

CAA statutory charges 2016-17

Consultation on charges (excluding air display and low flying permission charges) CAA response document

CAP 1407



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Published by the Civil Aviation Authority, 2016

Civil Aviation Authority,
Aviation House,
Gatwick Airport South,
West Sussex,
RH6 0YR.

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First published 2016

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Executive summary

On 1 February 2016, the CAA set out proposals for our Schemes of Charges due to come into effect from 1 June 2016. As a cost recovery body, not funded by the tax payer, the cost of our activities must be paid by those we regulate.

Our air displays and low flying permission charges within the General Aviation Scheme have been subject of a separate earlier and now finalised consultation (see CAP 1388) and are therefore not included here.

The key proposals under this consultation were:

- 2016/17 operating costs are held at 2015/16 levels, which will enable charges to remain at current levels overall.
- Where new additional activities are required in relation to the pricing review of Heathrow Airport and extra capacity in the south east, specific charging mechanisms have been incorporated to recover these costs.
- Introduction of a new per-passenger complaint charge following the implementation of the European Alternative Dispute Resolution Directive, leading to reductions in the variable charges of the Air Transport Licensing Scheme and the licensed and non-licensed airports, within the Regulation of Airports Scheme.

The consultation ended on 4 April 2016, by which time we had received 15 responses. The majority of these focused on the introduction of the Alternative Dispute Resolution (ADR) Scheme and the proposed per-passenger complaint charge. As such, section 2 of the document has focused on this issue. However, responses to all the feedback received is detailed in appendix 1.

The CAA is grateful for those responses received and, after a CAA Board discussion, is proposing to implement all proposals made with no further amendments. However, it is clear from the responses received that there is confusion surrounding the introduction of the ADR Scheme and when the proposed per complaints charge will be levied. As such, we will be providing further guidance prior to 1 June 2016 and will work with the airlines over the coming months to

determine an effective triage process for our Passenger Advice and Complaints Team (PACT).

The CAA remains committed to controlling its costs while investing in new processes, systems and skills in order to achieve further savings in the future. The key objectives for the CAA is to provide the best possible outcome for consumers, be an efficient and effective organisation that meets the principles of Better Regulation, and to provide value for money in all its activities.

Chapter 1

Consultation responses

1.1 Number of responses

A total number of 15 respondents provided submissions through the consultation exercise. The respondent type can be broken down as follows:

Respondent	No.
Organisations	7
Representative trade organisations	5
Airlines	2
Airports	1
Total	15

1.2 The five representative trade organisations that responded were:

- Association of British Travel Agents
- Board of Airline Representatives in the UK
- British Air Transport Association
- British Gliding Association
- British Helicopter Association

1.3 The majority of the responses focused on the introduction of the Alternative Dispute Resolution Scheme and the proposed per-passenger complaint charge. As such, section 2 of the document has focused on this issue. However, response to all the feedback received has been detailed in appendix 1.

1.4 The submissions from the following trade associations / organisations can be found as Annexes to Appendix 1.

- Annex 1 – British Gliding Association
- Annex 2 – British Air Transport Association
- Annex 3 – Board of Airline Representatives in the UK
- Annex 4 – Flybe Ltd
- Annex 5 – Ombudsman Services

Chapter 2

CAA's responses to the consultation

The CAA's responses to the main points raised within the submissions received are detailed in this chapter.

Air Transport Licensing Scheme of Charges

UK Alternative Dispute Resolution (ADR) Scheme

2.1 Concerns over the setting up and running of the UK Alternative Dispute Resolution (ADR) Scheme and the role of the CAA's Passenger Advice & Complaints Team (PACT) going forward.

Article 16(2) of Regulation (EC) 261/2004 and Article 15(2) of Regulation (EC) 1107/2006 require Member States to ensure that passengers can complain to a designated body about an alleged infringement of the European Regulations. PACT is currently the only designated body for Regulation (EC) 261/2004 for the UK, and is the designated body for Great Britain for Regulation (EC) 1107/2006 (for Northern Ireland the designated body for this Regulation is the General Consumer Council for Northern Ireland).

As set out in CAP 1286 (the CAA's policy statement on consumer complaints handling and ADR, published in April 2015), the CAA had intended to use the withdrawal of the complaint handling element of PACT as an incentive for airlines to sign up to ADR schemes, which offer better outcomes for consumers. This recognised that airlines would not be prepared to bear the costs of both PACT and ADR. However, in late 2015, following enquiries from the European Commission and input from consumer bodies, CAA and the Department for Transport (DfT) reviewed CAP 1286 and the legal advice underpinning it. It was collectively determined that the role of complaint handling bodies designated under the European Regulations is to handle individual complaints (i.e.

investigate and provide a response), rather than simply receive them, as set out in CAP 1286. PACT will therefore continue to provide a complaint handling service along current lines, until such time as all passengers have access to an ADR body that is also designated as a body to which passengers can complain under the European Regulations. The key difference from June 2016 is that PACT will be funded through a per-complaint charge in order to preserve incentives for airlines to sign up to ADR, a policy objective that both CAA and DfT support.

