

Department for Transport: Aviation Consumer Policy Reform Response from the CAA's Consumer Panel

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 CAA Consumer Panel is a group of independent experts, who bring together deep consumer expertise and experience along with strategic thinking, applying these in a practical way to improve the experience for commercial air passengers

The Panel's objective is to champion the interest of consumers and we appreciate the opportunity to contribute to the development of these key consumer policy reforms.

General comments

The Panel very much welcomes this consultation and the proposals to provide the CAA with effective enforcement powers, mandate ADR and improve the ability of less mobile passengers to easily obtain the appropriate compensation for lost or damaged equipment. We are concerned that the proposals to amend the compensation rights for delayed or cancelled domestic travel will not benefit consumers in the way the DfT envisages but welcome the opportunity to consider what more can be done to help people access the redress that they are entitled to when their journeys are significantly disrupted.

We have commented extensively on the issues affecting aviation consumers, most recently in our publication on supporting consumer confidence¹. This document details our assessment of the actions needed in the aftermath of the pandemic to enable consumers to book and travel with peace of mind, from general health measures to legal protections, addressing concerns related to safety, financial security, and strength of enforcement activity.

We also provided a detailed response to the DfT's Aviation 2050 consultation² on the future of UK aviation in 2019³ and supported the direction of the DfT's consumer policy towards greater accountability from industry for important customer services including complaints handling and high-quality accessibility provisions. Whilst we are pleased to see the important issues of CAA enforcement powers and ADR being progressed, we urge the DfT to revisit the wider policy approach and consider what further measures can be delivered for the benefit of all aviation consumers.

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<https://publicapps.caa.co.uk/docs/33/CAA%20Consumer%20Panel%20Supporting%20Consumer%20Confidence.pdf>

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/769695/aviation-2050-web.pdf

³ <https://www.caa.co.uk/media/5kldswbg/consumer-panel-response-to-aviation-2050.pdf>

Tools for the regulator to protect consumers and ensure fair treatment

1. The Panel are very pleased to see further proposals being presented by Government for the enhancement of the CAA's enforcement powers. As stated in our response to the consultation on reforming competition and consumer policy from the Department for Business, Energy and Industrial Strategy (BEIS)⁴, we believe very strongly that the time is right to reform sectoral regulators' civil consumer enforcement powers.
2. The Panel has repeatedly 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, during which businesses continue to breach the law without consequence.
3. We are concerned that the existing regime, using the powers provided by the Enterprise Act, fail on multiple fronts. They do not act as an effective deterrent, do not penalise businesses for activity already undertaken and do not allow quick action meaning that consumers are out of pocket or continue to face detriment for lengthy periods.
4. Across the consumer enforcement landscape, the CAA is almost unique in its reliance on the Enterprise Act to ensure compliance with consumer law. Providing specific regulatory powers would strengthen the position of the CAA as a consumer enforcer and rebalance this discrepancy.

Q1. What, if any, additional powers to enforce aviation consumer protection laws directly through civil sanctions should the CAA have? What specific issues would these powers address beyond the enforcement powers already available to the CAA?

5. We agree that the CAA should have the ability to decide if an aviation business has breached consumer rights law, make directions to end infringements or stop them from happening in the future, order compensation or redress for the breach and be able to impose financial penalties, where appropriate.
6. Such reforms would allow the CAA to deal more swiftly and effectively with compliance issues leading to benefits for consumers and businesses who do play by the rules. As we do not yet know the outcome of BEIS's considerations on enforcement power reforms for the CMA and other regulators, it is worth re-iterating the value of strong sectoral regulators working alongside the CMA.
7. 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 the DfT is looking at the CAA specifically and making proposals that will allow the CAA to carry out its important work effectively.

Q2. If the CAA were to have increased enforcement powers, should their enforcement remit remain as it is currently, i.e. only for cases of collective harm? What would be the advantages and disadvantages of the CAA having increased powers to enforce consumer laws in individual cases?

⁴ [CAP2273: CAA Consumer Panel response to BEIS RCCP consultation](#)

8. The Panel believes the CAA should continue to primarily act to address collective harm. The ability to act in this capacity is one of the CAA's main strengths and reflects their ability to recognise and prioritise the enforcement work that can have the greatest impact.
9. The CAA should also be allowed to enforce individual cases where there is a principle or precedent under consideration, or for especially egregious cases related to consumers in vulnerable circumstances⁵ or particularly significant breaches. This would only be possible with the appropriate resourcing and with clear parameters so as not to create unrealistic expectation or an excessive workload for the CAA and to ensure that the CAA can continue to respond proportionately to the most significant breaches.
10. The Panel proposes that this approach works well where there is a strong and effective alternative resolution scheme through ADR, including through an ombudsman who can investigate individual cases, escalating to the CAA where the novelty, scope or complexity of the case makes it more appropriate to be led by the regulator.

