

# Decision on the Terms of Reference for the H7 Consumer Challenge Board (CCB)

**CAP 1449**



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Civil Aviation Authority  
Aviation House  
Gatwick Airport South  
West Sussex  
RH6 0YR

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Enquiries regarding the content of this publication should be addressed to:

[james.tallack@caa.co.uk](mailto:james.tallack@caa.co.uk)

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## Chapter 1

# Introduction

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## Purpose of this document

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- 1.1 This document sets out our decision on the approach to establishing a dedicated consumer challenge function for the H7 price review of Heathrow Airport. This will help ensure that the H7 review is driven by a robust understanding of what consumers value.
- 1.2 Following detailed discussions earlier this year with Heathrow Airport Limited (HAL) and the airline community at Heathrow, in July 2016 we published a consultation ([CAP 1425](#)) on our proposals for a ‘Consumer Challenge Forum (CCF)<sup>1</sup>’. The CCF – as we referred to the concept at the time – would support our strategic theme of empowering consumers as part of a wider agenda to put passengers and cargo users at the heart of our approach to airport regulation.
- 1.3 We invited comments on all aspects of the document and specifically focused our consultation questions on the draft Terms of Reference (ToR):
  - Do you agree with our proposed Role for the CCF?
  - Do you agree with our proposed membership requirements including the steps to secure the independence of the CCF?
  - Do you agree with our proposed Scope, Focus and Responsibilities for the CCF?
  - Do you agree with our proposals on the operating principles for the CCF, particularly on remuneration and transparency?

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<sup>1</sup> In our consultation, we used the term ‘Consumer Challenge Forum’ (CCF) for consistency with our earlier H7 publications and other communications with stakeholders. However, as we explain in this document, we consider that the term ‘Consumer Challenge Board’ (CCB) better describes the body we want to see established.

- Do you agree with our proposals on the working practices of the CCF?

1.4 We thank the following stakeholders for their responses to our consultation:

- The Association of British Travel Agents (ABTA)
- British Airways (BA)
- Heathrow Airport Limited (HAL)
- The Heathrow Airline Operators Committee (AOC) and the London Airports Consultative Committee (LACC)
- The Heathrow Airport Consultative Committee (HACC)
- Star Alliance
- Virgin Atlantic Airways (VAA)

1.5 We also consulted with the CAA's Consumer Panel and sought input from consumer groups, although we did not receive written responses from these parties.

1.6 This document sets out our decision on the ToR for the CCF and provides clarification on a number of other issues that stakeholders raised in their responses. A final version of the ToR can be found at Appendix A, with a marked-up version of the draft ToR showing all changes at Appendix B. For ease of reference we have summarised the main changes to the ToR at the end of Chapter 2.

## **The CAA's duties**

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1.7 The Civil Aviation Act 2012 (The Act) gives us a single primary duty to further the interests of users of air transport services in respect of our economic regulation functions. Users are defined in the Act as present and future passengers and those with a right in property carried by the service, i.e. cargo owners.

- 1.8 The scope of our primary duty concerns the range, availability, continuity, cost and quality of airport operation services. We must carry out our functions, where appropriate, in a manner that will promote competition in the provision of airport operation services.
- 1.9 In discharging our primary duty, we must have regard to a range of other matters under the Act. These include:
- the need to secure that HAL is able to finance its licensed activities;
  - the need to ensure that all reasonable demands are met;
  - the need to promote economy and efficiency;
  - the need to secure that HAL is able to take measures to reduce, control and mitigate adverse environmental effects;
  - any guidance issued by the Secretary of State or international obligation on the UK notified by the Secretary of State; and
  - better regulation principles.

## Chapter 2

## Key issues

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### Our objectives

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- 2.1 In line with our primary duty, we want the H7 review to be driven by a robust understanding of the needs of consumers regarding the services provided by HAL. This understanding should emerge from high quality consumer engagement, carried out by HAL as the regulated entity.
- 2.2 For H7 we want to put the emphasis on HAL to engage with consumers and to demonstrate that its business plan reflects their interests. Although HAL carried out some research for the Q6 review, we largely took responsibility ourselves for understanding what consumers value, supplementing this with research into customer experiences and preferences that airlines had produced to inform their commercial strategies. We used this combination of insight to help inform the design of the regulatory framework.
- 2.3 Our change of approach for H7 reflects an important trend in the theory and practice of economic regulation towards the facilitation by regulators of greater engagement between regulated entities and end consumers. Over the last few years, other economic regulators, such as Ofgem, Ofwat and the Water Industry Commission for Scotland (WICS), have made significant steps in this direction and we have sought to understand how their experiences could be applied to airport regulation. The approaches taken by Ofwat and Ofgem are documented in more detail in the report we commissioned from First Economics<sup>2</sup> on recent price review innovations, which we published alongside our discussion document on the strategic themes for H7.<sup>3</sup>

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<sup>2</sup> [www.caa.co.uk/CAP1383b](http://www.caa.co.uk/CAP1383b)

<sup>3</sup> [www.caa.co.uk/CAP1383](http://www.caa.co.uk/CAP1383)



- 2.4 In order to ensure that HAL engages effectively with consumers and responds appropriately to what it learns from this engagement, we will establish a body that will provide independent, consumer-focused challenge to HAL. This body will focus on the development of the H7 business plan, which HAL is required to prepare to inform our regulatory review.
- 2.5 In previous documents and other public statements, we referred to the body as the 'Consumer Challenge Forum' (CCF). However, following consultation, we now consider that the title 'Consumer Challenge Board' (CCB) better reflects the important role that we expect the group to play in the regulatory process.

