

MISUSE OF SLOTS ENFORCEMENT CODE

ANNUAL REPORT – 2016/17

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, 2010, 2011 (for the 2012 London Olympics) and 2013. In 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, 17 September 2010, November 2011 (for the 2012 London Olympics) and 20 August 2013, taking into account the views expressed by the respondents to the consultation.

This report summarises ACL's activities in applying the Enforcement Code during the period April 2016 to March 2017. A copy of the Enforcement Code can be found in the 'Slot Sanctions' area of the ACL website (www.acl-uk.org).

⁽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, London City and London Luton.

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 (as defined in the Enforcement Code) before it can be liable for a possible sanction.

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

The purpose of the Enforcement Code is to achieve compliance with allocated slots and combat 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. Birmingham as of the start of Summer 2017 is now

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

coordinated, but is not included in the figures for this report, which covers the period March 2016 to April 2017). 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 may be 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.

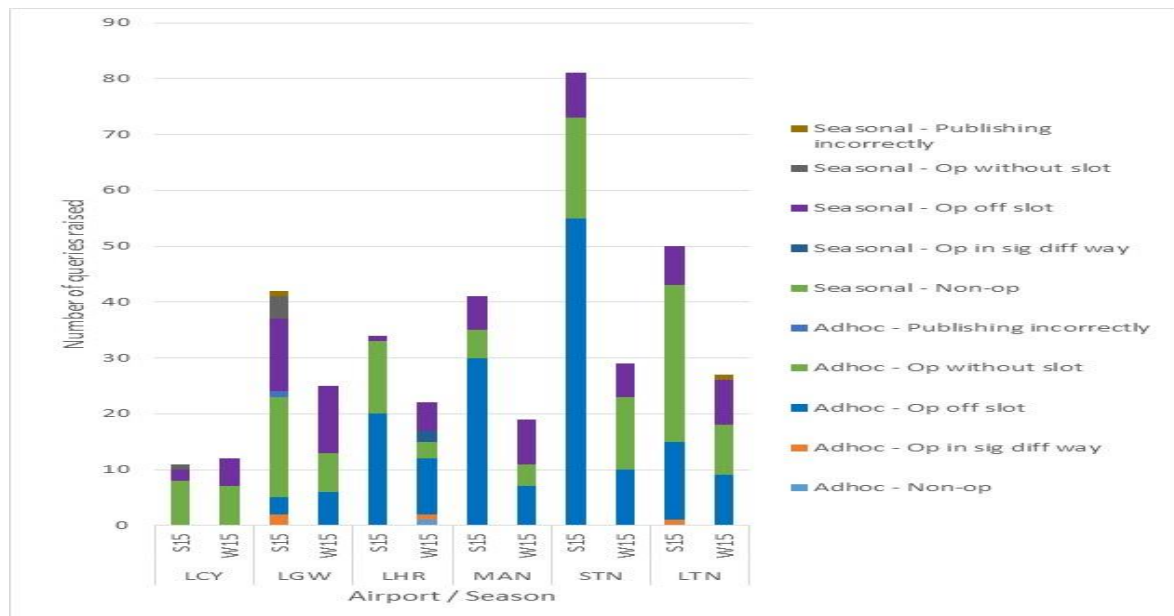
5. Monitoring Activity

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 2016 and Winter 2016/17 scheduling season.

