

# Consumer Panel minutes

## 12-4pm Thursday 24 October 2019

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### Attendees

#### Consumer Panel

Jenny Willott (JW) Panel Chair

Trisha McAuley (TM)  
David Thomas (DT)  
Walter Merricks (WM)  
Jacqueline Minor (JM)  
Claire Whyley (CW)  
Carol Brennan (CB)  
Helen Dolphin (HD)

Helen Swanbury (HS) Panel secretariat

### Invited guests

Stephen Dunne (NS)	Centre for Data Ethics and Innovation (CDEI) (Item 2)
Martin Harrison (MH)	ICF (Item 3)
Alvaro Ponte (AP)	ICF (Item 3)
Matt Buffey (MB) by Skype	CAA, CMG (Item 5)
David Oastler (DO)	CAA, CSP (Item 6)
Tim Johnson (TJ)	CAA, CSP (Item 6 onwards)

### Declaration of interests

None.

## 1. Introduction

JW opened the meeting with a brief introduction of the Panel's first guest, Stephen Dunne from Centre for Data Ethics and Innovation. She explained the Panel's interest in the topic of data driven technology and online sales practices affecting aviation consumers. She also reminded the Panel that SD's presentation would be followed by an overview of how we can use newly available airline operational data to better understand disruption management from Martin Harrison and Alvaro Ponte from consultancy firm ICF.

## 2. Centre for Data Ethics and Innovation

SD introduced himself and explained that the Centre for Data Ethics and Innovation (CDEI) was created as an independent advisory body to direct policy development in response to the emergence of data driven technology. The CDEI has been tasked with assessing public attitudes to the use of data to target users with specific content and products online.

SD presented a set of slides summarising the investigation that CDEI undertook to investigate attitudes. He explained the extent to which artificial intelligence and data driven technology are used across all internet platforms and identified the potential risks that occur when certain biases are built into algorithms. Many websites and apps now identify where and how data is being used but it is often not obvious that personalisation is occurring and not clear how a user can avoid it. Respondents in the investigation were aware of some level of data collection and targeting but were surprised at the breadth and depth of data held.

Respondents expressed some concern that this undermined choice but also understood the benefit in allowing websites and search engines to select relevant information for them. The study also identified concerns over inappropriate or unethical material being shared as the result of a decision by an algorithm and the potential for discrimination, specifically for protected characteristics where the example of job adverts was discussed. SD explained that the algorithms in use are also very good at identifying vulnerability as they are designed to interpret observed behaviour, which again raised concerns but shows how this level of behavioural analysis has the potential to help identify where intervention is needed. Facebook for example will post items from Samaritans where data suggests a user is at risk of self-harm or suicide.

The CDEI have found no evidence of price discrimination as a result of data driven online interactions, but SD agreed with the Panel that this would be difficult to identify and that a lack of evidence does not necessarily mean that this is not happening. SD pointed to the history of dynamic pricing in aviation as an example of how difficult it is to identify the factors that lead to a specific price being presented. In some cases, data allows targeted discounts and special offers, but it may also dictate a consumer's opportunity to access certain goods and services by only presenting certain products.

Taking this forward, SD explained the limitations of relying on consumer choice to affect change was discussed in reference to search engines as large, data gathering companies such as Google provide a better service than small, ethical sites, and the larger sites do demonstrate some degree of ethical consideration such as if a user searches for anti-vaccination they will be presented with reputable medical advice first. SD explained that this typifies the problem and brings up ethical issues of intervention as, along with the Facebook example above, the businesses are interpreting what the user needs rather than what they want.

SD advised the Panel that the CDEI expect to publish a full report with recommendations for Government before the end of the year. This will cover what has been observed and how data is being used online and also a summary of harms and risks. It will also set out what governance already exists and what the public expect from government. JW thanked SD for attending and wished him all the best for the upcoming publication.

### 3. Data and Air Passenger Rights

Martin Harrison (MH) introduced himself and gave the panel an overview of his experience working in industry and his role now as a consultant at ICF. He explained that over his career data availability has changed drastically and means that there is now a significant amount of intelligence that can be used to help airlines manage their business and provide consumers with information about services. MH gave the example of flight tracking software that has been developed in response to the disappearance of MH370 which has a range of uses. The aim of ICF is to bring together all the different data sources to create a picture of what is happening in the industry.

MB's presentation demonstrated how airlines schedule flights to keep an aircraft in near constant use, explaining why there are so many knock-on delays following a technical issue. He explained how performance data can help build resilience into a timetable for the benefit of airlines and passengers, and how an airline's planning assumptions should be considered when assessing a defence against EC261 claims that an airline has taken all reasonable measures to avoid a delay.