## Key principles

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- 2.6 In our consultation we set out a number of key principles. There were no substantive objections to these and, with some minor changes to reflect stakeholders' feedback, we consider that these principles still stand.
- As a non-statutory body, the independence, role and scope of the CCB will principally be governed by the CCB's Terms of Reference (ToR). It is essential that the CCB is (and is seen to be) an independent and transparent body that is qualified to comment on the issues that we envisage it dealing with. This will help ensure that the focus of H7 continues to be on consumers and not on the measures that have been put in place as a direct or indirect result of the regulatory regime to promote their interests.
  - The objective of the CCB is to provide us with a clear view on the overall quality of HAL's consumer engagement (including its use of insight into consumer preferences provided by the airline community and other parties) and how this engagement has been reflected in the development of HAL's business plan.
  - The work of the CCB should complement and enhance the existing regulatory framework including the process of Constructive

Engagement (CE). We see the CCB particularly focusing on the consumer research and other inputs that we expect HAL to use in developing an appropriate and robust, consumer-focused outcomes framework for the H7 business plan. As such, we see it as inevitable that the CCB will have some influence over the parameters within which the detailed scrutiny of HAL's business plan by the CAA, airlines and other parties will take place during the subsequent phases of the H7 review.

- The CCB should not be expected to approve or endorse HAL's overall plan. Instead, it should comment on the key issues and highlight areas of challenge and disagreement, including how HAL has responded to the CCB's challenges.
- The determination of HAL's revenue requirement (which will include issues such as the allowed return, the scope for efficiency etc.) remains the CAA's responsibility. However, we reserve the right to consult with the CCB on specific issues if we consider that doing so would be in the interests of consumers.
- The CCB would be distinct from the CAA Consumer Panel although the challenge and scrutiny functions are similar in both. The Consumer Panel provides independent challenge to the CAA on the delivery of our consumer strategy. The CCB, on the other hand will provide independent challenge to HAL on the development of a consumer-focused H7 business plan, publicly reporting back to the CAA and other stakeholders. Given that we expect the CCB to play a key role in the regulatory regime, we would expect the Consumer Panel to take a keen interest in its work.

2.7 While some stakeholders' responses sought greater transparency of the CCB's activities, our view is that the degree of transparency prescribed in the draft ToR is appropriate for the advisory role that the group will perform (subject to some relatively small changes). The level of additional transparency proposed by airlines (see paragraph 2.16) would not only be administratively burdensome for the CCB, but would also be inimical to the

type of relationship between the CCB and HAL and other stakeholders – dynamic, open, informal and based on mutual understanding and respect – that we think would be most beneficial to the H7 process.

## **Clarifying the role of key stakeholders**

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### **The role of the Consumer Challenge Board**

- 2.8 In summary, the CCB will carry out the following roles:
- The provision of independent scrutiny and challenge to HAL on the development of its business plan; and
  - The provision of independent advice to us on the overall quality of HAL's H7 business plan, particularly how, and the extent to which, it has been informed by high quality consumer engagement and the extent to which the outcomes and incentives in the plan reflect the needs of consumers, as demonstrated by that engagement.
- 2.9 The CCB will be an advisory body focused on challenge and scrutiny activities rather than being, for example, directly responsible for undertaking consumer research or developing consumer outcomes. We note airline responses expressing concern about the CCB having any role in developing consumer outcomes and/or considering the appropriateness of any performance standards or incentives attached to those outcomes. However, our view is that it is essential that outcomes are informed by robust consumer engagement, and this issue will be important for the CCB to consider. We therefore consider it inevitable – and beneficial – that the CCB will have some involvement in the development of outcomes.
- 2.10 Just as HAL should not substitute engagement with the CCB as a substitute for engaging with consumers, the CCB should not substitute its views for the views of consumers. Instead, the CCB should be challenging HAL on how it has carried out engagement with consumers and how it has interpreted the results of that engagement.

- 2.11 In carrying out all of its activities, the CCB will act independently of all H7 stakeholders, including the CAA. However, and in response to concerns from airlines, to help ensure the CCB remains focused, we intend to publish guidance setting out our expectations of the CCB in a number of key areas. These will include the issues we think the CCB should consider in its reports on HAL's H7 business plan and what we think the key characteristics of good consumer engagement are. We consider that such guidance will be helpful in enabling stakeholders to evaluate whether the CCB has successfully met its objectives.
- 2.12 We also consider it necessary that the CCB has the ability to escalate issues with us if it has been unable to do so directly with HAL, having followed the escalation process set out in its ToR. This should be a last resort. We will deal with issues escalated to us on a case by case basis and involve other stakeholders if necessary.
- 2.13 Regarding the request for clarification on whether the CCB will consider the interests of cargo users as well as passengers (both groups are considered consumers under the Civil Aviation Act 2012), our provisional view is that the CCB's primary focus should be on passengers. Given that over 95% of cargo at Heathrow travels in the bellyhold of passenger aircraft, we consider that the interests of cargo owners will in many ways be aligned with those of passengers. That said, we will be carrying out further work separately to understand better the perspective of cargo owners.

