

Consumer complaints handling and ADR

Summary of responses to CAA consultation on draft policy statement (CAP 1257)

CAP 1285



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Introduction

About our consultation

1. Between early January and late February 2015, the Civil Aviation Authority (CAA) consulted on a set of proposals to reform consumer complaints handling in the UK aviation sector and ensure that consumers booking flights serving UK airports have access to high quality complaints handling arrangements.
2. Our proposals covered both how we will carry out our new role as the competent authority for alternative dispute resolution (ADR) entities in the UK aviation sector, as well as what we will do to encourage as many airlines as possible to make high quality ADR arrangements available to their passengers.
3. Our consultation followed the conclusion of the UK Government's own consultation on implementing the ADR Directive, and the publication of the Government Response in November 2014¹. We also carried out consumer research and engaged extensively with airlines during Autumn 2014 to ensure that our proposals were based on a robust understanding of consumer and industry needs.
4. We received 15 responses to our consultation, mainly from airlines and their trade associations and consumer bodies. This short document summarises the main issues and themes identified in those responses and briefly explains our policy response, which is set out in more detail in our final policy statement ([CAP 1286](#)).

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377522/bis-14-1122-alternative-dispute-resolution-for-consumers.pdf

Summary of responses

Definition of ADR

Summary of comments

5. There was broad agreement with the definition of ADR that we proposed to adopt, as it was in line with the definition in the ADR Directive. One consumer group suggested that we needed to clarify whether the ADR model we envisaged would allow for mutually acceptable settlements (i.e. 'win/win' outcomes) as well as binding decisions (i.e. 'win/lose').

CAA response

6. We have clarified our policy to make it clear that our approach would allow for mutually acceptable settlements, and indeed this should be encouraged. A formal determination by the ADR entity should be seen as a necessary last resort – evidence from existing UK ADR schemes suggests that many complaints are resolved amicably and without the need for a formal determination.

Type of complaints that ADR should cover

Summary of comments

7. Stakeholders agreed that contractual disputes, including disputes over statutory rights that flow from consumer contracts, should be within the scope of an aviation ADR scheme.
8. Clarification was requested by one consumer group on which, if any, aspects of air travel would be excluded from the CAA's remit as a competent authority, and whether business travellers would have access to ADR processes provided by ADR entities approved by the CAA;
9. Two consumer groups proposed that an ADR scheme covering complaints against airlines, airports and travel agents would be a comprehensive approach and provide consumers with a single point of redress for all air travel related issues.
10. Airline industry respondents stated that ADR coverage of non-contractual disputes should be at airlines' discretion. A provider of ADR services said that blanket coverage of contractual and non-contractual disputes was desirable, claiming that limiting access to certain complaint types would confuse consumers and may undermine confidence in ADR provision.

CAA response

11. Our remit as a competent authority is limited to areas for which the CAA has regulatory responsibility. Airports are not within the scope of the ADR Directive as they have no contract with the consumer. However, we hope that UK airports will want to use ADR, and if so it would be logical for them to join schemes run by ADR entities approved by the CAA. If ADR were mandated for the aviation sector at some point in the future, we would make a strong case for the inclusion of airports.
12. Although we are technically responsible for certain travel agent activities, these are not activities that generate consumer complaints. We therefore believe that ADR entities for travel agent complaints should be approved by the generic competent authority and have clarified our policy accordingly.
13. Our policy does not distinguish between 'business' and 'household' consumers. To the extent that there is a contract in place between a named customer and a business, ADR should be available for disputes that flow from that contract.
14. We believe that blanket coverage of all disputes would be desirable. However, the ADR Directive does not provide for coverage of non-contractual disputes. However, as the vast majority of disputes are contractual in nature, we do not see this restriction as a barrier to the voluntary development of ADR and would hope that, once ADR schemes are established, businesses will see them as a way to resolve any type of consumer complaint.

Geographical scope

Summary of comments

15. Stakeholders recognised that the international nature of aviation created the potential for overlap and duplication between nationally-based ADR schemes. A pan-European system of ADR was seen as a better fit for aviation, but stakeholders accepted that this was unlikely to happen in the short to medium term.

CAA response

16. By putting all flights in and out of the UK within the scope of our policy, we hope that more consistent and coherent complaint handling arrangements will at least develop for the UK aviation sector in the coming years.
17. The CAA will ensure that any ADR entity approved by us as a competent authority meets the requirements set out in this policy statement. Where an airline joins an ADR entity approved by a competent authority in another Member State and uses that ADR entity to handle complaints about flights in and out of the UK, we will look at the type of ADR provided by that ADR entity and consider whether it satisfies our policy. This will be a factor in our decisions on withdrawal

of our own complaint handling service, and on whether we make a case to Government for legislation mandating participation in ADR if airlines are resistant to voluntarily signing up to ADR that meets our requirements.

CAA objectives and vision

Summary of comments

18. Two airline associations stated that our policy should recognise more clearly that ADR will be voluntary in aviation and that the Government has been clear that there is not sufficient evidence that the benefits of making ADR mandatory would justify the high cost to business. One of the airline associations claimed that we have made an inaccurate assumption that airlines face insufficient incentives to deal with complaints properly in house.

