



## **Airline Insolvency Review**

**A call for evidence**

**11 May 2018**

## **Introduction**

- 1.1. The General Consumer Council for Northern Ireland (The Consumer Council) is a statutory body whose main function is to “promote and safeguard the interest of consumers in Northern Ireland”.
- 1.2. In taking forward our statutory remit we work to bring about change to benefit consumers by making their voice heard and making it count. The Consumer Council represents consumers’ views by obtaining and researching consumer opinions so that we can robustly reflect consumers’ views.
- 1.3. The Consumer Council handles complaints from public transport users, ferry passengers and air passengers. We are the designated complaint handling body for EU Regulation 1107 (Passengers with reduced mobility), the voluntary complaint handling body for EU Regulation 1177 (Maritime passenger rights) and we handle complaints for Northern Ireland (NI) passengers flying to and from NI in relation to EC Regulation 261 (Denied boarding and cancellation).
- 1.4. The Consumer Council welcomes the opportunity to respond to the Airline Insolvency Review’s call for evidence. We have concentrated our comments on the principles, the focus of protection, possible solutions and how to bring passengers home.
- 1.5. The Consumer Council acknowledges that the aviation industry has vastly changed and with it the way that consumers interact with the market. While we accept that there are a growing number of passengers who are not protected from airline insolvency when considering any changes to the protection regime going forward the current level of protection should not be diminished.

## **Principles**

- 1.6. The Consumer Council understands the proposed principles however we have made some comments in relation to what should be considered as part of these principles.

### *The beneficiary pays for protection*

- 1.7. The call for evidence document (the document) acknowledges the complexities of financing, corporate governance, and ownership structures of airlines and states that

‘such complex structures further complicate the ability of regulators to offer simple solutions to protection and increase the risks of failure and passengers detriment.’

- 1.8. Given the complexities of the business involved there must be recognition of the difficulties that could be experienced by consumers of assessing and understanding the risks when making travel decisions. In its consideration of paying for protection the panel should consider whether it is appropriate to place all the risk on the consumer as there must also be a responsibility industry.
- 1.9. In the last number of years the travel industry has evolved leading to changes in consumer purchasing behaviours. In 2017 ABTA found that 83% of people who had booked a holiday in the last twelve months had done so online<sup>1</sup>. In the last 12 months booking through a travel company or agent was the preferred method for holidays abroad (45%), 43% have booked directly with a service provider and 42% have used a general holiday website (e.g Opodo, booking.com). This demonstrates the various ways passengers can book overseas travel and at times consumers may not be aware that they are booking with a website that is based outside the UK.
- 1.10. The Consumer Council has received complaints from passengers who had thought that they had booked flights online through a travel agent. However, in reality they had booked through a flight comparison website resulting in no protection when there was issues with their bookings. This shows that the market is not clear for consumers and this must be addressed.

#### *Efficient allocation of risk*

- 1.11. The document states that the ‘risks for passengers should be allocated to those best placed to manage and control them, avoiding duplication where possible’. The Consumer Council believes that in doing this the needs of passengers should be at the centre of those controls.

---

<sup>1</sup> [https://abta.com/assets/uploads/general/Holiday\\_Habits\\_Report\\_2017.pdf](https://abta.com/assets/uploads/general/Holiday_Habits_Report_2017.pdf)

### *Simplicity for passengers*

- 1.12. The Consumer Council believes that in order to make informed decisions clear information is key. The document implies that it should be for consumers to determine and manage the risks and that they have failed to do so in the past. For example,

*“Successive failures have demonstrated that where consumers fail to understand or manage the risks they expose themselves to, public policy and political factors can combine to means consequences of these risks are passed to the tax payer.” (Page 5)*

*“In a well-functioning market passengers would consciously weigh and manage these risks before making their purchasing decisions...Ultimately such action usually makes the taxpayer carry some burden and thereby creates moral hazard, as passengers who have chosen not to protect themselves (whether consciously or not) rely upon society to act when things go wrong. The travel industry thus benefit from a form of subsidy from the tax payer.” (Page 18)*

*“Government intervention could aim to ensure that wider society and the taxpayer are protected from foolhardy or ill-informed decision making by passengers and from moral hazard by ensuring the cost of protection is factored into upfront flight costs.” (Page 19)*

- 1.13. However, with the complexity of the industry in mind, there must be a responsibility placed on industry to inform consumers of the level of protection available. This must be explicit in covering what the consumer is covered for and what gap in protection exists.
- 1.14. With the huge volumes of information provided to consumers it may make it difficult to assess the risk of an airline becoming insolvent. Therefore, any information about risks and the protection available must be up front and easy to understand.
- 1.15. At times of disruption consumers may face a greater level of uncertainty and the assistance and redress available should focus primarily on the needs of the individual passenger as opposed to the interests of airlines.