## Ownership

- 2.14 It is important that the CCB is not seen by HAL as an extension of the regulatory regime. While we will wish to know if the CCB is having difficulty performing its role (in order that we can put contingencies in place if required), we want to ensure that discussions between the CCB and HAL are open and frank and allow for the discussion of new and innovative ideas. Any expectation that views expressed in those discussions will be routinely fed back to us – as would occur as a result of some of the transparency requirements advocated by some stakeholders (see

paragraph 2.16) – will risk undermining this objective. Instead, our interest will lie in the CCB's views on the final decisions made by HAL in its business plan. It is essential that the views presented by the CCB in its reports to us clearly document areas of challenge and disagreement and how trade-offs have been made.

2.15 As the CCB will be a new feature of the regulatory regime there is understandably some uncertainty about its role. This has been clear to us since we started engaging with stakeholders on this matter. In their responses, airlines continued to focus on the risk of the CCB's independence being compromised through repeated interactions with HAL. We consider that the following steps will address this issue:

- We are consulting publicly on the CCB's initial Terms of Reference (ToR) and will also do so on any material changes to the ToR.
- We are offering airlines an equal say in the appointment of the CCB Chair through a seat on the nomination committee alongside HAL and the CAA. This is to help ensure that airlines have confidence in the integrity and capability of the individual appointed to lead the CCB.
- We are using an independent executive search consultancy to ensure that the Chair is appointed from the widest possible pool of suitable candidates, and ensuring that airlines are equally involved in the shortlisting process.
- We are placing responsibility on the Chair to determine the number of CCB members and the skills and experience they will need, and to appoint them. We believe that this approach will strengthen the independence and the accountability of the CCB. Our reasoning here is that an independent chair, endorsed by all key stakeholders, should be trusted to appoint independent members. Furthermore, the Chair will be ultimately responsible for delivering the CCB's objectives and should therefore have considerable discretion to shape the CCB in a way that allows them to do this. This recognises

the importance of both the individual skills of the CCB members and the synergies within the group as key determinants of its success.

We fully expect the Chair to justify their decisions on member appointments to the nomination committee, but do not consider – as some stakeholders have proposed – that the nomination committee should have a veto on appointments (except where they do not conform to the requirements set out in the ToR).

We are requiring a high degree of transparency from the CCB, including timely publication of agendas (to allow interested parties to request attendance), minutes and maintaining a log of meetings. We will ensure that the CCB publishes all of this information on the CAA website and any other information that it sees fit to publish.

- We are handling all contractual matters (including remuneration) relating to the CCB.

2.16 We consider that the above steps will be sufficient to safeguard the CCB's independence and do not intend at this stage to implement the other measures proposed by stakeholders. These included: stipulating where the CCB holds its meetings and locates its secretariat; that all CCB meetings should, by default, be open to any stakeholder; and that a detailed log of all interactions between the CCB and any stakeholder is maintained and published.

2.17 We intend to review the effectiveness of the above measures, and the CCB in general after the start of the H7 period. This will help us to understand whether they should be retained if the CCB is used for future regulatory reviews (see below). We agree with stakeholders that they should be involved in this review.

### **Timetable**

2.18 Our intention is that the CCB Chair will be appointed in November 2016. Recruitment of members will commence shortly thereafter, with a view to the full CCB being in place by early 2017.

- 2.19 We believe that consumer engagement should be a continuous and ongoing process, rather than a 'programme' with a defined start and end point. However, our interest is largely limited to the role that consumer engagement plays in the development of HAL's H7 business plan and we have designed the CCB with this in mind. This means that the CCB may not be the most appropriate model for ensuring high quality engagement between price review periods.
- 2.20 We therefore agree with the view expressed by some stakeholders in response to our consultation that the initial period of appointment should be for the duration of the H7 review. Any role for the CCB beyond the H7 review will be considered as part of our review of the CCB.

### **The role of airlines**

- 2.21 In their responses to our consultations, airlines have consistently argued that their direct contractual relationship with consumers meant they are best placed to understand their priorities, needs and requirements. We are aware that airlines collect considerable intelligence on their customers, and that some of this intelligence will relate to their experiences of using Heathrow. It is therefore important that HAL's consumer engagement strategy recognises the important role that airlines can – and do – play in providing consumer insight (see below).
- 2.22 We expect HAL to develop a systematic and detailed understanding of how all consumers experience – whether directly or indirectly – the key processes and services it provides to them as the airport operator. Done well, this insight will allow HAL to cross-check and triangulate consumer views from other sources, such as airlines, and come to a well-rounded view of the consumer experience for its business plan.
- 2.23 Within that context we consider that airlines have a crucial role to play in the consumer engagement process, given their access to intelligence on consumer experiences and needs and their sophisticated approaches to gathering such data. We expect HAL and airlines to work together to identify mutually beneficial ways to share and discuss consumer

intelligence (indeed, we are aware that routine sharing of information between HAL and some airlines is already taking place), and we will look to the CCB to provide us with its view on the effectiveness of these arrangements.

- 2.24 We recognise airlines' concerns around the risks to the CCB's independence. However, we consider that the measures that we have put in place are proportionate to these risks. We also re-emphasise that the CCB's role will be advisory. Airlines and other stakeholders should not view the CCB as the only way to make consumer views known to the CAA. As set out above, we expect engagement with airlines to be a key part of HAL's consumer engagement strategy. If airlines are concerned about HAL 'filtering' airline consumer intelligence, they should provide this intelligence directly to the CCB, or to us.

