



Aviation Consumer Policy Reform

THE CONSUMER COUNCIL RESPONSE

March 2022

1. EXECUTIVE SUMMARY	3
2. THE CONSUMER COUNCIL.....	5
3. RESPONSE TO CONSULTATION QUESTIONS	7
3.1 TOOLS FOR THE REGULATOR TO PROTECT CONSUMERS AND ENSURE FAIR TREATMENT .	7
3.2 RESOLUTION FOR INDIVIDUAL CONSUMERS	8
3.3 COMPENSATION FOR DELAYS AND CANCELLATIONS	10
3.4 ACCESSIBILITY	13
4. CONCLUSION	16
5. CONTACT DETAILS	17
ANNEX 1.....	18

1. EXECUTIVE SUMMARY

The Consumer Council welcomes the opportunity to respond to the Department for Transport (DfT) consultation on aviation consumer policy reform.

- Northern Ireland is unique in the UK in having no road or rail links with England, Wales or Scotland. Northern Ireland is uniquely dependent, both economically and socially, on domestic air travel to connect its people and its economy to the rest of the UK and via the UK to the world. Between 2017 and 2020, 86% of journeys made through Northern Ireland airports were for domestic journeys. This compares to 45% for Glasgow airport and 16% for Bristol airport, each of which has a similar passenger though put as the three Northern Ireland airports combined.¹ Therefore, any changes to domestic aviation consumer protection will disproportionately affect Northern Ireland consumers.
- This disproportional impact on NI aviation passengers is significant not only in terms of the numbers of passengers affected but, with regard to the delay compensation issue, also the level of inconvenience and consequential loss that could be incurred. Unlike consumers in the rest of the UK, many NI passengers are required to make flights to GB in order to make connections for flights abroad. If delays or cancellations cause these flights to be missed the inconvenience and consequential loss will be significant and far higher than the proposed new compensation levels.
- The Consumer Council has an active and prominent role in Northern Ireland dealing with aviation complaints, representing consumers and raising awareness of consumer protection in aviation. We are designated to handle passenger complaints made under Regulation 1107/2010 (the Access to Air Travel Regulation) relating to an airport in Northern Ireland or a flight departing from an airport in Northern Ireland by the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007 (SI 2007/1895). The Consumer Council also handles complaints made under Regulation 261/2004 concerning flight delays, cancellations and instances of denied boarding, under an MOU with the Civil Aviation Authority (CAA).
- Since 2017, we have assisted 5,897 Northern Ireland airline consumers to receive almost £1,241,552 in refunds and compensation. We work in partnership with the three airports in Northern Ireland to conduct 'Access Audits' of the facilities for passengers with a disability and reduced mobility. We produce information guides for passengers on their rights when services are delayed or cancelled, and for passengers travelling with a disability or reduced mobility. We have a statutory duty to sit on the three airport forums in Northern Ireland as prescribed in the Airports (Northern Ireland) Order 1994. We have included detailed statistics for the Consumer Council's aviation complaints work between 2017 and 2021 at Annex 1.
- We strongly support the proposal to strengthen the enforcement powers of the CAA. There have been a number of occasions in recent years where the powers of the CAA appeared insufficient to address the issue of consumer detriment effectively and in a timely manner. The CAA must have enforcement tools available that will enable it to act swiftly to stop consumer detriment where it has been identified. Equally important is the need for the CAA to have sufficient resources and a willingness to use those powers.

¹ CAA [UK airport data](https://www.caa.co.uk/uk-airport-data) | [Civil Aviation Authority \(caa.co.uk\)](https://www.caa.co.uk/)

