Department for Transport

Aviation Consumer Policy Reform

January 2022

Department for Transport
Great Minster House
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Executive summary

1. The aviation sector is important to the UK, connecting the people of the UK to the rest of the world for business, tourism, and reconnecting with family and friends. We want to ensure this remains the case, and that passengers remain at the heart of the industry. Everyone should have the confidence to travel by air, and government is committed to ensuring that flying is a positive experience for all.

2. The aviation industry understands the importance of consumers and many demonstrate good practice in providing a positive experience for consumers. As the sector evolves and the way consumers choose to travel changes, we want to continue to work with industry to identify modern and flexible tools to support consumer protection. The COVID-19 pandemic has understandably had a devastating effect on the aviation sector, and this in turn has affected the confidence of consumers to travel by air. Despite this, we have seen industry step up to respond more flexibly, and to work collaboratively with the Civil Aviation Authority (CAA) to ensure they are protecting consumers. We want to continue to build upon this positive response, and use the lessons learnt from the pandemic to do so. As international travel has reopened, now is the time to consider what reforms could be made to reinforce consumer confidence to fly and thereby help to strengthen our critical aviation industry.

3. Some of the proposals in this consultation build upon themes set out in the Aviation 2050: The future of UK aviation consultation[1] which covered provisions for protections for those travelling with wheelchairs and mobility aids, enhanced powers for the CAA to enforce breaches of consumer laws, and ensuring Alternative Dispute Resolution is available and working in the sector. The proposals set out in this consultation, are seeking more detailed and specific feedback, and provide an opportunity to reflect on recent experiences, in particular, following the pandemic. Government is keen to know how these areas could be improved further to support our aviation sector's recovery and growth. Other areas from Aviation 2050 that do not feature in this consultation have not been forgotten with further consideration of wider consumer protection issues to be conducted separately to this consultation. For example, this consultation does not include any consideration of The Air Travel

[1] Aviation 2050 (publishing.service.gov.uk), Chapter 5: Enhance passenger experience

Organisers' Licensing (ATOL) scheme[2], however, government continues to consider how to reform ATOL, including how to implement civil sanctions for the CAA to deal with non-compliance with ATOL Regulations. These considerations will form part of government's wider ATOL reform work.

4. The UK's withdrawal from the EU, provides an opportunity to review retained EU legislation that provides consumer protections for domestic UK flights. The proposals set out in the consultation in relation to compensation in particular, allow us to consider what works best for the UK domestically and to ensure the UK is a competitive place for the industry.

5. The consultation covers four key areas to ensure that consumers are protected and treated fairly and best practice from the industry becomes commonplace. These consider the tools the regulator has to enforce regulations, methods available for the individual to resolve issues, compensation for cancellations and delays, and accessibility. We welcome views from across the UK, and from the sector, wider industry, and the public to feed into our ambition to showcase the importance of positive air travel, and the UK's leading role in modernising passenger experience and supporting industry to provide the best service.

[2] The ATOL scheme provides protection to consumers that have booked an ATOL protected flight or holiday involving a flight, from the potential insolvency of their travel provider. In the rare event of a failure, the scheme ensures consumers can complete their holiday, or receive a refund if they are yet to travel. The ATOL scheme protects approximately 20 million British passengers per year according to the CAA.

How to respond

The consultation period began on 31 January 2022 and will run until 23:45 on 27 March 2022. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at https://www.gov.uk/dft#consultations or you can contact AviationConsumerConsultation@dft.gov.uk if you need alternative formats (Braille, audio CD, etc.).

Please use the response form available at https://www.gov.uk/government/consultations/reforming-aviation-consumer-policy-protecting-air-passenger-rights to respond to this consultation and email it to: AviationConsumerConsultation@dft.gov.uk

Due to remote working for the foreseeable future and health and safety issues with handling physical mail, we strongly encourage responses by email. If you are unable to respond by email, we would invite you to please let us know by asking someone to email on your behalf. If none of the above is possible, then we invite you to provide responses to:

Aviation Consumer Policy Team

4th Floor, Great Minster House,

33 Horseferry Road,

London,

SW1P 4DR

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Data Protection

The Department for Transport (DfT) is carrying out this consultation to gather evidence on aviation consumer policy reforms. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified, DfT will, under data protection law, be the Controller for this information.

