

Written Evidence: October 2023

Transport Select Committee Session on the NATS System Failure

Introduction

1. Which? welcomes the opportunity to submit written evidence to the Transport Select Committee's inquiry into the NATS system failure. Our focus is on the impact this had on consumers - drawing on lessons from other recent air travel disruption.
2. While airlines cannot be blamed for the failure at NATS, testimony from passengers affected by the cancellations and delays suggests some operators may have failed to quickly communicate with affected passengers and uphold their rights, particularly with regards to rerouting and care obligations.
3. While the NATS system failure and subsequent flight disruption warrants investigation by the Committee, it is one in a long line of instances where passengers have struggled to get clear communication and the support from their airline that they are legally entitled to in the event of delays and cancellations.
4. Which? appreciates that major incidents, like the NATS system failure, require a major operational response to be stepped up immediately by airlines. While we do not underestimate the logistics involved, a number of airlines are routinely disregarding or ignoring their legal obligations to passengers in these situations, failing to communicate what an incident means for passengers in a timely manner, and it is unclear how airlines are learning from past incidents. The Civil Aviation Authority (CAA) recently took enforcement action against Wizz Air for an abysmal track record of failing to reimburse expenses to passengers affected by delays and cancellations. Additionally, Which? has calculated that just five airlines have been ordered to pay over £11 million by courts and adjudicators, including £6,041,498 million in ADR rulings during the period April 2022 to March 2023 alone, highlighting a systemic problem in claiming these expenses from airlines.
5. Although a key part of the CAA's remit is to ensure airlines uphold passengers' rights when disruption occurs, it lacks the powers to do so effectively meaning airlines lack meaningful deterrents or sanctions. Without an effective civil sanctions regime and the ability to impose fines for non-compliance - something afforded to regulators in other sectors - it is unclear how airlines will be motivated to improve their compliance with consumer law.
6. The CAA, the Department for Transport (DfT), and the recent independent review of the CAA agree that reform is needed. The DfT outlined support for strengthening the regulator's consumer enforcement powers in its response to its consultation on aviation consumer reform earlier this year. However, Number 10 has stopped short of confirming when it will be introducing a Bill delivering this change despite the fact

that the Queen's Speech 2022 confirmed there would be a wide-ranging Transport Bill which has never materialised.

7. With limited time left in the Parliamentary calendar before a General Election, Which? is calling on the Prime Minister to demonstrate he is on the side of consumers who have been repeatedly affected by recent aviation incidents, and prioritise legislation in the forthcoming King's Speech.

Air travel disruption caused by the NATS system failure

8. More than 2000 flights were cancelled due to the NATS system failure, while the disruption affected an estimated 250,000 passengers¹ in total, leaving many stranded for days struggling to receive adequate support whilst waiting for an alternative flight.
9. Although the system failure itself was a rare incident, major flight disruption is a regular occurrence for UK consumers.
10. Over the past few months holidaymakers have seen their summer plans ruined by the threat of UK and European strike action, 1,700 EasyJet flight cancellations, and the knock-on impact of wildfires in Greece and Spain. In recent years passenger journeys have been hit by airport capacity issues and staff shortages, pandemic cancellations, the collapse of Monarch Airlines and Thomas Cook, and the Icelandic ash cloud.
11. While these incidents are difficult to predict and challenging to respond to, Which? has questions around the operational plans airlines have in place to deal with these events - a variation of which take place every year - to ensure affected passengers are provided with fast and clear communication about the impact of an incident, and given the support that operators are legally obligated to provide.
12. In order to ensure lessons are learned from this latest crisis and future passengers have access to the information and support they are legally entitled to - the regulator should be given additional powers to enforce passenger rights upon the industry.

The Icelandic Ash Cloud 2010

13. In 2010 an Icelandic volcano caused an ash cloud that grounded all aircraft over Europe for 8 days. This caused cancellations, disruptions and mass compensations and refunds to passengers.
14. Months after the event, the Guardian were reporting that thousands of passengers were still waiting for refunds and compensation - as some airlines, such as the Dutch KLM, felt emboldened to ignore UK/EU law.²

¹

<https://www.theguardian.com/business/2023/sep/06/uk-air-traffic-failure-blamed-on-extremely-rare-circumstance-s-as-cao-opens-inquiry>

² <https://www.theguardian.com/business/2010/aug/15/air-passengers-ash-cloud-compensation>

15. Which? Received thousands of calls with regards to the ash cloud and we criticised the CAA at the time for not being tough enough and taking legal action against KLM and others that weren't paying up.
16. This was eight days of disruption, twelve years ago: but could easily describe the events of the pandemic, capacity and staffing issues last year or the NATS system failure. Whilst we understand that these events were difficult to anticipate - lessons should have been learned and applied by the industry.