Q3. Are there any specific issues for the aviation sector that should be considered in the development of any administrative framework for the CAA?

11. The Panel would like these powers developed in such a way that all UK departing passengers benefit from the gains made. With that in mind, and given the international nature of air travel, development of these powers will require careful consideration of issues around jurisdiction and co-operation. This is particularly relevant where the CAA is seeking information from businesses whose main base is outside of the UK, which we understand has been challenging for the CAA in the past.

Resolution for individual consumers

12. Aviation consumers face a complex and confusing situation where not all passengers can access a binding decision on their case, creating the risk of weakened confidence as consumers do not feel they can trust the system.
13. 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. The CAA has consistently urged the remaining airlines to join and amend their policies to remove the stated obstacles for these businesses, yet we still do not have full participation. Around one in five consumers flies with an airline that has decided not to subscribe to either approved ADR scheme. This is a significant gap in consumer protection for aviation passengers.
14. We welcome the strongest indication to date that ADR in aviation is a priority for the DfT and urge them to make the delivery of this proposal a priority. The panel believes strongly that a single scheme, free to use with an extended remit should be pursued and welcome the recognition that an ombudsman scheme should be considered.

Q4. Should ADR be mandatory for all airlines flying to and from the UK? Please explain the reasons for your answer.

⁵ The Panel believe that, in relation to aviation, a broader range of consumers may find themselves vulnerable due to the impact of actions taken by airlines or airports and are pleased to note the CAA also accepts this definition.

15. We were surprised to see that Government was not considering mandatory ADR for aviation when BEIS consulted on this subject last year through the reforming competition and consumer policy consultation. We are therefore very pleased to see this proposal from the DfT and fully support making ADR mandatory for all airlines flying to and from the UK.
16. In the research report '*Confusion, gaps and overlaps: a consumer perspective on alternative dispute resolution between consumers and businesses*⁶' it was observed that where there is more than one scheme, ADR schemes compete, and this is not in the consumer interest. The researchers recommended that mandatory ADR should be extended across all consumer sectors. And in regulated sectors, ADR should be limited to one provider in each sector.
17. As stated in our response to BEIS, the aviation sector fits all the criteria identified as indicators that consumers needed this essential service. These included:
- “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.

Q5. Should all airlines flying to and from the UK be required to register with the ADR provider, or should parent organisations be able to register on behalf of all businesses within their parent group? What are the advantages and disadvantages of each of these options?

18. The priority for the Panel is for all consumers to have access. There is an argument for the requirement to apply to the individual airline and not the parent company, in recognition that the consumer has a relationship with the airline. Either way, the development of these proposals must take into account the need for the consumer to be able to easily navigate the procedures regardless of the legal or commercial relationships of the businesses involved.

Q6. How successful are the current compliance and enforcement mechanisms for the voluntary ADR schemes, and what alternative enforcement mechanisms should be in place to ensure compliance with any determinations made by an ADR body?

19. Within the parameters of the existing ADR arrangements, the Panel is confident that the CAA, with the appropriate enforcement powers, would be well placed to ensure compliance and develop mechanisms to ensure determinations are acted upon. We are aware that there are

⁶ https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer_publications/Gaps_overlaps_consumer_confusion_201704.pdf

occasionally problems with airlines failing to settle claims which are currently dealt with as a contractual issue between the ADR provider and the business. Making adherence a legal requirement would strengthen this and deliver greater certainty for consumers, particularly if remedies are required to be paid within a specific time period of, for example, 28 days unless the company has good reason to have extra time.

20. The Panel believes that the best outcome for consumers would however be a move to an ombudsman scheme, with this body also being granted an effective enforcement toolkit to ensure compliance with the binding decisions that it would be empowered to deliver. See our response to question 14 below.

Q7. What mechanisms could be put in place to ensure compliance with mandatory ADR for non-UK registered airlines?

21. The Panel does not feel qualified to answer this question, but again, we are confident that this obstacle can be overcome and that the CAA, with the appropriate powers, will be well placed to manage this risk.