As part of this consultation we're asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. You do not have to give us this personal information. If you do provide it, we will use it only for the purpose of asking follow-up questions.

DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter.

We will not use your name or other personal details that could identify you when we report the results of the consultation. Your information will be kept securely in a secure IT system within the Department for Transport and destroyed within 12 months after the consultation has been completed.

1. Tools for the regulator to protect consumers and ensure fair treatment

1.1 The Civil Aviation Authority (CAA) is the UK's aviation regulator. Their role is to ensure:

- the aviation industry meets the highest security standards
- consumers are protected and treated fairly
- the efficient use of airspace and managing environmental impacts
- efficient management of security risks

1.2 The CAA are responsible for enforcing consumer laws that apply specifically to aviation, including relating to passenger rights during flight disruptions and accessibility. The CAA have powers under Part 8 of the Enterprise Act 2002 (2002 Act) to enforce aviation consumer law where infringements harm the collective interest of consumers. In addition, they have concurrent powers with the Competition and Markets Authority (CMA), also under Part 8 of the 2002 Act, to enforce general consumer law in the aviation sector.

1.3 The CAA aims to work with industry to strengthen their consumer protections. Currently the CAA uses a variety of enforcement actions, including (but not limited to) consultation with businesses, warning letters, securing formal undertakings from businesses to comply with the law, applying to the court for enforcement orders (under the 2002 Act) and criminal prosecutions. The powers available to the CAA to ensure consumer rights are respected could be stronger and are time consuming. When enforcement is necessary, the CAA generally utilise less burdensome enforcement powers, as good regulatory practice, and to avoid lengthy and costly processes, such as court action. In addition, currently civil cases have no financial sanctions for breaches of consumer laws, which limits the power to deter non-compliance.

Example of court action

The CAA started enforcement action on 5 December 2018 against an airline for not paying financial compensation to passengers who were affected by cancellations and delays due to industrial action by airline staff.

Passengers have to wait for the outcome of the CAA's enforcement action before being able to make any claim to financial compensation from the airline in relation to this matter.

On the 29 April 2021, the High Court judgement stated that the airline would need to pay compensation to the passengers affected by delays and cancellations.

The case is ongoing.

1.4 The consultation on Reforming Competition and Consumer Policy[3] published by the Department for Business, Energy & Industrial Strategy (Competition and Consumer consultation), which closed on the 1 October 2021, sought views on reforming the Competition and Markets Authority's (CMA) civil consumer enforcement powers under Part 8 of the Enterprise Act 2002 to allow enforcement through an administrative model. This would enable the CMA to decide whether a business has infringed consumer laws, decide on appropriate redress for breaches and if appropriate order a financial penalty. Such an enforcement regime may provide the CMA more control over the timetable for investigations, enabling them to conclude cases faster, end infringements and secure redress for consumers. The Competition and Consumer consultation also sought views on whether there is a case to consider similar administrative powers for other regulators, including the CAA. Consequently, and as the BEIS consultation closed before this consultation, findings related to administrative powers for other regulators including the CAA from the Competition and Consumer consultation, will be used to help inform policy development on CAA civil sanction powers following this consultation. However, findings from this consultation (which will close later) may not be included in considerations made following the Competition and Consumer consultation. In addition, the Competition and Consumer consultation looks at the potential provision of additional civil sanctions for all regulators, including the CAA. It proposed that these powers would include sanctions for non-compliance with information gathering powers, breaches of undertakings and breaches of consumer laws, by applying to the court to impose turnover-based fines. Such powers would go some way to improve the enforcement powers of the CAA, but government is seeking views in this consultation on whether these powers alone would be enough, or whether additional civil sanctions imposed by the CAA administratively would be beneficial.