- In principle we support the mandatory requirement for aviation to have an ADR and believe this should be in the form of a single Ombudsman funded by industry and free to consumers. However, in Northern Ireland, where the Consumer Council is the lead body for dealing with aviation complaints, ADR is currently not working for aviation consumers.
- The role of the Consumer Council and our work in protecting aviation consumers needs to be acknowledged and taken into account in the proposal to make ADR mandatory in aviation. To this end we request a discussion with both the DfT and the CAA to understand how our functions will fit into this proposal.
- We do not support the change to the delay/cancellation compensation scheme as proposed. In our view, the proposals are not based on robust statistical evidence or sound objectives. The consultation states its objective is to ensure that compensation for delayed flights is more representative of the costs of travel and to reflect the newer ways consumers are choosing to travel by air. However, the original objective behind Regulation 261 was primarily for it to be a deterrent against bad practice by the airlines and secondly to provide compensation that reflects, as far as is possible, the inconvenience and consequential financial loss to the customer.
- As it is possible that these proposals will proceed to law without parliamentary scrutiny, it is essential that the evidence base is robust and the objectives understood and agreed by all stakeholders and policymakers. We believe these proposals should be the subject of a call for evidence and only consulted on once the data and assumptions are sound.
- In principle, we support the proposal to have delay compensation commence at one hour plus. However, we do not support the calculation of the level of compensation as a percentage of the ticket price as this will not be a sufficient deterrent to poor customer service by airlines. We suggest that fixed amounts of compensation are retained and that the requirement for compensation commences after a one hour delay.
- We propose that compensation payments should be paid automatically by airlines and 94% of NI aviation users we surveyed support this.²
- We support the proposal that the fee related to the Special Declaration of Value be abolished; and the limit to compensation be replaced with an obligation to provide a suitable temporary replacement without delay and compensation must be the original purchase value of the wheelchair or mobility aid, subject to the provision of reasonable evidence.

² Consumer Council Pulse Survey, online 11 February-1 March 2022. There were 436 respondents to the survey.

2. THE CONSUMER COUNCIL

The Consumer Council is a non-departmental public body established through the General Consumer Council (Northern Ireland) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland.

We are an insight-led, evidence based organisation:

- Providing consumers with expert advice and confidential guidance.
- Engaging with government, regulators and consumer bodies to influence public policy.
- Empowering consumers with the information and tools to build confidence and knowledge.
- Investigating and resolving consumer complaints under statutory and non-statutory functions.
- Undertaking best practice research to identify and quantify emerging risks to consumers.
- Campaigning for market reform as an advocate for consumer choice and protection.

We have specific statutory duties in relation to energy, postal services, transport, water and sewerage, and food affordability and accessibility. These include considering consumer complaints and enquiries, carrying out research, and educating and informing consumers.

Our non-statutory functions educate and empower consumers against unfair or discriminatory practices in any market from financial services to private parking charge notices. Across all our areas of work, we pay particular regard to consumers:

- who are disabled or chronically sick;
- who are of pensionable age;
- who are on low incomes; and
- who live in rural areas.

We are a designated body under the Rural Needs Act 2016 and Section 75 of the Northern Ireland Act 1998. In this role, we aim to ensure government policies recognise consumer needs in rural areas, and promote equality of opportunity and good relations across a range of equality categories.

We are committed to ensuring positive outcomes for consumers. We are a designated super-complaints body set up under the Enterprise Act 2002 and the Financial Services and Markets Act 2000 Order 2013.

We use a set of eight guiding principles (Figure 2) developed by the United Nations to:

- assess where the consumer interest lies; and
- develop and communicate our policies, interventions and support.

These provide an agreed framework through which we approach regulatory and policy work.

Figure 2: Consumer protection principles



The principles ensure we apply a consistent approach across our statutory and non-statutory functions, and in all our engagement with consumers and stakeholders.

They serve and protect consumers and set out the minimum standards expected from markets when delivering products or services, including in digital markets, in Northern Ireland. They also frame our policy position and approach to resolving consumer disputes with industry, offering a straightforward checklist to analyse and validate outcomes, in particular amongst vulnerable groups.

3. RESPONSE TO CONSULTATION QUESTIONS

Please note we have consolidated our answers to some questions.

3.1 TOOLS FOR THE REGULATOR TO PROTECT CONSUMERS AND ENSURE FAIR TREATMENT

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

The CAA must have enforcement tools available that will enable it to act swiftly to stop consumer detriment where it has been identified. The length of time it currently takes the CAA to progress enforcement through the courts is a barrier to justice for consumers and fails to alleviate consumer detriment. We would support the suggestions made in the consultation that would enable the CAA to decide if an aviation business has breached consumer law, make directions to end infringements, order compensation and impose financial penalties.

The CAA has itself called for stronger and more streamlined enforcement powers. We saw the limitations of the CAA powers during the early days of the COVID-19 pandemic when airlines chose to offer vouchers instead of refunds as required by law. The lengthy legal process that was required to enforce the provisions of Regulation 261 precluded any effective enforcement action by the CAA. Instead the CAA was only able to make agreements with airlines and these were not strictly adhered to by airlines.