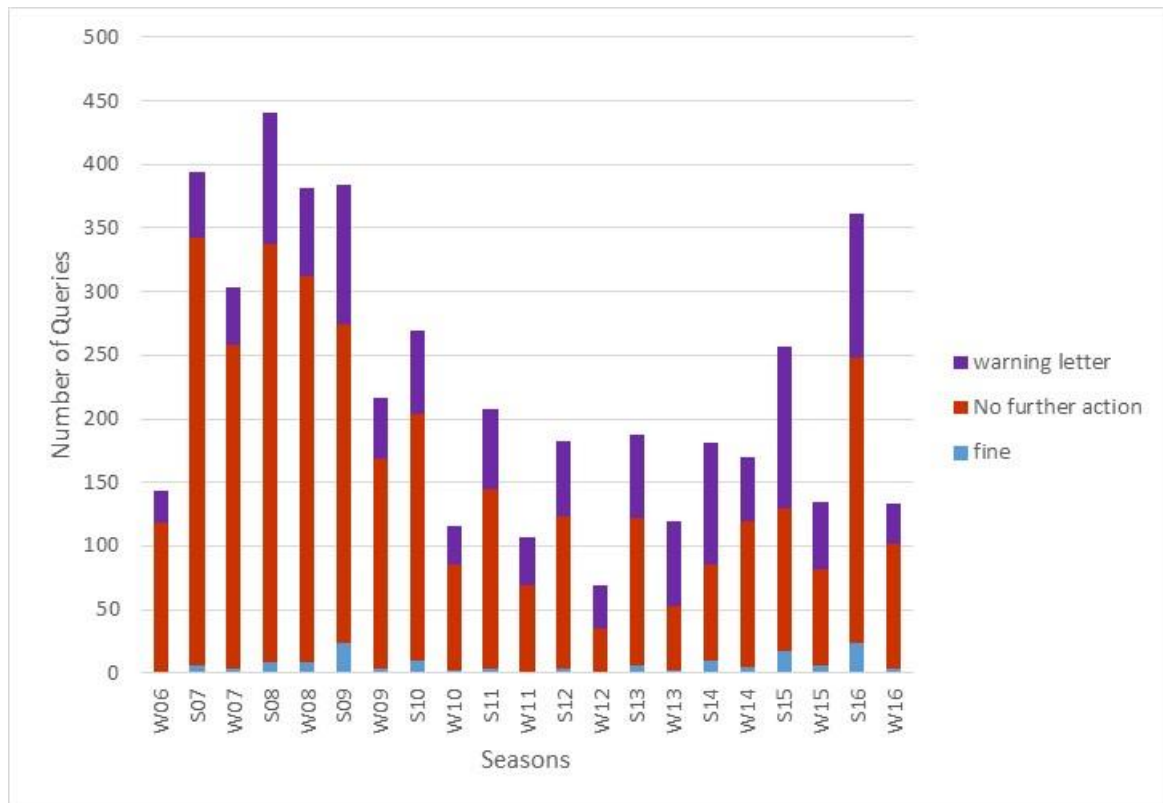
Slot monitoring issues related to a series of slots tend to arise around the start of each scheduling season, i.e., in March for a summer season and October for a winter season. Over the last couple of seasons the percentage of Airlines that are deemed to be significantly off slot has deteriorated. This has led to an increase in focus on seasonal monitoring, and the number of queries sent.

Figure 1: Sanction Queries raised by Airport



There were a total of 505 issues raised during the 2015/16 year, an increase of 28.5% on the 2014/15 year. The queries raised between the Summer and Winter Season were roughly split 70/30 (71.9% Summer, 28.1% Winter) compared to the previous period of 65.9% Summer 2014 and 34.1% Winter 2014/15. As with the previous year, the majority of queries related to ad hoc off slot operations. Figure 2, demonstrates the increase in the number of queries sent over S15, and S16.

