



**Enhancing consumer representation within
the aviation sector**

**Response of the
Air Transport Users Council (AUC)**

**to the proposals at
Chapter 10 of the Department for Transport
consultation paper on reforming the framework for the
economic regulation of UK airports**

2 June 2009

The Air Transport Users Council (AUC) is the UK's consumer council for air travellers. It receives its funding from the Civil Aviation Authority (CAA) as an Auxiliary Group within the CAA corporate structure. It comprises a council of volunteer consumer representatives, supported by a salaried secretariat. Its purpose and functions are set out in Terms of Reference agreed with the CAA.

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Introduction

In this paper, the AUC responds to the Department for Transport (DfT) proposal to transfer air passenger representation to Passenger Focus (the UK representative body for rail and bus passengers). The paper:

- sets air passenger representation in its regulatory and market context
- considers current key priorities for air passenger representation
- discusses the implications for passenger representation of (i) the DfT proposal that the CAA should have a primary duty to consumers and (ii) the CAA's internal review of its consumer policy
- examines whether the proposal to transfer air passenger representation to Passenger Focus is the most practicable solution to issues identified in (i) and (ii) above, or the solution that best meets the needs of air passengers.

These issues are discussed in response to the questions repeated below.

Q10.1 Do you agree with the proposal to give Passenger Focus responsibility for consumer policy advocacy with regards to airlines and airports, funded through airport licence fees? In particular, we welcome views on the proposal for Passenger Focus to develop and support a network of consumer panels at leading airports.

Q10.2 Do you agree with the proposal to give Passenger Focus responsibility for complaints handling on airline and airport issues alongside its policy advocacy function? How can we best ensure the expertise and knowledge in relation to EU air passenger rights built up over time by the AUC is retained?

In addressing these two questions, we begin from the following perspectives:

- the CAA should have a primary duty to consumers in its economic regulation of airports, which implies a need to establish mechanisms for capturing consumer interests in its regulatory decisions;
- arrangements for protecting air passenger interests more widely need to be updated to take account of the evolution of the market and legislative background since the AUC was set up in 1973.

Our principal observations on the proposals in questions 10.1 and 10.2 are:

- they are based on an analysis relating to economic regulation, but are presented as a solution to updating passenger representation in its broader context;
- they are premature pending final outcomes of three concurrent reviews that touch on air passenger representation.

The solution to capturing the consumer interest in regulatory decisions on economic regulation may indeed lie in updating arrangements for air passenger representation. But any updating should not be arranged around that sole objective. The objective in relation to regulated airports should be included in a wider review taking account of all requirements of air passenger representation in the UK.

Current arrangements for air passenger representation in the UK in context

In this section we briefly describe the regulatory and business environments against which air passenger representation in the UK currently takes place.

Regulatory framework

Air travel is an international activity. UK passengers travel on UK and non-UK airlines. Some 150 carriers are scheduled to operate UK services during summer 2009. In 2008-09, the AUC handled complaints against 185 airlines, of which 22 were UK carriers.

This activity takes place within a complicated international regulatory framework. The overarching regime derives from the Chicago Convention 1944. In addition to setting a basic global legal framework, this Convention established the International Civil Aviation Organisation (ICAO) as the international rule-making body for air transport. Its membership comprises 190 sovereign states.

In the period since 1944, European Union legislation has added another layer to the international regulatory framework. A key feature of this has been the creation of a single market in aviation. EU airlines are free to operate services between any EU airports according to their commercial judgement.

The EU has supplemented the single market with a range of Regulations and Directives aimed at promoting fair competition amongst operators. It has also passed a series of measures for enshrining air passenger rights in EU law. These have been established against a wider EU consumer protection agenda that has included a range of generic measures that can also be applied to air transport issues.

In the UK, the Enterprise Act 2002 established an enforcement regime for a wide range of consumer protection legislation. More recently, the CAA's consumer protection remit has been extended beyond financial protection, with responsibility for enforcement of Regulations EC261/2004 (compensation and assistance for denied boarding, cancellation and delay) and EC1107/2006 (access to air travel for persons of reduced mobility).

