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A Critical Analysis of Air Passengers' Protection in the Nigeria Civil Aviation Authority Regulations (NCARs) 2023

Bariyima Sylvester Kokpan*

Abstract

Carriage of goods and passengers by air is the fastest means of transportation. It is also arguably the safest means of transportation. The primary objective of the regulators of air transportation is to ensure safety and security of flights. The provisions of certain rules and regulations that guide the airlines, airport operators and even the passengers are geared towards achieving this objective. Another primary consideration for air operators is the comfort of air passengers. Regulators are determined to earn, build and sustain public confidence in the aviation sector by ensuring certainty and predictability in the contract of carriage by air. The NCARs 2023 is one of those regulations aimed at promoting the aviation sector. Part 19 of the NCARs deals specifically with the protection of air passengers/consumers and it is the fulcrum of this paper. The 2023 edition is an improvement on the 2015 NCARs. It introduced some innovations. This paper found that the NCARs 2023 made adequate provisions for the protection of air passengers with reduced mobility or disability. It also attempted to address the issue of delay of flights at the tarmac. However, it failed to provide a seamless procedure for the determination of air passenger's complaints by the Nigerian Civil Aviation Authority by insisting on physical attendance for complainants or their representatives. The paper accordingly recommends among others virtual hearing of air passengers' complaint.

Keywords: Air Passenger, Protection, Civil Aviation Authority, Civil Aviation Regulations, Nigeria.

1. Introduction

The Nigeria Civil Aviation Regulations 2023[1] was enacted by the Nigeria Civil Aviation Authority in April 2023 pursuant to section 8(1) (f) of the Civil Aviation Act 2022. The Nigerian Civil Aviation Act, 2022 came into effect on the 16th day of August 2022. The Act repealed the 2006 Act.[2] Section 8(1) of the CAA 2022 provides that the Authority shall be responsible for the issuance of rules and regulations for ensuring aviation safety and security, the efficiency and regularity of air navigation, including the safety of aircraft, persons and property carried on aircraft and for preventing aircraft from endangering any person and property.

The NCARs 2023 that came into effect on the 10th of July 2023 replaced the 2015 Regulations that was first retained by the CAA 2022.[3] The latter had succeeded the 2012 NCARs.

The NCARs 2023 deals with twenty subject matters relating to civil aviation in Nigeria. Part 19 of the NCARs just like its 2015 version is dedicated to consumer protection in the aviation industry. This paper is focused on an examination of the said Part 19. Twenty-seven issues are addressed in Part 19 of the NCARs 2023. Some of the issues creates substantive rights[4] while others deal with procedural matters.[5] In all, the focus of Part 19 of the NCARs is on the protection of air passengers,

*__Bariyima Sylvester Kokpan,__ LLB(RSU); LLM (Ife), PhD (NAU), BL is a Lecturer in the Department of Jurisprudence and International Law, Faculty of Law, Rivers State University, Port Harcourt. Email: bariyima.kokpan@ust.edu.ng.**

[1] Hereinafter referred to as NCARs.

[2] CAA, 2022, s. 114.

[3] Ibid, s.115(2).

[4] For examples, right to compensation, reimbursement, rerouting; care and adequate cum transparent information.

[5] NCARs Part 19, (23) -(27) contains procedural matters.

which also imposes certain obligations on passengers, including the airport authority.[6] Literally, the Part addresses the fate of air passengers in the event of flights disruptions within and outside the control of the operating airlines.

To be sure, Part 19 of the NCARs 2023 prescribes minimum rights and responsibilities for passengers and airlines' obligations. Part 19 applies to overbookings, denied boarding, delayed flight and cancellation of flight. It also applies where passengers fail to discharge their responsibilities. What this imply is that there are obligations on the passengers, airlines and airport managers.

The NCARs does not apply to all manners of flights. The jurisdiction of the Regulations covers passengers departing from an airport located within Nigeria to another airport within Nigeria. For example, Port Harcourt International airport to Nnamdi Azikiwe International airport, Abuja. Furthermore, the Regulation would also apply to passengers departing from an airport located in another country to an airport situated in Nigeria, unless the passengers received benefits or compensation and were given assistance in that other country. For instance, a flight departing Heathrow Airport to Murtala Muhammed Airport, Lagos, Nigeria. The passengers would however get no benefit if the airline had complied with the NCARs or similar regulations in that other country. This is to avoid double benefit on the part of the passenger.

