

Amendments to the CAA's policy for ADR applicants and approved ADR entities (CAP1324)

CAA Decision

CAP 2104

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Amendments to the CAA's policy for ADR applicants and approved ADR entities – CAA Decision

Introduction

- 1.1 The CAA is the competent authority for the consumer aviation sector under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015, as amended (hereafter referred to as the 'ADR regulations'¹). As set out in the ADR Regulations, the CAA's key function in its role as a competent authority is the approval of organisations seeking to become ADR bodies in the sector. To this end, the CAA publishes a set of approval criteria which applicants need to meet before being approved by the CAA, and which continue to apply to ADR bodies once approved. These criteria are set out in the CAA's ADR policy² (hereafter referred to as 'CAP1324').
- 1.2 Since the most recent revision to CAP1324 in February 2019, the CAA has been in discussions with stakeholders on further potential enhancements to its policy, both to make ADR work better for consumers and to encourage airlines that do not currently participate in ADR to consider again the merits of the schemes that are offered by the two CAA-approved ADR bodies (namely CEDR and AviationADR). On 15 July 2020, the CAA began consultation³ on a number of proposals to amend CAP1324. This consultation closed finally on 20 November 2020.
- 1.3 A summary of the responses to the consultation, and the CAA's view on these responses, can be found in Appendix A. Points raised by respondents that were outside the scope of the consultation, but still related to ADR, and the CAA's view on these responses, are summarised in Appendix B.
- 1.4 The remainder of this document sets out the CAA's decision in respect of each of the proposals put forward by the CAA for consultation.
- 1.5 The revised version of the CAA's ADR policy document, CAP1324, incorporating the relevant amendments made following the consultation, can be found on the CAA's website here: www.caa.co.uk/CAP1324.

¹ A consolidated set of the ADR regulations is provided on the CAA's website here: <http://www.caa.co.uk/Commercial-industry/Airlines/Alternative-dispute-resolution/>.

² "Policy for ADR applicants and approved ADR entities", CAP1324, www.caa.co.uk/cap1324.

³ <https://consultations.caa.co.uk/cmng/policy-for-adr-applicants-and-entities/>

Decision

- 1.6 The CAA consulted on proposals in five policy areas. The CAA's decision in respect of each of these proposals is set out in this section.

Post-decision review process

- 1.7 Although a majority of the respondents that commented on this part of the consultation welcomed the CAA's clarification that, in its view, the ADR regulations permit ADR bodies to introduce a post-decision review process, some concerns were raised by respondents. As set out in Appendix A, the CAA has responded to these concerns and has offered a number of points of clarification and reassurance.
- 1.8 Having carefully considered the responses to this part of the consultation, and in light of the CAA's views as expressed in Appendix A, the CAA has implemented the amendments to the text in paragraphs 14.9 and 14.10 of CAP1324 as consulted upon. The implementation of a post-decision review process will remain voluntary and the CAA encourages industry participants and ADR bodies to work together to find a solution that suits their specific business needs whilst providing the sought after assurance that can be provided through the adoption of this policy. The CAA also welcomes further engagement on the details of how this may work in practice and is happy to engage with airlines and ADR bodies as arrangements are developed. We will monitor closely any examples where this approach is implemented, which will allow us to consider any policy changes relating to this issue in the future, including returning to the question of whether there is a case for mandating any type of arrangement.

Complex and novel issues raised by complaints

- 1.9 There was a mixed reaction from respondents on the CAA's proposals for the handling of passenger complaints that, in terms of their broader applicability, raise issues that are genuinely complex and novel for the purpose of establishing extraordinary circumstances under Regulation EC 261/2004⁴ (hereafter referred to as 'complex and novel complaints' or 'complex and novel issues').
- 1.10 Those respondents that supported the CAA's proposal for handling complex and novel complaints cited a number of benefits. For example, one respondent

⁴ 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 \(caa.co.uk\)](https://www.caa.co.uk/CAP2045A00:ConsumerRegulation261/2004).

considered that ADR bodies do not typically have the same level of industry expertise as the CAA, and therefore the ability to seek the views of the CAA on particular matters is to be welcomed. Similarly, another respondent stated that, from their experience, dealing with airline complaints occasionally throws up unusual issues that give rise to complaints and where guidance from the CAA would be welcome. Another respondent expressed the view that these types of complaints are better suited for resolution through the courts in accordance with the procedure that the CAA proposed.

