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**Date: 13th October 2021**

***Response to: Transport Select Committee's call for evidence on airlines and airports recovery***

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**Which? submission to Transport Select Committee call for evidence "Airlines and airports: supporting recovery in the UK aviation sector", 13 October 2021**

Which? welcomes the opportunity to respond to the Transport Select Committee's call for evidence on its inquiry on airports and airlines' recovery from the pandemic. Consumer confidence in the aviation industry is central to its recovery and growth. We urge the Committee to ensure this inquiry takes account of the consumer experience with the industry and examines ways in which unlawful business conduct has harmed consumers and their trust in the sector. To build long-term consumer confidence in the industry, the government should conduct a thorough review of the protections available to consumers and ensure that robust enforcement measures are in place to deter non compliance and hold to account airlines that break consumer law. We therefore encourage the Committee to:

- 1. Review airlines' handling of passenger refunds during the pandemic and the systemic causes and lessons to be learnt**
- 2. Review government plans and preparedness for the lateral flow devices (LFD) market and the impact on consumers**
- 3. Ensure the government designs an ambitious, long-term vision for the travel sector that addresses the evident gaps in consumer protections and the enforcement system**
- 4. Launch a consumer-focused inquiry to look at the failures to safeguard rights in the aviation and holiday sectors and how to rebuild consumer confidence in the industry**

Whilst it is encouraging to see the committee look to long-term recovery of the sector, we are disappointed that this inquiry does not seek to examine the consumer experience with the travel sector during the pandemic and government and regulators' failure to safeguard passengers rights.

From the refund crisis to the more recent problems with the private testing market, passengers have been left significantly out of pocket, faced difficulty having their consumer rights upheld and confidence in the sector has fallen. Therefore, successful and sustainable recovery of the industry, and more widely of the UK's post-pandemic economic recovery, cannot happen without considering the treatment of consumers and restoring their long-term confidence in the industry.

In this view, we urge the Transport Select Committee to launch a specific consumer-focused inquiry to ensure that the passenger experience in aviation is taken into account and to thoroughly assess the failures of the consumer enforcement system and gaps in consumer protections that are in need of urgent government intervention.

### **Airline's handling of passenger refunds**

Which? research found that consumer confidence in airline and holiday operators plummeted at the start of the pandemic with levels of trust similar to those in autumn 2019 when holiday company Thomas Cook collapsed.<sup>1</sup> In order to rebuild trust and confidence in the industry, consumers need to know that businesses will treat them fairly and that their rights will be protected and enforced.

During the course of the pandemic, tens of thousands of refunds were not paid to consumers within the specified legal time frame with many having to wait weeks or months to receive their refund, in clear breach of Regulation EC261. Arguably, the government financial support to the aviation sector should have been conditional on payment of outstanding refunds claims. To date, there are still millions to be paid for flights that were cancelled at the start of the pandemic while several holiday providers and their customers are still waiting to receive the flight portion of their holiday refunds from the airlines. Frequent changes to travel rules and lockdown restrictions in the UK or abroad have made it impossible for many to go ahead with their journeys. In many such cases, passengers have lost money simply for complying with the law or following government advice against non-essential travel and have had their refund claims refused because flights continued operating.

The scale of the consumer detriment caused by these passenger rights violations and industry's unfair commercial practices has put a spotlight on the weakness of the current enforcement framework and the urgent need for reforming and enhancing the Civil Aviation Authority's (CAA) powers. The lack of accountability in the sector has allowed unlawful behaviour to persist, with businesses facing no consequences and consumers left to shoulder the bill. These systemic issues are particularly evident in the regulators' failed attempts at enforcing consumer protection law during the pandemic.

The CAA's review of airlines' behaviour was largely ineffectual in changing airline refund practices. Even though the regulator identified several carriers that weren't paying refunds 'sufficiently quickly', it opted not to take enforcement action after receiving commitments from the airlines to improve their performance.<sup>2</sup> Which? passed on evidence to the regulator showing that some airlines still failed to comply with the law, with passengers who were due to travel in March 2020 still waiting for a refund in the summer, but no enforcement action was taken against those airlines that failed to meet their commitments to the regulator.

