

CAA Consumer Panel Response to Aviation 2050 — the future of UK aviation

The CAA's Consumer Panel endorses the DfT's aspirations set out in its green paper, Aviation 2050. Developing a long-term strategy is vital to ensure that the consumer interest is embedded in policy making and the Panel looks forward to working with the CAA and DfT as these policies are developed further.

Consumers should be at the heart of all DfT policy with explicit reference to consumer outcomes across the range of proposals. As presented, the consumer focus is contained primarily in "Chapter 5: Enhance the passenger experience" and the Panel has therefore responded directly to the questions posed in that chapter. We believe that the final Strategy needs to reflect a stronger consumer focus throughout, for example, on competition and growth. It is ultimately consumers that drive effective competition and, in turn, business growth and sustainability, and we therefore urge the DfT to ensure that the consumer interest does not remain "siloes" in one section.

The main proposal in Chapter 5 is for the development of a Passenger Charter. The Panel supports this proposal and agrees that the creation of a set of clear industry commitments backed up by effective guidance and with appropriate performance measurements has the potential to deliver considerable improvements for consumers.

The green paper states that the starting position is for industry to voluntarily agree to adhere to best practice guidelines. Where there are gaps in the regulatory landscape, the Panel agrees that voluntary commitments could improve standards and understands that voluntary arrangements are easier to implement and could be established in relatively short time frames. The Panel however cautions the DfT to ensure that the governance of such commitments is effective to guarantee that businesses are truly held accountable for their actions and not merely rewarded for signing up to a commitment that they may not deliver.

It is also important to maintain a clear distinction between the proposed content of the charter that is based on identified areas for improvement, such as complaints handling and consistent policies concerning food allergies, and areas where there are clear and well-established legal rights and obligations, such as access to air travel for passengers with reduced mobility and where compensation is due following a cancellation or long delay.

Passengers must be able to see straightaway whether an item is a legal right or merely best practice. It must also be made clear how such rights can be enforced so passengers have all the information they need in one place. The Panel therefore suggests two separate vehicles to avoid any confusion.

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To be truly effective, the proposals must be underpinned by robust and effective information and enforcement powers for the CAA. The limitations with the current information duty mean that the CAA is able to request information already held by airlines but only able to compel its provision where it can demonstrate that the information would have an impact on consumers' behaviour. The CAA also has to rely on enforcement powers contained in Part 8 of the Enterprise Act 2012 meaning that the remedies available are often not flexible enough to deal with the aviation market. The Panel are concerned that a regime based on tackling future behaviour and which is slow to administer allows businesses to benefit commercially from non-compliance and believes that a commitment to strengthening CAA powers to achieve positive consumer outcomes should be central to the aviation strategy going forward

In addition to our detailed comments below on Chapter 5, the Panel also has an interest in proposals set out elsewhere in the green paper.

The Panel is supportive of measures to provide greater choice and incentivise the use of less environmentally impactful modes of transport when travelling to and from airports - as set out in "Chapter 3: Ensure aviation can grow sustainably" - but seeks assurance that these developments take into account accessibility issues and do not create barriers for passengers with specific mobility needs that may best be addressed through car travel.

The Panel also sees great potential in the measures set out in "Chapter 8: Encourages innovation and new technology" on ways to improve quality and openness of data including the proposal for an Aviation Data Action Plan. The Panel is committed to working with the CAA over the coming year to map the data that is currently available to inform consumer choice and to see what gaps exist. This work will consider how consumers make use of information and the role of third parties in increasing informed choice and the Panel would be happy to share its findings with the DfT when this work is concluded.

If you wish to meet to discuss any of the points in this letter in more detail or if the Panel can be of any further assistance please contact helen.swanbury@caa.co.uk.

Yours sincerely,



Jenny Willott
CAA Consumer Panel Chair

Chapter 5: Enhance the passenger experience

(Questions and paragraph numbers extracted from DfT's response form)

42. This section contains questions on chapter 5 of the consultation document - Enhance the passenger experience. Which of the following topic areas are of interest to you as an individual or to the organisation on behalf of which you are answering? (choose all relevant options)

x	Passenger charter
x	Passengers with additional needs
x	Disruptive passengers and alcohol
x	Experience at the border
x	Delays, complaints and compensation
x	Airline failure
x	Booking information

43. To what extent does the proposed Passenger Charter adequately address the issues that are most important to passengers?