In reference to complaints and compensation claims, MH stated that the performance data has great potential for helping ADR bodies assess a case on the facts, potentially removing the need for legally trained staff to be employed as the level of judgment required would be reduced. For example, if the data showed that all airlines operating the same route or using the same airport suffered the same or similar delays, ADR claims assessors could be confident that the delay was out of the airline's control. MH suggested that this could be developed to eventually allow compensation to be paid automatically.

Improved efficiencies in ADR was stated as a commercial incentive to encourage airlines to make more data available. At the moment, ICF work with airlines who operate loyalty schemes where performance data is useful for mitigating the damage to repeat business caused by delays. The Panel also discussed the idea that data could be used for infrastructure management to identify where resources are required.

The Panel commented that there was great potential for performance data to be used widely by air passengers in the same way that rail passenger access real-time information on their journeys. JW thanked MH and his colleague AP for the insightful presentation and for attending the meeting.

### 4. ADR Proposals

The Panel were joined by MB by Skype. MB explained that the CAA have been considering issues raised by airlines concerning the application of the extraordinary circumstances derogation in scenarios where the law is unclear. MB cited Jet2.com's response to the DfT's Aviation Strategy green paper which captures these concerns.

The CAA's has developed proposals to address these and other issues which will be subject to consultation. MB explained that the ADR bodies would be able to decide whether to adhere to the proposed changes. Concerns were raised that the proposals could result in the airlines setting the agenda and defining the issues, and that the changes proposed would not incentivise greater sign up to a voluntary scheme. The Panel were also concerned that this element of choice would make ADR more complex for consumers as processes and expectations would differ.

The panel were keen to stress the importance of transparency so that consumers can better understand how their complaint will be handled before they escalate it to ADR and to better understand how the decision on their case was reached once it is resolved. For example, there could be more clarity on the ADR body's process for approaching regularly occurring scenarios. It was

agreed that communication by the ADR provider was key and that issues of transparency should be considered further.

The Panel questioned whether the current regime allowed the CAA to make full use of the intelligence available from ADR bodies. Other sectoral regulators gathered information on trends and implications from the volume and types of complaints being escalated. MB stated that the CAA were always keen to learn best practice and agreed to continue this conversation outside of committee.

## 5. Brexit Update

DO joined the meeting to provide an update on the actions taken by the CAA to prepare for Brexit. He explained that whilst the 31 October date for leaving was no-longer an option and despite the passing of legislation to prevent the UK leaving without a deal, a no-deal exit was still a possibility and that the CAA's preparations were made with this in mind. DO explained that the UK Government had taken steps to ensure that EU legislation would continue to apply in UK law after the exit date. To give effect to this, statutory instruments were required and have all been created and signed off for aviation.

In the no-deal scenario, the UK will no longer be subject to third party agreements and new safety agreements have therefore been prepared. The CAA has also taken steps to ensure that the impact on UK businesses is minimised by assisting airline personal with the required certifications and authorisations. This has been largely successful, but the CAA is aware that there are likely to be SMEs who have not engaged with the CAA and may be adversely affected.

The CAA's will assist the Government with Operation Yellowhammer and has developed internal contingency plans to complement these activities. The main focus of these is to ensure that UK passengers can continue to fly, and UK businesses continue to operate. The main issue facing UK passengers concerns passport validity and security delays which the CAA is mindful of but not in a position to directly influence.

## 6. CAA Update

TJ provided an overview of Project Matterhorn, the operation undertaken to help passenger affected by the collapse of Thomas Cook. During the two weeks following the failure of the tour operator, the CAA arrange the repatriation of over 140,000 passengers. Approximately 60% of these were ATOL protected having bought a package holiday, the remaining 40% with bookings to fly on Thomas Cook airlines. Over 90% of passengers returned to the UK on the day of their original flight. Where flights were consolidated, passengers were provided with transport to their original arrival airport and were greeted by CAA colleagues who provided advice regarding their onward journey as well as a hot drink and snack. TJ explained how such gestures were instrumental for minimising the stress experienced by these passengers and the panel identified how this was an example of how individuals can be made vulnerable by circumstances out of their control and how effective such mitigation can be.

