

MISUSE OF SLOTS ENFORCEMENT CODE

ANNUAL REPORT – 2012/13

1. Introduction

The EU Slot Regulations 2004⁽¹⁾ (Article 14.5) requires Member States to ensure that effective, proportionate and dissuasive sanctions or equivalent measures are available to deal with repeated and intentional slot misuse.

In July 2005 the UK Department for Transport (DfT) consulted with industry stakeholders on the best means of controlling the misuse of slots at the coordinated airports in the UK⁽²⁾.

As a result of this consultation, the DfT concluded that a sanctions scheme, including financial sanctions, was necessary and that ACL as the coordinator at the UK's coordinated airports should administer the scheme.

In April 2006 the DfT published draft 'Misuse of Slots Rules' and 'Procedures and Guidelines', produced jointly by the DfT and ACL, setting out the proposed basis of operation of the scheme. The DfT also published a draft Statutory Instrument to implement the EU Slot Regulations 2004 into UK law. The DfT and ACL held a seminar attended by industry stakeholders to discuss the proposed scheme and invited written submissions.

On 1 January 2007 the Airport Slot Allocation Regulations 2006 (SI 2006 No. 2665 – the 'UK Regulations') came into effect which mandated ACL (the Coordinator) to adopt an enforcement code to make provision for the manner in which it would enforce the UK Regulations. ACL published the Misuse of Slots Enforcement Code 2007 (the Enforcement Code) taking into account the views expressed by the industry stakeholders in the previous consultations.

The Enforcement Code was reviewed in 2008 and 2010. In the light of experience, ACL proposed and consulted on a number of clarifications and improvements to the Enforcement Code and consulted the industry. The Enforcement Code was then updated on 22 September 2008 and 17 September 2010, taking into account the views expressed by the respondents to the consultation.

⁽¹⁾ Regulation (EC) No 793/2004 amending Council Regulation (EEC) No 95/93 on common rules for the allocation of slots at Community airports

⁽²⁾ The UK's coordinated airports are Heathrow, Gatwick, Stansted, Manchester and London City.

ACL is currently undertaking the 2013 review of the Enforcement Code, and an updated Code will be published following consultation in July 2013.

This report summarises ACL's activities in applying the Enforcement Code during the period April 2012 to March 2013. A copy of the Enforcement Code can be found in the 'Slot Sanctions' area of the ACL website (www.acl-uk.org).

2. Types of Misuse

The Enforcement Code identifies five common types of misuse that are addressed by the UK Regulations:

- Operation of a series of air services at times significantly different from the allocated slots.
- Operation of an ad hoc air service at times significantly different from the allocated slots.
- The use of a slot in a significantly different way from that indicated at the time of allocation where such use causes prejudice to airport or air traffic operations (eg, operating with a larger aircraft than the slot allocated at a terminal constrained airport, operating at night without an allocation of night movements/night quota, or operating with a noisier aircraft than approved by the Coordinator).
- Operation of an air service without an allocated slot.
- The failure to operate a slot allocated by the coordinator without cancelling it in advance, where the non-operation is not the result of factors beyond the air carrier's reasonable control, and thereby causing prejudice to airport or air traffic operations.

Each type of misuse above must be both repeated and intentional before it can be liable for a possible sanction. To be treated as repeated, the misuse should be of the same type at the same airport within the last six months.

The Enforcement Code also states that this list is not exhaustive and that there may be other forms of slot misuse covered by UK Regulations and the Enforcement Code, or which become identified over time, and which may also need to be addressed in the future.

3. Sanctions Available

The UK Regulations permit the coordinator to apply a penalty of up to £20,000 for each instance of slot misuse where the misuse is repeated and intentional. The Enforcement Code states that, where a financial penalty is deemed necessary, the minimum value will normally be £1,000 with higher values for multiple infringements or more serious instances of misuse.

The UK Regulations also give the coordinator the power to issue directions for the purpose of securing compliance with allocated slots. Directions may be issued to air carriers, the airport managing body or the air traffic service

provider. Air carriers failing to comply with a direction may be subject to a penalty of up to £20,000.

The UK Regulations also permit the coordinator or schedules facilitator to apply a penalty of up to £20,000 for the failure to provide the coordinator or schedules facilitator with necessary information, or knowingly or recklessly providing false information.