The Panel believes that, used correctly with appropriate monitoring and sanctions, the proposed Passenger Charter has the potential to deliver improvements to areas that are important to consumers.

Where the content is already covered by aviation specific or generally applicable consumer legislation, the Panel agrees that inclusion in a charter could be effective in improving awareness amongst consumers of their rights and shining a light on businesses who persistently fail to comply.

For the measures where the DfT is seeking to improve outcomes for consumer through voluntary commitments, the Panel agrees that a charter could be a powerful tool in filling in the regulatory gaps. Since the aviation strategy aims to set the policy agenda for the next 30 years, the Panel would like reassurance that it will take this opportunity to enact a framework of statutory powers to enable such gaps to be addressed as the needs arise. This would send a clear signal to industry that these important consumer issues are a high priority for Government and the regulator. There should also be an agreed review date for assessing the effectiveness of the voluntary charter in delivering meaningful consumer outcomes.

The Panel also urges the DfT to make clear the distinction between legal requirements and voluntary commitments. As well as the specific topics identified, transparency and clarity

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are vitally important to consumers, so the Panel recommends strongly that legal requirements and voluntary commitments are distinct from each other, either as clearly defined sections of the same charter or as distinct charters presented separately. A key aim of the Charter is to provide a single portal for consumers to have information about the market and the standards they should expect. Not to clearly distinguish between legal rights and voluntary standards will only increase consumer confusion not alleviate it.

The Panel also believes that the charter will only address the issues that are important to consumers if there is independent governance. The CAA is clearly well placed to monitor some elements of the charter, assuming it has appropriate powers and resource (for example accessibility, disruption management and compensation rights and complaints handling). Elsewhere, the DfT must establish effective oversight to ensure that the charter does not perpetuate the worst elements of self-regulation by placing undue confidence in the whole of the industry to act in the best interests of consumers on the assumption that it is in their commercial interest to do so.

Of the topics identified for inclusion in the charter, the Panel believes that the most effective and consumer-focused opportunities exist where there are currently gaps in the regulatory regime, such as for complaints handling.

Research conducted by the CAA demonstrates low satisfaction levels with complaints handling, with only 64% reportedly being satisfied with how their complaint was handled ([CAA Aviation Consumer Survey, December 2018](#)). The creation of a code of practice for complaints handling contained in a charter provides an opportunity to drive improvements in a relatively short timeframe which should be a key aim for the DfT and CAA in delivering tangible consumer outcomes.

Relying on performance indicators to drive improvements has so far had limited impact in this area and the Panel note that recent experience in using data publication to drive improvement has not been encouraging. The CAA publishes [data](#) from the Alternative Dispute Resolution (ADR) bodies which show consistently high rates of uphold of consumer complaints. High uphold rates strongly suggest that most consumers accessing ADR schemes had a valid complaint that had been wrongly dismissed by airlines. Figures for the last published quarter (Jun-Aug 2018) reveal some very high uphold rates, including Easyjet 82% and British Airways 61%. How the charter performance indicators are presented will be key in ensuring the desired outcomes for improved performance are met and published.

44. How should the operating model for border service be designed to improve the passenger experience?

The evidence shows that the experience at arrivals and border control is a key area of consumer dissatisfaction. The Panel believes that security should be balanced appropriately with customer service to enhance the passenger experience. The Aviation Strategy is a key

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opportunity to review Service Level Agreements (SLAs) and key performance indicators (KPIs) which have been in place, without change, for many years. The Panel believes that, in addition to the legitimate security concerns, SLAs should be also driven by consumer insights, a key gap at the moment. Current KPIs are numerically target driven, which fails to acknowledge or understand the qualitative consumer experience and means that current standards only impact a certain percentage of passengers. Average waiting times mask significant differences throughout the day, with many passengers still experiencing poor service because average times are used to determine overall service standards. In designing an operating model and setting SLAs, the needs of vulnerable passengers and those with accessibility or mobility issues must also be considered.