Figure 2: Volume of queries to warnings/sanctions



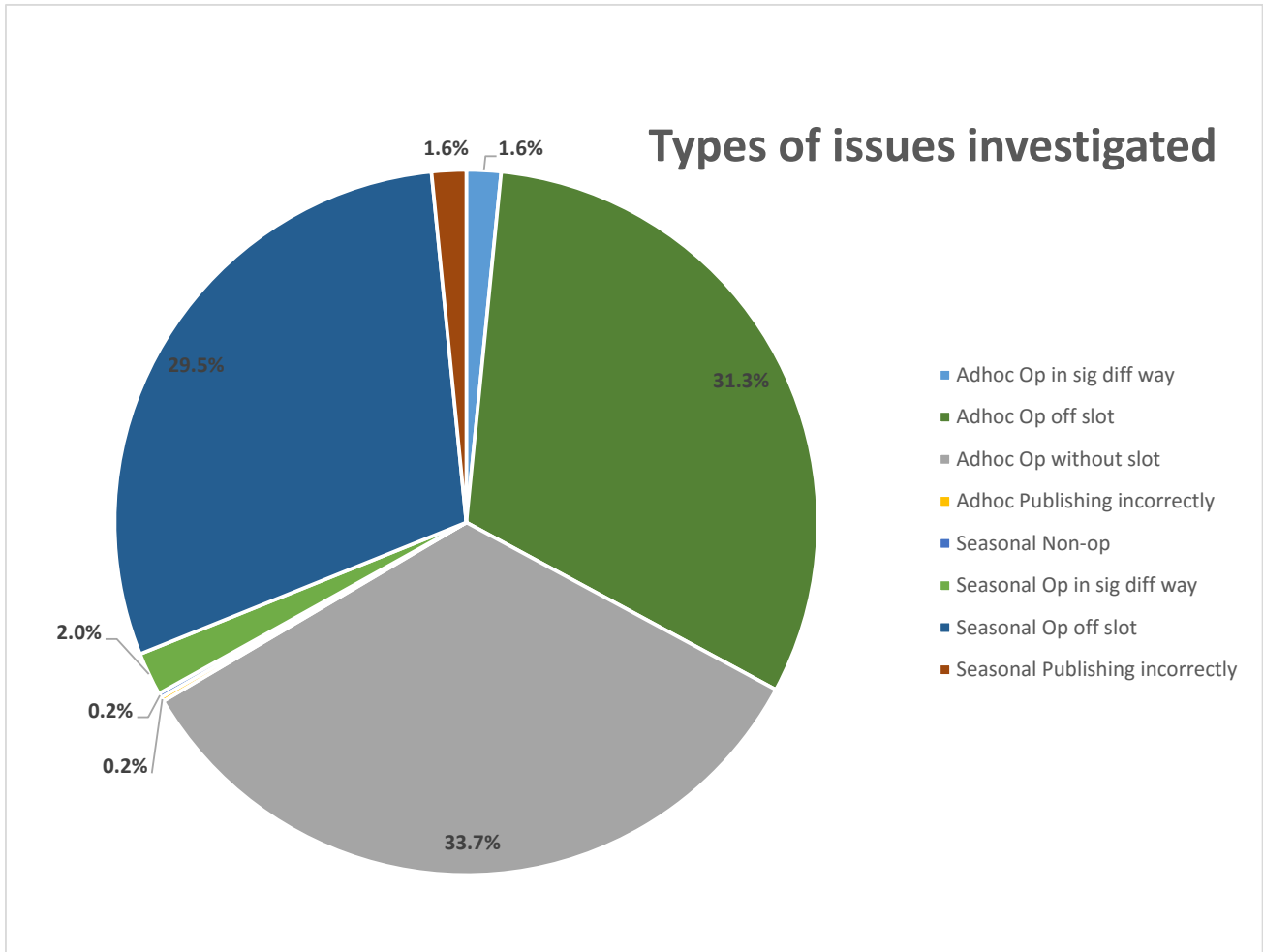
The types of issues investigated are broken down in Figure 3.

Overall, 67% of issues related to ad hoc services – mainly operations without an allocated slot or operations at a time significantly different from the allocated slot.

Issues arising with seasonal off slots related to air carriers, operations without an allocated slot, operating at the wrong time, or operating in a significantly different way to the slot allocated. Over the past few seasons the balance of ad hoc queries to seasonal queries has shifted, in a great part due to the decreasing On-Time Performance of a number of Airlines, which in turn has impacted on the general performance of the Airports they service.