A problem for the CAA appeared to be the lack of accurate data available from airlines on refunds and therefore an important part of strengthening the CAA enforcement powers will be to strengthen its evidence gathering powers.

Equally important to having increased and swifter enforcement powers is the need for the CAA to have sufficient resources and a willingness to use those powers.

Regional tests of proportionality should be applied to the setting of CAA annual priorities and to investigations undertaken by the CAA. This must include tests of proportionality of consumer impact in different regional markets which is based on improved understanding and analysis of local market conditions. Northern Ireland is disproportionately reliant on aviation for domestic connectivity compared to the rest of the UK and this must be recognised in the CAA decision making.

The 2021 BEIS consultation, in conjunction with this consultation, presents an opportunity to clarify and rationalise the role of different regulators in the travel sector. During the COVID-19 pandemic, it was unclear to consumers (and their representatives) which organisation had responsibility for enforcing the law and who they should speak to for advice. Whilst the CAA are charged with enforcing Regulation 261, Trading Standards enforce the Package Travel Regulations. Meanwhile,

the Competition and Markets Authority (CMA) also gave advice on holiday cancellations and undertook its own investigation into airlines that refused to pay refunds where the consumer could not fly because of UK Government travel restrictions.

In October 2021, we provided a response to the BEIS consultation on Reforming Competition and Consumer Policy.³ Our overall response and the principles that underpin it are directly relevant to this consultation and are appropriate in the case of the CAA. In particular we would draw your attention to the following points:

- We support both the CMA and other sector regulators (including the CAA) having enforcement powers under an administrative model. This would create a model that provides fast and efficient action against businesses that infringe consumer protection laws and cause consumer detriment.
- The CAA should have increased evidence gathering powers to obtain information and to sanction companies that do not comply.
- An administrative model should be legally required to consider input from consumer interest bodies in its enforcement actions.
- There is a need for a process to appeal the decisions of the CAA where it has decided not to take any further action against a business. A decision made by the CAA should be followed by a set standstill period to allow consumer bodies and other interested bodies to respond or appeal the decision. This would enable consumer interest groups to fully assess the impact a decision by the CAA will have on consumer interests.
- The CAA should be fully transparent in its decision making processes and publish its decisions.
- There should be an appeals process available to those who are the subject of CAA enforcement action. The scope and powers of judicial scrutiny set out by government should apply to provide a robust and appropriate independent appeals process.
- There should be an equal right for consumers to appeal the decisions of the CAA.

3.2 RESOLUTION FOR INDIVIDUAL CONSUMERS

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

³<https://www.consumercouncil.org.uk/policy-research/publications/reforming-competition-and-consumer-policy-consultation-response>

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?

Q12. Should ADR be completely free for consumers or would a '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?

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?

In Northern Ireland the Consumer Council is the lead body for dealing with aviation complaints. The formal ADR scheme, as it currently operates, is not working for aviation consumers here. Between 1 January 2017 and 31 December 2021 we have dealt with 5,897 aviation consumer contacts and investigated 2,967 aviation consumer complaints. During this time 2,719 consumers we represented received reimbursement from airlines totalling £1,241,552. Evidence from a Consumer Council survey of 436 aviation users in February 2022 showed that 34% of respondents said they would contact the Consumer Council for help if an airline did not deal satisfactorily with a complaint they had made, whilst only 16% said that they would contact the airline's ADR provider.⁴

It is important that our role in aviation complaints is acknowledged and recognised in this consultation process and we would welcome discussions with both the DfT and the CAA to understand how our functions will fit into the proposed mandatory ADR scheme.

Beyond Northern Ireland there is evidence that ADR, as it operates in the aviation sector, is not effective for consumers. In June 2019 the Consumer Protection Partnership (CPP), in its response to the DfT "Aviation 2050" consultation, asked for a review of ADR to ensure it is working in the best interests of consumers. The evidence submitted in the consultation response concluded that the review should consider the type of complaints that make it to ADR given that the airline should already have had the chance to resolve the issues. This consultation would benefit from a review of the type proposed by the CPP taking place before any final decisions are made.

Notwithstanding the current limitations of the existing ADR system we support, in principle, the mandatory requirement for aviation to have ADR and believe this should be in the form of a single Ombudsman funded by industry and free to consumers.

Providing a choice for airlines of competing ADR providers means that an airline will use the company that provides it with the greatest benefit, and the ADR provider will compete with other ADR providers to provide the greatest benefit to airlines. This model is not in the interests of consumers.

