



**Minutes of 9<sup>th</sup> CAA Consumer Panel Meeting  
Thursday 17<sup>th</sup> April 2014 10am-1pm**

Present:

Keith Richards (KR)	Chair
Crispin Beale (CB)	Panel Member
Sarah Chambers (SC)	Panel Member
Philip Cullum (PC)	Panel Member (para 1-3)
Ann Frye (AF)	Panel Member
Steven Gould (SG)	Panel Member
Alastair Keir (AK)	Panel Member
Robert Laslett (RL)	Panel Member

Invited guests:

James Tallack (JT)	Principal (PPT), CAA
David Moesli (DM)	Deputy Director (CPG), CAA
Simon Froome (SF)	Head Of Risk Management (CPG), CAA
Sandra Webber (SW)	Consumer Policy Programme Head (PPT), CAA
David Oastler (DO)	Policy Officer (CPG), CAA

Apologies:

Richard Jackson	Group Director (CPG), CAA
Anthony Smith	Panel Member

Meeting minuted by James Tallack

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**Update from the Chair**

1. KR provided a summary of Panel and Panel-related activity since the last Panel meeting (February 2014):
  - 1.1. The meeting with the Airport Operators Association (AOA) revisited the issue of disruption and how consumers are looked after at non-economically-regulated airports. The Panel wishes to continue to develop thinking on how consumer outcomes can be improved with the AOA and CAA.
  - 1.2. KR jointly chaired a stakeholder forum on the CAA's draft Consumer Programme with Andrew Haines, which was very constructive.
  - 1.3. SG and KR were interviewed by Deloitte as part of the Better Regulation Healthcheck commissioned by CAA.
  - 1.4. AF and KR met with colleagues in consumer enforcement to find out more about how CAA handles consumer vulnerability issues.

- 1.5. KR and the other Consumer Panel leads met with Baroness Hayter to discuss the draft Consumer Rights Bill and its potential impacts.
- 1.6. PC, SG and KR met with CAA colleagues to discuss the CAA's complaints handling role as the starting point for the development of a Panel position on the opportunities presented by the ADR Directive regarding how the industry handles complaints.

## Introduction to CPG

2. The Panel received a comprehensive presentation from colleagues in the CAA's Consumer Protection Group (CPG) on the work of the Group. Members made the following comments:
  - 2.1. On financial protection for package holidays, UK consumers need to understand clearly under which member state's institutional arrangements they fall and what the implications are. CAA's information powers almost certainly have a role to play here. The current arrangements where ATOL holders have to provide a link to the live database of licence holders is not adequate as it only covers those who are (or were once) licensed - how would the consumer know that a company wasn't (and may never have been) licensed?  
**ACTION: CAA to explore how its information powers could be used to improve consumer outcomes in this area.**
  - 2.2. An increase in cross-border trade in package holidays could result in a systemic increase in the number of people needing to be rescued due to increase in foreign based firms selling into UK without adequate insolvency protection.
  - 2.3. Irrespective of the requirement in the Package Travel Directive (PTD) for businesses (rather than consumers) to obtain a security for refunds/repatriation in the event of a failure, wouldn't a more economically efficient outcome be where people bought individual insurance against failure of their tour operator. Could this be the answer to the obvious conflict between cross-border trade and national protection schemes? Is this the line the CAA should be taking in PTD negotiations?
  - 2.4. As people do buy travel insurance that includes insolvency protection, is there a risk of double selling if corporately you have protection and then pay an extra sum for insolvency protection on travel insurance? Could this be a future PPI-type mis-selling scandal?
  - 2.5. There appears to be a fundamental issue of consumer confusion over what is and what isn't covered by ATOL. Could the ATOL fund be used to raise awareness? If people understand what they're buying then they're making an active choice; if people have no comprehension of what they are buying then they may blame the government or the CAA when things go wrong. Rather than wait for a joined up European solution on the issue of whether seat-only sales are covered or not, could CAA require people to be told at point of purchase whether they are covered in the event of an airline failure? The unclear legislation is not CAA's fault, but the question is what CAA can do to reduce the complexity in the shorter term while working hard to reduce the confusion in the legislation.
  - 2.6. The lack of consumer representation on ATIPAC is a concern, although the Panel accepts that finding people with the right expertise is a challenge.