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<sup>1</sup> Trust in the travel industry plummets to record low amid coronavirus refunds scandal', Which? <https://www.which.co.uk/news/2020/05/trust-travel-industry-plummets-record-low-amid-coronavirus-refunds-scandal/>

<sup>2</sup> [CAA review into airline refund practices during the pandemic.](#)

The Competition and Markets Authority's (CMA) own investigation into British Airways and Ryanair over their failure to refund passengers for flights they could not legally take due to lockdown was positive news for consumers, particularly given the success the CMA had had in its intervention in the package holiday sector where it secured commitments from holiday companies to comply with the law and return millions of pounds to affected customers. However, the recent announcement of the case closure is a further blow to consumer trust in the market and in the regulators' ability to safeguard their rights.

*"In June 2020 I booked flights for four to Tenerife (to fly on Dec 23 2020), at a cost of £2,700. On 22 December Spain joined the list of countries banning UK nationals from entering. I duly received an email from Ryanair advising me that we would not be allowed to board the flight. Ryanair refused a refund and merely offered a one-off flight change, to be effected by 31 March 2021. I had to initiate a claim via the small claims court hoping that common sense and justice will prevail".*

Not all airlines have been refusing refunds for flights passengers couldn't take due to lockdown. For example, when Which? asked the UK's five biggest airlines if their customers could claim a refund if prevented from traveling due to lockdown laws, Jet2, Tui and Easyjet confirmed they could, even if the flight was still operating.<sup>3</sup> However, given the lack of enforcement action on airlines that violated passenger rights, many consumers are having to take matters into their own hands, as exemplified by the case above. We have heard from many who are having to incur the financial cost, stress and time challenges of taking the case to a small claims court in order to get the refunds they are owed.

#### **Which? calls on the Transport Select Committee to:**

- **Launch a specific consumer-focused inquiry that looks at passenger rights and protections in the sector, recognising that consumer confidence is critical to the effective and sustainable recovery of the industry.**
- **Investigate the role of industry and government in the handling of passengers' refunds crisis.**
- **Determine whether the lack of regulatory action on industry was a result of the CAA's insufficient enforcement powers or due to other factors.**

#### **Covid testing for travel**

After the halting of international travel during the pandemic, the reopening of some travel corridors was welcomed by many UK travellers looking to get away. However, an unwelcome issue that has accompanied the reopening of travel has been the covid PCR testing market, provision and the lack of swift intervention from government or regulators to clamp down on rogue test providers.

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<sup>3</sup> Ryanair and British Airways continue to refuse refunds for customers who can't legally travel, Which? <https://www.which.co.uk/news/2021/01/ryanair-and-british-airways-continue-to-refuse-refunds-for-customers-who-cant-legally-travel/>

Travellers returning to the UK from abroad are required to take a PCR test on day two and sometimes day eight after their arrival. However, this summer has been plagued by issues in the market and even now many travellers continue to face issues in relation to cost and provision of tests. Which? has consistently called for intervention in the market and a clampdown on rogue test providers.

Although the committee's inquiry is right to highlight the issue of test pricing in the PCR market, this is by no means the only issue consumers experience. Lack of clarity around accessibility, lack of accreditation and consumer protections and rights, have also left consumers at the mercy of a new and confusing market that has been prone to fraudulent behaviour.

The impact of this unregulated market on UK consumers cannot be understated. Travellers have got in touch to share experiences of being left out of pocket for tests that never arrived, or stranded abroad with very little guidance as to their rights and protections. In addition many passengers have missed flights or lost money due to test providers not delivering the service they promised, or not turning test results around in the time stated.

Which? investigations continue to reveal huge issues on the government's approved provider list with unobtainable or "drip pricing" still being utilised by providers in order to appear higher up the list. A Which? investigation in August found that all of the top ten providers on the government website advertised day two tests for £20, but to get them delivered they cost nearly three times as much; on average £70 (not necessarily including postage & packaging). The same investigation found that some of the companies advertising the cheapest test prices on the government website charged upwards of £50 for delivery, which didn't cover additional postage and packaging costs. Additionally, some companies advertised prices that were only obtainable by travelling to a given location on a given day, sometimes weeks away or with very limited appointments.

Finally, very few test providers have received full accreditation from the UK Accreditation Service (UKAS). In late April Which? found that only four private providers of the over 500 providers listed on the government website had been accredited<sup>4</sup> and that had only risen to 10 by mid-July.

### **Action we want to see**

Which? welcomed the intervention of the Secretary of State for Health in ordering a CMA investigation into the PCR test market in the summer and was pleased with the outcomes and recommendations of that audit. However, Which? had been warning the government of these market issues for several months ahead of the reopening of travel. It is disappointing that it took so long to take action, as the lateness of the intervention will have negatively impacted people's ability to navigate the booking process and their confidence in making summer holiday plans. It is crucial the government establishes the rules and requirements on the LFD market from the outset to avoid further denting consumers' confidence and ability to travel.