4. Funding

It should be noted that the purpose of the Enforcement Code is to achieve compliance with allocated slots and combat intentional misuse, **not** to generate revenue. The costs of administering the scheme are funded initially by the managing bodies of the UK coordinated airports (Heathrow, Gatwick, Stansted, London City, London Luton¹ and Manchester airports). The airports' funding is refunded from any fine revenue received by ACL in proportion to their original contributions. Any surplus revenue (fine revenue in excess of the cost of administering the Enforcement Code) at the end of the year is submitted to HM Treasury and paid into the Consolidated Fund. This ensures the Coordinator's financial independence and seeks to avoid incentives to levy financial penalties except to the extent necessary to achieve adherence to the allocated slots.

5. Monitoring Activity

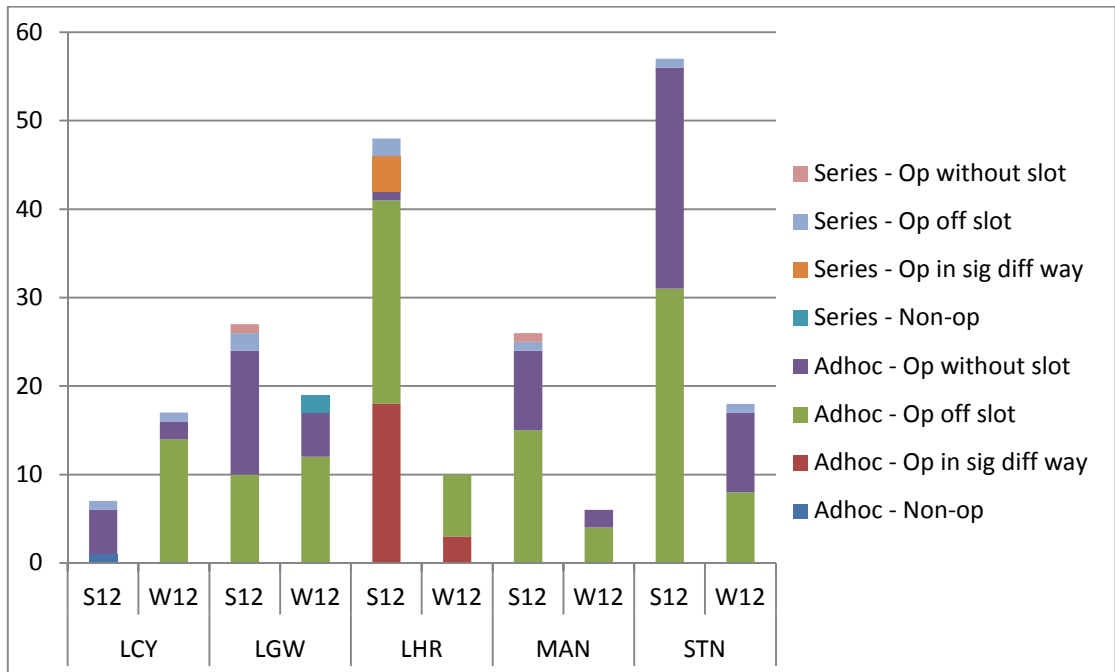
ACL's monitoring processes involve discrepancy checks both in advance of the date of operation (eg, differences between allocated slot times and published times on airline websites) and retrospective analysis of the actual times of operation compared with the allocated slots. This retrospective analysis also identifies any operations without allocated slots.

After identifying significant discrepancies, the air carrier concerned is contacted and asked to provide an explanation. Figure 1 shows the seasonal volume of issues investigated across the coordinated airports during the Summer 2012 and Winter 2012/13 scheduling season. General slot monitoring queries are not recorded under these figures, only issues relating to possible intentional misuse.

Slot monitoring issues related to a series of slots tend to arise around the start of each scheduling season, ie, in March for a summer season and October for a winter season. However issues with series of slots now tend to be very small in number, which is one measure of the success of the Enforcement Code.

