

Consumer complaints handling and ADR

CAA policy statement and notice of approval criteria for applicant ADR bodies

CAP 1286



Published by the Civil Aviation Authority, 2015

Civil Aviation Authority, CAA House, 45-59 Kingsway, London WC2B 6TE

You can copy and use this text but please ensure you always use the most up to date version and use it in context so as not to be misleading, and credit the CAA.

The latest version of this document is available in electronic format at www.caa.co.uk

Contents

Contents	3
Foreword	4
Introduction	6
What is this document?	6
Who is this document for?	7
Scope of our policy	8
Which consumer complaints are covered by our policy?	8
Which businesses are covered by our policy?	9
Which businesses are the focus of our policy?	10
What is the geographical scope of our policy?	10
Part one – Our approach	12
Our objectives	12
The need for change	13
The problem with current arrangements	13
Could PACT be turned into an approved ADR entity?	13
Could PACT continue its service without being an approved ADR entity?	14
The type of ADR we want to see	15
A high level of consumer protection	15
Minimum requirements under the ADR Directive	15
Additional CAA requirements for approval	16
How the CAA will enable change	20
Ending the PACT service	20
Maximising participation in ADR	23
A simple ADR landscape	26
Part two – Approval criteria for applicant ADR entities	28
Core requirements	28
Additional requirements	28
Supplying information	29

Foreword

We are today announcing the CAA's final policy on consumer complaints handling and alternative dispute resolution (ADR). This follows extensive consultation with our stakeholders and our recent designation as the competent authority for ADR entities in our sector.

The approach we consulted on at the beginning of the year still largely stands. We believe that the future of consumer complaints handling in aviation lies not in the CAA handling individuals' complaints, but in ADR schemes, such as consumer ombudsmen. These bodies are directly funded by the businesses that use them, but have clear and independent governance, with oversight provided by the relevant regulator. This has been the norm for many years in major consumer service sectors, such as financial services, telecoms and energy. It is now time for aviation consumers to benefit from the simple, swift and effective approach to dispute resolution that ADR brings.

There is one key difference between our sector and the aforementioned markets: ADR will not be mandatory in aviation and the CAA has no powers to require airlines – the focus of our policy – to join an ADR scheme. Our policy is therefore focused on creating the conditions within which voluntary ADR can develop and thrive. As a competent authority for ADR we can set the rules of the schemes in our sector, and deliver better redress outcomes for consumers than we can in our present voluntary role as a complaint handler, but we cannot force airlines to participate.

This means that in developing our policy we have had to make some compromises between what consumers and their representatives want and what the airline industry is prepared to support. Our strong preference is for ADR to be free at the point of use, as it is in other sectors. Nonetheless, we have decided to allow ADR entities to charge a nominal fee to consumers using their services, as permitted under the European Directive on ADR.

Our approach on fees responds to industry concerns that if ADR is free then it will attract spurious and/or poorly prepared complaints, which are costly to administer. This is seen as a particular risk in aviation, because the vast majority of disputes relate to claims for lump sum compensation under the sector's consumer protection rules. However, we have balanced this concession to the industry with a requirement that if a complaint is upheld in any way, the consumer's fee will be refunded. Assuming that complaint outcomes from ADR schemes in aviation will be similar to those in other sectors, this means that the vast majority of consumers will not pay to use ADR.

Airlines have also made it clear to us that they are not prepared to support the costs of both private ADR and the CAA's current complaint handling service. As such, we have decided to make withdrawal of our service conditional on airlines carrying at least 50% of passengers in and out of the UK demonstrating firm commitment to ADR by September

2015 – a realistic target given the characteristics of the airline industry. However, this means that there could be a period when the only option for some consumers seeking redress is the courts. This is not desirable, so we have set out a number of measures to mitigate this risk:

1. The CAA will rigorously enforce the ADR Directive's information requirements, which oblige businesses to tell consumers if they are not prepared to use ADR;
2. We will provide additional information to the market under our consumer information powers, if we feel this will sharpen incentives for industry to participate in ADR;
3. We will, for the foreseeable future, provide a backstop complaints handling service for disability access issues, reflecting the particularly high risk of detriment to this group of consumers; and
4. Finally, if, having been given the chance, voluntary ADR does not develop as we envisage, we will actively seek legislative opportunities to make participation by industry compulsory.

Our overriding objective is for all consumers flying in and out of the UK to have access to high quality ADR. We have been encouraged by the constructive and proactive way that the airline industry has engaged with this issue so far. Now that the CAA has made its position clear, we hope to see real progress towards that goal before the end of this year.



Andrew Haines

Chief Executive of the Civil Aviation Authority

Introduction

What is this document?

1. This document is the Civil Aviation Authority's (CAA) policy on consumer complaints handling and alternative dispute resolution (ADR). 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 European Directive on consumer ADR¹ (the ADR Directive);
 - Is provided by an ADR entity, which has been approved by an independent competent authority on grounds of independence (from consumers, traders and anyone else that might have an interest in the ADR outcome), and which 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 entity – this is common practice in existing UK ADR arrangements
2. In this document we explain 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 will carry out our new role as the competent authority for ADR entities in the UK aviation sector, as well as what we will do to encourage as many airlines as possible to make high quality ADR arrangements available to their passengers.
3. We consulted on our draft policy in early 2015², following the conclusion of the Government's own consultation on implementing the ADR Directive, and the publication of the Government Response in November 2014³. Alongside our consultation we published the findings of independent consumer research on ADR.
4. We received 15 responses to our consultation, mainly from airlines and their trade associations and consumer bodies. We have also received ongoing input on this issue from the CAA Consumer Panel, which is independent from the CAA. We have published a separate document ([CAP1285](#)) detailing the

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

² [CAP 1257](#)

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377522/bis-14-1122-alternative-dispute-resolution-for-consumers.pdf

responses we received and the changes we have made to ensure that the issues and concerns raised by stakeholders are addressed in this document.

