

# Consumer Panel minutes

## 11:30 – 16:00 Thursday 4<sup>th</sup> February 2020

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### Attendees

#### Consumer Panel

Jenny Willott (JW)	Panel Chair
Trisha McAuley (TM) David Thomas (DT) Walter Merricks (WM) Jacqueline Minor (JM) Claire Whyley (CW) Carol Brennan (CB) Helen Dolphin (HD)	Panel members
Harriet Gamper (HG) Tom Willis (TW)	Secretariat

### Invited guests

Paul Smith (PS)	Group Director, CMG
Matthew Buffey (MB)	Head of Consumer Protection, CMG
Nic Stevenson (NS)	(Items 4 & 8) Head of Strategy, CSP
Kee Kras (KK)	(Item 8) Policy Development Associate, CSP
Ben Alcott (BA)	(Item 7) Director, International Group
Tim Johnson (TJ)	(Item 6) Policy and Strategy Director

### Declaration of interests

None.

The meeting was held remotely.

## 1. Chair's Update

### Update from the Panel Chair

The Chair had held a number of internal meetings since the last Panel meeting: JW met with the CAA Chief Executive Richard Moriarty and Chair Sir Stephen Hillier to talk about the current situation facing aviation and the CAA as well as the strategy refresh.

JW attended an all Consumer and Markets Group (CMG) meeting to give the group a fuller understanding of the Panel's work and how to get more involved with its projects.

JW also met with PS to discuss the paper the Panel is drafting on consumer confidence in the context of restart and recovery, and how the paper might be used going forwards.

## **Updates from Panel members**

CB and TM updated on the work the CAA is carrying out on the provision of environmental information to consumers – Britain Thinks have been appointed to research how consumers might use environmental information using a deliberative methodology. The Panel sub-group has been involved in the research design and will be engaged on the early findings.

DT updated on the work of the economic regulation sub-group. The Panel had responded to a consultation on the NERL price control and raised (once again) the point that airlines' interest may not be a reliable proxy for the consumer interest in every scenario.

PS replied that the CAA will test this as there is likely to be an assumption that the interests of consumers do align with those airlines when the focus is on aspects such as minimising air traffic delays and environmental effects.

WM and CB had provided feedback to the CAA on its process for handling complaints related to ATOL. An update on how the CAA's Passenger Advice and Complaints Team (PACT) has been coping since it moved from the London to Gatwick office and has been dealing with Ryanair complaints in addition to other (since Ryanair left the ADR body it had been using) was requested. PS said that around 70% of claims have been dealt with since the start of the pandemic and complaints are currently at a low level. He took an action to revert to the Panel on PACT.

## **ACTIONS**

PS/MB to provide an update on PACT.

HG to follow up on the ATOL complaints process and request an update for the Panel towards the end of 2021.

## **2. CAA update**

PS set out how the situation for the sector has worsened over the past few months due to new border restrictions. The main issue is the need for a longer-term roadmap which includes the summer period since recovery is likely to be leisure travel led.

It is now an offence for airlines to allow passengers to board without having shown a valid negative test. The CAA has been granted new enforcement powers around this requirement. Airline compliance has been high so far. Passenger locator forms (a separate requirement which arriving passengers must complete, and where the CAA also has a role) are the main challenge currently, largely due to language barriers and accessibility.

The current paper-based process for vaccine documentation is unlikely to be viable long term due to queueing at airports. The process needs to move to digital/online (for example via an app) and the CAA will remain vigilant that people are not excluded by digitisation.

## **Discussion**

Are passengers aware that they must pay for the Covid test before getting to the airport? PS explained that testing requirements are in place for most countries so passengers should be aware before travel.

It is concerning and a risk to health and safety that people are having to stand for 2-3 hours (see recent press reports about queues at Heathrow). Many customers have said they would rather stay sitting in their aircraft rather than standing in the airport. PS explained that there has been a lot of engagement between the Home Office and Heathrow about overall responsibility for managing queues. With short haul flights, there is usually a quick turnaround so it's not possible to keep passengers on board. MB added that Heathrow have brought staff back from furlough to help deal with queues. A problem with keeping passengers on the aircraft would be that the crew need to leave.

