

Guidance for ADR Applicants

CAP 1324

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Introduction

This is CAA Guidance for Applicants wishing to be approved as ‘ADR entities’ under The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015.

The regulations require those organisations wishing to apply for ‘ADR entity’ status to supply the information set-out in schedule 2 of the regulations and such other information as the competent authority may require in order to assess whether the ADR applicant meets the requirements in schedule 3. This information may be in such a form as the competent authorities require.

This document is intended to explain to applicants what information we are looking for¹, and in what form it needs to be provided.

This guidance includes 3 annexes which provide:

- Annex A – A list of all the documents/information we ask to be provided to us upon application.
- Annex B – A statement which we ask is signed by a Director / Sole Trader / Partner.
- Annex C – A checklist to help applicants ensure they have provided everything they need to as part of their application.

It is advised that applicants read the full Regulations, including the Schedules, when making their application. However, this guidance document is intended to cover all the requirements that the CAA is looking for.

¹ This does not preclude us asking for further information should we see fit to do so.

General statement

The purpose of the Directive is to provide for ADR for consumer complaints and disputes concerning contractual obligations where the existing availability is insufficient. When implementing the Directive the UK government noted in particular that there was an unmet need regarding claims by consumers of aviation. For this reason a specific competent authority was identified to approve ADR entities for aviation consumers i.e. the CAA. The CAA's role, as a specialist aviation regulator, combined with its strategic objective to improve choice and value for aviation consumers, means it is best placed to consider the competence and suitability of ADR applicants to provide alternative dispute resolution procedures to consumers of aviation.

In addition, the CAA's role as recipient of consumer complaints for some disputes stemming from aviation services contracts (and the CAA's current role in seeking to mediate those disputes) means the CAA is well aware that non-binding ADR procedures are not delivering effective alternative dispute resolution for most consumers of aviation.

The CAA's policy, set out in this guidance, is to approve those ADR applicants that can deliver the alternative dispute resolution procedures that are needed by aviation consumers. The CAA is also aware that consumer and trader confidence in ADR entities is vital to the success of ADR within the aviation sector and the past and current conduct of ADR applicants/entities, and those appearing to the CAA to control the ADR applicant/entity, will be relevant to that CAA's assessment of a body's suitability for an ADR entity approval.

Unless otherwise apparent from the context, the use of the word "Trader" in this document means a business whose disputes with consumers are in scope of the CAA's function to approve a body to provide ADR procedures by approving it as an ADR entity.

Note: Upon application we will review the required documents against the corresponding policy. We make no comment or assessment on any aspect of the documentation sent to us that does not directly relate to our assessment of the issues set out in this policy. We require a Director (Partner or Sole-Trader as applicable) of ADR applicants to confirm that there are, to his knowledge, no other provisions or instruments that purport to override or change the impact of the information the CAA will and has assessed as part of the application. The Director further undertakes to advise the CAA within 3 days of changes to any of the aspects of any of the documents that are relevant to the CAA's assessment of the issues set out in this policy.

1. Your organisation

The regulations require that applicants provide: a) the ADR applicant's name, contact details and website address.

Notes on our policy:

- An applicant intending to operate as a corporate ADR entity must already be incorporated and we will be carrying out identity checks.
- We will require proof that the applicant controls, and will control, the web domain name for a minimum of 2 years forward..

2. Structure of your organisation

The regulations require that applicants provide: b) information regarding the structure and funding of the ADR applicant, including such information as the competent authority may require regarding its ADR officials, their remuneration, term of office and by whom they are employed. Schedule 3 sets-out requirements as regards this information.

Notes on our policy:

- The CAA will not approve an ADR entity that appears to the CAA to be controlled by a Trader.
- The CAA will want to be satisfied that no Trader that has joined the ADR entity's scheme appears to the CAA to control the ADR entity.
- Banking arrangements will need to demonstrate that any consumer fee income is ringfenced from general funds/working capital and that any payments by the Trader to consumers do not pass through the ADR entity's accounts.
- Where the ADR entity is established by or financed by a trade association or a professional body the CAA will require the ADR entity to be a separate corporation or company (albeit it may be wholly owned by that trade association or a professional body) and as a consequence the funding for the ADR processes by the ADR entity will be ringfenced from the trade association or a professional body (this is required by the regulations in any case).

3. Funding of your organisation

Notes on our policy:

- The CAA has identified that the risk of harm to a consumer if an ADR entity enters insolvency proceedings is low. The CAA will therefore be reviewing these documents to assess whether the ADR entity considers it can meet its projected liabilities taking into account its projected expenditure and case load over the next 12 months.
- The CAA's assessment of who appears to control the ADR entity will be influenced by the identity/terms/amount of lenders/borrowings.
- If the ADR applicant is partly or wholly owned, and therefore financed, by a trade association or a professional body, the CAA will assess whether the funding arrangements appear sufficient to ensure that the ADR applicant will have sufficient budget at its disposal to carry out its functions as an ADR entity.

4. ADR officials

Notes on our policy:

- The regulations recognise that ADR officials will comprise case handlers and others that oversee an ADR entity's ADR procedures in a management capacity.
- Where the ADR official can:
 - only make a decision with the agreement of both the airline and the consumer the CAA refers to them as case handlers;
- But where the ADR official can:
 - (subject to the agreement of the consumer) impose a decision on the airline the CAA refers to them as case managers.
- ADR officials must not hold shares in any Traders in the sector(s) for which the ADR entity holds a CAA approval to provide ADR services that have signed up to the ADR entity's scheme, or in any company that is part of a group of such an airline.