1.5 There have been improvements in the protection of consumers by the aviation industry, and the CAA have worked alongside industry to strengthen this area. This is clearly seen from the work during the COVID-19 pandemic to review refund compliance and work collaboratively with airlines to improve performance on consumer obligations, resulting in the majority of airlines paying refunds within 7

[3] Reforming competition and consumer policy - GOV.UK (www.gov.uk)

days, however, there are still improvements that can be made to continue to protect consumers.

1.6 Administrative powers to enforce civil sanctions could mean that the CAA would for example, be able 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
- impose financial penalties, where appropriate

Such powers could strengthen the CAA's ability to enforce consumer law, enhance protection of consumers, reduce time spent on enforcement, avoid more cumbersome recourse options, and incentivise compliance and engagement. These kinds of powers would go further than the proposed powers in the BEIS consultation for all regulators outlined above.

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?

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?

1.7 Government is keen to ensure that any administrative powers would be subject to clear, fair, transparent and open processes to secure confidence of industry. The BEIS Competition and Consumer consultation sets out proposals for decision making and appeal processes for an administrative model for the CMA. Government considers it would be important to develop any additional administrative powers for the CAA alongside any model for the CMA to help ensure the enforcement landscape is consistent and works together. The BEIS Competition and Consumer consultation sets out a framework at paragraphs 3.15 – 3.32 for decision making processes, appeals and safeguards. Feedback from the questions from the BEIS consultation relating to the framework will be considered in any policy development following this consultation.

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

2. Resolution for individual consumers

2.1 In the event that an individual feels their consumer rights have been breached by an airline, their first step is to raise the issue with the airline to try to resolve the matter, however, sometimes, an agreement cannot be reached. Some airlines are members of an Alternative Dispute Resolution (ADR) scheme in the UK which provide a route to escalate complaints. However, if the airline is not a member of an ADR scheme, an individual has limited options to seek redress; with court action being costly and time consuming.

2.2 ADR is an umbrella term for a framework of processes for resolving disputes without going to court. These include mediation, conciliation, early neutral evaluation, expert determination, adjudication, arbitration or a combination of these. ADR can help consumers enforce their rights faster and cheaper than going to court. The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 made ADR available for contractual disputes, but do not make airline participation in ADR schemes mandatory.

2.3 Government is already looking at ways to ensure alternative processes of dispute resolution are being used as an integral part of the justice system. The aim of this is to mainstream non-adversarial dispute resolution mechanisms, such as mediation, so that resolving disagreements proactively and constructively is the norm, rather than the alternative. To support this work, the Ministry of Justice is working to improve the evidence base. The public Call for Evidence on Dispute Resolution in England and Wales[4] was open from 3 August to 31 October 2021 and sought views on: drivers of engagement and settlement; quality and outcomes; dispute resolution service providers; economic costs and benefits of dispute resolution; technology infrastructure; and equality impacts. The responses require careful consideration and will help build a more comprehensive evidence base to inform policy development in this area. The outcome of this will be confirmed by the MOJ in due course and any future proposals will be the subject of a separate consultation exercise at the appropriate time.

[4] Dispute resolution in England and Wales: Call for Evidence - Ministry of Justice - Citizen Space

2.4 ADR is currently voluntary in aviation; 22 airlines are members of a CAA approved ADR scheme, covering approximately 80% of consumers traveling to and from the UK. The CAA is the competent authority for aviation ADR[5], approving ADR bodies to provide a high standard of dispute resolution for consumer disputes in aviation disputes[6]. There are currently two ADR bodies approved by the CAA[7]. There are some airlines that are members of EU approved ADR bodies, however these are not approved by the CAA, and can be difficult for those in the UK to use to challenge breaches.