Business environment

Against this regulatory background, air transport has developed into an increasingly competitive sector. Airlines compete vigorously for passengers. And airports compete to attract airlines. Most passengers will have a number of choices for any purchase of air transport services.

Most destinations can be reached from a range of UK airports (albeit with a change of aircraft at some point in the journey in some cases). At larger airports, airlines

Some key milestones in the evolution in of the air transport sector and relevant consumer protection legislation

1984	Liberalisation of UK airline sector
1987	Privatisations of BA and BAA
1989	Regulation EEC299/89: computer reservation system code of conduct
1990	Directive 90/314/EEC: package travel
1991	Regulation EC295/91: denied boarding compensation Stansted new terminal (later to accommodate no-frills boom)
1992	EC liberalisation "third package"
1993	Directive 93/13/EEC: unfair terms in consumer contracts
1999	Montreal Convention: unlimited liability for death or injury; increased limits for baggage
2000	European Commission Communication on Air Passenger Rights House of Lords report on aviation health
2001	EC/ECAC airport and airline voluntary passenger service commitments
2002	Enterprise Act: new powers for designated enforcers – including CAA
2003	White Paper on the future of aviation in the UK
2004	Regulation EC261/2004: compensation and assistance in the event of denied boarding, cancellation and delay
2005	Directive 2005/29/EC: unfair commercial practices
2006	European Commission Communication on passenger rights in the EU Regulation EC1107/2006: access to air travel for persons of reduced mobility
2008	Regulation EC1008/2008: operation of air services [reform of third package]: includes price transparency requirements Opening of Heathrow Terminal 5

compete on individual routes. Passengers can also choose between the overall air transport packages (price; airline; accessibility, etc) available at different airports. They may even base their choice of holiday destination on the availability of services from their preferred airport or airline.

And air travel is largely discretionary. Prospective air passengers may choose not to fly at all, but to spend their disposable income on something else. Airlines know that they are competing for discretionary spend in the economy at large. They therefore have powerful commercial incentives to meet passenger expectations. They will have an interest in seeking to influence airports to provide a level of service that is consistent with their own product offer.

This is thus a competitive market in which passengers always have a choice (even if the ultimate choice is not to travel by air). But the discipline imposed on service providers by competition does not always prevent abuse of a liberal environment. Air passenger representation still has a role to play in ensuring that the market works to the benefit of consumers.

Air Passenger Representation

The existing UK consumer body for air passengers is the AUC. It was set up by the CAA in 1973 but has no statutory basis. Its remit was to assist the CAA in its duties to further the reasonable interests of air transport services. Its budget for 2009-2010 is £750,000.

The role and remit of the AUC was last reviewed by the CAA in 2001. Its position as the UK's representative body for air passengers was reaffirmed in the Government's 2003 White Paper on the future of aviation in the UK. And it was retained as a sector-specific consumer body following a Department of Trade and Industry review of consumer representation in the UK in 2004.

Some key milestones in recent AUC history

1997	AUC complaint to ASA on fares advertising upheld; all print advertising in future to include inclusive prices First annual AUC charter airline delay league table (airlines use as staff incentive: table published in tour operator brochures)
1999	AUC "unfair terms" complaint to OFT about airline contracts: resulted in new IATA Recommended Practice [used industry-wide as blueprint and as key reference document in AUC complaints handling] Publication of AUC airport best practice guide (disruption management)
2001	Led consumer input to development of European Civil Aviation Conference (ECAC) voluntary codes of practice for airlines and airports
2004	DTI review of consumer representation in regulated industry's cites AUC "unfair terms" complaint as example of proactive promotion of consumer interests
2005	First (of three) AUC report on website pricing: campaign contributed to inclusion on pricing rules in Regulation EC1008/2008
2007	First (of three) AUC report on mishandled baggage:
2008	Report for European Commission cites AUC activity as factor in greater compliance with unfair terms legislation in airline contacts in UK than in other EU member states
2009	Third AUC report on mishandled baggage: EU transport commissioner responds with call for study of extent of the problem

The AUC has been active both domestically and internationally throughout the period of regulatory and market evolution described above. It provided consumer perspectives on a wide range of legislative proposals and other initiatives, both in its

own right and as coordinator of the Federation of Air Passenger Representatives in Europe (FATURE).

