

Policy for ADR applicants and approved ADR entities - updated February 2021

CAP 1324



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1. Introduction

- 1.1 This document provides guidance for applicants wishing to be approved by the Civil Aviation Authority as alternative dispute resolution (ADR) entities for aviation under The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (the Regulations). It is also guidance on CAA policy for ADR entities which have been approved by the CAA under aforementioned Regulations.
- 1.2 The CAA is the competent authority under these Regulations for aviation. Part of our role as competent authority is to consider the competence and suitability of ADR applicants to provide an ADR service to aviation consumers.¹ In its role as a competent authority the CAA also maintains continuous oversight of the ADR entities which it has approved and therefore the requirements of this policy apply to both ADR applicants and ADR entities on an ongoing basis.
- 1.3 The Regulations require those organisations wishing to apply for 'ADR entity' status to supply the information set out in Schedule 2 of the Regulations. In addition, the Regulations require that applicants provide any other information required by the competent authority in order to assess whether the ADR applicant meets the requirements in Schedule 3. This document is intended to explain to applicants what information we are looking for,² and in what form it needs to be provided. Such information may also be required by the CAA to be submitted by approved ADR entities, whether during its annual continuation of approval process or at any other time. In order to be assessed for ADR entity approval, ADR applicants must complete the application form, provide a signed statement and supporting documentation.
- 1.4 This guidance includes seven annexes which provide:
- a) Annex A – Application form
 - b) Annex B – Statement to be signed by a director / sole trader / partner
 - c) Annex C – Checklist for applicants
 - d) Annex D – Explanation of the term 'deadlock'
 - e) Annex E – Consumer disputes that fall within the scope of 'trading fairly'
 - f) Annex F – Complaints Review Process flow chart
 - g) Annex G – Resolving complaints that raise complex and novel issues

¹ We set out our policy on consumer complaints handling and ADR in [CAP 1286 – Consumer complaints handling and ADR updated CAA policy statement](#)

² This does not prevent us asking for further information should be see fit to do so.

- 1.5 Applicants are advised to read the full Regulations, including the Schedules, when making their application.
- 1.6 Approved ADR entities are required to inform the CAA of any subsequent changes made to information submitted at the time of application with regard to matters set out in this document.

2. General statement

- 2.1 The purpose of the ADR Directive is to provide ADR certified by a competent authority for consumer complaints and disputes stemming from contractual obligations where the existing availability is insufficient. As the sectoral regulator for aviation the CAA was designated as the competent authority to approve ADR entities for aviation consumers.
- 2.2 The CAA's policy, set out in this guidance, is to approve those ADR applicants that can deliver the alternative dispute resolution services 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. As such, the past and current conduct of ADR applicants / approved entities, and the governance of the ADR applicant / approved entities, will be relevant to the CAA's assessment of an applicant's suitability for ADR entity approval and of an approved entity's continued suitability.
- 2.3 Unless otherwise apparent from the context, the use of the word "trader" in this document means the business with which an aviation consumer may have a dispute stemming from a contractual obligation.
- 2.4 **Application process:** our application process is set out in [CAP1426 - ADR entity approval and appeals process](#).³
- 2.5 **Dormant applications:** the CAA will generally deem an application 'dormant' should the applicant halt the application process by not submitting required information and/ or documentation within two months of feedback being provided by the CAA case worker, or by going out of communication entirely for two months or more. The applicant can also request explicitly that their application is deemed 'dormant'. Applications can only be held dormant for six months. After this time the original application will be withdrawn and no refund will be due. If the applicant wishes to 're-activate' their application following withdrawal then a new application will need to be made with the payment of a further application fee.

³ www.caa.co.uk/cap1426

- 2.6 **Withdrawal of approval:** our policy is set out in [CAP 1427 - Withdrawal of ADR Entity Approval Policy](#).⁴

3. Your organisation

Requirements of the ADR Regulations

- 3.1 The Regulations require that applicants provide their registered name (and trading name if different),⁵ contact details and website address.

