

**Consultation on
Passenger Representation in Regulatory Decision Making
for Dublin Airport**

Commission Paper 9/2017

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Commission for Aviation Regulation

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1. Introduction

- 1.1 The Commission for Aviation Regulation has decided to consult on possible ways that we can increase our focus on the needs of passengers when we make regulatory decisions about Dublin Airport.
- 1.2 We, with the assistance of external advisers, have looked at how some other regulators address this question and possible ways forward in Ireland. We are, today, publishing a separate detailed report which sets out the detailed findings of this research¹. The Commission encourages respondents to review this report in preparing their responses to this consultation paper.
- 1.3 This paper summarises the key points of the detailed report. Section 2 provides a high-level summary of how the views of passengers are presently included in decision making. Section 3 looks at the key elements of the approaches taken by other regulators and Section 4 assesses these approaches. The final two sections of the paper summarise the initial views of a number of stakeholders that our advisors talked to when undertaking the research and our three high-level proposals.
- 1.4 The Commission welcomes the views of interested parties on the proposals included in Section 6 and the questions asked.²
- 1.5 Responses should be titled “Passenger Representation in Regulatory Decision Making” and sent by email to info@aviationreg.ie or by post to: Commission for Aviation Regulation, 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin D02 W773.
- 1.6 The deadline for responses to this consultation is **5pm, Monday, 16 October 2017**.

¹ Study on Passenger Representation in Airport Charge Determinations at Dublin Airport (CEPA)
<https://www.aviationreg.ie/fileupload/2017/Final%20report%20CEPA.pdf>

² Respondents should be aware that we are subject to the provisions of the Freedom of Information legislation. Ordinarily we place all submissions received on our website. We may include the information contained in submissions in reports and elsewhere as required. If a submission contains confidential material, it should be clearly marked as confidential and a redacted version suitable for publication should also be provided.

We do not ordinarily edit submissions. Any party making a submission has sole responsibility for its contents and indemnifies us in relation to any loss or damage of whatever nature and howsoever arising suffered by us as a result of publishing or disseminating the information contained within the submission.