Q8. Are there any other alternatives to mandatory ADR? What incentives could be used to encourage more airlines to voluntarily utilise ADR?

22. As stated above, the CAA has made repeated attempts to attract more businesses since ADR was first introduced in 2015. The Panel believes that we have run out of options for improving take up of ADR on a voluntary basis and that now is the time to mandate ADR in aviation.

Q9. Do you have any further evidence on the likely impact of mandatory ADR on the number of ADR cases brought forward by consumers?

23. The Panel believes that mandating ADR in aviation will not only ensure that those who do not currently have access to ADR benefit, but that take up will increase across the industry. As identified by the CAA in response to the BEIS consultation, the majority of complaints escalated to ADR concern flight disruption. A report produced for the EU's DG MOVE and published in 2020 suggests that around 3% of flights were cancelled or delayed in 2018⁷. Applying this rate to the reported number of overseas visits by air from the UK for that year (approximately 60 million as reported by the ONS⁸), we can estimate that there were around 1.8million instances of individuals being affected by disruption that could give rise to a cause for complaint. Not all these instances will qualify for compensation of course, but this figure seems to be significantly at odds with the 35,000 cases handled by the CAA approved ADR schemes in 2018⁹.
24. This substantiates the case put by BEIS that even where dispute resolution is available, consumers' understanding of ADR is low. Mandating ADR would enable clearer messaging around routes to resolution and the development of a single ombudsman scheme would allow for promotion and publicity with a one-stop-shop for aviation consumer issues.

⁷ European Commission, Directorate-General for Mobility and Transport, Kouris, S., Study on the current level of protection of air passenger rights in the EU : final report : study contract, Publications Office, 2020, <https://data.europa.eu/doi/10.2832/529370>

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<https://www.ons.gov.uk/peoplepopulationandcommunity/leisureandtourism/bulletins/overseastravelandtourism/previousReleases?page=2>

⁹ <https://www.caa.co.uk/data-and-analysis/uk-aviation-market/passenger-complaints/>

25. We also believe that effective resolution mechanisms create benefits beyond redress. Effective ADR encourages better first tier complaint handling by airlines and airports, which we know is needed given the low score that complaints handling receives in the CAA's UK Aviation Consumer Survey (see response to question 14 below). A report produced for the All-Party Parliamentary Group on Consumer Protection by MoneySavingExpert¹⁰ details how a well-designed and delivered ombudsman scheme provides an opportunity for greater learning from complaints. If the learning changes company behaviour, it could actually lead to a reduction in the number of future complaints as the triggers for the complaints are addressed, benefiting volumes of consumers that is hard to quantify but clearly significant.

Q10. What, if any, considerations should be had in relation to whether ADR should be mandatory for airports in relation to complaints around services for disabled passengers and those with reduced mobility?

26. The arguments for ADR to be mandatory for airlines apply equally for airports, and we believe that the reliance of passengers on the services and facilities provided by the airport operators makes this move essential. The Panel believes that such a requirement would help focus the attention of airport operators by providing a clear path for escalating complaints, reducing the opportunity for capitulation and maintaining pressure where improvements are needed.

27. Moreover, 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, respond to the understandable confusion that consumers face when trying to establish who is responsible for their poor treatment or lack of assistance and provide an avenue for passengers who may want to complain but do not currently have an appropriate route to do so.

Q11. What incentives could be used to encourage more airports to voluntarily use ADR?

28. The Panel believes that participation should be mandatory. If this is not possible, use of ADR could be incorporated into service level agreements and included by the CAA as a compliance indicator for its airport accessibility framework. Participation is a clear indication that complaints are taken seriously, and that unbiased resolution is a priority for the business.

Q12. Should ADR be completely free for consumers or would an 'nominal fee' in the event of an unsuccessful claim across ADR be advantageous to deterring frivolous claims?

29. We note the use of the term 'frivolous' to describe the context for a nominal fee being imposed and would like to re-iterate comments made in response to the BEIS consultation on the inappropriateness of this label. 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 are concerned that the term 'frivolous' implies a lack of value in these complaints and maintain that all complaints can provide valuable data to firms who seek to analyse it and make improvements to the way they do business.