A single Ombudsman that is funded by an industry levy and is free to consumers would provide consistent decision making across the industry. This would provide clarity on the regulations for both consumers and airlines.

⁴ Consumer Council Pulse Survey, online, February 2022

In developing a mandatory ADR system, accessibility is very important. DfT should consider a requirement for the ADR provider to have BS18477 accreditation (which provides a framework to help organisations and their employees understand the underlying factors involved in consumer vulnerability), and to follow the recommendations of the World Wide Web Consortium (Accessibility - W3C) on accessibility.

Furthermore, as awareness of ADR amongst aviation consumers is low, airlines and airports should be required to promote the service to consumers.

3.3 COMPENSATION FOR DELAYS AND CANCELLATIONS

Incorporates our response to:
Q15. Should compensation for delays to domestic flights to be calculated as a percentage of the cost of the ticket?
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?
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: <ul style="list-style-type: none"> • 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.
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?
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?

We do not support the change to the delay/cancellation compensation scheme as proposed. In our view the proposals are not based on robust statistical evidence or sound objectives and will have a detrimental impact on the experience of aviation consumers.

Disproportional impact on Northern Ireland consumers

The detrimental impact of the proposed changes will be felt disproportionately in Northern Ireland which, unlike the rest of the UK, relies on domestic flights to connect its people and its economy directly to the rest of the UK and via the UK to the world.

This disproportional impact on NI aviation passengers is significant not only in terms of the numbers of passengers affected but also the level of inconvenience and consequential loss that could be incurred. Unlike consumers in the rest of the UK, many NI passengers are required to make flights to GB in order to make connections for flights abroad. If delays or cancellations cause these flights to

be missed the inconvenience and consequential loss will be significant and far higher than the proposed new compensation levels.

Objective of delay compensation

The consultation states that the policy objective of this proposal is to ensure that compensation for delayed flights is more representative of the costs of travel and to reflect the newer ways consumers are choosing to travel by air. However, this does not align with the original policy objective of Regulation 261 which was to be a deterrent against bad practice by the airlines⁵ and to provide compensation that reflects, as far as is possible, the inconvenience and consequential financial loss to the consumer. The success of Regulation 261 as a deterrent can be seen in the large reduction in the practice of “denied boarding”⁶ by airlines.

Furthermore, the policy objective posited by DfT in the consultation is confused. The statement at point 10 of the Impact Assessment states:

“The key motivation for addressing the current compensation regime is to rebalance the compensation rates paid for delays to flights so that they are proportionate to the costs incurred by passengers and the inconvenience caused to them by delays.”

Calculating the compensation as a percentage of the cost of the ticket does not compensate passengers for the actual costs and inconvenience caused by a delay. Rather, it is only a partial refund on the ticket price. It was never the aim of Regulation 261 to provide compensation that reflects how much was paid by the consumer for the service to be provided.

In our view a rational, evidence based argument that justifies the change in policy objective has not been made.

The consultation appears to suggest that the Montreal Convention 1999 is an alternative route to claim damages up to the amount set out in the Convention. However, it is our understanding that it only applies to international flights and does not relate to domestic flights, the type of travel upon which Northern Ireland consumers rely so heavily. Secondly, if it is possible to use the Montreal Convention to claim delay compensation, this would be a far more difficult route for a consumer to take as it requires going through the Civil Courts and producing quantified evidence of financial loss.

Lack of robust evidence

The evidence provided in the Impact Assessment is based on insufficient data and the assumptions used are not reliable enough to justify the change proposed. We recognise the difficulty in gathering data from airlines and this reinforces the need for the CAA to have enhanced data gathering powers.

The impact Assessment states:

“Low cost airlines have told DfT that the impact of the compensation on their turnover is far more material than it is for standard airlines, indicating verbally it can reach a value equivalent to 3% of their turnover. Unfortunately, they have not shared any evidence to

⁵ https://ec.europa.eu/commission/presscorner/detail/en/IP_05_181

⁶ This means that occasionally too many people will attempt to check in for a flight. As a result, some passengers may be asked or forced to give up their place on the flight (<https://www.caa.co.uk/passengers/resolving-travel-problems/delays-and-cancellations/denied-boarding/>)

prove this claim because of commercial sensitivities but we expect a cap of the compensation to the ticket price to be very welcome across all airlines and particularly the low-cost section. We welcome evidence to enable us to assess the scale of the problem as part of the consultation process.”