2.5 ADR schemes for airlines cover the following types of complaints:

- denied boarding, delay or cancellation
- destruction, damage, loss or delayed transportation of baggage
- destruction, damage, or loss of items worn or carried by the passenger
- complaints about airlines due to problems faced by disabled passengers or passengers with reduced mobility when using air transport services
- disputes where consumer alleges the business is not trading fairly

2.6 Participation in some form of ADR is mandatory in most regulated sectors, with aviation the notable exception. For airlines not voluntarily using an approved ADR scheme, consumers may refer their complaint to the CAA's Passenger Advice and Complaints Team (PACT). PACT can advise whether they think the complaint is valid and will take up the complaint with the airline concerned, however, PACT cannot impose a decision on the airline. Comparably, under the existing aviation ADR schemes an expert considers representations from the consumer and the airline and makes a determination. Where a passenger agrees with the determination made by the ADR body, the determination becomes binding upon the airline through the Scheme Rules. The scheme rules of the ADR body set out what happens in the event of non-compliance with the Scheme Rules[8].

2.7 Government is seeking views on whether participation in a CAA approved ADR scheme should be mandatory for airlines flying to and from the UK, as an additional mechanism for enforcing air passenger rights. Using ADR to resolve disputes is also positive for business, providing an independent body to consider the individual case, protecting those businesses that are operating within the law and offering a speedier and more cost-effective way of resolving disputes.

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

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[5] The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, Schedule 1

[6] CAA guidance for ADR applicants

[7] Consumer Dispute Resolution Limited (AviationADR) and Centre for Effective Dispute Resolution (CEDR)

[8] CEDR Scheme Rules November 2020
Aviation ADR Scheme Rules May 2021

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?

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?

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

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

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

2.8 In addition, ADR is available on a voluntary basis for airports, to deal with complaints about problems faced by disabled passengers and those with reduced mobility when using air transport services. There are currently seven UK airports voluntarily members of a CAA approved ADR scheme. The level of complaints about airports through ADR is low, and mandating ADR in these limited cases may be disproportionate.

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?

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

2.9 The CAA charge a fee per complaint referred to PACT, however for non-UK registered airlines, and specific complaint types, there is no mechanism to ensure the airline pays these costs, and in many cases this cost is subsidised by Government. Alternatively, members of an ADR scheme will be bound contractually to pay an agreed fee for ADR services. The costs of ADR will vary, for example depending on the length and complexity of the case, the agreed fee between the ADR body and the business, and whether charges are per case or a yearly fee.

2.10 One of the two approved ADR bodies for aviation charge a consumer a nominal fee of £25 in the event that the claim is 100% unsuccessful (this does not apply for accessibility or Equality Act cases). This is lower than going to court and may help deter frivolous cases being brought from consumers and helping to protect airlines that are operating within the law and demonstrating good practice. This is different to other regulated sectors where ADR is mandatory and completely free for consumers. In addition, the Ombudsman Association Service Standards Framework sets out that services should be free to complainants.

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?

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?

2.11 Other regulated sectors have introduced a single ombudsman, for example the Rail Ombudsman[9], which is an independent organisation that can offer free expert services to help resolve consumer complaints about service providers. Such ombudsmen are funded by industry in order that services remain free for consumers. Ombudsmen are able to provide a range of outcomes depending on the situation, including compensation, as well as requirements on the provider, and are binding on the service provider. Government is seeking views on whether ADR should continue to be provided by approved ADR entities or whether alternative options such as an ombudsman should be considered, and if so, what model of ADR would be more appropriate and/or effective.

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?

[9] https://www.railombudsman.org/

3. Compensation for delays and cancellations

3.1 The rules on compensation for flight cancellations and long delays are set out in Regulation (EC) No 261/2004 as retained in UK law. This regulation applies for passenger:

- Departing from a UK airport
- Departing from another country arriving in an airport in the UK, if the airline is a UK or EU carrier
- Departing from another country arriving in an airport in the EU, if the airline is a UK carrier

3.2 In the event of cancellation by the airline, the consumer is entitled to a full refund or to be re-routed under comparable transport conditions to their final destination. In addition, for cancellations by the airline and for delays resulting in the passenger arriving more than three hours after the original arrival time, passengers are in some circumstances entitled to compensation for the inconvenience of the delay or cancellation. The Regulations provide set rates depending on the distance of the flight, for all consumers, regardless of ticket price, to compensate for inconvenience.

