



The Effectiveness and Efficiency of the Civil Aviation Authority (CAA)

THE CONSUMER COUNCIL RESPONSE

January 2023

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1. EXECUTIVE SUMMARY

- 1.1 The Consumer Council welcomes the opportunity to respond to the Department for Transport (DfT) call for evidence on the effectiveness and efficiency of the Civil Aviation Authority (CAA), as part of evidence-gathering for its review of the CAA.
- 1.2 The role of the Consumer Council is to promote and safeguard the interests of all consumers in Northern Ireland. We have chosen to not directly address the questions in the call for evidence as many apply to organisations directly licensed or regulated by the CAA.
- 1.3 The Consumer Council has an active and prominent role in Northern Ireland dealing with aviation complaints, representing consumers and raising awareness of consumer protection in aviation. We are designated to handle passenger complaints made under Regulation 1107/2010 (the Access to Air Travel Regulation) relating to an airport in Northern Ireland or a flight departing from an airport in Northern Ireland by the Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2007 (SI 2007/1895). The Consumer Council also handles complaints made under Regulation 261/2004 concerning flight delays, cancellations and instances of denied boarding, under an MOU with the CAA.
- 1.4 The Consumer Council believes that the enforcement powers of the CAA should be strengthened. There have been a number of occasions in recent years where the powers of the CAA appeared insufficient to address the issue of consumer detriment effectively and in a timely manner. The CAA must have enforcement tools available that will enable it to act swiftly to stop consumer detriment where it has been identified. Equally important is the need for the CAA to have sufficient resources to use those powers. In particular, the CAA needs powers that would enable it to decide if an aviation business has breached consumer law, make directions to end infringements, order compensation and impose financial penalties.
- 1.5 The role of the Consumer Council and our work in protecting aviation consumers needs to be acknowledged and taken into account when considering the future funding model of the CAA. To this end we request a discussion with both the DfT and the CAA to understand how our functions will fit into this model and we would ask that The Consumer Council receive proportionate funding to grow and develop our representative and complaints role.

2. THE CONSUMER COUNCIL

- 2.1 The Consumer Council is a non-departmental public body established through the General Consumer Council (Northern Ireland) Order 1984. Our principal statutory duty is to promote and safeguard the interests of consumers in Northern Ireland.
- 2.2 We are an insight-led, evidence based organisation:
 - Providing consumers with expert advice and confidential guidance.
 - Engaging with government, regulators and consumer bodies to influence public policy.
 - Empowering consumers with the information and tools to build confidence and knowledge.

- Investigating and resolving consumer complaints under statutory and non-statutory functions.
 - Undertaking best practice research to identify and quantify emerging risks to consumers.
 - Campaigning for market reform as an advocate for consumer choice and protection.
- 2.3 We have specific statutory duties in relation to energy, postal services, transport, water and sewerage, and food affordability and accessibility. These include considering consumer complaints and enquiries, carrying out research, and educating and informing consumers.
- 2.4 Our non-statutory functions educate and empower consumers against unfair or discriminatory practices in any market from financial services to private parking charge notices. Across all our areas of work, we pay particular regard to consumers:
- who are disabled or chronically sick;
 - who are of pensionable age;
 - who are on low incomes; and
 - who live in rural areas.
- 2.5 We are committed to ensuring positive outcomes for consumers. We are a designated super-complaints body set up under the Enterprise Act 2002 and the Financial Services and Markets Act 2000 Order 2013.
- 2.6 We use a set of eight guiding principles (Figure 2) developed by the United Nations to:
- assess where the consumer interest lies; and
 - develop and communicate our policies, interventions and support.

These provide an agreed framework through which we approach regulatory and policy work.

Figure 2: Consumer protection principles



2.7 The principles ensure we apply a consistent approach across our statutory and non-statutory functions, and in all our engagement with consumers and stakeholders.