The operation raised some questions over entitlement to repatriation. The ATOL scheme and Air Travel Trust Fund are designed to help passengers on package holidays. For both Thomas Cook and the failure of Monarch in 2017 the DfT have asked the CAA to repatriate those due to return with the airline even where they were not part of an ATOL protected package. These issues were considered as part of the DfT's Airline Insolvency Review published earlier this year. The proposal to allow the CAA to "keep the fleet flying" was discussed as a priority outcome and TJ explained that

this proposal had been included in the Queen's Speech and therefore likely to be the first recommendation adopted. Further consideration is needed into funding of repatriation arrangements as there is likely to be some scrutiny into the costs of Thomas Cook met by taxpayers and questions over funding if the CAA is asked to manage any future airline failures.

TJ explained that following the successful repatriation exercise, the CAA now has the task of managing refunds for future holidays. ATOL colleagues managing this aspect of the failure have been hampered by poor quality data and attempted fraud. That said, passengers who paid by Direct Debit or credit card have already had their refunds processed and TJ advised the Panel that those who paid by other means have access to an online claim form and claims agencies employed by the CAA are actively processing these now.

Operation Matterhorn diverted CAA resources from their day job and the CAA has therefore had to delay and reconsider some of its immediate strategic priorities. TJ explained that the CAA is assessing the impact that Matterhorn has had on these priorities and how to respond appropriately, in respect of insolvency protection and other lessons learnt. TJ also explained that the new ministerial team at the DfT have their own priorities, meaning that much of the consumer focussed work that the CAA and Panel have been assisting them with is now on hold. There is now a clearer focus on environmental issues following the publication of a report by the Committee on Climate Change and greater interest in General Aviation.

## **7. Panel Workplan 2020-21**

The Consumer Panel published its last workplan in August 2018 following the panel refresh. This contained details of the activities planned up to March 2020. The panel were asked to consider items for the next workplan which will run from April 2020 to March 2021 and to decide how best to respond to the strategic issues raised during the CAA update. The following ideas were discussed:

- Heathrow – The panel received an overview of economic regulation and developments at Heathrow in July and expect BC to attend the Panel in October 2020 to provide further updates. In advance of this session, the panel could consider issues relating to the charging model in operation to take account of intergenerational fairness, infrastructure funding and benefits to incentivise new entrants.
- Disruption Management – This is contained in the 2018-2020 workplan but is not expected to be completed before the new plan period begins. This should therefore be included in the new workplan with reference to the work undertaken on data availability and consumer information requirements. TM also reminded the group of the offer of assistance from the AOA.
- Environmental Issues - As this issue gains prominence, there is a role for the Panel in helping understand consumer attitudes and considering the role of the CAA in managing or presenting the trade-offs available to consumers wishing to manage their carbon footprint.
- Brexit Policy Response – The Panel may wish to consider how air passenger rights that originate in EU law may be amended or enhanced following Brexit in readiness for a possible push from industry for a review of these regulations by the UK Government.
- Air Passenger Attitudes – There may be a role for the panel in considering public attitudes to safety regulations, issues around the consumer satisfaction score declining in the Aviation Consumer Survey and the public's appetite for innovation.
- Economic/Airport Regulation - Passengers at an airport need to become consumers of the airport services to fully engage and drive industry improvements. The Panel would also like to consider issues relating to the rebuttal assumption in regulation.

- ADR/Complaints Handling – Issues around redress remain a key concern for the Panel and an item should be considered for the workplan around influencing CAA and Government policy in this area.

JW thanked the Panel for their ideas. JW and HS will work with Harriet Gamper (HG) on her return from maternity leave to design a workplan that addresses as much of this as possible. Further communication should be expected out of committee and an item to finalise the plan will be included in the agenda for the January Panel meeting.

## **8. A.O.B**

HS explained that the item on consumer information that was intended for this Panel meeting was delayed to allow time in the agenda for an in-depth update on Matterhorn and because she was working on Matterhorn herself. This will be on the agenda in January.

HS advised that, on the subject of Matterhorn, the Consumer Panel inbox had received messages of thanks from passengers helped by the CAA and that the Panel wished to pass on their congratulations to the CAA on a well-run operation.

Following a presentation and discussion with the Consumer Panel in May, the CAA's Innovation Hub approached HS in her capacity as CAA Consumer Policy Principal for input on consumer risks in its development of a regulatory approach to air taxis. This is a good example of the impact of the Panel on CAA policy development.

The next Panel meeting will take place 23<sup>rd</sup> January 2020. By this point, secretarial support will have reverted to HG who is due to return from maternity leave in November. HG will be supported by CSP colleague Carol Cairns (CC) and HS will attend as a CAA representative when relevant issues arise. HG will confirm or amend the meeting dates proposed for 2020 in due course.