

Civil Aviation Authority Response to Government Consultation on Improving Price Transparency and Product Information for Consumers

October 2023

Introduction

The CAA, as the UK's aviation regulator, works so that: the aviation industry meets the highest safety standards; consumers have choice, value for money, are protected and treated fairly when they fly; the environmental impact of aviation on local communities is effectively managed and CO2 emissions are reduced through efficient use of airspace; and the aviation industry manages security risks effectively.

The most important responsibility we have is to deliver our core regulatory functions. This means taking independent regulatory decisions to uphold high standards of safety, security and consumer protection, recognising that a weakness across any of these three outcomes impacts the others.

Our main focus for consumer protection is to ensure high levels of compliance with air passenger rights which, in the event of disruption, provide the right to redress and care and assistance, and set clear expectations for air travel to be accessible to passengers regardless of any visible or non-visible disability. We also run the ATOL protection scheme, providing financial protection for air package holidaymakers, and oversee alternative dispute resolution for aviation.

We welcome the Government's consultation on improving price transparency and product information for consumers. Aviation is a highly competitive market, and clear and accurate information from businesses on what is on offer, and at what price, is key to allow consumers to take advantage of that competition. We have recently published our consumer strategy¹ that sets out the importance of consumers being empowered to make the right booking decisions. Given the relatively short time frame to respond to this consultation, we have focussed our response on the proposals on hidden fees and drip pricing.

As the majority of air travel is booked on-line and given the prevalence of on-line third-party agents in the holiday market, we are also interested in developments around online platforms and online interface orders, and on the proposals to protect consumers from fake reviews. We look forward to further engagement on all the issues covered in this consultation.

¹ <https://www.caa.co.uk/our-work/about-us/consumer-strategy/>

Hidden fees and drip pricing

1. The CAA believes that transparent pricing is vital to ensuring that consumers can take advantage of the high levels of competition that we see in the aviation market.
2. We have sector specific regulations (Air Services Regulations² (ASRs) and Package Travel Regulations³ (PTRs)) that mandate the inclusion of all unavoidable and foreseeable taxes, fees, and charges, and states that the price shown must be available to the consumer. We periodically undertake reviews to ensure that businesses meet their obligations in respect of price transparency under the ASRs and PTRs and these reviews have not highlighted systematic non-compliance. Across the sector, however, businesses differentiate themselves by including or disaggregating certain optional services or optional extras.
3. As stated in the consultation document, offering optional extras throughout the booking flow is a form of drip pricing. In aviation, this form of pricing has widely been seen as a key driver in expanding access as those with less to spend can choose the least expensive option and pay a price that does not include services that they either do not use (such as priority boarding or hold luggage) or can manage personally at a lower price (such as entertainment or refreshments). We have also worked with airlines to ensure that optional extras are presented as an opt-in rather than pre-selected, so that consumers have control over their choices.
4. Our concern around these optional extras is how well they are communicated to consumers and to what extent vulnerable consumers are disadvantaged by them. This is particularly significant in reference to the practice of charging for seat allocation. When booking tickets online, many airlines charge their passengers extra to choose a specific seat, meaning that people have to pay more to guarantee sitting with their companion or group. If passengers choose not to pay to select specific seats, they may still be able to sit together but it is not guaranteed, and whilst the reasons for this service to be monetised is less clear than other discretionary services, our primary concern is the lack of clarity on how likely you are to be sat together (i.e. the risk of being separated if not choosing this option). As well as allowing the average consumer to make an informed decision, this is vital information for more vulnerable consumers. CAA safety requirements set out that young children must be sat with an accompanying adult and that those with disabilities who need assistance should

² <https://www.legislation.gov.uk/ukxi/2013/486/contents>

³ <https://www.legislation.gov.uk/ukdsi/2018/9780111168479/contents>

be sat with an accompanying person wherever possible. Our internal analysis shows that there is widespread compliance with these requirements.

