



**The Consumer Council**

# **Response to the Department for Transport (DfT) on Regulating Air Transport: Consultation on Proposals to Update the Regulatory Framework for Aviation**

**By the  
General Consumer Council  
for Northern Ireland**

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## **Introduction**

The Consumer Council for Northern Ireland (CCNI) welcomes the opportunity to comment on the Department for Transport's Regulating Air Transport Consultation.

The Consumer Council has a statutory duty to represent the interests of consumers and handle complaints and enquiries across a broad range of areas including air, sea and public transport. The majority of transport related complaints received by the Consumer Council concern air travel issues.

This reflects the key role air travel plays for consumers in Northern Ireland supporting connectivity to Great Britain, Europe and beyond. For Northern Ireland, as part of an island economy, aviation is a key driver for economic growth, business development, tourism and leisure.

## **1. Addressing Consumer Issues**

The Consumer Council welcomes the proposals presented within the consultation to strengthen the framework for resolving consumer complaints relating to airports and airlines.

The Consumer Council has had mixed experiences in dealing with airports and airlines when seeking to resolve passenger complaints. Common problems include non-responses, a failure to adhere to consumer protection legislation, unsatisfactory replies or inadequate redress provided to passengers. Providing the Civil Aviation Authority (CAA) with a stronger focus to deal with the issues passengers face should ultimately help address these concerns and ensure greater consistency across airlines and airports which would prevent many problems arising in the first instance.

## **2. The Civil Aviation Authority's Consumer Role**

The Consumer Council is supportive of the proposal to ensure the CAA has a clear strategic objective to consider the needs of consumers in the functions they undertake.

This will ensure a balance across the three priorities for the CAA in terms of safety, environment and consumers. It will also ensure the priorities of the CAA reflect its wider remit, focusing on the needs of consumers and promoting the sustainable development of the aviation sector in addition to economic regulation of the aviation industry.

As the statutory representative for passengers travelling to and from Northern Ireland the Consumer Council supports the proposal that the CAA should have a statutory duty to promote the interests of consumers in conducting its regulatory responsibilities. The Consumer Council believes ensuring the wellbeing of passengers is of critical importance and we recognise the interdependence of all three strategic priorities in helping achieve this aim.

The Consumer Council agrees with the intention to place upon the CAA a broad objective to represent consumers' interests in conducting its regulatory functions. We note the proposal not to give the CAA a mandate to act as an advocate or a campaigning body for consumers. This role is better undertaken by organisations (such as Consumer Council / Passenger Focus) that have greater interaction with consumers, deal with complaints and enquiries and have established approaches to building the confidence of consumers.

Although the CAA will not have a direct role as a consumer advocate there is a need to establish formal relationships with organisations that campaign on behalf of consumers. It is essential that there are appropriate mechanisms for consumer representatives to escalate complaints to the CAA where unsatisfactory responses have been provided. This is especially important given consumer representative bodies have limited formal powers to require airlines or airports to address consumer complaints. In the Consumer Council's experience this has led to dissatisfaction among passengers, a feeling that airlines and airports lack accountability and a view amongst

consumers that passengers' interests are not adequately considered by airports and airlines.

In addition to a framework for escalating specific cases to the CAA, the CAA should formally review on regular basis trends and intelligence gathered by passenger representative bodies is responding to passenger issues and dealing with airlines and airports. This will provide a greater strategic overview of common issues faced by passengers, and trends/issues specific to certain airlines and airports.

The recommendation to develop a Memorandum of Understanding (MOU) between the CAA and Passenger Focus to clearly determine the role, functions and relationship of each organisation should be extended to include the role of the Consumer Council in Northern Ireland. A model of how this may work currently exists in relation to EC Regulation 1107/2006 where a MOU and close working relationships exist between DfT, CAA, the Consumer Council and the Equality and Human Rights Commission.

The MOU should establish a clear framework for escalating issues to the attention of the CAA in any instance where Passenger Focus or the Consumer Council believe there is a need for enforcement action to be taken against an airline or airport.

### **3. Vulnerable Groups and Future Consumers**

The Consumer Council agrees with the Government's proposal that the CAA should prioritise supporting the interests of vulnerable groups of consumers and members of the public ahead of businesses or organisations which are more capable of seeking legal redress through the courts system.

We note the consultation proposes the CAA should take a realistic and pragmatic approach to consumer representation, recognising that consumers

may make 'suboptimal' decisions faced with a complex market. However the Consumer Council would contend airlines could be more proactive in supporting consumers to make 'optimum' choices by providing greater transparency on pricing, additional charges and payment fees.

In recent correspondence with the European Commission the Consumer Council has received confirmation that a number of airlines are failing to meet legislative requirements to ensure transparency in fare pricing structures. The Commission has indicated that airlines which sell optional services on an "opt-out" rather than an "opt-in" basis, fail to comply with article 23 of the EC Air Services Regulation. Airlines which charge unavoidable check-in fees were also determined by the Commission to be in breach of the Regulation.