The CAA therefore requires the following:

- 3.2 An applicant intending to operate as a corporate ADR entity must already be incorporated and we will be carrying out identity checks. ADR applicants must provide supporting information about their business structure and trading name. The information required is different depending on whether the applicant is a company, a partnership or a sole trader.
- 3.3 ADR applicants must provide their web address or addresses for consumers and traders.
- 3.4 ADR applicants must provide proof that the applicant controls, and will control, the web domain name for a minimum of 2 years ahead.

4. Structure and funding of your organisation

Requirements of the ADR Regulations:

- 4.1 The Regulations require that applicants provide 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.

The CAA therefore requires the following:

Structure

- 4.2 The CAA will not approve an ADR applicant that appears to the CAA to be controlled by an airline or an airport.
- 4.3 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 legal entity (albeit it may be wholly owned by that trade association or a professional body). ADR applicants that this applies to will need to provide evidence on their corporate structure to demonstrate that they meet this criterion.

⁴ www.caa.co.uk/cap1427

⁵ ADR applicants should be aware of the rules on using sensitive words, for example 'Ombudsman', in company names: <https://www.gov.uk/government/publications/incorporation-and-names>

- 4.4 Corporate applicants will need to provide information on their group structure, copies of memorandum and articles of association and details of the shareholders of the applicant including number and class of shares held.

Funding

- 4.5 As part of the application process the CAA will review the documents listed at 4.7 below to assess:

- a) Whether the ADR applicant can meet its projected liabilities taking into account its projected income and expenditure over the next 12 months; and
- b) Who is in a position of control for the ADR applicant (including names of directors).

- 4.6 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 resources at its disposal to carry out its functions as an ADR entity.

- 4.7 ADR applicants will need to provide the following documents:

- a) Audited financial statements with an unqualified audit report dated within six months of financial year end;
- b) i) A projected profit and loss, cash flow forecast and balance sheet all analysed by month for the current financial year. (This should include actuals for the relevant months that have passed). If the applicant is more than 6-months through its current financial year the forecasts should be extended for an additional 12-months to the next financial year end.

ii) Supporting commentary to the forecasts detailing the key assumptions used and the explanations for any significant year-on-year movements.
- c) Details of the current funding of the applicant. Copies of any loan agreements should be provided; and
- d) Details of access to additional sources of funding e.g. overdraft or revolving credit facility.

- 4.8 ADR applicants will need to provide information about banking arrangements to demonstrate that any consumer fee income is ringfenced from operational funds and that any such fees will be processed by the ADR entity themselves, and not by a third party.

- 4.9 ADR applicants must provide assurances that they will not profit from consumer fees, but will use income raised from the fee towards charitable aims.

- 4.10 ADR applicants will need to confirm in writing that any payments by the trader to consumers do not pass through the ADR entity's accounts, with the exception of

trust accounts created in accordance with section 19 below. Please see section 19 for guidance on the CAA's requirements for a trust account arrangement in cases where the ADR applicant / entity is seeking hold and manage funds on behalf of a scheme member for the purpose of paying consumer awards.

5. ADR officials (independence and impartiality)

The CAA requires the following:

- 5.1 ADR applicants must provide evidence that conflict of interest clauses in employment contracts (or contracts for services where self-employed) contain the following (or similar):

"[ADR officials]⁶ must not hold shares in airlines or airports.

[ADR officials] are required to disclose to [the ADR entity] a circumstance that may, or may be seen to (i) affect [the ADR official]'s independence or impartiality; or (ii) give rise to a conflict of interest with a party to the dispute which [the ADR official] is asked to resolve. Such matters include knowing someone involved in the complaint from either the consumer or [the trader] side (including having worked in the last 12 months for an airline or airport signed to [the ADR entity]'s scheme).

[ADR officials]' remuneration or other terms and conditions are not related to the financial outcome for consumers or traders of the ADR procedures."

- 5.2 The CAA does not require evidence of the amount of salary or wages paid to the ADR officials. However, ADR applicants must provide evidence that ADR officials are paid by the ADR entity and not by a third party.

6. ADR scheme rules

Requirements of the ADR Regulations

- 6.1 The Regulations require that applicants provide the rules of the alternative dispute resolution procedure to be operated by the ADR applicant. Schedule 3 sets out specific requirements on what the rules must contain.