5. We welcome the research published to support the consultation and note the assessment of baggage fees as harmful, given the expense relative to the cost of the flight and the timing within the booking flow. It is interesting to see how this, and other practices employed by airlines, compares across sectors. That said, awareness of these additional fees is high amongst consumers booking flights and as stated above, the ability of consumers to purchase a low-cost flight with hand luggage only is viewed by many as an advantage of the market. Our own research into aviation consumer's experience and attitudes⁴ shows consumer satisfaction with the booking process is generally high and has been tracking at over 85% for the last 6 years, with the majority of consumers reporting that it is easy to understand how much it costs to travel with different airlines and to weigh up relevant information when searching for a flight.
6. This suggests that the addition of services and optional extras during the booking flow does not in itself, therefore, cause harm as long as the options are displayed transparently, a comparable cost is available early in the booking flow to help make the right purchasing decision and that there are no high-pressure sales techniques employed to incentivise purchasing extra services when they are not necessary.
7. We look forward to seeing how these proposals develop and suggest a focus on incentivising businesses to ensuring clarity of information to enable consumers to make informed choices, including understanding the consequences of not choosing optional extras, particularly where there the potential for vulnerability.

Question Responses

Q18. To what extent do you think current law protects consumers from any detriment that may be caused by drip pricing?

8. The provisions of the Consumer Protection from Unfair Trading Regulations 2008 ("CPRs"), included in the Digital Markets, Competition and Consumers Bill (DMCC Bill), provide the legal basis for us to challenge businesses where we see evidence of harmful practices. Combined with the ASRs that require transparent up-front pricing, we feel that the existing law is sufficiently clear and comprehensive for aviation consumers⁵.

⁴ <https://www.caa.co.uk/data-and-analysis/uk-aviation-market/consumer-research/analysis-reports/uk-aviation-consumer-survey/>

⁵ <https://www.caa.co.uk/passengers/resolving-travel-problems/how-the-caa-can-help/consumer-protection-law/>

9. We welcome the progress being made in the DMCC Bill to strengthen the tools available to enforce these existing laws, through the additional option to apply to the courts for financial penalties when there has been a breach of consumer law. This will hopefully incentivise compliance in the first instance and should ultimately ensure that businesses employing unfair commercial practices ultimately lose any financial benefits gained from their illegal behaviour. We would urge further consideration of whether these benefits could be extended by providing sector specific regulators with an administrative regime in line with the intended enhancement to the Competition and Market Authorities (CMA) powers, as the most effective way to enable a fast and effective response to non-compliance.

Q19. Are there further steps the Government should take to better explain or promote these rules, to improve consumer protection?

10. The proposal to make the omission of material information a separate unfair commercial practice and an offence is welcome, as would any additional considerations that promote compliance by raising awareness of the legal requirements. We would expect businesses to adhere to CPRs without the need for this, however, and would not accept ignorance of the law as an excuse for employing unfair commercial practices.

Q20. Would an explicit requirement on traders to include all mandatory fixed fees in the up-front price be effective in reducing consumer detriment? Or would better guidance explaining the existing rules be more appropriate?

11. As stated above, we have rules in aviation that achieve this outcome and can see how an explicit requirement for all mandatory fixed fees to be included in the up-front price would reduce consumer harm in other markets, and potentially for aviation consumers booking through third parties. We would also welcome guidance on how to define “mandatory” and how to determine what is genuinely optional (see response to question 26 below).

Q21. Is the provision of mandatory variable fees a problem that Government should seek to address? Please explain the reasons for your answer.

Q22. Should traders be required to make clear the existence of mandatory variable fees, and how they will be calculated, when they display the price for a product? Or would better guidance explaining the existing rules be more appropriate?

12. Taxes, fees and charges on airline tickets will be different depending on a range of factors including the airports used and the final destination. Airlines often state in their small print that if the taxes, fees and charges increase after you have confirmed your booking, they will charge you the increase. This could happen in situations where the Government has increased the Air Passenger Duty tax, where passengers that have already booked may be required to pay

the increase before they travel. In practice, this is very rare, and airlines are required to clearly explain how any increase has been calculated.

