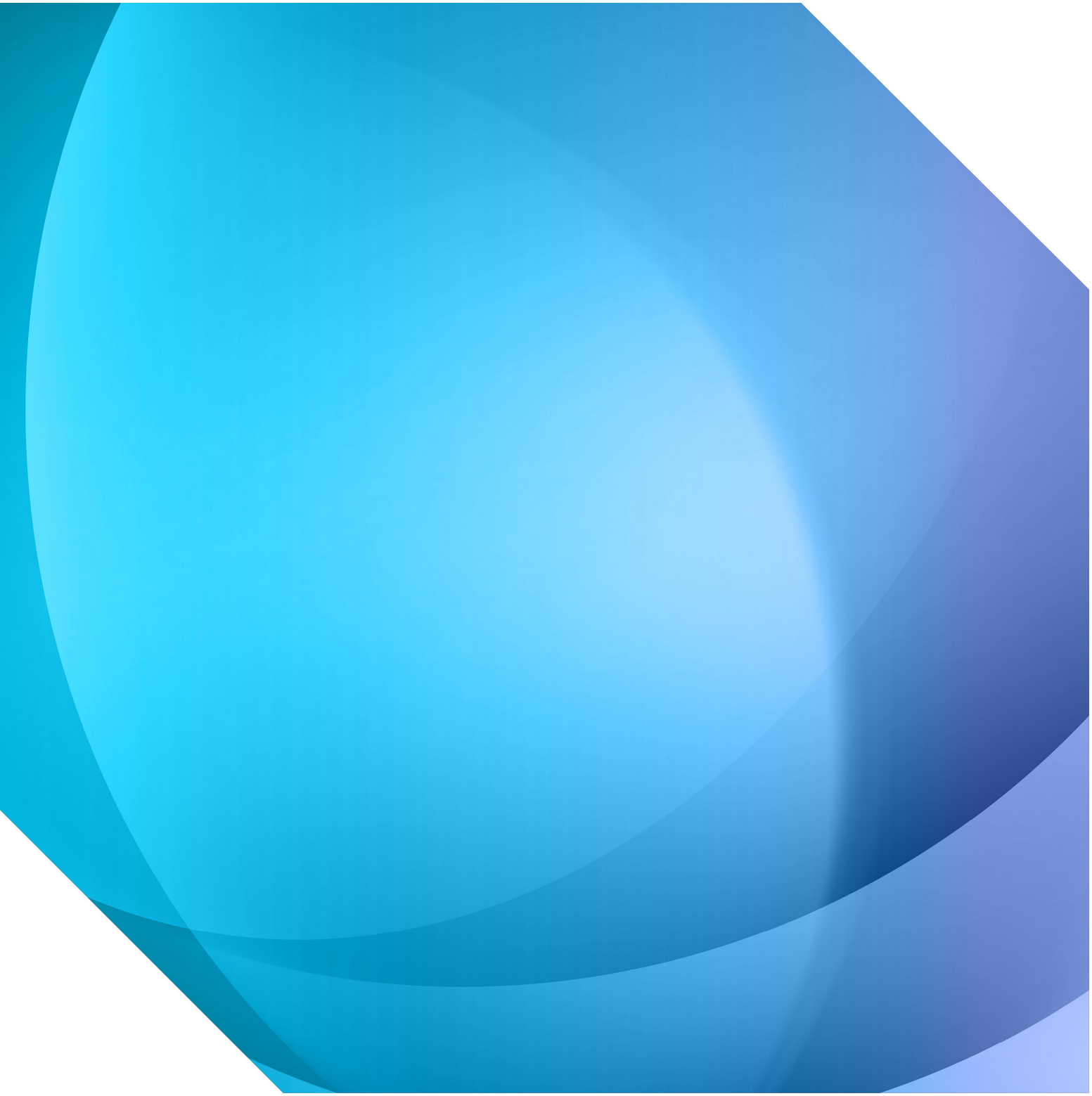
Review of airline contract terms

CAP 1815



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Executive Summary

The vast majority of passengers flying to and from the UK have a positive and trouble-free experience. A small minority, however, will experience a problem when they have not followed certain rules set down by the airline. For example, certain airlines charge a fee for passengers that need to check in or print their boarding pass at the airport, even if the passenger had intended to check in online but had simply overlooked doing this in their preparations for the flight. Other airlines have rules on how their tickets are used and will, for example, automatically cancel the ticket for a return flight in cases where the passenger does not take their outbound flight (and will charge the passenger a fee to reinstate the return flight even where the passenger missed their outbound flight through no fault of their own). Although only a small minority of passengers are caught out by these rules in practice, and although issues such as ticket price, convenience and service quality are more important factors in passenger choice, the impact of these rules on individual passengers can be significant, for example in having to pay a sizeable fee in order to travel as planned.

Airlines set out and enforce these rules through the contract between the airline and the passenger. Not all airlines apply the same rules, and differences exist between different airline business models (full service, low-cost and tour operator). Notwithstanding the diversity of the different service offerings of different airlines, as well as the different approaches that they take to the rules in their contract, it is a legal requirement for these rules to be fair and balanced and for consumers to be able to understand the contract and to be made aware of the contract terms which could catch them out.

Over the course of the last two years we have considered the fairness and transparency of the contract terms of fourteen major airlines flying to and from the UK. In our discussions with these airlines they have explained that, across each of the key contract terms that we have considered, the rules set down in their contract terms are intended to protect the economic interests of both airlines and passengers as a whole. For example, airlines say that they charge passengers a fee for checking in at the airport because it encourages passengers to check in online, which allows airlines to reduce the staff and infrastructure they need at the airport and which, in turn, allows them to reduce costs and to pass on savings to passengers in the form of lower fares. Airlines that enforce rules on the order in which their tickets are used do so because they say it allows them to price differently for different market segments, which allows them to offer low fares and special deals which they could not offer otherwise.

We acknowledge that airlines are entitled to pursue such interests, including through setting and enforcing[1] rules through their contract terms. And we acknowledge also that these rules can lead to positive benefits for passengers, for example through the availability of lower fares. However, concerns have arisen for us in relation to the proportionality of these rules for some airlines, and specifically the consequences for passengers in terms of how much they might be charged, and in their ability to travel as planned, if they do not follow the rules correctly. Through our work on airline contract terms we have sought to better understand the nature and extent of the economic and commercial interests that are linked to a number of key airline contract terms. These terms were selected on the basis of their perceived fairness by passengers. We have also explored with the airlines in the project whether there are other, more proportionate, means of protecting these interests. In particular, we have considered whether solutions can be found that distinguish genuine passengers that had intended to follow the rules but had failed to do so through no fault of their own, from situations where an individual or organisation is seeking to exploit the rules to gain a financial or commercial advantage over the airline. Another important consideration for us has been the transparency and prominence of the contract terms that are most likely to catch passengers out. In the CAA's view, if passengers are not aware of, or do not understand, the consequences of not following the rules set down in the contract, it is unfair to expect them to be able to comply.

We are pleased to report that, in many cases, airlines have worked with us to make their rules more proportionate and fairer for passengers. For example, over the course of the project a number of airlines have removed the fee that they charged previously for processing refunds of Air Passenger Duty in situations where the passenger does not travel. We are also pleased to report that a number of airlines have implemented 'key terms' summary documents to give greater prominence to the contract terms that have the potential to catch passengers out. A number of other airlines undertook wholescale reviews of their contract terms in order to make them simpler and easier to understand for passengers. We would like to thank these airlines for their cooperation in these matters.

As explained above, although we feel that we have made substantial progress overall on the fairness, prominence and transparency of the contract terms of these fourteen airlines, there are still a number of areas where we are not satisfied and where we feel that there is further work to be done. In particular, we are disappointed that almost half of the airlines in the project have not implemented a 'key terms' summary document for their contract terms. As explained in this report, although none of these airlines has definitively ruled out introducing a key terms document in the future, it is still disappointing that they have not made progress on what, to the

[1] For example through applying charges for non-compliance.

CAA, is a relatively simple and straightforward pro-consumer measure which would, in fact, assist passengers in complying with the airline's contract terms. In addition, we remain concerned at the level of the charges applied by some airlines for providing refunds, correcting a spelling mistake in a name in a booking, and checking in or printing a boarding pass at the airport. We are also concerned that a number of airlines have not made further progress in updating their rules to ensure that passengers who do not take their outbound flight are not caught out when their return or onward flight has been cancelled by the airline.

In terms of progressing these issues, we will continue to keep the contract terms of each of the airlines in the project under review. We will also write to a broader range of airlines to alert them to this report and to encourage them to review their contract terms for fairness, prominence and transparency, and to adopt the good practices highlighted in this report. We will also continue to consider whether the CAA is best placed to tackle the contract terms issues identified in this report using its legal enforcement powers. However, it should be noted that the underlying law on contract terms, which the CAA has drawn on to establish its assessment criteria, is general consumer protection law and was not designed to tackle the specific issues that we have encountered in our work and as set out in this report. It should be noted also that the success of any legal action against a particular contract term is likely to depend heavily on the facts in each case, in particular how the contract term was enforced in practice by the airline and the impact of this on the individual consumer. In contrast, the CAA's enforcement powers are based on the collective interests of consumers, which suggests to the CAA that action by individual consumers might be more successful than that by a public body such as the CAA.

We are of the view that, in order to drive a further step-change in the fairness, prominence and transparency of airlines' contract terms, a change to the underlying rules covering airlines' contract terms, and the enforcement of these rules, would be necessary. Unfortunately, the CAA is not a rule-making body in its consumer protection role and its associated enforcement powers are relatively limited. Instead, as part of our response to the Government's Aviation 2050 green paper consultation we intend to encourage the Government to consider the issues raised in this report and whether there are any further interventions open to it to ensure that the contract terms of all airlines flying to and from the UK are fair and balanced, that consumers are able to understand the contract, and that airlines make consumers aware of the contract terms that could catch them out.

Introduction

More than 290 million passengers flew to and from the UK last year. The vast majority of these passengers had a trouble-free journey, but a small proportion will have suffered disruption to their flight when things did not go 'according to plan' for the airline. For example, delays and cancellations will have occurred due to issues with the operation of the flight, such as a technical fault with the aircraft, or due to external factors such as bad weather. But disruption is not just limited to incidents where the physical operation of a flight does not go according to plan. Airlines' business and operational models are based, in part, on passengers following certain rules, in particular rules around booking a flight, checking in, carrying baggage, and taking the flight itself. In many cases, airlines seek to encourage passengers to comply with these rules through the imposition of financial sanctions (i.e. additional fees and charges) for failing to follow the rules correctly.

Airlines benefit from such rules in that they can enable them to reduce costs. For example, airlines that require passengers to check in online are able to reduce the number of staff that they need at the airport. Alternatively, such rules can assist airlines in maximising their revenue, for example through the sale of ancillary products such as additional cabin baggage. Competition between airlines means that a proportion of this benefit is passed through to passengers, for example through lower fares, or through allowing passengers to customise the service to their needs and their budget (for example in choosing to take only hand luggage in order to reduce the price of their ticket). Although, in principle, such rules can work in the interests of passengers as a whole, passengers that fail to follow these rules correctly, even if as the result of an honest mistake by the passenger, can encounter problems with their bookings and, in some instances, can find themselves unable to board their flight.

Although the specific rules applied by different airlines have changed over time, these rules have a long history. For many decades airlines based their rules on a standard template developed by the International Air Transport Association (IATA), which is a trade association incorporating many, but not all, of the world's major airlines. Following liberalisation, new airline business models developed, in particular the low-cost airline model, which led to greater flexibility in these rules in some areas[2], but new restrictions in others[3]. Although the rules have changed over time,

[2] See, in particular, the later section on using tickets out of order (so called 'coupon sequence and use').

[3] For example only offering the ability to check in for free if the passenger does so online.

and differences exist between different airline business models and between airlines themselves, it is standard practice for airlines to apply their rules through contract terms included in a document typically called the 'conditions of carriage'.

The fact that these rules are incorporated into the contract between the passenger and the airline means that the contract, and the rules within it, must comply with domestic and EU legislation covering fair trading. In the UK, the Consumer Rights Act 2015 ('CRA15') is the main piece of law protecting consumers from unfair terms in consumer contracts[4] (in the context of this report, the term "consumers" should be interpreted as referring to "passengers" and the two terms are used interchangeably). The CRA15 sets out two requirements for a contract term to be compliant: first, the term must be fair and, second, it must be transparent. As explained by the Competition and Markets Authority ('CMA') in its guidance on the unfair terms provisions in the CRA15[5], the purpose of both requirements is to achieve fairness overall, and the fairness test is more likely to be met where there is transparency. The practical application of these tests is covered in more detail in the section in the report on the relevant law. From the perspective of the consumer, the effect of these requirements is that a contract term that is found to be unfair under the CRA15 cannot be enforced by the business against the consumer.

It is ultimately for the courts to interpret and apply the provisions in the CRA15 to specific airline contract terms, based on the facts in each case. Passengers impacted by unfair contract terms are able to seek a remedy themselves through the courts. In addition, by virtue of it being the sectoral regulator for aviation and an enforcer of the CRA15, the CAA is able to take action to tackle more general issues of fairness in contracts for carriage by air using its enforcement powers under the Enterprise Act 2002. The CAA's enforcement powers under the Enterprise Act 2002 limit its scope to infringements which harm the "collective interests of consumers". Accordingly, it is not the role of the CAA to become an alternative source of private redress[6] for passengers impacted by specific airline contract terms, but rather it is the CAA's role to identify and address, where appropriate[7], broader fairness issues

4 Parts 1 and 2 of the Act consolidate and replace the Unfair Terms in Consumer Contracts Regulations 1999.

5 https://www.gov.uk/government/publications/unfair-contract-terms-cma37.

6 The CAA is the Competent Authority for approving bodies providing alternative dispute resolution (ADR) to operate in the aviation sector. The CAA's policy statement covering consumer complaints handling and ADR (CAP1324; http://www.caa.co.uk/CAP1324) sets out the criteria that ADR bodies must meet in order to receive approval from the CAA. One of these criteria is that ADR must be available for the most common types of disputes between passengers and airlines, including general disputes arising where the consumer alleges that the business is not trading fairly, which includes disputes arising under the CRA15.

7 For further information on how the CAA prioritises its consumer protection work, please refer to "CAP1233: Prioritisation Principles for the CAA's Consumer Protection, Competition Law and Economic Regulation Work", which can be found here: https://goo.gl/gxW4vj.

with airline contract terms or industry-wide practices which, in the CAA's view, harm (or have the potential to harm) a large number of passengers.

It is within the scope of this role that the CAA has conducted its review of airline contract terms. Given that airlines' contract terms, as included in their conditions of carriage, can sometimes run to many dozens of pages, it was necessary for the CAA to focus its review on the contract terms that, in its view, give rise to the greatest potential to harm the collective interests of consumers. In order to guide it in identifying these terms, the CAA conducted consumer research to understand consumers' perspectives on the fairness of airline contract terms, the main findings of which are covered in subsequent sections of this report. Although the research showed that individual consumers have varied views on the fairness of different contract terms, and indeed that the concept of fairness is often a very personal one, the research was helpful in assisting the CAA in identifying the contract terms that consumers consider to be unfair or, in some cases, very unfair. In addition, in revealing consumers' views on the factors that drive fairness and unfairness, the CAA has been able to benchmark individual airline contract terms against consumers' overall expectations of what represents a fair deal and, in doing so, has revealed where improvements could be made to make the arrangements fairer and more balanced in the eyes of consumers.

Having identified the priority issues and contract terms to focus on in its review, the CAA then engaged with the top fourteen[8] airlines flying to and from the UK[9] to seek improvements to their contract terms in relation both to the transparency of the terms and their fairness. The outcome of the CAA's work with these airlines can be found in later sections of this report.

[8] The CAA began its project with fifteen airlines, however Monarch Airlines went into liquidation in October 2017.

[9] By numbers of passengers carried. See Appendix 1 for a list of these fourteen airlines.

The relevant law

Consumers frequently purchase goods and services and, as a result, enter into a wide range of standard contracts. However, consumer research has shown that consumers do not generally read contracts thoroughly before they make their purchase. Research[10] conducted by the CMA[11] in 2011 found that many consumers do not read contracts in full, but instead focus on headline elements such as the price. The research also found that, in the real world, consumers have limited processing power and that, even for consumers that take the time to read contracts, their ability to make sense of contracts is significantly affected by the way information is presented. For example, complex information in contracts can lead consumers to take different decisions than they would have otherwise taken had they been given simple, clear and easy to understand information about the contract in good time. Similarly, consumers can make particular errors when a contractual decision relates to things (such as charges or services) that take place over time, or in uncertain circumstances. Further, consumers typically overvalue the present relative to any future time, which makes them less willing to spend time now in understanding how the contract deals with problems which may occur in the future. It also means that consumers tend to ignore or undervalue future (and contingent) charges, so firms can make such charges higher than if consumers paid them full attention.

According to the CMA's research, although most consumers thought that the most important information about the deal was clear to them, fewer than half agreed that contracts were clear about key risks involved or what would happen if things went wrong. This is an especially relevant point in relation to passenger air travel since tickets based on basic economy fares tend to be non-refundable and non-transferable. The findings of the CMA's research suggest that, at the point that a consumer is booking a flight, they would be unlikely to consider the possibility that they might fall ill, for example, and therefore might need to cancel their flight or transfer it to another person, or that they might miss their flight through circumstances outside of their control and might therefore need to change their journey plans. Passengers' rights and obligations in each of these uncertain future scenarios are typically dealt with in the airline's conditions of carriage. For these reasons, it is especially important that businesses ensure that the terms in their

[10] https://webarchive.nationalarchives.gov.uk/20140402172855/http://oft.gov.uk/shared_oft/market-studies/consumercontracts/oft1312.pdf.

