

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

CAA Decision

CAP 2104



Published by the Civil Aviation Authority, 2021

Civil Aviation Authority
Aviation House
Beehive Ring Road
Crawley
West Sussex
RH6 0YR

You can copy and use this text but please ensure you always use the most up to date version and use it in context so as not to be misleading, and credit the CAA.

First published February 2021

Enquiries regarding the content of this publication should be addressed to:
consumerenforcement@caa.co.uk

The latest version of this document is available in electronic format at: www.caa.co.uk/CAP2104

Contents

Contents	3
Amendments to the CAA’s policy for ADR applicants and approved ADR entities – CAA Decision	4
Introduction	4
Decision	5
Post-decision review process	5
Complex and novel issues raised by complaints	5
Trust account arrangement for paying consumer awards	6
Handling claims on a flight basis	7
Non-regulated ADR schemes	7
Appendix A – Summary of responses to the CAA’s proposals and the CAA’s view	8
Introduction	8
Post-decision review process	8
Complex and novel issues raised by complaints	10
Trust account arrangement for paying consumer awards	21
Handling claims on a flight basis	22
Non-regulated ADR schemes	24
Appendix B – Summary of responses on other issues raised by respondents and the CAA’s view	26

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-Consumer-Regulation-261/2004).

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,

in the view of this respondent, changes should be made to the detail of the CAA's proposal in order to recognise consumer interests properly.

CAA response

- A15. In relation to the benefits to consumers of the CAA's proposal, much of the benefit will only be realised if the proposal encourages airlines that are not currently members of one of the CAA-approved ADR schemes to agree to participate in one of the schemes. At the current time this is still unclear. However, the CAA agrees with the view that, on balance, the availability of a procedure for handling complex and novel complaints should make participating in ADR more attractive for airlines.
- A16. The CAA would like to draw attention to the fact, should either of the CAA-approved ADR schemes 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.

Voluntary nature of the proposed process

- A17. A number of respondents commented on the voluntary nature of the CAA's proposal – i.e. that it is not a requirement that all CAA-approved ADR bodies you must incorporate into their schemes the prescribed procedure for handling complex and novel complaints.
- A18. One respondent expressed the view that only one of the two schemes might decide to do so and the other not – or indeed that neither might decide to do so. While recognising the constraints of the ADR regulations in which the CAA has to operate, this respondent considered that it would have been helpful for the CAA to consider the effect if one scheme adopts these proposals but the other does not. Another respondent considered that this situation could have a negative impact on consumers' experience when escalating a complaint which, in the view of the respondent, would exacerbate the inconsistencies of the current ADR regime, and could also lead to airlines switching from one scheme to another.
- A19. Another respondent considered that the CAA should expand this exceptional process to automatically apply to situations where an airline is litigating the particular question already before the courts. This respondent expressed the view that, as the CAA's proposal is that, in situations where the CAA, the ADR body and the airline cannot agree, the matter would be referred to the courts, it would be efficient and logical to recognise this situation as an illustration of a complex and novel issue that should be handled by the courts.

CAA response

- A20. The CAA notes the views of respondents on the potential for issues to arise if one of the CAA-approved ADR bodies implements the CAA's proposed process, but the other does not. However, in the view of the CAA it is important to recognise that not all of the businesses that currently participate in ADR will necessarily want to adopt this process and, even for those that do, it may be that the ADR body itself does not wish to offer this facility. Indeed, one of the CAA-approved ADR bodies responded to the consultation that ADR bodies should not be compelled to adopt this process. Although this could mean that there is some movement between the members of the two CAA-approved ADR bodies, this is already possible under the current legal framework. Notwithstanding these points, the CAA considers that the potential issues raised by respondents in relation to the voluntary nature of the CAA's proposed process would be best assessed as part of the two year review, when the relevant information will be available.
- A21. In relation to the view of the respondent that the CAA should expand its proposal to apply to situations where an airline is litigating the particular question already before the courts, the CAA would like to stress that its proposal is intended to facilitate the effective resolution of a certain type of issue (i.e. complex and novel) raised by a passenger complaint that would otherwise have been considered through the usual ADR process. As such, the proposed process has been developed by the CAA in the context of its role as a competent authority under the ADR regulations, and the scope of the proposed process is necessarily limited to complaints submitted through the ADR process. In the view of the CAA, it is not within its gift to extend the proposed process to enable consideration of complex and novel issues that arise in other contexts.
- A22. Having carefully considered the responses on the issue of the voluntary nature of the proposed process, and in light of the CAA's views as expressed above, the CAA has not implemented further amendments in relation to this issue.