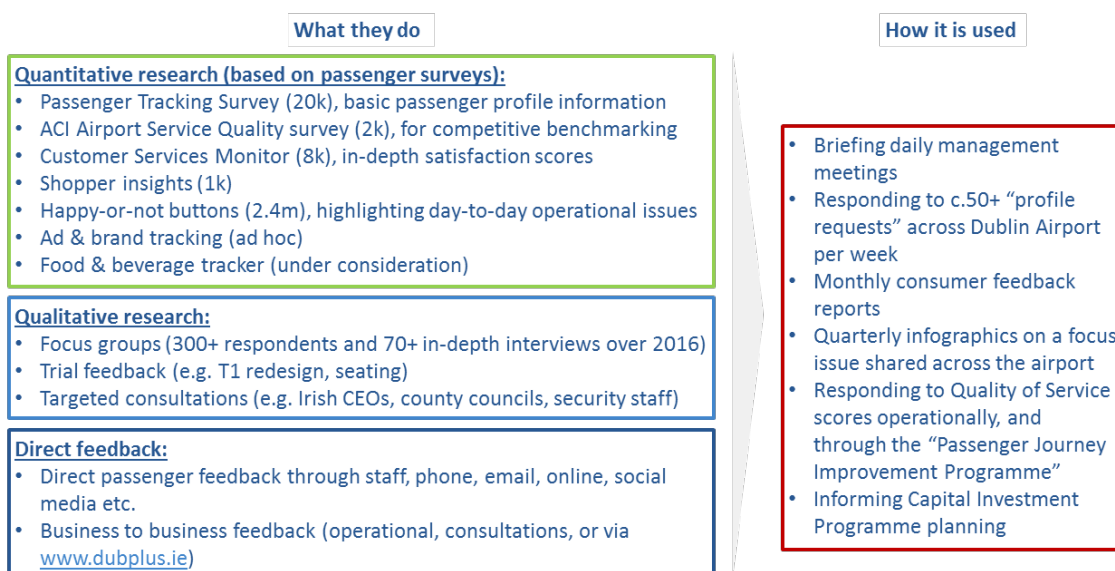
2. Background

Commission’s Approach

- 2.1 We regularly invite responses to our consultations and draft determinations as part of our decision-making process. These consultations are public and open to all stakeholders. However, our experience to date has been that some groups of passengers have not been well represented in this process. For example, consultations on our 2014 pricing decision received responses from groups representing business and inward leisure passengers, but did not receive any responses from groups representing outward leisure passengers, those with reduced mobility or other groups of passengers.
- 2.2 Our main source of related intelligence has been the feedback received from quality of service indicators. In 2009, the Commission introduced a quality of service term to Dublin Airport’s price cap formula, through which the maximum price cap allowed in a given year would be reduced for each service quality target that was missed in that period. Of the twelve targets put in place in 2014, nine are based on the results of passenger surveys (conducted as part of Airports Council International’s Airport Service Quality programme) and three relate to passenger security queue times and baggage system-availability data provided by Dublin Airport. At that time, we decided that up to 4.5% of Dublin Airport’s maximum allowed price cap was conditional upon achieving these service targets. Outside of the price determination process, the Commission’s main activity with respect to customer-related intelligence is the collection of complaints data relating to flight-delay compensation and passengers with reduced mobility, which it publishes in an annual report.

Dublin Airport’s Approach

- 2.3 Dublin Airport has a team that carries out passenger research and this research feeds into a range of activities to engage with passengers (see below).



- 2.4 However, the main gap in their approach is the way in which they use the insights from the engagement activities to feed into their strategic decision making. In addition, the Commission has little visibility about how Dublin Airport has used the results of passenger engagement to support its regulatory submissions.

Airlines' Approach

- 2.5 Airlines contribute to our decision-making process by talking to Dublin Airport directly about its proposals and making regular submissions to the Commission (as well as engaging with Dublin Airport regularly on any operational issues).
- 2.6 Some airlines are of the view that they best represent the views of passengers, and therefore there is no need for the Commission to do more in this area. While in some instances this may be true, there may be certain passenger groups who only make small contributions to airlines' profitability. It is not always clear that airlines will take sufficient account of these groups when making submissions to the Commission. In short, while airlines have an important role in representing the interests of passengers, it is not clear that they represent the needs of all passengers all of the time.

Initial Assessment

- 2.7 An initial review suggests that our current consumer engagement model does not provide sufficient evidence that the views of passengers have explicitly been taken into account when we make decisions. This may reflect a lack of passenger engagement, but also reflect the fact that the consultation responses/submissions made to the Commission by Dublin Airport or the airlines do not show clearly that they are based on high quality passenger research.
- 2.8 It appears that Dublin Airport might not effectively communicate the results of its own research and engagement with passengers to the Commission or not demonstrate the full extent to which it has incorporated this information into its proposals.
- 2.9 In addition, it is worth considering the argument that although airlines can be effective at representing their passenger base in general when dealing with the airport on operational issues, they may be less effective at representing specific groups of passengers or reflecting interests of future passengers in relation to long-term capital infrastructure projects. Passenger interests are diverse and airlines might not convey the complexity of these interests in their consultation submissions, or may be reluctant to share the full extent of information available to them.
- 2.10 The question is, do these shortcomings have a negative impact on our decisions by leading the Commission to allow some expenditures which should not have taken place or disallow other expenditures which should have? Can improved consumer representation help in this area or perhaps other areas such as helping how we design quality of service incentive mechanisms?

Q1: Do you agree with the Commission's assessment that the level of customer engagement in our decision making could be improved? If not, please provide your views.

