

Consultation on the Terms of Reference for the H7 Consumer Challenge Forum (CCF)

CAP 1425



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Chapter 1

Introduction

Purpose of this document

- 1.1 The current regulatory controls on the charges and services that Heathrow Airport Limited (HAL) offers to airlines, and, ultimately, to consumers are due to expire on 31 December 2018. The CAA has therefore launched a review (called 'H7') of the appropriate regulatory arrangements that should be put in place after that date.
- 1.2 To initiate this review, we published a discussion document in March 2016 seeking views from all interested parties on the process, strategic themes, and the relevant issues that should shape the CAA's methodology for the H7 review.¹ One of the key themes in the discussion document was around 'empowering consumers and furthering their interests'.
- 1.3 This document invites comments on our proposed approach to establishing a Consumer Challenge Forum (CCF)² to help ensure that the H7 process is driven by a robust understanding of what consumers value.

CAA duties

- 1.4 The Civil Aviation Act 2012 (The Act) gives the CAA a single primary duty to further the interests of users of air transport services in respect of its economic regulation functions³. We stated in the discussion document that we intend to go much further than we have previously to put consumers at the heart of our airport economic regulation.

¹ <http://publicapps.caa.co.uk/docs/33/CAP%201383%20final%20March%201383.pdf>

² We use the term Consumer Challenge Forum (CCF) for consistency with our earlier H7 publications and other communications with stakeholders. However, we recognise that the body that is ultimately established may take a different name.

³ 'Users of air transport services' are defined as present and future passengers and those with a right in property carried by the service i.e. cargo owners. For the sake of simplicity we use the term 'consumers' to mean both present and future passengers and cargo owners.

Views invited

- 1.5 Any representations about the proposals in this document should be sent, if possible by e-mail, to economicregulation@caa.co.uk by Friday 5 August 2016. Alternatively, comments may be sent by post to:

James Tallack
Consumers and Markets Group
Civil Aviation Authority
CAA House
45-59 Kingsway
London WC2B 6TE

- 1.6 We expect to publish the representations on our website for other interested parties to read as soon as practicable after the period for written representations expires. Any material that is regarded as confidential should be clearly marked as such. Please note that we have powers and duties with respect to information under section 59 of the Civil Aviation Act 2012 and the Freedom of Information Act 2000.
- 1.7 If you have any questions on this document please contact James Tallack on 020 7453 6734 (or by e-mail to james.tallack@caa.co.uk).

Key consultation questions

- 1.8 We welcome comments on all aspects of the ToR and the principles set out in this consultation document. However, we are particularly keen to understand stakeholders' views on the following key consultation questions:
- Do you agree with our proposed Role for the CCF?
 - Do you agree with our proposed membership requirements including the steps to secure the independence of the CCF?
 - Do you agree with our proposed Scope, Focus and Responsibilities for the CCF?

- Do you agree with our proposals on the operating principles for the CCF, particularly on remuneration and transparency?
- Do you agree with our proposals on the working practices of the CCF?

Chapter 2

Objectives and key principles

Objectives

- 2.1 In line with our primary duty, we want to see good quality consumer engagement at the heart of the H7 review. In order to promote this, we will be working with HAL and the Airline Community to establish an independent Consumer Challenge Forum (CCF). The CCF will act on behalf of consumers during the H7 process by advising the CAA on the quality of HAL's consumer engagement during the H7 review and the extent to which the outcomes and incentives in HAL's overall business plan reflect the needs of consumers.
- 2.2 The CCF is an advisory body focused on challenge and scrutiny activities rather than being, for example, directly responsible for undertaking consumer research or developing consumer outcomes. In carrying out these activities, the CCF will act independently of us. This reflects our view that HAL, in consultation with airlines, is best placed to engage with consumers to understand their priorities, needs and requirements, and then to use the insight from this engagement to inform its business plan.
- 2.3 The CCF will not have any decision making authority. It will provide expert and independent advice to us, but we will have the final say on regulation and policy. For example, the CAA will continue to be responsible for making the final decision on whether:
- high quality engagement has been carried out by HAL;
 - consumers' voices have been heard;
 - HAL's business plan genuinely and demonstrably reflects the needs of consumers; and
 - the right consumer outcomes are captured by the regulatory regime.

