

# Consumer Panel minutes

## 12-4pm Thursday 12 July 2018

---

### Attendees

#### Consumer Panel

Jenny Willott (JW) Panel Chair (on Skype)

Sarah Chambers (SC) Chairing meeting

Helen Dolphin (HD)

Robert Laslett (RL)

Trisha McAuley (TM)

Walter Merricks (WM)

Anthony Smith (AS)

Claire Whyley (CW)

Harriet Gamper (HG) Panel secretariat

#### Invited guests

Matt Buffey CAA, CMG (Item 3)

Anne-Marie Hopcroft (AMH) CAA, CSP (Items 5 and 6)

Tim Johnson (TJ) CAA, CSP

#### Apologies

None. The meeting was quorate.

#### Declaration of interests

None.

### 1. Chair's Update

SC opened the meeting.

The Panel held a successful away day on 7 June, which included members who will be joining in October alongside current members. Attendees discussed the CAA's strategic objectives, the existing consumer evidence base, and priority areas.

JW briefed the Panel on activities since the last meeting. This included regular catch ups with CAA colleagues in CSP and CMG, attending the UKACCs annual meeting, and a meeting with the CEO of the Safer Tourism Foundation.

JW attended the CAA Board away day dinner as after dinner speaker and led a constructive discussion on the Panel's priorities for the next 18 months and Panel views on how the CAA could best focus on the consumer interest. The Board were keen to have the Panel's views on the consumer interest.

Panel members met with the Airline Insolvency Review Chair and team, the Airlines UK CEO and members of the executive board, and members of CAA staff to discuss accessibility and complaints handling.

## 2. Update on CAA Strategic Developments

TJ briefed the Panel on the main CAA strategic developments and priorities since the last meeting, with particular focus on Brexit.

The CAA is currently focused on contingency planning, and is liaising closely with Government and industry. Information on the preparations being made was published on the CAA website in June.

### Key comments/responses/questions

- The Panel underlined how important it is that the CAA is prepared to give consumers information on the risks they may face and has official advice ready to support consumers, particularly in the event of a hard Brexit or a no deal scenario.

## 3. Consumer enforcement work

Matt Buffey, Head of Consumer Enforcement, gave an update on his team's recent work. The team covers: compliance with the ATOL regulations, general consumer law such as unfair commercial practices and unfair contract terms, accessibility of airports and airlines and the authorisation of ADR schemes.

MB introduced the work of the team, which is broad and covers airlines, airports, ATOL holders, ADR schemes and travel agents. The team uses prioritisation criteria to work plan but also has to be ready to respond to events.

The main areas the team is dealing with currently include:

- Delay/cancellation, with particular focus on whether people are being informed of their rights. The CAA has worked closely with airlines such as TUI on this.
- Rerouting. The CAA view is that this should mean the next flight and not the next flight with the airline the original ticket was for. MB accepted the CAA may need to take action in this area in order to clarify the law.
- Disabled passenger rights, including the CAA's work with airports and airlines to improve standards. For example this year Heathrow has improved, 16 airports were assessed as 'good', and the CAA is working with Stansted currently to improve aspects such as assistance waiting areas.
- Unfair contract terms, based on research the CAA carried out in 2016. The team is currently preparing recommendations and working with industry on improvements to areas such as how easy terms are to understand.

### Key comments/responses/questions

- The Panel expressed support for the team's work, said there is an open invitation to call on the Panel whenever staff want input, and asked that the team share reports earlier.
- The Panel suggested there may be a role for the CAA on how information provision is streamlined and standardised.
- There may be work that could be done to make airports and airlines more accountable for how they work together, in particular on accessibility issues. The Panel suggested an initial think piece on this could work well.

## Actions

- MB confirmed the team was aware to contact HG for input at any time but said he would re-iterate this.
- The quality framework for airports will be reviewed this year, along with development of a framework for airlines, and the Panel will be asked to input.

## 4. Draft Consumer Panel work programme

HG introduced the draft work programme, which was based on discussions at the Panel away day in June. The key themes are access, quality and redress. The work programme covers a time period of 18 months, to March 2020.

### Key comments/responses/questions

- Overall, the text should be shortened.
- Getting the purpose of the Panel right is key, and the Panel asked for it to be made clearer that its objective is to make things better for consumers.
- The terminology around accessibility and vulnerability was discussed, and it was recognised that work needs to be done around the language that is used, this to be added to the outputs.
- The outputs could be made more measurable in terms of their impact.
- Add acknowledgment of other ongoing work the Panel carries out such as around H7 and Brexit.
- Add recognition that over an 18-month period things will change and the work programme will need to be flexible and recognise this.

## Actions

- Panel members to send drafting comments to HG by email asap on where outputs could be made more measurable.
- HG to amend draft based on comments and circulate to the Panel via email for final sign off.

## 5. Complaints and redress: ADR

The Panel has agreed to focus intensively on complaints and redress over the next 6 months in order to feed into the Aviation Strategy. A particular question to be answered in this context relates to whether the Panel has a preference for single or multiple ADR providers in aviation.