Similarly, the NCARs also apply to passengers on foreign transportation with respect to flight segments originating at a point within Nigeria. What is envisaged here is that a part of the foreign flight must originate from a place in Nigeria. The implication is that the Regulation will apply where there is a breach of any of the provisions of the NCARs before or after take-off.

2. Passengers Covered by the NCARs 2023

a. Passengers on Scheduled Air Flights

There is no definition of 'scheduled air flights' in Part 19 of the NCARs, 2023. However, it simply means where the air carrier sells single seats to individuals until the aircraft is full. In other words, scheduled flight is a flight that is sold seat by seat until the aircraft is full.[7] It is not the same as chartered flight where the customer hire the entire aircraft for a certain period. The NCARs used the phrase 'schedule change' to imply where an air carrier makes change to already booked flight time or date.

b. Passengers on *Packaged Tours*

A tour operator means, with the exception of an air carrier, an organizer of package travel, package holidays and package tours.[8] A package tour comprises transport and accommodation advertised and sold together by a vendor known as a tour operator. It could also mean a holiday at a fixed price in which the travel company arranges one's travel, hotels, and sometimes meals.

c. Passenger with Confirmed Reservation

The NCARs define 'Confirmed Reserved Space' as a space on a specific date and on a specific flight and class of service on an air carrier which has been requested by a passenger, including a passenger with zero fare ticket, and which the air carrier or its agent has verified, by appropriate

[6] Section 19(12) imposes obligations on airport operator/authority.
[7] 'AIRCO, Difference between Scheduled and Chartered Flights', October 21 2019 available at <https://www.aircharters.com/post/differences-between-scheduled-chartered-flights.>accessed 5 May 2024.
[8] Section 19.1.2.1

notation on the ticket or in any other manner provided therefore by the air carrier, as being reserved for the accommodation of the passenger. The reservation could be done physically or online.

In the infancy of commercial air travel, the manner in which airlines made and tracked reservations was arguably simple, reflecting supply and demand of a not-yet-penetrated, unsaturated market. Airline management relied on rudimentary and manual document-retention and retrieval systems to orchestrate flight times, seat assignment, and the like.[9] Ravich noted that market power and antitrust concerns prompted the DOT to interpose regulations between airlines and CRSs for the benefit of consumers in the first place.[10]

Commercial airlines began using computerized reservation system (CRS) technology in the mid-1970's. These systems consist of mainframe computers and assorted peripherals operated by the airlines, telecommunications equipment connecting the airlines computers with the travel agents, and a plethora of terminals and printers in the offices of user travel agents. The proprietary airline installs the system for the travel agency and lists its flight schedules on the system so that the travel agents can peruse the listings and select the most appropriate flights for customers. The travel agents can then use the interactive aspects of the system to reserve flights for customers and to print tickets on ticket stock provided by the airline. This is substantially more efficient than the previous method of telephoning various airlines, requesting flight information, relaying that information to the customer, and then requesting tickets.[11]

Earlier, manual reservations systems were first automated using the electromechanical technologies available after World War II. With the commercial production of second-generation digital computers, a few innovative carriers joined with IBM to build the first privately owned, real-time computer networks.[12]

In the years immediately following World War II, the demand for air travel began to exceed the available supply, and the airlines' ability to process passenger reservations assumed increased importance. Manual systems in use at the time-maintained seat inventories for a given flight at its point of departure. Reservations agents were free to book space on a flight after confirming seat availability posted on large display boards in each reservation's office. After selling a seat, an agent sent a one-way booking message via telephone or teletype to the reservation's office in the flight's originating city. Upon receipt of the booking message, a clerk decreased the count of available seats for the flight from an inventory maintained in a loose-leaf folder. When the number of available seats for a flight dropped below a specified level, a "stop sale" message was sent to all reservations offices for posting on the availability boards.[13]

d. Another set of passengers covered by the NCARs 2023 are passengers with tickets obtained under airline promo.

[9]T M Ravich, 'Deregulation of the Airline Computer Reservation Systems (CRS) Industry', (2004) 69*J. AIR L. &COM*. 387, <https://scholar.smu.edu/jalc/vol69/iss2/6>accessed 5 May 2024
[10]Ibid.
[11]L G Locke, 'Flying the Unfriendly Skies: The Legal Fallout Over the Use of Computerized Reservation Systems as a Competitive Weapon in the Airline Industry,' (1989) 2 *Spring Issue*, 219-237.
[12] DG Copeland and J L McKenne, 'Airline Reservations Systems: Lessons from History', (1988)*MIS Quarterly/.September*353-370.
[13] Copeland and McKenne (n12).

e. All Operating Air Carriers. Air carrier means an enterprise that engages in provision of transportation services by aircraft for remuneration or hire.