FATURE was wound up, despite the best efforts of the AUC, in 2004 when the European Commission withdrew support for transport costs for members to attend meetings in Brussels. This move reflected the completion of much of the work on creation of a single European market in aviation and of identification of principal requirements for air passenger rights.

As the only consumer organisation in Europe dedicated solely to air passengers the AUC remains a key resource and essential point of contact for consumer perspectives on air transport issues both in the UK and in Europe.

Against the background of the evolution of the regulatory and market structures of the air transport industry, the requirements of air passenger representation have also changed. Many of the issues that were of concern to the AUC in earlier years of its history have been addressed through legislation. A key example of this is Regulation EC261/2004 on compensation and assistance in the event of denied boarding, cancellation and delay. This covers both provisions for redress and for assistance (meals and refreshments etc) at the time of the delay or cancellation on the day of travel. Another example is the Montreal Convention 1999, which removed compensation limits for death or injury and increased maximum limits for mishandled baggage. Further examples of key legal instruments are listed in the table at page 3.

On the airport side, the CAA has been developing service quality and rebate schemes within its price cap regulation to ensure delivery of agreed standards for passenger facing services at regulated airports.

Other issues have been resolved through changes brought about by the industry itself – often as a direct response to competition. The table below gives some recent examples.

Issue	Resolution
Lost tickets: no automatic reissue or refund	e-ticketing: no ticket to lose
Saturday night rule: promotional fares available only on return basis and encompassing Saturday night	promotional fares increasingly available on one way basis within EU: Saturday night requirement no longer applies
Reservations not transferable to another passenger	trend towards transferability (with penalty)
No “force majeure” flexibility on use-it or lose-it fares	trend towards credit of monies paid towards new reservation
Long check-in queues	check-in on-line or at self-service kiosks

The CAA’s review of consumer policy cited in the DfT consultation document refers to two government surveys in 2008. It concludes that these surveys found that the market for air travel was working well. But the AUC’s view is that establishment of a competitive market has not eliminated the potential for significant consumer detriment in air transport.

There is a continuing need for a consumer representative body that is alert to issues of detriment as they arise. Passenger complaints are the main mechanism by which issues of detriment are identified. As the market in air transport has developed, the AUC has continued to use feedback from complaints as the basis for intervention where legitimate interests of individual passengers have been discounted in the quest for growth and market dominance.

The tools deployed by the AUC have included “name and shame” reports and league tables, mediation on individual complaints, and working with individual airlines to resolve systematic problems. But persuasion has its limits, and things can go wrong even with the best intentions of a supplier. As the market evolves, so must the priorities for effective consumer representation.

Changing Priorities

An important corollary of recent consumer protection legislation is that potential remedies exist when detriment arises. As a consequence, the nature of advocacy on behalf of air passengers has changed.

Where the focus for consumer advocacy in air transport was previously on calling for legislation or changes in industry best practice, the priority now is to ensure that legislation is enforced to the benefit of passengers. In general, that means a greater emphasis on advocacy directed at individual carriers and at enforcement bodies rather than legislators or industry trade associations.

We thus have a vigorous “market” in air transport. And we have consumer protection legislation to impose discipline on the market and to provide redress when things go wrong. We have tools at our disposal that we did not have before. We are able to secure redress for more individual passengers. And we have potential remedies for wider issues of detriment to which we are alerted through our complaints.

In this mature market and consumer legislation environment, individual complaints are vital hard evidence of the issues that cause quantifiable detriment for individual passengers. They tell us about costs that passengers should not have incurred. We now need to ensure that an appropriate framework for passenger representation is put in place to enable us to apply this intelligence to the benefit of all air travellers. Any future framework must accommodate the full range of consumer interests in air transport.

Future arrangements for air passenger representation

In this section we summarise the context against which future arrangements for air passenger representation must be discussed and consider the merits of the DfT proposal.