The CAA therefore requires the following:

- 6.2 ADR applicants must provide copies of their scheme rules. The scheme rules must:

⁶ The CAA defines certain types of ADR officials as:

- a) **Case handlers:** Where the ADR official can only make a decision with the agreement of both the trader and the consumer
- b) **Case managers:** Where the ADR official can (subject to the agreement of the consumer) impose a decision on the trader

- a) Clearly advise the consumer and the trader:
- i. About the process that will be followed once the ADR entity has agreed to accept the claim, making clear to the trader and the consumer who will/must do what and when;
 - ii. About the time they will be given to consider and respond to any documents or questions put to them by the ADR entity. It is the CAA's policy that this will be at least 14 calendar days;⁷
 - iii. That when the ADR entity has the complete complaint file the ADR entity will issue a notice to confirm that;
 - iv. That final decisions will be made within 90 calendar days⁸ of the ADR entity receiving the complete complaint file, except where:
 - the ADR entity considers that the dispute is highly complex, in which case it may extend the 90 day period, but must advise the consumer and the trader of the additional time that the ADR entity needs to make a decision on the claim⁹; or
 - the applicable scheme rules provide for complex and novel issues to be resolved in accordance with the process specified in Section 18 (and Annex G) below and this process is invoked by the trader. In this case, the ADR entity may extend the 90 day period, but must advise the consumer of the process that will be followed for their claim, and that additional time may be required for the ADR entity to make a decision on the claim.
 - v. That the decision made by the ADR entity will be binding on the trader if accepted by the consumer;
 - vi. That records will be maintained of any discussions which take place with the consumer and/or, trader, witnesses or experts as disputes are investigated, considered and determined. Oral hearings (i.e. face to

⁷ In the case of pre-travel complaints related to disability matters this timeframe should be shortened so as to effectively deal with the complaint (e.g. if the flight is due to take place in the next few weeks then the airline can be required to respond within an expedited timeframe, at the discretion of the ADR entity so as to meet the need of the passenger(s));

⁸ In the case of pre-travel complaints related to disability matters this timeframe should be shortened so as to effectively deal with the complaint. For example, if the flight is due to take place within the next week then the ADR entity should make its decision with an effective timeframe so as to resolve the issue for the passenger prior to the flight taking place.

⁹ As defined by ADR Regulations Schedule 3(6)(d); <http://www.caa.co.uk/Our-work/About-us/Alternative-Dispute-Resolution/> under 'Consolidated UK Regulations'.

face meetings or tele-conferences) cannot be required to take place unless the consumer agrees;

- vii. That if, after consideration of the consumer's complaint has commenced, it is discovered that the ADR official handling the consumer's complaint has a conflict of interest the case will be immediately moved to another ADR official within the same entity. Alternatively the ADR entity will cease handling the complaint. In the latter case the ADR entity will assist the consumer in transferring their complaint to another ADR entity and pay any fee payable by the consumer for doing so. If another ADR entity cannot accept the complaint (or there is not another ADR entity) the original ADR entity will only continue handling the complaint with the consent of the trader and the consumer. If that consent is withheld the ADR entity will refund the fee already paid by the consumer;
- viii. That if the consumer's complaint cannot be accepted (due to reasons set-out in the 'statement of grounds for refusing or refusing to continue applications' or due to reasons relating to conflict of interest) the consumer must be advised of this within three weeks of the ADR entity receiving the final submissions of the consumer and trader;
- ix. That consumers must allow a trader eight weeks to respond to a direct complaint before it can be submitted to the ADR entity and become eligible for consideration by that ADR entity;¹⁰
- x. That should an airline provide a response to a consumer which does not indicate clearly that there is the potential for further consideration of their complaint, then that letter will be considered a 'deadlock' letter and the consumer will have a right to take his/her complaint to ADR;¹¹
- xi. Of the required timeframes within which traders must pay any awards to consumers as a result of the ADR process and that non-payment within the specified time period is a breach of the scheme rules;

¹⁰ Except in the case of pre-travel complaints related to disability matters. In such cases consumers must be permitted to access the ADR scheme within a shorter time period, as necessitated by the practicalities of their complaint. For example, if the flight is due to take place within the next week then the ADR entity should not refuse the complaint as long as there is some evidence that the complainant has attempted to contact the airline to resolve the matter.

