

Written evidence submitted by Which? (AAS0049)

Issues with the private Covid testing market and government changes to travel restrictions

Current issues with PCR testing for travel

Which? has been raising concerns about the private testing for the travel market and ahead of the reopening of international travel in Spring 2021. Persistent issues in the market have included a lack of reliable information for consumers, a big variance in prices for tests and significant problems with quality and reliability of service.

Our research and investigations found that the private travel testing market has been flooded with rogue providers, which has led to travellers being left out of pocket and unable to travel, and a flawed accreditation system has made it too easy for firms to provide testing services and appear on the government's list.

Therefore in September, Which? fully supported the recommendations of the Competition and Markets Authority's (CMA) rapid review of the market and shared its concerns that the market risks becoming "a race to the bottom". Worryingly, these recommendations are yet to be implemented and we have seen little meaningful improvement to the list of providers on the GOV.UK site, despite the reintroduction of the PCR testing requirements for travellers in November 2021.

The situation today is extremely confusing for consumers, who are having to navigate a market with a wide range of pricing, and with confusing information from the Government. Many of those travelling over the Christmas period will be visiting family in the UK and abroad, and will be facing difficult decisions, and potentially hefty costs, when choosing a test provider in anticipation of the expected postal service disruption.

Firstly, there are currently 443 providers on the GOV.UK Day-2 PCR test list with prices ranging from £15 to £399 and the list gives no indication or information with regards to quality of service. Concerningly, the practice of "bait pricing" is extremely prevalent at the lower cost end of the GOV.UK site. Recent reports have stated that of the top 30 cheapest providers on the

GOV.UK site, just four are available at the advertised price - with costs sometimes tripling for “available” tests from the other 26 providers.¹ Similarly, earlier in December some providers were advertising tests for as little as 30p that turned out to be unavailable just to get to the top of the GOV.UK list.²

Secondly, information from the Government has added further confusion regarding testing costs. On 7 December, the Department of Health and Social Care was reported to say that the average price for Day 2 PCR tests were £45, with many available for £20.³ However, our analysis of the list on 13 December 2021 shows that less than one in five tests on the GOV.UK list are advertised for less than £45 and only five providers advertise tests for £20. Moreover, drip-pricing practices continue. Currently there are 20 firms quoting tests for ‘self swab at home’ for less than £30 - some as little as £15. However, by the time the delivery charges are added, the total bill can go up in some cases to £80.

Finally, Which? has heard that some Covid test providers have stopped selling tests over the Christmas period as they are struggling to deal with demand and cannot guarantee fast test results during this busy period due to expected disruption to the postal network. Many travellers will be forced to purchase expensive tests that are provided at the airport or in a clinic or from firms that offer their own courier services. Those who can’t afford these extra costs, which can easily exceed the costs of flight tickets, will face the tough decision of cancelling holidays or their plans to visit family and friends abroad and will be left at the mercy of their travel company’s booking terms and conditions.

Which? has continued to support consumers to navigate this complex market with more trustworthy information and advice, including publishing a guide to testing providers. However, if there is a continued requirement for consumers to engage with the private PCR testing market in order to travel, it is critical that the Government, particularly the UKHSA, ensures there is stronger regulation in place supported by effective monitoring and swift enforcement.

Case study: Expert Medicals

In November Which? reported on Expert Medicals, a PCR testing provider who failed to deliver good customer service to consumers with regard to day 2 and day 8 PCR tests, a requirement of all passengers at the time:

When Patricia Baker didn't receive the Covid tests that she had purchased from Expert Medicals, she told us that the most galling thing was having to fall back on the NHS to be able to leave her house. When the day eight test she'd bought from Expert Medicals didn't arrive and, like so many others, she ended up calling 119 to ask the government to step in. Patricia didn't want to leave the house until she had been given the all-clear.

'I was so cross that the NHS had to come to my rescue after I'd spent all that money. And we'll all end up paying for it again through our taxes.'