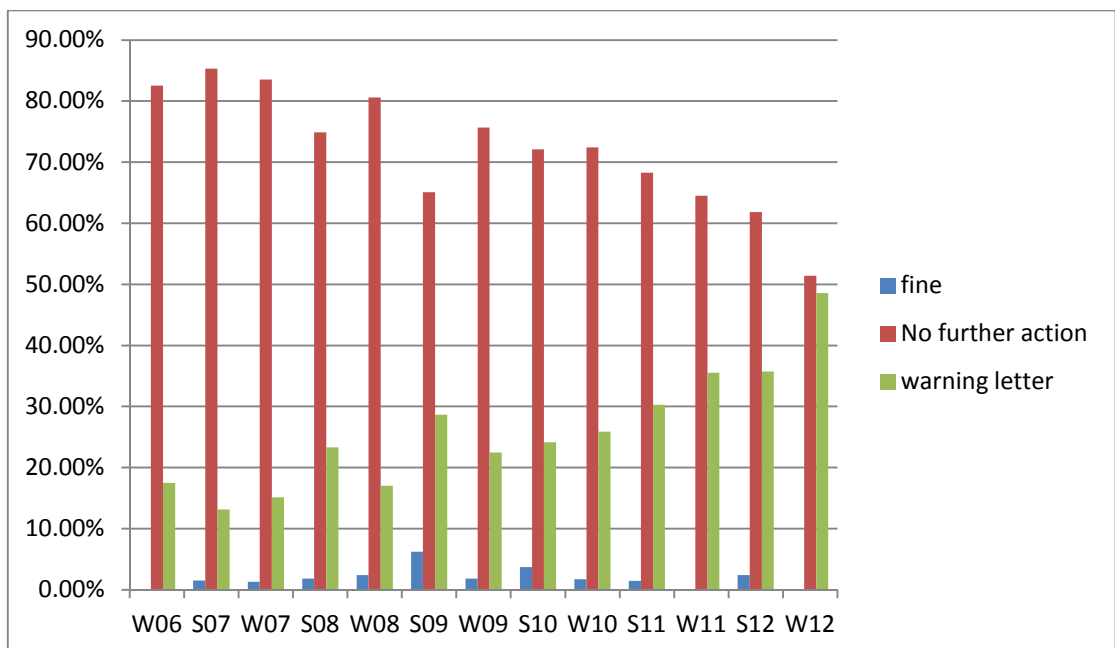
¹ London Luton Airport (LTN) was designated as a coordinated airport from the Summer 2013 season

Figure 1: Sanction Queries raised by Airport



There were a total of 235 issues raised during the 2012/13 year, a decrease of 25% on the 2011/12 year. In part the reduction can be attributed to an increased level of investigation prior to ACL sending queries which is indicative of a more targeted approach, and results in a higher proportion of queries resulting in a warning or sanctions, as is evident in Figure 2. Once again the majority of the queries were raised during the busier summer period. As with the previous year, the majority of queries related to ad hoc off slot operations.

Figure 2: Percentages – queries to warnings/sanctions



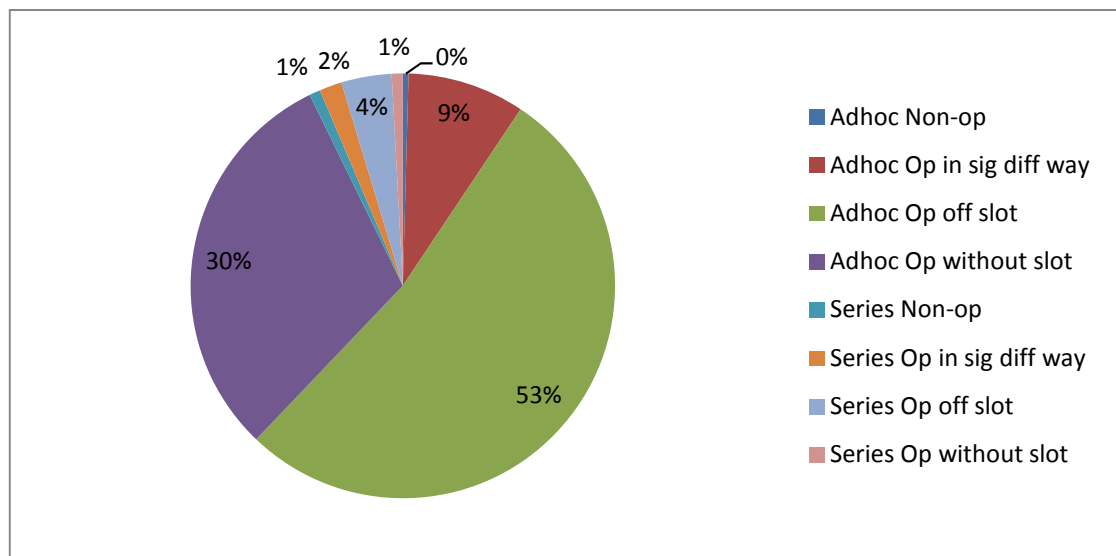
The types of issues investigated are broken down in Figure 3.