It should though still 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

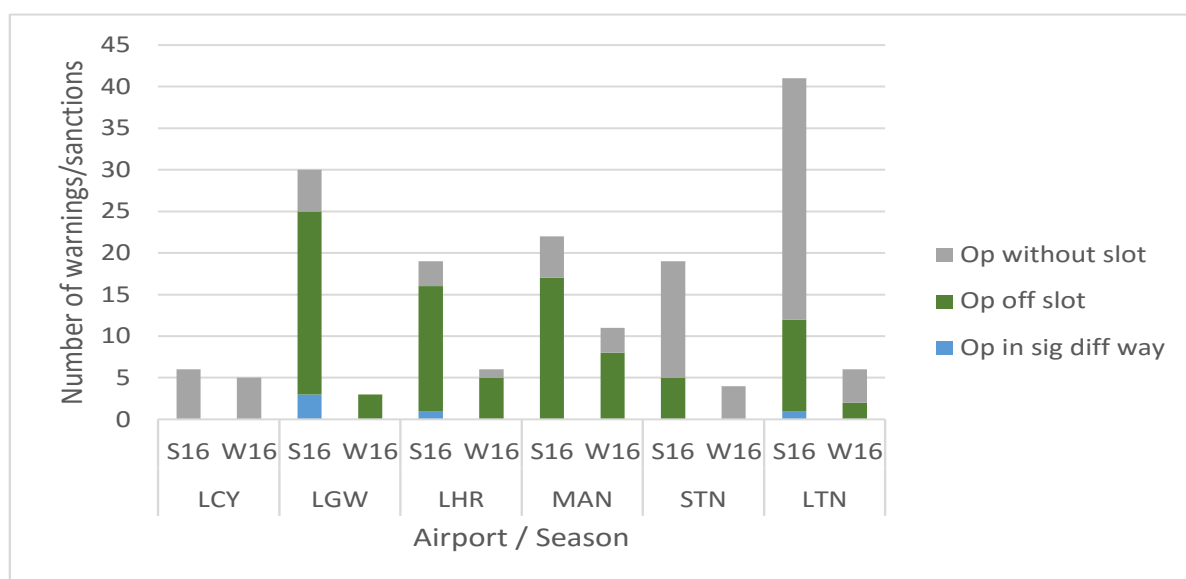


6. Warnings and Sanctions

Following the initial investigation of a potential slot misuse, the coordinator must decide whether a breach of the UK Regulation 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 2016/17 is shown in Figure 4. Of the 505 issues investigated, 172 (34.1%) were deemed to be a breach of the UK Regulation, down on the figure in the previous period (2015/16), of 51.3%. This is in part due to ACL looking to work with and understand from the Airline in respect of seasonal queries if the matter was beyond the reasonable control of the Airline, or if corrective measures, including rescheduling can be implemented. In such cases, ACL will continue to monitor the Airline, and where improvement in OTP is observed, no further action will be taken.

Figure 4: Warnings/Sanctions Issued by Airport/Season



6. Sanctions Applied

The sanctions applied during 2016/17, which are published on the ACL website, are summarised in the table below. The total amount of sanctions applied during 2016/17 was £1,585,000.

Air Carrier	Airport	Season	Issue	Sanction
Air India	Heathrow	S16	Operations in a significantly different way	£88,000
Air X Charter (Malta)	Luton	S16	Operation without slot	£20,000
British Airways	Gatwick	S16	Operations significantly off slot	£14,000
easyJet	Gatwick	S16	Operations significantly off slot	£348,000
easyJet	Gatwick	S16	Operations significantly off slot	£612,000
easyJet	Gatwick	S16	Operations significantly off slot	£180,000
Flybe	London City	S16	Operation without slot	£1,000
GlobeAir AG	Luton	W15	Operation without slot	£2,000
GlobeAir AG	Luton	S16	Operation without slot	£1,000
Medview	Gatwick	S16	Operations in a significantly different way	£12,000
Norwegian Air Shuttle	Gatwick	S16	Operations significantly off slot	£174,000
Ryanair	Stansted	W15	Operation without slot	£2,000
Thomas cook	Gatwick	W15	Operations significantly off slot	£12,000
Thomas cook	Gatwick	W15	Operations significantly off slot	£8,000
Titan Airways	Gatwick	S16	Operation significantly off slot	£6,000
Titan Airways	Stansted	S16	Operation significantly off slot	£6,000
Transavia France	Stansted	S16	Operation without slot	£10,000
Travel Services, a. s.	Gatwick	S16	Operations in a significantly different way	£8,000
Tuifly Germany	Luton	W15	Operation without slot	£1,000
VistaJet	Luton	S16	Operation without slot	£12,000
Vueling	Gatwick	S16	Operations significantly off slot	£48,000
Vueling	Gatwick	S16	Operations significantly off slot	£18,000
Vueling	Stansted	S16	Operation without slot	£2,000

8. Independent Review

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

For the reporting period 2016/17, four Independent Reviews were called, three of which are still in progress.

