

Reforming consumer complaints handling

Consultation on the CAA's draft policy

CAP 1257



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Foreword

If consumers feel able to complain about the problems they have, and businesses handle those complaints fairly and professionally, there should be less need for regulatory intervention in the market. So effective complaints handling complements proportionate and effective regulation.

The CAA's vision is simple. In the first instance, we want airlines to have strong incentives to handle complaints properly in-house. If this does not happen, we want consumers to have access to independent, impartial and low-cost dispute resolution arrangements that are an easier alternative to court action.

We have been voluntarily handling complaints from aviation consumers for over 40 years, latterly through the Passenger Advice and Complaints Team (PACT). PACT has helped many thousands of passengers, winning millions of pounds of compensation. But this is despite some fundamental problems with these arrangements. The PACT funding model does not create the right incentives for effective in-house complaints handling by airlines. And PACT's lack of powers to make airlines adhere to its decisions remains a major source of frustration for many consumers, who may have to go on to court to get their problem resolved.

As we explain in this document, a system of private alternative dispute resolution (ADR) is a better way to bring about the improvements needed to achieve our vision. That is to say, a scheme set up and directly funded by the aviation industry, but with clear and independent governance, and regulatory oversight by the CAA as a designated competent authority

The European Directive on ADR provides a legal framework for such ADR arrangements and specific information tools to encourage clarity and transparency. However, the Directive is not a silver bullet. Because ADR will not be mandatory in aviation we cannot guarantee that all of the 200-plus airlines serving the UK will join an ADR scheme immediately. Nonetheless, we understand there is a reasonable level of enthusiasm for ADR among the airline community, and we have been encouraged by the constructive and proactive way the industry has engaged with this issue

Our preferred approach is to build on this momentum, and give the industry the necessary support to establish its own ADR arrangements, while accepting not all airlines may join a scheme straight away. We recognise the risk that, for a transitional period, some passengers may have no access to complaint resolution other than the courts. However, the CAA will aim to minimise this transitional period. This draft policy statement therefore explains how we will seek to maximise airline participation in high quality ADR.

In short, we are committing to winding down our direct involvement in consumer complaints handling if we see commitment by 1 September 2015 from at least half of the market to an ADR scheme that meets the criteria set out in this document. The CAA will not stand over arrangements that will not deliver the outcomes that consumers want, no matter how many airlines would join them. Our draft policy explains how, through the use of information and other measures, we will, over time, encourage more reluctant airlines to join an ADR scheme.

Our draft policy is being published for public consultation, which closes on 22 February 2015. We encourage everyone involved with consumer complaints handling and ADR to respond to our consultation, so that together we can shape an efficient and effective redress landscape which delivers for all.



Andrew Haines

Chief Executive of the Civil Aviation Authority

Introduction

What is this document?

1. This document sets out for public consultation the Civil Aviation Authority's (CAA) draft policy on consumer complaints handling and alternative dispute resolution (ADR). It explains the approach we intend to take to ensure that consumers booking flights serving UK airports have access to high quality complaints handling arrangements. Our policy encompasses both how we intend to carry out our new role as a competent authority for ADR schemes, as well as how we intend to encourage as many airlines as possible to participate in high quality dispute resolution arrangements.
2. The publication of our draft policy statement follows the conclusion of the Government's own consultation on implementing the European Directive on consumer ADR¹ (the ADR Directive), and the publication of the Government Response in November 2014².
3. The implementation of the ADR Directive in the UK in July 2015 will introduce a new landscape of complaint handling standards, institutions and information requirements, with significant implications for the current complaints handling arrangements in the aviation sector. This document sets out how the CAA will respond to these changes, particularly in light of its commitment to promoting choice and value for passengers, and also given its current role in consumer complaints handling.
4. By publishing this policy statement we intend to provide clarity on:
 - a) The CAA's vision for complaints handling in the aviation sector.
 - b) How the CAA intends to carry out its role as a competent authority. (The CAA will be designated as a competent authority in regulations that implement the ADR Directive in the UK. Our role as a competent authority will be to assess that ADR providers wishing to operate in the UK aviation sector qualify under the ADR Directive, including checking that they meet the requirements of the Directive and any additional criteria we apply as a competent authority.)
 - c) The circumstances in which the CAA will end its direct involvement in complaints handling, including ceasing the service provided by the

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1417446013180&uri=CELEX:32013L0011>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377522/bis-14-1122-alternative-dispute-resolution-for-consumers.pdf

Passenger Advice and Complaints Team (PACT). That is, on the condition that the airline industry sets up an ADR scheme that meets our requirements in terms of market coverage and the design of the scheme.