3.3 In addition, the UK is a signatory to the 1999 Montreal Convention (the Convention), an international treaty governing airline liability in the case of death or bodily injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo. The Convention applies to international flights; however, the UK has extended the coverage of the Convention domestically. Under the Convention, passengers can claim damages for delay to the passenger, baggage or cargo, up to the amount set out in the Convention. This requires proof of loss caused by the delay, and as it is different to the compensation for inconvenience as set out in Regulation (EC) No 261/2004, can be claimed in addition. The Convention is exclusive, which means signatories cannot set different limits for damages already set out in the Convention. Whilst reforms can be made to domestic flights, international flights are limited to the provisions of the Convention.

Compensation for delays to domestic UK flights

3.4 We have heard calls from industry to rebalance the rates for compensation, to be more representative of the cost of travel, and to reflect the newer ways consumers choose to travel by air, for example, using more low-cost airlines. This kind of approach would be more closely aligned to other modes of transport. For example, in

maritime, if a service is cancelled or delayed by more than 90 minutes, passengers are entitled to either a full refund or to be rerouted. In addition, where a passenger's arrival time to their destination is delayed by a specified amount of time, they are entitled to compensation of a minimum of 25% (and up to 50%) of the cost of the ticket[10]. For domestic rail, the National Rail Conditions of Travel set out the minimum level of compensation payable which is 50% of the ticket price (depending on the ticket type) for delays of more than an hour[11]. However, many train operators exceed these minimum standards. For example, if the train company is part of the 'Delay Repay' scheme, passengers are entitled to delay compensation of 50% of the ticket price for delay to destination between 30 and 59 minutes, and a full refund for a delay to destination of over an hour (many operators also provide 25% of the ticket price for delays between 15 and 29 minutes).

3.5 There is an opportunity to align domestic aviation compensation for delays and with other domestic modes. Government is seeking views on whether compensation for delayed flights should be linked to the price of travel by providing a proportion of the ticket price for domestic flights (not including those stopping in another territory, or those considered as a leg of an international journey).

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

3.6 Government is also seeking views on the length of delay that should trigger compensation for domestic flights, and what proportion of the ticket price should be available for delay. The current trigger for assistance is where a flight of less than 1,500km is delayed for two hours or more[12]. This entitles passengers to meals and refreshments, and free of charge communications. Where the delay is over a day, they will also be entitled to accommodation overnight and transport to that accommodation. According to caselaw, a delay at arrival of at least three hours gives rise to the same rights in terms of compensation as a cancellation[13]. This would entitle the individual to compensation set out at Article 7 of Regulation (EC) No 261/2004 as retained in UK law[14].

3.7 One proposal for such a compensation scheme could be as follows:

Passengers may request compensation from the airline if their domestic UK flight is delayed as set out below:

- For a delay of more than 1 hour but less 2 hours, passengers are entitled to compensation of 25% of their ticket price

[10] Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (as retained in UK law), Articles 18 and 19

[11] National Rail Conditions of Travel

[12] Regulation (EC) No 261/2004 (as retained in UK law), Article 6

[13] Joined cases C-402/07 and C-432/07, Sturgeon e.a. ECLI:EU:C:2009:716

[14] £220 for flights of 1,500km or less, £350 for flights between 1,500km and 3,500km or £520 for flights not falling under the first two categories.

- For a delay of more than 2 hours, but less than 3 hours, passengers are entitled to compensation of 50% of their ticket price

- For delays of over 3 hours, passengers are entitled to compensation of 100% of their ticket price.