The one independent Review which has been resolved was called by Air India in relation to the application of a sanction at Heathrow for operating slots in a significantly different way than allocated, by operating a larger capacity aircraft, on 11 occasions.

On 14 occasions during the period 23 June 2016 to 17 July 2016, inclusive Air India operated a Boeing 77W configured with 342 seats compared with the seat capacity approved for the associated slot of 238 seats using a Boeing 77L, a variance of 30.4%. On 13 of those occasions the actual passenger loads [on the AI112 departure] exceeded the 238 capacity approved, and on 12 occasions were in breach of the Heathrow Airport declared check-in capacity. For the 11 occasions proposed for a sanction, a total of 733 extra economy passengers were carried.

In March 2016 ACL imposed a sanction on Air India of £1,000 per operation for operating aircraft larger than a slot had been allocated for (the misuse occurred in November 2015).

In the Notice of proposed decision a sanction of £20,000 per operation was proposed.

Following correspondence and two oral hearings, ACL reduced the sanction to £8,000 per operation for 11 operations.

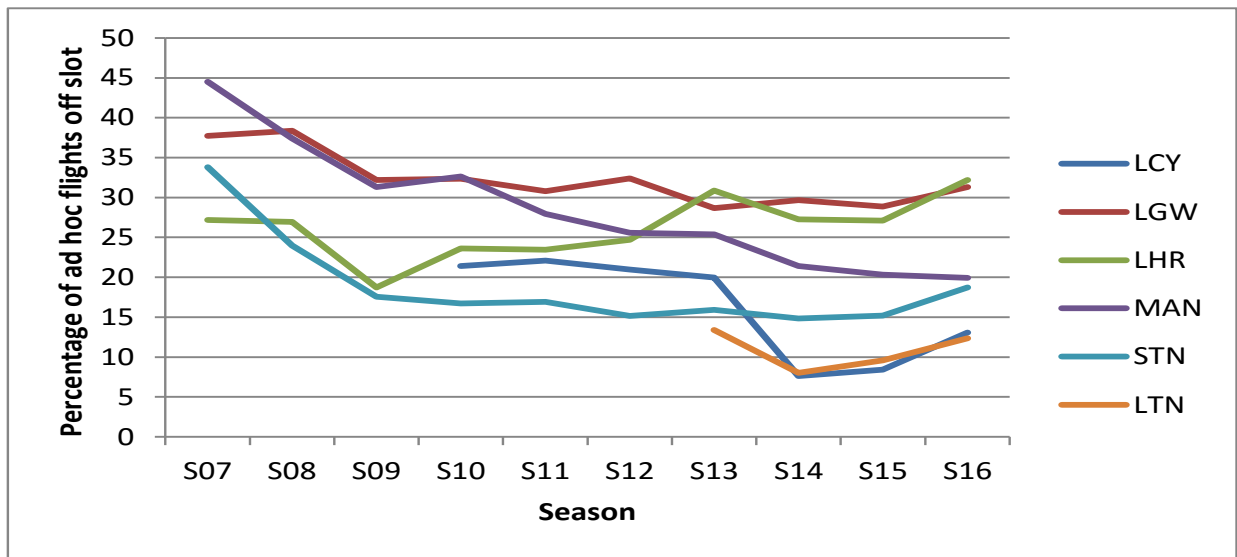
Air India did not dispute the facts, .i.e. that the flights had breached Regulation 14. Air India's request for an Independent Review was primarily made on the grounds that the level of sanction was disproportionate, but that they had not intended to try and recoup any additional cost of operating the larger aircraft by selling the extra seats, more that this was down to internal administrative failings.