Notably, the 2023 NCARs for the first time make a clear provision for delay of air passengers at the tarmac. Furthermore, the new Regulation rephrased and renumbered some of the provisions of the old 2015 NCARs. Furthermore, the 2023 NCARs made elaborate provisions for the protection of air passengers with reduced mobility,[14] including imposing obligations on the airport authority for the protection of passengers with reduced mobility.[15]

Nonetheless, the new NCARs is not without some kinds of confusion. The use of the phrase 'not later than' in certain provisions as in section 19:7 seems to imply a maximum duration for the airline to notify passengers of cancellation. 'Not later than' means not more than. When the NCARs provide in section 19:7 that the airline shall provide notice 'not later than', it appears, in the context of its usage that the airline could give the notice of the cancellation few minute to the scheduled departure time, which is apparently at variance with the air passengers protection regime.

The rationale for airline to give early notice of cancellation of flight is to enable the passengers adjust their itinerary following the cancellation. An early notice of cancellation would save the passenger from incurring avoidable cost of transportation back and forth the airport as well as other incidental expenses. A passenger that is aware of the flight cancellation ahead of time has the opportunity to make alternative arrangements, including booking another flight.

3. *What is New in the 2023 Regulation?*

This paper shall examine the entire provisions of Part 19, with emphasis on the innovations.

i. Additional List of Abbreviations

Part 19:1 deals with the applicability of the Regulations and definitions of terms. The NCARs 2023 applies to situations of overbooking, involuntarily denied boarding; delay and cancellation of scheduled flight in addition to passenger that fails to discharge their responsibilities.

The definitions of terms as under the 2015 NCARs are nearly maintained in the 2023 Regulation. However, further terms and abbreviations were added. Some of these new terminologies include PRM, which is defined as a 'person with reduced mobility'. The term is used interchangeably with persons with disabilities. Others are 'tarmac delay', 'travel agent', 'schedule change means' and 'Significant Change of Flight Schedule'.

ii. Provision for Tarmac Delay

Further novel terms include Tarmac Delay, Travel Agent, Schedule Change Means and Significant change to flight schedule. Tarmac Delay occurs when an airplane on the ground is either awaiting take-off or has just landed and passengers do not have the opportunity to get off the plane. Closed doors define a tarmac delay. Delay at the tarmac also occurs when passengers are confined, with no immediate opportunity to disembark. Similarly, a schedule change means where an air carrier makes a change to already booked flight time or date. In a related vein, significant change to flight schedule refers to an air carrier making a change to a flight's original booked time to more than

[14]Section 19.12 (8) (13).
[15] Section 19.12.1.1. See also, section 19.13.

two hours prior to departure or more than two hours later than arrival for domestic flights, or six hours prior to departure or six hours later on arrival on international flights.

iii. Right of Re-Routing for Domestic Flight

Another innovation could be found in section 19:6 (1)(b) which creates a further right in favour of the passengers in the event of delay and cancelled flight. Consequently, the law at present is that where a domestic flight is delayed beyond three (3) hours, the passenger shall be entitled to exercise right of rerouting in addition to the refreshment. Rerouting has been defined as 'any change in a routing, carrier, flight or period of validity from that originally provided in the duly-issued Ticket which a Passenger presents for carriage'. [16] Rerouting has also been described as when an airline changes its planned route for a flight.[17] In practice, rerouting could include the use of another aircraft and sometime another airline (air carrier) from the one initially booked. What is certain is that rerouting envisages a situation where the passenger did not travel with the scheduled aircraft for no fault of the passenger.

iv. Expansion of the definition of Complaint

It is notable to emphasize that the new Regulation retained the definition of 'Complaint' to mean an allegation in writing made by an air passenger, a group of passengers or their legal heirs or representatives. In *Obevs. MTN Nig. Coms. Ltd*,[18] the Supreme Court determined that a consumer's complaint should be the statement of grievance or dissatisfaction made to the licensee by the consumer. The court emphasized that a failure by a consumer to first resort to domestic resolution of his complaint with a licensee through the mechanism of the Nigerian Communications Commission would rob the court of jurisdiction. The implication in the context of this paper is that a passenger must register his or her dissatisfaction by first complaining to the airline before seeking remedy in court.[19] This is only logical and reasonable as the airline enjoy a right to appreciate the complaint against them.