This is insufficient evidence on which to make a policy change on an issue that affects so many consumers. The DfT must ensure it has robust and reliable evidence from the industry before it considers proceeding with this proposal.

It is worth noting that the issue of the level of delay compensation has been the subject of an ongoing debate at the European Commission since 2014. Whilst this may be regarded as overly long, it does indicate the differing views and evidence on this issue. It would be a mistake to go to the other extreme and rush to a decision without the appropriate evidence and scrutiny.

The potential route to law of this proposal through secondary rather than primary legislation raises the possibility that these proposals will become law without parliamentary scrutiny. It is essential that the evidence base is robust and the objectives understood and agreed by all stakeholders and policymakers. We believe that on this proposal, this consultation should be regarded as a call for evidence. No decision should be made on this until sufficient data on delays, cancellations and compensation is gathered and further consulted on.

Alternative proposals

Whilst our view is that further evidence needs to be gathered, outlined below are three proposals which would improve consumer protection and confidence in the aviation industry.

1. Airlines should be required to make delay compensation payments automatically

If an individual consumer is entitled to a compensation payment then all passengers on the flight are entitled to it and should receive it. It should not only be those passengers who happen to know their rights, or are made aware of their rights, and are willing to make the effort to pursue those rights, that should receive the compensation.

Airlines have the technical and practical means to repay passengers automatically and doing so would stop airlines from undertaking practices that hide from passengers their full rights, as happened extensively during COVID-19. Our Consumer Council Pulse survey showed that 94% of respondents supported the automatic payment of flight compensation.

If automatic payment of compensation was to be adopted, it may be necessary at that point to review the level of compensation payments to ensure they reflect a fair balance between consumers and airlines.

2. Compensation should commence after a delay of one hour

In principle, we support the proposal to have delay compensation commence at one hour plus, as this brings more consumers who are inconvenienced by delays into the compensation payment regime. If paid automatically or widely claimed, this would go some way to compensating for inconvenience and would be a deterrent to airlines against bad practice.

3. Current compensation rates should be enhanced

Current compensation rates should not be diluted. Calculating the compensation as a percentage of the ticket price (particularly at 25% of the current average price of £65) provides an amount so low that is insufficient compensation which many consumers may deem not worth the hassle of claiming. This means that it will neither act as a deterrent to airlines against bad practice nor provide a realistic level of compensation for inconvenience or consequential loss.

We suggest keeping fixed amounts that commence after a one hour delay as follows:

- One hour plus £70
- Two hour plus £140
- Three hour plus £220

Holiday operators

We support the proposal to enable package holiday organisers to make a claim for a full refund for a cancelled flight on behalf of its customers. During the COVID-19 pandemic we became aware of many instances where the package holiday operator removed the cost of the flight from the refund it made to the consumer because it could not get the flight refund from the airline. We also heard anecdotally of package holiday operators who made a full refund to the consumer but had difficulty recovering the refund from the airline. This would clarify the rights of the package holiday operator and make the full recovery of a refund easier for consumers.

3.4 ACCESSIBILITY

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

The Consumer Council is the recognised complaints handling body for the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007 (SI 2007/1895) relating to an airport in Northern Ireland or a flight departing from a Northern Ireland airport. The Consumer Council works alongside the Northern Ireland airports to ensure that these services continue to meet passengers' needs.

Whilst for most travellers, loss or damage to baggage is an inconvenience, damage to a wheelchair or assistance equipment can have a life limiting effect resulting in a loss of independence. In addition, the current level of compensation is inadequate as the majority of equipment will cost significantly more than the compensation threshold.

This limit can be waived if the passenger makes a Special Declaration of Value at check in and pays an appropriate fee. It should be noted that some airlines set their own limits of compensation which would still not meet the costs of replacement. However, we believe that wheelchair or assistance equipment should not be treated in the same way as other luggage and that damages claims for

breaches of what is an individual's fundamental right should not be excluded; and airlines should not be permitted to levy additional fees on consumers to insure such items.

Under Article 15, EC Regulation 1177/2010, ferry carriers and terminal operators are *"liable for loss suffered as a result of the loss of or damage to mobility or other specific equipment, used by a disabled person or person with reduced mobility, if the incident which caused the loss was due to the fault or neglect of the carrier or terminal operator"*. We see no reason why the situation should be different in respect of air travel.