13. Passengers booking a package holiday, who are protected by the PTRs, benefit from an upper limit for increases, and are entitled to cancel the booking and receive a full refund if the increases exceed this amount. This may be a model that Government should consider when developing proposals around variable fees⁶.
14. Some airlines advise that if the taxes, fees, and charges are reduced or abolished after you have paid for your ticket, you will be entitled to a refund. Not all airlines advise of this, but we consider that it is fair to have this refunded, particularly where airlines reserve the right to pass increases back to passengers. When considering proposals that allow for mandatory variable fees to increase, we would suggest considering a counter requirement for traders to reduce costs or offer refunds when the same fees decrease.

Q23. Are there any circumstances in which traders would not be able to inform consumers about the existence of mandatory variable fees and how they will be calculated at the time of providing them with the price of a product?

15. For airline tickets and flight inclusive packages, mandatory fees are included and displayed as part of the ticket price. These fees include those covered by the ASRs and we do not see any scenario where the airline or tour operators would not be able to inform the consumer.

Q24. When should traders that provide optional fees for products present these to consumers in the purchasing process? Please explain the reasons for your answer.

16. Our experience suggests that there are high levels of awareness amongst aviation consumers that airlines offer additional services through the booking flow, including items that many consumers consider essential for their personal circumstances. We believe that information on how these extras are calculated should be available separately to the booking flow and early in the purchasing process to allow informed decisions. Transparency and communication around the available options is key, whilst maintaining the ability to purchase the most basic option if that is the most suitable. For additional clarity, we would like to see more consistency amongst airlines on definitions and limitations, such as the dimension of hand luggage, but appreciate that variances in aircraft specifications and seat configurations makes this challenging.

⁶ The price of the package may only be increased if certain costs rise (for instance fuel prices, tourist taxes), and if expressly provided for in the contract, and in any event not later than 20 days before the start of the package. If the price increase exceeds 8% of the price of the package, the traveller may terminate the contract.

Q25. Are there any types of optional fees that cannot be presented to consumers early in the purchasing process? If so, what are these, and why?

Q26. Are there any other features of products or services that are presented as optional fees but are in practice unavoidable for most, or certain groups of consumers? For example, is it really optional, when buying airplane tickets for parents with young children to choose to sit together?

17. As stated above, charging for seat allocation is a concern when it affects consumers in vulnerable circumstances. For safety reasons, airlines must not separate children under 12 from an accompanying adult, and our work to promote accessibility has ensured that carers will be seated with those they are assisting at no extra charge. When resource allows, we would like to consider further what can be done to improve communications around airline policies and will be reviewing whether certain airline practice would constitute a breach of existing unfair commercial practice legislation.
18. We would also be interested in the development of definitions or thresholds for assessing whether an optional service could be considered unavoidable and look forward to further engagement on the development of such definitions.

Q27. In what circumstances might it be reasonable for traders to charge for features that are presented as optional but are in practice unavoidable for certain groups of consumers? What might the consequences be of any action to limit this practice?

19. Where a charge is unavoidable due to personal characteristics that may define the consumer as vulnerable, we would expect the airline to waive the fee, for example where priority boarding or specific seat allocation is required due to a mobility impairment, or for the carriage of specific aids or equipment for disabled passengers.
20. We would encourage a focus on vulnerable consumers when developing proposals around the inclusion of specific features or tailoring of price presentation to personal needs.

Q28. Should the law be strengthened to address optional dripped fees that are detrimental to consumers, or should guidance be produced for specific sectors that sets out how to provide optional fees in a way that is fair, transparent, and lawful?

Please explain the reasons for your answer.

Q29. Should any guidance that is produced on optional fees be targeted to specific sectors? If so, which sectors should guidance focus on?

21. Industry specific guidance would be hugely beneficial given the existence of sector specific legislation that complements wider consumer rights legislation. Where there is a sector regulator, we see benefits in this being developed as a joint publication between the Government and the regulator. This has been

effective in the past when we have worked the then Office of Fair Trading and with the Department for Transport on guidance for airlines and tour operators. This is a great way to ensure a joined-up approach to the interpretation of the existing law and to signal to industry that the different agencies are equally committed to promoting positive changes for the benefit of consumers.