v. Refund for Cancelled Ticket Reservation

The third innovation in the 2023 Regulations is Regulations 19:9:2 dealing with refund for cancelled ticket reservation. It provides that 'if a consumer cancels a ticket reservation no later than 24 hours after purchasing it, for tickets bought at least seven days before a flight's scheduled departure date and time, the air carrier shall either allow such consumer to cancel their reservation and receive a refund or allow such consumer to reserve the ticket (place it on hold) for 6 months'. The conditions here is that the flight ought to have been bought earlier and the notice of cancellation must not be short. This is necessary to reduce incidence of no show and to enable the airline sold out its tickets, including the cancelled seat before the time of departure. Under the old Regulation, this right was not recognized and the issue of timing for cancellation of reservation was unclear.

[16]Rerouting Definition –Law Insider accessible at <https://www.lawinsider.com-rerouting>

[17] K Misins, 'What Does Rerouting Mean in Air Travel?'*Connecting Flights Guide*, October 17, 2023.

[18] [2021] 18 NWLR (Pt 1809) 415

[19]The appropriate court with jurisdiction in relation to this subject matter is the Federal High Court. See B. S. Kokpan, Determining the Exclusivity of the Jurisdiction of the Federal High Court of Nigeria in Aviation Causes and Matters Through the Law in Law and Good Governance in Nigeria, A text in Honour of Rt. Hon. Umaru Bago, Zubic Infinity Concept, Owerri, pp. 467-494.

vi. Imposition of Obligation on Airport Authority

Significantly, section 19:12 is novel. It is notable because it imposes duty on the managers of airports. Strictly speaking, whereas the 2023 NCARs was strictly meant to deal with the relationship between air passengers and air carriers or their representatives, Part 19:12 expanded the scope to include imposition of obligations on the airport managers. Every airport operator, airline and ground handling company shall provide facilities at the airports to enhance the movement of Persons with Reduced Mobility. Accordingly, every airport operator, airline and ground handling company shall ensure that no passenger discriminated against on the grounds of his/her disability or reduced mobility. This innovation demonstrates the realization that the actions and inactions of the airport authorities, including airport security agencies could contribute to the infringement of air passengers' rights.

vii. Special Provision for Persons with Reduced Mobility

All Operating airlines shall give priority to persons with reduced mobility and any persons accompanying them, unaccompanied minors, and families (maximum of two adults) where at least one child is aged five years or under. In cases of denied boarding, cancellation and delays (as specified in subpart19.6) persons with reduced mobility and any person accompanying them, unaccompanied minors, and families (maximum of two adults) where at least one child is aged five years or under, shall have the right to care in accordance with subpart 19.10. 19.12.1.5.

The right to care include the provision of refreshments, such as water, soft drinks, confectioneries/snacks, a meal, hotel accommodation (where applicable), transport between the airport and place of accommodation, free telephone calls, SMS or emails.[20] Regulation 19.10.1.2 reiterates that the operating air carrier shall prioritize the needs of persons with reduced mobility and any person(s) accompanying them, as well as the to the needs of unaccompanied minors.

Similarly, the Regulation provides that the air carrier or its agents shall not leave a person with disability or person with reduced mobility unattended for more than 30 minutes in a wheelchair or other device, in which the passenger is not independently mobile. In other words, the airport or operating airline staff, as appropriate, should be in frequent (every 30 minutes) contact with the person with reduced mobility to advise them of the status of the request for assistance and to enquire about the person's needs.[21]

Another innovation is that airlines may not require passengers with disabilities to provide advance notice of their intent to travel or of their disability. However, Persons with reduced mobility shall provide the airline with up to 48 hours advance notice if they require any guided assistance that meet their disability related needs.[22] Further rights of passengers with reduced mobility shall be examined subsequently in this paper.

viii. Reservation Assistance

Regulation 19.12.3.1 dealing with reservation assistance is new. This section is geared towards achieving transparency and support for air passengers in the course of purchasing air ticket. The

[20]See NCARs Regulation 19.10
[21] Regulation 19.12.1.5, NCARs 2023.
[22] Regulation 19.12.2.1, ibid.

section also recognized the importance of online purchase of air tickets. Accordingly, it is provided that during reservation, airlines, travel agents and tour operators shall:

> (a) Provide travelers the opportunity to request assistance at booking, across all points of ticket sales (including by telephone or the internet). Furthermore, all air carriers and their agents shall mandatorily place on their ticket portal, a mandatory field or column where persons with disabilities or their assistant may request for special needs assistance while booking or purchasing a flight ticket.
>
> (b) Actively enquire whether there will be any person in a party who may require assistance at the airport and/or in flight.