Context

Against the background outlined above, three recent reviews external to the AUC have considered the future of air passenger representation in the UK. These were:

- the Strategic Review of the CAA (“Pilling”)
- CAA internal review of consumer policy
- DfT review of economic regulation of airports in the UK

In the context of each of these reviews, the AUC has consistently acknowledged the need for change to current arrangements for representation of air passengers. All three reviews have made observations on how representation may be updated or improved. Each has approached the subject from a particular perspective. None has had passenger representation as its primary focus.

All of the reviews include proposals that imply significant change to the CAA's own role in consumer protection. It is therefore imperative that discussion on future arrangements for air passenger representation takes account of the outcome of these reviews – in addition to taking account of recent developments in the air transport market and regulatory environment described above.

In particular, we will need to know how the CAA intends to capture the consumer interest in its economic regulation of airports and how it plans to take forward its review of consumer policy before we can assess the requirements of air passenger representation in relation to these functions.

Passenger Focus

The AUC was surprised that proposals for modification to economic regulation of airports in the UK included a proposal for wholesale change to arrangements for air passenger representation. We note that only one option was presented, with no indication that alternative potential arrangements had been considered. In particular, there is no detailed explanation as to why the DfT has moved away from the Pilling recommendation for an enhanced AUC, which it appeared to be taking forward as recently as October 2008.

→ airport services

The consultation paper refers to the need for a passenger voice in relation to airport services: we endorse the sentiment, but it does not logically lead to giving the role to Passenger Focus. Nor is there necessarily a need to set up and support new consumer panels at main airports. A number of airport consultative committees already have passenger services sub-committees. There would be merit in exploring ways to build upon existing best practice amongst these committees – such as Gatwick and Heathrow - before developing new mechanisms for passenger representation at individual airports.

A further key consideration that would influence the nature of the passenger voice in relation to airport services will be the way in which the CAA decides to capture the consumer interest in formulating its regulatory decisions. Separate passenger representation in the context of airport regulation should aim to complement not duplicate the work of the regulator.

→ end-to-end journey

We note the reference in the paper to the end-to-end journey concept. But the paper also comments that its focus group work revealed that most passengers “recognised the distinct role of service providers” (and that “usually the actual experience was better than expected”).

The paper observes that there appears to be no focal point with overall responsibility to resolve complaints effectively. But the journey is a series of separate contracts. For passengers travelling by public transport to an airport, any service failure will be the responsibility of the operator on which it occurs. It would be to that operator that

a passenger would need to address a complaint. If a rail or bus delay causes a passenger to miss a flight, there is currently no provision for reimbursement of consequential loss.

→ Passenger Focus remit

Moreover, the vast majority of UK air passengers do not travel to airports using public transport. For those that do, only a small minority will use services that fall within the scope of Passenger Focus's remit. This point can be illustrated by considering the examples of the London airports and of major airports elsewhere in the UK.

According to the CAA survey figures that the DfT cites in its November 2007 end-to-end journey publication, the [London airports](#) have by far the highest proportion of passengers arriving and departing by public transport. But the majority of these journeys would fall not within the remit of Passenger Focus but of London TravelWatch. The London TravelWatch remit covers:

- all bus and rail services (including Tube and Dockland Light Railway) between London and Heathrow and London City airports, and
- national rail services serving London within an area that encompasses Gatwick, Stansted and Luton.

Thus, the only London airport journeys falling within the Passenger Focus remit would be long distance coach or rail journeys from other regions (a small proportion of total airport journeys), or local bus services at Gatwick, Luton and Stansted. And Passenger Focus will not be handling bus complaints. The percentages for modal split are given in the table below.