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

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

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

3.8 Changes to the way we travel by air has meant that "ticket price" could mean a variety of things, including only the basic cost of the seat, or any optional extras such as baggage, seat selection, or priority boarding. It would be important for any compensation linked to ticket price to be clear what is included within the definition of ticket price.

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

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.**

Delay to international flights

3.9 Considering that the compensation rates are set by the Convention for international flights that are delayed, Government is interested in views on alternative approaches to recognise the changes in the types of airlines being used to travel and to link compensation to the costs of travel.

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?

Refund for cancellations by the airline

3.10 Currently when a consumer books a flight as part of a package holiday, and where that flight is cancelled, the package organiser who arranged the holiday is responsible for ensuring the consumer receives their refund. The package organiser would then claim the money back from the airline through their commercial arrangement.

3.11 We have heard from the travel industry a call for package organisers to be able to make a claim through legislation, i.e. Regulation (EC) No 261/2004 (as retained in UK law) on behalf of the consumer for a full refund where a flight that is part of a package holiday is cancelled by the operator. This would not affect the rights of the individual consumer, who would continue to receive their refund through the package organiser, nor should it affect airlines who would ordinarily do this through the commercial arrangement with the package organiser, but it would make clear in legislation the right for the package organiser to recoup the refund from the airline.

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?

4. Accessibility

4.1 Everyone should be able to fly, and both airlines and airports have worked to support passengers with additional needs. However, there are some areas that could still be improved. The regulation[15] in place to protect the rights of disabled people and passengers with reduced mobility while travelling by air, ensures passengers receive special assistance free of charge, from their designated point of arrival to the point of disembarkation.

4.2 According to survey data, 25% of passengers flying have a disability or health condition, and of those 60% find it difficult to access and use airports or fly[16]. Three quarters of passengers who have received assistance are satisfied with the overall assistance received, however, there is a noticeable decrease in satisfaction in many points of the journey, including the carriage of special items[17].

4.3 Wheelchairs and other mobility equipment can be costly and are often customised for the specific needs of the individual. Due to the size of wheelchairs they are generally transported in the hold, and can be damaged in transit, either through incorrect stowage, poor handling, or lack of standardised tether points in the hold. Damage to a wheelchair or other mobility equipment can have a significant impact on the individual, not only financially, but on their quality of life. Currently, wheelchairs and mobility equipment are defined as baggage under the 1999 Montreal Convention (the Convention), which limits the amount of compensation. Some airlines have voluntarily waived this financial limit for wheelchairs.

4.4 The limits of liability set by the Convention do not apply if a passenger has made a special declaration of interest stating the value of the baggage, although airlines may set their own limits. A special declaration may require payment of a supplementary fee. In those instances, the airline is liable for the amount declared. This is an option for disabled passengers travelling with wheelchairs or mobility equipment. Government is seeking views on whether reforms should be made to remove the need for a supplementary fee for special declarations for wheelchairs and accessibility equipment for domestic UK flights.

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

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[15] Regulation (EC) No 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (as retained in UK law)

[16] The CAA's UK Aviation Consumer Survey Wave 10 (Autumn 2021)

[17] The CAA's UK Aviation Consumer Survey Wave 9 (winter 2020)

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

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?

4.5 Whilst domestic flights are currently covered by the Montreal Convention limits, other signatories to the Convention have legislation for compensation up to the full value of repairing or replacing a wheelchair or mobility aid that is damaged or lost during transit on a domestic flight. A similar approach could be taken for UK domestic flights. This would be a positive step to supporting disabled passengers and those with reduced mobility to travel by air and help to make domestic aviation as safe as other forms of transport. This approach would mirror other modes, for example in maritime, where if wheelchairs or other mobility equipment is damaged or lost due to the fault or neglect of the carrier, compensation is available to replace or repair the wheelchair or mobility equipment[18], or on trains, where if damage or loss of mobility equipment is caused by the railway, there is no financial limit for compensation[19].