Having taken further written statements from both parties, the Independent Reviewer endorsed the sanction imposed of £8,000 per operation.

9. Effectiveness of the Enforcement Code

It is difficult to accurately measure the overall effect of the Enforcement Code on slot adherence. Since the introduction of the Enforcement Code in 2007 the trend of ad hoc flights triggering a query for off slot operations has fallen. However Figure 1 shows there has been an increase in S16. In part this may be down to ceasing the use of the Airport Slot ID from the end of W15. The Airport Slot ID was previously generated for use in matching flight plans to airport slots for GABA aircraft, but due to the small number of no slot operations the contract was not extended. It can only be surmised that although not intended, the Airport Slot ID may well have become an additional means of acknowledgement for the GABA operator.

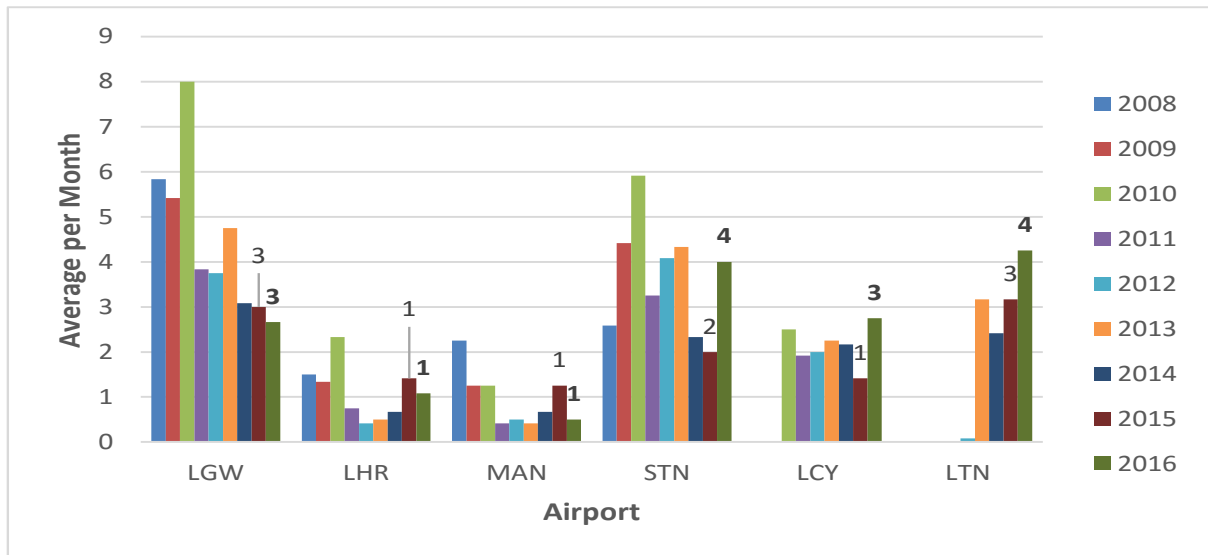
Figure 1: Percentage of Ad Hoc Operations Triggering a Query for Off Slot Operations



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 2), 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 (85.5% reduction overall). This performance although greatly improved since the inception of the Code has recently deteriorated. One explanation, as previously stated, may be the termination of the use of the Airport Slot ID. Such an explanation though would only be attributable to GABA operations. When all the operations without a slot are examined for Summer 2016, 132 in total across the six UK coordinated airports, only 49 were GABA, and of those 29 were at Luton alone. The remaining 89 no slotted flights were Airline related, either positioning flights, missing dates .i.e. seasonal flights missing dates at the start of the season, or as a result of cancellations, that then proceeded to operate.