30. We do not consider that imposing a nominal fee on consumers to access ADR or seeking to deter 'frivolous' complaints is appropriate. There is no evidence from free access ADR schemes of frivolous complaints being encountered and the balance of businesses that have chosen to join

¹⁰ https://images6.moneysavingexpert.com/images/documents/MSE-Sharper_teeth_interactive.pdf

the ADR scheme which does not charge a fee suggests that this is also not a significant concern for industry. Research also suggests that the existence of a fee, even where this is refundable, creates an obstacle for consumers as a report published by Citizens Advice shows that over 60% of consumers are put off by the need to pay a fee¹¹.

Q13. Should the cost per ADR case for the airline be capped at a specific amount? If so, at what level? Should there be different cost levels for different types of case, and if so, how could those be determined?

31. The cost model needs to be carefully considered to ensure that the monopoly ADR provider is sufficiently resourced and that the airlines and airports are not inappropriately burdened. This is achieved in other sectors and the Panel recommends that the DfT review other schemes to help reach that appropriate balance.

Q14. What are the advantages and disadvantages of CAA approved ADR entities as opposed to other options such as a single ombudsman? What benefits would there be to moving away from the current model?

32. The Panel's view is that a single provider would provide better outcomes for consumers and that the creation of an aviation ombudsman (also approved and regulated by the CAA) would deliver the greatest benefits for all parties. An ombudsman would 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.

33. This ombudsman would need clear powers to enforce the findings, with set rules on the time available to pay the remedy (i.e. 28 days to pay the consumer) and the Panel would like to see a role for the ombudsman to set standards for the care and quality of industry complaints handling. The ombudsman is in a unique position to understand these issues as they manage the escalation, and we see real value in a process that helps consumers receive the appropriate help from the business when the complaint is first made.

34. An alternative would be for the CAA to be given the role of standard setter and enforcer in this area. As stated above in reference to enforcement powers, the CAA is the outlier here, with other sector regulators able to set standards and monitor the quality of complaints handling. We see this as a significant gap in the current consumer protection landscape for aviation. The CAA's Aviation Consumer Survey consistently reports complaints handling as the area of air travel with the lowest levels of satisfaction¹² and we are keen to see the DfT and CAA deliver tangible consumer outcomes in respect of complaints handling.

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<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf>

¹² Satisfaction with handling of complaints made to aviation businesses fluctuate. Whilst it has risen to 71% in latest report, it was as low as 56% as recently as 2019 and still performs worse than other metrics. UK Aviation Consumer Survey Wave 10 (Autumn 2021) Report can be found here:

<https://publicapps.caa.co.uk/docs/33/CAA%20Consumer%20Survey%20Wave%2010%20Autumn%202021%20Full%20Report.pdf>

Compensation for delays and cancellations

35. The rights and obligations contained in the law on denied boarding, delays and cancellation have pushed the industry to significantly alter its attitude to disruption management. Instances of overbooking have reduced significantly, and businesses have clearly improved operational resilience to avoid the financial cost associated with compensation. That said, the Panel does not believe that this legislation is delivering all it promises.
36. The Panel welcome the recognition from DfT that this area of consumer protection can be improved but are concerned that the proposals devised and presented for consultation fail to tackle the most serious shortcomings and could potentially create worse outcomes for consumers.
37. Take up rates for compensation are low and some airlines appear to be building in obstacles to claiming a refund, presenting vouchers or credit as equivalent reimbursement when consumers are entitled to their money back. A number of claims management companies, together with some solicitors' firms, have responded by setting up schemes to help consumers claim their entitlement, but all will take a share of the compensation. This is far from ideal. As Lord Briggs pointed out in a recent Supreme Court case concerning Ryanair¹³, all passengers booked for the same flight suffer collective detriment through delay or cancellation, yet the compensation arrangements lack any collective approach to ensuring that compensation reaches all those who suffer detriment¹⁴. The policy objective should be that all those affected should receive the full compensation they are due without having to initiate claims through a complaint process, with a further appeal to an ADR if refused.
38. We would like to see a more fundamental assessment of the issues that need to be tackled, backed up by clear evidence and appropriate consumer research. We would also welcome a thorough assessment of whether it is really appropriate to equate domestic air travel to train travel, as the Panel believes that there are some fundamental differences that make this comparison flawed.
39. Although users of some long distance or infrequently served routes will suffer inconvenience comparable with that of air passengers, in general train passengers are more likely to have a choice of alternative routes to reach their destination or the possibility of catching a later train, and replacement bus services commonly used as mitigations that are not available to air passengers. The next service can also usually accommodate those displaced by earlier disruption, whereas you cannot ask air passengers to move down the aisle and sit in the luggage racks.
40. As well as these operational differences, aviation and rail are very different markets. Air passengers have a choice of providers offering a range of different propositions at different price points, whereas rail is effectively a monopoly on most routes. Where other routes are available,