The CMA opened an investigation into Expert Medicals for potential breach of consumer law in September 2021 and the provider was removed from the GOV.UK PCR provider list. Despite this, Expert Medicals later appeared on the Rapid Lateral Flow Testing GOV.UK provider list after restrictions changed to allow for this type of testing. This case raises concerns about the lack of vetting and enforcement from the government with regards the providers on the GOV.UK list, which consumers are turning to for information to best navigate the market and identify providers.

Handling of announcements and policy on new 'variants of concern'

Consumers must have confidence in the information they are provided with in order to make better informed decisions, particularly in a market which is experiencing constant change. However we strongly believe that they have been woefully neglected by the government in its handling of travel restrictions announcements.

While consumers will understand the need to introduce public health measures at short notice, it is crucial the government considers the impact, both financial and emotional, that constantly changing rules at the last minute will have on travellers. People intending to travel must be properly informed of changes that would strongly affect their plans, such as the requirement to take a pre-departure test before returning to England which might lead to quarantine while abroad if testing positive.

Government must ensure it properly communicates upcoming changes to travel restrictions with timely and reliable information. As part of this, we urge the government to review its plans and preparedness when dealing with new

emerging variants and set out a strategy to ensure there is no repeat of the chaos travellers have been facing over the last couple of weeks.

Which? recommendations on testing for travel:

The Government and UKHSA must:

1. Implement the CMA recommendations immediately to set high standards on quality of service, consumer protections and a benchmark of price for providers in the market; and ensure only good providers are listed on GOV.UK.
2. Improve the quality of information on the GOV.UK provider list, which includes information held on timeliness of delivering test kits and processing results on time, and quality of customer service.
3. Ensure that all future announcements on changes to travel restrictions will be communicated in a clear and timely manner to consumers, and work with the travel industry to limit the impact on consumers whose travel plans may be affected.
4. Publish its strategy for dealing with new 'variants of concern' and thresholds for changes in travel restrictions.

In the meantime, Which? advises those travelling not to solely rely on the [GOV.UK](https://www.gov.uk) list to find testing providers due to the ongoing concerns about the reliability of the information shown. Which? has reviewed a number of PCR test firms, and social media is also a good place to check for the experience customers are having with test providers.

CAA powers and access to redress

The pandemic has been a litmus test for consumer protections in the Aviation Sector, highlighting regulatory gaps in consumer protection.

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 consumers in the U.K. 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 February 2021 Which? reported that an estimated [3.2 million people](#) were still waiting for refunds for flights they could not legally take during the pandemic.

Through our investigations and research, we have demonstrated that the lack of administrative fining powers has undermined the ability of the CAA to enforce consumer law legislation and secure routine compliance, leaving travellers exposed to unfair business practices.

The need for regulatory reform has been clear for years through other significant events like the failure of Thomas Cook which required taxpayers intervention, the Icelandic ash cloud that grounded planes and passengers for days with no recourse to refunds, Ryanair workers' industrial action in 2018 that saw passengers refunds refused and the airline ignore CAA and ADR scheme rulings, and the long term small claims court backlog costing both individual consumers and the taxpayer.

The lack of accountability in the sector has allowed unlawful behaviour to persist, with businesses facing no consequences and consumers left to shoulder the bill. These systemic issues are particularly evident in the regulators' failed attempts at enforcing consumer protection law during the pandemic.

There should be a quick and effective route for consumers to enforce their rights directly, but the current system of ADR in aviation fails many passengers. Given the significance of the sector and the scale of consumer detriment, ADR should be mandated to ensure all passengers in the UK have access to redress without having to resort to court action through the small claims court.

Finally, as the government consults on Consumer Policy in Aviation, in a bid to establish additional tools for enforcing consumer rights, it is crucial that passenger rights are safeguarded and enhanced by reducing inconsistencies between air travel and package holiday regulations.

Our calls to the Government on consumer rights reform:

1. The CAA must be given stronger enforcement powers, including fining powers, for breaches of consumer law to prevent operators from acting with impunity.

2. An effective ADR system with mandatory membership should be established, with the introduction of a single statutory-backed ombudsman for the aviation sector
3. The Government must commit to safeguarding consumer protections in travel post-Brexit and reduce inconsistencies between air travel and package holiday regulations, bringing greater clarity and protection to consumers.