- 2.7. Has CAA conducted mystery shopping exercises that look at the consumer journey through the booking process and what their awareness of financial protection is? This would be very interesting. A further avenue for research is understanding the value that people place on ATOL protection. While it is almost certain that people would say yes given the choice, how can we be confident that they understand the trade-offs (e.g. would they say yes if it cost another £50?), and how do people deal with probabilities when making decisions about which product to buy? To answer this question, people need to have an understanding of the likelihood of insolvency. The value of research is huge: even if you think you know the answer to the question, robust evidence of that answer can be very helpful in discussions with DfT, Europe etc.
- 2.8. Also need to look at redress arrangements and ensure there is a single entry point for consumers making a complaint when things go wrong - this could be even more important if ATOL is broadened to cover non-air holidays. Ultimately a complaint may need to be routed elsewhere (e.g. to a credit card company) but the consumer may not know this.
- 2.9. Is there a risk of ATOL distorting the market? The one day time limit for a Flight-Plus booking feels arbitrary; does it restrict consumers' freedom to shop around and get the best deal (e.g. by waiting to book accommodation at the 'last minute')?

### **Complaints handling and redress**

3. The Panel received a short presentation from SW on the strategic choices facing the CAA with the ADR Directive on the horizon. Essentially this amounts to whether the CAA wishes to continue handling complaints from individual consumers, or adopt a role where it would be responsible for the oversight of industry complaint handling, specifically ADR schemes. The Panel expressed a strong preference for CAA taking on an oversight role as this is more in line with CAA's core competencies. For context, PC provided a brief overview of the arrangements in the energy sector. Members made the following comments:
  - 3.1. Fundamentally, the CAA's policy on consumer complaints should be without regard to legal frameworks. If something is stopping CAA from implementing a policy that is in consumers' best interests then it needs to raise this with government - this also 'de-risks' the regulator in the public mind by putting the responsibility on politicians. CAA should not see implementation of the ADR directive and delivering a strategic complaints policy that seeks to deliver something else as mutually exclusive: it's about taking a long-term view and making the most of political and legislative opportunities, such as the ADR Directive, when they arise.
  - 3.2. If the CAA stops handling complaints itself it must not leave a vacuum, i.e. this is not about finding an exit strategy but about taking proper strategic steps from where it is now to ensuring the consumer interest is properly served in the future by an effective, efficient and fair complaints handling system.
  - 3.3. The CAA must make sure it doesn't lose very relevant and valuable real-time data that comes from complaints handling wherever they end up being handled.

- 3.4. Good businesses must not end up paying for the problems caused by bad businesses, so the user ('polluter') pays principle is important in ensuring businesses have to live with the consequences of poor complaint handling. An unintended consequence of regulators or consumer groups handling complaints is that it encourages complacency.
- 3.5. It may be very difficult for the CAA to deliver an ADR scheme itself - the code of the British and Irish Ombudsman Association doesn't appear to allow for it and arrangements would also have to be put in place to completely separate the governance mechanisms of the two bodies.
- 3.6. Because the Directive allows for multiple ADR schemes in a sector there is a risk of a race to the bottom and schemes not providing the type of service consumers want. However, CAA could mitigate this risk by using industry charges to fund the front end of a high quality independent redress scheme and making individual businesses pay for the cases that the scheme handles. This wouldn't stop businesses from joining an alternative scheme but they would have to fund that directly (on top of what they would be paying for the CAA-funded scheme), which reduces incentives to do so. If the scheme proves popular with businesses it could be transferred to full direct industry funding after a couple of years.
- 3.7. ADR schemes should definitely be able to consider complaints relating to statutory (rather than just contractual) rights, particularly as the vast majority of aviation complaints relate to statutory rights. CAA should also be aware that the BIS consultation on civil enforcement powers could bring in financial compensation for Regulation 1107 (the PRM Regulation).
- 3.8. Regarding complaints under Regulation 1107, CAA should reconsider whether it should continue to receive these in the event of becoming a Competent Authority given the benefits of a consistent landscape with a single point of entry. As long as good feedback mechanisms were in place between the CAA and the ADR scheme(s), this should not affect CAA's ability to take swift action to resolve the issues giving rise to the complaint.
- 3.9. There is a need to consider the cross-border dimension, e.g. airlines using non-UK schemes and the potential impact on the flow of regulatory intelligence.
- 3.10. The CAA's information powers could play a key role in incentivising participation, possibly by requiring businesses to declare if they are not members of an ADR scheme at point of purchase.

