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Dear Peter,

**Airline Insolvency Review: call for evidence**

Thank you for meeting with members of the CAA Consumer Panel on 8 May, and for the opportunity to input to the call for evidence. Our discussion covered the key points the Panel would like to make but we have set these out in more detail below. Overall, the Panel's view is that any alternative system should not diminish consumer protection, but should build on what is already in place to enhance the arrangements for consumers.

*Principles of the review*

Firstly we note the principles of the review. Overall we agree the principles identified are the right ones, with some caveats and comments:

- **The beneficiary should pay for protection:** We agree that passengers should pay for protection and protections should apply to all. The review should explore how costs can be distributed fairly and ensure this is covered in the recommendations.
- **There should be efficient allocation of risk:** We agree risks should be allocated to those who can best manage and control them but we also feel that risks should be carried by those who are able to bear them at least cost and are concerned with suggestions that passengers are guilty of "flawed risk management", or "foolhardy and ill-informed decision-making".
- **Market distortions should be minimised:** We agree that protection should apply to all passengers whose journey starts in the UK.
- **Protection should be easy for passengers to understand:** We agree but feel there is currently too much emphasis on consumer awareness and information as solutions. The review team should liaise with the BEIS team working on the Green Paper on *Modernising Consumer Markets* so that approaches to markets, consumer protection and empowerment remain consistent.

These comments are explored in more detail below.

*Focus of the review*

The review focuses on after the event solutions (repatriation and refund/payment protection) rather than the operation of the market itself. The Panel notes the scope of the review and the terms of

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reference but considers that the root causes of market failure are something which should also be addressed to limit failures occurring in future. We note from our meeting with your team that this will also be considered. We believe this is important and should not be neglected.

#### *Consistency of protections*

Under the current arrangements travellers have different protections depending on how their travel arrangements were booked. This undermines the arguments for having protection in the first place – either it is necessary for all travellers or it is not necessary. It cannot be necessary for some travellers but not others simply because of *how* they booked.

In the case of the Monarch failure the Government and the CAA made the decision to treat all consumers the same, regardless of whether they had ATOL cover or not. This was clearly a practical recognition of the situation, and one the Panel supported. The Panel believes that the rules surrounding protection should be simplified and that protection should apply to all passengers departing the UK, and not only some.

We believe it is fair that passengers pay for this extra protection, and that there is merit in further exploring mandatory insurance and schemes such as the Danish and German examples mentioned in the Call for Evidence. Care should be taken with how the costs are passed on to consumers and whether this is done directly or via airlines. How any costs are distributed requires careful consideration.

#### *Distribution of risk*

We agree that risks should be allocated to those that can best manage and control them. Consumers benefit from choice in the market and some responsibility needs to be taken for decisions to avoid moral hazard. Having said that, the Panel's view is that it would be unfair to expect consumers to accept risks they either do not know about or cannot reasonably be expected to manage. We disagree that passengers may be guilty of "flawed risk management", or "foolhardy and ill-informed decision-making" in this context.

In some cases consumers may not have a choice of carrier if they want to travel to a certain destination, or from the airport that they can access easily. We know from previous CAA consumer tracker surveys that airlines access to the airport is an important consideration for consumers. This doesn't seem to be a "flawed" or "foolhardy" reason to choose an airline.

Consumers cannot be expected to know if an airline is in financial difficulty and in reality behavioural biases mean this type of information is not something they will factor in to buying decisions. Buying flights is (for the majority of people) a reasonably infrequent purchase so consumers don't have opportunities to learn. Nor are consumers likely to use information such as whether their holiday is protected or not to make choices. Providing clear information about protection is important therefore, mainly because consumers will use it in the event of a problem, but should not be seen as a panacea. The BEIS Green Paper on *Modernising Consumer Markets* recognises that providing information is not always enough and those consumers who do not shop

around should still get a fair deal. The review team should liaise with the BEIS team to ensure thinking here is aligned.