### **3. Consumer Panel visibility**

HG asked for views on the paper. It is important to think about the Panel's impact and how best use can be made of this small resource. As staff turn-over, project leads change, and new priorities open up, it is a good idea to make sure that all CAA colleagues are aware of the Panel, what it does, and how it might be able to help them. It is also important that the Panel is visible to senior colleagues, and that lines of communication are kept open.

There was support for the idea of an internal intranet page and a one-off intranet blog by the Panel chair. Members asked whether there is scope for the CAA to produce an annual consumer report which pulls together the consumer activity going on? And if there is scope for the Panel to meet with aviation consumer policy leads from the DFT?

The importance of the transparency of the Panel's work externally was raised. It was agreed that the minutes should continue to show both a description of the issues and actions.

The Panel will be updated on impact and progress against items in the work programme as a regular standing item (every 6 months) going forwards.

## **ACTIONS**

Secretariat to enable/explore the various proposals above and report back to the Chair.

### **4. CAA Strategy**

NS stated that the CAA needs to analyse the success of producing the new strategy by measuring how outcomes have achieved certain goals that were set at the start of the project. NS also stated that over the next 2 – 3 years the overwhelming context that the CAA will be operating within, will be the sector's recovery from Covid.

The CAA is getting to the point of defining what the shape of the actual strategy is going to look like, for example, who's it for, what is it aiming to do and what documents is it supported by. NS is going to take the strategy to Exco in March so he can share his perception of what the strategy looks like and he hopes that the consultation will be ready for May. NS does not view the strategy as a

'business plan' as he believes it needs to be more transparent and focus on specific contextual issues.

## 5. EU Exit: EC 261 / 'UK 261': overlapping obligations and rights

'UK261' is the retained EU Regulation covering Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights (EU261). There will be situations where passengers have rights under both 'UK261' and EU261, and where there is an overlap, questions such as which regulation passengers should claim under and where tier 2 claims should be referred need to be clarified. When EU 261 was copied into UK 261, the compensation amounts were amended (for example) which means that as currency fluctuates, it may be advantageous for consumers to claim under one piece of law or the other, if they are in a situation where the laws overlap. There may also be gaps. This creates awareness problems as consumers may not know that they have these two sets of overlapping rights. Under both laws, the airlines are obliged to give consumers information on their rights, but this may be confusing as both sets of rights look almost identical which will make them hard to distinguish from each other.

### Discussion

The Panel raised the following points/questions:

- Whether in the absence of continuing cooperation and information exchange and since the ECJ caselaw no longer applies, how the risk of divergent approaches by airlines, ADR systems and NEBs can be minimised?
- Will a passenger whose claim is rejected by an EU ADR body be able to start a new ADR request with the UK body? Can s/he bring both complaints simultaneously? And if both were to succeed, can the passenger claim the higher amount?
- Although English remains an official language of the EU, how comfortable will EU27 ADR bodies be in operating in English?
- If both Tier 1 complaints handling and ADR fail to satisfy the passenger, their options are less advantageous than previously for example passengers will no longer have access to the European Small claims procedure, choice of law rules now much more complicated making it uncertain whether a claim could be brought in a UK court against an EU carrier and no automatic enforcement in the EU of UK court judgments. Do passengers need to know this?
- Is this an area where the UK could potentially diverge from EU consumer law by (for example) placing an obligation on the carrier to pay compensation automatically to all affected passengers or at least, to alert them that they have a valid claim and a simple way to opt-in?
- Is there a problem for consumers in knowing whether they have contracted with a UK or a Community carrier? Will this be clear to the passenger at the time of booking for example?

### ACTIONS

Panel to comment on draft paper being prepared by CMG.

CMG to respond to Panel comments and update Panel in due course, following conversations with industry and the Department for Transport.

## 6. EU Exit: Following the end of the EU exit transition period

TJ updated the Panel on EU Exit following the end of the transition period. He explained that the aviation related part of the trade agreement is made up of two main parts; air services and safety. The air services agreement allows for continued flights between destinations in the UK and the EU without restrictions. The aviation safety part includes airworthiness, covering design and production. This allows for some mutual recognition of certificates and will provide certainty for regulated businesses. The deal does not include technical implementation procedures, however the CAA has already started discussions with the European Aviation Safety Agency (EASA) to get these in place as soon as possible.

Airlines and aerospace companies have given a strong message that they want the UK to remain in line with the EU system as most of them are European integrated, otherwise costs and inefficiencies would be driven up which would result in higher costs for end users.

