

CAA policy on assessing 'competency' of proposed airline ADR schemes with 'EU listed bodies'

CAP 1408

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Foreword

Note on contents

Airlines carrying passengers in and out of the UK must signpost such passengers (if they complain and the airline cannot resolve their complaint) to either an ADR entity approved by the UK CAA, or to an EU listed body which would be competent to deal with the complaint. This document sets out CAA policy as to how it will assess this competency.

Chapter 1

Introduction

Under the UK ADR Regulations¹ 19(2)(b), when an airline has “exhausted its internal complaint handling procedure” it needs to signpost consumers to “the name and website address of an ADR entity or EU listed body that would be competent to deal with the complaint”. They must also state whether the airline is obliged, or prepared, to submit to an alternative dispute resolution procedure operated by an ADR entity or EU listed body.

An ‘ADR entity’ is one approved by the UK CAA²; an ‘EU listed body’ is an ADR provider approved by another European Member State (under the ADR Directive and any associated implementing legislation). This policy sets-out how the UK CAA will decide whether an EU listed body is ‘competent’ to deal with complaints regarding aviation.

The CAA recognises that there are benefits associated with the mutual recognition of ADR providers throughout Europe. However, the Directive recognises that the quality requirements of the Directive “*should not prevent Member states from adopting or maintaining rules that go beyond what is provided for in this Directive*”.

To promote a high level of consumer protection in the aviation sector there are a number of specific requirements placed upon ADR entities approved by the UK CAA including, for example, the requirement that ADR outcomes are binding upon the trader. Another example is that our assessment of the expertise and knowledge of ADR entities approved by us ensures that we are satisfied as to their level of understanding of consumer protection legislation specifically targeted at the aviation sector.

¹ The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (as amended by) The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015. A consolidated set of Regulations is provided on our website at the following link: <http://www.caa.co.uk/Commercial-industry/Airlines/Alternative-dispute-resolution/>.

² A list of ADR entities approved by the UK CAA is available here: <http://www.caa.co.uk/Commercial-industry/Airlines/Alternative-dispute-resolution/>.

Therefore, whilst not requiring EU listed bodies to meet exactly the same criteria as UK approved ADR entities, our assessment of competency will ensure that an appropriately high standard of consumer protection is maintained.

Chapter 2

Requirements

(i) Specific understanding of aviation

In the UK, the government has assigned a specific role to the CAA to approve ADR providers wishing to operate in the aviation sector. As such, ADR entities approved by the competent authorities in the UK (such as TSI, the Financial Conduct Authority, or the Gambling Commission for example), cannot rely upon those approvals so as to operate within the aviation sector. ADR providers must apply to directly to the CAA to do so.

As such, it would be incongruent for the CAA to accept the signposting by airlines of EU listed bodies approved by competent authorities in other member states, which do not specifically include the aviation sector. Therefore, **one of the key requirements for assessing an EU listed body as ‘competent’ is that its approval must specifically cover aviation disputes.**

Following on from this, **the EU listed body will need to have sufficient knowledge and expertise in relation to the aviation sector.** The UK Regulations require that the ADR entity ensures that an ADR official possesses a general understanding of the law and the necessary knowledge and skills relating to the out-of-court or judicial resolution of consumer disputes, to be able to carry out his or her functions competently. And the Directive at Article 6 states under *“Expertise, independence and impartiality”* that *“Member States shall ensure that the natural persons in charge of ADR possess the necessary expertise and are independent and impartial.”*

This is clearly for the benefit of consumers but will also be important to airlines. For those EU listed bodies which already operate ADR within the aviation sector then this experience should be able to be demonstrated through the body’s track record in terms of its decision making. We will therefore need to know what complaint types are currently dealt with and what ratio of cases are found for and against airlines.

For any ADR bodies which do not have a past history of dealing with aviation related disputes, we will need to be provided with evidence which demonstrates their knowledge and expertise. We will therefore need written statements to demonstrate how this knowledge has been acquired and the strategies in place for keeping up to date with changes to the law.

(ii) Coverage, language and scope

To ensure that there is comprehensive coverage for consumers **the proposed scheme will need to handle complaints from any EU resident related to flights in and out of the UK. To enable this the airline will need to ensure that the ADR body can communicate in writing³ with the consumer in whatever language the airline / consumer contract is in.**

It will also need to include disputes covering, as a minimum:

- i. Denied boarding, delay, or cancellation;**
- ii. Destruction, damage, loss, or delayed transportation of baggage;**
- iii. Destruction, damage, or loss of items worn or carried by the passenger;**
- iv. Problems faced by disabled passengers or passengers with reduced mobility when using air transport services; and**
- v. Any more general disputes arising where the consumer alleges that the business is not trading fairly.**

This is to ensure that consumers are not left in a position where there is no ADR provider which can deal with his/her complaint. This is a key objective of the Directive.

³ If the consumer has a disability which makes communication in writing difficult and verbal communication is preferred by the consumer, then it is expected that the EU listed body would be prepared to make a reasonable adjustment to enable that consumer to make out his/her complaint in the language of the airline / consumer contract. If there is evidence that consumers with disabilities are being excluded from the complaints process we may withdraw our assessment of competency.