It should be noted that the European Commission *"encourages airlines to voluntarily waive their limited liability to bring the amount of compensation closer to the actual value of the mobility equipment."*⁷ This approach has already been implemented by the several international airlines e.g. Lufthansa and Air Canada. Both airlines have already moved to waive the provisions of the Montreal Convention in the event of damage to a wheelchair or mobility aid. In the United States, the Air Carrier Access Act (ACAA) states that, for domestic flights, *"the criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device."*

We therefore recommend that the fee related to the Special Declaration of Value be abolished; and the limit be replaced with an obligation to provide a suitable temporary replacement without delay and compensation must be the original purchase value of the wheelchair or mobility aid, subject to the provision of reasonable evidence.

Incorporates our response to:
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?

It appears that there is little information available on the scale of the issue related to damage to mobility equipment, as very few stakeholders appear to have reliable or publicly available statistics on the issue.⁸ This compares poorly with other countries. For example, in the USA, all domestically operated airlines are required to report such incidents under the Federal Airline Authority Reauthorization Act 2018 e.g. in the three months from December 2018, there were 1,975 incidents involving damage to wheelchairs.⁹

We recommend developing a system to collect such evidence and information to understand the scale of the issue. In addition, there should be more transparency on how airlines handle wheelchairs and mobility equipment and additional training provided to relevant staff (airport, airline, PRM service providers and ground handlers) as necessary.

⁷ EUR-Lex - 52008DC0510 - EN (europa.eu)

⁸ European Commission, Directorate-General for Mobility and Transport, Kouris, S., *Study on the current level of protection of air passenger rights in the EU : final report : study contract*, Publications Office, 2020

⁹ [Damaged Wheelchair on a flight: Who is really responsible? \(tripability.net\)](https://www.tripability.net)

Incorporates our response to:

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?

The CAA has reported on the accessibility of airports since 2016, however it has yet to publish information on how individual airlines are meeting their legal duties to disabled consumers. Whilst EC1107/2006 provides disabled people with a right to assistance at airports; the regulations also apply to airlines, which have legal duties to provide assistance on board flights, such as support to and from the toilet, and providing information about the flight in advance in an accessible format.

We recommend that the CAA publish information about how airlines are complying with the regulations and publish guidance for airlines similar to the guidance provided for airports.¹⁰

We note that the Aviation Passenger Charter, announced in December 2018, was to cover the improvement of storage standards for wheelchairs and the waiving of limits for compensation payments; as well as introducing a new system of measuring performance by airlines in addition to existing airport standards. We would urge the implementation of this Charter as soon as possible.

¹⁰ [CAP1228.pdf \(caa.co.uk\)](#)

4. CONCLUSION

We welcome and support the proposal on strengthening the powers of the CAA and to abolish the limit on compensation for damaged mobility equipment.

We support the creation of a single ombudsman for aviation and urge DfT and the CAA to engage with the Consumer Council to clarify our role in aviation complaint handling in Northern Ireland.

We do not support the proposal in the consultation for changing delay compensation payments as this diminishes consumer protection and our response makes alternative proposals.

We would welcome further ongoing engagement with DfT on all aspects of our response.

5. CONTACT DETAILS

To discuss the Consumer Council's consultation response, submitted on 25 March 2022, please contact Richard Williams, Head of Transport Policy.