3. RESPONSE TO CALL FOR EVIDENCE

CAA Strategy

3.1 The CAA’s key strategic priority is the continued safety and security of aviation and aerospace, and protection of consumers. However the strategy document states that “Consumer protection and confidence relies on a safe and secure sector, and we will always prioritise our resources and capabilities to ensure that we are fulfilling this role and encouraging and enabling industry to deliver on their duties.”¹ Whilst safety and security are of paramount importance to consumers it is vital to recognise and differentiate the role of consumer protection and ensure this is adequately resourced.

Powers of the CAA

3.2 The CAA must have enforcement tools available that will enable it to act swiftly to stop consumer detriment where it has been identified. The length of time it currently takes the CAA to progress enforcement through the courts is a barrier to justice for consumers and fails to alleviate consumer detriment. As we stated in our response to the consultation on Aviation Consumer Policy Reform,² we would support actions that would enable the CAA to

¹ [CAP 2181 CAA Horizon - Full Strategy.pdf](#)

² <https://www.consumercouncil.org.uk/policy-research/publications/aviation-consumer-protection-consultation>

decide if an aviation business has breached consumer law, make directions to end infringements, order compensation and impose financial penalties.

- 3.3 In their report published in April 2022 the Transport Select Committee stated that the CAA “urgently requires the power to impose financial penalties on airlines that do not provide complete refunds to consumers when they are required to do so by law”.³ Passengers have comprehensive rights but we have seen that they are not being protected and enforced sufficiently.
- 3.4 The Consumer Council is a member of the Consumer Protection Partnership (CPP) which, in its April 2019 response to the UK government’s consultation on Aviation 2050: The Future of Aviation” supported proposals to grant the CAA, as the national enforcement body, greater powers to enforce the rights of consumers. The evidence provided at that time by the CPP, showed that there is inconsistency of practice across airlines, and providing the CAA with powers it can use to enforce compliance swiftly will be key in ensuring passengers get the support, assistance and redress they are entitled to.
- 3.5 The CAA has itself called for stronger and more streamlined enforcement powers, stating that they “have experienced significant obstacles and delays through the process of seeking information when investigating a potential compliance issue, negotiating meaningful undertakings that address the underlying behaviour, and the time taken to reach a resolution in court”.⁴ We saw the limitations of the CAA powers during the early days of the COVID-19 pandemic when airlines chose to offer vouchers instead of refunds as required by law. The CAA was unable to impose financial penalties on operators who do not meet their obligations and enforcing its powers against airlines often required a “very expensive” court process that could take up to two years.⁵ This lengthy legal process required to enforce the provisions of Regulation 261 precluded any effective enforcement action by the CAA. Instead it was only able to make agreements with airlines and these were not strictly adhered to by those airlines.
- 3.6 Whilst the pandemic brought the CAA’s lack of enforcement powers into stark focus, it exacerbated issues that were already evident. For example in 2018, the CAA made an application to the courts against Ryanair in 2018 for its failure to compensate passengers after disruption to flights due to a strike by the airline’s pilots.⁶ This was the only time in which the CAA took enforcement action in 19 years. Despite the High Court ruling against the airline in 2021, the case did not finally end until December 2022 when Ryanair decided not to pursue an appeal to the Supreme Court and to provide compensation to passengers in line with the entitlements set out under UK (EC) Regulation 261/2004.⁷ The process followed in this case has resulted in passengers waiting up to five years to receive compensation for cancelled flights. If the CAA had the ability to impose a direct fine on the airline a lengthy and costly court process could have been avoided and passengers could have received redress promptly.