Scope of the proposed process

- A23. With regard to the scope of the CAA's proposed process for handling complex and novel complaints, one respondent suggested that limiting the scope to passenger claim for compensation under Article 7 of Regulation EC 261/2004, as applied and amended in the UK under the Withdrawal Act 2018 (hereafter referred to, as previously, as Regulation EC 261/2004), would rule out using the process for other complex and novel issues, for example in relation to jurisdiction. Another respondent considered that, if an EU or UK legal issue arises through a passenger complaint which makes the case more appropriate to be dealt with by the court, the claim should be directed to the court, which would make a declaration as to the relevant issue, instead of it being resolved through the ADR process. In the view of this respondent, this would allow a proper

opportunity for such issues to be ventilated and decided because of the experience of the judges who are practised at dealing with matters of complex law and evaluating factual evidence.

- A24. One respondent expressed the view that the designation of “complex and novel” was overly restrictive and that it would effectively eliminate every potential complaint. The reason given by the respondent was that the proposed Annex G is based essentially on a list of extraordinary and non-extraordinary circumstances. By drawing up the definition in this way, it was the view of this respondent that the only complaints that could be considered through the proposed process complaints raising new extraordinary circumstances which had not already been recognised in any of the precedential courts in the EU and the UK.
- A25. Another respondent stated that, given the broad drafting of many of the issues on the CAA's proposed list (the list of issues which the CAA does not consider to be complex or novel), it cannot be ruled out that some issues will arise which, although they may appear at first sight to fall within a listed category, nevertheless raise points which are genuinely novel and complex in the particular circumstances.

CAA response

- A26. The CAA acknowledges that there may be other issues outside the scope of its proposed process that are genuinely complex and novel in terms of their broader applicability. As set out in the explanatory note and in paragraph 18.1 of the draft amended version of CAP1324, the CAA's expectation is that the process for handling complex and novel cases will be invoked only very rarely. Given this, it is the view of the CAA that, at least initially, the proposed process should be limited to complex and novel issues that are relevant for establishing extraordinary circumstances under Regulation EC 261/2004. In the view of the CAA, this can be considered again as part of the two year review proposed by the CAA.
- A27. The CAA acknowledges that it is possible for an issue to be raised which, at first glance, would appear to be excluded from the proposed process on the basis that it is one of the issues on the CAA's proposed list but that, on further investigation, should be included as it has not been fully dealt with by the established case law. To this point, the CAA would like to note that this possibility is already recognised in the text accompanying the proposed list of issues which the CAA does not consider to be complex or novel. This text states that, in relation to claims that raise issues that are genuinely complex or novel in terms of their broader applicability, “Such cases might involve circumstances that have not previously occurred, and/ or where there is no established case law or clear principles for determining the outcome of the case”. The CAA would also like to draw attention to paragraphs 5 and 6 of Annex G in the draft amended version of

CAP1324 which state that, in the event that it is not possible to reach agreement on whether a complaint does raise complex and novel issues, the airline can effectively insist that it does and as a result the process for consideration of the issue is triggered.

- A28. Finally, the CAA would like to draw attention again to the fact that it has committed to a two year review the functioning of its proposal, should either of the CAA-approved ADR schemes adopt it. The issue of the appropriate scope for the process for handling complex and novel complaints can be considered as part of this review.
- A29. Having carefully considered the responses on the issue of the scope of the proposed process, and in light of the CAA's views as expressed above, the CAA has not implemented further amendments in relation to this issue.