The Committee's upcoming evidence session

We would welcome the Committee raising these key issues with the UKHSA and Government ministers in its upcoming session.

Suggested questions to UKHSA on overseeing the private testing market:

1. What is the UKHSA's progress and ongoing timetable for implementing the CMA recommendations?
2. How many providers has the UKHSA assessed and found issues with on the GOV.UK list since it took over responsibility? And how many have been removed from the list as a result?
3. PCR testing has recently changed hands from DHSC to UKHSA, and it appears DfT no longer has any say - can the panel clarify how the departments work together and where accountability sits?
4. When private testing firms are removed from one government list for customer service failings, what process or checks are undertaken before they are able to reappear on a GOV.UK list to provide private testing services again?
5. Are firms able to appear on the gov.uk list when under investigation by the CMA (as above)?

Suggested questions to the Government

On the private testing market:

1. Many people will be travelling to see family and relatives over the Christmas period, however private test providers are experiencing high demand and pausing sales over the Christmas holidays due to expected postal network disruption. What is the government doing to ensure consumers will have access to affordable and reliable tests during this period?

2. The next review of travel restrictions is expected on 20th December, by which point it will be too late for most people to adjust their plans. Therefore:
 - a. What is the Government doing to limit undue disruption, stress and financial strain during the holidays as a result of further changes to travel restrictions?
 - b. What discussions is the Government having with the travel industry to support consumers who may not be able to continue with their travel plans over the upcoming period?
3. In addition to implementing the CMA's recommendations, would the Government now consider introducing a price cap on testing services to reduce prices and support regulation of the testing market?

On the CAA powers and enforcement:

1. Given the scale of the refunds crisis and that the sector has faced no enforcement action despite repeated consumer law violations, what is the government's view on whether consumer protections in aviation are fit for purpose?
2. What role should the regulator play to better protect consumers from unlawful practices and breaches of consumer law by the aviation industry, and what is the Government's plan to rebuild consumer trust in this sector?
3. Why has the government decided it will re-consult on proposals regarding CAA powers and ADR reform in the Aviation Consumer Policy Strategy when BEIS consulted on these issues earlier this year and could deliver changes more efficiently through the forthcoming consumer enforcement reforms?
4. Is the government committed to clarify the law on flight refunds rights for those people who cannot travel due to Government advice or imposed restrictions?

About Which?

Which? is the UK's consumer champion. As an organisation we're not for profit - a powerful force for good, here to make life simpler, fairer and safer for everyone. We're the independent consumer voice that provides impartial advice, investigates, holds businesses to account and works with policymakers to make change happen. We fund our work mainly through member subscriptions, we're not influenced by third parties and we buy all the products that we test.

Annex:

The CMA's recommendations from the rapid review of the private PCR testing market

- Creating a one-stop shop list of quality, approved test providers by significantly improving the basic standards to qualify for inclusion and remaining on the GOV.UK list.
- Introducing a comprehensive monitoring and enforcement programme to ensure providers on the GOV.UK list meet these basic standards and rules, and swiftly removing and sanctioning those firms that don't.
- Improving the provider listings on GOV.UK so consumers get the information they need to compare providers properly and find the best deals for them.
- Developing the NHS Test and Trace travel test as a benchmark for quality and price to drive higher standards and more competition across the sector.
- Monitoring prices and costs on an ongoing basis, in case price reductions are not seen on the back of other measures and consider introducing a price cap if necessary.

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Endnotes

¹ www.mirror.co.uk/news/politics/pcr-test-rip-off-slammed-25672811 [Accessed: 13 Dec 2021]

² www.thetimes.co.uk/article/sajid-javid-urged-to-crack-down-on-the-testing-firms-conning-customers-tms5fqdlf [Accessed: 13 Dec 2021]

³ <https://www.thetimes.co.uk/article/covid-19-downing-street-vows-to-strike-off-exploitative-pcr-test-firms-r5tng6czp> [Accessed:13 Dec 2021]