### **Consumer vulnerability**

4. KR introduced the discussion by asking whether the Panel's interest in consumer vulnerability should go beyond the obvious matter of the CAA's enforcement of Regulation 1107 (the PRM Regulation). For example, are there issues in the market where there is no legal obligation for the CAA or the industry to do anything but where consumers could nonetheless be vulnerable to detriment? The impact of disruption on certain consumers was one possible issue, another might be if some consumers are unable to access information in the way that a 'typical' consumer is able to, a further issue might be affordability, especially if air transport is the only way to get around.

5. The discussion was informed by a discussion paper that JT had compiled and circulated to the Panel prior to the meeting, which asked the specific question of whether compliance with Regulation 1107/2006 will allow the CAA to meet the objective in its Consumer Programme to ensure that “consumers are not unfairly discriminated against in terms of their ability to participate in the air transport market”, or whether a broader framework for assessing consumer vulnerability is required. Members made the following comments:
  - 5.1. The concept of vulnerability rather than vulnerable consumers, which puts people into a box according to their characteristics, does have merit as there are circumstances where the regulator needs to look at how people's needs change. For example, a consumer making a particular purchasing decision may have absolutely no choice about what to do.
  - 5.2. Need to be careful of seeing vulnerability as a purely transitory thing: there are people who become vulnerable as a result of circumstances; but there are also people who are intrinsically vulnerable. There may be different mechanisms for dealing with each group and you risk diluting or devaluing the importance of dealing with vulnerability if you spread it too widely.
  - 5.3. One way might be to look at the issue in terms of transactional moments rather than the characteristics of consumers, e.g. are there ‘high noon’ situations that put consumers in vulnerable positions (cf. OFT work)?
  - 5.4. Is there a distinction between becoming vulnerable when using a product that is not an essential service? For example, unlike in water and energy, (most) users of air travel services are voluntarily putting themselves in a position where they may at some point become vulnerable. Is that a regulatory matter, or a market issue, or a human rights issue?
  - 5.5. Related to the point above, should the CAA be concerned about regional airports closing down, if this could make consumers vulnerable because they have less access to services and/or less competition? Or is this down to market forces, with the CAA’s interest defined as where services are being delivered that they work for everyone (i.e. not about market access per se).
  - 5.6. Some risks of vulnerability are manageable through information; others may not be (and need specific operational processes to be put in place). However, if the answer is information then you need to ensure that information can be understood by the consumers it’s targeted at – what's the bar for ‘consumer circumspection’?
6. KR said the Panel needed to think about some next steps on this issue, as there is a huge consumer interest in having confidence that the regulator understands the needs of those who can be particularly adversely affected by certain market practices. Vulnerability can be addressed through many means (e.g. information provision, influencing the industry) so it’s more about targeted regulation than a ‘one size fits all’ approach.

**ACTION:** The Panel needs to understand more about the level of understanding of this issue within the CAA before it can decide whether it could help the CAA develop a framework that it could use itself and/or encourage the industry to use to help them to think about the experience the customer is going to get. An internal survey (e.g. using SurveyMonkey-type software) of CAA staff (including senior management) could be used to understand what the different areas of the



CAA think about the issue, particularly how their own work can both cause as well as remove the risk of vulnerability. A further key part of developing such a framework would be to look at what other consumer panels have done in this area.

**End of minutes**