The Panel understands the resource restraints faced by Borderforce, but a consumer-focused service is not necessarily more resource-intensive – it's about doing things differently to make the service work for everyone, including Borderforce and the airport. The Panel recommends that the DfT explores closely, with Borderforce and the aviation industry, how the use of data can improve the consumer experience, for example, by using flight data more effectively to match Borderforce resource with incoming flights.

Policy proposals

The questions in the section below refer to policy proposals contained in chapter 5 of the consultation document - Enhance the passenger experience. As with the rest of this consultation, you are welcome to respond to any, all or none of the questions in this section.

45. How could the policy proposals be improved to maximise their impact and effectiveness in addressing the issues that have been identified?

Passenger Charter

The proposal states that the industry would sign up and adhere to the charter on a voluntary basis. The Panel believes the impact of the charter would be maximised if adherence to it was underpinned by legislation. As a minimum, this should compel industry to provide regular and accurate comparable performance data to the CAA.

The introduction of a charter as a central point for legislative requirements and voluntary measures provides an excellent opportunity for the Government to clarify the CAA's role in regard to consumer rights and to strengthen the CAA's consumer remit and enforcement powers.

CAA Enforcement Powers

The Panel supports proposals for the CAA to have additional enforcement powers to call upon when seeking compliance with EC261 and EC1107. As the enforcement body for these specific air passenger rights and with the power to enforce generic consumer rights in

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aviation, the CAA has managed to achieve positive outcomes for consumers when seeking compliance with the law. The Panel believe that the CAA could achieve much more with a clear consumer remit and greater powers.

The Panel note with interest the recommendations made by the Chair of the Competition and Markets Authority in a letter to the Secretary of State for Business, Energy and Industrial Strategy outlining proposals for reform of the competition and consumer protection regimes. This refers to the limitations of relying on Enterprise Act powers to address non-compliance and the importance of having effective, legally enforceable remedies that can be imposed at an appropriate time. The Panel is also aware that the CAA has to rely on the Enterprise Act powers more than other sectoral regulators, such as the FCA, Ofgem and Ofcom, who have clear information powers, can set financial penalties and can correct behaviour through licensing conditions.

Role for Transport Focus

The DfT have identified the need for a strong voice for consumers and have proposed extending the role of Transport Focus. However, the Panel believes that any consideration of consumer advocacy in the aviation sector should be driven by, and based on, recognised, sound principles for an effective consumer advocacy body, rather than focusing on any particular organisation. Form should follow function.

If the DfT are seeking to strengthen advocacy in general for air passengers, the Panel believes that the following key principles of advocacy should be the drivers. These include clear independence from government and a robust evidence base, which the Panel believes should be wide-ranging and multi-dimensional. Other essential features include a strong basis in statute, demonstrable connectedness with the consumer experience and strong relationships with those it seeks to influence including the regulator and industry, as well as providing good value for money. In a complex market, an effective consumer body needs to demonstrate an ability to formulate practical policy solutions on the basis of evidence, together with leadership in bringing all stakeholders together to build consensus for sustainable change.

Transport Focus does provide a vital service for rail and bus passengers and road users, using survey methods to capture satisfaction and identify areas for improvement. This could be of particular value when considering cross-modal access issues and comparing air travel with other forms of transport where such a comparison is appropriate.

When looking for intelligence specifically about air travel, the Panel believe that the work undertaken on the Aviation Consumer Survey and by the CAA's departing passenger survey provides the vital insights needed to direct CAA and DfT policymakers. The design of these surveys means that the CAA has a canon of comparable information to call upon and also the freedom to consider emerging issues, for example, seeking views on the impact of poor complaints handling on future booking decisions.

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The Panel re-iterates that stronger consideration of what an aviation consumer body should be set up to achieve should drive consideration of the form that should deliver it. The DfT should then look across the different consumer body models that exist, including the statutory consumer panels in financial and legal services, and in communications. The Panel would be happy to discuss this in more detail with the DfT to help develop this proposal further.

Airline Insolvency

Chapter 5 states that the DfT will consider the recommendations of the Airline Insolvency Review which was published in May 2019. The Panel would like to take this opportunity to endorse the proposal for a Flight Protection Scheme to repatriate passengers abroad when an airline failure occurs. This would close a gap in financial protection that has the potential to cause significant consumer harm.

