

21 July 2022

Dear Sir/Madam

## **CMA and CAA Open Letter to Airlines**

1. The Competition and Markets Authority (CMA) and the Civil Aviation Authority (CAA) are jointly writing to airlines about their practices and processes regarding flight cancellations and reimbursements, and to advise airlines of their obligations under sector-specific legislation (such as [UK \(EU\) Regulation No. 261/2004 on compensation and assistance to passengers in the event of flight delays or cancellations](#)) and under general consumer protection law, in particular the [Consumer Protection from Unfair Trading Regulations 2008 \(CPRs\)](#).<sup>1,2</sup>
2. We recognise that some airlines have performed better than others, and we acknowledge and welcome some recent improvements, for example flight cancellations being announced earlier. However, we are concerned that consumers could experience significant harm unless airlines meet their obligations and minimise flight disruptions throughout the summer and beyond.<sup>3</sup>
3. Our priority is to ensure that consumers are protected and businesses adhere to consumer protection law. It is critical that airlines take action to ensure consumers have a positive experience. Consumers must be kept informed of the status of their flights and made aware of their rights, so they can assess their options sufficiently in advance of travel. Where flights are cancelled, consumers should be supported and their rights upheld to ensure they get the best outcomes.
4. This letter is in addition to your engagement with the CAA and the Department for Transport (DfT).<sup>4</sup> It focuses on our expectations for compliance with consumer protection law to ensure you treat your customers fairly.

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<sup>1</sup> The CMA has a wide range of legal powers to examine and address problems found in UK markets, including consumer law enforcement. The CAA regulates the UK aviation sector.

<sup>2</sup> The [CAA has provided guidance](#) on how it expects airlines to comply with this and other important safety and licensing rules. The CMA has issued [general guidance on compliance with the CPRs](#). Consumers also have basic rights under the [Consumer Rights Act 2015](#) and general contract law.

<sup>3</sup> Throughout, the term 'consumers' includes references to passengers within Regulation 261.

<sup>4</sup> The CAA wrote to airlines in [April](#) and with DfT in [June](#), primarily focusing on resilience-building and sector-specific requirements. On [14 July](#), CAA and DfT wrote to the industry on passenger rights and DfT published an [aviation passenger charter](#) on 17 July.

## Overview of concerns

5. We are concerned that some airlines may not be doing everything they could to avoid engaging in one or more harmful practices, including:
  - selling more tickets for flights than they can reasonably expect to supply and failing to warn consumers about the ensuing risk of cancellation;
  - not always fully satisfying obligations to offer consumers re-routing<sup>5</sup> (including with alternative carriers where necessary) in the event of cancellation; and/or
  - failing to give consumers sufficiently clear and upfront information about their rights on cancellation, and/or to provide adequate and appropriate support and care where flights are cancelled or disrupted.
6. We are considering evidence about these issues.
7. So far it appears that refunds and compensation are generally being processed and paid in a timely fashion, though we are concerned to ensure that payment delays and other issues do not begin to emerge over summer as more flights are cancelled.

## What consumer protection law requires of airlines and our expectations

8. You should ensure that your practices and policies are in line with the requirements of consumer protection law. We strongly advise you to make any necessary changes as soon as possible, to prevent further disruption and harm.
9. Consumer protection obligations on airlines include the following, as set out in the CPRs:
  - a. Professional Diligence: Airlines must behave in a way which is in line with honest market practice and good faith. As well as complying with sector-specific legislation and guidance, this means operating in a way which demonstrates care and skill towards consumers, enabling them to take properly informed decisions.
  - b. Misleading Actions: Statements that airlines make to consumers must be true and not otherwise deceptive.
  - c. Misleading Omissions: Airlines must ensure that consumers receive all the information ('material information') they need to take informed decisions. This must be clear, prominent and timely.

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<sup>5</sup> Under Regulation 261, where a flight is cancelled by an airline, it should offer re-routing among other options - a comparable journey with the same carrier, or a journey provided by another carrier – and if this option is selected by the passenger, reimburse any additional costs for re-routing.

10. We set out below our views and expectations on what airlines should do to ensure that they comply with consumer protection law relating to the areas of concern we have identified.

***Tickets sold should not exceed reasonable supply***

11. We recognise that flights are often booked months in advance, and that airlines and the aviation sector more generally have faced pressures on their business arising from the COVID-19 pandemic.