¹¹ Regulation 19(2) of the ADR regulations enable a consumer to take his/her complaint to ADR once a trader has exhausted its internal complaint handling when considering a complaint. Annex D provides further information regarding this.

- xii. That if a monetary award is an outcome of the ADR process under EC Regulation 261/2004¹² that the amount awarded will be as set-out in those regulations and not varied;
- xiii. Of the ADR entity's policy as regards the application of currency exchange rates (i.e. the date at which exchange rates will be calculated with reference to);
- xiv. That interest payments are not normally part of awards determined;
- xv. Of the notice period required by the ADR entity should the airline wish to leave the ADR scheme. And that, in such a situation, any complaints submitted by consumers prior to the end of the notice period will be completed through to an ADR outcome. The airline will remain bound to pay any awards determined and the scheme rules will apply to such complaints, even once the notice period is completed;
- xvi. That consumers are not bound by any confidentiality restrictions regarding their experience of the ADR process;
- xvii. That the General Data Protection Regulations apply and that all data submitted to the ADR entity with regard to consumer complaints, may be shared with the Civil Aviation Authority, including all personal data.¹³
- xviii. That where the ADR entity is aware of cases which are progressing through the UK or European courts which may affect the outcomes of ADR decisions:
 - The consumer will be advised and given the option to proceed with the ADR process, or place it on hold awaiting the court case final outcome.
 - The consumer will be reminded of the limitation period applicable to bring their dispute before a court and that pausing the ADR process to await the outcome may lead to their claim being timed-out for court action.

¹² Reference to Regulation 261/2004 (or Regulation EC 261/2004) throughout this document should be read as reference to Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) (Retained EU Legislation). This is UK law and includes amendments to allow for its adoption by the UK. Full details can be found at: [CAP2045A00: Consumer Regulation 261/2004 \(caa.co.uk\)](#).

¹³ <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

- If the consumer chooses to proceed with the ADR process without awaiting the outcome of the court case, the consumer will be made aware that if they had consented to pause the case the eventual ADR outcome may have been different.
- The CAA will be informed when the option to pause is given to consumers.
- Where the court case in question has resulted from the process for resolving complex and novel issues specified in Section 18, the process in Section 18 will be followed.

b) Clearly advise the consumer that:

- i. They may withdraw from the procedure at any stage
- ii. They may bring a claim to court at any stage
- iii. They will be given a choice (and at least 7 calendar days to consider) whether to accept the solution proposed by the ADR entity
- iv. Court proceedings may result in a different outcome to ADR
- v. They can submit complaints to the ADR entity in the language they used to contract with the airline, and that complaints can be handled in that language
- vi. If payment of any award agreed as an outcome of the ADR process has not been completed within the required timeframe, how the consumer should report such to the ADR entity (which will raise the matter with the airline until payment is made)

c) Include the 'Statement of Disputes Covered' (as at Section 10).

6.3 ADR applicants must ensure that all contracts between the ADR entity and traders:

- a) Require the trader to provide 90 calendar days notice of its intention to terminate its arrangements with the ADR entity;

14.1 Allow for early termination (i.e. before the 90 calendar day period has expired) only in the event that:

- i) The trader has entered into a contract for ADR services with an alternative ADR entity; and
- ii) The termination date for early termination is no earlier than the day before the arrangements to provide ADR services with the new ADR entity commence.

- b) Set out that if the trader terminates their arrangement with the ADR entity this will not affect the processing of, and resolution of, any disputes submitted by consumers (and already accepted by the ADR entity) before the effective date of that termination;
- c) Ensure that the trader is obliged to comply with any binding outcome of those disputes in the ADR process;
- d) Ensure that the trader is obliged to provide evidence to the ADR entity when it pays awards to consumers (or some alternative mechanism for measuring compliance by traders with outcomes of the ADR procedures);
- e) Require that the trader must comply at all times with the extant scheme rules (as approved by the CAA) of the ADR entity; and
- f) Specify that, in the event on any conflict between the scheme rules and the contract, the scheme rules will prevail.