E: richard.williams@consumercouncil.org.uk

T: 028 9025 1649

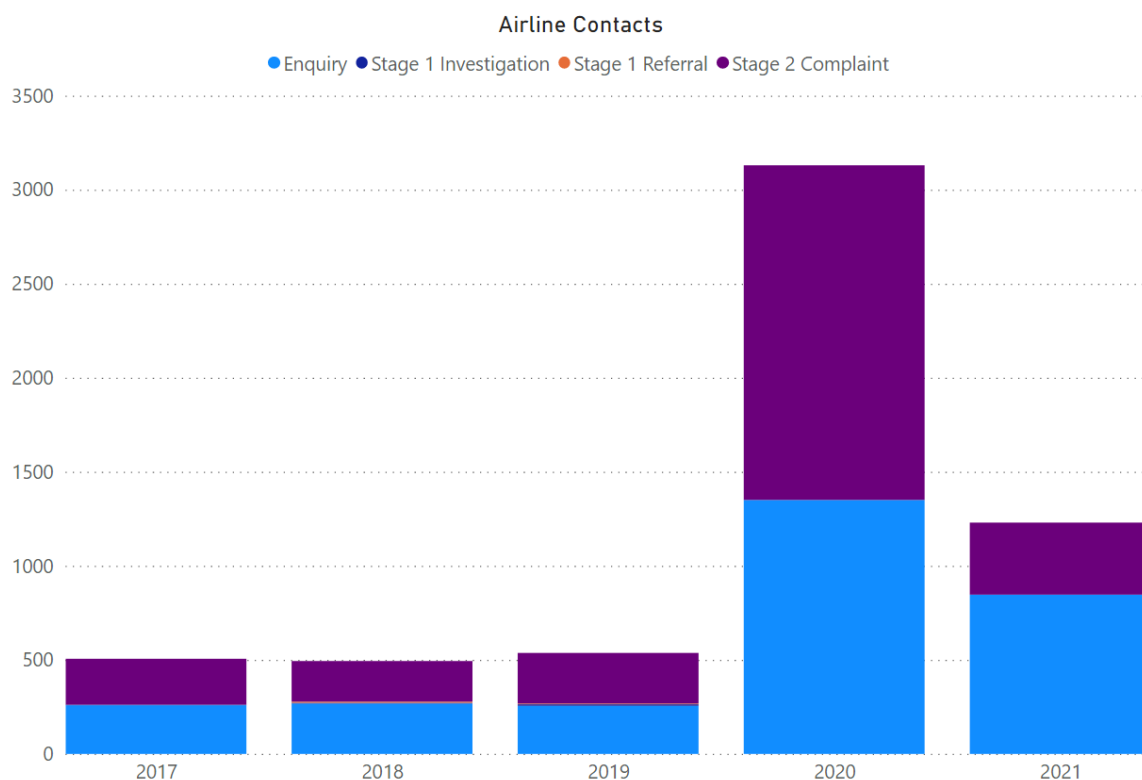
ANNEX 1

Breakdown of data from the Consumer Council Airline Complaints Statistics, Jan 2017 – Dec 2021