In addition to receiving the above information, air carriers are to ensure that the information they receive from travelers with disabilities regarding their disability-related needs is communicated to the departments, teams and organizations that will deliver the relevant assistance.

ix. **Family Assistance Programme**[23]

This provision is new and imposes a duty on the NCAA, aerodrome operators and air carriers. It provides that the NCAA will facilitate the establishment of a Family Assistance Programme (FAP) that shall provide succor to aircraft accident victims and their families by the aerodrome operators and air carriers (domestic and foreign) operating in and out of Nigeria.

Accordingly, all air carriers and airport operators shall develop and submit to the NCAA, a Family Assistance Plan for addressing the needs of families of passengers involved in any aircraft accident involving an aircraft of the air carrier that results in a loss of life.[24]

The Authority will ensure that each air carrier makes arrangement with all aerodromes in which it operates to implement the Family Assistance Plan. The Authority will facilitate periodic reviews and exercise of the Family Assistance Plan to ensure its efficacy.

This subsection applies only to situations of aircraft accident. Accordingly, such programme would help the family and relevant stakeholders in evacuating the injured and the death, and arrangements for funerals, including payment of advance compensation. For instance, section 55(3) of the Nigeria CAA 2022 imposes a duty of air carrier to make an advance payment of thirty thousand dollars to each of bereaved families in the event of aircraft accident within 30 days. This is in line with article 28 of the Convention for the Unification of Certain Rules for International Carriage by Air, commonly called, Montreal Convention, 1999.

Article 28 of the Montreal Convention provides that 'in the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier'. As noted above, the Nigeria's Civil Aviation Act requires such payment.

x. Right to Information and Full Disclosure

Regulation 19.21.1.1 provides that every passenger shall, before purchasing any ticket for a contract of carriage by the air carrier or its agents, be entitled to the full, fair, and clear disclosure

[23] Section 19.13.
[24] Section 19.13.1.2.

of all the terms and conditions of the carriage about to be purchased. The disclosure shall include, among others, documents required to be presented at check-in, provisions on check-in deadlines, refund and rebooking policies, and procedures and responsibility for delayed and/or cancelled flights. These terms and conditions may include liability limitations, claim-filing deadlines and other crucial conditions.

This is necessary to avoid complaint of hidden terms and conditions that are common with standard clause agreements. Standards clause contracts are not without reservation because they are characterized by hidden conditions that are unacceptable to the other party. They appear to be imposition because of the absence of negotiation. The vast majority of consumer transactions are conducted via standardized agreements presented to consumers on preprinted forms with little or no opportunity for the consumer to negotiate the terms of the agreement.[25]

It also has been recognized that it is not just consumers who are subjected to the tyranny of the standard form contract, but business persons as well. As argued by Donald,[26] there is increase in the reliance on standard clause contract, thus, courts have begun to recognize that experienced but legally unsophisticated businessmen may be unfairly surprised by unconscionable contract terms, and that even large business entities may have relatively little bargaining power, depending on the identity of the other contracting party and the commercial circumstances surrounding the agreement. This recognition rests on the conviction that the social benefits associated with freedom of contract are severely skewed where it appears that had the party actually been aware of the term to which he "agreed" or had he any real choice in the matter, he would never have assented to inclusion of the term.[27]

The distinction between this type of contract and the traditional one and its danger to society is without doubt. The traditional contract is the result of free bargaining of parties who were brought together by the play of the market, and who meet each other on a footing of approximately economic equality. In such a society, there is no danger that freedom of contract will be a threat to the social order as a whole. However, in present day commercial life, the standardized mass contract has appeared. It is used primarily by enterprises with strong bargaining power and position.[28] The usage of such contract denies the other party of an opportunity to freely negotiate the terms.

Accordingly, injuries to the principle of freedom of contract is caused when there is a lopsided condition regarding the burden imposed by the parties in the form of transferring obligations to the weaker party, making the weak party having no more freedom, even though in the principle of freedom of contract it should guarantee everyone freedom in matters relating to the agreement.[29]

NCARs 2023 requires travel agents and or tour operators, in a contract that involves air travel provided by an airline as well as other services including, but not limited to accommodation and other tourist services, to provide consumer, in writing or any other appropriate form, with

[25]D P Stolleand A J Slain, 'Standard Form Contracts and Contract Schemas: A Preliminary Investigation of the Effects of Exculpatory Clauses on Consumers' Propensity to Sue, (1997) 15 (1) *Behavioral Sciences and the Law,* 84.