- 2.4 This is somewhat different to the approach adopted for the Q6 review. In Q6 we largely took responsibility ourselves for understanding what it is that consumers value and we used this to help inform the design of the regulatory framework. The CCF and the dynamic, iterative process of challenge that we see it bringing to HAL's business planning are central to embedding these distinct roles for the regulated company and the regulator in to the regulatory process. In simple terms, the CCF will provide us with expert, independent advice – for example, through the reports it publishes – on the extent to which HAL's business plan is a consumer-focused one. We intend to use the views of the CCF to help inform our regulatory determination.
- 2.5 However, although we expect to place considerable weight on the CCF's views, we want to be clear that we are not delegating any regulatory function (i.e. decision making authority) to the CCF – it's role will be purely advisory. We are also not ruling out the possibility that we will obtain our own consumer insight to help inform and/or triangulate the views of the CCF.
- 2.6 As a non-statutory body, the independence, role and scope of the CCF will principally be governed by the CCF's Terms of Reference (ToR). The approach that we set out in the paper for the empowering consumers seminar was that the CCF⁴ itself should develop the ToR in consultation with HAL and other interested stakeholders. This reflected our view that we should not be too prescriptive in the establishment of the group and rather it would be for the industry to consider the detailed arrangements.
- 2.7 However, some stakeholders have argued that such an approach may call in to question the credibility and potential independence of the group. Having discussed these concerns in some detail with interested stakeholders, we have decided that the CAA should prepare the initial version of the terms of reference and then undertake a consultation to

⁴ <https://www.caa.co.uk/Commercial-industry/Airports/Economic-regulation/Licensing-and-price-control/Heathrow-price-control-review-H7/>

gather views on the purpose, membership, scope and principles of the CCF.

Key principles

- 2.8 As a non-statutory body, the independence, role and scope of the CCF will principally be governed by the CCF's Terms of Reference (ToR). It is essential that the CCF is (and is seen to be) an independent and transparent body that is qualified to comment on the issues that we envisage it dealing with. This will help ensure that that the focus of H7 continues to be on consumers and not on the measures that have been put in place as a direct or indirect result of the regulatory regime to promote their interests.
- 2.9 The work of the CCF should complement and enhance the existing regulatory framework including the process of Constructive Engagement (CE). We see the the CCF particularly focusing on the development of an appropriate and robust, consumer-focused outcomes framework, and as such helping to set the parameters for the detailed scrutiny of HAL's business plan by the CAA, airlines and other parties during the subsequent phases of the price review.
- 2.10 The objective of the CCF is to provide us with a clear view on the overall quality of HAL's consumer engagement (including its use of insight into consumer preferences provided by the airline community and other parties) and how this engagement has been reflected in the development of HAL's business plan.
- 2.11 The CCF should not be expected to approve or endorse HAL's overall plan. Instead, it should comment on the key issues and highlight areas of challenge and disagreement, including how HAL has responded to the CCF's challenges.
- 2.12 The determination of HAL's revenue requirement (which will include issues such as the allowed return, the scope for efficiency etc.) should remain our responsibility. However, we reserve the right to consult with the CCF on

specific issues if we consider that doing so would be in the interests of consumers.

- 2.13 The CCF would be distinct from the CAA Consumer Panel although the challenge and scrutiny functions are similar in both. The Consumer Panel provides independent challenge to the CAA on the delivery of our consumer strategy. The CCF, on the other hand will provide independent challenge to HAL on the development of a consumer-focused H7 business plan, reporting back to the CAA and stakeholders. Given that the CCF is ultimately a creation of the regulatory regime, we would expect the Consumer Panel to take a keen interest in its work.

Chapter 3

Draft Terms of Reference for the CCF

Role of the CCF

- 3.1 The Consumer Challenge Forum (CCF) is an independent advisory body set up for the Civil Aviation Authority's (CAA) seventh periodic review of Heathrow Airport's charges and services ('H7'). The CCF is established through a partnership between Heathrow Airport Limited (HAL), the Heathrow Airline Community ('the Airline Community') and the Civil Aviation Authority (CAA), and is subject to these Terms of Reference (ToR).
- 3.2 The Role of the CCF is to provide independent challenge to HAL on behalf of consumers, on how HAL takes account of and reflects the interests of consumers in its business strategy and operations. Through reporting publicly on the outcomes of this challenge process, the CCF will provide advice on these matters to the CAA and other interested stakeholders.
- 3.3 In these ToR, the term 'consumer' is a shorthand for a "user of an air transport service" as set out in the Civil Aviation Act 2012 (the Act) defined as a current or future person who is a passenger carried by the service or has a right in property carried by the service.