### Discussion

The Panel raised the following:

- Since the trade agreement has not yet been ratified by the European Parliament, there is potential for a breakdown in relations. Does the CAA view the deal as a start or an end (in that the agreement may provide opportunities for further cooperation and side agreements)?
- Have there been any signs that UK carriers will be charged additional airport charges/landing fees in Europe and vice versa?
- Is there scope for cooperation between the UK and Europe on the issue of environmental sustainability?

TJ replied that there has not yet been any impact on airport charges, but it is hard to say whether there will be any longer-term impacts. TJ believes that it will be some time before the politics of Brexit normalise and discussions on environmental sustainability take place.

## 7. Covid-19 response: Public health

JW welcomed and thanked BA for joining the session. The presentation was timely as the Consumer panel is currently drafting a document on supporting consumer confidence in the context of sector recovery.

BA explained that the CAA has been working since the start of the pandemic to understand and influence global guidance on Covid security in aviation. For example, the CAA has been working with the International Civil Aviation Organization (ICAO) to test the ICAO public health corridor concept and the organisation's feedback has influenced both the original ICAO CART documents, which includes practical, aligned guidance to governments and industry operators in order to restart the international aviation sector and recover from the impacts of COVID-19 on a coordinated global basis, and the recently issued Version 2.

The UK aviation industry is clear that common international standards are crucial to restoring passenger confidence and enabling recovery. Through the CAA's strong links with ICAO, the UK is well placed to be a leader in promoting and driving the idea of the ICAO CART work and Take-off

documents. The ICAO CART Take-off guidance document includes recommended measures for four operational modules relating to airport guidelines, aircraft guidelines, crew guidelines and cargo guidelines.

CART has now begun a new phase (CART3) where the global framework for the validation of testing and vaccination records and certificates will be considered. The phase also includes updating the Take-off guidance document again, based on new knowledge and understanding, such as around requirements for wearing masks. There may be a role for the CAA to provide assurance.

### **Discussion**

The Panel considered:

- How manageable it would be for the CAA to provide assurance if the majority of UK aviation businesses sign up
- How the CAA is communicating information to consumers regarding pre-departure testing and other requirements.

That some issues might be resolved by use of technology, for example, if test results and certificates are digital then queue times will be reduced rather than if everything is paper based (as it is currently). BA agreed that the biggest issue at the moment is having enough qualified medics to undertake the assurance role. This is likely to be the biggest limitation.

PS explained that the CAA's consumer protection team have done a lot of work to make sure airlines are publicising requirements on their websites and the information pops up at relevant points in the booking process which will allow consumers to act on it. Current evidence is that airlines are trying to provide this information as clearly as possible.

It was asked whether there are points at which the Consumer Panel could help - for example by flagging areas for action. BA suggested that there is possibility for this in the future as the government looks to expand work on this issue and said he would revert to the Panel.

## **8. Aviation Consumer survey**

KK presented initial findings and explained that key focus areas for this wave of the survey (fieldwork for which took place in November 2020), was consumer sentiment around environmental information and the impact Covid has had on flying.

### **Discussion**

Key feedback from the Panel included;

- The Panel welcomed the latest survey results - it is a valuable dataset, highlights areas the CAA might like to consider in more detail, and complements other research the CAA might also be undertaking.
- Concerns were raised around sampling and the split between pre and post Covid respondents. A large majority of the findings do not address the possible differences in experiences and perceptions between those who flew before the pandemic started and those who flew after. This is key because the data presented here will help to shape the response of the CAA and others as we move towards sector recovery.

- Some of the headlines did not match the more detailed information available underneath, which skewed the take-away messages. This was particularly evident in the section on complaints handling.

The current survey provider is contracted to undertake one final wave, which will most likely take place in autumn 2021. KK will be in contact with the Consumer Panel to get their input on the question design.

There will then be an opportunity to refresh the way the survey is conducted and to look at the types of questions that are asked.

The Panel suggested that it may be worth seeking involvement in the UK Regulators Network's (UKRN) cross sector survey as a way of saving money.

#### **ACTIONS**

Panel to provide detailed comments on the draft survey.

KK to involve the Panel in drafting the questions for Wave 10 in due course.

KK to revert to Panel with a paper setting out the different research and evidence currently available to the CAA on consumer issues, any gaps, and plans to refresh the survey in this context.

## **9. AOB**

No issues were raised.