5. In this document, we provide clarity on two issues:

- **Part 1** explains the CAA's vision for complaints handling in the UK aviation sector. This includes the type of ADR we want to see develop if we are to end our longstanding, direct involvement in complaints handling, as well as the steps we will take to encourage as many airlines as possible to participate in ADR.
- **Part 2** sets out the criteria we will use in our role as a competent authority for the approval of ADR entities in our sector. These will consist of the minimum criteria prescribed by the ADR Directive and a number of additional criteria which we believe are necessary to ensure a higher level of consumer protection principally that ADR entities that we approve must impose binding decisions on businesses if a resolution cannot be agreed between the two parties.

Who is this document for?

6. This document is aimed at informing 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 because they have not been resolved to the consumer's satisfaction);
- UK airports, who also receive complaints from consumers (some of which are 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;

- Legal professionals and claims management companies (CMCs), who are playing an increasingly prominent role in aviation complaints by helping consumers take court action;⁴
- The media, who play an important role in helping consumers understand their rights and the redress available to them; and
- 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.

Scope of our policy

Which consumer complaints are covered by our policy?

7. The ADR Directive applies to “disputes between consumers and businesses concerning contractual obligations in sales or services contracts, both online and offline”. The terms and conditions of a service contract between an airline and its passengers are set out in the airline’s conditions of carriage. Certain statutory rights flow from these contracts.⁵ The issues that dominate complaints currently handled by the CAA are all covered by airlines’ conditions of carriage. These include: delayed and cancelled flights; denied boarding; lost or damaged baggage; and disability access.⁶ We expect ADR entities to deal with all of these types of complaints.
8. Indeed, one of the core requirements of the ADR Directive is that approved ADR entities must have a general understanding of law to understand the legal implications of the disputes they deal with. Clearly, in the aviation context this must be the relevant law for resolving passenger disputes. To support this, the Directive also places an obligation on consumer protection authorities, such as the CAA, to cooperate closely with ADR entities. This cooperation includes the provision of information and guidance necessary for the handling of consumer disputes.⁷ This will help ensure that ADR entities are equipped to deal with the main issues that give rise to air passenger complaints. However, we will also expect ADR entities that we approve to build on their own knowledge and expertise.

⁴ 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 – see <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004R0261>)

⁵ For example, compensation for denied boarding under Regulation (EC) 261/2004.

⁶ Based on data collected by the CAA’s Passenger Advice and Complaints Team (PACT), the main drivers of consumer complaints are: denied boarding, cancelled or delayed flights (these alone account for over 90% of PACT complaints); delayed, damaged and lost baggage; and assistance for passengers with a disability or reduced mobility.

⁷ See Article 17 of the ADR Directive.

9. Moreover, the ADR Directive does not prevent approved ADR entities from dealing with non-contractual complaints. In practice, we would expect any approved aviation ADR entity to be able to deal with the main issues faced by passengers, whether or not statutory protections apply. In the event of ADR becoming compulsory in aviation in the future, we would expect that it would cover disputes over contractual and statutory obligations.

Which businesses are covered by our policy?

10. Under The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 the CAA has been designated as the competent authority for ADR entities offering ADR services in:
 - Areas for which the CAA has regulatory responsibility; and/or
 - Any other areas for which the CAA has oversight under any enactment.
11. The CAA is therefore the competent authority for ADR entities covering disputes concerning contractual obligations arising from consumer contracts for air transport services provided to or from a UK civil airport. In practice, this means complaints about airlines, whether or not they are based in the UK. Any ADR entity established in the UK and seeking approval from a competent authority to provide ADR services in this area would have to apply to the CAA.
12. For clarity, although we have regulatory responsibility under certain pieces of consumer protection legislation for the sale of flights to UK consumers by travel agents, we do not intend to be the competent authority for ADR entities handling complaints about travel agents. This is because the vast majority of complaints about travel agents are not about activities or issues that we regulate.⁸ Our view is that the competent authority for ADR schemes covering travel agents should be the Trading Standards Institute, which will act as a 'generic' competent authority for sectors that do not have a designated competent authority.⁹
13. The provisions of the ADR Directive do not apply to airports, as airports have no contract with the consumer. However, we see no reason why UK airports could not use an approved ADR entity to handle the type of complaints they receive. We would therefore encourage the voluntary use of ADR by airports, and would ensure that we make our competent authority function available for the approval of such scheme. In the event of ADR being made compulsory in aviation at some point in the future, we would make a strong case for the inclusion of airports in

⁸ In respect of travel agents, the CAA primarily considers enforcement action regarding price transparency and unfair contract terms.

⁹ The Trading Standards institute will perform this role on behalf of the Secretary of State for Business, Innovation and Skills.