The Panel Secretariat carried out a literature review of reviews/evaluations of ADR schemes in sectors with single and multiple providers, which the Panel discussed. Although none of the reports found were specifically intended to address the question of single versus multiple providers, they each benchmarked the utility to consumers of different redress schemes, in sectors with both single and multiple providers. The reports were used to obtain insights regarding the outcomes for consumers from sectors with single ADR schemes and those with multiple ADR schemes.

### Key comments/responses/questions

- The Panel noted that schemes in competition with each other are not incentivised to share information or record data in a consistent manner.
- An ADR scheme or Ombudsman should be an authoritative voice in the sector to help feed back issues and drive improvements.
- The focus should be on authorisation standards, and the Panel should make the case for improving standards.
- Overall, the Panel recommended the following:
  - The Panel's view has consistently been that mandating ADR is crucial. The Panel remains of this view for the reasons set out previously.

- Closely linked to the issue of mandating ADR is the issue of single or multiple providers. The Panel is of the view that a single provider is more likely to provide better outcomes for consumers. A single provider will also have the ability to be a voice in the sector, sharing good practice, providing consistent decision-making, highlighting emerging issues, feeding issues back to consumers, industry and regulators, and having a comprehensive overview of issues giving rise to complaints and to the complaints handling behaviour of all participants.
- Recognising that any legislation in this area is likely to be some way off, the Panel also recommends that the authorisation standards for ADR providers in the sector are crucial (whether single or multiple providers are authorised), and believes these could be improved in the meantime. For example schemes could provide more granular and comparable data to the public and to CAA on cases, and could show greater transparency and accountability around areas such as governance and independence. The Panel would be pleased to work with the CAA to further develop authorisation standards.

### **Actions**

- HG to draft supplementary advice to the CAA based on above, to be signed off by the Panel and Panel Chair via email.
- To be provided to CAA staff by 27 July, so CAA can use as part of input to Aviation Strategy discussions with DfT.

## **6. Complaints and redress: compensation and collective redress**

When things do go wrong the Panel wants to see consumers having quick and easy access to redress, with equitable outcomes. Complaints should be used to help drive service improvements to help make things better for everybody, including those who do not complain. Consumers should be aware of their legal right to compensation and be able to quickly and easily claim what they are entitled to.

The Panel believes awareness and uptake of compensation could be improved, in line with the DfT's vision in the Aviation Strategy next steps document. 92% of what aviation ADR schemes do currently relates to EC261 compensation. Uphold rates of around 65% are high and suggest that such claims are not being dealt with fairly by airlines at the first tier.

The Panel discussed options for how awareness and uptake of compensation could be improved.

### **Key comments/responses/questions**

- The Panel discussed the following options to improve awareness and uptake:
  - Separating EC261 compensation from other complaints. Compensation is a legal right, while complaints should instead be used as intelligence to drive service improvements. The two should not be dealt with in the same way. Separation would have the effect of greatly reducing the volume of contacts to ADR bodies and the CAA PACT team. These bodies would then simply be dealing with 'actual complaints' and would be able to classify and deal with these, and feed back to industry in order to drive improvements relating to the root causes of complaints.
  - Compensation under EC261 also needs to be distinguished from other compensation and redress to which consumers may be entitled, whereby consequential loss or damage to items may have been suffered.
  - As compensation is a legal right, the Panel asked the CAA to write formally to airlines to request information on: the proportion of flights/passengers eligible for compensation, what proportion of this compensation is claimed, and of that what proportion is paid out. Such information would help the CAA to

assess whether the Regulation is having the intended effect of securing compensation for those consumers where it is due.

- Consumers who have experienced EC261-related detriment do not know whether their airline has disputed or accepted liability in previous claims for the same flight, for when claims have been ruled on by ADR schemes. It may be helpful if airlines, ADR schemes and PACT were to publish decisions where they have accepted EC261 compensation claims, to enable other affected passengers to claim based on this information. This would help to demonstrate that decisions are consistent (also decisions made by courts and ADR schemes) and would give consumers an opportunity to find out whether or not their claim is likely to be accepted.
- An independent third party (such as the CAA) could provide a definitive list of eligible flights. The Panel recognised this option could entail additional resource, processes and potentially powers before it could be effected however.
- Collective redress is of particular relevance in the aviation sector since often identical circumstances will pertain to all individuals on a given flight. The CAA, in its response to the BEIS green paper on modernising consumer markets, suggested it may be helpful for the Government to consider any potential barriers to access to collective action as part of the wider work on the green paper. The Panel supports this view and considers that mechanisms for improving access to collective redress should be explored.
- Finally, longer-term systems could be developed so that consumers could be compensated without having to apply proactively where an independent decision-maker had ruled on the liability of an airline.

## Actions

- HG to draft supplementary advice to the CAA based on above, to be signed off by the Panel and Panel Chair via email.
- To be provided to CAA staff by 27 July, so CAA can use as part of input to Aviation Strategy discussions with DfT.
- AMH to take forward development of an evidence base to better understand the scope of EC261 eligibility and take up and pay out. In this context the Panel recommended it would be helpful to request information from airlines on the proportion of flights/passengers eligible for compensation, what proportion of this compensation is claimed, and of that what proportion is paid out.

## 7. Any other business

This was the last meeting for SC, RL and AS. JW and TJ thanked them all for their contributions over the last 5 years, as founding Panel members.