The conclusion that the Flight Protection Scheme should be paid for by industry and managed by the CAA seems sensible. The recommended means of meeting the costs through security provisions and a small levy on airlines (that would inevitably be passed on to consumers) appears a fair way to protect the taxpayer from bearing the burden whilst also ensuring that UK consumers are not significantly disadvantaged financially.

Government, CAA and other stakeholders should be encouraged to address the challenges, which the Panel recognises are complex, identified to 'keep the fleet flying'. This is clearly the most cost-effective method and the least disruptive for affected consumers with similar efforts proving effective in past disruption handled by the CAA. Where the proposals recommend that the CAA takes on new additional responsibility, the Panel supports this as an opportunity to make use of the CAA's expertise and experience but also seeks a commitment from Government that appropriate resource will be available so that this does not have a detrimental impact on the work already undertaken to protect consumers.

Recommendations for a code of conduct for rescue fares are also welcomed by the Panel. Commitments regarding price and availability could easily be developed into an undertaking for inclusion in the Passenger Charter. The charter may also have a role to play in raising awareness of the means by which consumers can protect themselves against the cost of failure, requiring airlines to provide information on what to look for when buying travel insurance or advising customers of the protection available when paying by credit card.

46. How should the proposals described be prioritised, based on their importance and urgency?

The Panel would like to see the proposals that could have the greatest impact implemented as a priority but also see the value in focussing on the elements where there is already a

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clear framework that can be built upon, such as measures to improve compliance with EC261 and EC1107.

The CAA has achieved significant improvement in compliance with both of these key pieces of consumer legislation and the Panel sees this work as a strong foundation that can be developed into a framework or set of principles for inclusion in a charter. In addition, the Panel has developed a set of complaints handling principles which it believes would make a strong starting point for best practice guidelines for complaints and redress.

For accessibility proposals, the Panel feels strongly that the focus should be on establishing consistent, high quality service to allow maximum access, using the charter to set out the expectations for delivery of this service and co-operation amongst various industry players. It sees the proposal for specifics around wheelchair design as a secondary priority and urges caution that a focus on such detail does not distract from gaining widespread improvements for all users with special needs.

It also believes that the emphasis should incorporate vulnerability beyond physical access requirements and that the DfT should seek a commitment from industry in respect of vulnerable consumers and recognition of the role that businesses play in creating and responding to vulnerability. This approach is now widely accepted as good practice in many other sectors, and by the UKRN. If implemented successfully, this would then allow for other priority issues to be addressed such as agreed guidelines for allergy sufferers and the steps to address disruptive behaviour.

47. What implementation issues need to be considered and how should these be approached? (e.g. resourcing challenges, high levels of complexity, process redesign, demanding timelines)

The main implementation issue that the Panel would like the DfT to be mindful of is the potential for the compliance work currently undertaken by the CAA to be undermined.

The publication of compliance reports has proved effective in nudging businesses to make improvements before the CAA view of their policies and practices are reported upon. This is more nuanced than a simple publication of performance indicators or rankings.

The Panel sees a requirement for the publication of data as a significant move in pushing for improvements in areas that are *not* currently the subject of regulation but are aware that this may not be a quick process as participants would need to make the necessary adjustments to capture, store and provide this data.

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The Panel would also like to reiterate the need for strong enforcement powers for the CAA to make sure that the charter can deliver the desired outcomes and that the consumer enforcement activities undertaken by the CAA are as effective as they can be.

48. What are the financial burdens that need to be managed and how might those be addressed?

The proposals aim to ensure compliance with existing legal requirements and the adoption of good business practices. The Panel does not therefore see this as having any significant additional financial burden beyond that which already exists for a well-run business.

49. What are the regulatory burdens that need to be managed and how might these be addressed?

If developed effectively, the charter should contain no more onerous requirements than the business would put on itself to meet its customers' needs. This includes monitoring key performance to demonstrate compliance with the charter.

If this is not the case, the CAA should be concerned that the businesses do not have effective governance and monitoring in place and the travelling public should be made aware that these businesses are not addressing customers' poor experiences.

If done properly, the Panel sees compliance and performance monitoring as a benefit to business. Any improvement made to internal governance in response to the requirements of the charter should be welcomed by all stakeholders.