³ [Airlines and airports: supporting recovery in the UK aviation sector \(parliament.uk\)](https://www.parliament.uk/publications/5801/cmselect/cmtrans/268/26809.htm)

⁴ [CAP 2269: CAA Response to 2021 Government Consultation Reforming Competition and Consumer Policy](https://www.parliament.uk/publications/5801/cmselect/cmtrans/268/26809.htm)

⁵ <https://publications.parliament.uk/pa/cm5801/cmselect/cmtrans/268/26809.htm>

⁶ <https://webarchive.nationalarchives.gov.uk/ukgwa/20190923103217/https://www.caa.co.uk/News/UK-Civil-Aviation-Authority-begins-enforcement-action-against-Ryanair/>

⁷ <https://www.caa.co.uk/news/update-on-ryanair-enforcement-action/>

- 3.7 Equally important to having increased and swifter enforcement powers is the need for the CAA to have sufficient resources, including strengthened evidence gathering powers to ensure accurate data is available from airlines.
- 3.8 It remains important to clarify and rationalise the role of different regulators in the travel sector. During the COVID-19 pandemic, it was unclear to consumers (and their representatives) which organisation had responsibility for enforcing the law and who they should speak to for advice. Whilst the CAA are charged with enforcing Regulation 261, Trading Standards enforce the Package Travel Regulations. Meanwhile, the Competition and Markets Authority (CMA) also gave advice on holiday cancellations and undertook its own investigation into airlines that refused to pay refunds where the consumer could not fly because of UK Government travel restrictions. Indeed the closure of this investigation, with the CMA's conclusion that "a lack of clarity in the law makes it insufficiently certain that it would be able to secure refunds for customers of British Airways and Ryanair who were prevented from flying by Covid travel restrictions"⁸, illustrates the lack of protection currently available for consumers.
- 3.9 In October 2021, we provided a response to the BEIS consultation on Reforming Competition and Consumer Policy.⁹ Our overall response and the principles that underpin it are directly relevant to this call for evidence and are appropriate in the case of the CAA. In particular we would again draw your attention to the following points:
- We support both the CMA and other sector regulators (including the CAA) having enforcement powers under an administrative model. This would create a model that provides fast and efficient action against businesses that infringe consumer protection laws and cause consumer detriment.
 - The CAA should have increased evidence gathering powers to obtain information and to sanction companies that do not comply.
 - An administrative model should be legally required to consider input from consumer interest bodies in its enforcement actions.
 - There is a need for a process to appeal the decisions of the CAA where it has decided not to take any further action against a business. A decision made by the CAA should be followed by a set standstill period to allow consumer bodies and other interested bodies to respond or appeal the decision. This would enable consumer interest groups to fully assess the impact a decision by the CAA will have on consumer interests.
 - The CAA should be fully transparent in its decision making processes and publish its decisions.
 - There should be an appeals process available to those who are the subject of CAA enforcement action. The scope and powers of judicial scrutiny set out by government should apply to provide a robust and appropriate independent appeals process.
 - There should be an equal right for consumers to appeal the decisions of the CAA.
- 3.10 The CAA has reported on the accessibility of airports since 2016, however it has yet to publish information on how individual airlines are meeting their legal duties to disabled consumers. Whilst EC1107/2006 provides disabled people with a right to assistance at airports; the regulations also apply to airlines, which have legal duties to provide assistance on board flights, such as support to and from the toilet, and providing information

⁸ [CMA closes investigation into British Airways and Ryanair - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/cma-closes-investigation-into-british-airways-and-ryanair)

⁹ <https://www.consumercouncil.org.uk/policy-research/publications/reforming-competition-and-consumer-policy-consultation-response>

about the flight in advance in an accessible format. We recommend that the CAA publish information about how airlines are complying with the regulations and publish guidance for airlines similar to the guidance provided for airports.¹⁰

Proportionality

- 3.11 Regional tests of proportionality should be applied to the setting of CAA annual priorities and to investigations undertaken by the CAA. This must include tests of proportionality of consumer impact in different regional markets which is based on improved understanding and analysis of local market conditions. Northern Ireland is disproportionately reliant on aviation for domestic connectivity compared to the rest of the UK and this must be recognised in the CAA decision making.