## The role of the CAA

- 2.25 The CCB will not have any decision making authority. It will provide expert and independent advice to us, but we will have the final say on regulation and policy. For example, we will continue to be responsible for making the final decision on whether:
- high quality engagement has been carried out by HAL;
  - consumers' voices have been heard;
  - HAL's business plan genuinely and demonstrably reflects the needs of consumers; and
  - the right consumer outcomes are captured by the regulatory regime.
- 2.26 In simple terms, the CCB will provide us with expert, independent advice – through the reports it publishes on the various iterations of HAL's business plan – on the extent to which HAL's business plan is a consumer-focused one. While we intend to use the views of the CCB to help inform our regulatory determination, we are clear that we are not delegating any regulatory function (i.e. decision making authority) to the CCB – its role will be purely advisory.



- 2.27 As explained above, for H7 we will be handling the CCB's contractual matters, including remuneration. However, once the Chair has been appointed, we see our involvement with the CCB as being limited to providing guidance (see paragraph 2.10), seeking high level updates for the purpose of assuring ourselves that the CCB is able to perform its role, and dealing with any issues that are escalated to us as a last resort.
- 2.28 We do not rule out the possibility of us obtaining our own consumer insight to help inform and/or verify the views of the CCB. Indeed, given that the CCB will be a new feature of our regulation of HAL, it is particularly important that we have a range of contingencies to deal with key risks, such as the failure of HAL to gain the endorsement of the CCB for its business plan, or a failure of the CCB itself to perform its role. We note comments from airlines on this point and confirm that we will mitigate the impact of these risks by requesting regular updates from the CCB on the progress of its work, and requiring the CCB to report to us on HAL's initial, as well as its final business plan.

## **Summary of changes to the Terms of Reference for the CCB**

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- 2.29 In addition to the commentary provided in this section, we have provided a mark-up version of the draft ToR at Appendix B in order that stakeholders can easily see every change we have made to the CCB's ToR following consultation.
- 2.30 Our review of the ToR has largely been a process of clarifying issues rather than making significant changes and we highlight the following:
- The role of the CCB remains fundamentally unchanged. As set out above (paragraph 2.9), we see the task of scrutinising and challenging HAL's approach to consumer engagement as inseparable from the development of outcomes and related incentives, so we consider it appropriate that the ToR refers to these concepts.

- Reflecting our view that the CCB, once set up, should operate independently of all H7 stakeholders, we have clarified what we see as the key stages in the establishment process.
- We have emphasised the CCB's role of scrutiny alongside challenge, as some stakeholders felt this was unclear.
- We have clarified that the CCB should focus primarily on passengers.
- We have strengthened the role of the CCB Chair, clarifying that he or she will be responsible for determining the number of members (although we have set a minimum) and the skills and capabilities of the members (although we have provided guidance), as well as appointing and removing members (with these actions needing to be justified to the nomination committee).
- We have aligned the period of appointment to the CCB with the H7 period, in response to stakeholder proposals.
- Regarding CCB meeting minutes, we have changed our requirement from publication within 10 days to "as soon as practicably possible". We have changed the requirement for a non-confidential version of minutes to be published to publication of the full minutes with sensitive information redacted. We have also changed the requirement for all CCB information to be published on the CAA's website and HAL's website to the CAA's website only (although we recognise that HAL may also want to publish the information voluntarily).

## Appendix A

## Terms of Reference for the CCB

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### Role of the CCB

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1. The Consumer Challenge Board (CCB) is an independent advisory body set up for the Civil Aviation Authority's (CAA) seventh periodic review of Heathrow Airport's charges and services ('H7'), and is subject to these Terms of Reference (ToR).
2. A partnership between Heathrow Airport Limited (HAL), the Heathrow Airline Community ('the Airline Community') and the Civil Aviation Authority (CAA) is responsible for the establishment of the CCB. The establishment of the CCB entails the CAA consulting with these and other parties on these ToR, as well as the appointment of the CCB Chair, who will be required to appoint the Members and Secretariat and will be responsible for the fulfilment of the CCB's Role.
3. The Role of the CCB is to provide independent scrutiny and challenge to HAL on behalf of consumers, on how HAL takes account of and reflects the interests of consumers in its business strategy and operations. Through reporting publicly on the outcomes of this challenge process, the CCB will provide independent advice on these matters to the CAA and other interested stakeholders.
4. In these ToR, the term 'consumer' is a shorthand for a "user of an air transport service" as set out in the Civil Aviation Act 2012 (the Act) defined as a current or future person who is a passenger carried by the service or has a right in property carried by the service. In practice, it is anticipated that the CCB will focus primarily on the interests of passengers.

## Membership of the CCB

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### Composition of the CCB

5. The CCB will consist of a minimum of four Members, including the Chair. The Chair is responsible for determining how many Members the CCB needs to fulfil its Role. It is recognised that the CCB will become operational before all of its Members have been appointed.
6. The Chair of the CCB will be responsible for ensuring that the CCB has sufficient collective expertise and experience to perform its Role. The CCB is likely to require expertise and experience in the following areas:
  - Consumer research and insight, including how the needs of consumers with particular requirements (such as disabled or reduced mobility consumers) can be understood;
  - Consumer advocacy and engagement;
  - Consumer policy and economic regulation, including outcome-based incentives; and
  - Business planning / strategy.
7. The Chair of the CCB will be appointed by the CCB Nomination Committee ('the Nomination Committee'), which will consist of a senior representative from HAL, the CAA and the Airline Community.
8. Members of the CCB will be appointed by the Chair. The Chair will have the final say on the appointment of the Members, but should justify such decisions to the Nomination Committee.
9. The Chair and the Members will be appointed (and, where applicable, re-appointed) through an open and transparent process, involving advertising of positions and/or the use of an external search consultancy. Short-listing of candidates for the position of Chair will involve all members of the Nomination Committee.

