holidays should be sold in a manner that complies with consumer protection legislation. Section 4 of this guidance describes how the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) applies to the issues raised in this letter.
7. In particular, we would like to draw your attention to paragraph 4.14 of this guidance, which states that "failing to take steps to ensure that the consumer is kept informed of changes to the flight schedule or other disruption, in a timely and effective manner" is likely to be considered by the CAA be a breach of 'Professional Diligence' under the CPRs. This paragraph goes on to state that ensuring that the consumer is kept informed of changes to the flight schedule or other disruption can be achieved by "passing on consumers' contact details to the airline, or by ensuring that updates from the airline are passed to the consumer without delay".

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<sup>2</sup> <http://www.caa.co.uk/docs/33/CAP1015CAAOFTEApplicableConsumerLawGuidance.pdf>

8. We would like to draw your attention also to paragraph 4.30, which states that 'material information' to consumers under the CPRs is likely to include "information regarding a change to a flight schedule". The failure to provide consumers with material information could constitute a 'misleading omission' and could therefore represent breach of the CPRs.
9. Clearly, given the importance of ensuring that passengers are not left stranded at airports, and given the commitment of tour operators, travel agents and other intermediaries to providing excellent customer service, it is the expectation of the CAA that the issues raised in this letter can be resolved amicably between the parties involved and, ultimately, to the benefit of consumers. However, should progress not be made in this area, the CAA will consider its next steps, which include formal enforcement action.

*Next steps*

10. Any queries or requests for further guidance as a result of this communication should be addressed to me or Tom Carpenter ([tom.carpenter@caa.co.uk](mailto:tom.carpenter@caa.co.uk); +44 207 453 6439).

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Buffey', with a long, horizontal flourish extending to the right.

Matthew Buffey  
Head of Consumer Rights Enforcement  
Markets and Consumers Group