

**Minutes of 5th CAA Consumer Panel Meeting
Wednesday 18th July 2012 8.30am-12.30pm**

Present:

Keith Richards	Chair
Philip Cullum	Panel Member
Steven Gould	Panel Member
Alastair Keir	Panel Member

Invited guests:

James Tallack	Senior Consumer Policy Adviser, CAA
Tim Griffiths	Head of Price Control for Gatwick and Stansted Airports, CAA
Peter John	Interim Head of Price Control for Heathrow Airport, CAA
Abigail Grenfell	Regulatory Policy Adviser, CAA
Beryl Brown	Senior Regulatory Policy Advisor
Maggie Kwok	Regulatory Policy Adviser, CAA
Matt Buffey	Head of Consumer Policy & Enforcement, CAA (para X-X)

Apologies:

Crispin Beale	Panel Member
Sarah Chambers	Panel Member
Ann Frye	Panel Member
Robert Laslett	Panel Member
Anthony Smith	Panel Member

Meeting minuted by James Tallack

Discussion of responses to Q6 proposals

1. The Panel agreed that there were a number of overarching issues regarding the Panel's input into the Q6 process:
 - It is not the role of the Panel to comment on the full detail of the Q6 proposals – the Panel's concern is to ensure that the CAA fully reflects the interests of passengers (ie consumers) in its final proposals having considered the views of stakeholders.
 - Airlines have been considered a useful general proxy for the passenger interest. However, CAA needs to come to a view on where the interests of airlines and passengers are aligned (eg processing time) and where there may be misalignment (eg disruption).
 - Q6 is a complex and continually evolving process – in order to input usefully the Panel needs to understand: (i) where its recommendations have been taken on board (and if not, why not); (ii) where CAA thinks there has been movement in industry/regulator positions; and (iii) the timescales for the process and opportunities for the Panel to provide further input.

Proposals for London Gatwick Airport (LGW)

2. Tim Griffiths gave a short overview of the responses to the Q6 proposals from Gatwick Airport Limited (GAL) and the LGW airline community. He then asked the Panel for its views on the capital expenditure (capex) proposals. Members made the following points:
 - Airline community at LGW does not seem as joined up as at Heathrow (LHR) – could be due to greater diversity of business models at LGW.
 - There is a risk of individual airline self-interest coming to the fore – some capex projects will only benefit some airlines and their passengers but all airlines (and ultimately their customers) will pay the costs.
 - CAA therefore needs to demonstrate how it understands what consumers want where airline interests diverge. Willingness-to-pay (WTP) studies from airports may help (subject to following best practice in conducting such studies) but CAA should validate the findings – a consumer saying they are willing to pay for something doesn't necessarily mean they want it. For example, it is important to ensure that when asking the questions the consumer has transparency about the elements that make up the price they are already paying. CAA should consider the prioritisation of services that passengers see as essential, nice-to-have etc.
 - CAA should also consider whether there are some capex projects that should sit outside the Regulatory Asset Base (RAB) and be funded differently because only certain airlines want them – eg customer lounges, A380 pier, etc. As a general principle, airports should be prevented from putting premium services for higher-paying passengers into the RAB, unless this is in the wider passenger interest.
 - There is also an issue of the interests of present passengers versus those of future passengers – eg, if present passengers are being asked to fund the strategic realignment of an airport, there must be clear evidence that this is in the interests of consumers, and exploration of how this expenditure would be funded in a truly competitive environment. We urge the CAA not to put too much weight on speculative arguments about what passengers might want in the future. Research and analysis can provide the evidence base that can reduce the amount by which the interests of future passengers are wrongly predicted.