The Coronavirus Pandemic

17. In the space of six weeks at the beginning of the pandemic, Which? received 14,000 complaints from passengers who had not received refunds for cancelled flights. The 12,602 we analysed were worth a total of £5.8 million to UK consumers. Those who reported their complaints to Which? were, on average, out of pocket by £446 and had collectively spent 52,000 hours (nearly six years) on the phone chasing their money. In April 2020, Which? contacted 10 of the UK's largest airlines and found all were breaking the law over refunds.
18. Which? submitted the complaints we received and our evidence of law breaking to the CAA, but in July 2020 the regulator told us they would not be taking legal action. This is despite airlines such as Virgin saying customers would have to wait upwards of 80 days to be refunded. The CAA told us they had sought assurances from the airlines that they would improve their practices.
19. However, Which? investigated airlines a month later and found that they were taking upwards of ten weeks to refund consumers, proving that the CAA's review of airlines' behaviour, in addition to the undertakings it sought from airlines, made little difference in changing refund practices.

Passengers' rights during the NATS system failure

20. When a flight is severely delayed or cancelled, the airline must provide care and assistance to passengers such as refreshments while they wait at the airport and overnight accommodation where necessary. They must also inform passengers of their legal rights and make sure they offer multiple and effective means of communication for passengers who need to get in touch. When delays and cancellations are not caused by extraordinary circumstances outside the airline's control, passengers may also be entitled to compensation.
21. When a flight is cancelled, airlines are required to offer the affected passenger a choice between a full refund, paid within 7 days, or the option of being rerouted at the earliest opportunity or at an agreed date via any carrier or alternative transport mode.
22. The NATS system failure is likely to be considered an "extraordinary circumstance" under Regulation EC261/2004 (retained EU legislation that lays out air passenger rights) as the disruption could not have been avoided even if all reasonable measures had been taken. Therefore, while airlines are likely not liable to pay compensation to

consumers in this instance, they are obliged to provide care and assistance and to reimburse expenses incurred.

23. Airlines should be without doubt about their obligations to passengers during periods of disruption, with the CAA reminding airlines of their obligations in a letter to industry following the NATS technical issue.³

- The CAA would like to ensure that the overall disruption to passengers is minimised. Therefore, we are reminding airlines of the importance of looking after passengers, particularly those delayed overseas. Airlines can reduce the overall impact of the delays and cancellations by doing all they can to keep passengers informed. Airlines should also ensure they advise passengers of their rights.
- Airlines are obliged to offer passengers whose flights have been cancelled the choice of a refund, rerouting at the earliest opportunity or re-routing at a later date.
- Airlines must also look after passengers while they are delayed and provide them with meals, refreshments and hotel accommodation proportionate to the length of the delay. Particular attention should also be given to those who require more practical assistance.
- In cases where airlines are unable to proactively offer care, or offer suitable replacement flights, we expect airlines to promptly reimburse passengers for the costs they incur making their own arrangements. Passengers are encouraged to avoid incurring excessive costs.

24. With respect to the requirements for airlines to provide passengers with information on their legal rights, the CAA's guidance on re-routing states that "airlines should inform consumers of their policies on rerouting, making clear that they will offer rerouting on other airlines and, where necessary, other transport modes. This information should be provided on airlines' websites and it should be prominently included in the information sent to consumers regarding the cancellation of their flight. Airlines should also make it easy for consumers to contact them to explore alternative re-routing options if the re-route offered to them is not suitable. In addition, airlines should inform consumers of how to make a complaint or a claim for expenses in cases where a dispute arises between the airline and the passenger."⁴ Airlines must also ensure they prioritise vulnerable and disabled passengers when providing assistance and offering re-routing options.

25. Despite this clarity, testimony from passengers who took to social media suggests that in some cases airlines may not have been fulfilling passengers' rights to rerouting and expenses for accommodation and food and drink during the period of disruption that followed the NATS system failure.

26. Both Ryanair and Jet2 posted social media graphics that contained inaccurate information around the right to rerouting. The text of these are included in the below

³ CAA guidance to industry, August 2023.

https://www.caa.co.uk/media/etrlbfw1/guidance-to-industry-atc-incident_.pdf

⁴ Re-routing in accordance with Article 8 of Regulation EU261, CAP2155, CAA.
[https://publicapps.caa.co.uk/docs/33/Re-routing%20Guidance%20\(CAP2155\).pdf](https://publicapps.caa.co.uk/docs/33/Re-routing%20Guidance%20(CAP2155).pdf)

box.