¹³ Bott & Co Solicitors Ltd (Appellant) v Ryanair DAC (Respondent)

<https://www.bailii.org/uk/cases/UKSC/2022/8.html>

¹⁴ Lord Briggs also pointed out in his judgment, "neither Ryanair nor any other airline (so far as the evidence went) had set up its own online scheme for enabling passengers to seek recovery of flight delay compensation. Payment was not volunteered by airlines, which must have known which flights were relevantly delayed, and must have had the names and contact details of the passengers thereby entitled to compensation." Thus it was left to passengers to make complaints in order to claim compensation to which they were entitled.

rail passengers are often given the opportunity to travel on other services with alternative operators accepting tickets. The commercial realities of aviation make this unattractive to businesses and consumers alike, albeit for different reasons.

41. The Panel would be happy to discuss this issue further with the DfT, not only to consider the appropriate rates and triggers but also the possibility of automatic compensation or other forms of collective redress, or any other measures that could be implemented to ensure that consumers receive the compensation that they are due.

Q15. Should compensation for delays to domestic flights be calculated as a percentage of the cost of the ticket?

42. The Panel acknowledges the arguments for aligning compensation for domestic flights more closely to the price of the ticket but is concerned that this fails to take into account the purpose of the compensation as a recognition of the inconvenience caused and value of an individual's time rather than merely a contractual failure.
43. It is also an acknowledgment of the additional costs associated with the disruption. The levels of compensation proposed would bear no relation to the expenses incurred by passengers affected by a delay or cancellation. If a flight was delayed 3 hours, for example, which meant passengers arriving after public transport had stopped, they would only get the ticket price refunded, and they would receive nothing to cover the cost of a taxi. Likewise, if a passenger on a low-cost carrier was compensated in reference to the cost of original booking they could find themselves significantly out of pocket if they then have to book travel on an alternative airline.
44. This is a particular concern for consumers from more remote areas. The Panel is concerned that this proposal could be discriminatory against those travelling from Northern Ireland, Scotland or Cornwall, for example, where there are fewer alternative modes of travel and therefore fewer options for stranded or delayed passengers.

Q16. What are the advantages and disadvantages to the above proposal for compensation for delayed domestic UK flights?

45. We are concerned that creating a separate regime for domestic flights will create confusion where we believe consumers need high levels of knowledge and understanding to ensure that they can access their rights. This proposal not only has the potential to muddy the messaging around air passenger rights in general but could also lead to complications during the actual disruption given the carve out for passengers whose domestic journey connects to an international flight. In fact, passengers on the same flight could find themselves with different entitlements depending on their onward plans.
46. There is also a risk that airlines would make operational decisions that disadvantage domestic passengers. If the costs associated with domestic delays are at odds with those for international departures, a choice on which services to prioritise during a disruption will favour the services with the higher associated compensation costs.
47. The DfT also needs to consider the possibility that this move could actually reduce the incentive on airlines to limit the length of disruptions. If the compensation amounts reduce significantly, the motivation to limit delays to 3 hours is potentially removed.

Q17. What other options, if any, are there for delay compensation, delay triggers, and proportion of ticket price for domestic UK flights?

48. The Panel acknowledges the difficulty in identifying the appropriate triggers and designing a fair redress scheme and urge any further proposals or development to be based on clear evidence of where changes will deliver consistent and effective protection for all aviation consumers.

Q18. Should similar changes be made to compensation for cancelled flights and denied boarding? What are the advantages and disadvantages of both?

49. As stated above in reference to long delays, linking compensation to ticket price fails to take into account the purpose of the compensation as a recognition of the inconvenience caused. The existing law states that an airline need only refund the ticket price if the flight is cancelled up to 2 weeks before departure. The fact that compensation kicks in after this time reflects the need to recognise the disruption and distress that these changes can cause, for both short notice cancellations and denied boarding.

Q19. If compensation for delayed domestic UK flights is linked to ticket price, what should the definition of ticket price include?