- 6.4 For fixed term contracts between ADR applicants and traders, ADR applicants must ensure that the contract requires the trader to provide 90 calendar days notice of intention to allow the contract to expire (which would thereby terminate its arrangement with the ADR entity).
- 6.5 ADR applicants must, on request by the CAA, provide the CAA with a copy of the contract between the ADR entity and the trader.
- 6.6 ADR entities must notify the CAA when a trader provides notice of its intention to terminate their arrangements with the ADR entity, and must provide the CAA with confirmation of the termination date.
- 6.7 ADR applicants must ensure that any and all financial damages due under the terms of the contract between the ADR entity and the trader due to non-compliance by the trader with the contract and/or the scheme rules continue to be due and payable once a trader has given notice of termination, during that notice period, and after termination of the contract.
- 6.8 ADR applicants must confirm that, if approved as an ADR entity, they will notify the CAA as soon as possible on becoming aware of potential or actual breaches of their scheme rules by traders.
- 6.9 ADR applicants must provide information to the CAA about all financial damages payable by traders for non-compliance with the contract and/or the scheme rules including, but not limited to, failures on the part of the trader to pay the sum awarded to a consumer in compliance with the scheme rules.

7. Fees

Requirements of the ADR Regulations

7.1 The Regulations require that applicants provide details of any fees to be charged.

The CAA therefore requires the following:

Fees to consumers

7.2 ADR applicants must confirm that any fees to consumers are:

- a) £25 or less;
- b) Only be applied per complaint and not per passenger or per issue raised in that complaint; and
- c) Only applied at the conclusion of the ADR determination.

7.3 If a consumer is charged a fee ADR applicants must confirm:

- a) That consumers with complaints that relate to EU Regulation 1107/2006¹⁴ or the UK Equality Act 2010 are not charged a fee. However, if the same complaint includes a complaint in respect of other issues then the fee may be charged;
- b) That if consumer fees can be paid by pre-authorised credit/debit card transactions, it will be made clear that they will pay only if their claim is unsuccessful (as opposed to being refunded if their claim is successful); and
- c) That consumers will be told about any fee at the beginning of their transaction to submit a claim.

Fees to traders

7.4 ADR applicants must confirm that the fee charged to traders will not be calculated with reference to the outcome of the ADR process (which includes the amount of a financial award (if any) made to consumers). Subject to that, a scale of charges is permissible, including fee scales or amounts that incentivise early settlement/resolution by traders.

7.5 The ADR applicant must advise the CAA of the range of fees payable by traders at all stages of the ADR process.

7.6 We are aware that the specifics of commercial contracts may be sensitive and may not have been agreed at the time of the application. However, we require an overview of how the fees will be structured. ADR applicants will need to confirm (for example) whether fees are up-front per case or after the case has been

¹⁴ Passengers with reduced mobility

closed. Should agreements be put in place with traders in the future which differ from the range of fees provided in this application the ADR entity must inform the CAA.

8. Average length of the ADR procedure

Requirements of the ADR Regulations

- 8.1 The Regulations require that applicants provide information on the average length of the alternative dispute resolution procedure, where the ADR applicant already operates an alternative dispute resolution procedure.

9. Language

Requirements of the ADR Regulations

- 9.1 The Regulations require that applicants provide information on the language in which the ADR applicant is prepared to receive initial complaint submissions and conduct the alternative dispute resolution procedure.

The CAA therefore requires the following:

- 9.2 ADR applicants must confirm that they agree to deal with the dispute both orally and in writing in the languages which may be used by consumers for entering into a contract with the applicable trader to which the complaint relates.

10. Statement of disputes covered (including monetary thresholds)

Requirements of the ADR Regulations

- 10.1 The Regulations require that applicants provide a statement as to the types of disputes covered by the ADR procedure operated by the ADR applicant.
- 10.2 As regards airlines, the CAA recognises that the majority of disputes between consumers and airlines that stem from contracts for flights relate to the issues set out below. ADR applicants must be able to deal with complaints against airlines, and must be able to handle the following types of complaints as a minimum:
- a) Denied boarding, delay, or cancellation;
 - b) Destruction, damage, loss or delayed transportation of baggage;
 - c) Destruction, damage, or loss of items worn or carried by the passenger;
 - d) Problems faced by disabled passengers or passengers with reduced mobility when using air transport services; and
 - e) Any more general disputes arising where the consumer alleges that the trader is not trading fairly.