We do not consider that the recent CJEU judgement affects this position, given that it focused on the question of whether such bodies “must guarantee each individual passenger’s right to obtain compensation”. This implies that the process operated by the body will result in a legally binding outcome, which is not a feature of the PACT service. Although legally binding outcomes will be a feature of ADR entities that the DfT will be designating under the European Regulations, the key distinction is that airlines will enter into ADR arrangements voluntarily and outcomes will be binding by contract. As a backstop service, there is no contract between PACT and the airline and therefore no mechanism to make the outcome of the process legally binding.

We therefore consider that the decision to introduce a per-complaint charge for PACT is based on a robust understanding of what PACT, as a designated body, is required to do. The introduction of the charge also ensures that airlines that offer a designated ADR body for complaints under the European Regulations, do not bear the cost of the PACT service. As such CAA will continue to provide a complaint handling service for complaints relating to Regulations (EC) 261/2004 and 1107/2006 where ADR is not available.

Finally, it has been suggested that there is a conflict of interest between our role as a complaint handler under the European Regulations and our role as a competent authority tasked with the approval of ADR providers. We do not recognise this alleged conflict because we are effectively seeking to end our own role in complaint handling by facilitating a switch

to ADR (i.e. we are not a market participant seeking to grow our market share at the expense of ADR providers). Furthermore, our role as a complaint handler and ADR competent authority are separate – and in both cases we can only recover our costs.

2.2 Per-Passenger Complaint Charge (£150)

As a cost recovery body, not funded by the tax payer, the cost of our activities must be paid by those we regulate. Previously the cost relating to PACT was recovered from the variable charges within the Air Transport Licensing (ATL) Scheme and the Regulations of Airports (RAS) Scheme. With the introduction of the per-complaints charge, this has led to reductions within those ATL and RAS variable charges.

The per passenger charge of £150 has been set to recover the cost of PACT, and assumed that approximately 6,000 complaints would be dealt with by the PACT team. Appendix D of CAP 1373 represented 10 months (£775k) of the cost as the Scheme is not due to come into effect until 1 June 2016.

It should be noted that the presentation given by the CAA and DfT on the 18 March 2016 to the carriers highlighting the current position with regard to complaint handling, showing a total of 10,000 complaints being received through PACT. It has been assumed that in 2016/17 4,000 of the complaints will be dealt with through an ADR providers.

The CAA agrees that high levels of ADR uptake would require us to assess whether better value for charge payers could be obtained by delivering the PACT service in a different way. One option would be to outsource the function to a designated ADR provider. We will keep this under review.

2.3 Re-balancing of the Air Transport Licensing (ATL) Scheme and the Regulation of Airports (RAS) Scheme

Appendix D of CAP 1373 shows that the ATL and RAS cost base reduced by £220k and £401k respectively when compared to the 2015/16 budget.

The reduction primarily relates to the movement of the PACT cost base to the ADR Scheme being £775k (50% of which has been reduced from each Scheme). However, each year the CAA's Consumers and Markets Group review their activities for the following year and determine the most appropriate allocation of costs to accurately reflect their forthcoming activities. This re-allocation has led to the disparity between the revised cost base and the movement in cost relating to PACT.

The income has been set to recover the revised cost base and achieve a 3.5% return on capital employed while removing the cross subsidies that existed previously.

2.4 ADR Entities charging fees to consumers

The CAA is prepared to allow ADR entities to charge a nominal fee to consumers for the sole purpose of deterring frivolous or vexatious complaints, although we have some concerns about such a fee acting as a deterrent to consumers being able to enforce their rights. Where an ADR entity charges such a fee, we will review its impact after a year of operation to see if it is having the intended effect. If it is not then we will make changes to our terms of approval, such as reducing or removing the fee. However, given our concerns, we do not think it is appropriate to impose a fee on consumers where we are responsible for the complaint handling service, as is the case with PACT. As such, airlines should see the option to charge a nominal fee as a benefit of using ADR over PACT.

2.5 ADR annual charge

The CAA has reviewed its expected workload with regard to the annual oversight tasks of ADR providers and is content that the proposed charge of £13,440 is appropriate. This work will be closely reviewed over the coming year and should any adjustment be warranted, then revised proposals will be included in the industry consultation concerning the 2017/18 charges.

Other Schemes of Charges

Personnel Licensing Scheme

- 2.6 The concerns expressed by the British Gliding Association (BGA) on charges for airworthiness certification of sailplanes, sailplane licences, seminars, instructors and examiners when the BGA carries out most of the regulatory activities with regard to sailplanes.**

The CAA values the important and pivotal role the BGA has, and is, playing to ensure the safety and growth of the UK gliding sector of aviation in the UK.