Membership of the CCF

Composition of the CCF

- 3.4 The CCF will consist of a minimum of five members, including the Chair.
- 3.5 The Chair of the CCF will be responsible for ensuring that the CCF has sufficient collective expertise and experience to perform its Role. The CCF will require expertise and experience in the following areas:

- Consumer research and insight, including how the needs of consumers with particular requirements (such as disabled or reduced mobility consumers) can be understood;
 - Consumer advocacy and engagement;
 - Consumer policy and economic regulation, including outcome-based incentives; and
 - Business planning / strategy.
- 3.6 The Chair of the CCF will be appointed by the Tripartite Appointment Panel (TAP), which will consist of a senior representative of HAL, the CAA and the Airline Community.
- 3.7 Members of the CCF will be appointed by the Chair-
- 3.8 The Chair and the Members will be appointed (and, where applicable, re-appointed) through an open and transparent process, involving advertising of positions and/or the use of an external search consultancy. Short-listing of candidates for the position of Chair will involve all members of the tripartite appointment panel.

Independence of the CCF

- 3.9 Neither the Chair nor any Member shall be deemed to be independent if he/she:
- Is currently an employee of HAL or paid by HAL for any role;
 - is an employee of any member of the Airline Community or any other commercial party currently operating at Heathrow, or is paid by such a party for any role;
 - has within the last three years been an employee of HAL, any member of the Airline Community or any other commercial party currently operating at Heathrow, or has been paid by HAL or any such party for any role within the last three years;
 - has, or has had within the last three years, a material business relationship with HAL, any member of the Airline Community or any other commercial party currently operating at Heathrow;

- has close family ties with any directors or senior employees of HAL or any member of the Airline Community, or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder of HAL, any member of the Airline Community or any other commercial party operating at Heathrow; or
- has served on the CCF for more than the allowed period of appointment.

3.10 In addition, and without the express permission of the CAA, neither the Chair nor any Member may take on any paid or unpaid role with HAL, the Airline Community or any other commercial party currently operating at Heathrow during the term of their appointment to the CCF, or within one year of that term coming to an end.

Period of appointment

3.11 Appointment of the Chair and Members will be for an initial term of no more than 3 years, which may be renewed for a maximum of one further term of no more than 3 years.

3.12 The Chair will be responsible for maintaining the continuity of the CCF's expertise and experience through the management of appointments.

Termination of appointment

3.13 The Chair can remove any CCF Member if he/she believes the individual is no longer capable of performing their role or has not been performing their role to a sufficient standard.

3.14 The TAP reserves the right to remove the Chair, if it believes the individual is no longer capable of performing their role or has not been performing their role to a sufficient standard.

Scope, Focus and Responsibilities of the CCF

Scope

- 3.15 The Scope of the Consumer Challenge Forum (CCF) is primarily the monitoring of the development of HAL's business plan for the H7 price review period.

Focus

- 3.16 The Role of the CCF is to act solely in the interests of consumers by independently challenging, assessing, raising issues and making recommendations to HAL. The CCF will particularly, though not exclusively, consider the following issues:
- the quality of engagement carried out by HAL in order to ensure that consumer views are properly represented to HAL and taken into consideration, including any gaps or omissions and the likely implications of these;
 - the extent to which the outcomes that HAL intends to achieve through the delivery of its business plan reflect the needs of consumers and are supported by robust evidence; and
 - the appropriateness of the performance standards and incentives proposed by HAL in its H7 business plan (for example, whether performance targets are sufficiently challenging).
- 3.17 The determination of HAL's revenue requirement (which will include issues such as efficiency etc.) will remain the CAA's responsibility. However, the CAA reserves the right to consult with the CCF on specific issues if the CAA considers that doing so would be in the interests of consumers.

Responsibilities

- 3.18 The CCF will, amongst other responsibilities:
- undertake an initial induction programme to ensure all CCF members have the necessary understanding of the industry to carry out the CCF's Role;

- consult with other stakeholders, particularly the Airline Community, to ensure their views can be represented directly to the CCF;
- review the airport's engagement process and the evidence emerging from it; and
- produce reports on the business plans submitted by HAL during the price review, having reference to any guidance issued by the CAA on the key issues for consideration.

Operating principles of the CCF

Remuneration

- 3.19 The CCF Chair, Members and any individuals providing secretariat functions to the CCF (see paragraph 3.25-3.28) will be remunerated at an appropriate rate and will be able to reclaim reasonable travel expenses. The CAA will handle remuneration and expenses claims and charge the costs to HAL.