- 1.16. Protection must be consistent across the industry and not open to interruption. For example, despite the existence of EU Regulations for over ten years that outlines the assistance that airlines must provide passengers with during times of disruption, the help provided to passengers can vary depending on the airline resulting in passenger complaints. In 2017-2018, The Consumer Council received 539 contacts in relation to air travel and 79% of these related to delays and cancellation. We helped secure over £77,218 being returned to air consumers.

**Whose protection should be the focus of the review?**

- 1.17. The paper discusses the possibility of focusing protection on passengers whose journey begins in the UK. The panel should consider those UK passengers that may have booked their return journeys with different airlines. This would affect those whose outward journey from the UK operates as normal but the airline delivering the inward journey may become insolvent. In this situation would the passenger's journey be considered as beginning in the UK? Or, as there is a separate ticket for the return would their journey be considered as beginning outside the UK and therefore not covered?

**Possible solutions**

- 1.18. In considering Government intervention and investigating if the cost of protection is figured into upfront flight cost the review must consider if any proposals will unfairly impact on groups of consumers, specifically Northern Ireland consumers.
- 1.19. Civil Aviation Authority statistics show that in 2017 there were 8.6 million passenger<sup>2</sup> journeys into and out of Northern Ireland. With 72% of passengers travelling to or from other UK airports. Depending on how this protection cost is levied it could have the potential of detrimentally impacting Northern Ireland consumers who take a large number of UK to UK flights.
- 1.20. This high level of dependence on air travel has been recognised by the Northern Ireland Affairs Committee who in its report *Air Passenger Duty: implications for Northern Ireland*, stated "that for many people in NI travelling by air is not a luxury,

---

<sup>2</sup> Civil Aviation Authority Statistics, 2017

but is an essential element of family and economic life”.<sup>3</sup> Requiring all airline ticket sales to include mandatory personal insurance or to include a protection levy could be an unnecessary financial burden for Northern Ireland passengers travelling on scheduled services with limited risk of airline insolvency.

### **How to bring people home**

- 1.21. As previously explained the majority of passenger journeys are regional trips to and from the UK. The Consumer Council would urge caution in expecting passengers to protect themselves through the purchase of discretionary travel insurance products. Consumer Council research published in 2013<sup>4</sup> found that 44% of those that travelled in the previous five years had not purchased travel insurance. This could leave a number of consumers stranded when airlines/operators cease to exist and appropriate insurance has not been purchased. The Consumer Council would also have concerns that with this approach that the majority of Northern Ireland passengers who travel on regional services would not receive the same level of protection as other air passengers if there is no Government intervention if carriers fail on these routes. The Consumer Council believes further research and consultation would be needed before this approach could be considered.
- 1.22. The document discusses the possibility of placing the emphasis on those administering an insolvent airline to ensure passengers’ welfare. Under EU Regulations airlines are required to provide assistance to passengers during times of disruptions. However, the CAA’s Consumer Tracker research<sup>5</sup> (slide 47) states that when looking at experience of disruption, satisfaction is also quite low (38% are dissatisfied with arrangements made to look after passengers, 35% are dissatisfied with information and updates provided, and 29% are dissatisfied with the outcome of any complaints). Therefore when considering this option the review must consider how passengers’ needs would be adequately met.
- 1.23. It is suggested that by providing passengers with accommodation and marginal living expenses that the majority of passengers may be willing to wait until alternative

---

<sup>3</sup> House of Commons Northern Ireland Affairs Committee *Air Passenger Duty: implications for Northern Ireland* (July 2011).

<sup>4</sup> [Consumer Council Travel Insurance Research - 2013](#)

<sup>5</sup> [CAA Consumer Tracker Research - December 2016](#)

scheduled capacity is available. While The Consumer Council appreciates that this is an example, this hypothesis would need to be tested with consumers as additional nights' stay not only places a financial burden on consumers but there could be knock-on impacts such as employment issues, childcare or individual personal needs e.g. medical conditions etc. It would also need to be ascertained how long is acceptable for a passenger to wait for the next alternative flight.

### **Conclusion**

1.24. In conclusion, although The Consumer Council understands the proposed principles we have concerns that this call for evidence appears to place responsibility on consumers to make informed purchasing decisions in an extremely complicated market.

1.25. The Consumer Council believes that if this principle is to be at the centre of the call for evidence a greater weight of responsibility must be placed on industry to ensure informed decisions can be made easily. The Consumer Council does not believe this balance is reflected in the call for evidence and would welcome the opportunity to discuss this issue in greater detail.

**To discuss this response please contact** [REDACTED]  
[REDACTED]  
[REDACTED]

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

Freephone: 0800 121 6022  
Switchboard: 028 9025 1600  
Fax: 028 9025 1663  
E-mail: [info@consume](mailto:info@consume)  
Website: [www.consume](http://www.consume)