## Independence of the CCB

10. Neither the Chair nor any Member shall be deemed to be independent if he/she:

- Is currently an employee of HAL or paid by HAL for any role;
- is an employee of any member of the Airline Community or any other commercial party currently operating at Heathrow, or is paid by such a party for any role;
- has within the last three years been an employee of HAL, any member of the Airline Community or any other commercial party currently operating at Heathrow, or has been paid by HAL or any such party for any role within the last three years;
- has, or has had within the last three years, a material business relationship with HAL, any member of the Airline Community or any other commercial party currently operating at Heathrow;
- has close family ties with any directors or senior employees of HAL or any member of the Airline Community, or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder of HAL, any member of the Airline Community or any other commercial party operating at Heathrow; or
- has served on the CCB for more than the allowed period of appointment.

11. In addition, without the express permission of the CAA neither the Chair nor any Member may take on any paid or unpaid role with HAL, the Airline Community or any other commercial party currently operating at Heathrow during the term of their appointment to the CCB, or within one year of that term coming to an end.

## **Period of appointment**

12. Appointment of the Chair and Members will be for an initial term of no more than 36 months. In total, no Chair or Member may serve on the CCB for more than 6 years.
13. The Chair will be responsible for maintaining the continuity of the CCB's expertise and experience through the management of appointments.

## **Termination of appointment**

14. The Chair can remove any CCB Member if he/she believes the individual is no longer capable of performing their role or has not been performing their role to a sufficient standard. The Chair will have the final say on the removal of Members, but should justify such decisions to the Nomination Committee.
15. The Nomination Committee reserves the right to remove the Chair, if it believes the individual is no longer capable of performing their role or has not been performing their role to a sufficient standard.

## **Scope, Focus and Responsibilities of the CCB**

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### **Scope**

16. The Scope of the CCB's work is performing a scrutiny and challenge function to HAL in relation to the development of HAL's H7 business plan.

### **Focus**

17. The Role of the CCB is to act solely in the interests of consumers by independently scrutinising, challenging, assessing, raising issues and making non-binding recommendations to HAL. The CCB will particularly, though not exclusively, consider the following issues:
  - the quality of engagement carried out by HAL in order to ensure that consumer views are properly represented to HAL and taken into consideration, including any gaps or omissions and the likely implications of these;

- the extent to which the outcomes specified in HAL's H7 business plan reflect the needs of consumers and are supported by robust evidence; and
  - the appropriateness of the performance standards and incentives in HAL's H7 business plan (for example, whether performance targets are sufficiently challenging).
18. The determination of HAL's revenue requirement (which will include issues such as allowed returns, efficiency etc.) will remain the CAA's responsibility. However, the CAA reserves the right to consult with the CCB on specific issues if the CAA considers that doing so would be in the interests of consumers.

## Responsibilities

19. The CCB will, amongst other responsibilities:
- undertake an initial induction programme to ensure all CCB members have the necessary understanding of the industry and the roles and interests of different stakeholders to carry out the CCB's Role;
  - consult with other stakeholders, particularly the Airline Community and the Heathrow Airport Consultative Committee, to ensure their views on consumer needs are taken into account by the CCB;
  - review and challenge HAL's consumer engagement process and the evidence emerging from it; and
  - produce independent reports on the initial and draft business plans submitted by HAL during the price review, having reference to any guidance issued by the CAA on the key issues for consideration.

## Operating principles of the CCB

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### Remuneration

20. The CCB Chair, Members and any individuals providing secretariat functions to the CCB (see paragraph 25-28) will be remunerated at an appropriate rate and

will be able to reclaim reasonable travel expenses. The CAA will handle remuneration and expenses claims and pass all of the costs on to HAL.

### **Gifts, hospitality and donations**

21. The CCB must not accept gifts or donations from HAL, the Airline Community or any other commercial party operating at Heathrow. The CCB may accept refreshments offered during the course of meetings with HAL, the Airline Community or any other commercial parties operating at Heathrow.

### **Escalation policy**

22. The CCB will raise issues with, and make recommendations to, HAL as it sees fit. If necessary, the CCB will escalate issues to HAL's senior management and/or the HAL Board. HAL should identify an individual at senior management and/or Board level who is responsible for dealing with issues escalated by the CCB.
23. Where the CCB has raised material issues with HAL's senior management and/or the HAL Board and believes that they have not been addressed satisfactorily, the CCB will, as a last resort, escalate such issues to the CAA to deal with as the CAA sees fit.
24. The CCB should allow HAL at least 10 working days to respond to an issue it has raised before escalating the issue to HAL's senior management and/or the HAL Board. The CCB should allow HAL's senior management and/or the HAL Board at least 10 working days to respond to the issue it has raised before escalating it to the CAA.

### **Authority**

25. The CCB is an advisory body only and does not have any decision making authority. However, the CCB may publish 'comply or explain' notices, requiring HAL to address a concern raised by the CCB, or explain formally in writing why it does not intend to do so. The CCB may publish these notices and HAL's responses. Comply or explain notices should be issued in accordance with the CCB's Escalation Policy.