Gifts, hospitality and donations

- 3.20 The CCF must not accept gifts or donations from HAL or any commercial party operating at Heathrow. The CCF may accept refreshments offered during the course of meetings with HAL, the Airline Community or any other commercial parties operating at Heathrow.

Authority

- 3.21 The CCF is an advisory body only and does not have any decision making authority. However, the CCF may issue 'comply or explain' notices to HAL, requiring HAL to address a concern raised by the CCF, or explain formally in writing why it does not intend to do so. The CCF may use its reports to publish these notices and HAL's responses. Comply or explain notices should be issued in accordance with the CCF's escalation policy.

Escalation policy

- 3.22 The CCF will raise issues with, and make recommendations to, HAL as it sees fit. The CCF must allow HAL the right to respond before the CCF

takes its concerns further. If necessary, the CCF will escalate issues to a member of HAL's senior management and/or the HAL Board who has been identified by HAL as responsible for dealing with issues escalated by the CCF.

- 3.23 Where the CCF has raised material issues with HAL's senior management and/or the HAL Board and believes that they have not been addressed satisfactorily, the CCF will, as a last resort, escalate such issues to the CAA to deal with as the CAA sees fit.
- 3.24 The CCF should allow HAL at least 10 working days to respond to an issue it has raised before escalating the issue to HAL's senior management and/or the HAL Board. The CCF should allow HAL's senior management and/or the HAL Board should at least 10 working days to respond to the issue it has raised before escalating it to the CAA.

Secretariat

- 3.25 The Chair will be responsible for the CCF's relationship with HAL and other stakeholders.
- 3.26 The Chair will appoint a suitably independent and qualified person to provide secretariat services to the CCF (e.g. coordination of meetings, escalation of unresolved issues, managing finances, minuting meetings, and ensuring that all relevant papers and minutes are issued in accordance with these ToR). The costs of the secretariat will be recovered from the CAA. The CAA will, in turn, charge them to HAL.
- 3.27 The Chair must ensure that the CCF's secretariat is publicly identifiable, with contact details published on HAL's website and the CAA's website.
- 3.28 If the CCF's secretariat requires office accommodation, the Chair should have due regard to the CCF's independence, particularly the risk of undue influence, when considering any offers from HAL, the Airline Community or any other commercial party currently operating at Heathrow to accommodate the secretariat.

Resources

- 3.29 The CCF will have access to detailed, high quality information, including consumer research data and specialist advice on regulatory and operational issues, such as is needed to perform its Role effectively. HAL will ensure that arrangements are in place for sharing confidential and/or commercially sensitive information with the CCF.

Transparency

- 3.30 The CCF will publish non-confidential versions of its meeting agendas and minutes as soon as they have been finalised on HAL's website and the CAA's website, in addition to any reports it prepares.

Working practices of the CCF

CCF meetings

- 3.31 Meetings shall be convened as the need arises at key stages during the H7 price review, and no less than four times a year. The CCF will meet at locations agreed by the CCF.
- 3.32 The Chair or his/her named representative shall chair each CCF meeting. The quorum for a CCF meeting shall be fixed and determined by the Chair.
- 3.33 The Chair shall be responsible for publishing the agenda for each CCF meeting on HAL's website and the CAA's website at least 48 hours before the meeting.
- 3.34 The Chair shall be responsible for minuting the proceedings and resolutions of all meetings chaired by the CCF and which achieve the quorum. Minutes of meetings shall be circulated promptly to the CCF for agreement and published within 10 working days of the meeting on HAL's website and the CAA's website.

Other meetings

- 3.35 The CCF will maintain, and provide on request, an up-to-date log of all other meetings and telephone calls involving substantive discussion of

issues within the CCF's Scope. The log should record the names of individuals and organisations involved and identify at a high level the issues discussed.

Meeting observers

- 3.36 At the Chair's discretion, other bodies or individuals can be invited to attend CCF meetings as observers. Observers can participate in discussions but are not members of the CCF. Observers can be asked to leave the meeting during periods when the information being discussed is of a sensitive or confidential nature.

Other matters

- 3.37 The CCF shall be responsible for periodic reviews of its operational performance and, at least annually, review these against the ToR to ensure it is operating at maximum effectiveness.
- 3.38 Changes to the ToR can only be made by the CAA..