ATOL

- 3.12 During the COVID-19 pandemic we became aware of many instances where the package holiday operator removed the cost of the flight from the refund it made to the consumer because it could not get the flight refund from the airline. We also heard anecdotally of package holiday operators who made a full refund to the consumer but had difficulty recovering the refund from the airline. We supported the proposal in the DfT's Aviation Consumer Protection Reform Consultation that package holiday organisers should be able to make a claim for a full refund for a cancelled flight on behalf of its customers. This would clarify the rights of the package holiday operator and make the full recovery of a refund easier for consumers. However we note that this is already provided for in Regulation 29 of the Package Travel Regulations¹¹ and it is clear that again the CAA's powers to enforce need to be strengthened.

CAA Funding Model

- 3.13 In Northern Ireland, The Consumer Council is the statutory representative for air passengers (as described in Section 1.3 of this submission). In addition, Section 5.(1) of the General Consumer Council (Northern Ireland) Order 1984 states, "The Council shall consider and, where it appears to it to be desirable, make recommendations with respect to any matter affecting ... services and facilities provided for passengers travelling to and from Northern Ireland."
- 3.14 Between 1 April 2017 and 31 December 2022, we have assisted 7,100 Northern Ireland airline consumers to receive almost £1,377,817 in refunds and compensation. We have included detailed statistics for the Consumer Council's aviation complaints work between 2017 and 2022 at Annex 1. We work in partnership with the three airports in Northern Ireland to conduct 'Access Audits' of the facilities for passengers with a disability and reduced mobility. We produce information guides for passengers on their rights when services are delayed or cancelled,¹² and for passengers travelling with a disability or reduced mobility.¹³ We have a statutory duty to sit on the three airport forums in Northern Ireland as prescribed in the Airports (Northern Ireland) Order 1994.

¹⁰ [CAP1228.pdf \(caa.co.uk\)](#)

¹¹ <https://www.legislation.gov.uk/ukdsi/2018/9780111168479/regulation/29>

¹² https://www.consumercouncil.org.uk/sites/default/files/2022-07/Plane_Facts_Guide_Web_0.pdf

¹³ https://www.consumercouncil.org.uk/sites/default/files/2022-07/Access_to_Air_Travel_Guide_Web.pdf

- 3.15 Despite this, no funding is provided for these activities by either DfT or CAA. The Consumer Council would therefore request, that in order for this review of the CAA to achieve its objective of “ensuring the provision of world-leading civil aviation regulation and public services for decades to come”,¹⁴ DfT considers funding The Consumer Council within the CAA funding model in undertaking its work.

4. CONCLUSION

- 4.1 We believe the powers of the CAA must be enhanced and strengthened in order to better enforce passenger rights. The role of the Consumer Council and our work in protecting aviation consumers also needs to be acknowledged and taken into account when considering the future funding model of the CAA.
- 4.2 We would welcome further ongoing engagement with DfT on all aspects of our response.

5. CONTACT DETAILS

- 5.1 To discuss the Consumer Council’s consultation response, submitted on 27 January 2023, please contact Richard Williams, Head of Transport Policy or Michelle Kelly, Policy Officer.

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¹⁴<https://www.gov.uk/government/news/government-launches-review-of-civil-aviation-authority-to-strengthen-regulator-for-the-future>

ANNEX 1

Breakdown of data from the Consumer Council Airline Complaints Statistics, April 2017 – December 2022