It is important the CAA takes note of the issues collated by passenger representative bodies in relation to pricing transparency and ensure airlines make their booking and fare pricing processes easily understandable to enable consumers to make purchases which are in their best interests.

This issue is reinforced by research conducted by the Consumer Council in January 2010<sup>1</sup>. Less than half of respondents surveyed found it easy to compare the final price of different airlines or routes. For a significant proportion of air passengers, finding out the cost and service options best suited to their needs is difficult and therefore increases the likelihood of making poor choices.

The Consumer Council welcomes the proposal that the CAA should pursue the interests of future consumers as well as the needs of existing consumers. We believe it is important the Northern Ireland aviation sector develops in a planned and controlled manner to ensure expansion in airport capacity and route development is in the long-term interests of Northern Ireland

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<sup>1</sup> Consumer Council Air Passenger Research March 2010 – Report to be published April 2010

consumers. We also acknowledge that the aviation sector should develop in a manner that minimises its impact on global climate change.

#### **4. Funding Consumer Representation**

The Consumer Council recognises the consultation includes a proposal to fund CAA's work within its new consumer objective through an airport licence fee. The decision on whether an airport licence fee should be introduced to Northern Ireland is not within the scope of the current consultation.

The Consumer Council understands that the introduction of an airport licence fee to Northern Ireland is currently being considered by DfT and the Department of Regional Development. It is essential that any consideration of funding/licence fees to support air passenger representation in Northern Ireland involves the Consumer Council as the statutory passenger representative.

The Consumer Council has expertise and experience in working to represent consumers and has established protocols and relationships across a range of industry sectors including financial services, water and energy. These formal relationships include agreed funding mechanisms to support consumer representation across each of the industry sectors.

Any funding arrangement to support air passenger representation must be proportionate, open, transparent and clearly communicated across the aviation industry, to passengers and the wider public.

#### **5. The CAA's Enforcement Powers**

The Consumer Council agrees the CAA should be given additional concurrent competition powers over airport services which are not provided directly or solely by the airport operator. Where consumers are negatively impacted as a result of insufficient competition in the provision of airport services we would

support a framework in which the CAA has powers to refer such markets to the Competition Commission.

The Consumer Council supports the proposal that a range of civil sanctions similar to those available under the Regulatory Enforcement and Sanctions Act 2008 should be made available to the CAA.

We recognise the instigation of criminal sanctions is not always the most appropriate course of action and not always commensurate with the issues being dealt with. Civil sanctions will provide the CAA with a greater range of available powers and greater flexibility to apply the most appropriate enforcement action on a case by case basis. These powers will enable the CAA to more easily ensure airlines comply with the requirements of legislation without the need for taking formal legal action in the first instance.

## **6. CAA's Proposed Information Powers**

The Consumer Council welcomes the proposal to give the CAA the power to address gaps in information available to consumers. The Consumer Council believes it is important consumers are able to make informed choices concerning the purchases they make. Ensuring consumers have access to information on customer service standards and environmental impacts of air travel will help consumers make choices based on more than price alone. Improved provision of information will enable consumer choice to act as a lever to drive improvements in airline performance.

## **7. The CAA's Environment Role**

The Consumer Council believes the preferred option for the CAA's environmental objective is the most appropriate of those outlined in the consultation document. We believe that where possible and appropriate the CAA should have regard for environmental factors alongside the proposed

safety and consumer objectives. It is in the interests of all consumers to make sure that the environmental impacts of all sectors of the economy do not impact negatively on consumer choice in the long-term. However, we agree that environmental considerations should be balanced against safety and consumer objectives. It would not be appropriate to give the CAA a more stringent environmental objective which would require the CAA to prioritise environmental considerations when exercising its regulatory functions. The Consumer Council agrees that any funding requirements arising from a new environment objective should be met through the CAA's existing charging schemes with costs recovered from industry in line with the "polluter pays" principle.

The Consumer Council agrees the Government should give the CAA guidance to help it interpret its environmental objective. This guidance should integrate with the Government's environmental policy to ensure efforts to mitigate the environmental impact of air travel contribute to the Government's wider environmental objectives. Where priorities compete within environment policy we believe the optimum solutions for mitigating the impacts of climate change should be prioritised over issues concerning air quality and noise. We also support the proposal that the Secretary of State should have new powers to direct the CAA in regard to its environment objective.

## **8. Financial Protection for Air Passengers**

The Consumer Council welcomes the recommendation that "flight plus" products should fall within the scope of the ATOL scheme. This goes some way to recognising the changing market, especially in terms of internet sales, in how consumers consider and book their travel arrangements. We especially welcome the recommendation that flights sold by airlines in conjunction with other services including accommodation or car rental will be covered by ATOL. We also support the proposal to introduce a standard

ATOL Certificate for consumers who have purchased ATOL protected holidays.

The Consumer Council is willing to discuss any of the above issues with you in more detail if required.

Yours sincerely

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