Deciding whether the complaint is complex and novel

- A30. One respondent considered that the CAA had not explained what would happen if no agreement could be reached on whether the complaint was genuinely complex and novel but the airline insisted that it was. On a similar point, another respondent considered that, in designating that only the member airline can make an initial decision as to whether a complaint is complex and novel, the CAA's proposal gives far too much influence to the organisation being complained about.
- A31. Separately, another respondent expressed the view that, if no court case exists on a particular legal question affecting ADR cases, then it is not sufficiently complex or novel as to justify deviating from allowing the CAA-approved ADR bodies to reach their own decisions on that legal issue.

CAA response

- A32. In relation to the first point above, as set out in paragraphs 5 and 6 of Annex G in the draft amended version of CAP1324, in the event that it is not possible to reach agreement on whether a complaint does raise complex and novel issues, the airline can effectively insist that it does and as a result the process for consideration of the issue is triggered.
- A33. In relation to the second point, the CAA acknowledges that ADR bodies are also in a position to be able to identify issues raised in passenger complaints that are potentially complex and novel. However, as set out in the explanatory note and in paragraph 18.1 of the draft amended version of CAP1324, the CAA's expectation is that the process for handling complex and novel cases will be invoked only very rarely. Given this, it is the view of the CAA that, at least initially, the ability to trigger the proposed process should be limited to airlines, The CAA will consider this again as part of the proposed two year review.

- A34. In relation to the third point above, the CAA does not agree with the implication that every complex and novel issue underpinning consumer claims for flight compensation has already been litigated through the courts. Although the CAA accepts that many such issues have, and indeed such issues form the basis of the list it proposes to establish of common issues underlying passenger complaints that are not considered to be complex and novel, it is the view of the CAA that it is still possible for new issues to emerge through passenger complaints.
- A35. Having carefully considered the responses on this issue, and in light of the CAA's views as expressed above, the CAA has not implemented further amendments in relation to this issue.

Transparency of the process

- A36. One respondent was concerned that, once the CAA's proposed process was invoked in relation to a particular complex or novel complaint, it would not be open to public comment or scrutiny, despite the fact that the process could lead to outcomes that would affect potentially large numbers of other people and organisations. This respondent went on to say that the CAA's final assessment in the proposed process would represent a significant regulatory policy decision following a private tripartite discussion. In the view of this respondent, regulatory policy decisions should be preceded by open public consultation. The respondent recognised that an open public consultation would increase the timeframe for handling the complaint but that, on balance, transparency was more important.
- A37. On a narrower point, this same respondent expressed the view that the provision in the CAA's proposed process for tripartite discussions or submissions were all apparently to be private between the parties involved. This respondent went on to say that, in their view, the CAA's proposal covers the sharing of relevant correspondence only between the CAA, the airline and the ADR body, but not the complainant. In the view of this respondent, this was a very limited model of transparency.

CAA response

- A38. On the narrower transparency point raised by the respondent, the CAA would like to point out that paragraph 9 of Annex G (as set out in the CAA's proposed amendments to CAP1324), specifies that, at the outset of the proposed process, the passenger, member airline and ADR body are all allowed a period of time to provide written evidence and submissions to the CAA. This paragraph also specifies that all evidence and submissions provided will be shared with the other parties. In the view of the CAA, therefore, in terms of the submission and sharing of evidence and information, the complainant is on an equal footing to the airline and the ADR body.

- A39. The CAA acknowledges that, as drafted, paragraph 16 of Annex G envisages a more limited form of information sharing – i.e. just between the CAA, the member airline, and the ADR body. The CAA will implement further changes to this paragraph to expand the information sharing to include the passenger.
- A40. On the broader transparency point, in the CAA's opinion, the CAA is not under a statutory or public law duty to consult each time it provides its view in relation the application of legislation, including in relation to complex or novel issues raised by passenger complaints. The CAA does not consider that pausing the process to issue a public consultation is proportionate in the circumstances or will achieve the speedier outcomes for consumers that the ADR scheme is intended to achieve. The CAA's processes continue to be subject to public comment and scrutiny in the usual way.
- A41. The CAA would also like to point out that, as proposed, the CAA will not itself adjudicate on the complaint but will provide its view to the ADR body on how to interpret the genuinely complex and novel issue underlying the complaint. As proposed, it is the ADR body that issues the final adjudication on the case, taking account of the CAA's advice. Finally, the CAA would like to point out that the decisions of the CAA-approved ADR bodies are only binding on the airline, and not on the consumer. Consumers will always have the option of pursuing their claim through the courts if they are unhappy with the decision of the ADR body.
- A42. Having carefully considered the responses on the issue of transparency, and in light of the CAA's views as expressed above, the CAA has not implemented further amendments in relation to this issue, except that referred to in paragraph A39 above.