50. The Panel has previously expressed concern over price aggregation and poor pricing practices in the context of ticket purchasing. Looking at the work conducted by the CAA on seat allocation as an example, consumers often feel pressured into adding these so called 'optional' extras and in fact such add on items can make up a significant portion of the ticket price. We therefore believe that the total paid by the consumer for the flight should be considered the price of the ticket for refund purposes.

Q20. Government is keen to understand the impact of the proposal to link compensation to ticket price:

- **Please provide any evidence on the number of passengers on domestic flights who are currently eligible to claim compensation for delays.**
- **Please provide any evidence on the proportion of eligible passengers who currently make a successful compensation claim for delays of domestic flights.**

51. The Panel would expect industry respondents to be better placed to provide the required evidence for the DfT but, taking the CAA's data on punctuality¹⁵ and an assumed average fare of £50, our estimates suggest that whilst there may be around a 40% increase in the number of passenger eligible these passengers would only be entitled to an average pay out of £16.70, compared to £220 now.

52. Research published by the DfT into rail compensation claims¹⁶ suggests that where the amounts due are low, consumers are significantly less likely to claim. Over the 4-year period of the study, half the proportion of eligible passengers claimed for short delays¹⁷ than longer ones¹⁸. There was also a strong correlation between the cost of the ticket and the likelihood to claim, with over half of those with a ticket costing over £40 claiming compared to 25% of those whose

¹⁵ <https://www.caa.co.uk/data-and-analysis/uk-aviation-market/flight-punctuality/>

¹⁶ <https://www.gov.uk/government/publications/rail-delays-and-compensation-2018>

¹⁷ 18% of those delayed between 15 and 30 minutes

¹⁸ 39% of passengers subject to a delay of 30 minutes or more

tickets cost less than £5, with 31% of non-claimants stating that the compensation was not worth the effort of claiming.

53. The Panel is therefore concerned that the proposals set out by the DfT may result in lower uptake by consumers of their legal rights and we believe reforms should focus on ease of access and effective enforcement rather than a change to eligibility and compensation rates.

Q21. Is there anything else that can be done internationally within the confines of the 1999 Montreal Convention to help link compensation to the costs of travel for delay?

54. The Panel are unable to answer this question but look forward to hearing views from other respondents.

Q22. What would be the advantages and disadvantages of enabling package organisers to seek a refund for cancelled flights that are part of a package holiday through legislation?

55. The Panel believes that consumers deserve quick resolution when cancellations occur, and refunds are due. Ideally, the airlines and tour operators would have effective commercial arrangements in place make sure this happens, allowing the business that has the relationship with the consumer to provide the refund without suffering itself from a failure of other parties to meet their obligations. That said, it is important that consumers are not prevented from exercising their rights where they have a legitimate claim against the airline and where the involvement of a third party would delay or complicate that claim. We would suggest that any reform in this area relates the ability of a third party to claim on a passenger's behalf to the refund ultimately reaching that passenger (i.e. the refund obligations under the Package Travel Regulation).

Accessibility

56. The Panel is an advocate for accessibility in aviation. We have worked with the CAA to develop and embed a better understanding of vulnerability across the breadth of its work and provide input via specialist accessibility groups to enhance fairness for consumers at risk of vulnerability and where accessibility issues occur. As described by the DfT, a significant proportion of air travellers report having a disability or health condition with the majority of these stating that they find it difficult to access airports or to fly. When the appropriate measures are employed, these difficulties can be effectively mitigated but when things go wrong the consequences can be devastating.

57. In response to the DfT's Aviation 2050 consultation, we stated that proposals should focus on establishing consistent, high-quality service to allow maximum access, encouraging co-operation amongst various industry players to ensure high quality delivery of assistance services. We also commented that proposals needed to go beyond a focus on wheelchair design and specific measures with a narrow scope for delivering improvements.

58. The DfT are again focussing on wheelchairs and mobility aids, but we appreciate the importance of this for many travellers for whom loss or damage of their equipment not only means a significant financial loss but a loss of independence that can have far reaching consequences.

Q23. What are the advantages and disadvantages of special declarations to anyone travelling with a wheelchair or mobility equipment?

59. The Panel are concerned that many aspects of the special declaration arrangements place too much onus on the passenger and that there is an unrealistic expectation of the individual's ability to assess the value of their equipment. The high cost of specialist equipment means that many users make use of the various NHS or charity schemes available to obtain it, often paying only part of the cost. It is also quite likely that time has passed since it was purchased, making it difficult to easily obtain details of the cost. In many instances, only part of the equipment will be damaged, and it is unfair to expect the consumer to know the cost of individual components such as headrests or control units.