[26] D B King, 'Standard Form Contracts: A Call for Reality', 44 (2000)*St. Louis U. LJ*. Available at: <https://scholarship.law.slu.edu/lj/vol44/iss3/15>.accessed 7 May 2024.

[27] Ibid.

[28]King (n 26) p 911.

[29]Y Marpi, Erlangga, B T Endaryono and K Noviani, 'Legal Effective of Putting "Business as Usual" Clause in Agreements', (2021) 10 *International Journal of Criminology and Sociology,* 58-70.

information in good time before the contract is concluded and before the start of the journey.[30] Accordingly, the following information are mandatorily required:

(a) General information concerning passport and visa requirements applicable to nationals of the State Party concerned and in particular on the periods for obtaining them, as well as with information on the health formalities required for the journey and the stay;
(b) The total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs or, where those costs cannot reasonably be calculated in advance of the conclusion of the contract, an indication of the type of additional costs which the traveler may still have to bear;
(c) The terms and conditions for the packaged tours (no-show, cancellation, termination of the contract/tour, refund policy, optional or compulsory insurance, cost of assistance, including repatriation, in the event of accident, illness or death, etc.)
(d) The times and places of intermediate stops and transport connections as well as details of the place to be occupied by the consumer;
(e) The name, address and telephone number of the organizers and/or its local representative or, failing that, of local agencies on whose assistance a consumer in difficulty could call.
(f) Where no such representatives or agencies exist, the consumer must in any case be provided with an emergency telephone number or any other information that will enable him to contact the agent or the airline, as the case may be;
(g) In the case of journeys or stays abroad by minors, information enabling direct contact to be established with the child or guardian at the child's place of stay;
(h) Information on the optional conclusion of an insurance policy to cover the cost of cancellation by the consumer or the cost of assistance, including repatriation, in the event of accident or illness.
(i) Where the consumer is prevented from proceeding with the package, he may transfer his booking, having first given the organizer or the retailer reasonable notice of his intention before departure, to a person who satisfies all the conditions applicable to the package. The transferor of the package and the transferee shall be jointly and severally liable to the organizer or retailer party to the contract for payment of the balance due and for any addition.

This is in line with the general consumer protection regime. For instance, the Federal Competition and Consumer Protection Act prohibits the use of hidden terms, which, is a major feature of standard clause agreement. The FCCPA [31] prohibits business practices/conducts that are misleading, fraudulent, unconscionable or generally anti-competitive. Some of such prohibited conducts include issuing a false or wrong advertisement; giving false, erroneous, misleading or likely to be misleading in any material respect, fraudulent or deceptive representations concerning any material fact for the purpose of promoting or marketing a product; giving representations in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of products which are not based on an adequate and proper test of the goods or services; and offering to supply, supplying or entering into an agreement to supply any goods or services on unfair, unreasonable or unjust contract terms.

[30] Section 19.21.1.2
[31] Sections 17(a), (e), (l), (s); 18(3)(a); 157; and 158 of the FCCPA.

In accordance with its powers the FCCPC on March 2, 2022, issued interim orders under sections 17(a), (e), (l), (s); 18(3)(a); 157; and 158 of the FCCPA prohibiting the performance or continuation of any agreement or arrangement associated with or resulting from the resolutions made by domestic airline operators in Nigeria regarding any coordinated and arbitrary increase in airfares.[32]

The hazard of standard clause agreement to consumers of services, including the air passengers is because it provides a 'take' or 'leave it' kind of posture.

xi. Prevention of Refusal of Carriage

Regulation 19.12.4.1 is also novel and it prohibits discriminatory practices by the air carrier. It provides that air carrier or its agent or a tour operator shall not refuse, on the grounds of disability or of reduced mobility to accept a reservation for a flight departing from or arriving at an airport to which this Regulation applies. It shall also not refuse on same grounds to embark a person with disability or a person with reduced mobility at such an airport, provided that the person concerned has a valid ticket and reservation. This is the general rule that is in accordance with the global regime against discrimination and the anti-discriminatory clause in section 42 of the Constitution of the Federal Republic of Nigeria, 1999.

