



2 Marylebone Road
London NW1 4DF
t 020 7770 7000
f 020 7770 7600
which.co.uk

Huw Merriman MP,
Chair of the Transport Select Committee
House of Commons
London
SW1A 0AA

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Dear Huw Merriman MP,

We would like to thank you again for inviting us to provide oral evidence. It was a pleasure to attend the session and we would like to take the opportunity to follow up on a few points that were raised, did not have the opportunity to cover during the session or have come up since our appearance.

1. Lockdown restrictions and refunds survey

Firstly, with regards to the question from Greg Smith MP on the findings from a Which? survey in February 2021, we can confirm that the 2.3 million people estimate refers to those who were still waiting for a refund for flights that were not cancelled by the airline but that they could not take due to COVID restrictions.

Under these circumstances, many were refused a refund or struggled to make a claim through their travel insurance or bank. The data is based on a nationally representative Which? survey of 2,001 adults who had flight bookings but were unable to travel since the UK went into its first lockdown. In particular, the survey revealed that:

- Many passengers were prevented from travelling because of local or national lockdowns, restrictions preventing entry at their destination, or the FCDO advising against non-essential travel.
- Passengers would often have only been given the choice of rebooking their flight or losing their money. Rebooking may have meant paying a significant difference in fare if the new flights were more expensive, and trying to choose new dates without knowing when international travel is likely to resume again.
- Of those who couldn't get their money back from the airline, 49% claimed they couldn't travel because of national or regional lockdown laws instructing them to stay at home. It is worth noting that while during the first national and local lockdowns instructions against non-essential travel were not always written into law, many passengers did not fly due to following government guidance.

- Just over a quarter (27%) of those left out of pocket said they were unable to fly because of restrictions in place at their destination that would prevent them from entering the country.
- Others said they were unable to travel because the FCDO had advised against all non-essential travel to their destination. Nearly four in 10 (37%) cited this as their reason for not flying.
- Additionally, many of those returning from these destinations would have also had to quarantine for two weeks after returning to the UK, with three in 10 (28%) of people saying the need to quarantine prevented them from travelling.

2. Comparison with international regulatory regimes

Secondly, with regards to your question on aviation regulators outside the UK, there are significant differences in the activity and regulatory powers of enforcers in other countries. In the European Union, some regulators can issue fines against airlines for their failure to comply with passengers rights, both on a flight level following complaints from individual passengers, or on a systemic level once an issue or trend is identified.

For instance, in Germany, the equivalent authority, Luftfahrt-Bundesamt, can issue administrative fines against airlines that do not act in compliance with Regulation EC261. The maximum penalty is €30,000; in addition, the regulator can impose a fine to recover the financial benefit gained by the airline from the illegal practice.

An example in relation to refunds handling during the coronavirus pandemic, is the activity of the Italian Competition Authority which in May 2021 imposed a fine of €4.2 million on Ryanair for unfair commercial practices during the pandemic over the airline's refusal to refund passengers whose flights had been cancelled. Fines were also imposed on Easyjet (€2.8 million) and Volotea (€1.4 million) for similar reasons.

Nevertheless, as mentioned by the CAA's Consumer Panel Chair during the session, it is probably easier to compare the CAA's powers with the enforcement toolkit available to other regulators in the UK, such as the FCA or Ofcom, which are able to issue financial penalties to punish wrongdoing, to deter non-compliance and to ensure a business does not benefit financially from the illegal practice. Indeed, the CAA itself has often used the examples of the FCA, Ofcom or the Pensions Regulator in its calls for greater powers.

Therefore, whether compared to other international or domestic market regulators, an enhancement of the CAA powers and/or the CAA utilising additional powers for civil enforcement would not be without precedent in other markets.

3. Passenger Locator Forms

Since our appearance at the Select Committee, Which? has published a report into passenger locator forms advising consumers against paying private companies to help fill the form out.