3. Regulatory Approaches Elsewhere

3.1 In looking at how the Commission can improve consumer representation in its decision making, our advisors reviewed some approaches used by other regulators. From this review, it appears that there are three main techniques that have been used by regulators (to varying extents) to develop their consumer engagement models:

- Publication of guidance to explain what a regulator expects a company it regulates to do to take on board consumer interests and to explain how the regulator will interpret how well the company carries out this activity.
- Financial incentives to reward and/or penalise regulated companies for its quality of consumer engagement and research. Non-financial incentive mechanisms have also been applied, for instance, where the regulator states clearly that the quality of consumer engagement will be a determining factor in whether it is willing to allow certain expenditures by the regulated company.
- Consumer panel as part of their consumer engagement model. The role of the panels varies, but it is typically responsible for providing advice or scrutinising the quality of engagement carried out by the regulator or in some cases the regulated company.

3.2 When assessing the various options, we intend to use a number of criteria. Any option must:

- be consistent with our existing legal framework;
- provide substantial advantages over the current situation;
- be cost effective and proportionate relative to any benefits;
- be possible to implement in a transparent way; and
- Improve representation of passengers.

<p>Q2: Do you agree with the selection of criteria chosen by the Commission to assess any customer engagement mechanism? If not, please provide the criteria you think should be applied.</p>

4. Review of Regulatory Approaches

- 4.1 The key question that needs to be considered when developing consumer engagement models is whether they have the scope to deliver benefits to consumers, or will just impose additional costs with no benefit to consumers. Our report has generally had to rely on a qualitative assessment because of the lack of existing quantitative evidence of these impacts.
- 4.2 It is also important to note that across the 12 regulators reviewed, all have introduced approaches to improve consumer engagement in recent years. Furthermore, the clear trend has been to do more rather than less to strengthen their existing consumer models.

Publication of Guidance

- 4.3 None of the regulators have relied on publishing guidance alone to achieve an improved quality of consumer engagement. Therefore, whilst it is possible that guidance alone may be effective at improving the quality of engagement, we cannot say for sure using the examples from other regulated sectors.

Financial Incentives

- 4.4 There is evidence that financial incentives can improve the level of consumer engagement. The clearest example of the use of incentives to improve consumer engagement has been in the UK energy sector. Ofgem's reviews have found that their use of incentives helped to achieve a level of stakeholder engagement which *"represents a significant improvement on previous price controls"*.³ Ofgem also found evidence that incentives delivered better outcomes for consumers - in particular by motivating the companies to become more customer-focused, which coincided with rising scores for engagement and consumer satisfaction.
- 4.5 However, there has been some criticism that the use of incentives has rewarded companies for work that they should have been doing anyway, with questions around the cost-effectiveness of how regulators have used incentives for consumer engagement to date.

Consumer Panel

The report includes details of a range of panels which differ in composition and role, and finds evidence that they increase the quality of engagement. For example, an independent review of Ofwat's Consumer Challenge Groups (CCGs) found 'unanimous' feedback that the process had helped to achieve a big step forward in the industry's efforts to engage customers in the price review process. There are, however, examples of panels that are thought to have been less effective due to their composition (e.g. insufficient expertise), governance arrangements (e.g. appointed by the regulated company), or lack of clarity over roles.

³ Ofgem (2013). Assessment of the RIIO-ED1 business plans.

5. Initial Feedback from Stakeholders

5.1 As part of a review of the various options, the airport, airlines and some customer representatives were asked for their views. These stakeholders provided initial feedback on whether the Commission should maintain the existing status quo or adopt one variant of the three broad options during a two-day workshop or in the form of written submissions. These are summarised below.

Passenger Representatives (Competition and Consumer Protection Commission (CCPC); Disability Stakeholders Group; European Consumer Centre Ireland (ECCI); National Disability Authority)

- 5.2 Overall, positive about the initiative to improve passenger representation but it should be cost-effective and be able to deliver beneficial outcomes.
- 5.3 Individual passengers may find it very difficult to provide useful feedback for most topics relating to airport charge determinations. Perhaps, passenger representatives or experts representing their views could advise on discrete aspects of the review - such as the quality of service incentive scheme - if asked to respond to clear, specific questions.
- 5.4 it would be difficult to commit resources to engage without a realistic prospect of their involvement achieving meaningful benefits in terms of more appropriate services or improved affordability.
- 5.5 Dublin Airport could make more use of non-consultative inputs, such as engaging disability groups to test ease of way-finding and advice on new infrastructure proposals at the design stage.