Overall, 93% of issues related to ad hoc services – mainly operations without an allocated slot or operations at a time significantly different from the allocated slot.

The issues arising with series off slots related to air carriers, publishing or operating at the wrong time, or failing to cancel slots.

It should be noted that, prior to the introduction of the Enforcement Code, there were no effective sanctions against slot misuse by ad hoc services. The administrative sanctions of the EU Slot Regulations 2004 (eg, Article 14.4) related only to the loss of historic rights for a series of slots, but there are no historic rights associated with ad hoc air services.

Figure 3: Types of Issues Investigated

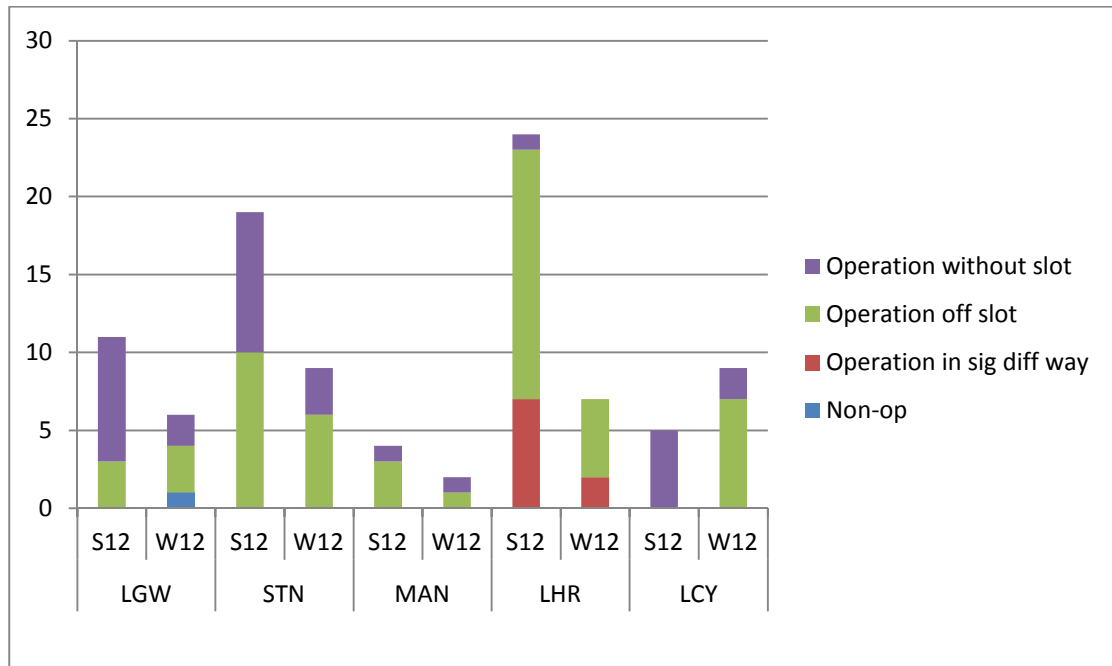


6. Warnings and Sanctions

Following the initial investigation of a potential slot misuse, the coordinator must decide whether a breach of the Enforcement Code has occurred. If it is a one-off incident then a warning letter is issued informing the air carrier that a further occurrence of the breach within the next 6 months may result in a financial sanction. If there is a repeated and intentional breach then a financial penalty may be applied.

The number of warnings issued each season by airport during 2011/12 is shown in Figure 4. Of the 236 issues investigated, 94 (40%) were deemed to be a breach of the Enforcement Code, an increase from the previous season which saw 33%, which is evidence of ACL's more targeted approach.

Figure 4: Warnings/Sanctions Issued by Airport/Season



7. Sanctions Applied

The sanctions applied during 2012/13, which are published on the ACL website, are summarised in the table below. The total amount of sanctions applied during 2012/13 was £43,000.