[11] At that time the Office of Fair Trading.

conditions of carriage are fair and that they specifically highlight any terms that impose potentially surprising, significant or onerous obligations on the consumer.

The particular difficulties experienced by consumers in engaging with contracts, and the ease with which these difficulties could be exploited by businesses, has led to legal protections for consumers to ensure they are treated fairly. The CRA15, which came into force in October 2015, strengthened the already existing consumer rights in place for protecting consumers against unfair contract terms. As described previously, the CMA has provided detailed guidance on the unfair terms provisions of the CRA15 and has also published a number of short guides[12] to assist businesses in ensuring their terms are fair. It is the responsibility of all consumer facing businesses, including airlines, to keep their contract terms under review to ensure that they are fair and comply with the CRA15. In addition, airlines and other consumer facing businesses must ensure that their contracts, and the information they provide to consumers more generally, comply with the Consumer Protection from Unfair Trading Regulations 2008 ('CPUT') and do not mislead consumers.

The CRA15[13] states that a contract term is unfair "if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer". As explained by the CMA in its guidance, there will be a 'significant imbalance' in the term if it is significantly weighted in favour of the business, for example by allowing it to impose a disadvantageous burden on the consumer. In the CMA's view, balanced contracts provide for consumers and businesses to enjoy rights that are of equal value and of equal extent. A 'significant imbalance' can also occur where a business uses a term to put the consumer in a position that is less favourable than that provided for by the law. In the CMA's view, this can occur when a business imposes excessive financial sanctions on the consumer for breaching the contract. The CMA's guidance explains also that a term can be unfair even if it has not yet caused any detriment to consumers – the test of unfairness is based on the potential to do so.

As quoted in the paragraph above, the imbalance between the parties is described in the CRA15 as being 'contrary to the requirement of good faith'. As explained by the CMA in its guidance, 'good faith' requires there to be open and fair dealing and covers the drafting of contracts as well as how they are carried out. The CMA characterises the concept as looking to good standards of commercial morality and practice. In the CMA's view, businesses should draft their contracts in a way that respects the legitimate interests of consumers. In order to achieve the openness required by good faith, the CMA considers that terms should be clear and should not

[12] https://www.gov.uk/government/publications/unfair-terms-explained-for-businesses-individual-guides.
[13] Section 62 of the CRA15.

include hidden traps for consumers. Where terms are particularly disadvantageous or surprising they should not be hidden away in the small print, but instead should be drawn to the consumer's attention. Openness is not enough on its own. In the CMA's view, businesses must also deal fairly with consumers and must not take advantage of them[14]. The Court of Justice of the European Union (CJEU) has also considered the meaning of 'good faith' and said that it should be considered broadly and that courts should consider whether the consumer would have accepted the term if the contract had been agreed on in individual contract negotiations with the consumer[15]. The CMA considers that the CJEU's ruling means that, in formulating their contract terms, businesses should actively take into account the legitimate interests of the consumer.

Transparency is a key aspect of fairness and there is a separate obligation[16] for terms to be written in plain and intelligible language and to be legible. The CMA's guidance explains that consumers should be able to understand the impact of particular terms on them. The CJEU's view is that it is of fundamental importance for consumers to require information on the terms of the contract and the consequences of entering into the contract[17]. Businesses are therefore required to ensure that consumers can make an informed choice and that any technically difficult terms are explained clearly. If a business fails the specific transparency test this does not automatically make the term unfair. However, as explained by the CMA, if there is any ambiguity in the meaning and a consumer takes court action, the court is required to apply the interpretation most favourable to the consumer. Where ambiguity could cause consumer detriment, it remains open to regulators to take action on the basis of unfairness. Action can also be taken on the basis that the term fails the transparency test.

A related issue to transparency is that of the prominence of certain types of contract terms. In the CMA's view, the average consumer cannot be expected to have to carry out 'legal mining'[18] to discover disadvantageous terms that may trap them. Where terms are complex or they contain terms that could surprise consumers or place onerous obligations on them if a future event occurs, the CMA considers that the businesses should bring them to the attention of the consumer. In the CMA's view, providing this type of information at an early stage and clearly highlighting it is likely to improve the transparency of the relevant terms and ensure that consumers

[14] Lord Bingham of Cornhill in The Director General of Fair Trading v First National Bank pol 2001.
[15] C-415/11 Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa).
[16] Section 68 of the CRA15.
[17] C-92/11 RWE Vertrieb AG v Verbraucherzentrale Nordrhein-Westfalen eV.
[18] The Office of Fair Trading v Foxtons Ltd [2009] EWHC 1681 (Ch) – paragraph 74.

can understand their implications. Where transparency is achieved, terms are more likely to be considered to be fair.

The CRA15 also includes a Grey List[19] which details terms that are potentially unfair. Of particular relevance to airlines are terms which impose disproportionate financial sanctions on consumers[20]. This includes potentially penal terms where there may be a requirement to pay a fixed sum if the consumer breaches the contract. These types of terms are particularly likely to be unfair if the business has excessive discretion to decide on the level of the fee or it is unclear what consumers might have to pay. Termination charges where a consumer decides to cancel the contract may also be challenged as unfair if the business is able to retain all the money or claim additional money. Airlines typically collect full payment at the time of booking and, as highlighted previously, seek to use their contract terms to enforce a policy of non-refundability (at least for the basic economy fares). In the CMA's view, if a business can mitigate its loss, for example for an airline by re-selling the flight to another consumer, generally the law would allow it to claim no more than the likely costs of doing so, together with any difference between the original price and the re-sale price.

The Grey List also identifies that binding consumers to hidden terms[21] is potentially unfair. This would occur when consumers have no real opportunity to read and understand contracts. According to the CMA, the use of tick boxes which say "I have read and understood these conditions" may be unfair if in reality the consumer has no reasonable prospect of reading the terms. It is important that businesses draw attention to important terms and flag them up clearly.

The Supreme Court considered the issue of unfair terms in consumer contracts in the case of *ParkingEye Limited v Beavis*[22]. The Court considered the test for fairness as set out in the Unfair Terms in Consumer Contracts Regulations 1999[23]. In this case, ParkingEye Limited operated a car park for a retail park, where consumers were able to park for free for 2 hours. If consumers overstayed then they faced a charge of £85, which could be reduced to £50 if they paid early. The Court held that the charge did not fall into the core exemption[24] as it did not relate to the main

[19] Part 1 of Schedule 2 of the CRA15.
[20] Part 1 of Schedule 2, paragraph 6 of the CRA15.
[21] Schedule 2, Part 1, paragraph 10 of the CRA15.
[22] ParkingEye Limited v Beavis and Cavendish Square Holding BV v El Makdessi [2015] UKSC 67.
[23] Now part 2 of the CRA15.
[24] Terms that cover the main subject matter of the contract or the adequacy of the price are exempt from the fairness test. However, this is subject to the terms being transparent and prominent. The core exemption also requires the relevant term to be prominent. The scope of CAA's project on contract terms has not included any terms which cover the main subject matter of the contract.

subject matter of the contract and was not related to the adequacy of the price. The term could therefore be assessed for fairness. The Courts considered whether there was a significant imbalance and took the position set out in the CJEU case of *Aziz*[25]*. Aziz* looked at whether the party had a legitimate interest in imposing a charge on the party that breached the contract. The Supreme Court considered that ParkingEye did have a legitimate interest as it needed to ensure that car parking was available for users of the retail park and it needed to deter commuters from parking there all day. The Court decided that the charge was no higher than it needed to be to achieve its objective and that it was a legitimate part of ParkingEye's business model that charging £85 for those who overstayed allowed it to provide 2 hours free parking for everyone else. The Court also looked at whether a consumer entering the contract in individual negotiations would have been likely to accept the clause. It found that a reasonable motorist being offered 2 hours free parking subject to a fee of £85 if they overstayed would have been likely to accept it. The car park notice was clear and prominent and the charge was in line with that imposed by statute for on-road parking and in the BPA Code of Practice. The Court therefore found that the charge was not unfair.

The Court also considered the common law relating to contractual penalty clauses. The Court said that the test should consider whether a clause was extravagant or unconscionable in light of any innocent party's interest in the performance of the contract. Punishing a contract-breaker can never be a legitimate interest. The Court found that the charge was not a penalty clause as ParkingEye was protecting a legitimate interest in ensuring parking was available for use by consumers of the retail park. The charge was not extravagant or unconscionable as it was in line with guidelines and other statutory schemes.

As is covered later in this report, a number of the airline contract terms considered by the CAA appear to share similar traits to that at issue in the *ParkingEye v Beavis* case, in particular the imposition of financial sanctions in cases where the individual fails to follow certain rules correctly. As such, as explained further later in this report, the concept of businesses having a 'legitimate interest' to protect through their contract terms is one which has particular relevance for airlines and their conditions of carriage. Further, for contract terms that are coercive in nature, for example in employing the threat of financial sanctions to encourage a contracting party to perform their obligations, a key factor in any assessment of fairness is whether the

[25] Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Case C-415/11) [2013] 3 CMLR 89.

sanction (e.g. a fee or a charge) is no higher than it needs to be[26] to achieve its objective of protecting the legitimate interest of the business.

On the issue of the levels of the fees and charges associated with contract terms, some airlines have argued that Regulation EC 1008/2008[27] (on common rules for the operation of air services in the Community) allows them the freedom to set prices, including the fees and charges associated with contract terms. As set out in the CJEU case of *Air Berlin*[28], the provisions on pricing freedom laid down in Regulation EC 1008/2008 cannot prevent the application of national consumer protection legislation, in this case the CRA15, to the terms of contracts of carriage by air.

[26] In his concurring judgment in the *ParkingEye v Beavis* case, Lord Hodge wrote that "I therefore conclude that the correct test for a penalty is whether the sum or remedy stipulated as a consequence of a breach of contract is exorbitant or unconscionable when regard is had to the innocent party's interest in the performance of the contract. Where the test is to be applied to a clause fixing the level of damages to be paid on breach, an extravagant disproportion between the stipulated sum and the highest level of damages that could possibly arise from the breach would amount to a penalty and thus be unenforceable. In other circumstances the contractual provision that applies on breach is measured against the interest of the innocent party which is protected by the contract and the court asks whether the remedy is exorbitant or unconscionable".

[27] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R1008&from=en.

[28] Air Berlin plc & Co. Luftverkehrs KG v Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e. V. (Case C‑290/16) [2017].

Consumer research on airline contract terms

The CAA commissioned Opinion Leader to conduct consumer research into the issue of airline contract terms to assist its understanding of consumers' views on the fairness of airlines' contract terms, as included in their conditions of carriage, including how consumers feel about certain specific contract terms, how effective airlines are at communicating key terms, and what their experiences or expectations are in relation to airlines' contract terms. The research included a quantitative component, with over 1,000 surveys conducted among a representative sample of people who had recently travelled abroad, as well as a qualitative component based on eight focus groups. The final report can be found here: caa.co.uk/CAP1815R

On the issue of transparency, the research found that, although around three quarters of the survey participants were aware that they have the opportunity to read the airline's contract terms when booking a flight, nearly four in ten survey participants did not read the contract terms at all and only around half read some (but not all) of the contract terms document. It is not surprising to us that this finding agrees with those of the CMA's consumer research. However, it does not absolve businesses of their obligations to make their contract terms transparent, but rather it emphasises the need for businesses to think carefully about how to present information to consumers on contract terms in a way that engages them.

This point is borne out in the CAA's consumer research, which found that the likelihood of a consumer reading the terms and conditions is affected by the ease of the language used in the contract terms – survey participants who found the contract terms easy to read were over twice as likely to read them as those who found them difficult to read. It is also worth noting that the consumer research found that only a fifth of survey participants felt that airlines were pro-active in communicating their contract terms during the booking process.

The qualitative component of the CAA's consumer research allowed it to explore consumers' attitudes towards airline contract terms in more detail, and in particular consumers' views on the drivers of fairness in airline contract terms. Two elements[29] emerged from the discussions:

[29] In addition to the two elements covered here, many focus group participants felt that the cost of the flight was also a relevant consideration for fairness in certain circumstances. However, other participants felt that cost was irrelevant for whether or not a contract term was fair. However, it is

- First, in relation to contract terms that have an associated fee[30] or charge[31], the focus group participants felt that it was unfair for the airline to profit from such fees and charges given that, in many cases, consumers could find themselves in the position of having to pay the fee or charge through no fault of their own or as the result of an honest mistake by themselves. The focus group participants felt that, in many cases, the level of the fee or charge appeared to be much greater than their (albeit subjective) view of the associated cost to the airline. The focus group participants felt that, if airlines were more transparent about the actual costs to their business then, even if this cost was higher than consumers' perceptions of it, the associated fees and charges would be more likely to be accepted and considered fair.

- Second, in relation to the transparency and prominence of contract terms, focus group participants said that they often did not read the contract terms document because it was usually too long and not written in plain English. Participants were of the view that, where contract terms information is presented in a clear and transparent way, it would make the terms themselves fairer and would allow consumers to make an informed decision about whether or not to purchase a ticket. This finding, as well as the similar finding from the CAA's quantitative survey, supports the CMA's position on the relationship between transparency and fairness.

The CAA's consumer research also sought to establish the relative fairness between a number of contract terms[32] as expressed by individuals that had been affected by them in the past. As a proxy measure intended to reflect overall fairness, participants in the research were asked how fairly or unfairly the airline handled the situation based on the following qualitative measures: forewarning of the particular rule and / or charge during the booking process; the justification for why the rule existed and the level of any charge; and the cost incurred as a result of the charge.

important to stress that the legal protections for consumers against unfair contract terms set out in the CRA15 are not dependant on the price of the product or service.

30 For example, a fee to claim back Air Passenger Duty in circumstances where the passenger has not travelled.

31 For example, to check in or print a boarding pass at the airport.

32 The contract terms tested were: changing or correcting a name on a booking/ticket and incurring a fee as a result; cancelling a flight but not being able to claim a refund; cancelling a flight and paying an administrative fee; paying a fee to print the boarding pass; paying an additional fee to guarantee sitting with others; the airline rescheduling the flight but not providing the right to claim for a refund; the airline not providing the services (e.g. In-flight entertainment) or items (e.g. working headphones) that were advertised; and the return ticket being cancelled because the passenger missed their outbound flight.

In summary, none of the terms under consideration was generally felt by the research participants to be absolutely fair. The most unfair terms were felt to be:

- Having to pay to print a boarding pass at the airport. More survey participants rated this as 'not at all fair' across the three different measures of fairness than any other term.
- Having the return flight cancelled if the outbound flight is not used and the consumer does not contact the airline.
- Having to pay to choose a seat in advance of the day of the flight. Survey participants rated the justification provided by airlines for this term as being particularly unfair.

The terms which were felt to be unfair but not very unfair were:

- Not receiving a refund for a cancelled flight. From the survey results, this term was rated less negatively than most other terms, particularly with regards to the justification provided by airlines for having this term.
- Flight time changing by less than two hours and not having a right to a refund.
- Having to pay to change a name on a flight. This was also rated less negatively than most other terms, particularly with regards to the justification provided by airlines for having this term, although there was substantial negative sentiment in connection with the level of the charge.
- No compensation for additional services e.g. if in-flight entertainment not provided. In general, this was felt to be fairer for short-haul flights and less fair for long-haul flights. Although the forewarning given by airlines of this contract term and the justification for having the term was rated comparatively low by customers, the cost implications were not perceived as negatively.

The CAA's approach to its review of airline contract terms

Having considered the relevant law in relation to contract terms, the findings of its consumer research, and its broader understanding of contract terms issues based on information gathered from passenger complaints, consumer groups, and the wider media, the CAA focussed its review on three areas:

- The broader, crosscutting issues that impact on the fairness of contract terms, namely transparency and prominence;
- The fairness of a number of specific contract terms that are typically included in airlines' conditions of carriage and which, in the CAA's view, have the greatest potential to be unfair and harmful for passengers. In each case, the CAA's assessment for fairness is based on the contract term specific to each airline[33] and based on the rules applicable to the most basic economy fare[34].
- The internal processes that the airlines have in place for overseeing their contract terms for fairness, including how they determine the levels of fees and charges linked to contract terms.

The CAA then engaged with the top fourteen airlines flying to and from the UK to seek improvements to their contract terms where relevant, both in terms of their transparency and fairness. The results of this work are covered in the following sections.

[33] The CAA's assessment was based on the extant conditions of carriage of each airline during the period 24 January 2019 to 1 March 2019.

[34] In the case of Thomas Cook, this is the airline's 'Economy Light' fare. This fare is less flexible than the airline's standard economy fare. It should be noted that the 'Economy Light' fare is not available on all the airline's routes and that it represents only a small minority of the airline's total seat sales.

Crosscutting issue: transparency of contract terms

As explained in the introduction to this report, for many decades it was standard industry practice for airlines to base their contract terms on a standard template developed by IATA. During the post-war years, which was a time when the air transport industry was growing and developing rapidly, it was logical for governments around the world to want to standardise and harmonise certain aspects of passenger air transport, including the contractual rights and obligations of airlines and passengers. Unfortunately, in the CAA's view, the IATA standard terms did not keep pace with progress in the industry following liberalisation, or with the accepted standards of consumer protection more broadly. For example, in many places the language used in the IATA standard terms is archaic or refers to archaic industry practices[35]. In other standard terms legal jargon such as "prima facie" and "force majeure" is used. Although the IATA standard terms are no longer supported and maintained by IATA[36], many airlines still base their conditions of carriage on these standard terms.