The CAA acknowledges the ongoing concerns that the BGA has highlighted in its submission. The future regulatory EASA requirements for sailplanes are currently being considered, but the UK must adhere to the legislation concerning sailplanes contained within the current EASA regulations. The CAA and the BGA are actively involved in the review currently being conducted by EASA on the future regulatory requirements for the General Aviation sector. Mindful of the topics being debated within EASA, the CAA is working with the BGA to resolve concerns over the current transitory period until at least 2018 when it is expected that the EASA GA regulatory direction will be known.

Chapter 3

Conclusion

- 3.1 The CAA would like to thank all 15 respondents for their comments to the charging proposals.
- 3.2 Having discussed the comments received, and due consideration having been given by the CAA Board to the points detailed above, the CAA proposes to implement the charges outlined in the consultation document for the period commencing 1 June 2016 without further change.

Appendix A

Summary of representations received from charge payers and interested parties

Ref.	Topic	Detailed comment	CAA response
General points (GEN)			
GEN1	Content with the proposals	CAA Ref 0313: No objection to the proposals. CAA Ref 0317: Thank you for the opportunity to respond to this consultation. The BHA recognises the achievement of the Regulator in maintaining oversight costs at the current level and is content with the proposals.	Noted
Aerodrome Licensing Scheme (ALS)			
ADL1	Removal of the RFFS charges is appropriate but concern over RFFS crew standardisation across EU aerodromes	CAA Ref 0316: Rescue and firefighting services (RFFS) - approved training providers". The removal of this charge is appropriate as the requirement for approved training providers has been removed. However, there may be a future question on how RFFS crews are standardised across EU aerodromes when provided training is the responsibility of the aerodromes.	The CAA will incorporate checks on UK RFFS crew standards within its aerodrome oversight programme.

Ref.	Topic	Detailed comment	CAA response
ADL2	Unfair to use a banded system of number of ATCOs to charge for a ANSP ATC service	CAA Ref 0316: Grant of an Article 169 approval and/or designation of an ANSP to provide air traffic control services and ANSP annual charge by aerodrome. The charge should be based on the number of controllers employed rather than a banding system. A banding system is a negative influence on the decision to recruit an additional controller(s) for small units (i.e. if an airport had 15 controllers and wished to employ one more controller, the banding would change from Charge Ref 5 to Charge Ref 4 at an additional cost of £7,534 per annum). Effectively, smaller ANSPs appear to be subsidising units with many more controllers.	The method of charging by a banded system based upon the number of ATCOs is not subject to this charges consultation. Any banded system of charging will have a certain number of organisations that appear on the cusp of a band but overall it was based on actual time analysis that was grouped into the various bandings currently operating in order to recover the overall cost of oversight of all ANSPs.
ADL3	Unclear as to who should pay the MET ANSP annual charge	CAA Ref 0316: Meteorological (MET) ANSP charges. It is not clear who is to pay this charge. Is it to be paid by all ANSPs that also provide meteorological observation that is audited by the CAA? If so, what has changed as this service has been previously considered to be part of the standard CAA charges on airports/ANSPs?	The Scheme of Charges already has a charge for an initial application for an ANSP to provide MET services at an aerodrome. The charge proposal is to bring the ANSP charges in respect of the regulatory oversight of MET service provision into line with the other ANSP charges for ATC, CNS and AIS. The ANSP holder will be liable to pay this annual charge.
ADL4	The proposed structural charge for ANSP certification and	CAA Ref 0327: The proposed structural change for ANSP certification and designation appears to be sensible because it better reflects the costs of re-certification and distributes the cost of regulation more fairly. We would be grateful if the CAA could confirm whether the current charge structure has allowed it to recover the full costs of	The CAA is responding to the need to ensure cost recovery is achieved in the future even though any under-recovery to date has not been significant.

Ref.	Topic	Detailed comment	CAA response
	designation is sensible	certifying BAATL at Birmingham and ANS at Gatwick.	
Air Transport Licensing Scheme (ATL)			
ATL1	It is unclear as to how the CAA will operate both an ADR Scheme as well as a PACT service	CAA Ref 0323: ABTA supports the concept of ADR - we have operated our own scheme for over 40 years - and support the principle of it being extended to airlines. We acknowledge that the CAA wishes to incentivise voluntary participation by airlines in certified ADR arrangements. However, we are very concerned that the CAA, which is both the EU National Enforcement Body and the competent authority for the approval of ADR entities, is itself intending providing a residual complaints handling service through PACT. CAA Ref 0324: The CAA has pointed out itself that it "is required to be a regulator and should therefore avoid situations where it is also a service provider as a conflict of interest could result". We understand the need for the CAA to operate a residual scheme to deal with complaints where Traders have not opted to sign up to an ADR scheme under the regulations but it appears that the residual scheme as envisaged offers no incentives, either in terms of cost or otherwise, to Traders to switch to a non-CAA scheme. We feel (<i>the charges proposed</i>) are high relative to the level of fees being charged by other competent authorities and to the likely timeframe which it will take to persuade Traders to subscribe to a non-CAA scheme. It appears to us to be unwarranted while PACT	See section 2.1 in the main report.