27. Ryanair's notice suggests passengers can only change flights to another Ryanair flight (when airlines have a duty to re-route on any available carrier). Jet2's notice suggests passengers will only be entitled to a refund (when airlines have a duty to offer a choice of a refund or re-routing).

Ryanair Notice

"Due to another UK ATC failure, Ryanair will be forced to delay/cancel a number of flights to/from the UK today, Mon 28 Aug.

All affected passengers will be notified of their options to change flights (free of charge) to another Ryanair flight or receive a full refund.

We sincerely apologise for this UK ATC failure which is beyond Ryanair's control and is affecting all airlines operating to/from the UK today, Mon 28 Aug." ⁵

Jet2 Notice

"Due to the technical fault affecting the UK's National Air Traffic Services, which has impacted all airlines, all Jet2.com flights departing and returning to the UK are expected to experience significant delays.

Our teams are working incredibly hard to communicate with, and look after, our customers and they will continue to do so.

As a result of the disruption, we have taken the decision to cancel some outbound flights today (Monday 28th August). We will be contacting all affected customers to let them know, and they will of course receive a full refund. We are extremely sorry to have to take this decision however the ATC disruption leaves us with no other choice.

We are reviewing tomorrow's (Tuesday 29th August) programme as the situation evolves, and we will update customers in due course. Customers due to travel tomorrow should travel to the airport as normal unless we advise otherwise, and continue to monitor Flight Information on our website.

We would of course like to apologise to everyone that is affected by the situation, which is unfortunately completely outside of our control." ⁶

28. In addition to inaccurate and potentially misleading information shared on social media, we found evidence to suggest some airlines may have failed to give their passengers accurate information on the ground.

⁵ <https://twitter.com/Ryanair/status/1696160754787819980>

⁶ <https://twitter.com/jet2tweets/status/1696224590047932648>

29. Having accepted a rerouted British Airways flight from Berlin to London due to depart three days after his cancelled flight, Michael McDonnell seemingly found a ticket available for another British Airways flight departing earlier. Michael's experience is detailed in the box below.

Michael McDonnell, was among the thousands of travellers who found themselves stranded after the ATC issues on bank holiday Monday, and told Which? of his frustration after being left waiting days for a replacement flight home with his carrier British Airways, despite appearing to find earlier options available via Google flights.

Michael and his girlfriend had been due to fly home from a city-break in Berlin on the 28th August, but customer service agents reportedly advised him that having checked their own and partner airlines' flights, the next available option was on the 31st August. (When arranging re-routing, airlines should try to find options with any airline, not just those they have a commercial relationship with - and they are obliged to re-route passengers 'at the earliest opportunity'). Yet after accepting the new booking, Michael found what appeared to be multiple flight options departing in the intervening days, all priced upwards of £800 - both with another airline and with BA. After tweeting the airline to see if he could travel via one of these earlier flights, he received no response - and had to book his own accommodation out of pocket for the three day wait. He has recently received the money he and his partner were owed for food and accommodation back into his account, although this took over a month after first submitting a claim for reimbursement, with customer service agents advising that his claim would be processed 'as soon as possible.'

30. These experiences echo those who took to social media in the days following the incident to voice their confusion with the situation and frustration at apparently being unable to access the support which they were entitled. This includes alternative accommodation and vouchers for food and drink, and compensation for these costs. A sample of these are detailed below.

Comments from customers stranded on the ground:

EasyJet customer:

"So just received from easy jet saying they won't compensate hotels but the ground staff stated to everyone at the airport that easy jet told them to tell passengers to book our own hotels. Disgraceful behaviour will be seeking a full refund"

Sourced from Twitter/X

Wizz Air customer:

"We have been kicked out of the airport and everyone is struggling to find accommodation and flights. Your customer support is not supporting."

Sourced from Twitter/X

Ryanair customer:

"Stranded in Ibiza, first flight to the UK not till 2nd, no accommodation provided or food vouchers"

Sourced from Twitter/X

Please note these are lifted from social media and Which? has not verified each comment with the individual or airline.

Difficulties in obtaining an accurate picture

31. While there was a lot of anecdotal evidence of problems faced by consumers, data on passenger complaints and claims specific to this incident is not yet available. This is key to giving us a more comprehensive view of how airlines' responded to the incident and the extent to which consumers were impacted. We expect the independent review of the NATS failure to assess the impact on passengers and report on airlines and airports' response and compliance with their legal obligations. Likewise, while seeking improvements for future disruption management, the CAA should evaluate airlines' practices and gather information on the impact on passengers and outcomes when seeking redress in accordance with its new Consumer Strategy.
32. When passengers struggle to receive a satisfactory response to their complaint from the airline, they can escalate it to the Alternative Dispute Resolution (ADR) provider the airline has signed up to or alternatively to the CAA's own Passenger Advice and Complaints Team (PACT). Passengers who tried these options unsuccessfully can resort to the small claims court to resolve their dispute.
33. For those currently pursuing recompense for expenses relating to accommodation, refreshment and/or rerouting during the NATS system failure disruption through ADR or the County Court - it can take months for their case to be put on public record through the CAA's publication of ADR data or the official registry of judgements.
34. As such, it is likely to be many months after the event before a clearer picture emerges regarding passengers' ability to claim for expenses from airlines. It's notable that these figures only relate to passengers who have been willing to pursue airlines via these methods and therefore, these figures will most likely underestimate the scale of the impact.