Airline Contacts

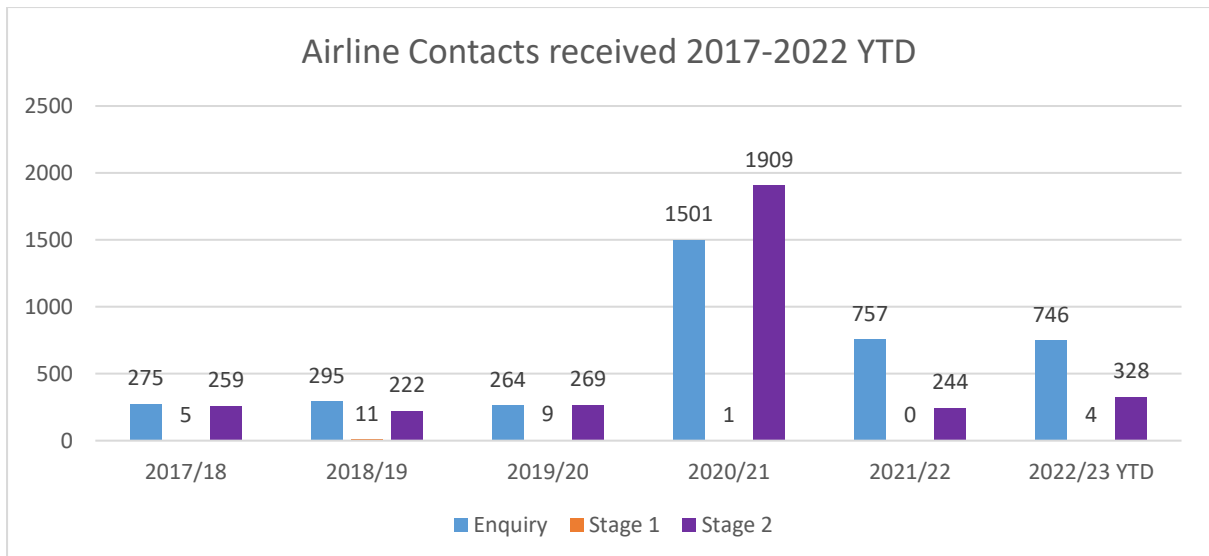
Total Contacts

Year	Total Contacts	Enquiry	Stage 1 Investigation	Stage 1 Referral	Stage 2
2017	539	275	3	2	259
2018	528	295	6	5	222
2019	542	264	6	3	269
2020	3411	1501	1	0	1909
2021	1001	757	0	0	244
2022 YTD	1079	746	2	2	328
Total	7100	3838	19	12	3231

A **Stage 1 investigation** is an instance where the consumer has not yet contacted the service provider; however, the Consumer Council believes it is in the consumer's best interests if we raise the complaint on his/her behalf. For instance, if the consumer is vulnerable in some way.

A **Stage 1 referral** is when the consumer has not contacted the service provider in the first instance to give it the opportunity to resolve the complaint. The complaint is therefore forwarded to the service provider by the Consumer Council and it is asked to respond to the consumer in accordance with its complaints procedure.

A **Stage 2 complaint** is where the consumer has contacted the service provider but remains dissatisfied with the response received or is yet to receive a response after a reasonable period of time has elapsed.



Contacts related to refunds and compensation

From 2017-2022, 5,090 of the contacts about airlines were issues relating to refunds or compensation. This represents 72% of all the airline contacts in this period. They fall under the category “Cancellations & Delays”, so it is not possible to determine which are due specifically to delayed or cancelled flights, but rather the total is representative of all queries regarding refunds and compensation.

Financial Returns

From 2017-2022 YTD, 2948 of the 7065 airline contacts received money back. This represents 42% of all the airline contacts in this period. The total amount returned to consumers for airline issues was £1,377,817. The majority of this was returned in 2020/2021 due to the high volume of contacts about airlines related to the COVID-19 travel restrictions.