The history and background of how airlines' conditions of carriage have developed is important context when it comes to assessing them for transparency. Clearly, the use of archaic language and legal jargon goes against the general principle of clarity and legibility in contractual language which underpins the CRA15's transparency requirement. In contrast, a number of airlines that we spoke to expressed the view that, as the contract for carriage and associated conditions of carriage represents a legal document, it is important that it is written in legal language. The CAA does not agree. As explained in the CMA's guidance, although it is desirable that terms are clear and precise for legal purposes, legal precision alone will not suffice to meet the transparency test. This is because the purpose of transparency is to ensure that the

[35] For example, the IATA standard terms refer to a 'flight coupon' and a 'passenger coupon' in connection with paper tickets. Although paper ticketing used to be standard industry practice many years ago, the use of paper tickets is now relatively limited. In this regard, it is not obvious to the CAA that even the most sophisticated aviation consumer would understand implications for them of the following term: "Except in the case of lost tickets, refunds will only be made on surrender to Carrier of the passenger coupon or passenger receipt and surrender of all unused flight coupons". The IATA standard terms make reference to archaic practices in other areas. For example, a section of the standard terms is reserved for terms relating to the "reconfirmation of reservations" – to the CAA's knowledge, airlines stopped requiring passengers to reconfirm their reservations many years ago.

[36] The IATA Recommended Practice setting out the standard contract terms (RP1724) was rescinded at the 35th Passenger Services Conferences of IATA (Dublin, October 2013).

average consumer is properly informed. According to the CMA, precise legal terminology does not generally assist consumers in their decision-making.

The requirement for transparency goes beyond the requirement for plainness and intelligibility of language. As set out in the CMA's guidance, contract terms should be drafted to ensure that consumers are put into a position where they can make an informed choice whether or not to enter into the contract. In this respect, passengers need to have a proper understanding of the conditions of carriage for sensible and practical purposes, and the airline contract should set out all obligations and rights in a clear and comprehensible way. As explained previously, the CMA's guidance goes on to state that businesses should not assume that consumers understand the detail of how a particular transaction or market operates.

In relation to this last point, there are a number of contract terms that are commonly used by airlines to protect their revenue but which, due to their historical origins in how airlines price their tickets, the average passenger would be unlikely to be familiar with. One such example is 'coupon sequence and use'. Notwithstanding the archaic language used in the IATA standard terms version of this contract term (e.g. use of the term "coupon" – see footnote 35), it is unlikely to be obvious to the average passenger that the substance of this (typically lengthy) contract term has the potential to impose a surprising and onerous obligation on them – specifically, in this case, that the passenger's ticket for their return flight will be cancelled automatically if they miss their outbound flight.

In order to assess the fourteen airlines' conditions of carriage for transparency, the CAA commissioned a review by the Plain English Campaign. The first review was commissioned prior to the CAA starting its bilateral work with the airlines in the project and was based on the airlines' conditions of carriage in place at that time. The Plain English Campaign assessed the conditions of carriage of British Airways to be the clearest of the fourteen airlines in the project, giving them an overall clarity rating of 'very good' ('excellent' was the highest possible rating, although no airline achieved this). Flybe and Jet2 were the next best, with each receiving a 'good' rating. Aer Lingus[37], easyJet and Emirates each received an 'average' rating. Of the remaining airlines, Lufthansa, Norwegian, Ryanair, TUI and Virgin each received a 'poor' rating. Finally, KLM, Thomas Cook and Wizz Air each received a 'very poor' rating, with Air France receiving the worst rating of all the airlines of 'terrible'.

The CAA shared these findings with each of the airlines as part of it ongoing bilateral work on the contract terms project. Over the course of the project, a number of airlines reviewed and overhauled their entire conditions of carriage, in part to achieve

[37] Aer Lingus has recently confirmed to the CAA that it has undertaken a comprehensive analysis of its conditions of carriage and that a revised set of contract terms will be published on 1 July 2019.

greater transparency. The CAA subsequently commissioned the Plain English Campaign to do a further review of the new conditions of carriage of these airlines. The CAA is pleased to report that both Thomas Cook and Virgin improved their overall clarity ratings and received an updated rating from the Plain English Campaign of 'average'. TUI improved its overall clarity rating and received an updated rating of 'good'. Ryanair has recently informed the CAA that, having worked with the Plain English Campaign to review its contract terms, a new set of contract terms are now live on its website. Unfortunately, Ryanair has not yet received an updated rating from the Plain English Campaign and so we are unable to report on that here.

It is disappointing that almost half of the fourteen airlines in the project, namely Air France, KLM, Lufthansa, Norwegian, and Wizz Air, achieved an overall clarity rating from the Plain English Campaign of only 'poor' or worse. It is also disappointing that, having received their initial transparency ratings in April 2018, these airlines have not acted on the feedback provided and revised their conditions of carriage to make them more transparent (although Norwegian and Wizz Air have each committed to the CAA to undertake a fundamental review in the near future). As such, these airlines fall below the CAA's expectations in terms of transparency. The CAA recommends that these airlines review their conditions of carriage in order to increase the standard of transparency of their contract terms.

As set out in the previous section on the relevant law, one of the two requirements of the CRA15 for a contract term to be compliant is that the term must be transparent. As explained in the CMA's guidance, for terms to be transparent they must be written in plain and intelligible language and be legible. Given the findings of the Plain English Campaign's review, the CAA considers that the conditions of carriage of these airlines, and in particular those of Air France, KLM, and Wizz Air, are at risk of failing the transparency test in the CRA15. Although this would not automatically make any particular contract term unfair, this lack of transparency could provide the basis for a legal challenge, including from individual passengers (although this would depend on the specific facts in each case).

Crosscutting issue: prominence of surprising, significant or onerous contract terms

In relation to prominence, as explained in the section above on the relevant law, the fairness test incorporates the concept of 'good faith' which, as explained by the CMA in its guidance, embodies a general principle of 'fair and open dealing' and relates to how contracts are drafted and presented. In order to achieve the openness required by good faith, the CMA's view is that appropriate prominence should be given to terms which might operate disadvantageously to the consumer. In the CMA's view, if potentially disadvantageous terms are in any way concealed[38], they may become a trap for the consumer. In relation to this last point, the CMA's view is that this is particularly true for complex pricing terms or terms which involve potentially surprising, significant or onerous obligations being imposed on the consumer in the future (for instance, on the occurrence of a future event where there is some element of uncertainty as to whether the event will occur).

Airlines' conditions of carriage typically contain a number of terms which, in the CAA's view, have the potential to impose surprising, significant or onerous obligations on the passenger in situations where an uncertain future event comes to pass. This is true even in cases where the event in question occurs through no fault of the passenger or as the result of them making an honest mistake. For example, as described previously, failing to take the outbound flight of a return journey can lead to a passenger's ticket for the return flight being cancelled automatically. As another example, many airlines' conditions of carriage restrict the ability of passengers to transfer their ticket to another person in the event that they cannot take their flight, even where the reason is outside of the passenger's control, such as due a serious illness. In addition, passengers that find themselves having to cancel their flight are typically only able to recover a small amount from the airline (sometimes only Air Passenger Duty) to cover their loss even though the airline may be able to re-sell that seat to another passenger, thereby potentially doubling their revenue for that seat.

Given this, as part of the CAA's bilateral work with the fourteen airlines in the project, the CAA has considered how to give greater prominence to the contract terms that have the potential to impose surprising, significant or onerous obligations on

[38] On this point, particularly in longer contracts (such as, in the CAA's view, airline conditions of carriage), the CMA's view is that it should not be assumed that consumers will necessarily to be able themselves to identify terms which are important, or which may operate to their disadvantage or which would be likely to surprise them, if drawn to their attention.

passengers. In the consumer financial sector, businesses are obliged to prepare summary documents alongside the documentation for consumer financial products such as loans and insurance. Indeed, the use and contents of 'Key Facts' summary documents is tightly controlled by the Financial Conduct Authority (FCA). The purpose of such summary documents is to provide consumers with key information about the nature and complexity of the product, for example how the product works, the significant features and benefits of the product, any significant or unusual exclusions or limitations, and how to make a complaint to the business concerned, in order to assist the consumer in making an informed decision on whether or not to proceed.

Although consumer financial products are distinct from consumer aviation services, they have similarities in the complexity of their contract terms and the potential for consumers to be surprised by certain features of the contract. Therefore, in its discussions with the fourteen airlines in the project, the CAA proposed[39] that each airline should develop their own 'key terms' summary document, to be provided to passengers at the same time as they are invited to review and accept the conditions of carriage (usually at the end of the booking process). Although the CAA encouraged the airlines to make an assessment of their own contract terms to identify those which had the greatest potential to impose surprising, significant or onerous obligations on the passenger, the CAA provided an indicative list to airlines of the key terms which it considered should be given prominence in a key terms document (see Appendix 2).

We are pleased to report that seven airlines involved in the project have implemented a key terms document. Flybe has developed a 'Key Information Document', which includes information on key contract terms issues such as changes to flight times, missed flights, refunds of taxes, fees and charges, and changes to bookings. In addition, the link to the 'Key Information Document' is displayed clearly and prominently throughout the online booking process on Flybe's website. The CAA considers this to be best practice. In addition to Flybe, easyJet, Jet2 and Ryanair have each implemented a key terms document which, as with Flybe's version, includes information on key contract terms issues. For these airlines, the key terms document is available on the payment page of website, displayed prominently next to the link to the conditions of carriage. The CAA would like to acknowledge the positive and constructive engagement that it has had with Flybe, easyJet, Jet2 and Ryanair on this issue.

[39] It should be noted that, unlike the consumer financial sector, there is no specific legal requirement on airlines to publish a 'key terms' summary document.

Air France, Emirates, and Thomas Cook have also implemented key terms documents which include information on key contract terms issues such as cancellations, name changes and ticket use. Air France's key terms document also includes information on alternative dispute resolution which, in the CAA's view, is a helpful addition. The CAA would like to acknowledge the positive and constructive engagement that it has had with these airlines. In the CAA's view, the prominence of the key terms documents for these airlines could be improved further. In the case of Air France, the CAA considers that passengers might be more inclined to review the document if it had a more informative title, for example 'Key Terms' or 'Key Information' rather than its current title of 'General Conditions of Sale'. Second, it is not obvious from the airline's booking process that it provides a key terms document. In order to access the document the passenger first has to click on a link titled 'Legal notices'[40], which directs them to another page with a number of links to various policies including the 'General conditions of Sales'. In Thomas Cook's case, its key terms document is available only if the passenger first clicks on the 'Terms and Conditions' link in the footer of the website, after which they are provided a link to the 'A helpful guide to our Terms & Conditions' document. The CAA would like to encourage Air France and Thomas Cook to review the practices of Flybe, easyJet, Jet2 and Ryanair in terms of the prominence they give to their key terms documents. In its discussions with the airline, Emirates has committed to the CAA to enhance the prominence of its key terms document by providing links to the document during the online booking flow. The CAA would like to thank Emirates for committing to take this additional step.

Although none of the remaining airlines has definitively ruled out introducing a key terms document in the future, it is still disappointing that these airlines have not made progress on what, to the CAA, is a relatively simple and straightforward pro-consumer measure and one which could assist them in mitigating the risk of legal challenge from passengers. As such, the CAA considers that British Airways, KLM, Lufthansa, Norwegian, TUI, and Wizz Air[41], fall below its expectations on fairness and transparency. Virgin has developed its own key terms document and has committed to the CAA that it will make the document available on the payment page of the website, displayed prominently next to the link to the conditions of carriage, shortly after the publication of this report. Aer Lingus has also committed to the CAA that it will introduce a key terms document shortly after the publication of this report.

Airlines offered a variety of reasons for their reluctance to introduce a key terms document:

[40] Available on the page where the passenger is invited to enter their personal details.

[41] Wizz Air has committed to the CAA to provide a key terms summary document on the payment page of website but this has not yet been implemented.

- A number of the airlines expressed the view that they already provided summary information during the booking process, for example information on baggage fees and the fare rules for different fare types. The CAA welcomes this practice, which is common across the industry. However, although information on the fare rules is important for passengers, it does not usually cover the contract terms which the CAA considers have the greatest potential to impose surprising, significant or onerous obligations on passengers.

- A number of airlines felt that passengers could find information on contract terms through other channels, for example FAQs. Again, the CAA welcomes this practice, which is common across the industry. However, as explained previously, the objective of the key terms document is to give greater prominence to the contract terms which have the greatest potential to impose surprising, significant or onerous obligations on the passenger. The CAA does not consider that FAQs, or other channels where the passenger has to search for information, is a substitute for a key terms document presented to the passenger before they make their purchase.

- One airline expressed the view that, since there is a wide range of important provisions throughout its conditions of carriage, it would be difficult to decide on the terms to give prominence to without risking material omissions. The CAA accepts that, by definition, a key terms summary document cannot replace the full contract terms document. However, its purpose is to complement the full contract terms document rather than to replace it. Further, the CAA's view is that it should be possible for airlines to identify, for example through using information gathered from passenger complaints and enquiries, the terms in their conditions of carriage that have the greatest potential to impose surprising, significant or onerous obligations on the passenger. Notwithstanding these points, as explained above, the CAA has already provided an indicative list to airlines of the key terms which it considered should be given prominence in a key terms document.

- Other airlines expressed the view that putting certain contract terms in bold text, or in capital letters, in their conditions of carriage, would assist in making certain terms more prominent to consumers. The CAA is not convinced by this as it still relies on passengers reviewing the (often very lengthy) conditions of carriage in their entirety. Further, in relation to the conditions of Wizz Air which, for certain contract terms, displays text in all-capitals in order to add emphasis, the Plain English Campaign commented that "The copy is very off-putting as a result of the layout, mainly the lack of spacing between

paragraphs, the use of block capitals and italics, and the font used" and that "The italicised text and block capitals are also more difficult to read".

The CAA recommends that those airlines that have so far not implemented a key terms document, namely British Airways, KLM, Lufthansa, Norwegian, TUI, and Wizz Air, review the approaches taken by the airlines that have taken this step, and in particular the approaches of easyJet, Flybe, Jet2, and Ryanair in terms of the prominence given to this information. These airlines have set a high standard for making key contract terms more prominent for passengers which, in the CAA's view, all airlines should be aiming for.

Contract term: refunds of unpaid taxes, fees and charges

As explained above in the section on the relevant law, the Grey List in CRA15, which details terms that are potentially unfair, includes terms which impose disproportionate financial sanctions on consumers. This list also includes terms with disproportionate termination fees and those requiring consumers to pay for services not supplied. As explained previously, this is especially relevant for air travel as airlines typically collect full payment at the time of booking, but tickets for basic economy fares tend to be non-refundable and non-transferable. Passengers that find themselves having to cancel their flight, even through no fault of their own (situations of death and serious illness are covered in a later section), are therefore exposed to the potential of the total loss of the monies paid to the airline for their ticket. However, this risk is asymmetric as airlines may be able to re-sell the forfeited ticket to another passenger and thereby potentially double their revenue for that ticket.

In our bilateral discussions with the airlines, they have typically maintained the position that, if passengers want to have the flexibility to be able to amend their ticket or to cancel it and receive a full refund, then they should to purchase one of the more flexible fare types that the airline offers. In its policy paper[42] on 'cooling off periods', IATA argues that, in offering non-refundable tickets, passengers are able to take advantage of lower fares and therefore that, at least for those passengers that are ready to commit to travel and are willing to travel under specific restrictions, these passengers receive an economic benefit from this form of price discrimination. IATA goes on to argue that, if airlines were not able to offer non-refundable fares, the uncertainty associated with the revenue expected from each ticket sale would mean that fares would be likely to rise to reflect the greater challenge of revenue management that airlines would face. IATA argues also that there is no guarantee that the airline would be able to re-sell the forfeited ticket at an equivalent price[43] (or greater), exacerbating the revenue uncertainty which, in turn, could lead to more overbooking by airlines and a resulting increase in the numbers of passengers denied boarding.

The CAA acknowledges the arguments put forward by airlines and by IATA. However, in the CAA's view, caution is needed in weighing these arguments against

[42] https://www.iata.org/policy/consumer-pax-rights/Documents/right-of-repentance.pdf.

[43] The likelihood that a ticket could be re-sold, and the amount that it could be re-sold for, will depend on the length of time that the airline has remaining to sell the ticket once it has been cancelled by the passenger.

the fundamental point of whether it is fair that passengers should suffer total loss, in all cases, of the monies paid to the airline in the event that they cancel their ticket. The CAA accepts that airlines offer more flexible fare types which, for passengers that value such flexibility (for example passengers travelling on business), may represent the most cost-effective option. However, in the CAA's view, the existence of more flexible fare types does not automatically mean that the restrictions on refunds applied to basic economy fare types are fair and balanced. Many passengers will book their flights on the reasonable assumption that they will not need to make any changes[44] and, at any rate, the CAA's view is that the average passenger would struggle to calculate the likelihood of future events that would require them to significantly change their travel plans, especially when considered against the (often significantly) higher prices for more flexible tickets. This said, the CAA does accept that, if all fares were made fully refundable in all circumstances, ticket prices could rise to reflect the greater uncertainty for airlines in terms of their ability to recover revenue from ticket sales.

Returning to the issue of fairness, as covered in the previous section on the CAA's consumer research on airline contract terms, participants in the research focus groups commonly felt that it was unfair for passengers to suffer total loss in situations where the airline was able to re-sell the forfeited ticket. Participants felt that this would mean that the airline was 'profiting twice', which would be unfair on those passengers that lost out. Unfortunately, it is not possible to predict with perfect accuracy the number of passengers that will book tickets for a particular flight and therefore whether, in circumstances where a passenger has cancelled their ticket, that this particular ticket has been resold to another passenger (except for cases where the flight is fully booked). Therefore, the CAA does not consider that a process for mitigating passengers' losses based on whether a forfeited ticket has been re-sold would be achievable in practical terms.

However, the principle of the airline not 'profiting twice' in circumstances where the passenger has had to cancel their flight is relevant in another area, specifically the collection and payment of certain taxes and charges by the airline. Air Passenger Duty[45] (APD), for example, is a duty levied on a per passenger basis and is collected by airlines as part of the ticket price[46]. Because APD is charged on a per (travelling) passenger basis, the duty collected by the airline for each passenger at the time of

[44] As explained in the section above on the relevant law, real-world consumers can make decisions that they would otherwise make differently in situations where a contractual decision relates to things (such as charges or services) that take place in uncertain circumstances or that may occur in the future.