Q24. What would be the impact of removing the need to pay a supplementary fee for wheelchairs and mobility equipment?

60. Any cost associated with access to air travel related to specific accessibility requirements should be viewed as discriminatory and the Panel feel strongly that access to adequate redress should be free for passengers who rely on mobility aids.

Q25. What evidence would it be reasonable to expect a passenger to provide to demonstrate like-for-like replacement/repair of a wheelchair or mobility equipment for a special declaration?

61. Again, this is placing the responsibility on the passenger where we feel the airline has a duty to take care of the equipment and make amends if they are unable to carry it in an appropriate manner.

Q26. What, if any, steps could be taken, beyond special declarations, to provide sufficient compensation for wheelchairs and mobility equipment damaged during transit on a domestic UK flight?

62. The consultation, including the wording of the questions, presupposes that damage is inevitable. The Panel would like to see a shift in emphasis to an approach that encourages appropriate treatment of mobility equipment by the airlines. Easier access to special declarations and an expectation that all costs will be met may of course provide a financial incentive to avoid damage. The Panel would like to explore further options with the DfT for the development of proposals that may lead to greater care in the carriage of mobility equipment on all flights.

63. We would also like to consider how such measures could apply internationally, even where international conventions appear to place a limit on what can be achieved.

Q27. Other than compensation for the damaged or lost wheelchair or mobility equipment, are there any additional provisions that would reduce the impact on an individual whose wheelchair or mobility equipment has been damaged in transit on a UK domestic flight?

64. As stated above, damage to mobility equipment can be relatively minor. In these instances, access to free and timely repairs could be offered to minimise the impact and the Panel would encourage industry to implement a policy that allows for minor damage to be fixed, possibly even at the destination, to deliver immediate remedy. This could also include the provision of less specialist equipment on a temporary basis which could be easily achieved through local providers.

Q28. What else could be done to protect wheelchairs and mobility equipment during carriage? What would the impact on the individual and the airline be?

65. The Panel does not have any further proposals in relation to the carriage of equipment but look forward to reviewing suggestions put forward by other stakeholders.

Q29. What other reforms can we consider, to encourage more support of passengers with accessibility needs when travelling by air?

66. The Panel believes that there are many areas where reforms could deliver support for passengers with accessibility needs, from the booking process to the design of the aircraft. As stated above, these should focus on establishing consistent, high-quality services to allow maximum access, encouraging co-operation amongst various industry players to ensure high quality delivery of assistance services. There are still too many instances of miscommunication between the business involved, complicated by different service providers using different definitions of the assistance needed even where internationally recognised codes are employed.
67. There also needs to be more consistency between airlines on the use of certain equipment and other provisions. For example, the CAA conducted a call for evidence on the use of assistance dogs in recognition of the disconnect between the definition used for air travel and that contained in disability legislation¹⁹. Such inconsistencies add to the complexity of air travel for less mobile passengers and to the anxiety many feel when making travel arrangements.
68. The Panel believes that more could be done to address the discrepancy between the level of information that passengers are asked to provide and the assistance that is subsequently provided. The level of detail that is required at the booking stage is onerous and daunting, especially for those with less experience of air travel. For equipment, for example, passengers are required to provide extensive details about the specifications, which can be difficult for some to obtain. Whilst we appreciate that details of batteries or elements related to the safety of baggage handlers are important, we feel that airlines could be more pragmatic and less prescriptive.
69. The Panel also notes that there is still a significant problem with pre-notification of assistance requests and are concerned that services required by those with significant mobility impairments are frequently diverted to passengers who could be helped in a different way, through improved wayfinding assistance, for example.
70. Finally, we would like to see a stronger requirement for accessibility to be considered in aircraft design. We recently became aware that the fixed partitions used in business class on one airline made that entire class of travel inaccessible for less mobile passengers who need to be lifted into a seat. Whilst we understand that adjustments will be made to rectify this, consideration of accessibility needs to be an integral part of the design phase to avoid such blatant discrimination.
71. The Panel are happy to provide further details on the above issues or consider more novel approaches. We look forward to working with the DfT of these issues and others that identified in response to this consultation by other stakeholders.

¹⁹ [Recognised assistance dogs: Call for evidence - Civil Aviation Authority - Citizen Space \(caa.co.uk\)](#)