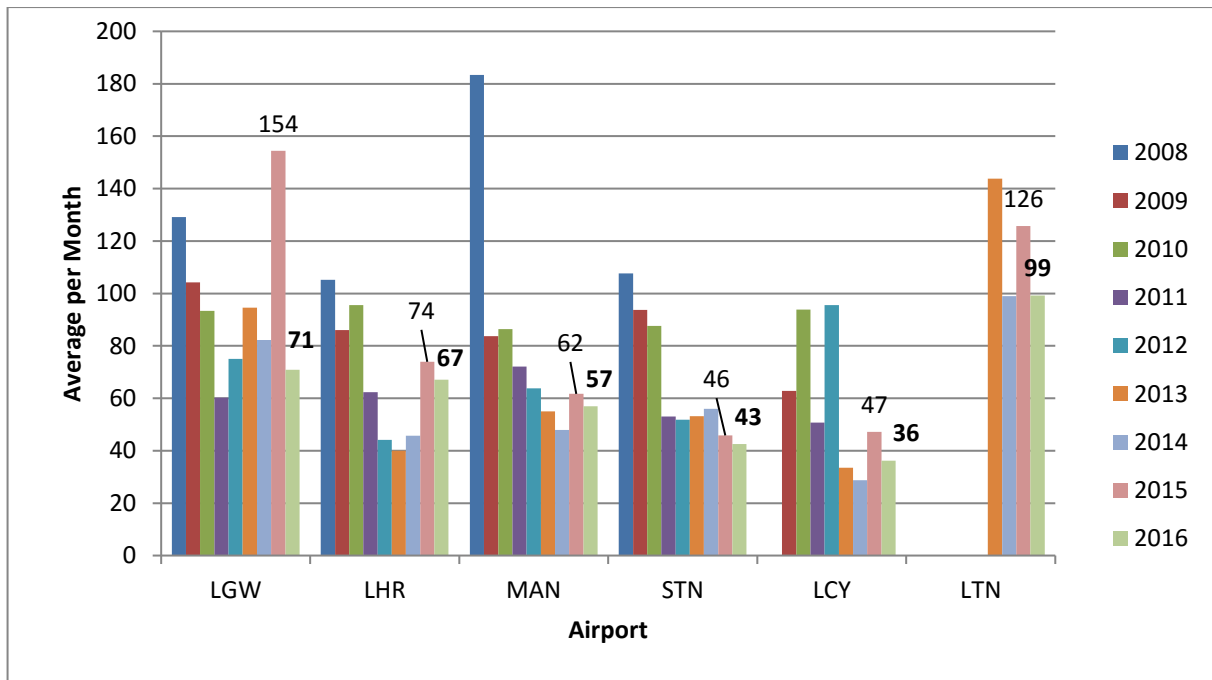
If it is warranted (on a case by case basis), ACL will, having reviewed responses from the operator, look to be pragmatic in either the education of the slot allocation process or the management of an operators slots through OCS (Online Coordination System).

Figure 2: Number of Operations without Slots Allocated (London City Airport data only since the Winter 2010/11 season – London Luton data only since the Summer 2013 season)



The number of slots operators fail to cancel has also continued to decline with all six airports now averaging (2016) 36 - 99 per month, as seen in Figure 3. The primary driver of non-operations at Luton remains General and Business Aviation which ACL continue to engage with handling agents about, to further reduce.

Figure 3: Number of Slots Not Operated without Cancelling in Advance (London City Airport only since the Winter 2010/11 season – London Luton data only since the Summer 2013 season)



11. Conclusion

Summer 2016 saw a deterioration in OTP for a number of Airlines, and in some cases this did impact the overall performance of the Airports they serviced.

This triggered ACL to write more seasonal queries than in previous years, and where justified sanctions were imposed, between £1,000 to £20,000 per operation for breaches of Regulation 14. In applying any sanction (per operation), the sanction is set with the aim of it being effective, dissuasive and proportionate. Where further misuse takes place, under the Enforcement Code, sanctions can be increased as it may be seen that the previous sanction was neither, effective or dissuasive, and only a larger sanction may have the desired effect.

The full effect of applying any sanction for seasonal misuse, and any corrective action implemented by an operator, may only be seen in the preceding equivalent season .i.e. S16 to S17. However, as stated previously, continued misuse from one season to the next, may well result in the need to reach a level of sanction (per operation) that does mean the criteria (for the operator concerned) that is effective, dissuasive and proportionate.

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