[45] Air Passenger Duty is an excise duty which is charged on the carriage of passengers flying from a UK airport.

[46] Although it is usually itemised separately in the price breakdown.

booking does not need to passed on to the government if the passenger does not travel. In addition to APD, there are other charges, for example certain airport charges, that are charged on a per passenger basis and are not paid by the airline in cases where the passenger does not travel.

Therefore, noting the general strength of feeling amongst focus group participants about airlines not 'profiting twice' in circumstances where a passenger has had to cancel their ticket, the CAA considers that a fair and balanced approach would be for airlines to pass back any unpaid taxes and charges to the passenger in question. In terms of the CAA's position on whether airlines are justified in charging a fee for processing this refund, given the general lack of detail in airlines' responses to the CAA's questions concerning how such fees are calculated, the CAA considers that the refund should be provided for free or for a nominal fee (proportionate to the amount that the passenger would typically receive by way of a refund).

When the CAA first started its bilateral work with the fourteen airlines, Air France, KLM, and Lufthansa refunded all unpaid taxes and charges for free[47]. In the CAA's view, this is the benchmark for best practice in this area.

Although not quite reaching this best practice benchmark, a number of other airlines have contract terms that go part way to mitigating passengers' losses in the event that they have to cancel their ticket. Both Aer Lingus and British Airways will refund all unpaid taxes and charges. Although both airlines charge a fee to process the refund (£13.50 for Aer Lingus[48] and £15[49] for British Airways), in the CAA's view the fee is not set at a disproportionate level compared with the amount of taxes and charges that could be recovered on a typical flight. Virgin's approach is similar to that of Aer Lingus and British Airways in that it will refund all unpaid taxes and charges but, in Virgin's case, the fee is materially higher at £30 per passenger. However, in the CAA's view, this is balanced out by the fact that Virgin will waive the fee in cases where the passenger is unable to travel due to an event beyond their control. The CAA would like to thank Virgin for making this additional change to its conditions of carriage. In the case of Thomas Cook, over the course of the CAA's project the airline agreed to amend its position and will now refund all unpaid taxes and charges for a fee of £25 per booking. Again, in the CAA's view, the fee is not set at a disproportionate level compared with the amount of taxes and charges that could typically be recovered on a per booking basis. The CAA would like to thank Thomas Cook for its cooperation in this matter.

47 In the case of Air France and KLM, if the refund is requested online.
48 Refund administration fee, per passenger per flight, for a short haul flight.
49 Service fee, per ticket, when requested online.

In respect of easyJet, Norwegian and TUI, although these airlines will only refund APD, they will do so for free. Over the course of the CAA's project both Norwegian and TUI agreed to remove the fee that they charged previously for processing refunds of APD. In addition, over the course of the project, Emirates also agreed to amend its contract terms such that it will now refund all unpaid taxes for free. The CAA would like to thank these airlines for their cooperation in this matter.

In the case of Flybe and Jet2, these airlines will only refund APD and will only do so for a fee. Given that the standard rate of APD is currently £13 for short- and mid-haul destinations[50], the fee would need to be set at a very low level in order for it to be worthwhile for many passengers to take the time and effort to apply for a refund. Unfortunately, this is not the case. Flybe, for example, charges a fee of £25 per passenger per sector, meaning that passengers would have to pay more to apply for the refund than they would receive in return. Jet2 charges a fee of £25, but in its case on a per booking basis. Although this is slightly more generous than Flybe, the booking would need to include more than two adults[51] for it to be worthwhile, in purely financial terms, for the passengers to apply for a refund of APD. In Ryanair's case, the airline will refund all government taxes (i.e. not just APD) but will only do so for a fee of £17 per passenger. On the face of it, not limiting the refund to APD implies that Ryanair's approach could be more generous than these other airlines. However, Ryanair has not provided the CAA with information on the amount that passengers can claim back in government taxes and therefore whether, in practice, its policy is more generous. The remaining airline, Wizz Air, takes the most restrictive and, in CAA's view, unfair position in relation to refunds, stating to the CAA that it does not provide anything by way of a refund for passengers that have had to cancel their ticket. In its bilateral discussions with Wizz Air, the airline has committed to the CAA to revisit its policy on the treatment of taxes.

It is disappointing that these airlines do not feel able to be fairer towards to passengers that need to cancel their flights. As explained in the earlier section on the relevant law, the CMA characterises the concept of 'good faith' as looking to good standards of commercial morality and practice. In the CAA's view, in not passing back to passengers all (or a significant proportion) of the taxes, fees and charges that go unpaid by the airline in the event that the passenger does not travel, the practices of Flybe, Jet2, Ryanair and, in particular, Wizz Air, will be likely to be seen by passengers as not being in good faith. In the CAA's view, the contract terms of these airlines fall short of its expectations in relation to fairness and transparency and the CAA recommends that these airlines review their policies against the

[50] APD is £78 for long-haul flights. The financial calculation on the part of consumers about whether to apply for a refund of APD would therefore be different for a long-haul flight.

[51] Children do not pay APD.

benchmark set by those airlines that refund all taxes, fees and charges that go unpaid when the passenger does not travel. Further, the CAA recommends that these airlines follow the lead taken by a number of their competitors and provide refunds for free.

In addition, the CAA would like to note that the approaches taken by Flybe, Jet2, Ryanair and, in particular, Wizz Air, could provide the basis for legal challenge, including from individual passengers impacted by them. However, it should be noted that the success of any such action by individual passengers would depend on the specific facts in each case. In addition, as highlighted by airlines in their discussions with the CAA, in some case airlines will offer ‘lead-in’ fares which are, in fact, lower than the combined taxes, fees and charges that would need to be paid by the airline on behalf of the passenger. In such cases, it would be unlikely to be considered reasonable for an airline to have to refund a greater amount in unpaid taxes, fees and charges than the price paid by the passenger for their ticket.

Contract term: transferring a ticket to another passenger

The previous section on refunds of taxes fees and charges covered the issue of the non-refundability of airline tickets in situations where the passenger decides not to travel. Another potential option for passengers that cannot travel as planned would be for them to transfer their ticket to another person. Although this option would not suit everyone's needs, for passengers on a family holiday, for example, the option to transfer the ticket to another family member or friend might be preferable to having to cancel their ticket or, in the worst case, the whole holiday. However, as pointed out in the previous section, the majority of basic economy fares offered by airlines tend to be both non-refundable and non-transferable, which exposes passengers to the potential of the total loss of the monies paid to the airline for their ticket.

In terms of the industry's rationale for the non-transferability of airline tickets, IATA's position paper[52] on the issue sets out four reasons. First, passengers that have bought a fully refundable ticket can request a refund rather than transfer the ticket to another passenger[53]. Second, in the case of partially or non-refundable tickets, passengers that do not travel can, in certain circumstances, receive a credit towards future travel on the airline (subject to what IATA describes as a "reasonable administration fee"). Third, that there are certain government-imposed security and immigration procedures that require advance passenger information prior to departure which, at a practical level, limit the amount of flexibility that can be offered. And fourth, should ticket transferability be permitted, a significant secondary market could develop, with serious scope for fraud and ticket touting.

A number of the airlines that the CAA engaged with through this project raised the same issues as IATA. However, the airlines' greatest concern was, by far, about the emergence of a secondary ticketing market. Airlines were of the view that a secondary market would enable third parties, principally travel agents, to buy large numbers of tickets when they are first offered for sale (and are, usually, at their cheapest) for later re-sale at a higher price. One airline commented that it charged a fee to transfer a ticket to another person because "it helps to ensure that travel companies do not buy up tickets so that genuine customers cannot purchase them and then seek to cancel them last minute" and also that it "prevents people trying to unscrupulously sell tickets on via selling sites (e.g. via eBay) at inflated prices and

[52] https://www.iata.org/policy/Documents/transferability.pdf.
[53] Although this is correct for certain fare types, basic economy fares tend to be non-refundable.

without protection to the purchaser". In the view of these airlines, a secondary ticketing market would, ultimately, lead to passengers paying more for their tickets than they would have done otherwise and would lead airlines to increase their ticket prices in an effort to recover the revenue lost to third party resellers.

In the CAA's view, it does not necessarily follow that the emergence of a secondary market would lead to worse outcomes for passengers in all circumstances. Although it is reasonable to assume that, in mature markets, businesses usually understand what their customers want and their willingness to pay for it, in markets that are developing or rapidly evolving third parties can assist in maximising consumer welfare through developing new business models or technologies to better match supply and demand or to assist in supplying or delivering the good or service. However, it is beyond the scope of this project to assess whether a secondary market in airline tickets would be likely to be harmful to passengers overall and / or whether it would be likely to disadvantage certain groups of passengers relative to others[54].

Notwithstanding this point, the CAA is not convinced that restricting ticket transferability is proportionate for achieving the objective of preventing a secondary ticketing market. In the CAA's view, a blanket policy of non-transferability also impacts on genuine passengers seeking to transfer their tickets for legitimate reasons, for example because they cannot travel as planned due to events outside their control. In the CAA's view it could be argued that, purely on this basis, a policy of non-transferability in all circumstances is disproportionate to achieving the objective.

Another way of looking at this is to consider whether there are other, more proportionate, means by which airlines can protect their legitimate interests which would be less onerous on genuine passengers seeking to transfer their tickets for legitimate reasons. On this point, it should be possible, in principle, for airlines to implement systems to distinguish, at the point of booking, between genuine passengers and third parties seeking to resell their tickets, and thereby restrict their ticket sales to legitimate passengers only. Similarly, it should be possible, in principle, for airlines to implement systems to distinguish, at the point the passenger is seeking to transfer the ticket to another person, between genuine passengers and

[54] Following the introduction of the Consumer Rights Act 2015 (CRA 2015), the Government commissioned an independent report by Professor Michael Waterson to explore the effectiveness of consumer protection measures concerning online secondary ticketing facilities. Although the report was primarily concerned with tickets for major sports and live entertainment events, it does include a discussion of the potential benefits that a well-functioning secondary market can bring for certain groups of consumers.

third parties seeking to resell the ticket, and thereby restrict the ability to transfer the ticket to genuine passengers only. Unfortunately, automatic systems to perform such verification do not currently exist[55] and, in the CAA's view, they are unlikely to be developed by airlines so long as they can restrict transferability through their contract terms. As things stand, such verification would require human intervention which, naturally, would come at a cost to airlines and, presumably, would be passed through to passengers in some form.

In the CAA's view, an alternative and more proportionate approach to a blanket restriction on the transferability of tickets would be for airlines to allow passengers to transfer their tickets to another person, but for a fee. Setting the fee at an appropriate level[56], for example as a modest proportion of the ticket price, should deter third parties from seeking to establish a secondary market for airline tickets, whilst still allowing genuine passengers to transfer their tickets to another person if they are unable to travel as planned. On the issue of the amount of the fee, in the CAA's view it is relevant to distinguish between passengers that elect not to travel because it is no longer convenient for them and passengers that cannot travel due to unusual and unforeseeable events outside of their control. For example, passengers with certain types of disabilities can only travel by air if they are accompanied by another person. Often the accompanying person is a friend or relative, but it can also be a person employed in the role of a professional carer (employed, for example, by the local authority or a charity). In such situations, particularly if the booking is made well in advance of the date of travel, it is more difficult to guarantee that the accompanying person will be a particular named individual. In the CAA's view, additional flexibility is needed for such situations and the CAA would not expect airlines to charge a fee to transfer the ticket[57]. Similarly, the CAA considers that it would be disproportionate for the fee to be charged in situations where the passenger in question cannot travel due to a serious illness or a bereavement in their family.

The Office of Fair Trading (now the CMA) considered the issue of ticket transferability in 2000[58] and, through its dialogue with IATA[59], came up with an

[55] A number of airlines have developed systems to deter online travel agents from 'screen scraping' – i.e. pulling content from airlines' websites to enable consumers to book flights via the travel agent's website.

[56] In its position paper on ticket transferability, IATA refers to a "reasonable administration fee" for processing a credit towards future travel on the airline.

[57] Although the CAA does accept that airlines may wish to assure themselves that the request to transfer ticket without incurring a fee is legitimate.

[58] Leaflet reference 325, "Unfair contract terms bulletin, CASE REPORTS, ISSUE NO 12, (April to June 2000), November 2000, OFT325", https://goo.gl/3tFYFv.

[59] The work of the OFT focused on a number of contract terms in the standard conditions of carriage developed by IATA.

alternative approach. The OFT challenged the total ban on assignment or transfer of tickets on the basis that the passenger could lose the whole value of the ticket in situations where they are unable to travel. However, the OFT ultimately accepted that tickets could remain non-transferable[60] but that passengers should instead receive a credit note for the non-refundable element of the ticket price in situations where the passenger was unable to travel as planned due to "unusual and unforeseeable circumstances beyond the passenger's control". The credit note would only be valid for the airlines concerned but could be used to purchase a ticket for another person. In the OFT's view, this solution would achieve transferability "in all but name".

Having considered the points made above, the CAA considers that a blanket policy of non-transferability in all circumstances, with no recourse for the passenger to any alternative remedies to avoid the total loss of the monies paid for the ticket, would be disproportionate to achieving the objective of preventing a secondary ticketing market. Noting that, depending on the individual circumstances of the passenger, they might prefer to receive a credit note rather than the option to transfer their ticket (or vice-versa), the CAA considers that a fair and balanced approach to ticket transferability would be as follows:

- Passengers that are unable to travel should be allowed to either transfer their ticket to another person or receive a refund for the non-refundable part of the ticket in the form of a credit note for later use on that airline (valid for at least one year and able to be used to book flights for themselves or other people). Ideally, the airline should allow the passenger to select from the option of transferring their ticket to another person or receiving a refund for the non-refundable part of the ticket.

- Ideally, the airline should not apply any conditions for passengers seeking to either transfer their ticket to another person or receive a refund for the non-refundable part of the ticket. If the airline does apply conditions to its decision of whether to allow the ticket transfer or the refund (for example in requiring the passenger to demonstrate that they are a genuine passenger rather than a travel agent, or to demonstrate that they cannot travel due to unusual and unforeseeable events outside of their control), the criteria should be clear, easy to understand, and not unduly restrictive.

- Noting that it is not impossible for airlines to establish processes for distinguishing genuine passengers from third parties seeking to resell their tickets, any fee for processing the ticket transfer should be set at an

[60] The OFT commented that "An insistence on universal refundability would go further than the common law allows and could limit the options, and cheaper fares, available to consumers".

appropriate level, for example as a modest proportion of the ticket price, so that it does not dissuade genuine passengers who cannot travel for legitimate reasons from requesting a ticket transfer.

- Noting the general lack of detail in airlines' responses to the CAA's questions concerning how fees for performing certain administrative tasks are calculated, ideally the refund should be provided for free or for a nominal fee.

- Finally, any fees for processing a ticket transfer or a credit note should be waived in situations where the passenger cannot travel due to unusual and unforeseeable events outside of their control.

As described above, disabled passengers that need to travel with a carer have a particularly important need for the airline to be flexible in allowing a ticket to be transferred to another person. Therefore, in situations where the carer or accompanying person of a disabled passenger is no longer able to travel, the CAA expects airlines to waive any fees for processing a ticket transfer.

The CAA has assessed each of the airline's contract terms against the criteria set out above. Although the results show a varying picture across the airlines, there is some degree of alignment amongst those airlines that have tended to follow the IATA standard conditions of carriage. For example, the conditions of carriage of Air France / KLM and Lufthansa do not allow passengers to transfer their ticket to another person (except where the ticket was purchased as part of a package holiday, as required by EU law covering package holidays[61]). However, for passengers that are unable to travel due to unusual and unforeseeable circumstances beyond their control, these airlines offer either a credit note or a refund for the non-refundable part of the ticket. The conditions of carriage of Air France / KLM and Lufthansa give them the discretion to apply a fee for processing the credit note or refund. However, each of these airlines has confirmed to the CAA that they do not apply a fee in practice.

On this basis, the CAA considers that the conditions of carriage of Air France / KLM and Lufthansa each provide passengers with a reasonable remedy in the event that they cannot travel due to unusual and unforeseeable events outside of their control. However, in the CAA's view, each of these airlines could be more transparent in how

[61] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015L2302&from=EN.

they present this information to passengers. In each case, the contract terms relating to ticket transferability and credit / refunds are buried in lengthy conditions of carriage documents which set out the airline's contract terms in their entirety. The CAA would like to encourage each of these airlines to develop a key terms document[62] to bring greater transparency and prominence to this important information. In addition, the CAA considers that greater transparency could be achieved by these airlines by explaining more clearly the types of events and circumstances that they would consider to be unusual and unforeseeable. In our discussions with airlines on this point they have been reluctant to provide greater clarity on the basis that, if they revealed their criteria for assessing circumstances as being unusual and unforeseeable, there is a risk that passengers could then 'game' these rules to gain an advantage over the airline. However, it is not clear to the CAA that this is a credible position, especially given that airlines could seek evidence[63] from passengers to confirm that the circumstances faced by the passenger were indeed unusual and unforeseeable. Finally if, as a matter of practice, these airlines do not apply a fee for processing the credit note or refund then, in the CAA's view, the conditions of carriage should be amended to reflect this. In the CAA's view, the threat that airlines might apply a fee could dissuade genuine passengers from claiming a credit note or a refund.

As with Air France / KLM and Lufthansa, Virgin does not allow passengers to transfer their ticket to another person. However, over the course of the project, Virgin agreed to amend its contract terms so that passengers that are unable to travel due to unusual and unforeseeable circumstances beyond their control can now receive a refund for the non-refundable part of the ticket. In Virgin's case, its conditions of carriage make it clear that there is no charge for processing the refund. The CAA would like to thank Virgin for its cooperation in this matter.