- 1.11 Those respondents that did not support the CAA's proposal raised a number of general concerns with the CAA's proposal, as well as a number of specific issues. As set out in Appendix A, the CAA has responded to these concerns and has offered a number of points of clarification and reassurance. In particular, the CAA would like to draw attention to the fact, should either of the CAA-approved ADR bodies adopt the CAA's proposal, the CAA has committed to review how it is functioning in practice within the first two years of its implementation (hereafter referred to as the 'two year review'). The benefits, or otherwise, to consumers of the CAA's proposal can be assessed as part of this review.
- 1.12 Having carefully considered the responses to this part of the consultation, and in light of the CAA's views as expressed in Appendix A, the CAA has implemented the amendments to the text in section 18 of CAP1324, as well as the new Annex G and the associated list of issues which the CAA does not consider to be complex or novel, as consulted upon, except for:
- Changes to paragraph 16 of Annex G to expand the sharing of information to include the passenger; and
 - Changes to paragraph 18.2 of CAP1324 to remove the reference concerning the number of instances in which the CAA consider that the complex and novel process should be invoked each year. This reference has been replaced with a statement that, in the view of the CAA, the process should only be invoked in exceptional circumstances and in the context of issues that are truly complex and novel, and that genuinely have broader applicability.

Trust account arrangement for paying consumer awards

- 1.13 A majority of the respondents that commented on this part of the consultation welcomed the CAA's proposal for allowing trust account arrangements for the payment of consumer awards. The CAA agrees with a number of respondents that the proposal should bring benefits to consumers, in particular in relation to simplifying and speeding up the process for paying compensation. A summary of the responses to this part of the consultation, and the CAA's view on these responses, can be found in Appendix A.

- 1.14 Having carefully considered the responses to this part of the consultation, and in light of the CAA's views as expressed above, the CAA has implemented the amendments to the text in section 19 of CAP1324 as consulted upon, except for a minor amendment to the wording of paragraph 19.2 in CAP1324 to make clear that having a trust account for paying consumer awards is optional rather than mandatory.

Handling claims on a flight basis

- 1.15 All of the respondents that commented on this part of the consultation welcomed the CAA's clarification that, in its view, ADR bodies can establish procedures for ensuring consistency in decision-making in relation to claims for financial compensation under Article 7 of Regulation 261/2004, and specifically that this can include procedures for handling such claims on a flight basis rather than a claim basis. A summary of the responses to this part of the consultation, and the CAA's view on these responses, can be found in Appendix A.
- 1.16 Having carefully considered the responses to this part of the consultation, and in light of the CAA's views as expressed in Appendix A, the CAA has implemented the text in section 20 of CAP1324 as consulted upon. Again, the CAA encourages airlines and ADR bodies to work together to find a solution that suits their businesses and welcomes further engagement on the details of how this policy may work in practice. To address some concerns raised by respondents over the oversight of any arrangements for handling claims on a flight basis, the CAA will also liaise closely with the CAA-approved ADR bodies on any proposals for introducing such arrangements.

Non-regulated ADR schemes

- 1.17 A majority of the respondents that commented on this part of the consultation welcomed the CAA's proposal to require CAA-approved ADR bodies that offer multiple aviation ADR schemes to provide information to consumers on the different schemes operated; whether the schemes are regulated or non-regulated; the scheme rules that apply in each case; and, in the case of non-regulated schemes, the options available to consumers if they are not satisfied with the decision of the ADR body. A summary of the responses to this part of the consultation, and the CAA's view on these responses, can be found in Appendix A.
- 1.18 Having carefully considered the responses to this part of the consultation, and in light of the CAA's views as expressed above, the CAA has implemented the amendments to the text in section 21 of CAP1324 as consulted upon, except for amendments to the wording of paragraph 21.3 in CAP1324 to make clear that the signposting to PACT should make clear the scope and limitations of the PACT service.

Appendix A – Summary of responses to the CAA's proposals and the CAA's view

Introduction

- A1. The CAA received thirteen responses to the consultation.
- A2. This appendix sets out a summary of the responses received to the consultation, structured according to the amendments proposed in the consultation. In the summary below the CAA has provided its response to the points raised by respondents. The summary also identifies where the CAA has decided to implement amendments to the proposals as consulted upon.

Post-decision review process

- A3. A majority of the respondents that commented on this part of the consultation welcomed the CAA's clarification that, in its view, the ADR regulations permit ADR bodies to introduce a post-decision review process.
- A4. Those respondents that supported a post-decision review process in ADR identified a number of benefits. One respondent, whilst recognising that the decision of the ADR body must be binding on the business if accepted by the consumer, was of the view that there are circumstances in which the decision could be partially or fully incorrect, and that it is critical that a process be available to identify issues such as lack of knowledge or lack of understanding to avoid the same mistake being repeated. Another respondent noted that it is best practice for ombudsman schemes to have a quality assurance processes in place to consider any complaints that are made either about the service provided, or if factual errors or a failure to consider certain evidence has impacted on the decision.
- A5. One of the CAA-approved ADR bodies commented that it already engages with subscribing airlines and airports to discuss decisions that have been made by adjudicators in order to improve the service going forward. This respondent stressed that such discussions do not permit the overturning of ADR decisions. The respondent supported the CAA's confirmation that the review process must not change that principle.
- A6. One respondent recommended that the CAA should introduce a provision within the review process to ensure that the purpose of the review process is clear. That purpose being to allow the CAA-approved ADR bodies to enhance their expertise in handling future aviation consumer disputes.

