Dear Lillian,

Thank you for your letter of 26 March 2019, which asked several questions relating to charter flights in the context of the tragic accident off the Channel Islands on 21 January 2019. There are very clear rules in place that define whether a flight is a commercial transport operation. If a flight is commercial, the operators of the flight are subject to strict safety requirements overseen by the Civil Aviation Authority (CAA). If a pilot or operator breaks these rules, then it becomes a matter of law enforcement.

The legal framework for private charter flights

Any individual, organisation or company that intends to undertake commercial air transport is required by law to hold an Air Operator Certificate (AOC) and an Operating Licence (OL), which allows them to charge to fly passengers on their aircraft. AOC holders are required to operate to strict safety standards.

Holders of these licences are subject to rigorous oversight by the CAA to check compliance with the relevant legal requirements, and that they are operating safely. We do this through a combination of compliance and risk-based oversight, including audits and inspections. OL holders must also meet requirements for insurance, company ownership and financial solvency. It is an offence to operate a commercial air transport flight without an AOC or OL.

Ultimately it is the responsibility of the pilot in command of each flight to make sure it is operated legally. As part of their initial training a pilot studies, and is examined on, air law. This covers the regulations to be met to carry fare paying passengers. A private pilot will absolutely know that they do not have the necessary approvals to undertake a commercial flight.

How the CAA monitors illegal charter flights

The CAA monitors for possible illegal operations by conducting inspections at airfields and public events where aeroplane and helicopter operations take place and carries out spot checks of flight plans in order to identify potentially illegal activity. We also conduct checks at airfields in conjunction with UK Border Force and the police, where all the legal aspects of flights are checked. Our inspectors will also look out for signs of illegal activity during routine
visits to aviation sites or events. These inspectors have powers that give access to otherwise restricted areas of flying sites, and to the crew and passengers of aircraft. Where we find evidence that a flight may have operated, or is intending to operate, illegally we have the power to detain an aircraft and, where appropriate, take enforcement action. We also act on intelligence reports provided by the aviation industry or members of the public, including information submitted through confidential reporting channels such as whistleblowing reports.

Since 2016, the CAA’s enforcement team has received 21 allegations of illegal public transport. If we receive an allegation that aviation legislation has been breached, in the first instance it is referred to the CAA team which has oversight of the activity. If that team decides that the allegation warrants an investigation (i.e., the allegation is credible, and the alleged breach is sufficiently serious) then the allegations will be referred back to our enforcement team for investigation. Actions taken will vary depending on the circumstances of the incident but can range from educating individuals or organisations on the regulations to avoid breaches, a formal warning, the revocation of licences, approvals or certificates, or criminal investigations and prosecutions. Our overall enforcement approach is set out in the CAA’s enforcement policy which can be found at www.caa.co.uk/cap1326. If a case is to proceed to prosecution, the evidence must pass the two-stage test in the Code for Crown Prosecutors.

The CAA will take enforcement action when there is sufficient evidence of an offence and it is in the public interest to do so. However, it can often be difficult to obtain the evidence necessary to bring a successful prosecution. Reliable evidence of the arrangements in place, including the exchange of valuable consideration for the flight, is essential to a successful prosecution.

It is not possible to monitor or inspect every flight. The CAA’s enforcement team focuses its attention on high-risk sectors, individuals or areas where such flights may be more common based on intelligence we receive. The CAA recently assisted with the prosecution of an individual in the Manchester Crown Court for, among other things, illegal public transport.

Concerns raised about illegal charter flights

The CAA has previously conducted campaigns to raise awareness of the dangers of illegal public transport operations, and to guide consumers on what to look for when chartering an aircraft to ensure the flight is legal. These campaigns have targeted specific sectors where the CAA believed illegal activity may be taking place. The aviation industry was directly involved in promoting these campaigns. Following the tragic accident on 21 January we are planning further work to educate consumers about the rules, and potential risks, relating to such flights.

Investigation of the accident of 21 January 2019

The Air Accidents Investigation Branch (AAIB) is conducting an investigation into the accident. The AAIB has published an initial special bulletin which explains the known circumstances and will publish a final report once its investigation has concluded. The CAA is working closely with the AAIB and has provided it with all relevant information that it holds. The CAA is also conducting its own investigation into potential breaches of aviation legislation relating to this incident that may result in enforcement action. We will continue to review any new information that becomes available, including in relation to the arrangements with the United States Federal Aviation Administration (FAA) as the aircraft was registered in the USA.
Cost sharing flights

It might be helpful if I explain the basis on which cost sharing flights can be operated legally, as these are often incorrectly conflated with illegal public transport.

The UK has always permitted cost sharing flights but updated these rules in 2015 to align with the implementation of European rules in the UK. The rules are similar to those that permit the costs of private journeys in cars to be shared. The rules allow the direct costs only of the flight to be shared between up to six private individuals, including the pilot - there can be no element of profit.

Web-based platforms, such as Wingly, introduce pilots and riders who wish to share the costs of a private flight in accordance with the rules. Such platforms, operating in accordance with the EASA Cost Sharing Charter (https://www.easa.europa.eu/charter-promote-safety-non-commercial-general-aviation), are doing much to highlight the private / non-commercial nature of these flights. They also provide a wealth of data on flights conducted as a result of being arranged through their platforms that was not previously available, and still isn’t for cost sharing flights arranged by other means. They play a significant part in ensuring that cost sharing flights are conducted within the rules.

Legal cost sharing flights provide a positive contribution to aviation safety, allowing pilots to build skills and experience, and progress to gain more ratings and licences. It also allows the passengers to take part in a recreational activity by sharing their passion for aviation with others, which otherwise they would be excluded from, unless they were conducting flying training. Cost sharing also brings more money into the General Aviation sector thereby supporting the Government’s intent to promote a vibrant and successful General Aviation sector in the UK.

I hope that this answers the Committee’s questions, but please do not hesitate to contact me if I can help further.

Yours sincerely

Dame Deirdre Hutton, DBE
Chair