Emirates, another IATA member airline, takes a slightly different approach. It too rules out ticket transferability except where the ticket was purchased as part of a package holiday. However, as part of the CAA's bilateral discussions with the airline it has implemented a number of other remedies for passengers that are unable to travel as planned. In the event of a bereavement, Emirates allows the passenger to either change the date[64] of their flight or receive a full refund of the ticket. In the

[62] In the case of Air France, the CAA would encourage the airline to include information in its "General Conditions of Sale" on the rights and options of passengers under the contract in the event that they are unable to travel due to unusual and unforeseeable circumstances beyond their control, including on how passengers can apply for a credit note.

[63] For example, those airlines that have a bereavement policy will request that the consumer provides a copy of the death certificate to verify the bereavement.

[64] Within 45 Days of the original flight date.

event that the passenger falls ill and cannot travel as planned, Emirates allows them to change the date of their flight[65] for free (and without recalculation of the fare). In circumstances where the passenger cannot travel due to events beyond their control more generally, Emirates allows the passenger to either change the date[66] of their flight or receive a credit note for the non-refundable part of the fare (valid for 12 months). In relation to the credit note, Emirates has recently amended its conditions of carriage again to remove the discretion it had to apply a fee for processing the credit note. The CAA would like to thank Emirates for its cooperation on this matter. As with the other IATA airlines, the CAA's view is that Emirates' contract terms provides passengers with a reasonable set of remedies in the event that they cannot travel due to unusual and unforeseeable events outside of their control.

Aer Lingus, another IATA member airline, has slightly different contract terms when it comes to ticket transferability. The airline will allow passengers to transfer their ticket to another person, but for a fee of £80. In the event of illness of the passenger, the airline's conditions of carriage state that it may extend the date of validity of travel of the ticket. In its discussions with the CAA, Aer Lingus also told us that, alternatively, it could provide a travel voucher for the full value of the ticket price for use on another Aer Lingus flight; however, the conditions of carriage do not state this as an option. In the event of a bereavement, the airline's conditions of carriage state that it will provide either a full refund or an extension to the date of validity of the ticket. It is worth noting that the precise wording of Aer Lingus' conditions of carriage appears to limit passengers' access to these remedies to circumstances relating specifically to illness and bereavement. However, our discussions with the airline did not indicate that its policy was limited to only these two sets of circumstances, but rather that it extended to circumstances where the passenger has to make last minute changes to their travel plans for reasons outside of their control.

The CAA's view is that, on the face of it, Aer Lingus provides passengers with a reasonable set of remedies in the event that they cannot travel due to unusual and unforeseeable events outside of their control. However, given that its conditions of carriage do not align with its policy as stated to the CAA, we cannot be confident that, in practice, Aer Lingus meets the CAA's expectations on the fairness and transparency of its contract terms on this issue. On the issue of ticket transferability, the CAA welcomes Aer Lingus' policy of allowing passengers the flexibility of transferring their ticket to another person. However, the CAA notes that this appears to contradict the airline's conditions of carriage (which limit ticket transfer to situations where the ticket was purchased as part of a package holiday). The CAA would like to note also that the fee for transferring a ticket to another passenger is

[65] Within 30 Days of the original flight date.
[66] Emirates' conditions of carriage do not place a limit on the timeframe for the new flight.

one of the highest amongst the fourteen airlines involved in the project. In the CAA's view, a fee of £80 per person per flight is likely to mean that it will not be an economic option for passengers that have bought cheaper tickets, for example for short-haul flights.

Aer Lingus has recently confirmed to the CAA that, following a review of its contract terms, it intends to add an additional clause entitling passengers that are prevented from travelling due to a serious illness or bereavement the choice of a refund, a credit note (voucher) for the ticket price, or the option to transfer the ticket to another person at no charge. The CAA welcomes this positive step by Aer Lingus and looks forward to reviewing its amended contract terms. Again, as with other IATA carriers, the CAA would like to encourage Aer Lingus to develop a key terms document to bring greater transparency and prominence to this important information.

The conditions of carriage of British Airways are similar to those of Air France / KLM and Lufthansa in that, although they do not allow passengers to transfer their ticket to another person (except where the ticket was purchased as part of a package holiday), passengers that are unable to travel due to unusual and unforeseeable circumstances beyond their control can receive a credit note for the non-refundable part of the ticket. The conditions of carriage give British Airways the discretion to apply a fee for processing the credit note. Taking into account the information provided by British Airways in relation to the fee that we are able to publish in this report, the CAA's view is that British Airways does not provide passengers with a reasonable remedy in the event that they cannot travel due to unusual and unforeseeable events outside of their control. In the CAA's view, British Airways falls short of its expectations on the fairness and transparency of its contract terms on this issue. The CAA recommends that British Airways amends its conditions of carriage to make clear that it will provide a credit note for free in the event that a passenger is unable to travel due to unusual and unforeseeable circumstances beyond their control.

All but one of the remaining airlines allow passengers to transfer their ticket to another person, albeit usually with some limitations. TUI is the best airline of this group as it allows passengers to transfer their ticket to another person for a flat fee of only £25 per person and does not apply any restrictive criteria for making a transfer, for example 'force majeure', that could confuse passengers. In the CAA's view, the relatively low fee (charged only on a per passenger basis rather than per passenger per flight), combined with the flexibility around the circumstances in which a passenger can transfer their ticket, strikes a balance between what is fair for passengers and what is necessary for an airline to protect its legitimate interest. This

represents a significant improvement on TUI's previous policy[67] and the CAA would like to thank TUI for its cooperation in this matter. It should be noted also that, although TUI's conditions of carriage state that its tickets are non-refundable, in our discussions with the airline it told us that it could make exceptions on a case-by-case basis. Unfortunately, this option is not obvious to passengers and therefore we would like to encourage TUI to amend its conditions of carriage to bring them into line with its policy as stated to the CAA.

Although it takes a slightly different approach, Flybe also sets a good standard in this area. The airline's conditions of carriage allow passengers to transfer their ticket to another person, for free, in the event that they are seriously ill or injured, or in the event of a bereavement[68]. The airline will also allow passengers in such situations to extend the validity of their ticket. In the CAA's view, although there are restrictions on the circumstances in which passengers can access these remedies, the fact that the passenger does not have to pay a fee and that they have the option of transferring their ticket or changing the dates of their flights, means that this approach is fair overall. The CAA's view on fairness is enhanced by the high level of transparency and prominence that Flybe gives to this information in its conditions of carriage and its key terms document. In addition, the airline's conditions of carriage specifically provide for disabled passengers to transfer the ticket of their accompanying person or carer to a different individual for free. The CAA would like to thank Flybe for the transparency and prominence that it has given to this important issue. The CAA would like to note also that, over the course of the project, Flybe agreed to the removal of the fee for transferring a ticket in cases where the passenger is seriously ill or injured, or in the event of a bereavement, and the CAA would like to thank Flybe for its cooperation in this matter.

easyJet is another airline that, in the CAA's view, offers passengers a set of remedies to deal effectively and fairly with situations where the passenger cannot travel. In terms of ticket transfer, easyJet allows passengers to transfer their ticket to another person for one of the lower fees amongst the group of airlines – just £25 per person per flight (if the ticket is transferred more than 60 days before the date of travel; the fee increases to £50 within the 60 days). The option to transfer the ticket to another person, as well as the fee, is made transparent and prominent in easyJet's key terms document and its conditions of carriage. In addition, if a passenger needs to cancel due to serious illness or family bereavement, the airline's key terms document states that it "may" offer the passenger a voucher towards the

[67] TUI's previous charges for transferring a ticket to another passenger were: £50 per person for 29 days or more before departure; £90 per person for 28-15 days before departure; and 100% of original fare for 14-0 days to before departure.

[68] In this case, the death of a spouse or civil partner or a person within the immediately family or another person named on the booking.

value of a subsequent flight (to be used within 6 months). Although, in the CAA's view, adding the remedy of a voucher is a positive step, the CAA would like to encourage easyJet to remove the element of discretion and to make this option of a voucher clear in both its key terms and its conditions of carriage.

Most other airlines in the project allow passengers to transfer their ticket to another person for a reasonable fee. Jet2 allows one passenger per booking to transfer their ticket to another person for a fee of £35 per flight. Similarly, Norwegian and Wizz Air allow passengers to transfer their ticket to another person, although for a slightly higher fee (£55 per person per flight for a short haul flight for Norwegian, and £45 per person per flight for Wizz Air). As with TUI and easyJet, none of these airlines apply any restrictive criteria for transferring the ticket which, in the CAA's view, is a positive step. It should be noted also that, in the case of bereavement[69], Wizz Air will provide affected passengers with a full refund. The CAA considers that Jet2, Norwegian and Wizz Air each strike a balance between what is fair for passengers and what is necessary for an airline to protect its legitimate interest. However, the CAA would like to encourage these three airlines to reduce the level of the fees that they charge.

The two remaining airlines are Ryanair and Thomas Cook. Ryanair charges the highest fee for transferring a ticket to another person – £115 per person per flight. This is significantly higher than the fees charged by other low-cost airlines for the same facility. In respect of the level of the fee, it is worth noting that, according to its 2018 annual report[70], Ryanair's average fare is just €39.40, which is around one third of the fee for transferring a ticket. Despite having been asked by the CAA to explain how this fee is calculated, Ryanair has only provided a very general explanation that its "tickets are not transferable for both revenue protection and security reasons". It is not clear to the CAA what "security reasons" Ryanair considers are relevant in this case as, in fact, it does allow passengers to transfer their tickets to another person, albeit for a significant fee. On the issue of the level of the fee, it is not clear to the CAA why Ryanair considers that it needs to charge a fee which is significantly higher than its average fare, as well as being out of line with its competitors, in order to protect the same legitimate interests. As highlighted in the CAA's consumer research, participants in the focus groups felt that contract terms were particularly unfair when they thought that the airline was 'profiteering' from the circumstances that passengers found themselves in. Ryanair has explained to the CAA that, given the level of the fee it applies for transferring a ticket, passengers wishing to do so would, in most cases, be better off booking a new Ryanair flight. In

[69] In this case, the death of an immediate family member within a month of the date of departure of the flight.

[70] https://investor.ryanair.com/wp-content/uploads/2018/07/Ryanair-FY-2018-Annual-Report.pdf.

the CAA's view, it is not fair to require passengers to buy a second ticket when they already have a ticket which they are not able to use.

The airline's position on ticket transferability is mitigated, to a degree, by its policy on refunds in cases of death and illness. In the case of a bereavement of an immediate family member (within 28 days of the intended date travel), the airline will provide affected passengers with a full refund. In the event of the passenger falling ill and being unable to travel, the airline's previous position was that it "may, at [its] discretion" provide a full refund or allow the passenger to change their flights without incurring a fee. The CAA has requested that Ryanair remove the element of discretion and make the right to a refund or a flight change clear in its conditions of carriage. Ryanair has now made this change and the CAA would like to thank Ryanair for its cooperation in this matter.

In the CAA's view, apart from Thomas Cook (see below), Ryanair has the most restrictive policies for dealing with situation where the passenger cannot travel. As covered above, the level of the fee for transferring a ticket is significantly out of line with other airlines. In addition, the other remedies available for passengers that cannot travel due to unusual and unforeseeable events outside of their control appear to be limited to cases of bereavement and illness. As such, it is on the borderline of the CAA's expectations on fairness and transparency. The CAA would like to encourage Ryanair to bring the level of its ticket transfer fee down substantially and into line with other airlines.

Unlike the other holiday airlines in this project, namely TUI and Jet2, Thomas Cook's most basic economy fare[71] does not allow passengers to transfer their ticket to another person[72]. In addition to its basic fare being non-transferable, Thomas Cook's conditions of carriage also specify that all its fares are also non-refundable[73], stating that "This means that if you cancel your Booking for these for any reason, other than due to Force Majeure, you will be charged 100% of the Booking cost and will not be entitled to a refund". Unfortunately, however, the conditions of carriage do not go on to state whether, and if so what, passengers are entitled to by way of a refund if the reason that they cannot travel is due to 'force majeure'. It should be noted also that Thomas Cook's conditions of carriage define 'force majeure' as unusual and unforeseeable circumstances beyond the airline's control, rather than the passenger's control, and therefore it is unclear how this term applies. In its

[71] See footnote 34.

[72] This option is available for other fare types for a flat fee of £35 per passenger per flight (the fee is more for medium and long-haul flights), plus an amount covering any increase in price between when the flight was originally booked and when the ticket was transferred. The flat fee is waived for 'Flex Fare' bookings and bookings with the 'Flex Option'.

[73] Except for tickets issued by Thomas Cook Airlines or Condor Airlines in the Flex Fare and bookings with Flex option.

discussions with the CAA the airline stated that it would deal with exceptional situations on a case by case basis, but that it did not want to specify this in its contract terms.

In recent discussions with Thomas Cook it has agreed to amend its position on refunds. The airline has agreed to amend its conditions of carriage such that, in the event that the passenger cannot travel due to unusual and unforeseeable circumstances outside of their control, Thomas Cook "may consider" cancelling the ticket and providing the passenger with a refund (subject to the passenger providing the airline with sufficient evidence to prove the reason that they can no longer travel). The CAA welcomes this change in policy by Thomas Cook. As with the example above in relation to Ryanair, the CAA has requested that Thomas Cook remove the element of discretion and make the right to a refund clear in its conditions of carriage. Unfortunately, Thomas Cook has confirmed to the CAA that it will not remove this element of discretion.

It is disappointing that Thomas Cook has taken a more restrictive approach to the issue of ticket transferability and credit / refunds in cases where the passenger cannot travel, in particular as compared to its closest competitors, TUI and Jet2. In the CAA's view, Thomas Cook falls short of its expectations on the fairness and transparency of its contract terms on this issue. The CAA recommends that Thomas Cook reviews its approach to these issues and, in particular, removes the element of discretion over whether it will provide passengers with a refund in the event that they cannot travel due to unusual and unforeseeable circumstances outside of their control.

The CAA would like to note that the approach taken currently by Aer Lingus (noting that it has committed to amend its conditions of carriage on this issue), and the approaches taken by British Airways, Ryanair and Thomas Cook, on the issue of ticket transferability and credit / refunds in cases where the passenger cannot travel could provide the basis for legal challenge, including from individual passengers impacted by them. However, it should be noted that the success of any such action by individual passengers would depend on the specific facts in each case and how the airlines operate the relevant contract terms in practice (for example if, in practice, the airline allows tickets to be transferred for free in certain circumstances or if it provides refunds in circumstances other than bereavement and illness).

Contract term: correcting a name in a booking

As was highlighted in the previous section on ticket transferability, a fundamental aspect of passenger air travel is that a ticket for a flight is only valid when used by the person named on the ticket. As was highlighted in the previous section, there are a number of government-imposed security and immigration procedures that require advance passenger information, including the passenger's name, prior to departure. The rules around passenger names are hardcoded into airlines' conditions of carriage. Taking the IATA standard conditions of carriage as an example, the general provisions on tickets specify that the airline will provide carriage only to the passenger named on the ticket. Although not every airline follows the exact wording of IATA, every airline has an equivalent rule in their conditions of carriage.

It is inevitable that, on occasion, passengers will make a mistake in their booking, for example accidentally typing their name incorrectly, or using the shortened version of their name that they commonly go by (e.g. Tom for Thomas) rather than the name on their passport. In addition, passengers that have recently married may also need to make amendments to their booking to reflect their new married name. Also, on occasion, other events can lead to the requirement for passengers to make a change to their booking, for example as highlighted most recently in relation to Ryanair[74]. Airlines differ considerably in how they approach the issue of correcting a name in a booking. For example, as highlighted further below, many airlines provide passengers with the facility to make corrections so long as it is clear that it is the same person travelling. Others operate more restrictive policies, limiting the changes that passengers can make and, in some cases, charging passengers for making more extensive changes.

The issue of correcting a name in a booking was covered in the CAA's consumer research on contract terms. Where airlines charged for correcting a spelling mistake in a booking, the focus group participants often viewed these as punitive costs rather than reflecting the actual cost to the airline and therefore felt that the charges were unfair. As highlighted in the later section of this report on the levels of fees and charges associated with contract terms, focus group participants felt that the charge for correcting a mistake in a booking should be in line with the actual cost to the airline of processing a change and that airlines should be more transparent about the costs involved. One of the findings of the quantitative survey was that 60% of those

[74] https://www.moneysavingexpert.com/news/2019/01/complaints-flood-in-about-ryanair--glitch--which-costs-customers.

who had experienced an issue with a mistake in a booking felt that the charge was unfair. Of those surveyed, 53% felt that a charge of £1-£10 would be fair.

However, from the perspective of some airlines, the rationale for having a charge, and the level of the charge, is broader than simply recovering the cost associated with processing a change to a booking. As with the issue of ticket transferability, airlines that place restrictions on changes to names argue that allowing too much flexibility could encourage individuals or third parties, in particular travel agents, to 'game' the system to allow them to resell tickets to another person. As covered in the previous section, airlines have strong views on the risks associated with the emergence of a secondary market for flight tickets.

As with the issue of ticket transferability, in the CAA's view the key question is whether the restrictions applied by airlines to correcting a name in a booking are proportionate to achieving their objectives. In this case, a clear objective is to enable airlines to comply with the rules around security and immigration. For this reason, it is straightforward to understand that the airlines will need to place a time limit on making changes to a booking to enable the changes to be processed by the airline's own systems and those of the relevant authorities. As with ticket transferability, however, the relevant objective in relation to preventing a secondary ticketing market needs to be carefully considered. The CAA acknowledges that airlines have a legitimate interest in preventing individuals or third parties 'gaming' the system to allow them to resell tickets to another person. In the CAA's view, therefore, the relevant objective of any restrictions to making corrections in bookings should be to ensure that any changes are consistent with the premise that it is the same individual as specified on the ticket.