3. Tim asked the Panel for its views on the service quality proposals. Members made the following points:
 - The main purpose of the bonus element of the regulatory model is to promote a culture of continuous improvement where an airport's position of market power may otherwise work against this objective.
 - However, continuous improvement will not be incentivised if current thresholds for bonus payments (from Q5) are now being consistently achieved. Furthermore, in some areas – eg amount of available seating per passenger – further improvement beyond the current level may not be practical or desirable. Here, CAA may need to recognise that the 'right' level of performance has now been achieved and abolish

bonuses by setting an upper bound on quality (penalties would be retained to prevent a drop in standards as this would represent a material detriment to passengers).

- As a general principle, airports should not be paid bonuses for things that people don't want. In service quality areas where CAA believes that passengers would benefit from an improvement in performance, thresholds for bonuses should be set at a level that is economically achievable.
- The service quality scheme should be broad and sophisticated enough to ensure that perverse incentives for airlines to reduce quality in some service areas in order to gain bonuses in others do not exist.

Actions:

- Tim to forward GAL WTP research to Panel for review.

Proposals for London Heathrow Airport (LHR)

4. Peter John summarised the responses to the Q6 proposals from Heathrow Airport Limited (HAL) and the LHR airline community. He then asked the Panel for its views on the **capex proposals**. Members agreed that many of the issues related to the LGW proposals also applied to LHR. Members made the following additional points:
 - On HAL's decision to reduce its proposed capex program from £3bn to £2bn, CAA needs to assess what the reduction would mean for consumers. If it means – as HAL claims in its business plan – that LHR's performance would be 'average' rather than 'best in class', CAA needs to come to a view on whether average is good enough for consumers.
 - The CAA should ask HAL to properly articulate the consumer impact of the proposed reduction in the capex program. It is not acceptable that a major regulated business that routinely emphasises its customer focus has not properly evidenced its reasons for the change.
 - As with LGW, the CAA must be sure that the WTP research provided by HAL is credible. How confident is the CAA that consumers would actually be prepared to pay £10-15 more to use LHR than LGW or that they would pay £7 for nicer toilets (more than they pay in total to use Stansted Airport)?
 - It is highly unfortunate that the timelines of the Q6 process mean that HAL's failure to produce an adequate assessment of the impact of its proposals on consumers has become the CAA's problem. This is a well-known tactic of regulated business and distorts the regulatory process by making the focus on the regulator rather than end users. The CAA needs to take a robust yet practical stand on this and not simply take on the problem as its own.
5. Peter asked the Panel for its views on the proposals for **security queuing standards**. Members made the following points:
 - CAA needs to be confident that the regulatory process is not being manipulated by airlines who argue for an average of 8 minutes against HAL's 10 minutes in order to

increase the possibility of rebates being paid – is a two minute reduction that significant from the passenger’s perspective?

- Research appears to suggest that passengers are largely content with security queuing times. However, CAA should bear in mind that: (i) people may frame their responses in an ‘airport context’, ie based on expectations from past experience rather than what’s reasonable; and (ii) survey-based approaches can be influenced by airports managing security procedures in ways that make them seem more expedient than they actually are.
- Is average queuing time the best way to look at this issue – can other metrics be found? Using averages may mask unacceptably long queuing times at certain points in the day.

6. Peter asked the Panel for its views on whether the service quality scheme should be used to incentivise wi-fi availability (both HAL and airlines are opposed to this). Members made the following points:

- Consumers increasingly expect to have access to data networks at all times. This is particularly important in airports where consumers may be shut off from information and communication channels when they most need it (eg during disruption). Access to free wi-fi is the norm in major airports across the world.
- Interests may not be aligned when it comes to access to information at times of disruption – airports and airlines may want to control the flow of information, whereas consumers want to get hold of the most up-to-date information from a range of sources.
- The industry should not rely on consumers having their own access to mobile data networks (eg 3G) – many people do not have smartphones (and even if they do, a signal may not be available) and if people are outside their home country they will incur substantial roaming costs.
- If the difficulties and costs of retrofitting an appropriately sized wi-fi network are being presented as an argument against better provision, CAA should talk to airports in the US where successful retrofits have been carried out to get a better understanding of costs.

