

Civil aviation offences – the legal low down

In this edition of *The Legal Lounge*, I provide a general overview of the civil aviation offences regime (for want of a better description) as it currently stands, and some issues that participants may wish to consider should they ever be faced with the prospect of CAA law enforcement action.

1. Civil Aviation Rules breaches

Almost every civil aviation rule on the statute books has a corresponding offence, contained in the Civil Aviation (Offences) Regulations 2006.

It would be fair to say that most breaches of the rules by participants are dealt with by the CAA operational groups as audit non-compliance findings and do not come to the attention of the CAA Law Enforcement Unit. However, from time to time, some individual rule breaches may be considered serious enough to warrant referral to the law enforcement unit, or there may be concern that a participant has continually breached certain rule requirements and that a more punitive sanction is necessary to address the continued non-compliance. Complaints from the public may also generate an enforcement investigation to consider whether any civil aviation rules have been breached (alleged low flying complaints spring to mind).

Non-participants may also be investigated for breaches of civil aviation rules. The most frequent of these usually concern breaches of civil aviation rule requirements by passengers on commercial air transport operations (for example using cell phones when prohibited), or security breaches at airports by members of the public.

Rule breaches resulting in law enforcement action may be dealt with as an infringement offence, or under the summary offences jurisdiction. Different consequences can follow as a result.

a) Infringement offences

The CAA (or the police for that matter) may choose to deal with a breach of a civil aviation rule by issuing an infringement notice with an accompanying infringement fine, where an infringement fee is specified for the offence in the Regulations. It is important to note that infringement offences are not subject to a conviction. Thus, while payment of the fine is legally deemed to be an admission of the offence, there is no risk of a conviction being entered on your record, and payment of the fine brings the legal process in relation to that offence to an end. However, there are three important issues for participants to consider.

The first is that a civil aviation infringement offence is a relevant matter that can be taken into account by the Director when assessing whether you remain fit and proper to exercise the privileges of your aviation document. As discussed in the February edition of *The Legal Lounge*, the fact that you have committed a civil aviation offence does not automatically render you not fit and proper. Nonetheless, it will become part of your personnel record and could become relevant to your on-going FPP status, particularly if there is further offending. Thus, if you strongly disagree that you have committed the alleged offence, notwithstanding the absence of any risk of conviction, you may still wish to consider defending the matter even if it costs more than paying the infringement fine.

This is done by notifying the informant (CAA or police) that you wish to defend the matter within the prescribed time on the infringement or reminder notice. The informant must then file a notice of proceedings to bring the matter to Court for a defended hearing if they wish to enforce it.

The second is that even if you accept responsibility for the offence, you may take issue with some of the facts as presented to you by the informant. It is possible to admit an offence but have a disputed facts hearing as part of the sentencing. This may involve calling witnesses to give evidence, with the Judge then making a determination about the facts before proceeding to sentencing. If the Judge makes more favourable findings about the facts, this may be important, both for sentencing, and if you are later subject to an FPP investigation.

Finally, you may wish to make submissions on the level of the fine imposed. Once the CAA decides to issue an infringement notice, it has no discretion as to the level of the fine which is imposed in the regulations. The standard fines for infringement offences in the Civil Aviation (Offences) Regulations for individuals are typically for the amounts of \$500, \$1,000 and in some cases \$2,000. For organisations, the fines are typically for \$3,000, \$6,000 and in some cases \$12,000. The Courts, on the other hand, have full discretion as to penalty. If there are mitigating circumstances, the Court might be persuaded to waive or impose a lower fine than that prescribed in the regulations.

A short hearing to air any dispute about the facts and/or to put your case as to any mitigating factors could therefore be well worth it and may favourably impact on the outcome even if you admit to an infringement offence.

b) Summary offences jurisdiction

Civil Aviation Rule breaches that are infringement offences may also be prosecuted by way of the summary jurisdiction procedure, if the informant elects (this involves a defended hearing before a Judge alone). This may be considered preferable for more serious rule breaches, where a higher penalty might be sought than the relevant infringement fees provide for. The maximum fine specified in the Regulations for a summary offence are higher than for infringement offences and this may be used as the benchmark rather than the infringement fine. However, Section 78A of the Summary Proceedings Act 1957 prohibits a conviction being entered for an infringement offence, even if prosecuted summarily. The Act and Regulations are clear that any rule breach for which an infringement fee is specified in the Regulations is an infringement offence, however it is enforced.

On the other hand, some rule breaches may only be pursued by way of summary prosecution. Those offences are specify a summary penalty in the Regulations, and are treated as offences against the Act. A conviction may therefore be entered if the charge is proved. If a rule breach is being prosecuted summarily, it is therefore important to check whether it is an infringement or summary offence, and thus liable to a possible conviction, and what the maximum fine could be, as this may influence your decision about whether or not to defend the matter or seek a disputed facts hearing as part of the sentencing.

2. Civil Aviation Act offences

Civil Aviation Act offences are contained in Part 5 of the Act and are generally viewed as more serious offences. They cover a range of offences such as endangerment or careless operation of an aircraft, to acting without a required aviation document or medical certificate, to communicating

false information or obstruction of CAA officers conducting their lawful duties. (As noted above, some rule breaches are also treated as offences against the Act).

All Act offences are subject to conviction and generally attract higher sentences, including, in some cases, a possible prison sentence. Any financial penalty imposed could also vary significantly from case to case depending on the circumstances and any mitigating factors. How you present your case to the Court is therefore very important. Where there is clear evidence supporting the offence, it is important to note that the Courts do give significant weight in sentencing to an early guilty plea, and in some cases, it can substantially reduce the amount of any potential fines. A conviction may also not be inevitable. It is possible that a first offender may successfully apply for diversion, or receive a discharge from the Court.

As with infringement offences, even if you admit the offence or key elements of it, you may dispute some of the facts as presented by the informant. In some cases, it may be possible to resolve any differences and come to an agreed facts summary prior to sentencing. If not, you may wish to have a disputed facts hearing at sentencing.

Once again, it is also important to bear in mind that there could be obligations for your FPP status, and while not necessarily fatal on its own, offences against the Act are likely to be viewed more seriously than infringement offences, particularly if there is aggravating factors of the offending.

Summary

Whether you receive an infringement notice or are being prosecuted summarily for a breach of the Act or Rules, there are many factors to consider before determining the appropriate response. You may of course reject the allegation and wish to defend it. Even if you accept responsibility for an offence, and wish to plead guilty, there may be a legitimate dispute over some of the key facts, or there may be important mitigating factors that may influence the final outcome at sentencing. Even a conviction may not be inevitable for a summary offence. There may also be future implications for your FPP status that need to be considered if you are subject to law enforcement proceedings. For these reasons, it is vital to seek legal advice before responding to any law enforcement action, to ensure you have considered all options and the best response to any enforcement action you may face.

In the next edition of *The Legal Lounge*, I will address medical certification issues (my apologies to those expecting that subject to be covered in this issue of *Aviation News*).

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