We also feel that risks should be carried by those who are able to bear them at least cost, to avoid situations where individuals - particularly vulnerable individuals - suffer severely in airline failures. This is important in the case of repatriation following an airline failure.

#### *Repatriation in the event of failure*

The Panel's view is that the best solution to the repatriation of passengers in a failure scenario is likely to be for the airline fleet to be enabled to continue to fly to complete the repatriation. Otherwise there is a risk of insufficient capacity in the market to allow passengers to return home on alternative scheduled flights. From a consumer perspective it does not matter whether this is provided by a government intervention – such as a bridging loan as with Air Berlin – or by an amendment to insolvency law to allow an airline protection from creditors for a limited period to allow for an orderly wind-down. In both cases the airline's staff would be able to manage the repatriation exercise, rather than putting the burden onto the CAA.

Repatriation should however be coordinated and planned by an authoritative institution with knowledge and experience of the industry. Reliable information and advice must be available for passengers – either from the airline's administrators or from a government agency. Throwing the risk onto consumers and telling them to fend for themselves, even with the benefit of a possible future insurance claim, is unrealistic and unfair.

We therefore very much support further investigation of potential amendments to the airline licensing regime and/or to the insolvency regime as it applies to airlines in the UK, to make it easier to apply a gradual approach to the exit of an airline from the market. We understand that this may not be straightforward to implement in practice but urge the review team to consider all the options carefully.

#### *Addressing the root causes of market failure*

For the Panel it is key that the root causes of failure are also addressed. There are lessons from banking from which learning can be taken, and we were pleased that the review team is looking at this area in detail. Structures were put in place after the banking crisis to ensure the system is more stable and robust, including increased capital requirements for banks through regulation and a greater level of deposit protection for consumers via the Financial Services Compensation Scheme (FSCS). The FSCS levy structure has been changed to incentivise better risk management on the part of banks. This is something we believe the review should consider carefully for parallels or learning if a new scheme is to be set up in aviation.

The review could also explore what more could be done to oversee the business models of airlines so that problems can be picked up, and more importantly, addressed earlier. It would be helpful if more was known by regulators about ongoing financial problems of airlines and the risks to which customers' money is exposed. Consumers cannot be expected to make this judgement

themselves, and indeed even if they could, the information is often not available at all or is very difficult to find.

*Non-financial considerations*

Finally, we feel it would be helpful to acknowledge the issues that passengers would experience, particularly vulnerable passengers, if having to wait for an alternative scheduled flight home. The call for evidence indicates that finance is the greatest concern. However, this will not always be the case. Trying to find alternative accommodation for passengers with physical disabilities may be impossible as can be limited and there may be very few accessible taxis to transport passengers. There may also be issues with getting additional supplies of medications which are not always available in other countries. We have suggested the team contacts charities and those representing vulnerable groups, and understand this is already underway.

These issues also apply to others, such as those travelling with children, when it might be difficult to get alternative accommodation. Not having enough medical supplies could affect a wide range of people, and there are issues about people getting back in time for school or work, which can be hugely important and cannot be resolved by money.

In addition to this, passengers (if they can find alternative accommodation, for example) may need to have money available to pay for it themselves, and then face the uncertainty of making a claim and waiting to see whether it is accepted, as well as a potentially long wait to be reimbursed. This will not be feasible for everybody.

Therefore, the stress and worry that insolvency could cause for some passengers - which contribute to the high costs of individuals bearing these risks - should also be addressed. It is essential that passengers know that they are going to be looked after and do not have to fend for themselves. The CAA will be able to share knowledge and good practices following the Monarch repatriation exercise, and we know the review team is already liaising closely with the CAA. This aspect should not be neglected during the discussions.

I do hope these comments are helpful. We would be very happy to meet with you at any time to discuss further. Please get in touch with [Harriet.Gamper@caa.co.uk](mailto:Harriet.Gamper@caa.co.uk) to arrange.

Yours sincerely,

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