In the CAA's view there are a number of ways in which this could be achieved. In order to assess each airline's approach to the issue, the CAA has identified a number of features which it considers would lead to a proportionate approach to the issue of correcting a name in a booking:

- The existence of a 'grace period' immediately following the passenger making their booking in which they can make changes to the name in the booking. The length of such a 'grace period' should be sufficient to give the average passenger the opportunity to check their booking confirmation details for any errors.

- Where the change to the name in the booking can be made online, this should be free to the passenger. Given that it would be difficult for airlines to attribute a specific cost to this functionality in their online systems, the CAA cannot see a reason for applying a charge in this case. However, the CAA does accept

that, without human intervention to check that the proposed changes are consistent with the premise that it is the same individual as specified on the ticket, the extent of the changes that can be made online may need to be limited.

- Referring to the previous paragraph, in cases where the changes to the booking are more extensive (for example to change a maiden name to a married name) such that human intervention is required, it is not unreasonable that the airline should seek to charge a fee to process the change. However, noting the general lack of detail in airlines' responses to the CAA's questions concerning how such fees are calculated, the CAA considers that more extensive changes such as these should be made for free or for a nominal fee.

- In cases where the changes to the booking are more extensive and therefore require human intervention, it is not unreasonable for airlines to request evidence from the passenger to demonstrate that the changes are consistent with the identity of the passenger.

- In terms of transparency, at the point in the booking where passengers are asked to provide their name, they should be reminded of the importance of providing the correct information and warned of any restrictions (including any fees) applied by the airline for making any changes post-booking.

Having considered the points raised above, the CAA has assessed the conditions of carriage of each of the fourteen airlines in the project to determine the proportionality of each airline's approach to the issue of correcting a name in a booking.

For a number of airlines, this was a relatively straightforward task as, in the case of British Airways, Air France / KLM, easyJet[75], Flybe, Lufthansa, and Virgin, passengers can make corrections to the name on a booking, including changing a maiden into a married name, for free. In the CAA's view, each of these airlines take a proportionate approach to achieving the relevant objectives, providing passengers with the flexibility to make legitimate changes to the name in their booking, typically up to the day before departure. Over the course of the CAA's project, TUI agreed to amend its position such that passengers can now make corrections to the name on a booking for free. Similarly, Thomas Cook has recently agreed to amend its previous position on name corrections such that it will now allow more extensive changes to be made, for example marital name changes, for free, where sufficient evidence can

[75] Spelling mistakes can be correct free of charge up to three characters online, or unlimited characters via easyJet's customer service team.

be provided that it is the same person travelling. The CAA would like to thank these airlines for their cooperation in this matter.

In Jet2's case, errors can be corrected free of charge for up to three characters online and, as with easyJet, passengers requiring more extensive changes need to contact the airline by phone or email. In its discussions with the airline, Jet2 has confirmed to the CAA that it does not charge passengers that need to make changes over the phone and it has amended its website to reflect this position. The CAA would like to thank Jet2 for its cooperation in this matter.

Norwegian is also an airline that previously allowed only minor errors (up to three characters) to be corrected free of charge. In our discussions with the airline it has agreed to waive the charge it previously applied for more substantial changes to the name in the booking, for example to correct errors of more than three characters or to change a maiden name to a married name, so long as it is still the same person travelling. Unfortunately, the process adopted by Norwegian for correcting more substantial errors requires passengers to pay the name change fee first and then request a refund from the airline later. In the CAA's view, it would be preferable for the facility to correct a name in a booking to be free at the point that the correction is requested. However, the CAA recognises the engagement that it has had with Norwegian on this issue and notes that, so long as Norwegian makes it simple and straightforward for passengers to request a refund, its process should not place a disproportionate burden on passengers in practice. The CAA intends to review its position on this in the coming months, following further discussions with the airline.

In the case of Aer Lingus, the airline stated to the CAA that it does not apply a charge to change a first name or to change from a maiden name to a married name or vice versa. In addition, the airline stated that it does not apply a time restriction for these changes. However, the airline admitted this policy is not specifically stated on its website or in its conditions of carriage, but rather that passengers are advised to contact the airline if they wish to change a name on their booking. The CAA has written to Aer Lingus to request that it amend its website to ensure that this information is provided in a clear, transparent, and prominent way. Unfortunately, as of the date of publication of this report, Aer Lingus has not confirmed to the CAA that it has made the necessary changes. However, it has recently committed to the CAA that it will amend its website shortly to reflect its policy.

In the case of Emirates, over the course of the project the airline agreed to lower its fees for correcting a spelling mistake in a booking to £10 per ticket (or £20 per ticket if the booking was not made directly with Emirates). The CAA would like to thank Emirates for the constructive dialogue that it has had with the airline on this issue. In terms of the level of the fee, although it is relatively small and not linked to the

applicable fees for other, unrelated, services (e.g. transferring the ticket to another person), the justification for the level of the fee remains unclear to the CAA, and in particular the reason for the fee increasing to £20 if the booking was not made directly with Emirates. As such, it is on the borderline of the CAA's expectations on fairness and transparency.

The remaining airlines, namely Ryanair and Wizz Air, each apply more restrictive policies than the airlines referred to above and which therefore need more careful consideration. Of these airlines, only Ryanair provides a 'grace period' in which passengers can correct a name in their booking for free (48 hours for 'minor corrections'). Any other changes will incur a fee of at least £115 (which is Ryanair's fee for transferring the ticket to another person). Wizz Air allows changes to names of up to 3 characters for free (changing a maiden name to a married name is also free) but, for more extensive changes, the airline applies its fee for transferring a ticket to another person. In its bilateral discussions with the airline, Wizz Air has told the CAA that, in individual cases, and provided that the passenger is able to prove that it is the same person travelling, passengers can correct a name via the airline's call centre. However, as at the date of this report, this option (and any associated fee) is not made clear on the website of Wizz Air.

In the CAA's view, two things stand out in terms of the approaches taken by the airlines that apply more restrictive policies to the issue of correcting a name on a booking versus those that do not. First, there is no obvious pattern in terms of business model, nationality of airline, etc. For example Emirates, in applying a fee, takes a more restrictive approach than the other IATA airlines. In contrast, easyJet takes a more flexible approach than the other low-cost airlines. Given that, on the face of it, each of the airlines covered in the project is concerned with mitigating the same risk, that of preventing a secondary ticketing market, it is not obvious to the CAA why these airlines should take such different approaches to the same issue.

The second thing that stands out for the CAA is the level of the fee that airlines charge in cases where passengers are seeking to make more extensive changes. In the case of Ryanair and Wizz Air, the fee charged is, in fact, the fee for transferring the ticket to another person. In the CAA's view, it does not follow that a passenger seeking to make a change of, for example, four characters in their name, is in fact transferring the ticket to another person and should therefore be charged the fee for doing so.

As set out above, in cases where the changes to the booking are sufficiently extensive to require human intervention, it is not unreasonable that the airline should seek to charge a fee to process the change. However, in the CAA's view, the fee should be calculated based on the cost to the airline of verifying that the proposed

changes are consistent with the identity of the passenger and of making the subsequent amendment to the booking. In the CAA's view, the fee for transferring a ticket to another person is targeted at achieving a different objective and is therefore irrelevant and, given the level of the charge for transferring a ticket, is anyway disproportionate for achieving the relevant objectives in relation to correcting names in bookings.

Given the level of the fees applied by Ryanair and Wizz Air for correcting a name in a booking, these airlines fall short of the CAA's expectations on the fairness and transparency of their contract terms on this issue.

The CAA therefore recommends that Ryanair and Wizz Air review their approaches to the issue of correcting names in bookings. As highlighted above, it is clear that it is possible for airlines that compete directly with this group of airlines to take a more proportionate and flexible approach to the issue. Further, the CAA recommends that these airlines, as well as Emirates, review the fees that they apply in cases where passengers are seeking to make more extensive changes, such that these fees are more explicitly aligned to the administrative cost to the airline of verifying that the proposed changes are consistent with the identity of the passenger and of making the subsequent amendment to the booking.

In addition, the CAA would like to note that the approaches taken by these airlines could also provide the basis for legal challenge, in particular in the case of Ryanair and Wizz Air where the passenger is seeking to make more extensive changes to the name in their booking, but not to transfer their ticket to another person. It should be noted, however, that the success of any such action by individual passengers would depend on the specific facts in each case and that the airlines concerned would be able to cite certain mitigating factors in their defence. In the case of Emirates, the airline could cite the relatively low level of its fee. Ryanair could cite the fact that it provides a 'grace period' where passengers can make certain limited changes to their booking for free. In addition, it should be noted also that, at the point in the online booking process where passengers are asked to enter their personal details, each of these airlines provides a clear warning that passengers should enter their names exactly as they appear on their passport. Again, the existence of such warnings could be a persuasive factor in favour of the airline.

Contract term: using tickets out of order ('coupon sequence and use')

As described previously in this report, there are a number of contract terms that are commonly used by airlines to protect their revenue. One such example is 'coupon sequence and use'. As explained by IATA in its policy paper on the issue[76], and as captured in its standard conditions of carriage, if any segment[77] of a particular ticket is not used, or if all the segments are not used in sequence, the ticket as a whole will lose its validity in most circumstances. For example, if a passenger does not take the outbound flight of a return journey, this will typically lead to the passenger's ticket for the return flight being cancelled automatically by the airline. Should the passenger arrive at the airport for their return flight, they would be denied boarding by the airline on the basis that they do not have a valid ticket for the flight. A similar situation can arise in relation to onward flights in cases where the passenger has a connecting ticket.

In the CAA's view the average passenger is unlikely to be familiar with such restrictions on ticket use because, although such restrictions are commonly employed by airlines and provide a longstanding basis for how airlines price their tickets, they are not common in other transport sectors or the economy more broadly and, further, it is not instinctively obvious, at least from the passenger's perspective, why they should exist at all. Participants in the CAA's consumer research focus groups were not familiar with the airline practice of cancelling the return ticket in cases where the outbound ticket has not been used. However, when it was explained to them, participants felt that the practice was very unfair. Focus group participants thought that if they had paid for a return flight they should be able to use it regardless of whether they used the outbound ticket. One participant commented that "If you take the train ticket, your return ticket comes in two halves. Although you don't get two halves of the plane ticket, it's essentially the same thing, isn't it? I could get on one train and not take the one back or vice versa, so why can't I do that with my plane ticket". Another participant expressed the view that "I wouldn't think that you'd have to contact the airline to say, 'sorry, I've not flown out on this one but don't cancel my flight'"

In IATA's view, applying restrictions on how tickets are used allows airlines to differentiate their fares based on the prevailing market conditions in different market

[76] https://www.iata.org/policy/Documents/coupon-use-paper.pdf.
[77] With each ticket segment relating to a particular leg of the journey.

segments. In relation to the airline practice of cancelling return and / or onward tickets in cases where the outbound ticket has not been used, IATA's policy paper explains that market segmentation can lead to situations where a return ticket, for example from Lisbon to Brussels, is cheaper than a one-way ticket from Brussels to Lisbon. From the airline's perspective, such an outcome would not necessarily be counter-intuitive if the prevailing market conditions dictated that there was greater demand for the one-way journey than the return. However, in the absence of restrictions on how tickets are used, the airline would be unable to maintain this difference in pricing because passengers wishing to travel only from Brussels to Lisbon could simply buy the cheaper return ticket (from Lisbon to Brussels and back to Lisbon) and use only the return leg of the flight.

In IATA's view, placing restrictions on how tickets are used is essential for allowing airlines to price differently for different market segments. In IATA's view, if airlines were to be prohibited from this type of market segmentation then the likely consequence would be that the low fares or special deals offered for certain market segments would no longer be made available and that airlines would be less likely to try and compete with low prices if those prices would automatically apply to other, more valuable, products. More generally, IATA's view is that this market segmentation enhances competition (which leads to lower fares), allows for better connectivity (including for smaller communities), and reduces wasted capacity (and therefore over-booking).

As with the section above on ticket transferability, it is beyond the scope of this project to assess whether the removal of the restrictions on how tickets are used would lead to higher prices, reduced connectivity and greater over-booking, and would therefore be harmful to passengers overall and / or would disadvantage certain groups of passengers relative to others[78]. However, it is worth noting that not all airlines apply such restrictions on how tickets are used. Many airlines, in particular the low-cost airlines, do not sell return or connecting tickets but rather price their fares based on one-way journeys. As a general point, therefore, in the CAA's view it does not follow that applying restrictions on how tickets are used is necessarily the only way to deliver such important consumer benefits as low fares.

Notwithstanding this broader point, the CAA acknowledges that certain types of airlines, especially the IATA carriers, have developed their pricing models over many

[78] A paper by the HEC-NYU EU Public Interest Clinic (prepared for BEUC, the European Consumer Organization), which advocates for the elimination of rules on ticket use throughout the European Union argues that, even if the rules on ticket use were removed, airlines would be left with a range of other pricing strategies that could compensate for the alleged loss and that, in fact, the removal of these rules could lead to an increase in competition rather than decrease, See: https://dial.uclouvain.be/pr/boreal/object/boreal:163687.

decades based on the principle of market segmentation and, as such, these airlines would argue that they have a legitimate interest in applying restrictions on how tickets are used. However, in the CAA's view, it is important to distinguish situations where passengers are trying to 'game' airlines' ticketing rules to their own advantage (as in the case of the Brussels to Lisbon journey described above), from situations where the passenger had intended to use their tickets in the manner required by the airline but, for legitimate reasons, for example due to unusual and unforeseeable events outside of the passenger's control, they needed to do something different.

In its policy paper on the issue, IATA explains that the industry does recognise that unforeseen circumstances do occur and that airlines have arrangements in place to accommodate passengers in such cases. IATA states that, should passengers be required to change their journey due to 'force majeure', that they should contact their airline as soon as possible and that their airline will use "reasonable efforts" to accommodate them, for example in allowing them to take the next available flight (without recalculation of the fare). However, as highlighted above, participants in the CAA's consumer research focus groups were not familiar with the airline practice of automatically cancelling the return ticket in cases where the outbound ticket has not been used. Therefore, although the CAA welcomes IATA's assurances that airlines will look after passengers that are forced to use their tickets in a manner other than that required by the airline, this relies on a level of awareness amongst passengers of their obligations and rights in relation to ticket use which, in the CAA's view, does not exist at this time.

Having considered the points made above, the CAA considers that it is reasonable for airlines to seek to protect their interests against passengers trying to 'game' their ticketing rules for their own economic advantage. However, the CAA considers that a policy of automatically cancelling a passenger's return and / or onward journeys if they do not take the outbound flight is disproportionate for achieving this objective. Rather, given the lack of awareness on the part of passengers of the restrictions around ticket use, and given the lack of prominence that, in general, airlines give to these restrictions in their contract terms, the CAA considers that it would be reasonable to expect airlines to make an effort to distinguish between passengers trying to 'game' their ticketing rules and passengers that had intended to use their tickets in the manner required by the airline but, for legitimate reasons, need to do something different. In the CAA's view, in order to achieve this, airlines would need to adopt a policy of not automatically cancelling the return and / or onward tickets in cases where the outbound ticket has not been used. Or, if they do automatically cancel the return or onwards tickets, they would need to be able to reinstate the ticket once they had determined that the passenger in question had missed their flight due to legitimate reasons.

In addition, in cases where the passenger misses their outbound flight, the CAA considers that it would also be reasonable to expect the airline to make an effort to pro-actively contact the passenger[79] to determine whether they intend to use the return or onward tickets and, if so, the reasons why the passenger did not use the outbound ticket. On the basis that these reasons appear legitimate, the passenger should be allowed to use their return or onward flights as they had planned, with no extra charge or recalculation of the fare. In the event that these reasons do not appear legitimate, or in the event that the airline cannot make contact with the passenger before the return or onward flights takes place, the CAA considers that it would be fair for the airline to recalculate the passenger's fare based on the revised journey.

On the basis set out above, the CAA has assessed the contract terms of the fourteen airlines in the project. As mentioned above, many airlines, in particular the low-cost airlines, do not sell return or connecting tickets but rather price their fares based on one-way journeys. These airlines meet the CAA's requirements as they do not cancel the return ticket if the outbound ticket has not been used. These airlines are easyJet, Norwegian, Ryanair, and Wizz Air. In addition, the holiday airlines Jet2, Thomas Cook, and TUI also do not cancel the return ticket if the outbound ticket has not been used.

To a lesser or greater degree, the IATA member airlines tend to follow the standard IATA conditions of carriage. These state that a passenger's tickets will not be honoured and will lose their validity if the tickets are not used in the sequence required by the airline. They do not state that a return or onward ticket will be cancelled automatically if a passenger misses their outbound flight, but rather that the airline "may cancel your return or onward reservations" unless the passenger advises the airline in advance of the start of the journey (for a return flight, this is the date of the outbound flight). Although the standard IATA conditions of carriage do allow passengers to make changes to their journey plans if they contact the airline in advance of the start of the journey, they state that passengers will need to pay a revised fare based on the difference between their original fare and the fare calculated based on the new journey. However, they do provide an exception to this fare recalculation in situations where the passenger needs to make a change due to unusual and unforeseeable events outside of their control. Under the IATA standard conditions of carriage, in cases where the passenger does not contact the airline in advance of the start of their journey, airlines are allowed to recalculate the fare based on the new journey.

[79] Where they have the passenger's contact details.