Reforms required to better enforce consumer rights

35. Air travel disruption has become a regular sight in recent years, and it is clear that airlines should do more to learn from recent events and have better systems in place to respond to these situations so passengers benefit from clear communication and access to the support they are legally entitled to.
36. Airlines' response to the NATS system failure is a reminder of the prevalence of this issue. While the anecdotal evidence gathered in the immediate aftermath paints a picture of the impact, we will have a more comprehensive view of what support customers received once more data is released.
37. The consistent failure by some operators to fulfil their legal obligations to passengers affected by disruption is indicative of a wider problem with the way in which the market is regulated. The CAA needs stronger enforcement powers to prevent airlines from behaving this way. It should have the power to fine airlines for breaches of consumer law, in the same way that the Competition and Markets Authority is finally being given fining powers under the Digital Markets, Competition and Consumers Bill.

38. There is an ever growing consensus around the need for reform of the CAA's powers. The DfT, in its response to the Aviation Consumer Policy Reform Consultation, stated:

"We will legislate when parliamentary time allows to enhance the enforcement powers of the CAA by providing additional administrative tools, such as issuing financial penalties."

The Independent Review of the CAA recommended that Ministers consider giving the regulator greater powers:

"Ministerial consideration should be given to providing the CAA with additional powers to more effectively regulate (in the interest of consumers) where it considers that an aviation related business has breached consumer rights law:

- *to make directions to remedy such infringements or stop them from happening in the future*
- *to impose financial penalties, where appropriate"*

39. The CAA itself has requested greater powers to better carry out regulation, with Consumer Director, Paul Smith, stating in 2022:

"We have regularly asked for stronger consumer enforcement powers, including the ability to impose fines on airlines. This would allow us to take faster action when appropriate and bring our powers in line with other sectoral regulators."

40. The Association of Independent Tour Operators (AITO), Explore, loveholidays, Lovetts Solicitors, On the Beach, RWH Travel Limited, Riviera Travel, The Advantage Travel Partnership, Thomas Cook and TravelUp Group all backed Which?'s call for the Government to legislate to give the CAA greater enforcement powers in a recent letter to the Prime Minister, which stated:

"As a coalition of consumer advocates and travel companies, we urge you to show your support for British holidaymakers affected by this summer's air travel disruption by agreeing to strengthen the Civil Aviation Authority's (CAA) enforcement powers through this autumn's King's Speech."

41. The Transport Select Committee (TSC) in its report: *UK Aviation: Reform for Take-Off* made specific recommendations that the Government legislate to give the CAA greater powers:

"The Civil Aviation Authority urgently requires the power to impose financial penalties on airlines that do not provide complete refunds to consumers when they are required to do so by law."

⁷ "Summary of next steps" in response to Aviation Consumer Policy Reform Consultation: <https://www.gov.uk/government/consultations/reforming-aviation-consumer-policy-protecting-air-passenger-rights/outcome/response-to-the-aviation-consumer-policy-reform-consultation#executive-summary>

42. His Majesty's Opposition are also in support of the CAA being given stronger powers with Shadow Secretary of State, Louise Haigh MP, stating the following in the wake of the NATS system failure:

"Passengers are facing shocking levels of disruption, and the Conservatives have comprehensively failed to protect them when things go wrong. With hundreds of thousands of passengers facing yet more appalling disruption this week, it's time for ministers to act. It's time for ministers to stop dragging their feet and give regulators the powers they need to stand up for passengers."

43. Trade body Airlines UK has stated that airlines would not stand in the way of the CAA being given more powers, with Chief Executive Tim Alderslade stating:

"I have no worries about a CAA power grab. The CAA dealt excellently with the issues that came up over refunds [during the pandemic]."

44. With limited time left in the Parliamentary calendar before a General Election, the Government must introduce a Bill to strengthen the CAA's enforcement powers, including by giving it fining powers, to ensure it has the impetus to take action against airlines responsible for breaking the law, bringing it in line with its international counterparts and other sector regulators in the UK.