## Secretariat

26. The Chair will be responsible for the CCB's relationship with HAL and other stakeholders.
27. The Chair will appoint a suitably independent and qualified person to provide secretariat services to the CCB (e.g. coordination of meetings, escalation of unresolved issues, managing finances, minuting meetings, and ensuring that all relevant papers and minutes are issued in accordance with these ToR). The costs of the secretariat will be recovered from the CAA. The CAA will, in turn, charge them to HAL.
28. The Chair must ensure that the CCB's secretariat is publicly identifiable, with contact details published on the CAA's website.
29. If the CCB's secretariat requires office accommodation, the Chair should have due regard to the CCB's independence, particularly the risk of undue influence, when considering any offers from HAL, the Airline Community or any other commercial party currently operating at Heathrow to accommodate the secretariat.

## Resources

30. The CCB will have access to detailed, high quality information, including consumer research data and specialist advice on regulatory and operational issues, such as is needed to perform its Role effectively. HAL will ensure that arrangements are in place for sharing confidential and/or commercially sensitive information with the CCB.

## Transparency

31. The CCB will publish its meeting agendas at least 48 hours before the date of the meeting and minutes (with any confidential and/or commercially sensitive information redacted) as soon as practicably possible after the meeting. Agendas and minutes should be published on the CAA's website, in addition to any reports the CCB prepares.

## **Working practices of the CCB**

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### **CCF meetings**

32. Meetings shall be convened as the need arises at key stages during the H7 price review. The CCB will meet at locations agreed by the Chair.
33. The Chair or his/her named representative shall chair each CCB meeting. The quorum for a CCB meeting shall be fixed and determined by the Chair.
34. The Chair shall be responsible for publishing the agenda for each CCB meeting on the CAA's website at least 48 hours before the meeting.
35. The Chair shall be responsible for minuting the proceedings and resolutions of all meetings chaired by the CCB and which achieve the quorum. Minutes of meetings shall be circulated promptly to the CCB for agreement and published as soon as practicably possible after the meeting on the CAA's website.

### **Other meetings**

36. The CCB will maintain, and provide on request, an up-to-date log of all other meetings and telephone calls involving substantive discussion of issues within the CCB's Scope. The log should record the names of individuals and organisations involved and identify at a high level the issues discussed.

### **Meeting observers**

37. At the Chair's discretion, other organisations or individuals can be invited to attend CCB meetings as observers. Observers can participate in discussions but are not members of the CCB. Observers can be asked to leave the meeting during periods when the information being discussed is of a sensitive or confidential nature.

### **Other matters**

38. The CCB shall be responsible for periodic reviews of its operational performance and, at least annually, review these against the ToR to ensure it is operating at maximum effectiveness.
39. Changes to the ToR can only be made by the CAA.

## Appendix B

~~Draft~~ Terms of Reference for the CCFCCB

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**Role of the CCFCCB**

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1. The Consumer Challenge ~~Forum~~ (CCFBoard (CCB)) is an independent advisory body set up for the Civil Aviation Authority's (CAA) seventh periodic review of Heathrow Airport's charges and services ('H7'). ~~The CCF is established through a), and is subject to these Terms of Reference (ToR).~~
- 1.2. A partnership between Heathrow Airport Limited (HAL), the Heathrow Airline Community ('the Airline Community') and the Civil Aviation Authority (CAA), and is subject to these Terms of Reference (ToR), is responsible for the establishment of the CCB. The establishment of the CCB entails the CAA consulting with these and other parties on these ToR, as well as the appointment of the CCB Chair, who will be required to appoint the Members and Secretariat and will be responsible for the fulfilment of the CCB's Role.
- 2.3. The Role of the CCFCCB is to provide independent scrutiny and challenge to HAL on behalf of consumers, on how HAL takes account of and reflects the interests of consumers in its business strategy and operations. Through reporting publicly on the outcomes of this challenge process, the CCFCCB will provide independent advice on these matters to the CAA and other interested stakeholders.
- 3.4. In these ToR, the term 'consumer' is a shorthand for a "user of an air transport service" as set out in the Civil Aviation Act 2012 (the Act) defined as a current or future person who is a passenger carried by the service or has a right in property carried by the service. In practice, it is anticipated that the CCB will focus primarily on the interests of passengers.

## Membership of the CCFCCB

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### Composition of the CCFCCB

5. The CCFCCB will consist of a minimum of ~~five members~~four Members, including the Chair. The Chair ~~of~~is responsible for determining how many Members the CCFCCB needs to fulfil its Role. It is recognised that the CCB will become operational before all of its Members have been appointed.

4.6. The Chair of the CCB will be responsible for ensuring that the CCFCCB has sufficient collective expertise and experience to perform its Role. The ~~CCF~~will CCB is likely to require expertise and experience in the following areas:

- Consumer research and insight, including how the needs of consumers with particular requirements (such as disabled or reduced mobility consumers) can be understood;
- Consumer advocacy and engagement;
- Consumer policy and economic regulation, including outcome-based incentives; and
- Business planning / strategy.

5-7. The Chair of the CCFCCB will be appointed by the Tripartite Appointment Panel (TAPCCB Nomination Committee ('the Nomination Committee')), which will consist of a senior representative ~~of~~from HAL, the CAA and the Airline Community.