Table 1 Sanctions Applied for Misuse by Ad Hoc Air Services

Air Carrier	Airport - Season	Issue	Sanction
Air X Executive	Heathrow - S12	Operation off slot	£4,000

Sanctions Applied for Misuse by series Air Services

Air Carrier	Airport - Season	Issue	Sanction
BMI	Heathrow - S12	Operation in a significantly different way	£23,000
British Airways	Heathrow - S12	Operation without a slot	£4,000
Virgin Atlantic	Heathrow - S12	Operation in a significantly different way	£12,000

8. Independent Review

Air Carriers that are dissatisfied with the coordinator's decision to apply a sanction may request an Independent Review. An Independent Reviewer was appointed by ACL for this purpose following consultation with Industry stakeholders, and the appointment was approved by the Secretary of State.

There was one Independent Review during 2012 relating to the application of a sanction against BMI at Heathrow for operating slot in a significantly different way than allocated, by operating a larger capacity aircraft, on 23 occasions between 21 May and 30 July 2012.

The case centred on the period of heightened concerns of operations at Heathrow during the London 2012 Olympics, especially in relation to unauthorised aircraft upgrades.

During the period 21 May and 30 July 2012, BMI operated an A330 with a 280 seats using slots allocated on the basis of 198 seat capacity. BMI had sold tickets based on the 280 seat capacity, but had failed to request a corresponding change to the allocated slots. On the 23 occasions when a sanction was applied, the larger aircraft was in breach of declared terminal capacities.

All airlines at Heathrow, including BMI, had received a number of reminders in advance of the Olympics period that, due to high demand expected demand, all planned aircraft changes must be requested in advance.

The independent review was requested by British Airways, which had assumed ownership of BMI. BA did not dispute the facts, but asked that the special circumstances related to the integration of the BMI and BA operations, which had stretched management oversight, be taken into account, and that the failure to request a larger seat capacity for the operations between 21 May and 30 July 2012 was a single error.

Having heard from both parties, the Independent Reviewer concluded that the BMI operations represented a series breach of the Regulations, and that the Enforcement Code would not be effective if management oversight or other forms of human error were proffered, and had to be accepted, as excuses for breaches of the Regulations. The Independent Reviewer accepted that ACL adopted a pragmatic approach on whether human error could be accepted as a possible mitigating factor in certain cases.

The Independent Reviewer endorsed the sanction imposed.

9. London Olympics 2012

During the Olympics period an additional 36 airports in the South of England were designated as coordinated for the period 21 July 2012 to 15 August 2012, and subject to the Enforcement Code.

A large increase in GA/BA movements was forecast (from around 7,000 movements in a normal summer period to around 10,000 movements over the Olympic period), with a significant increase in operators who do not use the UK airports on a regular basis.

To increase the effectiveness of the sanctions scheme the Enforcement Code was temporarily amended following consultations for the period of the Olympics period. The term 'repeated' was re-defined to include repeated misuses at different coordinated airports in the South of England, instead of necessarily at the same airport.

Section 5.1 of the Code was temporarily changed to be:

5.1 '**Repeatedly** - This is taken to mean more than once in the past 6 months on a ~~particular~~ scheduled service operated by that air carrier, to or from **any UK Coordinated airport** ~~the airport in question~~, or more than one ad hoc service in the past 6 months operated by that air carrier to or from **any UK Coordinated airport**. ~~the airport in question.~~'