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<sup>4</sup> Which?, 29th April 2021, *UK travel testing system at risk of collapsing when mass travel restarts, Which? warns.* <https://press.which.co.uk/whichpressreleases/uk-travel-testing-system-at-risk-of-collapsing-when-mass-travel-restarts-which-warns/>

We were pleased that as a result of the CMA's work, rogue private providers such as Expert Medicals and Dante Labs were removed from the government approved list. The CMA must continue to investigate and take swift action against rogue covid test providers.

Additionally, the government must work swiftly to implement the recommendations of the CMA audit in full and crucially, these learnings must be mirrored in the LFD market as travel rules change in late October, so as not to allow the same issues in the market to repeat themselves and leave consumers vulnerable to considerable harm.

Which? remains extremely concerned that the LFD market is not prepared for the demand it will see in late October once travel rules change. We think this market is a key issue area of consumer detriment and wholesale market interventions, such as price caps, should be considered if the government is not able to implement the recommendations of the CMA in full to bring the market into line. Further confusion and chaos in the market will further deplete consumer confidence in travel and in the sector. As testing is likely to be a component of travelling for the foreseeable future, ensuring that there is a fair, accessible and affordable market for testing is key to the sustainability and recovery of the aviation sector.

**Which? calls on the Transport Select Committee to:**

- **Investigate the government implementation of the CMA's recommendations on the PCR testing market.**
- **Ensure improved collaboration between DfT and DHSC on testing for travel.**
- **Assess the government's preparedness to introduce lateral flow testing for travel and ensure the establishment of a system consumers can have confidence in.**

### **Creating a long-term strategy to rebuild consumer confidence in the sector**

Reforms in the aviation and holiday sectors are long overdue. From the failure of Thomas Cook and Monarch, which highlighted the need for stronger insolvency protections and an airline insolvency scheme, to the ineffective alternative dispute resolution (ADR) system in aviation, which leaves millions without access to ADR when things go wrong, there is a strong need for an ambitious, long-term vision for a sustainable recovery of the sector. The government must address the gaps in consumer protections and public and private enforcement in the aviation and holiday sector. In doing so, it must not miss the opportunity to work with consumers and industry to design a joined-up strategy that has the dual objective of creating a financial and environmentally sustainable recovery as well as a coherent and understandable set of protections and enforcement mechanisms that work for consumers.

Which? is concerned that reforms in these sectors are being conducted in a piecemeal fashion and lacking ambition. It is important to recognise the ineffectiveness and fragmentation of the current regulatory landscape in travel, which exposes consumers to significant detriment caused by inconsistencies, confusion and lack of understanding of their

protections. We urge the government to take a cross departmental approach to travel reforms underpinned by close collaboration between DfT and BEIS, and to develop a plan that provides effective protection for consumers and helps to build back a competitive and resilient sector.

Now more than ever is an important time to examine and enhance consumers' payment protections, including EC261 and the Package Travel Regulations, and ensure consumers have access to affordable dispute resolution in the form of a statutory-backed ombudsman in the aviation and holiday sectors. The government must also urgently reform the CAA's powers so that the regulator can enforce the obligations under consumer rights regulations in a timely and effective way in the future. As part of this, it must take the opportunity to make progress on key proposals for travel reforms through its work on BEIS' Consumer and Competition Bill and DfT's upcoming Aviation Strategy. This must include strengthening the enforcement powers of the CAA, mandating a single mandatory Ombudsman scheme for the aviation and the holiday sector, while also guaranteeing the successful implementation of ATOL reforms and enhanced prepayment protections.

**Which? calls on the Transport Select Committee to:**

- **Ensure the government designs an ambitious, long-term vision that addresses the evident gaps in consumer protections and public and private enforcement in the aviation and holiday sectors.**
- **Interrogate collaboration between government departments in this area, whether there are inefficiencies which have led to slow, fragmented interventions and call for increased cross-departmental engagement.**

**About Which?**

Which? is the UK's consumer champion. As an organisation we're not for profit - a powerful force for good, here to make life simpler, fairer and safer for everyone. We're the independent consumer voice that provides impartial advice, investigates, holds businesses to account and works with policymakers to make change happen. We fund our work mainly through member subscriptions, we're not influenced by third parties and we buy all the products that we test.

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