Despite the fact that the conditions of carriage of British Airways, Flybe, and Virgin mostly follow the IATA standard conditions of carriage, each airline confirmed to the CAA that they do automatically cancel a passenger's return or onward ticket if they do not use the outbound ticket. However, the conditions of carriage of each of these airlines do allow the return journey to be reinstated. Air France / KLM has recently amended its previous policy such that it no longer automatically cancels the passenger's return or onward ticket. However, in order to travel on the return or onward flight the passenger is required to pay a fixed-rate fee depending on the flight length (starting at €250 for an economy class ticket for an intra-EU flight). Unfortunately, there is no exception for paying this fee in cases where the passenger has missed their outbound flight due to unusual and unforeseeable events outside of their control. British Airways' conditions of carriage state that the return ticket will not be valid for travel unless and until the passenger has paid the difference between their original fare and the recalculated fare. Although British Airways' conditions of carriage appear to provide an exception for cases where the passenger misses their outbound flight due to events outside of their control, it is not clear whether this exception applies only to situations where the passenger contacts the airline in advance of the start of their journey. Flybe's approach is similar to British Airways in that the return ticket can be reinstated if the passenger pays the fare difference, although its conditions of carriage are more explicit in stating that the return flight can only be reinstated if there is space available on the flight. As with British Airways, it is not clear whether the exception for paying the fare difference in cases of unusual and unforeseeable events outside of the passenger's control applies only to situations where the passenger contacts the airline in advance of the start of their journey.

As highlighted by Flybe's conditions of carriage, for those airlines that automatically cancel a passenger's return ticket if they do not use the outbound ticket, it must be assumed that the ticket can only be reinstated if there is space available on the flight. In our discussions with these airlines they did not inform us of any policies whereby such cancelled tickets are held back from being resold. It appears to the CAA, therefore, that passengers that miss their outbound flight, but that do not contact the airline immediately beforehand, risk not being able have their return ticket reinstated due to a lack of space on board, as well as having to pay the fare difference (as described above, not all these airlines have an exception for paying the fare difference and, for those that do, it is not clear that it applies to the situation where the passenger has already missed their flight).

In the case of Aer Lingus, although its conditions of carriage follow the standard IATA wording that, if the passenger misses their outbound journey then the airline "may cancel [their] return or onward reservations", the airline has confirmed to the

CAA that it does not cancel the return flight in these circumstances. However, its conditions of carriage allow it to recalculate the fare based on the new journey, and there does not appear to be an exception to this rule (for example in cases of unusual and unforeseeable events outside of the passenger's control), Lufthansa's approach is similar to that of Aer Lingus in that it does not automatically cancel the return flight in situations where the passenger misses their outbound flight, although again the airline will apply a fare difference.

Having considered the arguments set out above, and having considered the approaches taken by Aer Lingus, Air France / KLM, British Airways, Flybe and Lufthansa on the issue of ticket use, in the CAA's view these airlines fall short of its expectations on the fairness and transparency of their contract terms on this issue. Although the approaches taken by Aer Lingus, Air France / KLM and Lufthansa represent an improvement on the other airlines, the CAA does not consider it to be sufficient to meet the standards of fairness and transparency that it expects. The CAA recommends that these airlines review their conditions of carriage on the issue of ticket use in order to bring them into line with the CAA's expectation on fairness and transparency as expressed here.

Over the course of the project, Emirates agreed to amend its conditions of carriage to make it explicit that, although it will cancel the passenger's return ticket if they do not contact the airline within 24 hours of missing the outbound flight, if the passenger does contact the airline within this time then they will not have to pay the difference between the original fare and the recalculated fare in cases of unusual and unforeseeable events outside of the passenger's control. Virgin also agreed to amend its position on ticket use such that, in cases where the passenger has missed their outbound flight due to "a legitimate change in circumstance" (including, but not limited to, unusual and unforeseeable events outside of the passenger's control), and where the passenger contacts the airline in advance of their journey, it will reinstate the passenger's return flight (subject to availability, and the passenger providing proof in respect of the change in circumstance or the event). Virgin's conditions of carriage make it clear that, in such cases, there is no fee for reinstating the flight and passengers do not have to pay the difference between the original fare and the recalculated fare. The CAA would like to thank Emirates and Virgin for engaging with the CAA on this issue and in taking these positive steps. However, in the CAA's view, the approaches of both of these airlines are still overly reliant on the passenger being aware of the restrictions on ticket use and on realising that they need to contact the airline to avoid having their return and / or onward flights cancelled. The CAA would like to encourage Emirates and Virgin to reconsider their positions on ticket use, and in particular to implement a process to pro-actively contact passengers that miss their outbound flights to determine whether they intend

to use the return and / or onwards tickets and, if so, the reasons why the passenger did not use the outbound ticket.

The CAA's research into the contract terms applied by airlines in relation to ticket use has revealed two further exceptions to the conditions of carriage applicable to UK flights. First, it has come to the CAA's attention that Air France applies a different set of terms for tickets purchased in Italy. In this case, in an approach similar to that of Emirates, passengers are not required to pay the fixed-rate fee to reinstate their return ticket if, within 24 hours after the departure time of the missed outbound flight[80], they contact the airline to inform them that they wish to use their return ticket. Second, in the case of Lufthansa, passengers resident in Austria are not required to pay the difference between the original fare and the recalculated fare if they were prevented from using the ticket for the outbound flight due to 'force majeure', illness or other reasons beyond their control, and so long as the passenger informs the airline of these reasons as soon as it is aware of them[81].

It is clear that, in both cases, the contract terms applicable in these other jurisdictions are fairer and more balanced than those applicable in the UK. In Lufthansa's case, it appears to the CAA that the rights available to passengers that are resident in Austria are a substantial improvement on those available to UK residents. However, as with Emirates and Virgin, even these improved contract terms place the obligation on the passenger to pro-actively contact the airline which, in the CAA's view, is an obligation that they are unlikely to be aware of unless it is expressly brought to their attention. The CAA recommends that, as a minimum, both Air France and Lufthansa should bring their UK conditions of carriage into line with the fairer and more balanced contract terms that they apply in the other jurisdictions. As with Emirates and Virgin, the CAA recommends also that these airlines implement a process for pro-actively contacting passengers that have missed their outbound flights to give them the opportunity to preserve their return and / or onward flights if they wish.

The CAA would like to note that the contract terms on ticket use of the IATA airlines, and in particular those of Aer Lingus, Air France / KLM, British Airways, Flybe and Lufthansa, could provide the basis for legal challenge, including from individual passengers impacted by them – i.e. passengers that have missed their outbound flights but arrive at the airport for their return or onward flights but are denied boarding by the airline. The CAA notes, however, that the success of such a legal challenge would depend on the facts in each case and how these airlines operate these contract terms in practice, including any discretion that their staff have to waive the requirement to pay the fare difference in certain circumstances, and how they

[80] Or, if the departure time of the return flight is within 24 hours of unused flight, at least 2 hours before departure of the return flight.

[81] The passenger may be required to provide proof.

assist the passenger in making alternative travel arrangements if the airline cannot reinstate the return flight because there is no longer any available space on board.

Contract term: checking in and/or printing boarding pass at the airport

Broader societal and technological developments over the last two decades mean that more passengers are willing to use the internet, and in particular their smartphones, to engage with businesses in a variety of transactions. Not only is this more convenient for many consumers than, for example, completing paper forms or visiting a bricks-and-mortar shop, in many cases it is also more efficient for businesses.

These days most airlines, but in particular the low-cost airlines, encourage passengers to check in online and to bring their own boarding passes to the airport (either in paper form or on their smartphone). In general this benefits passengers that are willing and able to comply with such processes, who will benefit from spending less time standing in queues at the airport, and airlines, which are able to lower their costs through having less staff at the airport to perform tasks such as passenger check in. Many of the low-cost airlines have built their businesses, in part, around such a model and not only seek to facilitate passengers in checking in online and providing their own boarding passes (for example through providing a smartphone app), but also seek to actively encourage them through the imposition of financial sanctions when passengers fail to follow the rules correctly.

Issues relating to the practice of requiring passengers to provide their own boarding passes were covered as part of the CAA's consumer research on contract terms. The research found that just over one in ten (13%) of those surveyed had paid a fee to print a boarding pass in the last three years. The results from the quantitative survey suggested that this was a result of people overlooking printing their boarding passes rather than as a result of low technology literacy or any other reason. Participants in the focus groups typically felt that paying to print a boarding pass at the airport was unfair if the fee was more than the cost to the airline of performing the task. Some thought that the practice of charging to print boarding passes was exploitative or punitive and did not reflect the cost to the airline of printing off a boarding pass. Most respondents (57%) to the survey who had experienced this issue felt the cost incurred to be unfair. Participants felt that a nominal charge (up to £5 was frequently mentioned) was acceptable for printing a boarding pass at the airport, although in the survey the majority of customers (55%) felt there should be

no charge at all[82]. Participants in the focus groups were willing to accept a higher charge if the airline could demonstrate that the charge they make is a true reflection of the cost to them of providing this service. Finally, some participants in the focus groups also thought that it was very difficult to print off a boarding pass in a foreign country due to limited access to printing facilities, which made return journeys particularly vulnerable to having to pay to print boarding passes at the airport.

The CAA acknowledges that many airlines require passengers to perform certain straightforward tasks themselves that had previously been performed by the airline, such as check in and providing a boarding pass. Further, the CAA acknowledges that both passengers[83] and airlines can benefit from such an approach, and it is in protecting this benefit that airlines have a legitimate interest. The CAA accepts also that, in order to encourage passengers to comply, airlines may need to take steps to incentivise them in ways which go beyond merely facilitating the task, for example by charging passengers a fee to print out a boarding pass at the airport. As covered in previous sections, the key question in terms of fairness is whether the level of the fee is proportionate for achieving the objective (which, in this case, is ensuring that the vast majority of passengers comply with the rules) or whether it imposes a disproportionate financial sanction on passengers, in particular those passengers that had intended to check in online and provide their own boarding passes but had simply overlooked doing this in their preparations for their flight.

The majority of the fourteen airlines in the project, namely Aer Lingus, Air France / KLM, British Airways, easyJet, Emirates, Flybe, Norwegian, Thomas Cook, TUI and Virgin, allow passengers to check in and print their boarding passes at the airport for free. Given that most of these airlines operate different business models to the low-cost airlines, it is not surprising that they take a different approach. However, it is noteworthy that easyJet and Norwegian, which are both low-cost airlines, also allow passengers to check in and print their boarding passes at the airport for free.

In relation to Jet2, although the airline stated to the CAA that it did not charge passengers to check in or print their boarding passes at the airport, the CAA is aware that, during the online booking process, passengers are invited to choose between whether they wish to check in online for free, or whether they wish to check in at the airport, for which there is a £12 charge per person per flight (i.e. £48 for two people for a return flight). However, Jet2 has confirmed to the CAA that, in cases

[82] Age strongly shaped these views, with older customers being more likely to feel there should not be a charge.

[83] Only those passengers that are willing and able to comply with the required airline processes will benefit directly.

where the passenger needs to check in or print their boarding pass at the airport, it does not charge a fee.

Only Ryanair and Wizz Air charge passengers a fee to check in and print their boarding passes at the airport. For Ryanair, the fee to check in at the airport is £55 per passenger per flight and to print a boarding pass at the airport the fee is £25 per passenger per flight. In the case of Wizz Air, there is a flat fee of £27 per passenger per flight to either check in or print a boarding pass at the airport.

In terms of assessing whether the levels of fees charged by Ryanair and Wizz Air are proportionate for achieving the objective (of ensuring that the vast majority of passengers comply with the rules) or whether they impose a disproportionate financial sanction on passengers, it is worth first reflecting on two related things. First, in the CAA's view, the direct benefits to passengers in terms of the convenience of being allowed to check in online and to provide their own boarding passes should not be underestimated. In this respect, a strong incentive exists already for passengers to comply with the rules in this area. Second, as noted in the findings of the CAA's consumer research, the results from the quantitative survey suggested that, for those people that had to pay the charge to print their boarding passes at the airport, although they had intended to check in online and provide their own boarding passes, they simply overlooked doing this in their preparations for their flight. In this context, therefore, it is possible to view any fee to check in or print a boarding pass at the airport as a punitive charge, unless the level of the fee is linked directly to the cost to the airline of performing the check in / printing task at the airport.

As set out in the later section in this report on the levels of fees and charges associated with contract terms, the CAA requested information from each of the fourteen airlines in the project on how they calculated the level of the fees and charges linked to contract terms. The CAA also asked for supplementary information on the number of passengers that pay the relevant fee or charge each year, the overall revenue generated by such fees and charges and the total cost incurred by the airline associated with the relevant contract terms. The CAA has reviewed the information provided by Ryanair and Wizz Air in order to assess whether the levels of the fees charged by Ryanair and Wizz Air are proportionate, and in particular whether they are linked to the cost to the airline of performing the task.

Unfortunately, neither airline submitted any useful information to the CAA to allow it to make such an assessment. Both airlines provided only generic responses to the CAA's request for information. For example, in respect of the CAA's question on how fees are calculated, Wizz Air responded that "The fee is calculated based on the cost and the industry standards". In relation to information sought on the number of

passengers that pay fees related to contract terms, Wizz Air answered that it "does not consider this piece of information relevant regarding unfair terms in its [conditions of carriage]. It is considered as business secret", whereas Ryanair responded that it "is a publically [sic] traded company listed on the Irish, London and New York stock exchanges and we are accordingly restricted in relation to the disclosure of confidential and/or commercially sensitive information". Both airlines provided similar answers to the questions regarding the total revenue generated by such fees and the total cost incurred by the airline in providing the 'services' linked to the fees. In relation to the latter, Wizz Air stated that "Most of the additional fees are for services, where the incurred costs cannot be calculated by their nature or can be calculated only specifically, case by case or cost elements cannot be distinguished to only one fee (such as e.g. electricity). Therefore, we are not able to provide adequate answer to this question".

Although this lack of information means that the CAA is not able to conclude definitively on whether the levels of the fees charged by Ryanair and Wizz Air are proportionate or not, it not clear to the CAA that the fees to check in and reprint boarding passes at the airport are linked to the cost to the airline of performing the task, not least because the fee charged by Ryanair to check in at the airport is twice that charged by Wizz Air. On this basis, the approaches of both Ryanair and Wizz Air fall short of the CAA's expectations on fairness and transparency. The CAA therefore recommends that these airlines review the fees that they charge passengers to check in and print their boarding passes at the airport such that these fees are more explicitly aligned to the administrative cost to the airline of providing the function.

In addition, the CAA would like to note that the fees charged by Ryanair and Wizz Air could provide the basis for legal challenge, including from individual passengers impacted by them, in particular passengers that had had intended to check in online and provide their own boarding passes but had simply overlooked doing this in their preparations for their flight. The CAA notes, however, that the success of such a legal challenge would depend on the facts in each case.

Contract term: time limitations for claiming compensation under EC261

In 2014 the Court of Appeal heard the case *Dawson v Thomson Airways*, which considered the time limit in England and Wales for passengers to make a claim under Regulation EC261/2004[84]. It issued a decision on the case in June 2014 and found that the correct time limit was six years from the date of the flight. Thomson Airways asked the Supreme Court to hear an appeal, but this was turned down in October 2014.

Following the Supreme Court's decision not to hear an appeal in this case, in November 2014 the CAA wrote to the largest fifteen airlines by passengers carried to ask them to confirm that they were applying the Court of Appeal judgment and paying claims in accordance with the *Dawson v Thomson Airways* judgment[85]. Jet2 and Wizz Air failed to satisfy the CAA that they were correctly applying the six year time limit and the CAA took enforcement action against both airlines (and, subsequently, Ryanair) to bring them into line with the Court of Appeal's ruling. As a result of the CAA's enforcement action, Jet2 and Ryanair confirmed to the CAA that they applied a six year time limit for passengers making a claim for compensation under Regulation EC261/2004. The CAA referred Wizz Air's refusal to apply the 6 year time limit to the Hungarian Authorities and requested that they take enforcement action.

As part of the CAA's project on contract terms, the CAA reviewed the conditions of carriage of each of the fourteen airlines in the project to ensure that they were not being used to unfairly time limit passengers' ability to claim compensation. As is highlighted below, for the most part the conditions of carriage of the airlines were silent on the issue of a time limit for claims under Regulation EC261/2004. Given that legal clarity on the issue was achieved through the decision of the Court of Appeal, and given that the CAA had received assurances from the major airlines that they were correctly applying the Court of Appeal judgment, it could be argued that the risk associated with any ambiguity of the applicable time limit for claims under Regulation EC261/2004 is relatively limited.

[84] Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of the denied and of cancellation or long delay of flights.

[85] The CAA later expanded this work to cover the top 30 airlines flying to and from the UK.

However, for those airlines whose conditions of carriage are silent on the issue of the time limit, the CAA's view is that there is still scope for passengers to misinterpret their rights. This is because airlines' conditions of carriage almost always include terms relating to claims for damages under the Montreal Convention[86]. Under the Montreal Convention, passengers seeking damages from the airline, for example due to a delay to their flight, must submit their claim to the airline within two years from the date of the flight. This rule is specified in IATA's standard conditions of carriage. Under the title "Limitation of actions", the standard conditions of carriage state "Any right to Damages shall be extinguished if an action is not brought within two years of the date of arrival at destination, or the date on which the aircraft was scheduled to arrive, or the date on which the carriage stopped".

In the CAA's view, the average passenger is unlikely to be aware of the difference between their rights under the Montreal Convention as compared to Regulation EC261/2004, and is unlikely to be aware of the distinction between 'damages' for a delayed flight and the fixed-sum financial compensation available to passengers under Regulation EC261/2004 for flights delayed by 3 hours or more. The CAA is therefore concerned that terms in airlines' conditions of carriage which limit passengers' rights to claim damages to two years could easily be misinterpreted by passengers as applying to their rights under Regulation EC261/2004.

For this reason, as part of its project on contract terms, the CAA requested that each of the airlines in scope for the project amend their conditions of carriage to make clear that, in England and Wales, the applicable time limit for claims under Regulation EC261/2004 is six years.