6-8. Members of the CCFCCB will be appointed by the Chair. The Chair will have the final say on the appointment of the Members, but should justify such decisions to the Nomination Committee.

7-9. The Chair and the Members will be appointed (and, where applicable, re-appointed) through an open and transparent process, involving advertising of positions and/or the use of an external search consultancy. Short-listing of

candidates for the position of Chair will involve all members of the [tripartite appointment panel](#)~~Nomination Committee~~.

### Independence of the [CCFCCB](#)

~~8~~-10. \_\_\_\_\_ Neither the Chair nor any Member shall be deemed to be independent if he/she:

- Is currently an employee of HAL or paid by HAL for any role;
- is an employee of any member of the Airline Community or any other commercial party currently operating at Heathrow, or is paid by such a party for any role;
- has within the last three years been an employee of HAL, any member of the Airline Community or any other commercial party currently operating at Heathrow, or has been paid by HAL or any such party for any role within the last three years;
- has, or has had within the last three years, a material business relationship with HAL, any member of the Airline Community or any other commercial party currently operating at Heathrow;
- has close family ties with any directors or senior employees of HAL or any member of the Airline Community, or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder of HAL, any member of the Airline Community or any other commercial party operating at Heathrow; or
- has served on the [CCFCCB](#) for more than the allowed period of appointment.

~~9~~-11. \_\_\_\_\_ In addition, ~~and~~ without the express permission of the CAA, neither the Chair nor any Member may take on any paid or unpaid role with HAL, the Airline Community or any other commercial party currently operating at Heathrow during the term of their appointment to the [CCFCCB](#), or within one year of that term coming to an end.

## Period of appointment

~~10.12.~~ Appointment of the Chair and Members will be for an initial term of no more than ~~3 years, which~~ 36 months. ~~In total, no Chair or Member may be renewed~~ serve on the CCB for ~~a maximum of one further term of no~~ more than 36 years.

~~11.13.~~ The Chair will be responsible for maintaining the continuity of the CCF's CCB's expertise and experience through the management of appointments.

## Termination of appointment

~~12.14.~~ The Chair can remove any CCFCCB Member if he/she believes the individual is no longer capable of performing their role or has not been performing their role to a sufficient standard. The Chair will have the final say on the removal of Members, but should justify such decisions to the Nomination Committee.

~~13.15.~~ The ~~TAP~~ Nomination Committee reserves the right to remove the Chair, if it believes the individual is no longer capable of performing their role or has not been performing their role to a sufficient standard.

## Scope, Focus and Responsibilities of the CCFCCB

### Scope

~~14.16.~~ The Scope of the ~~Consumer Challenge Forum (CCF) CCB's work~~ is primarily the monitoring of performing a scrutiny and challenge function to HAL in relation to the development of HAL's H7 business plan ~~for the H7 price review period.~~

### Focus

~~15.17.~~ The Role of the CCFCCB is to act solely in the interests of consumers by independently scrutinising, challenging, assessing, raising issues and

making [non-binding](#) recommendations to HAL. The [CGFCCB](#) will particularly, though not exclusively, consider the following issues:

- the quality of engagement carried out by HAL in order to ensure that consumer views are properly represented to HAL and taken into consideration, including any gaps or omissions and the likely implications of these;
- the extent to which the outcomes ~~that HAL intends to achieve through the delivery of its~~[specified in HAL's H7](#) business plan reflect the needs of consumers and are supported by robust evidence; and
- the appropriateness of the performance standards and incentives ~~proposed by HAL in its~~[HAL's](#) H7 business plan (for example, whether performance targets are sufficiently challenging).

~~16-18.~~ The determination of HAL's revenue requirement (which will include issues such as [allowed returns](#), efficiency etc.) will remain the CAA's responsibility. However, the CAA reserves the right to consult with the [CGFCCB](#) on specific issues if the CAA considers that doing so would be in the interests of consumers.

## Responsibilities

~~17-19.~~ The [CGFCCB](#) will, amongst other responsibilities:

- undertake an initial induction programme to ensure all [CGFCCB](#) members have the necessary understanding of the industry [and the roles and interests of different stakeholders](#) to carry out the [CGF'sCCB's](#) Role;
- consult with other stakeholders, particularly the Airline Community [and the Heathrow Airport Consultative Committee](#), to ensure their views ~~can be represented directly to the CCF~~[on consumer needs are taken into account by the CCB](#);
- review ~~the airport's~~[and challenge HAL's consumer](#) engagement process and the evidence emerging from it; and

- produce independent reports on the initial and draft business plans submitted by HAL during the price review, having reference to any guidance issued by the CAA on the key issues for consideration.

## Operating principles of the CCFCCB

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### Remuneration

~~18-20.~~ The CCFCCB Chair, Members and any individuals providing secretariat functions to the CCFCCB (see paragraph ~~3.25-3.28~~) will be remunerated at an appropriate rate and will be able to reclaim reasonable travel expenses. The CAA will handle remuneration and expenses claims and chargepass all of the costs on to HAL.

### Gifts, hospitality and donations

~~19-21.~~ The CCFCCB must not accept gifts or donations from HAL, the Airline Community or any other commercial party operating at Heathrow. The CCFCCB may accept refreshments offered during the course of meetings with HAL, the Airline Community or any other commercial parties operating at Heathrow.