The Regulation however contain provisions when the refusal or prevention of carriage on grounds of disabilities or reduce mobility could be justified.[33]

Exceptions to Non- Discrimination in Carriage

The right to carry a passenger with disability in a commercial flight is not absolute. Regulation 19.12.5 contains grounds upon which an air carrier can refuse to carry air passenger on the grounds of disability or reduced mobility. These grounds include safety and impossibility, provided that the air carrier shall make appropriate recommendations to the affected air passengers. In other words, air carrier can deny boarding to disabled air passengers:

(a) in order to meet applicable safety requirements established by international Community or national law or in order to meet safety requirements established by the Authority; or
(b) when the size of the aircraft or its doors makes the embarkation or carriage of that person with disability or person with reduced mobility physically impossible.

It is necessary to emphasize that from the tenor of the provisions, the air passenger with disability or reduced mobility is one with a valid air ticket and satisfies all relevant traveling protocols. This explains the rationale for compensation to be paid to the affected passenger. Granted that circumstances could warrant change of aircraft type and design on the day of departure.

However, a person with reduced mobility who has been denied embarkation on the grounds of his or her disability or reduced mobility and any person accompanying him or her shall be offered the right to reimbursement or re-routing as well as the right to compensation. In all circumstances, the Regulation prioritized the need for safety of the aviation industry and the passengers above the right of passengers with disability.[34]

[32]I Okeke, 'Airfare Hike: Commission Commence Investigations, Says Law Prohibits Airlines' Action, Business Day Nigeria, March 3, 2022.
[33]See Regulation 19.12.5, NCARs.
[34]Regulation 19.12.5.b(3), NCARs

4. Further Rights of Air Passengers with Reduced Mobility in the Event of Refusal of Carriage

Part 19 of the NCARs 2023 contained other provisions that creates rights in favour of air transport consumers with reduced mobility. Some of these novel provisions include:

i. Right to be notified of the Reason for the Refusal[35]

When an air carrier or its agent or a tour operator refuses carriage of a person with disability or reduced mobility for the reasons stated in sub-paragraph 5 above, it shall immediately inform the Person with Reduced Mobility of the reasons therefore. An air carrier, its agent or a tour operator shall communicate the reason(s) in writing to the person with disability or person with reduced mobility, within five working days of the request, upon the request of the affected passenger. It is necessary to note no such requirement exist for other categories of air passengers.

ii. Right to be Informed of Relevant Safety Rules and Restrictions[36]

An air carrier or its agent shall make publicly available, in accessible and alternative formats and in at least the same languages as the information made available to other passengers, the safety rules and all other essential information provided to passengers that it applies to the flight information, carriage of Persons with Reduced Mobility, as well as any restrictions on their carriage or on that of mobility equipment due to the size of aircraft. A tour operator shall make such safety rules and restrictions available for flights included in package travel, package holidays and package tours, which it organizes, sells or offers for sale. In other words, the public must know the safety rules and areas of restrictions.

iii. Right to Assistance[37]

If no proper information is provided contrary to the provision of subsection 19.12.6.1, the air carrier shall make all reasonable efforts to provide the assistance specified in such a way that the person concerned is able to take the flight for which he or she holds a reservation. This would include right to care and rerouting.

iv. Right to Compensation for Delayed, Lost or Damaged Wheelchairs, Other Mobility Equipment and Assistive Devices

This provision is new, as it relates specifically to the equipment and devices of persons with disability or reduced mobility. Where wheelchairs, other mobility equipment, or assisted devices are lost or damaged whilst being handled by the airline or transported on board the aircraft, the airline shall be responsible for 100% of the repair or replacement cost.[38] For compensation purposes, a person with reduced mobility's mobility equipment is presumed to have been lost, if within a period of seven *days* for domestic flights and twenty-one days, for International flights, counted from the time the passenger should have received same, the mobility equipment is not delivered to the passenger.[39]

Although this sub-section includes 'delayed' in its title, there is no indication of the fate of the air passengers with reduced mobility where the equipment is delayed. Is it possible that the equipment could be delayed? Is it possible that such delay could cause inconvenience to the passengers? The

[35] Regulation 19.12.6.1, ibid.
[36]Regulation 19.12.6.2, ibid.
[37]Regulation 19.12.6.3, ibid.
[38] Regulation 19.12.7.1, ibid.
[39]Regulation 19.12.7.1, ibid.

answers to these questions are in the affirmative, hence the need for the NCARs to accommodate such situations. In any case, such equipment are not considered as baggage.