This comes after we found some websites are charging as much as \$99 (£72) to help consumers fill out the free form.

To check how many sites are offering this service, we performed separate PLF searches for the UK, Spain, Portugal, Greece, Italy and Turkey. In total across all searches, just on the first two pages of Google results, 19 non-governmental results were returned, which included 12 different URLs, offering to apply for PLFs for a fee.

Google allowed two of these to appear higher than the actual government website link. Some were presented to consumers as an advertisement in Google's search results – so they appeared to be trusted sites. Country flags were incorporated into other site's landing pages, which made them look more like some of the official ones.

Some websites claim that they are faster at processing an application than going through official government channels. Others said that doing it through their site was less 'hassle' or the 'likelihood of a positive outcome was higher'.

Which? is concerned that without proper Government oversight and regulatory scrutiny that consumers will end up paying more money to fraudulent firms and in this case - unlike testing - to a service for which consumers do not need to pay.

4. Alternative Dispute Resolution

Finally, we wanted to include a supplementary summary of evidence on Alternative Dispute Resolution (ADR) for consumers in aviation and travel, as another key area of reform that we believe is necessary to build back the aviation sector better in the interests of consumers. For a number of years, Which? has called on the government to reform the current system for ADR so that it works more effectively for consumers and provides an accessible and affordable alternative to court proceedings.

The aviation sector stands out among regulated sectors for not having mandated membership of an ADR scheme. We believe there is a clear opportunity for the government to deliver positive change in this area through the work led by BEIS on Competition and Consumer Policy reform.

At present, 80% of passengers departing the UK have access to ADR. The CAA has approved two ADR schemes with voluntary membership, and as a result airlines have the option of changing to a different scheme or leaving an ADR scheme altogether when they disagree with decisions made by the scheme.

Those passengers who do not have access to ADR are reliant on either the CAA's own resolution service (PACT), whose decisions are not binding on the airlines, or alternatively to relatively expensive, complex and lengthy court processes to resolve a dispute.



The voluntary nature of membership and the presence of multiple providers may mean there is an incentive for the CAA to create ADR rules that are appealing to airlines, encouraging them to join, and for airlines to choose a provider they perceive to be more sympathetic to their case. For example:

- Ryanair withdrew from AviationADR in November 2018 after the scheme made decisions the airline did not like. RyanAir rejoined AviationADR in June 2021 after the CAA made changes to the ADR scheme rules which do not appear to be beneficial to consumers and appear to favour airlines considerably.
- When easyJet moved from the Aviation Adjudication Scheme to AviationADR, the number of cases involving easyJet that were upheld fell from an average of 79% in the last six quarters it was a member of the Aviation Adjudication Scheme to 51% in the first six quarters it was a member of Aviation ADR.

The lack of an effective ADR system in aviation by extension has a considerable negative impact on the courts. In 2020 Which? investigated the number of consumer airline disputes that were being taken to court and found that one claims management company had more than 3,200 cases issued against two airlines. The same solicitors said it had another 6,000 cases against the same airlines that it hasn't brought to court because there are already so many cases waiting.

These numbers are not exclusively down to the pandemic, in 2018 Bott & Co issued court proceedings against airlines in the small claims court over 15,000 times, that figure was double that of the previous year.

Due to the particular characteristics of ADR, we believe a single ADR provider is more likely to result in a service with high standards that works for both businesses and consumers. It is therefore our view that consumers would benefit from the introduction of a single statutory-backed ombudsman in the aviation sector similar to those established in the financial, energy and rail sector.

We urge the government, and DfT in particular, not to miss the opportunity to capitalise on the proposals for ADR reform included in BEIS' Competition and Consumer Policy Consultation by mandating membership for airlines and establishing a single statutory-backed ombudsman in this sector.

Please let me know if there are any further questions or clarifications we can provide.

Kind regards,
Neena Bhati,

Head of Campaigns, Which?