50. Are there any options or policy approaches that have not been included in this chapter that should be considered for inclusion in the Aviation Strategy?

Chapter 5 states that the DfT, through the development of the Passenger Charter, will review ADR to ensure it is working in the best interests of consumers. It further states that it will encourage the industry to offer ADR to all passengers. If insufficient progress is made on a voluntary basis, the government will consider mandating it in the future.

The Panel's view has consistently been that mandating ADR is crucial. The current situation is that airlines are permitted to decide whether to offer their customers access to an ADR scheme, and if so which one of the two CAA approved schemes. In December 2017, noting that at that time 80% of UK passengers were covered by ADR, the CAA urged some of the

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remaining large airlines namely, Jet2 and AerLingus, to join an ADR scheme. Since then these airlines have remained unmoved by the CAA's pleas.

The recent episode in which Ryanair, one of the largest carriers of UK consumers, withdrew from an ADR scheme is clear evidence of the unsatisfactory nature of the current position. Ryanair's escalated complaints have now fallen to the CAA's PACT scheme in which outcomes are not binding. There is a risk that other airlines may follow suit. Far from progress towards 100% coverage advancing on a voluntary basis, the position has become worse, and the case for the government to make mandatory the offer of ADR to all passengers is stronger than ever.

The Panel's view is that a single provider would provide better outcomes for consumers. A single provider – an ombudsman - will also have the ability to be a voice in the sector, sharing good practice, providing consistent decision-making, highlighting emerging issues, feeding issues back to consumers, industry and regulators, and having a comprehensive overview of issues giving rise to complaints and to the complaints handling behaviour of all participants.

Moreover, where there are multiple schemes, experience in other sectors has shown that companies move between schemes if they don't agree with one or the other. For any ADR providers, there should be clear performance standards and a means of accountability to the regulator. We also believe that the Government should review the remit of ADR and broaden it so that cases of poor service standards, which currently fall through the gaps, can be referred to ADR alongside the current potential breaches.

The Panel's view is that access to ADR should be available for all complaints about UK airports and not confined to those relating to passengers with reduced mobility under EC1107. A single ombudsman with a remit over airlines and airports would be able to address instances of unjustified blame-shifting.

The Panel would also like to see the findings of all appropriately authorised second-tier complaints handlers made binding on the business, so that in the event ADR is not mandated, PACT decisions receive the same authority as those of the ADR bodies.

The Panel also note the proposal contained in Chapter 3 concerning the new measures to ensure better noise outcomes from the way aircraft operate, by increasing uptake of best practice operating procedures and improving compliance with mandatory controls. The DfT proposes extending the CAA's information duties to allow CAA to require additional information concerning noise. The Panel urges the DfT to consider extending the CAA's information duties more widely to allow consumer issues to be more effectively explored and as a key requirement for effectively monitoring the proposed Passenger Charter.

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The Panel would like to reiterate the need for strong enforcement powers for the CAA to make sure that the charter can deliver the desired outcomes and that the consumer enforcement activities undertaken by the CAA are as effective as they can be.

At present, the tools available differ depending on the specific piece of legislation which a business is breaching. The mix of criminal and civil sanctions is confusing and the tools available not proportionate when trying to address persistent but minor breaches. Where action is taken using powers provided by the Enterprise Act, these serve to prevent future infringements but do not penalise businesses for activity already undertaken and therefore do not provide an effective deterrent where there are commercial gains to be made.

The Panel strongly believe that the CAA should have effective powers that can be applied for all the consumer rights that it upholds. It also believes that whilst the CAA is an enforcer for air passenger rights and general consumer law in the sector, without a clear consumer remit set down in statute there is a real danger that the inconsistency that exists is perpetuated and the effective work done by the CAA in this area could be at risk from political will or resource limitations.

51. Looking ahead to 2050, are there any other long term challenges which need to be addressed?

The Panel believe that equipping the CAA with an appropriate consumer duty and effective powers now will put the regulator in a better position to handle the unknown challenges that may arise over the next 10, 20 or 30 years. The speed at which aviation has changed in the last 30 years shows how quickly industry responds to changes in technology and demand, and how the regulator must be fit to identify and address the potential consumer harm that such progress may cause.