	Gatwick %	Heathrow %	London City %	Luton %	Stansted %
Tube	0.0	13.4	0.0	0.0	0.0
Rail	29.1	9.1	40.2	0.3	23.3
Bus/Coach	6.3	13.1	1.6	29.8*	16.3
Other	64.6	64.4	58.2	69.9	60.4
Total	100	100	100	100	100
Terminating Passengers	29,562	44,231	2,316	8,941	21,271

**Includes bus from Luton Airport Parkway rail station*
Source: CAA Airport Survey 2006

At [regional airports](#) that have been included in recent CAA surveys, the proportion of passengers using public transport is considerably lower than at London airports. It is highest for Scottish airports. But the majority of these services fall not within the remit of Passenger Focus but of Passengers' View Scotland. Elsewhere, the highest public transport proportions at major regional airports (more than five million terminating passengers) that were included in the CAA 2006 surveys were:

Birmingham	18.3%	(8.7m terminating passengers)
Newcastle	11.7%	(5.0m terminating passengers)
Manchester	9.7%	(21.3m terminating passengers)

The purpose of this analysis is not to in any way denigrate Passenger Focus. It is to demonstrate that its remit does not cover most public transport journeys to and from UK airports. It would therefore not in any way be the one-stop shop for air passenger complaints as suggested at paragraph 10.16 of the consultation document.

→ **structural contexts**

The proposal that air passengers would be best served by an organisation that currently represents rail and (soon) bus passengers is further undermined by significant structural differences between the sectors. We refer above to the international environment and complicated regulatory structure within which representation of air passenger takes place: the comparable context for rail and bus is domestic (within the UK) or even local.

The table below sets out some of the principal differences between the sectors.

Air	Rail/bus
International regulatory framework	Domestic regulatory framework
International activity: UK passengers fly on airlines from around the world	Predominantly UK activity
Liberalised EU internal market in aviation: increasing momentum towards wider international liberalisation. Services provided according to operators' commercial judgement	Government franchises (rail) or local authority licences (some buses): Local Transport Bill 2008 likely to move sector more towards public provision
No government subsidy: private sector funding for all assets	Government operating subsidy for rail: government owns assets; leased or operated on franchise by operators: some local authority subsidy for buses – likely to increase when Local Transport Bill 2008 enacted.
Highly competitive (including competition from other consumer products and services)	Most rail and many bus routes are monopolies: few practical alternative for passengers
Elective	Majority of users effectively tied to public transport - as to utilities. Daily travel to work; little choice of operator. Availability and cost of transport a key factors in major life choices of place of work or residence.
Passenger representation funded by industry	Passenger representation funded by government
Potential for considerable detriment in terms of financial loss when things go wrong	Frustration and irritation more likely outcomes when things go wrong than financial loss

Meanwhile, air transport in the UK does not receive any government subsidy. It funds its own infrastructure. UK airlines are entirely private sector. Any EU registered airline is free to operate between any EU airports (including domestic services in another EU country), subject only to capacity constraints at individual airports.

Rail transport in the UK receives operating subsidy of around £5-6 billion per year, and government pays for both infrastructure and purchase of rolling stock. Operators compete for government franchises, but most routes are monopolies. And franchise agreements include guarantees in the event that forecast passenger numbers are not achieved.

Provision of local bus services is more of a mixed picture. London buses are operated to subsidised franchises. Elsewhere, some services are operated to local authority licences where essential services are not commercially viable. The Local Transport Bill 2008, currently going through Parliament, will enable local authorities countrywide to contract with bus companies for the provision of local services. This trend will move the main focus of Passenger Focus further towards publicly provided transport: that is, in the opposite direction to air transport.

The case for giving the role of air passenger representation to Passenger Focus might be stronger if there was not already a separate organisation for air passengers. But such a body already exists. And each organisation – AUC and Passenger Focus – has tailored its approach and culture according to the different environments in which they operate.

There is no immediately apparent synergy to be achieved from adding air passenger representation to existing structures for rail and bus. There is no evidence that it offers advantages to air passengers compared with provision of enhanced funding for a separate air passenger organisation building on existing structures.

Conversely, the significant differences between the sectors result in an inherent risk to the interests of air passengers in a single organisation for air, rail and bus. The needs of consumers of a discretionary activity (air travel) would be likely over time to come second to those of an essential daily service (rail or bus) for millions of UK users.