Airline Contacts

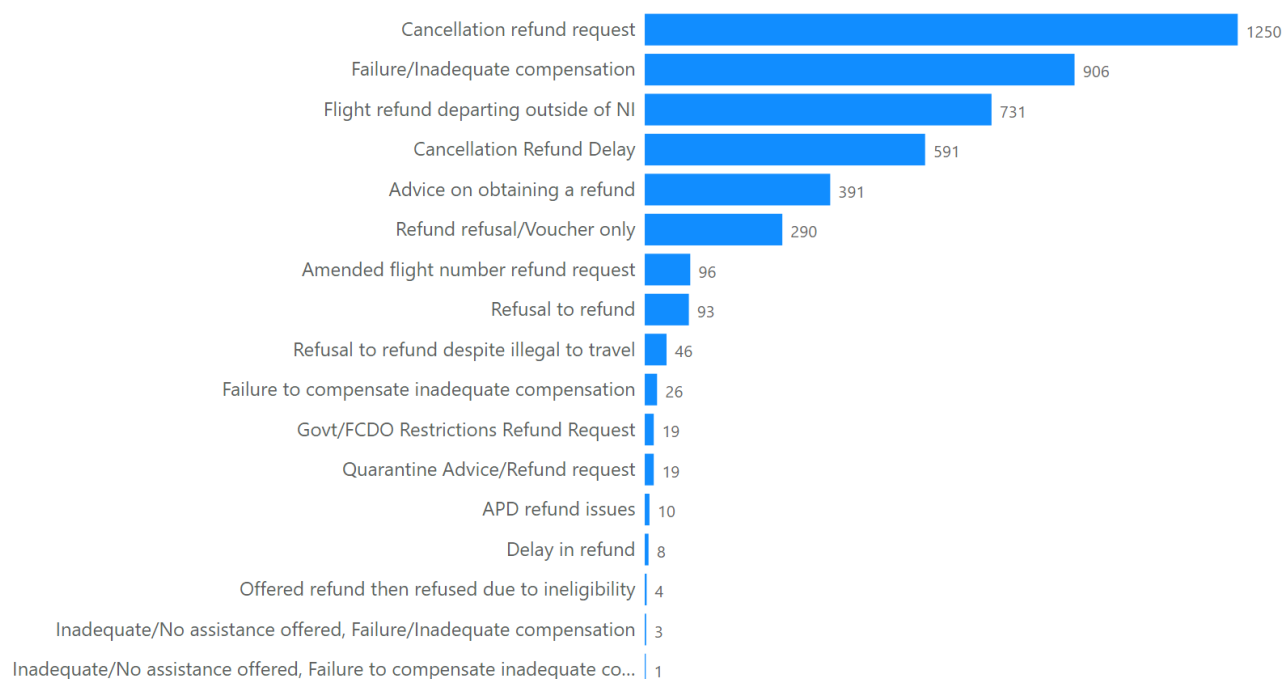
Total Contacts

Year	Total Contacts	Enquiry	Stage 1 Investigation	Stage 1 Referral	Stage 2
2017	506	259 (51.2%)	3 (0.6%)	0	244 (48.2%)
2018	494	268 (54.3%)	4 (0.8%)	6 (1.2%)	216 (43.7%)
2019	537	256 (47.7%)	8 (1.5%)	4 (0.7%)	269 (50.1%)
2020	3130	1350 (43.1%)	1 (0.03%)	0	1779 (56.8%)
2021	1230	847 (68.9%)	0	0	383 (31.1%)
Total	5897	2980 (50.5%)	16 (0.3%)	10 (0.2%)	2891 (49.0%)



Contacts related to refunds and compensation

From 2017-2021, 4484 of the contacts about airlines were issues related to refunds or compensation. This represents 76% of all the airline contacts in this period. They fall under the category “Cancellations & Delays” so it is not possible to determine which are due specifically to delayed flights.



Financial Returns

From 2017-2021, 2719 of the 5897 airline contacts received money back. This represents 46% of all the airline contacts in this period. The total amount returned to consumers for airline issues was £1,241,551.95. The majority of this was returned in 2020 due to the high volume of contacts about airlines related to COVID-19 travel restrictions.

Year	Amount returned
2017	£96,586.42
2018	£72,894.77
2019	£81,213.77
2020	£796,004.35
2021	£194,852.64
Total:	£1,241,551.95

The average amount received was £456.62. The most common reasons for receiving money back were cancellation refund request, cancellation refund delay and failure/inadequate compensation. The top 20 most common reasons for receiving money back are shown below.

Looking just at the period 2020-2021 covering the COVID-19 pandemic, 2196 contacts received a financial return in this time. This represents 50.4% of all airline contacts during this period and 80.8% of all financial returns from 2017-2021. The average amount received was £451.21. The top 20 most common reasons for receiving money back in 2020-2021 are also shown below.

Top 20 Reasons for Financial Returns 2017-2021

Reason for Contact	Financial Return	No. Contacts	Average per contact
Cancellation refund request	£415,540.07	976	£425.76
Cancellation Refund Delay	£235,359.55	463	£508.34
Failure/Inadequate compensation	£210,328.77	397	£529.80
Refund refusal/Voucher only	£78,477.73	188	£417.43
Voucher Request	£65,379.55	127	£514.80
Advice on obtaining a refund	£37,799.06	93	£406.44
Amended flight number refund request	£28,984.18	86	£337.03
Inadequate/No assistance offered	£19,304.53	61	£316.47
Flight refund departing outside of NI	£21,769.34	54	£403.14
Refusal to refund	£12,190.01	34	£358.53
Enquiry regarding company policy	£13,442.32	31	£433.62
Voucher expiry/Cash refund in place of voucher	£13,386.86	24	£557.79
Difficulty contacting airline	£13,001.94	21	£619.14
Advice on future travel	£15,293.45	20	£764.67
Incorrect/no reason for cancellation/delay provide	£11,462.38	20	£573.12
Failure to compensate inadequate compensation	£6,390.67	13	£491.59
Cancellation after voucher issue	£10,109.54	11	£919.05
Additional charges	£1,082.49	10	£108.25
Damaged/Delayed/Lost	£1,341.70	9	£149.08
Failure to notify	£1,139.38	7	£162.77
Redeeming voucher issue	£4,099.69	7	£585.67
Refusal to refund despite illegal to travel	£5,225.78	7	£746.54
Total	£1,221,108.99	2659	£459.24



The Consumer Council

Seatem House, Floor 3
28 - 32 Alfred Street
Belfast, BT2 8EN

T: 028 9025 1600
F: 028 9025 1663
E: info@consumercouncil.org.uk
W: www.consumercouncil.org.uk