The CAA's initial review of conditions of carriage of the fourteen airlines revealed that, whilst they all included terms limiting passengers' rights to claim damages to two years, only Flybe and Jet2[87] had conditions of carriage which made clear that the relevant time limit for claims under Regulation EC261/2004 is six years. Following bilateral discussion with the other airlines, the CAA is pleased to report that now British Airways, easyJet, Norwegian, Ryanair, Thomas Cook, TUI and Virgin also make this time limit clear. The CAA would like to thank these airlines for their cooperation in this matter.

In its discussions with the other airlines, the main reason given for the reluctance to make the time limit for claims under Regulation EC261/2004 clear was that the relevant limitation period differs between different Member States. The CAA accepts that this is the case. However, in the CAA's view this does not stop airlines from

[86] The Montreal Convention 1999 establishes airline liability in the case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo.

[87] The CAA had previously taken enforcement action against Jet2 on the issue of time limits.

specifying the limits that apply in England and Wales. In its discussions with these airlines the CAA explained that they could also satisfy the CAA's request by specifying the time limits that apply in each Member State or, alternatively, by specifying that the six year time limit applies only in England and Wales and that other time limits may apply in other Member States.

Following these further discussions, Emirates added text to its contract terms covering limitation of actions to make it clear that, for claims under Regulation EC261/2004, the limitation period is determined by the law of the court where the claim would be heard. Aer Lingus has also recently committed to making this change. Although such statements fall short of the full transparency preferred by the CAA on time limits, such statements do distinguish between the limitation period for claims under Regulation EC261/2004 and that which applies to claims for damages under the Montreal Convention.

In relation to Wizz Air, following discussions with the airline as part of its application for a UK Air Operator's Certificate and Operating Licence, the airline amended the conditions of carriage for its UK subsidiary[88] airline to make clear that a six year time limit applies in England and Wales for claims under Regulation EC261/2004. However, Wizz Air has not made a similar change to the conditions of carriage of its Hungarian airline. Given that a significant proportion of passengers on Wizz Air's Hungarian airline are UK residents and would therefore be likely to make any claim under the Regulation in the UK, it is not clear to the CAA why Wizz Air has chosen to amend only the conditions of carriage of its UK subsidiary.

The remaining airlines, namely Air France / KLM and Lufthansa have failed to amend their condition of carriage to reflect the six year time limit in England and Wales for claims under Regulation EC261/2004. For the reasons explained above, the CAA remains concerned that the terms in these airlines' conditions of carriage which limit passengers' rights to claim damages to two years could easily be misinterpreted by passengers as applying to their rights under Regulation EC261/2004. The CAA recommends that these airlines review the terms in their conditions of carriage relating to time limits for passenger claims to ensure that they are not misleading.

[88] Wizz Air UK LTD. Currently, this UK subsidiary operates around one-quarter of Wizz Air's flights from the UK.

Oversight: internal process for reviewing contract terms for fairness

In the CAA's view, in order for airlines to be able to assure themselves, on an ongoing basis, that their contract terms, as included in their conditions of carriage, are fair and in compliance with the law, airlines need to have robust internal processes in place for assessing their contract terms for fairness, incorporating factors such as transparency, prominence and the levels of fees and charges linked to contract terms. Therefore, as part of the CAA's bilateral work with the fourteen airlines in the project, it requested information from these airlines on their processes.

It is important to stress that it is not a legal requirement for airlines to have specific processes in place for assessing their contract terms for fairness. Therefore, in assessing the information provided by airlines, it has been necessary for the CAA to apply a degree of subjective judgement. However, as a general proposition, the CAA's view is that, for such processes for reviewing contract terms to be meaningful, reviews would need to be conducted periodically, would need to involve relevant staff from across the airline (in particular staff involved in handling passenger queries and complaints), and would need to incorporate relevant information from across the business on how passengers were being impacted by the airline's contract terms (e.g. complaints data).

Airlines were asked first to provide a general description of how they keep their contract terms under review for fairness, and were then asked to provide supporting information on the frequency with which they review their contract terms, the decision making process for assessing terms for fairness, transparency and prominence, and the process for ensuring that other information provided by the airline (e.g. on its website) is kept up-to-date and consistent with the contract terms and conditions of carriage. In general, the information provided by airlines on each of these points was notable for its lack of detail and the lack of any supporting information. This suggested to the CAA that, in fact, airlines' processes for assessing their contract terms for fairness were probably weak overall and that there was a lack of focus on the types of consumer issues raised by contract terms.

In terms of the process for reviewing contract terms, the most common answer from airlines was that their contract terms are reviewed on an "on-going basis", or that they are reviewed "continuously", or some other variant of this statement. The CAA was not convinced by such statements especially when, as was typical with such

responses, the statements were not backed up with any substantive information on what such a 'continuous' review process entailed. Indeed, one of the airlines that claimed to "constantly review[s] its conditions of carriage" was, in fact, applying a set of conditions of carriage dating from 2012. The CAA considers it unlikely that a conditions of carriage document that was under constant review would not have been amended for such a long time period. In the CAA's opinion, only easyJet and Flybe were able at the time to provide a credible description of a meaningful and proactive process for reviewing their contract terms.

The CAA provided each of the airlines feedback on the findings of its initial review of their processes for ensuring the ongoing fairness of their contract terms. Following on from this, the CAA engaged with each of the airlines in order to assist them in developing their processes and bringing them up to the standard expected by the CAA. We are pleased to report that a number of airlines involved in the project reacted positively to the CAA's initiative. Emirates, Jet2, Norwegian, Thomas Cook, and TUI have now each implemented new processes for proactively reviewing their contract terms for fairness. In each case, the processes involve input from staff from across the airline, including key departments such as customer services and ground operations. British Airways has also recently committed to the CAA to introduce a process for reviewing its contract terms twice per year. Aer Lingus and Virgin have recently agreed to do this on an annual basis. The CAA would also like to recognise easyJet for enhancing its processes and establishing a specific monthly cross-departmental forum where issues relating to its customer policies, including its contract terms, are raised and reviewed. We would like to encourage these airlines to build on the progress that they have made in this area and to keep their oversight processes under review to ensure that they remain effective.

Unfortunately, in respect of the remaining airlines, namely Air France / KLM, Lufthansa, Ryanair, and Wizz Air, the CAA does not have comfort that they have processes in place to assure themselves, on an ongoing basis, that their contract terms are fair and in compliance with the law. The CAA accepts that it is difficult to assess the effectiveness in practice of a process for reviewing contract terms for fairness given the lack of detail in the responses from airlines. Ryanair, for example, strongly disagrees with the CAA's assessment on this point. Given these issues, the CAA intends to keep this area under review and will amend its assessment should it consider this to be appropriate.

Oversight: the levels of fees and charges associated with contract terms

As explained previously, the CAA's consumer research on the fairness of airline contract terms was useful in revealing consumers' views on the factors that drive fairness and unfairness and in helping to understand consumers' overall expectations of what represents a fair deal. The research found that one of the main drivers of fairness for consumers was the difference between the perceived cost to the carrier, for example the cost of processing a refund, and the fee or charge that the airline required the passenger to pay for that service. Focus group participants felt that it would be unfair for airlines to profit from the (sometimes difficult and stressful) circumstances that a passenger might find themselves in when exposed to the fee or charge – for example in needing to print a boarding pass at the airport.

As explained previously, participants in the focus groups generally felt that the fees and charges associated with contract terms were much higher than their perceptions of the actual cost to the carrier. However, participants were also of the view that, if airlines were more transparent about the actual costs to them then, even if this was higher than passengers' perceptions of what these charges should be, they would be more likely to be accepted by passengers and considered to be fair. In the absence of such information, focus group participants generally felt that a nominal fee of between £1 and £10 would be fair in situations where the airline had to perform a straightforward administrative task such as correcting a spelling mistake in a booking, printing a boarding pass at the airport, etc.

As explained in the section above on the relevant law, businesses have greater discretion in setting the fees and charges associated with contract terms than simply to recover the direct costs of performing an administrative task. As set out in the section on the relevant law, businesses are entitled to use their contract terms to encourage certain behaviour on the part of the consumer so as to protect a 'legitimate interest'. However, where these contract terms are coercive in nature, for example in employing the threat of financial sanctions to encourage a consumer to perform certain obligations, a key factor in the assessment of fairness is whether the sanction (e.g. a fee or a charge) is no higher than it needs to be to achieve its objective of protecting the legitimate interest of the business. In the CAA's view, regardless of whether the basis for a particular fee or charge is cost recovery or protecting a legitimate interest, airlines should be able to provide an objective and evidence-based justification for the level of the fee or charge.

Given the points above, as part of the CAA's bilateral work with the fourteen airlines in the project, it requested information from the airlines on how they calculated the level of the fees and charges linked to contract terms. The CAA also asked for supplementary information on the number of passengers that pay the relevant fee or charge each year, the overall revenue generated by such fees and charges and the total cost incurred by the airline associated with the relevant contract terms.

The information provided by airlines to the CAA on these points was generally lacking in detail. In particular, airlines provided little detail on how the levels of the different fees and charges were calculated. Most airlines gave only a very general explanation of this relationship. For example, some airlines provided a general statement that the level of the fee or charge was set so as to recover the cost associated with the task. Other airlines provided a general statement about how fees and charges were set so as to protect their legitimate commercial interests (for example, to protect their revenue from the sale of flexible tickets). Others stated that it was a combination of both of these factors. Some airlines said that it was difficult to attribute costs for the provision of certain facilities, in particular in terms of IT functionality.

There was a similar lack of detail in airlines' responses to the CAA's supplementary questions on the revenue generated by such fees and charges and the costs linked to them, with a number of airlines stating that the information was not readily available or that performing the analysis would not be possible due to the complexity of the airline's operation. Others simply did not answer the question or stated "not applicable". One airline did not provide the requested information on the basis that it was "highly confidential and commercially sensitive".

Although the CAA accepts the principle that airlines have a right to charge a reasonable fee to recover the costs of performing a certain task, or to set a charge at a particular level to protect a legitimate interest, the general lack of detail in airlines' responses to the CAA's questions is concerning. The CAA acknowledges that, in some circumstances, it may be difficult to isolate the costs of the provision of a particular facility or service. However, it must also be accepted that airlines have, ultimately, expressly decided on the level of each fee or charge, and therefore there must be a reason for setting it at a particular level. Even where the level of a fee or charge is set based on an estimate of the costs and by making various assumptions, in the CAA's view airlines should still be able to provide a reasonable justification.

A number of airlines stated that the level of their fees and charges were set in line with the fees and charges levied by other airlines[89]. One airline stated that "The fee is calculated based on the cost and the industry standards". As is explained in earlier sections of this report, the CAA has found that the levels of the fees and charges associated with contract terms vary considerably between airlines. Indeed, in many cases, some airlines will not apply a charge or fee at all. The CAA is therefore not convinced that this explanation demonstrates that these airlines have given appropriate scrutiny to the level of these fees and charges.

Considering the points raised above alongside the CAA's findings on the weaknesses in airlines' general oversight of their contract terms (see earlier section), the CAA is concerned that airlines do not have the necessary depth of understanding of their own operations to assure themselves, on an ongoing basis, that the levels of the fees and charges linked to their contract terms are fair and in compliance with CRA15. Given this conclusion, and given the importance that participants in the CAA's focus groups placed on transparency over how the fees and charges are calculated, it is likely that passengers will continue to view these type of fees and charges as unfair and that airlines are "profiteering" from the (sometimes difficult and stressful) circumstances that passengers find themselves in when exposed to them.

[89] Some airlines also considered that competition between airlines would ensure that fees and charges remain low. However, given what we understand about passengers' level of engagement with airline contract terms, and given the related issues identified by the CAA in relation to the transparency and prominence of these contract terms, the CAA is not convinced that competition between airlines will drive the fees and charges associated with contract terms to a 'fair' level (and one which is consistent with the requirements of the Act).

Summary and next steps

As set out in this report, although only a small minority of passengers are caught out by the rules laid down in the contract between the airline and the passenger, and although issues such as ticket price, convenience and service quality are more important factors in passenger choice, the impact of these rules on individual passengers can be significant. Notwithstanding the diversity of the different service offerings of different airlines, as well as the different approaches that they take to the rules in their contract, it is a legal requirement for these rules to be fair and balanced and for consumers to be able to understand the contract and to be made aware of the contract terms which could catch them out.

Over the course of the CAA's project on the fairness and transparency of airline contract terms, we have sought to understand the basis for these rules and the nature and extent of the economic interests of airlines and passengers that they are designed to protect. On issues such as ticket transfer, correcting a mistake in the name in a booking, using tickets out of order, and requiring passengers to pay for check in and printing a boarding pass at the airport, we have found that there is indeed a rational and objective basis for the existence of the rules, linked to certain legitimate commercial and economic interests.

However, concerns have arisen for us in relation to the proportionality of some of these rules for some airlines, and specifically the (sometimes very significant) consequences for passengers in terms of how much they might be charged, and in their ability to travel as planned, if they do not follow the rules correctly. We have therefore focussed our work with the airlines on exploring whether there are other, more proportionate, means of protecting these interests. In particular, we have considered whether solutions can be found that distinguish genuine passengers that had intended to follow the rules but had failed to do so through no fault of their own, from situations where an individual or organisation is seeking to exploit the rules to gain a financial or commercial advantage over the airline. Another important consideration for us has been the transparency and prominence of the contract terms that are most likely to catch passengers out. In the CAA's view, if passengers are not aware of, or do not understand, the consequences of not following the rules set down in the contract, it is unfair to expect them to be able to comply.

In many cases, airlines have worked with us to make their rules more proportionate and fairer for passengers, as well as more transparent and, for the terms most likely to catch passengers out, more prominent. Over the course of the project a number of

airlines have removed the fees that they charged previously for providing certain facilities or services linked to their contract terms, for example processing refunds of taxes, fees, and charges in situations where the passenger does not travel. A number of other airlines worked with us to implement 'key terms' summary documents to give greater prominence to the contract terms that have the potential to trip passengers up. A number of other airlines undertook wholescale reviews of their contract terms in order to make them simpler and easier to understand for passengers.

As explained in this report, although we feel that we have made substantial progress overall on the fairness, prominence and transparency of the contract terms of the fourteen airlines included in this project, there are still a number of areas where we are not satisfied and where we feel that there is further work to be done. To this end, we will continue to keep the contract terms of each of the airlines in the project under review. We will also write to a broader range of airlines to alert them to this report and to encourage them to review their contract terms for fairness, prominence and transparency, and to adopt the good practices highlighted in this report. We will also continue to consider whether the CAA is best placed to tackle the contract terms issues identified in this report using its legal enforcement powers.

However, we are of the view that, in order to drive a further step-change in the fairness, prominence and transparency of airlines' contract terms, a change to the underlying rules covering airlines' contract terms, and the enforcement of these rules, would be necessary. Unfortunately, the CAA is not a rule-making body in its consumer protection role and its associated enforcement powers are relatively limited. Instead, as part of our response to the Government's Aviation 2050 green paper consultation, we intend to encourage the Government to consider the issues raised in this report and whether there are any further interventions open to it to ensure that the contract terms of all airlines flying to and from the UK are fair and balanced, that consumers are able to understand the contract, and that airlines make consumers aware of the contract terms that could catch them out.

Appendix 1: List of airlines involved in the CAA's project on contract terms

- Aer Lingus
- Air France / KLM
- British Airways
- easyJet
- Emirates
- Flybe
- Jet2
- Lufthansa
- Norwegian
- Ryanair
- Thomas Cook
- TUI
- Virgin
- Wizz Air

Appendix 2: Indicative list of contract terms to be given prominence in a key terms document

- Using tickets out of order (coupon sequence and use). Describe the rights and obligations of the passenger and the airline in cases where the passenger does not take their outbound flight, including what steps the passenger needs to take to retain the return flight if they miss the outbound flight.
- Cancellation. Describe clearly the rights and obligations of the passenger and the airline in cases where (a) the airline cancels the passenger's flight and (b) where the passenger cancels. Describe the amounts that can be refunded (e.g. APD, other unpaid taxes, fees, and charges), the process that passengers need to follow to claim a refund, the amount of any administration fee for processing the refund, and the circumstances in which a full refund or credit note might be provided (e.g. reasons outside the passenger's control, bereavement, illness, etc).
- Changes to flight times. Describe the rights and obligations of the passenger and the airline when the airline changes the flight time.
- Changing details on a ticket. Describe the rights and obligations of the passenger and the airline in cases where the passenger needs to make a change to their booking, for example to correct an error in their booking or to change the name on the booking. Describe the degree to which changes are allowed, the amount of any fee for processing the change, and the circumstances in which a full refund or credit note might be provided.
- Airport check in and re-printing boarding passes. Describe the rights and obligations of the passenger and the airline in cases where the passenger does not check in online and if they arrive at the airport without their boarding pass.
- Non-provision of services. Describe the rights and obligations of the passenger and the airline in cases where the airline fails to provide an on-board service either paid for by the passenger (e.g. a reserved seat) or reasonably expected by the passenger (e.g. in-flight entertainment).
- Codeshares and franchises. Describe the rights and obligations of the passenger and the airline in cases where the passenger is travelling on the services of an airline other than that which they booked with.

- Payment of additional taxes, fees and charges. Describe the rights and obligations of the passenger and the airline in cases where the airline needs to take a further payment from the passenger due to an increase in taxes, fees or charges. Describe also the rights of passengers to claim a refund in cases where taxes, fees or charges decrease.

- Refusal to carry. Describe clearly the circumstances in which the airline might refuse to carry a passenger – e.g. unaccompanied children, pregnant women or passengers who are ill. Describe the rights and obligations of the passenger and the airline in such circumstances.

- Cover for loss or damage of mobility equipment and luggage. Describe any financial limits imposed by the airline and how passengers can make a special declaration to cover high value items.