Government transport policy could also be expected to influence priorities of a single organisation. It will want a demonstrable return on the money that it invests in rail and bus services. And further pressure would come from government policy to encourage the use of public transport for essential journeys and to discourage discretionary air travel to meet climate change objectives.

These pressures could be expected to lead to tensions over conflict of interest between passengers' priorities for travel on the different modes. They would be exacerbated by the proposed funding arrangements.

→ funding

A further impediment to successful integration of air passenger representation with Passenger Focus's other roles arises from the proposed funding arrangements. A representational function based on airport licensing revenue would be sensible and appropriate for a sector-specific air passenger organisation like the AUC. But there is no evidence that discharge of the representational or complaints functions of the AUC by Passenger Focus would bring cost efficiencies or greater effectiveness.

It would be impracticable to have separate funding arrangements for passenger representation in the different modes within a single organisation. It would not be possible – or would be disproportionately costly – to provide the transparency and accountability of expenditure to ensure that aviation industry money was not spent on work relating to rail and bus passengers.

The DfT has argued that issues arising from separate funding streams have already been addressed with representation of rail and bus passengers within Passenger Focus. But both funding streams are from the same general taxation pot.

These considerations pose considerable practical impediments to the DfT proposals for reforming air passenger representation in the UK. These are in addition to the risks to air passenger interests from conflicting priorities within a single organisation. There may be a better alternative for the DfT to meet its objective of enhancing air passenger representation.

An alternative proposal

A consensus appears to have emerged amongst the DfT, CAA and AUC on the need for change to arrangements for promotion of air passenger interests in the UK. There also appears to be an emerging consensus around four strategic pillars for enhancing promotion of air passenger interests:

- CAA to have an explicit primary duty to consumers in economic regulation of airports
- greater focus on consumer interests in all aspects of CAA regulation
- CAA enforcement of consumer protection legislation
- enhancement of air passenger representation

The DfT proposal to move air passenger representation to Passenger Focus arose from a review of economic regulation of airports alone. It refers to the CAA's internal review of its own consumer policy – which also considers air passenger representation – but not in sufficient detail to inform decisions about the future of air passenger representation beyond airport regulation.

Much work still needs to be done to take forward the four pillars above to improve outcomes for air passengers. Aviation is set to continue to have its own regulator for safety, economic regulation and consumer protection. And the consumer interest is set to be given a higher ranking in the regulator's priorities.

The current model for air passenger representation needs to change to fit with the development described above, and with the wider regulatory and consumer protection environment. It would be premature to consider any changes to current arrangements before the ramifications of the reviews of economic regulation of airports, of the CAA (the Pilling review), and of the CAA's consumer policy have been fully considered.

In any event, the case for transferring the function to Passenger Focus from the AUC is on the one hand not compelling, and on the other poses considerable challenges. The case for taking forward the Pilling model for enhanced air passenger representation is more straightforward.

The Pilling model would allow representation to be more closely tailored to the needs of air passengers. It would be more practicable and more cost-effective to implement. Planning in respect of dialogue with airport consultative committees and the CAA's internal review of consumer policy could begin within existing structures as soon as the CAA begins its business planning for 2010-11. Subject to funding, work on enhancing air passenger representation could be taken forward even before the decision would be taken on the content of the 2010-11 legislative programme.

Should the Government of the day fail to secure parliamentary time for legislation required to put into effect the proposals of the review of economic regulation of airports, or indeed of the Pilling review, it would still have achieved its objective of enhancing air passenger representation.

Conclusions

Our key conclusions from the analysis set out in this consultation response are as follows:

- arrangements for air passenger representation in the UK need to be modified to take account of;
 - changes in the air transport market and in consumer protection legislation
 - proposals for the CAA to have a primary duty to consumers in economic regulation of airports
 - proposals for an enhanced consumer protection role for the CAA, in particular in relation to enforcement of consumer protection legislation
- air passenger interests are best served by a sector-specific organisation, in particular because of the international and competitive characteristics of the air transport market
- the most practicable solution to achieving the DfT's objectives for enhanced air passenger representation in a minimum timescale would be to build upon existing AUC structures, as recommended in the 2008 Pilling report.