- d) Our plans to encourage more reluctant airlines to participate, through the use of publicity and other measures.
- e) How the CAA will respond if an ADR scheme is not set up by the industry. The CAA will take steps to ensure that suitable ADR is available for aviation consumers, and that airlines are using the ADR arrangements that are in place. These steps may include exploring the potential for legislation that makes participation in ADR mandatory for the industry.

Who is this document for?

5. This document is aimed at all stakeholders with an interest in aviation consumer complaints handling, or consumer complaints handling in general, especially:
- Airlines operating in the UK market, who receive consumer complaints (some 20,000 of which are passed to the CAA each year by consumers or airlines because they have not been resolved satisfactorily);
 - UK airports, who also receive complaints from consumers (some of which are also referred to the CAA), although not usually in the volumes experienced by airlines;
 - Trade bodies, particularly given the important role trade bodies have played in other sectors in setting up complaints handling schemes;
 - Providers of ADR services, such as ombudsman schemes, who may be good candidates to deliver an aviation complaints handling scheme;
 - Consumer bodies, due both to their broad interest in improving outcomes for consumers through efficient and effective complaints handling, and their own roles in dealing with enquiries and complaints from individual consumers (e.g. Citizens Advice consumer advice service);
 - Legal professionals and claims management companies (CMCs), who are playing an increasingly prominent role in aviation complaints by helping consumers take court action, particularly claims against airlines for fixed sum compensation under Regulation (EC) 261/2004 (covering passenger rights in the event of denied boarding and of cancellation or long delay of flights).³
 - The media, who play an important role in helping consumers understand their rights and the redress available to them; and

³ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004R0261>

- Regulators and other authorities in the UK and Europe, who can assist us with broader perspectives on good practice, and on how the complaint handling landscape is evolving at both the national and cross-border level.

Definitions and geographical scope

What is ADR?

6. We define ADR as a complaints handling process that:
- Provides an out-of-court solution for disputes between consumers and traders, as specified in the ADR Directive;
 - Is assessed to be independent (of consumers, traders and anyone else that might have an interest in the ADR outcome), and offers impartial, transparent, effective, fast and fair alternative dispute resolution procedures – again, following the ADR Directive;
 - Is privately, rather than publicly, funded, e.g. through businesses paying membership fees, levies or case fees to the ADR provider – this expectation reflects a strong steer in the ADR Directive towards privately funded ADR, as well as common practice in existing UK ADR arrangements.

What type of complaints are covered by our policy?

7. The vast majority of complaints currently received by the CAA relate to issues where consumers have specific statutory rights, such as denied boarding, cancelled or delayed flights⁴ (these alone account for over 90% of PACT complaints); delayed, damaged and lost baggage⁵; and assistance for passengers with a disability or reduced mobility⁶. We would expect that these issues would also dominate complaints received by any future aviation ADR scheme.
8. The ADR Directive applies to “disputes between consumers and businesses concerning contractual obligations in sales or services contracts, both online and offline”.⁷ Common airline practice appears to be to expressly include statutory rights in the conditions of carriage. However, the Directive does not prevent qualified ADR providers from dealing with non-contractual complaints. In our view ADR will not be effective in aviation unless complaints concerning statutory rights are also covered by aviation ADR schemes.

⁴ Under Regulation (EC) 261/2004.

⁵ Under the Montreal Convention.

⁶ Under Regulation (EC) 1107/2006.

⁷ See Article 2(1).

9. We would therefore expect that any future aviation ADR scheme would, at a minimum, cover any complaint where a statutory right may apply, whether or not that right is also considered a contractual obligation. We recognise that businesses may also wish to use ADR to resolve complaints that do not relate to statutory rights or contractual obligations. However, this should be a matter for the business and the ADR scheme to determine.

What type of businesses are covered by our policy?

