

*Department for Business, Energy and Industrial Strategy: Reforming  
Competition and Consumer Policy*

RESPONSE TO CONSULTATION

## Background

The CAA Consumer Panel is a non-statutory critical friend, giving expert advice to the Civil Aviation Authority (CAA) as policy is being developed, and making sure the consumer interest is central. The Panel's objective is to champion the interest of consumers.

## General comments

The Panel very much welcomes this consultation and the proposals to enhance consumer rights and ensure those rights are robustly enforced.

As a general point, we note the consultation document is lengthy, at over 140 pages in total. Whilst it was possible to request the document in an accessible format (for example to ensure compatibility with assistive technologies such as screen readers), it is good practice to provide consultations, in particular those on consumer issues and which have particular application to consumers at risk of vulnerability, in more accessible formats such as Easy Read. This ought to help engage a wider audience with policy making.

## Preventing online exploitation of consumer behaviour

We support many of the proposals contained within the consultation, including updating consumer rights in relation to online shopping, subscriptions, reviews, and contract terms. We agree that consumers should be able to exercise effective choice and that this is important for competition. In this regard we think it is important that more is done to understand evolving practices such as personalised pricing. This is the practice of sellers charging different prices to individual buyers based on what is observable about them. Its aim is to assess the price sensitivity of individual buyers in order to set prices accordingly, and it is ideally suited to digital markets. Whilst price discrimination can be beneficial and increase market participation, it is also possible it could lead to detriment, particularly for more vulnerable groups of consumers, who may search less or have specific needs when booking a journey. This is an area which could have cross-sectoral relevance and therefore collaboration between Government and regulators, including as approaches develop, could be fruitful.

## Drip pricing

On the question of drip pricing, previous work (including that carried out by the Office of Fair Trading in 2010 into *Advertising of Prices*) demonstrates that clear, honest, upfront advertising of prices is beneficial to both consumers and competition. The OFT report considered various price framing practices and found 'drip pricing' to have the most potential to mislead consumers. The report pointed out that not only do consumers need to be confident that the advertising they see meets appropriate standards, but fair dealing businesses need to be confident that firms using unfair pricing practices will be subject to effective enforcement action. It is therefore important that drip pricing is addressed. In the aviation sector, we note the CAA carried out previous work looking at [seat allocation](#) and considered search costs as part of that work. Clearly the Covid-19 pandemic has had a very large impact on the aviation sector. However, as recovery gathers pace airlines will look to recoup losses, and we would expect the CAA and the Government to remain very much alive to poor pricing practices which may cause consumer detriment. The issue is a complex one, and it is important that the regulator has the right tools at its disposal to tackle detrimental practices should they arise.

## Civil consumer enforcement powers

Clear consumer rights form the basis for a vibrant market where consumers can shop around, exercise choice and vote with their feet. However, without effective enforcement to back them up and act as a deterrent to bad behaviour, consumers cannot exercise those rights in reality. We therefore support the proposals to empower the Competition and Markets Authority (CMA) to enforce consumer law directly rather than through the civil courts. Such a change would allow the CMA to take robust action in a timely way. The CMA is able to look across the economy, tackling practices that could have application in more than one sector and can share lessons, learning and expertise. For these reasons we also agree that the CMA should retain a similar enforcement scope under an administrative model to what it has currently.

Alongside the proposals relating to the CMA, we very strongly believe the time is right to reform sectoral regulators' civil consumer enforcement powers. The Panel has [previously noted](#) that the CAA's consumer enforcement powers are not well suited to swift action, with considerable periods of time taken for cases to come before the courts, meaning businesses are able to continue breaching the law without sanction over this period. At present, the tools available differ depending on the specific piece of legislation which a business is breaching and are 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. This can lead to situations where consumers are out of pocket or continue to face detriment for lengthy periods.

Reforming the CAA's civil consumer enforcement powers would allow the regulator to deal more swiftly and effectively with compliance issues leading to benefits for consumers and businesses who do play by the rules. Whilst the CMA is well placed to look across the economy, sectoral regulators including the CAA, hold deep expertise and are often the place to which consumers and consumer organisations look first to make sure rights are enforced and the playing field is level. It is right therefore that sectoral regulators have access to robust enforcement tools so that they are able to carry out their work effectively.

### Consumer impact assessments

We support the general thrust of the consultation towards a consumer regime which mirrors the UK competition regime. One area which could help to further support this would be the introduction of consumer impact assessments. Competition impact assessments already need to be carried out where laws, regulations or Government intervention could restrict competition in a market. A requirement to carry out a consumer impact assessment could mirror this, with consideration being given to areas such as which segments of a consumer market could be affected by a proposal; cost and quality implications; impacts on availability, choice, innovation and redress; as well as any specific or disproportionate impacts on vulnerable consumers. Carrying out this type of analysis in a structured way across the economy would help make sure policy makers have a proper understanding of and give due consideration to the implications for consumers. It would need to be done at an early stage of the policy making process and would help to make sure rules are framed in a way that does not have undue implications for consumers.