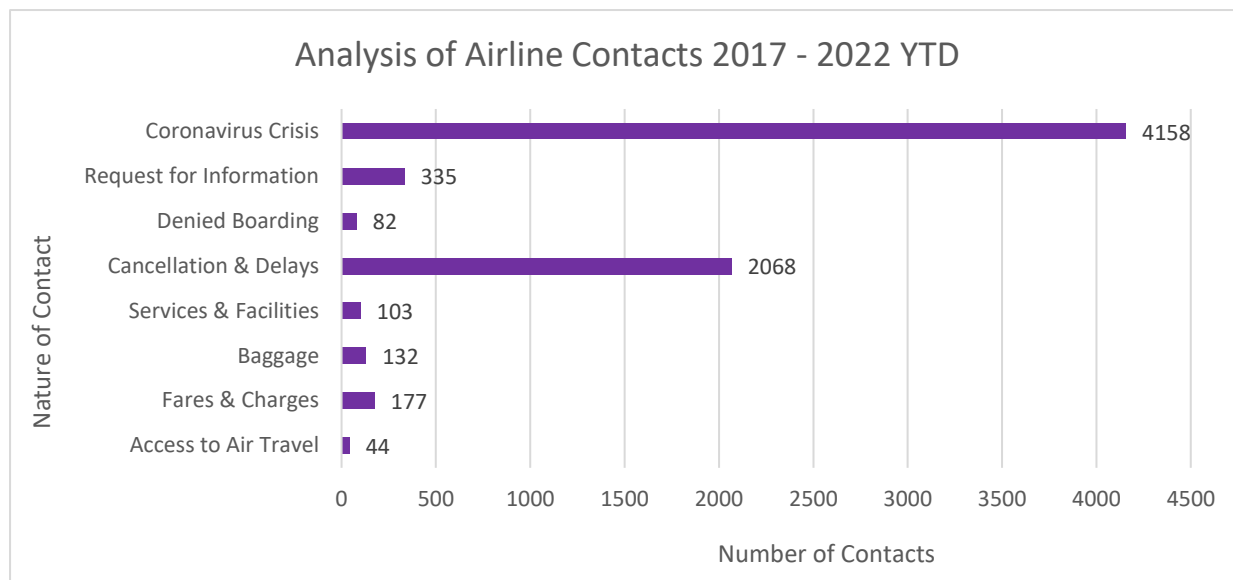
Year	Amount returned
2017	£103,068
2018	£59,535
2019	£92,813
2020	£855,292
2021	£132,292
2022 YTD	£134,817
Total:	£1,377,817

The average amount received was £467.37. The most common reasons for receiving money back were cancellation refund request, cancellation refund delay and failure/inadequate compensation.

Analysis of Airline Contacts

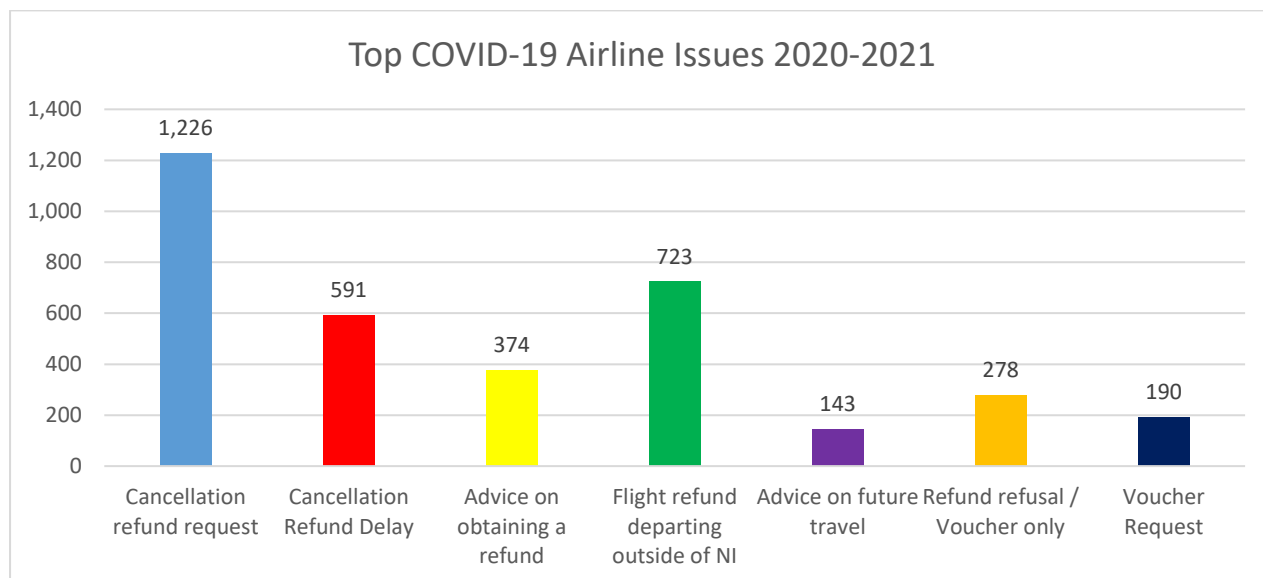
The chart below shows the top Airline issues raised by consumers in Northern Ireland since 2017 to 2022 YTD.