10. Reflecting the pattern of complaints currently received by the CAA, our policy is primarily concerned with how complaints against commercial airlines (including airlines owned by tour operators) are handled, particularly whether airlines voluntarily join private ADR schemes.
11. However, there is no reason why other aviation businesses could not join an ADR scheme overseen by the CAA as a competent authority. For example, ADR could be used to resolve complaints about assistance that the law requires is provided to consumers with a disability or reduced mobility at airports.
12. We are therefore proposing that the CAA would be responsible for assessing ADR schemes for air transport services provided to or from a UK civil airport, or services and facilities used in connection with such services. In practice, this means that we would be the competent authority for ADR schemes covering complaints against airlines⁸, airports⁹ and travel agents.

What is the geographical scope of our policy?

13. In line with our role as the UK's aviation regulator, this policy statement covers the ADR arrangements for contractual or statutory based complaints from consumers of any nationality relating to flights departing from or arriving at UK airports. This transcends our specific duties under Regulation (EC) 261/2004 and Regulation (EC) 1107/2006 (covering the rights of disabled persons and persons with reduced mobility when travelling by air) to provide facilities for consumers to complain about infringements of their rights under these Regulations. However, we will ensure that these duties will continue to be met under the arrangements that develop as a result of this policy (see paragraph 56).

⁸ Including sub-contracted services like ground handling.

⁹ Including airport-owned car parks and providers of assistance to disabled persons and persons with reduced mobility.

14. The ADR Directive applies to all Member States and it is therefore possible that aviation complaints handling arrangements will be established elsewhere in the EU that overlap with UK arrangements in ways that could affect consumer outcomes. (It is also entirely possible that ADR schemes overseen by the CAA could deal with complaints that are not related to flights to or from UK airports.) We set out in this policy statement how we think such overlaps should be dealt with (see paragraphs 43-44). While a pan-European system for complaints handling is, in principle at least, a more efficient and effective approach for a truly global industry like aviation than nationally-based arrangements, we see no evidence of such a system developing in the short- to medium-term.

Consultation scope

15. We began our internal review of the CAA's role in complaints handling soon after the publication of the ADR Directive in July 2013. During 2014, and particularly following publication of the Government's consultation, we have engaged more widely, both with consumers (through consumer research, see Appendix A), the CAA's independent Consumer Panel and the airline industry (through a dialogue facilitated by the independent transport consultancy, Steer Davies Gleave). We have also discussed this issue informally with the Consumer Council for Northern Ireland (CCNI) and Which?
16. Our engagement with stakeholders has convinced us that we can serve consumers better by adopting a regulatory rather than a service-provision role in this area. Hence, that the CAA should become a competent authority, responsible for assessing and overseeing providers of ADR services in the aviation sector. We have already notified the Government that we wish to take on this role in time for implementation of the Directive, and Government has confirmed that the CAA will be designated as a competent authority in implementing regulations which are due to come into effect in early 2015. This legislation will also designate most other UK sectoral regulators as competent authorities for their respective sectors.
17. We have briefly summarised our reasons for this strategic choice in the next chapter. However, we want to be clear that this consultation is not about whether or not the CAA should become a competent authority – this decision has already been made – but rather how we act in this role, including:
- The type of ADR that we, as a competent authority, want consumers to have access to;
 - How we intend to encourage the development of ADR, including the future of PACT and how any winding-down of the PACT service will be managed by the CAA;

- How we intend to encourage businesses to participate voluntarily in ADR; and
- The options available to the CAA should industry-led schemes not develop.

Consultation timings and next steps

18. The CAA has already carried out a significant level of engagement with consumers and industry on the issue of ADR arrangements in the aviation sector, which has greatly assisted our understanding of consumer and industry positions. This consultation will close on **22 February 2015**. We expect to publish our final policy statement at the end of March 2015 and we will remain in close contact with key stakeholders throughout the consultation period, particularly those engaged in the development of prospective ADR schemes.
19. We welcome comments on any aspect of our draft policy statement, but have highlighted issues at the end of each chapter where we would particularly value stakeholders' feedback. Please send responses and any queries by email to james.tallack@caa.co.uk.

Questions

- Q1: Do you agree with our definition of ADR?
- Q2: Do you agree with the type of complaints that we think should be covered by our policy?
- Q3: Do you agree with the geographical scope of our policy?