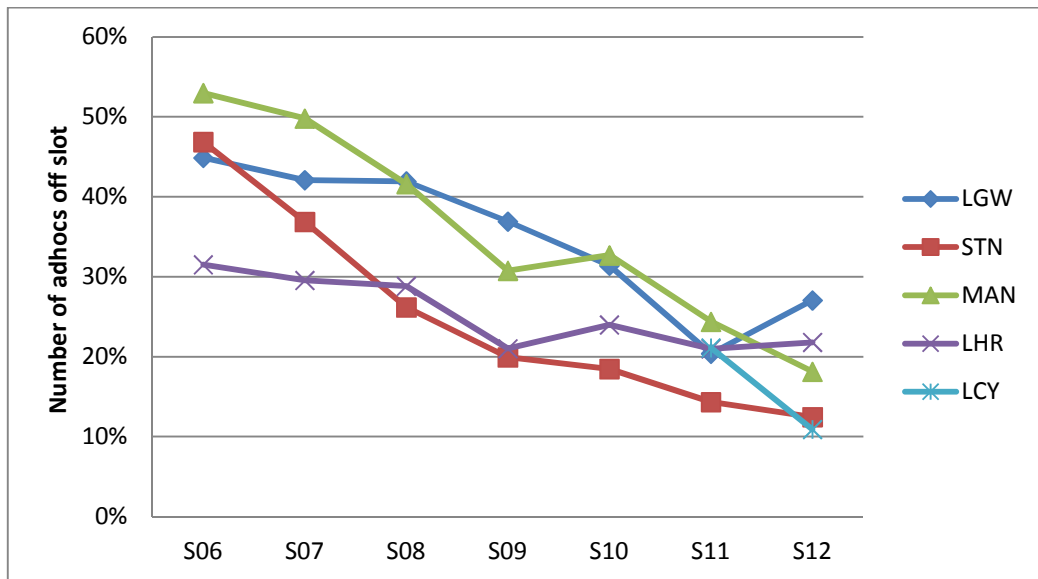
As a result of this change to the Code and a other additional measures implemented by all other interested parties (DfT, NATS, CAA, Eurocontrol, airports, air carriers, etc) across the Olympic period, overall performance during the Olympics was very good.

ACL sent out 25 queries for potential slot misuse at the temporarily coordinated airports. These resulted in five warnings being issued: four concerned operating without a cleared slot (three at Bournemouth, and one at Oxford), and one for a significant off slot operation at Oxford. No operators repeatedly and intentionally misused slots at the temporarily coordinated airports, so no financial penalties were imposed. The only financial penalties applied over the Olympic related to operations in a significantly different way than the allocated slots at Heathrow by BMI and Virgin Atlantic.

10. Effectiveness of the Enforcement Code

It is difficult to accurately measure the overall effect of the Enforcement Code on slot adherence. This is particularly true for operations at times different from the allocated slot time because there are many valid operational reasons why air services do not operate as scheduled. These punctuality issues tend to obscure the number of air services that may be *intentionally* operating at a different time. However Figure 5 shows there has been a general improvement in the number of ad hoc movements that trigger a query. The percentage shown is measured against the total number of ad hoc movements for that season, taking into account the recent decline in traffic. Gatwick increased in 2013 due to a change in the data capture for arrivals, as actual on block times become available compared with the previous method of using the landing time plus an assumed taxi in time. ACL expects Summer 2013 to show an improvement on this.

Figure 5: Percentage of Ad Hoc Operations Triggering a Query for Off Slot Operations



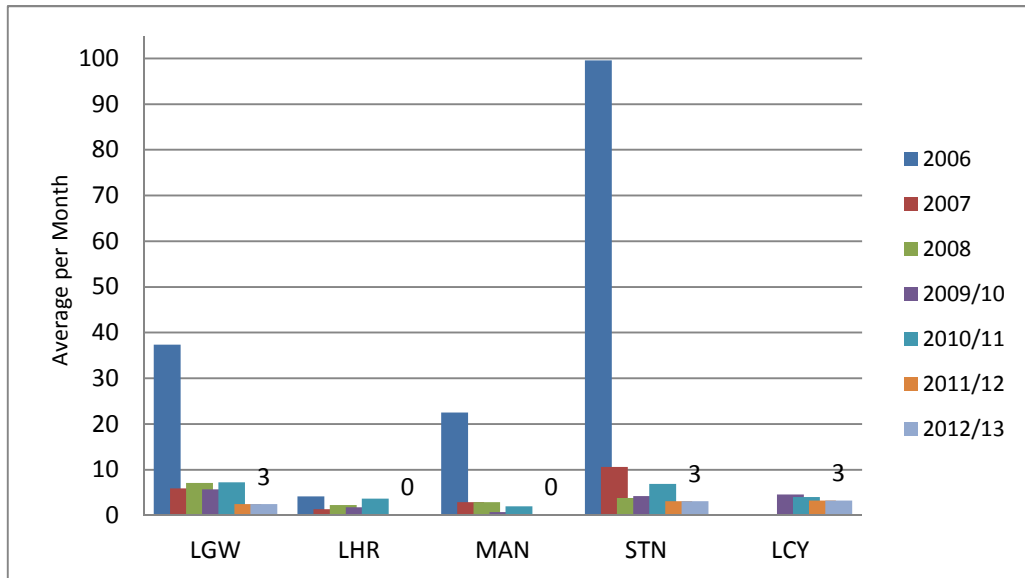
A good measure of the effectiveness of the Enforcement Code on slot adherence is the reduction in the number of operations without allocated slots (Figure 6), which can be more clearly identified than time discrepancies. In the first year of the scheme there was a dramatic improvement in the number of operations without allocated slots (87% reduction overall). This performance has largely been maintained during 2012/13.