Fairness and balance in the consideration of complex and novel cases

- A43. One respondent considered that the CAA should identify a mechanism to ensure the consumer interest is taken into account in the consideration of complex and novel cases. In the view of this respondent, the process proposed by the CAA should be clarified and should ensure that natural justice, that requires all parties to be heard on an equal basis, is not breached. This respondent suggested that allowing the consumer to make representations within the process could be an option. In a similar vein, another respondent expressed the view that the proposed process lacks the consumer perspective and would deepen the gap between complaint handling bodies and consumers.

CAA response

- A44. As set out in the explanatory note that was published as part of the consultation on the draft proposed amendments to CAP1324, the CAA's view is that the complex and novel issues arising from passenger complaints are most likely to be technical and/or legal in nature and relate principally to the operational aspects of the flight in question rather than the individual circumstances of the

passenger. The CAA's view on this remain the same, and the CAA notes that none of the respondents identified any gaps in terms of knowledge, experience, and/or expertise on the part of the CAA, the member airline, and the ADR body, which would be addressed by including a separate body to advocate for the passenger's interests. Notwithstanding this point, the CAA would like to stress that, as set out in paragraph A38 above, it is proposed that the complainant is given the same opportunity to provide the CAA with their views alongside the airline and the ADR body.

- A45. Having carefully considered the responses on this, and in light of the CAA's views as expressed above, the CAA has not implemented further amendments in relation to this issue. However, it is an issue that can be considered again as part of the two year review.

Achieving a resolution of the complaint

- A46. One respondent stated that they were unclear on how a member airline would go about issuing legal proceedings regarding the complex and novel issue, when it is the consumer who has brought an ADR action against the airline. Another respondent considered that the difficulty with this part of the CAA's proposal is that is that the airline would not have a party to sue. On this point the respondent said that, as the customer's complaint would have been resolved by the ADR provider, there would be no remaining issue for the courts to decide. In the view of this respondent, the airline would not have a cause of action against the CAA. This respondent suggested that there should be a facility for the airline to commence proceedings prior to the final adjudication by the ADR body, and for the CAA to "step into the shoes" of the customer so that the issue is properly aired before the court.

CAA response

- A47. As set out in Annex G in the draft amended version of CAP1324, it is not necessarily the case that every complex and novel issue handled through the proposed process will result in legal proceedings. It is possible that the airline question will be persuaded by the CAA's advice and will not choose to raise an objection.
- A48. In relation to the response concerning the airline commencing proceedings prior to the final adjudication by the ADR body, as set out in Annex G in the draft amended version of CAP1324, in the event that the CAA's advice does not uphold the member airline's view in part or in full, the member airline can raise an objection, and then has a period in which to issue legal proceedings. The complaint in question, and any further passenger complaints submitted to the ADR body concerning the same complex and novel issue, will be put on hold by the ADR body until the issue has been resolved, which would be following the conclusion of any legal proceedings. In the CAA's view, therefore, the proposed

process already includes a facility for the airline to commence proceedings prior to the final adjudication by the ADR body.

- A49. In relation to the response concerning the issuance of proceedings, it will be up to the member airline to decide on the most appropriate legal route through which to issue proceedings.
- A50. Having carefully considered the responses on this, and in light of the CAA's views as expressed above, the CAA has not implemented further amendments in relation to this issue.