Business and Tourism Groups (IDA Ireland; Fáilte Ireland)

- 5.6 Dublin Airport had been highly responsive to their views and to business user interests.
- 5.7 Additional representation of business interests is unnecessary as they do arrange meetings with the airport to discuss the needs of business customers and the airport typically acts on their requests.
- 5.8 A small, light-touch, panel established on a trial basis may be appropriate, especially where a more targeted case-by-case response might be suitable.

Airport (Dublin Airport; Airports Council International (ACI))

- 5.9 One stakeholder was open to the idea of improving passenger representation around capital investment planning and quality of service, but would wish to see a strong justification for any high-burden, high-cost intervention. Cautious about the need to establish a standing panel unless it would have sufficient understanding to engage effectively with the price determination process.
- 5.10 If there is guidance, the Commission should be clear on its expectations, and on when passengers should be consulted, to help it apply resources efficiently.
- 5.11 One welcomed the initiative to introduce a passenger representative.

Airlines (Aer Lingus; Etihad Airways; Ryanair)

- 5.12 Not supportive of any of the three options put forward and of the view that the current status quo should be maintained. However, there was some degree of openness to the concept of the Commission intervening to improve passenger representation as long as it could demonstrate that the benefits justified the costs, either by bringing about lower airport charges and/or improving service levels for passengers.
- 5.13 In general, the airlines' view was that there is no need to establish additional approaches to improve the level of consumer engagement, because they (the airlines) already fulfil the role of representing all consumers during the price determination process.
- 5.14 The airlines' specific feedback on the three options was as follows:
- *Guidance*: they were not supportive, but acknowledged that the additional costs with this approach would be minimal if implemented correctly and that the guidance could provide more flexibility to avoid unnecessary duplication of passenger research.
 - *Incentives (with guidance)*: the use of financial incentives for engagement would risk creating a tick-box exercise which incentivised processes rather than outcomes. An incentive phrased as a reward would not be well received and a reputational incentive would be sufficient.
 - *Panel (with guidance and potentially incentives)*: the airlines were not supportive of establishing a panel.

6. Commission's Proposals

- 5.15 Based on our review to-date, the Commission is minded to make the following decisions. These are high level in nature. If we decide, following this consultation, to proceed with these proposals, we will further consult on the detail of each proposal and assess these against the criteria referred to in Section 3 above.

Publication of Guidance

- 5.16 The Commission is minded to develop guidance to Dublin Airport. This will give more clarity to the airport about how to use existing consumer engagement activities to inform its business plans, which should help it to develop better quality investment plans that are more closely aligned to the needs of consumers. It would also enable the Commission to define how it expects the views of different passenger groups to be incorporated within the price determination process. Improved understanding of the needs of different consumer groups will help the Commission make regulatory decisions that take account of their needs.

Financial Incentives

- 5.17 The Commission proposes to explore some form of a financial incentive to reinforce the importance of Dublin Airport following our guidance when developing any submissions to the Commission. As a guiding principle, the Commission aims to focus on incentive arrangements that do not reward Dublin Airport for doing things that it should already be doing. We will also consider if non-financial incentives are useful. For example, there may be an opportunity to fast-track certain decisions depending on the quality of the consumer-related evidence that supports the airport's submission.

Consumer Panel

- 5.18 The study provided by our advisors presents mixed views regarding the role for a potential panel. Apart from a desire to limit the cost of any panel, there were divergent views on the potential composition of a panel. As a first step the Commission proposes to establish a more informal panel to seek the views of different types of passenger on an ad-hoc basis to inform our decision-making processes.

<p>Q3. Do you agree with the Commission's proposals to (a) provide guidance to Dublin Airport about how to involve passengers in certain aspects of their business plans; (b) some form of incentive arrangement to underpin the guidance; and (c) establishment of an ad hoc panel to inform our decisions? Please provide any relevant evidence to support your views either in favour with the proposals or otherwise.</p>