CAA response

19. Our policy is explicitly designed to facilitate the development of voluntary ADR in the aviation sector. Nonetheless, we believe that aviation has a number of characteristics that would allow us to make a strong case for mandatory ADR in future, should a voluntary approach fail. These include aviation businesses being, on the whole, large and well-resourced, and aviation consumers having robust statutory rights.
20. We believe that the vision for complaints handling set out in our consultation document still stand, although we have modified it slightly. One of the key benefits of ADR over current complaints handling arrangements is the ability to scale financial contributions made by businesses using external complaint handling processes to the number and type of complaints generated. With financial contributions calculated on a 'polluter pays' basis, the cost of ADR to businesses that deal with complaints properly in-house is unlikely to be large. Such businesses should also gain a reputational benefit from being members of an approved ADR scheme, even if they have little cause to actually use it.

Transferring complaint handling responsibility to private bodies

Summary of comments

21. The CAA's proposed withdrawal from direct complaints handling in the event of widespread adoption of ADR by airlines was largely supported. It was recognised that airlines would not be prepared to support the cost of the CAA's own complaint handling service and the use of a private ADR scheme.
22. However, stakeholders' views diverged on the point at which such the CAA's withdrawal should commence. Businesses tended to agree that pegging withdrawal to a 'critical mass' of industry coverage was appropriate. However, consumer groups were critical of a proposed approach that could leave up to half of passengers without access to any form of redress other than the courts. One

consumer group stated that the CAA should ensure that consumers do not end up with less protection than they currently have, particularly because consumers have demonstrated a clear unwillingness to enforce their rights in court.

CAA response

23. Our view remains that delivering the benefits of ADR to aviation consumers depends on the CAA ending its direct involvement in complaints handling. Our final policy statement sets out our reasons for this view in detail, including why current arrangements are no longer fit for purpose.
24. However, we have made changes to our policy statement to ensure it is clear that we see 50% market coverage as a milestone and will not hesitate to use measures to encourage more reluctant airlines to participate in ADR. This includes a commitment to seeking legislative opportunities for mandatory ADR, should we find that large numbers of consumer remain without access to ADR under a voluntary approach. We would hope that consumer groups would support us in making the case to Government should we need to.
25. We have also revised our approach to ensure that the CAA will continue to handle complaints about disability or reduced mobility access issues where an airline or airport is not committed to using ADR.

Consumer information

Summary of comments

26. Again, opinions were divided between businesses and consumer groups. Businesses felt that the information obligations imposed by the ADR Directive were sufficient to incentivise voluntary take-up of ADR (with 'naming and shaming' of non-participating airlines and signposting claims management companies (CMCs) seen as particularly contentious), while consumer groups felt the CAA may need to play a more active role in providing information to consumers.

CAA response

27. We intend to take a proportionate approach. If we find that the information obligations imposed by the ADR Directive are not having the desired effect, we will give consideration to how incentives to participate in ADR could be sharpened through the provision of additional information.
28. 'Naming and shaming' may have a role to play, but that this is likely to be more appropriate where a business has a poor record of compliance with consumer protection legislation. We believe that CMCs will remain a viable option for customers of airlines who do not join ADR and that consumers would benefit from clear and impartial information about the services they provide.

Binding decisions

Summary of comments

29. There was general support for the proposal that ADR for the UK aviation sector should reflect the approach to ADR in other UK sectors, where the ADR entity makes a formal decision if a mutually acceptable solution cannot be found. Such formal decisions are only binding if the consumer agrees to the decision. However, one group of US-based airlines saw this asymmetrical binding effect as unfair to businesses.

CAA response

30. Given the degree of alignment on this proposal, and insight from existing ADR schemes showing that consumers very rarely reject an ADR entity's decision and take the matter to court (and, moreover, that a mutually acceptable settlement is found for a large proportion of disputes), our final policy is that ADR decisions should be binding on businesses if the consumer agrees.

Charging consumers to use ADR

Summary of comments

31. This proved to be the most contentious proposal, with consumer groups strongly opposed to the principle of consumers being charged to complain, and very concerned about the potential for a fee to depress an already low propensity to complain. One consumer group was particularly concerned that the CAA had not explored the possible impact of a fee on complaint rates through our consumer research. Industry stakeholders, however, were supportive of a higher fee than the amount proposed in the consultation document. Two airline associations pointed to the ABTA arbitration scheme, which charges a minimum of £108.
32. Some useful insight on this matter came from a provider of ADR services. As well as pointing out that charging consumers to use ADR was not normal practice in the UK, it was suggested that administering a low fee could cost more than the fee itself. It was also suggested that any ADR entity that charges consumers to use its processes would not be allowed to call itself an ombudsman, a term with a particularly high level of trust among consumers.

CAA response

33. Our strong preference is for ADR to be free at the point of use. Nonetheless, we have decided to allow ADR entities to charge a nominal fee to consumers using their services, as permitted under the ADR Directive. Any fee charged should be solely for the purpose of deterring spurious and/or poorly prepared complaints, which are costly to administer and are seen by the industry as a particular risk in aviation because of fixed sum compensation provisions in sectoral consumer protection legislation. We would be very unlikely to approve an ADR entity that

proposes a consumer fee that is higher than the lowest fee for bringing a claim in the county court.

34. However, we have balanced this with a requirement that if a complaint is upheld in any way, the consumer's fee will be refunded (we will also ensure that this is made clear before the consumer decides to use the ADR process). Assuming that complaint outcomes from ADR schemes in aviation will be similar to those in other sectors, this means that the vast majority of consumers will not pay to use ADR.