Timescales

- A51. A number of respondents commented on the CAA's proposals for the timescales for the different stages of the process set out in Annex G of the draft amended version of CAP1324. A number of respondents expressed the view that the 90-day timeframe⁵ that ADR bodies are allowed to make decisions should already be sufficient to deal with complex and novel complaints, and that no cases should be allowed to go beyond the 90-day timeframe. Another respondent, which recognised that the ADR regulations allow ADR bodies to extend the 90-day timeframe in the case of highly complex disputes, considered that a second exception to the given timeframe for complaints of a complex and novel nature was unnecessary and would risk diluting the existing rules and would be detrimental to consumers.
- A52. One respondent noted that the final part of the process, which is the assessment by the CAA, is subject to no time limit at all. This respondent considered that, to give this process credibility, the CAA should also set itself a time limit for arriving at its assessment. This respondent also commented on the time allowed for an airline to issue proceedings, which it felt was excessive. In the view of this respondent, three months is longer than the airline's legal representatives would require to produce an appropriate claim. The respondent urged the CAA to consider imposing a shorter timescale.

CAA response

- A53. As set out in the explanatory note that was published as part of the consultation on the draft proposed amendments to CAP1324, the CAA is mindful that, in its role as a competent authority under the ADR regulations, it has sought to establish a framework for ADR which ensures that the vast majority of consumer aviation complaints can be dealt with simply, quickly and effectively. Consideration of the issues underlying complex and novel cases will necessarily take longer than the time allowed under normal ADR timescales. However, as

⁵ The ADR regulations specify that ADR bodies approved under the regulations have 90 calendar days from the receipt of complete complaint file in which to make their decision, unless the ADR entity considers that the dispute is a highly complex dispute, in which case it may extend the 90-day period.

set out in the explanatory note and in paragraph 18.1 of the draft amended version of CAP1324, the CAA's expectation is that the process for handling complex and novel cases will be invoked only very rarely. In this respect, therefore, the CAA does not consider that the proposed process will unduly hinder the effectiveness of the ADR bodies.

- A54. In addition, the CAA would like to draw attention again to the fact that it has committed to a two year review of the functioning of its proposal, should either of the CAA-approved ADR schemes adopt it. The issue of the potential for the proposed process to lengthen timescales, and the impact of this on the overall effectiveness of the ADR process, can be considered as part of this review.
- A55. Having carefully considered the responses on this, and in light of the CAA's views as expressed above, the CAA has not implemented further amendments in relation to this issue.

Frequency of use

- A56. A number of respondents commented on the CAA's view, as expressed in the explanatory note and in paragraph 18.1 of the draft amended version of CAP1324, that only one or two complaints each year would be likely to be considered complex and novel in the context of its proposal.
- A57. One respondent expressed the view that, although it agreed that the process should be restricted to novel or complex complaints, and that it did not consider that it would need to be invoked frequently, it did not consider that it could be appropriately or confidently stated that it should only be invoked once or twice a year. This respondent considered that including such a statement in CAP1324 gives the appearance of setting an arbitrary limit on the number of complaints which can be considered through the proposed process. Another respondent, whilst noting that the proposed process is intended to be exceptional, considered that there could be more than one or two cases a year that warrant being considered through the proposed process, particularly in light of the highly unusual times aviation is experiencing currently. This respondent proposed removing reference to the number of cases the CAA expects to be considered in this way, and to say instead the proposed process is exceptional.
- A58. One respondent considered that overuse of the proposed process would have negative consequences, impinging on the independence and impartiality of ADR bodies, which should as a general rule be free to reach their own fair and reasonable decisions on disputes which are within their competence. In the view of this respondent, the role of an ADR body as a forum distinct from the CAA for resolving disputes would be damaged if the complex and novel issues process was overused. This respondent welcomed the CAA's aim for the process to be used no more than twice per year by each airline/airport, and advised that it may be appropriate to formally limit the amount of times that an airline/airport can

make use of the process, in order to avoid its abuse. On a similar theme, another respondent considered that the creation of a new process for dealing with complaints of a complex and novel nature could create opportunities for airlines to use this process to delay and ultimately refuse compensation.