It is clear from the data below, how from 2017 to present, the COVID-19 pandemic had such an impact on airline contacts, with over 60% of the total airline contacts received in the reporting period, being COVID related (4,158).



Aside from the Coronavirus contacts which were mainly recorded in 2020-2021 (with some issues still being raised in 2022), cancellation and delays was the second highest issue raised by consumers. General requests for information and fares and charges, were also common issues.

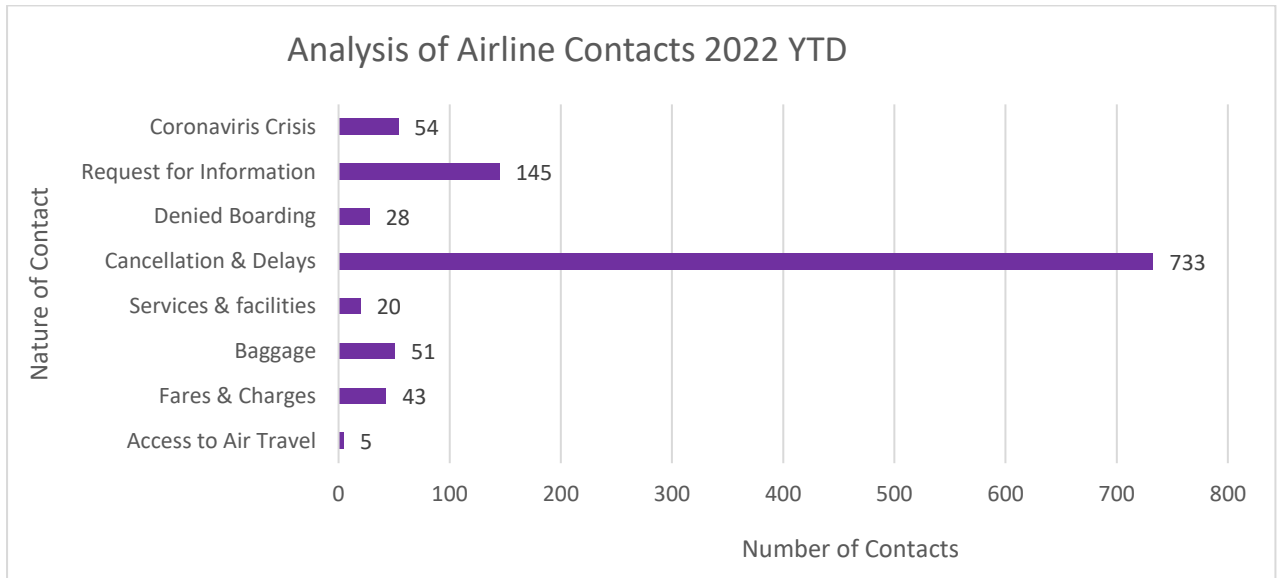
Looking more closely at the COVID-19 contacts, the chart below shows the top airline issues raised by consumers. Not surprisingly, contacts relating to refunds were the most common, dominating the top issues raised by Northern Ireland consumers during the pandemic.



In the summer of 2022, the Consumer Council saw a spike in airline contacts as many Northern Ireland consumers were affected by flight cancellations and delays. Consumers encountered issues

in obtaining refunds and compensation and contacted the Consumer Council to get advice and assistance in resolving their complaints.

The chart below shows the issues that consumers have contacted us about so far in 2022, with cancellation and delays once again dominating, accounting for 68% of the total airline contacts received from 1 April 2022 to 31 December 2022.





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