v. Right to File Complaint[40]

Any person with disabilities or reduced mobility who is not satisfied with air travel services, may file a complaint with the airline or the NCAA. Complaints concerning issues under the airport's responsibility can be filed with the Airport Operator or the NCAA.[41]

If a passenger with disabilities is still not satisfied with the handling of an issue by the customer affairs personnel of an air carrier, he or she may refer the issue to the NCAA for further redress.[42] Upon receipt of a disability related complaint, an air carrier shall respond to and directly address the complaint in writing *within 30 days*. The foregoing notwithstanding, air carriers are not required to address complaints sent more than 45 days after the incident unless the complaint is referred by the NCAA.[43] The NCAA shall investigate all disability-related complaints it receives to determine whether a violation of these regulations occurred.[44]

From the tenor of the provisions above, a person with reduced mobility must file his complaint to the air carrier within 45 days of the occurrence of the incident complaint against. Significantly, the NCARs imposes a time limit on air carriers to resolve the resolution of complaints from passengers with reduced mobility.

5. Conclusion and Recommendations

Carriage of passengers by air is the fastest means of commercial transportation. Like any other human undertakings, there are possibilities of deviation from the terms of contract. These deviations could be borne out of extraordinary circumstances or parties' deliberate actions.[45] The most important consideration in carriage by air is safety of carriage. Next is timeliness of carriage and respect for the rights of air passengers. The tendency in transportation law is strengthening the legal position of the passenger, as economically inferior side in transportation contract.[46] The NCARs 2023 is intended to complement these overall noble objectives, with Part 19 thereof concentrating on the protection of air passengers.

Aviation law is constantly evolving. The NCARs 2023 has introduced novel provisions aimed at protecting the passengers. This paper has carefully x-rayed those novel provisions, with the intention of clarifying and explaining their importance to the readers. Notably, this paper notes that Part 19 of the NCARs, 2023 emphasized the need to protect air passengers with reduced mobility. The Part also attempt for the first time to address the knotty issue of delay of flight at the tarmac, either before take-off or after landing. This paper found the innovations as relatively comprehensive except for the lack of provision on delay in the provision of traveling aids (equipment) for passengers with reduced mobility.

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[40] Regulation 19.12.8, NCARs.
[41] Regulation 19.12.8.1, ibid.
[42] Regulation 19.12.8.3, ibid.
[43] Regulation19.12.8.4, ibid.
[44] Regulation 19.12.8.5, ibid.
[45] Cf, B S. Kokpan, 'Covid-19, Extraordinary Circumstances and Cancellations of Flights in Nigeria Aviation Industry', (2019) 1 (1) *Journal of Comparative Law and Legal Philosophy (IJOCLLEP)*, accessible at <www.scholars.google.com>.
[46] M Kneževi, Level of Responsibility of the Transporter for Death and Body Injuries, AgEcon available at www:https://ageconsearch.umn.edu<aesearch@umn.edu>. accessed 10 May 2024

However, what is still left out is the retention of erstwhile provisions in Part 19 dealing with procedure for complaint and the determination of same.[47] Presently, Part 19(27) e-g, required air passengers (complainant) to attend the administrative hearing of their complaint physically in person or by their duly authorized representative. This requirement is practically cumbersome and in fact, unrealistic. Expecting aggrieved passengers to attend physical hearings of their complaints to the NCAA Administrative Body is inappropriate for so many reasons. First, it would impose additional financial burden on the air passengers. The amount of compensation provided under Part 19 will not be commensurate with for such further journey. More so, most air passengers, especially in international carriage are visitors to the countries of departures or arrivals, and possibly have no reason to return for an NCAA hearing. The point being made is that a physical hearing by the NCAA of air passengers' complaints would occasion further economic and physical hardships on the air passengers.

Accordingly, the NCARs should consider virtual hearings of passengers' complaints. Furthermore, some of the complaints founded under Part 19 are facts requiring no further proof. For instance, where the complaint is founded on flight delayed or cancellation, the NCAA should not require any further proof of that fact because these are facts sufficiently domiciled and documented with the NCAA and other relevant agencies at the airports.

[47] Cf, G N Okeke & B.S. Kokpan, 'Jurisdictional Issues in the Enforcement of Air Passengers' Rights: The Case of Nigeria' (2021) 1 (1) *Journal of Law and Policy*, 67-88.<https://www.peer-reviewed-journals.com/> Also accessible at <www.scholars.google.com>. accessed 10 May 2024.