- A7. One of the few respondents who raised concerns with this proposal questioned the motivation for the proposal and queried how it would work in practice to ensure fairness for the consumer and guarantee independence from the ADR body. Another respondent that did not support the proposal said that it did not address their main concern, which was that the current ADR process is one-way binding on the airline and therefore the airline has to pay (and keep paying compensation on further claims) even if it considers the decision-making to be incorrect. This respondent considered that it would be better for the CAA to make it a requirement for ADR bodies to have a post-decision review process, and for the CAA to be prescriptive on what this process should be and how it should work in practice.

CAA response

- A8. The CAA notes the views of the respondents concerning the CAA's clarification that, in its view, the ADR regulations permit ADR bodies to introduce a post-decision review process. The CAA agrees with the benefits highlighted by these respondents of this type of review process.
- A9. In relation to the views expressed by respondents that were not supportive of the clarification, the CAA would like to offer a number of points of clarification and reassurance:
- First, and most importantly, it is a requirement of the CAA that decisions made by the ADR bodies are binding on the trader if accepted by the consumer, and therefore any post-decision review process could not be an opportunity to overturn ADR decisions.
 - Second, in relation to the purpose of any post-decision review process, the CAA's proposed amendments to CAP1324 already make it clear that the purpose of such a review process would be to enable the ADR body to enhance its expertise in handling aviation consumer disputes.
 - Third, in relation to fairness for consumers, the CAA would like to point out that its policy, as set out in CAP1324, already requires the CAA-approved bodies to implement, and publish details of, a complaints review policy which sets out the process which *consumers* can utilise if they feel concerned that their complaint has not been handled properly by the ADR entity. In the CAA's view, therefore, consumers already have a route for having their complaint reviewed.
 - Fourth, in relation to independence and impartiality, Schedule 3 of the ADR regulations sets out the requirements that the CAA must be satisfied that the approved ADR bodies meet, which include requirements on independence and impartiality. In the CAA's view, these are sufficient to ensure the independence and impartiality of any review process.

- Fifth, in relation to the precise implementation of any post-decision review process, for example the details of the individuals and/or organisations in the process, their roles, responsibilities, experience, etc, and how decisions are made, the CAA would like to stress that there is sufficient flexibility in its proposal for the ADR bodies, together with their airline and airport customers, to develop bespoke arrangements that meet their needs, within the context of the 'safeguards' referred to in the bullet points above.

A10. Having carefully considered the responses to this part of the consultation, and in light of the CAA's views as expressed above, the CAA has implemented the amendments to the text in paragraphs 14.9 and 14.10 of CAP1324 as consulted upon.

Complex and novel issues raised by complaints

Overview

- A11. There was a mixed reaction from respondents on the CAA's proposals for the handling of passenger complaints that, in terms of their broader applicability, raise issues that are genuinely complex and novel for the purpose of establishing extraordinary circumstances under Regulation EC 261/2004.
- A12. Those respondents that supported the CAA's proposal for handling complex and novel complaints cited a number of benefits. For example, one respondent considered that ADR bodies do not typically have the same level of industry expertise as the CAA, and therefore the ability to seek the views of the CAA on particular matters is to be welcomed. Similarly, another respondent stated that, from their experience, dealing with airline complaints occasionally throws up unusual issues that give rise to complaints and where guidance from the CAA would be welcome. Another respondent expressed the view that these types of complaints are better suited for resolution through the courts in accordance with the procedure that the CAA proposed.
- A13. Those respondents that did not support the CAA's proposal raised a number of general concerns with the CAA's proposal, as well as a number of specific issues. These responses, and the views of the CAA on them, are covered in the subsections below.

Benefits to consumers of the CAA's proposal

- A14. One respondent commented that the CAA's proposal lacked certainty of outcomes and convincing evidence that the proposal would make ADR work better for consumers. In contrast, another respondent expressed the view, albeit reluctantly, that the balance of benefit for consumers lies in implementing the CAA's proposal and ultimately seeing airlines that are not currently ADR scheme members joining or re-joining one of the CAA-approved ADR schemes. However,