CAA response

- A59. The CAA notes that there is a good degree of agreement amongst respondents that commented on this issue that the proposed process should be invoked only very rarely. However, there was disagreement over whether the CAA should seek to specify a limit as to the number of instances it should be invoked each year.
- A60. The CAA acknowledges the concerns of respondents in respect of specifying the number of instances in which the complex and novel process should be invoked each year. Indeed, the CAA itself recognises that the propensity for complex and novel issues to arise could depend on external factors outside of the control of airlines or the CAA. In light of this, the CAA has decided to remove the reference in the proposed changes to CAP1324 concerning the number of instances in which the complex and novel process should be invoked each year. However, the CAA would like to stress that its view remains that 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, for the purpose of establishing extraordinary circumstances under Regulation EC 261/2004.

List of issues which the CAA does not consider to be complex or novel

- A61. A number of respondents commented on the list of issues which the CAA does not consider to be complex or novel. Most of these responses are dealt with in the section above on 'Scope of the proposed process'. However, one respondent identified a number of specific items on the proposed list which it considered should not be included on the basis that they may raise complex and novel points.

CAA response

- A62. As explained in paragraph A27, the CAA acknowledges that it is possible for an issue to be raised which, at first glance, would appear to be excluded from the proposed process on the basis that it is one of the issues on the CAA's proposed list but that, on further investigation, should be included as it has not been fully dealt with by the established case law. As explained in paragraph A27, in its view the proposed wording in the draft amended version of CAP1324 is sufficiently flexible to allow for such issues to be considered for the proposed process and, as a backstop, the process provides for the airline to effectively insist that a particular issue is complex and novel and therefore the process for consideration of the issue is triggered.

- A63. Having carefully considered the responses on the proposed list of issues which the CAA does not consider to be complex or novel, and in light of the CAA's views as expressed above, the CAA has not implemented further amendments in relation to this issue.

Cost of administering the proposed process

- A64. One respondent noted that, in order to actively monitor for new cases which are affected by a particular issue that was being considered through the proposed process, and to engage with the relevant airlines, passengers and the CAA, the ADR body may require additional resources, which would increase the cost that is ultimately passed on to the subscribing airline.

CAA response

- A65. The CAA acknowledges that ADR bodies may incur additional costs in administering the proposed process. The structure and level of the fees that ADR bodies charge their members are a commercial matter between the parties (subject to the requirements of paragraph 7.4 of CAP1324). Given this, and given that the voluntary nature of the proposed process means that the airline and ADR body in question will need to enter into discussions on implementing the process, discussions which can include the relevant airline fees, the CAA has decided not to implement further amendments in relation to this issue.

Trust account arrangement for paying consumer awards

- A66. A majority of the respondents that commented on this part of the consultation welcomed the CAA's proposal on allowing trust account arrangements for the payment of consumer awards. A number of those that supported the proposal considered that it should have the effect of speeding up the payment of compensation to consumers. One of these respondents added that allowing ADR bodies to collect and distribute compensation should simplify the process and make it more efficient.
- A67. One respondent that supported the CAA's proposal did so on the basis that the arrangements would be subject to ongoing monitoring and proper financial oversight from the CAA. Another respondent recommended that the optional nature of the CAA's proposal could be made clearer.
- A68. One respondent expressed the view that the CAA's proposal was a recognition that airlines are not complying with the CAA-approved ADR bodies' binding decisions in a timely manner. In the view of this respondent, having identified this as a failing, the goal should be to ensure that airlines respect the decisions made by the ADR body, take responsibility for whatever mistakes have been made, and comply with the binding decisions in a timely fashion. This respondent went on to say that, in other sectors, ombudsman schemes do not hold funds on behalf of the organisations under their jurisdiction, but rather there are specific

deadlines set for the organisations to comply with the decisions made, and action can be taken against non-compliance by the relevant regulatory / oversight body.