12. However, we expect airlines to ensure they closely monitor their likely ability to ensure flights take off as scheduled, and do not continue marketing tickets for flights if they cannot be reasonably confident they will go ahead. In particular:

- a. Airlines should have reasonable grounds to believe they will be able to supply all the flights they are advertising (under paragraph 5 of Schedule 1, CPRs, advertising a product/service that cannot be supplied is a banned practice). This means that airlines should, on an ongoing basis, assess and review all the key factors which could lead to flights being cancelled, and take steps to mitigate these or stop advertising flights where their assessment suggests there is a high likelihood of cancellation. In our view, carrying out regular assessments and not selling more than you can reasonably supply is also required under professional diligence.

We acknowledge that some airlines have reviewed their schedules and pre-emptively cancelled some flights ahead of the summer. We urge airlines to keep their schedules under review throughout the summer and beyond.

Key factors for assessment include:

- Airlines' own staff numbers, recruitment processes and other logistics.
  - External factors which are likely to impact airlines' ability to recruit on time.
  - The likelihood of disruption being caused by other essential suppliers.
- b. Airlines should ensure flights are not described as available if in reality there is significant doubt as to whether they will depart.

***Information on consumer cancellation rights***

13. Consumers have a number of important rights when a flight is cancelled. Airlines must communicate these rights accurately and clearly to consumers to avoid misleading them. For example, information about passenger rights provided in an app or website must be complete, presented clearly and be upfront – consumers should not be required to 'hunt' for such information.

### ***Offering re-routing options and providing care***

14. When cancelling a flight, airlines must offer re-routing, either using their own flights or if they cannot offer a timely replacement with another carrier. We consider that professional diligence requires airlines to have in place reasonably appropriate organisation and support staff to source replacement flights and complete the booking if consumers wish to take up this offer. Such services should also be provided with reasonable care and skill, as required by Part 1 of the Consumer Rights Act 2015. Likewise, airlines should organise appropriate care, including overnight accommodation, for those who need it.
15. We note that some airlines ask passengers to make their own arrangements if re-routing is on another carrier. However, we have concerns that in some cases, this is likely to breach professional diligence standards for those consumers who are not in a position to do so. For example, those who may be unable to: investigate or book alternative routes; self-fund the purchase of flight tickets and accommodation; or to afford to wait for reimbursement, would not be able to benefit from their statutory rights in the event of flight cancellation. We urge airlines operating this practice to quickly put in place mechanisms for these consumers to ensure re-routing is a viable option for them.
16. Relatedly, airlines must provide support to consumers when flights are cancelled or disrupted – eg by providing an effective means of communication for consumers to contact airlines so that consumers can understand and exercise their legal rights (failure of which may be a misleading omission and breach of professional diligence obligation). We expect airlines to provide multiple routes for this communication (eg not just via apps).
17. Airlines providing a phone line for this purpose must not charge more than the basic rate for the customer's call – doing so is a breach of the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013. We would also expect airlines to monitor the amount of time that consumers wait on hold for assistance and to ensure that wait times are not unreasonable.

### ***Paying refunds, compensation and other reimbursements***

18. Payments must be made promptly to consumers (and within any deadlines set out in Regulation 261). Failure to make prompt payment is likely to be contrary to the requirements of professional diligence, and in the case of very lengthy delay in reimbursement may also amount to an aggressive practice as the very fact of delay can dissuade consumers from exercising their rights to receive payment.
19. Airlines should not impose artificial limits on the level they are prepared to pay, in particular where this could leave customers out of pocket. Airlines must also be

clear and give accurate information about any reasonable upper cost limit, where this has been set. Giving false information or omitting this information (eg saying the expense just has to be 'reasonable') is likely be misleading under the CPRs.

**Next steps**

- 20. The CMA and CAA share consumer protection law enforcement powers in the aviation sector under the Enterprise Act 2002.
- 21. The CAA will continue to monitor airlines' practices and consumers' experiences, including by engaging with airlines to ensure they are addressing our concerns. If we receive evidence that consumers continue to experience these serious problems, the CAA, supported by the CMA, will consider further action, including enforcement.

Yours faithfully,



Sarah Cardell  
General Counsel  
CMA



Richard Moriarty  
Chief Executive  
CAA