4.6 Currently the Convention limits apply to domestic flights, however, like other signatories to the Convention steps could be taken to encourage airlines to compensate up to the full value of replacement or repair, as appropriate, of wheelchairs and mobility equipment damaged or lost during carriage on a domestic flight. For example, Canada[20] has legislated to ensure that if a mobility aid is damaged, lost or destroyed during transport the airline will, without delay, and at their own expense, provide a temporary replacement, reimburse or arrange for damage to be repaired, or replace the aid, and reimburse for any expenses incurred because the mobility aid was lost, damaged or destroyed.

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?

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?

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?

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

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[18] Regulation (EU) No 1177/2010 (as retained in UK law), Article 15

[19] Regulation (EC) No 1371/2007 on rail passengers' rights and obligations (as retained in UK law), Article 25

[20] Accessible Transportation for Persons with Disabilities Regulations (SOR/2019-244)

Public Sector Equality Duty

The Public Sector Equality Duty came in to force in April 2011 (s149 of the Equality Act 2010) and public authorities are required, in carrying out their functions, to have due regard to the need to achieve the objectives set out under s149 of the Equality Act 2010.

The Department for Transport has assessed the reform proposals set out in this consultation with regard to Public Sector Equality Duty. Work will continue as individual policies are developed.

We invite comment on how the aviation consumer policy reforms in this consultation could further achieve the objectives as set out under s149 of the Equality Act 2010 to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Q30. Please provide an indication of how you think the policies set out in this consultation would affect people who share the following protected characteristics. When answering please consider the three objectives set out above. Please indicate in each box whether you consider the proposed policy to affect the protected characteristic positively, negatively, no affect or don't know.

	Tools for the regulator to protect consumers and ensure fair treatment	**Resolution for individual Consumers**	**Compensation for delays and cancellations**	**Accessibility**
Age				
Disability				
Gender Reassignment				

Marriage or civil partnership				
Pregnancy or maternity				
Race				
Religion or belief				
Sex				
Sexual orientation				

Where you have indicated negative impact please describe your reasons why.

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on https://www.gov.uk/government/consultations/reforming-aviation-consumer-policy-protecting-air-passenger-rights. Paper copies will be available on request.

If you have questions about this consultation, please contact:

Email: AviationConsumerConsultation@dft.gov.uk

Aviation Consumer Policy Team

4th Floor, Great Minster House,

33 Horseferry Road,

London,

SW1P 4DR

Annex A: Full list of consultation questions

Question 1

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?

Question 2

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?

Question 3

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

Question 4

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

Question 5

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?

Question 6

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?

Question 7

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

Question 8

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

Question 9

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

Question 10

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?

Question 11

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

Question 12

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?

Question13

Should the cost per ADR case for the airline be capped at 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?

Question 14

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?

Question 15

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

Question 16

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

Question 17

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

Question 18

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

Question 19

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

Question 20

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.

Question 21

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?

Question 22

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?

Question 23

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

Question 24

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

Question 25

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?

Question 26

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?

Question 27

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?

Question 28

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

Question 29

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

Question 30

Please provide an indication of how you think the policies set out in this consultation would affect people who share the following protected characteristics. When answering please consider the three objectives set out above. Please indicate in each box whether you consider the proposed policy to affect the protected characteristic positively, negatively, no affect or don't know.

Where you have indicated negative impact please describe your reasons why.

	Tools for the regulator to protect consumers and ensure fair treatment	**Resolution for individual Consumers**	**Compensation for delays and cancellations**	**Accessibility**
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Pregnancy or maternity				
Race				
Religion or belief				
Sex				
Sexual orientation				

Question 31

Do you have any further information or evidence in response to the questions in the Impact Assessments published alongside this consultation?

Question 32

Do you have any further information or evidence to add to your response to this consultation not covered elsewhere in your response?

Annex B: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at https://www.gov.uk/government/publications/consultation-principles-guidance

If you have any comments about the consultation process, please contact:

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