### Complaints and Redress

We support the focus within the consultation on good complaints handling and access to redress, including that which consumers can enforce themselves. However, there are areas where we feel proposals could be strengthened in order to produce demonstrable benefits for consumers. We have previously made the case for improved complaints handling and redress in aviation, including as part of our response to the Department for Transport consultation on [Aviation 2050](#). We would be happy to provide support or more detailed views if helpful.

We are encouraged by the announcement that the government intends to reposition the UK's approach to air passenger consumer rights in the post-EU world, and that this will mean improving consumer confidence and developing trust in booking travel by consulting on additional, flexible and modern tools to enforce consumer rights. We look forward to seeing more detail of these proposals.

### First tier complaints handling

Redress is one of the fundamental consumer principles. Without it consumers are not able to enforce their rights and there is less incentive for businesses to follow the rules. This can lead to a variety of undesirable outcomes including weakened competition, unscrupulous businesses gaining an unfair advantage, and loss of consumer trust in a market. To overcome this it is important that consumers have access to effective and fair complaints and redress mechanisms. We have had concerns about the quality and timeliness of first tier complaint handling by airlines for some time. [Passenger surveys](#) rate dissatisfaction with complaints top of their concerns.

There are two ways to ensure that first tier complaints are handled properly: first to empower regulators to impose complaint handling quality and timeliness requirements on businesses, and second to provide access to Alternative Dispute Resolution (ADR) in the case of dissatisfaction. Access to ADR is important and in our view should be mandatory in the aviation sector for reasons we will set out below. However, it is a backdoor and only a partial solution to a primary problem. The Financial Conduct Authority has powers to regulate complaint handling by financial firms and to investigate standards breaches, and in our view other regulators including the CAA should also have similar powers.

We support the Government's proposal to reduce the period before which dissatisfied complainants should have access to ADR from 8 weeks to 4 weeks – a measure we have already urged on the CAA. In our view this should be matched by a primary obligation on businesses to finalise decisions on consumer complaints in 4 weeks.

### Alternative Dispute Resolution

The Panel's view has consistently been that mandating ADR is crucial. The current unsatisfactory situation in aviation 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. This means that not all passengers can access a binding decision on their case, the situation is complex and confusing, and confidence is weakened as consumers do not feel they can trust the system.

We were surprised to see the Government is not currently minded to expand mandatory ADR to the aviation sector. Given the criteria used to make this decision we believe the position should be reconsidered. The criteria set out in the consultation document includes:

- “*nature of consumers: vulnerability, importance (for example essential or high cost)*” – we note that air travel is often costly, especially in proportion to income, and that payment for transactions is often made well in advance of travel, leaving the consumer in an exposed position.

- “*nature of the purchase: complexity, value, incidence, competitiveness*” – holidays and air travel are often infrequent purchases, typically made once per year, which lowers the opportunity for consumer learning.
- “*consumer experience: consumer confidence/trust, level of complaints*” – our data shows that levels of dissatisfaction with first tier complaints are high and consumer trust in the sector has suffered as a result of the Covid-19 pandemic and associated widespread cancellations and changes to travel plans. Easy access to high quality redress is an important part of boosting confidence and thus sector recovery.
- “*alternative routes: availability and effectiveness of other types of consumer protection/enforcement*” – we note the CAA does not have the tools available to some other sectoral regulators (such as via licensing) to be able to mandate ADR as part of its regulatory oversight.

The Panel’s view is that alongside mandating ADR, a single provider would provide better outcomes for consumers. A single provider – an ombudsman - would 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.

#### Frivolous and low value complaints

We note the use of the term ‘frivolous’ complaints throughout the consultation. Whilst we agree that some complaints may be considered vexatious and that companies should have clear policies as to how they decide when this is the case and the action they take, we do not think that the term ‘frivolous’ is appropriate. In this context we also note the references to ‘low value complaints’. The value of a complaint is dependent on many things including its meaning to the person who brings the complaint. Monetary value is also subjective and depends on aspects such as the income of the complainant. All complaints can provide valuable data to firms who seek to analyse it and make improvements to the way they do business. We do not consider that imposing a nominal fee on consumers to access ADR or seeking to deter ‘frivolous’ or ‘low value’ complaints is appropriate. There is no evidence from free access ADR schemes of frivolous complaints being encountered.

### Collective redress

We very much support Government interest in opening up further routes to collective consumer redress. In aviation there are clear and well established legal rights following cancellation or long delay. Because of this, flight disruption is an area which lends itself to a collective system. Where it has been established that one passenger is entitled to compensation then all passengers on that flight are also. However, at the moment it is down to individual passengers to contact airlines and argue their case. Individuals do not have sight of where a decision might already have been made in respect to their flight and so in theory different consumers on the same flight may end up with different outcomes. A collective system would be quicker and easier for airlines to administer and would be fairer for consumers.

### Conclusion

In conclusion, the Panel very much welcomes this consultation and many of the proposals it contains. We note that any changes to the consumer landscape should not result in a decrease in consumer protection in the UK. As work continues in this important area please contact us if we can be of further assistance.