Evidence that this improvement is attributable to the Enforcement Code is gained by contrasting the performance of UK coordinated airports with Dublin Airport (there is no enforcement code in effect in the Republic of Ireland).

Dublin Airport is a good comparator as it is similar to Stansted or Manchester airports in terms of overall size and the degree of slot scarcity. Many of the Dublin air carriers also have large UK operations. ACL's management of the Dublin slot coordination process is the same as at the five coordinated airports in the UK.

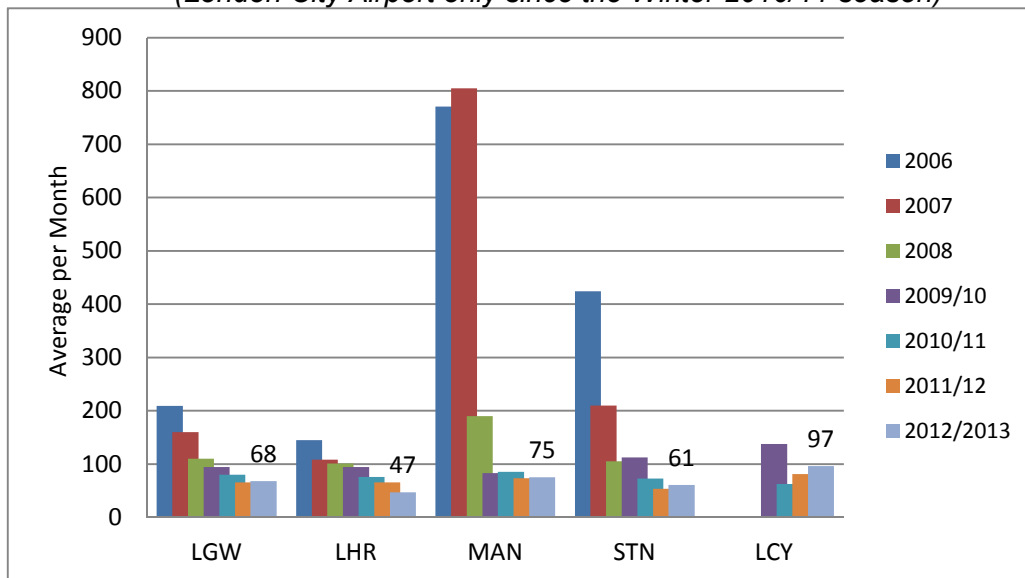
During 2012/13 the average number of operations without slots at Dublin Airport was 35 per month, compared with 0-5 per month at UK coordinated airports.

Figure 6: Number of Operations without Slots Allocated
(London City Airport data only since the Winter 2009/10 season)



The number of slots operators fail to cancel has also continued to decline with all five airports now averaging 47-75 per month, as seen in Figure 7.

Figure 7: Number of Slots Not Operated without Cancelling in Advance
(London City Airport only since the Winter 2010/11 season)



11. Conclusion

The continued application of the Enforcement Code has led to significant changes in the behaviour of air carriers. The result is greater compliance with allocated slot times, a significant reduction in the number of operations without slots, and improvements in the cancelling of slots in advance for flights that will not operate, allowing these slots to be 're-cycled'. ACL continues to refine the processes undertaken at the investigation stage, so reducing the number of queries for air carriers to respond to.

ACL has maintained the level of improvement seen in the first three years of the Enforcement Code and, where possible, sought to reduce misuse further.

A copy of this report is available in the 'Slot Sanctions' area of the ACL web site (www.acl-uk.org).