

Consumer complaints handling and ADR: CAA policy statement and notice of approval criteria for applicant ADR bodies

CAP 1286



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Foreword

Following recent changes to our policy on consumer complaints handling and ADR, we reviewed our April 2015 policy statement and replaced it with this version.

It remains our view that the future of consumer complaints handling in aviation lies not in the Civil Aviation Authority (CAA) handling individuals' complaints, but in this important work being done by private alternative dispute resolution (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 to ensure that the quality requirements introduced by the European Directive on ADR are adhered to.¹ Private ADR has been the norm for many years in major consumer service sectors, such as financial services, telecoms and energy. We want aviation consumers to also 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 is not currently mandatory in aviation and the CAA has no powers to require airlines or airports 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 set the rules for the schemes in our sector and ensure they deliver better redress outcomes for consumers than we can in our 'backstop' role as a complaint handler, but we cannot force airlines to participate in ADR.

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

¹ In spite of the result of the June 2016 referendum on the UK's membership of the European Union, the current lack of clarity on the UK's future relationship with the EU means the ADR Directive (Directive 2013/11/EU) will continue to be relevant to ADR arrangements in the UK for the foreseeable future.

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 substantial fixed 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. We also intend to keep the practice of charging consumers to use ADR under review and will not hesitate to make changes to our policy if we see consumer fees deterring consumers with genuine grievances from enforcing their rights.

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. This is where we have made the most significant change to our policy. Instead of withdrawing our own complaint handling service once a 'critical mass' of ADR coverage had been achieved, we have now decided to address this barrier to ADR uptake through changes to our regulatory charges. Following consultation with stakeholders, from 1 June 2016 we changed the way we fund our complaints handling service to a 'user pays' form of charging. This will ensure that only those airlines who do not offer their customers ADR pay for the service, reinforcing the 'polluter pays' principle. This should also mean airlines are not disincentivised from signing up to ADR because they are 'paying twice'.

Other measures that we will take to encourage the development of ADR will include, firstly, rigorously enforcing the ADR Directive's information requirements, which oblige businesses to tell consumers if they are not prepared to use ADR. Secondly, 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. 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.



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 ADR² (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 are taking to ensure that consumers booking flights to and from UK airports have access to high quality complaints handling arrangements. Our policy encompasses both how we carry out our role as the competent authority for ADR entities in the UK aviation sector, as well as what we 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 2015³, following the conclusion of the Government's own consultation on implementing the ADR Directive,

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1417446013180&uri=CELEX:32013L0011>

³ [CAP 1257](#)

and the publication of the Government Response in November 2014⁴. Alongside our consultation we published the findings of independent consumer research on ADR.

4. We received 14 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 [CAP 1285](#) detailing the 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 explain our 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.
6. Stakeholders who are interested in the process and criteria we use to assess ADR entities should refer in particular to [CAP 1324](#) (CAA guidance for ADR applicants) and [CAP 1390](#) (information for ADR entities approved by the CAA). All of our ADR publications can be found on [our website](#).
7. The implementation and impact of this policy will be periodically reviewed by the CAA.

Who is this document for?

8. 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 have been passed to the CAA

⁴ <https://www.gov.uk/government/consultations/alternative-dispute-resolution-for-consumers>

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;⁵
- 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?

9. The ADR Directive, which is transposed into UK law by the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and

⁵ 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>).