### Authority

~~20.~~ ~~The CCF is an advisory body only and does not have any decision making authority. However, the CCF may issue 'comply or explain' notices to HAL, requiring HAL to address a concern raised by the CCF, or explain formally in writing why it does not intend to do so. The CCF may use its reports to publish these notices and HAL's responses. Comply or explain notices should be issued in accordance with the CCF's escalation policy.~~

### Escalation policy

~~21-22.~~ The CCFCCB will raise issues with, and make recommendations to, HAL as it sees fit. ~~The CCF must allow HAL the right to respond before the CCF takes its concerns further.~~ If necessary, the CCFCCB will escalate issues to a member of HAL's senior management and/or the HAL Board. HAL should identify an individual at senior management and/or Board level who



~~has been identified by HAL as is~~ responsible for dealing with issues escalated by the [CCFCCB](#).

~~22-23.~~ Where the [CCFCCB](#) has raised material issues with HAL's senior management and/or the HAL Board and believes that they have not been addressed satisfactorily, the [CCFCCB](#) will, as a last resort, escalate such issues to the CAA to deal with as the CAA sees fit.

~~23-24.~~ The [CCFCCB](#) should allow HAL at least 10 working days to respond to an issue it has raised before escalating the issue to HAL's senior management and/or the HAL Board. The [CCFCCB](#) should allow HAL's senior management and/or the HAL Board should at least 10 working days to respond to the issue it has raised before escalating it to the CAA.

## Authority

25. The CCB is an advisory body only and does not have any decision making authority. However, the CCB may publish 'comply or explain' notices, requiring HAL to address a concern raised by the CCB, or explain formally in writing why it does not intend to do so. The CCB may publish these notices and HAL's responses. Comply or explain notices should be issued in accordance with the CCB's Escalation Policy.

## **Secretariat**

~~24-26.~~ The Chair will be responsible for the [CCF's CCB's](#) relationship with HAL and other stakeholders.

~~25-27.~~ The Chair will appoint a suitably independent and qualified person to provide secretariat services to the [CCFCCB](#) (e.g. coordination of meetings, escalation of unresolved issues, managing finances, minuting meetings, and ensuring that all relevant papers and minutes are issued in accordance with these ToR). The costs of the secretariat will be recovered from the CAA. The CAA will, in turn, charge them to HAL.

~~26-28.~~ The Chair must ensure that the [CCF'sCCB's](#) secretariat is publicly identifiable, with contact details published on ~~HAL's website and~~ the CAA's website.

~~27-29.~~ If the [CCF'sCCB's](#) secretariat requires office accommodation, the Chair should have due regard to the [CCF'sCCB's](#) independence, particularly the risk of undue influence, when considering any offers from HAL, the Airline Community or any other commercial party currently operating at Heathrow to accommodate the secretariat.

## Resources

~~28-30.~~ The [CCFCCB](#) will have access to detailed, high quality information, including consumer research data and specialist advice on regulatory and operational issues, such as is needed to perform its Role effectively. HAL will ensure that arrangements are in place for sharing confidential and/or commercially sensitive information with the [CCFCCB](#).

## Transparency

~~29-31.~~ The [CCFCCB](#) will publish ~~non-confidential versions of~~ its meeting agendas at least 48 hours before the date of the meeting and minutes (with any confidential and/or commercially sensitive information redacted) as soon as ~~they have been finalised on HAL's website and~~ practicably possible after the meeting. Agendas and minutes should be published on the CAA's website, in addition to any reports ~~it~~ the CCB prepares.

## Working practices of the [CCFCCB](#)

### CCF meetings

~~30-32.~~ Meetings shall be convened as the need arises at key stages during the H7 price review, ~~and no less than four times a year~~. The [CCFCCB](#) will meet at locations agreed by the [CCFChair](#).

~~31-33.~~ The Chair or his/her named representative shall chair each [GGFCCB](#) meeting. The quorum for a [GGFCCB](#) meeting shall be fixed and determined by the Chair.

~~32.~~ The Chair shall be responsible for publishing the agenda for each [GGF](#)

~~33-34.~~ [CCB](#) meeting on ~~HAL's website and~~ the CAA's website at least 48 hours before the meeting.

~~34-35.~~ The Chair shall be responsible for minuting the proceedings and resolutions of all meetings chaired by the [GGFCCB](#) and which achieve the quorum. Minutes of meetings shall be circulated promptly to the [GGFCCB](#) for agreement and published ~~within 10 working days of~~ as soon as practicably possible after the meeting on ~~HAL's website and~~ the CAA's website.

### Other meetings

~~35-36.~~ The [GGFCCB](#) will maintain, and provide on request, an up-to-date log of all other meetings and telephone calls involving substantive discussion of issues within the [GGF's CCB's](#) Scope. The log should record the names of individuals and organisations involved and identify at a high level the issues discussed.

### Meeting observers

~~36-37.~~ At the Chair's discretion, other ~~bodies~~ organisations or individuals can be invited to attend [GGFCCB](#) meetings as observers. Observers can participate in discussions but are not members of the [GGFCCB](#). Observers can be asked to leave the meeting during periods when the information being discussed is of a sensitive or confidential nature.

### Other matters

~~37-38.~~ The [GGFCCB](#) shall be responsible for periodic reviews of its operational performance and, at least annually, review these against the ToR to ensure it is operating at maximum effectiveness.

~~38-39.~~ Changes to the ToR can only be made by the CAA.