Actions:

- James to obtain WTP research from HAL.

Proposals for London Stansted Airport (STAL)

7. Beryl Brown summarised the responses to the Q6 proposals from STAL and the airline community. She then asked the Panel for its views on the implications for regulation if bilateral deals are agreed with Ryanair and easyJet, who represent around 90% of passengers at the airport. Members made the following points:

- Even if bilateral deals obviate the need for capping airport charges, an oversight regime may still be needed as bilateral arrangements are time-limited.

- Where airport charges are set by the market, there may still be a need for CAA to regulate certain aspects of STAL's provision if the interests of passengers and airlines (as the airport's customer) are not aligned.
- The CAA should consider the impact if bilateral deals are struck with Ryanair and easyJet on the 10% of passengers not carried by these airlines.
- STAL is owned by Manchester Airport Group (MAG) – and it may be useful to consider its performance at other airports owned by MAG as part of determining whether the oversight/price monitoring regime proposed for STAL is appropriate.
- As the CAA was minded to find that STAL is likely to have market power over non-passenger flights – has CAA considered how cargo customers are protected?

Actions:

- No actions arising.

Complaints handling

8. Steven Gould declared an interest in this item as a paid non-executive director of Ombudsman Services Ltd but stated that he had not been involved with any discussions concerning complaint handling in the UK aviation sector.
9. Members made the following general comments on the complaints handling briefing paper supplied by CAA:
 - As a general principle, regulators should absolutely be interested in how regulated businesses handle complaints from consumers but they don't need to have a complaints handling function themselves. Instead they should ensure that businesses handle complaints properly, that their work is informed by timely and accurate information about complaint numbers and types, and that there is adequate support for vulnerable and/or disadvantaged consumers.
 - There are three key considerations for CAA when thinking about the future of aviation complaints handling: (i) strategically, it is highly unusual for a statutorily regulated sector to have no access to an independent redress scheme; (ii) structurally, CAA needs to decide what its role in the complaints handling landscape is; (iii) systemically, there needs to be information and feedback sharing mechanisms between all parties involved with complaint handling.
 - Any independent sectoral redress scheme should be funded on a 'polluter pays' basis, although there may also need to be a 'membership fee' to establish the service and maintain it.
 - The Civil Aviation Act 2012 is a 'missed opportunity' to get complaint handling arrangements for the aviation sector with a statutory underpinning in place. The CAA knew the European ADR Directive was coming through – what was the thinking that prevented CAA from capitalising on this at the appropriate time?
 - There is a need to know more about the level of complaints in the industry – how does it stand relative to the number of transactions?

10. On the specific issue of compensation claims for delays and cancellations, Members made the following points:

- These complaints (which make up around 90% of the complaints received by CAA) differ from other types of complaints as they don't lend themselves to mediation through an ADR-type scheme (whether provided by CAA or another body). Due to 'hard coding' of monetary compensation amounts in Regulation 261 consumers have a clear idea of what they are entitled to and want as an outcome and are unlikely to accept anything else.
- CAA should treat compensation claims more mechanistically – this is about flights rather than complaints per se. Such an approach could include – irrespective of whether a complaint is received or not – systematically assessing every delay or cancellation on flights departing from the EU to determine if extraordinary circumstances apply or not. The outcome of these assessments could be published on the CAA website by flight number to help inform consumers whether they have a valid claim to take up with their airline.
- Systematically assessing flights and publishing outcomes would help CAA meet the criteria of being an effective and efficient regulator without having to become involved with handling complaints. It would also align CAA (in driving compliance with Regulation 261) and consumer (in receiving compensation where it is due) interests.
- CAA should not be concerned whether providing information about whether flights are eligible for compensation will harm the consumer interest by pushing up airfares as airlines pay out on a greater number of claims. CAA's role is to enforce the legislation – whether the compensation arrangements set out in the law are right or not is a political issue not a regulatory one.

Actions:

- No actions arising.

End of minutes