CAA response

- A69. The CAA notes the views of the respondents and agrees with the benefits highlighted by respondents that supported the CAA's proposal. As set out in the CAA's proposed amendments to CAP1324, such an arrangement could be beneficial for consumers in that it could reduce the number of transactions between the consumer, ADR entity and trader, which in turn could reduce the risk of errors and speed up payment to the consumer.
- A70. The CAA does not agree that its proposal is a recognition that airlines are not complying with the decisions of the CAA-approved ADR bodies, and that instead the CAA should focus on ensuring that airlines comply with the decisions made by the ADR bodies. CAP1324 requires that the scheme rules of the CAA-approved bodies must specify the 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.
- A71. The CAA agrees with the response that stressed the need for there to be financial oversight from the CAA on any trust account arrangement. The CAA has already set out a number of requirements for establishing a trust account arrangement in the form of a standard form trust deed. In the view of the CAA this should ensure that the funds associated with paying consumer awards are appropriately ringfenced. The CAA will monitor any such trust account arrangements as part of its ongoing oversight of the CAA-approved ADR bodies.
- A72. 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

- A73. 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.
- A74. One respondent expressed the view that assessing compensation claims on a flight basis should ensure that different passengers complaining about the same

flight for the same reasons receive the same outcome, while also creating efficiencies in the complaint handling process which should ultimately be beneficial for passengers. Another respondent recognised that it should enable those parties involved in processing consumer disputes, including airlines, to have a consistent, pragmatic approach to decision-making. This respondent considered that, should such procedures be implemented by one of the CAA-approved ADR bodies, it should be done so on a trial basis, with the benefits identified and monitored.

- A75. One of the CAA-approved ADR bodies commented that, although it currently deals with cases on a claim basis, it rigorously operates a number of processes in order to achieve a high level of consistency across decisions. Although this respondent had no plans to change its approach at present, it supported the option being made explicit.
- A76. One respondent considered that it would be better for the CAA to make it a requirement for ADR bodies to adopt the CAA proposal and for the CAA to be prescriptive on what the process for handling claims on a flight basis should be and how it should work in practice.
- A77. One respondent suggested that the draft proposed amendments to CAP1324 did not make it clear how this would apply when complaints included multiple claims for redress, such as when seeking a refund of expenses incurred because of a delayed flight as well as the claim for compensation. This respondent has requested that the CAA clarify this point to ensure that individual passengers' requests are still assessed on a passenger basis rather than on a flight basis. This respondent also considered that ADR bodies should publish information on the cases they assess under this process, to provide clarity on the scheme's operations and their decision-making process, and to demonstrate that the ADR body is impartial.

CAA response

- A78. The CAA notes the views of the respondents and agrees with the benefits highlighted by respondents of explicitly permitting the CAA-approved ADR bodies to establish procedures to handle claims for financial compensation under Article 7 of Regulation 261/2004 on a flight basis rather than a claim basis.
- A79. The CAA would like to note that handling such claims expressly on a flight basis rather than a claim basis is only one option for ensuring consistency in decision-making. On this point, the CAA notes the response of one of the CAA-approved ADR bodies, which already operates processes for achieving a high level of consistency across decisions but does not do this by handling claims expressly on a flight basis. However, handling claims expressly on a flight basis would be a departure from the standard ADR model, which is usually focussed on resolving consumer disputes on an individual basis. Given that this would be a departure

from the norm, the CAA has some sympathy with the views of one respondent that implementing procedures to handle claims on a flight basis should be done so on a trial basis, with the benefits identified and monitored.

- A80. Given this, the CAA has implemented the text in section 20 of CAP1324 as consulted upon, but will liaise closely with the CAA-approved ADR bodies on any proposals for introducing procedures for handling claims for financial compensation under Article 7 of Regulation 261/2004 on a flight basis rather than a claim basis.
- A81. The CAA would like to respond to the comment made by one respondent that the proposed amendments to CAP1324 do not make it clear that the process for handling flight compensation claims on a flight basis would only be applicable when complaints include additional passenger requests, such as for refunds of expenses incurred because of a delayed flight. To reiterate the CAA's view, as set out in the CAA's proposed amendments to CAP1324, procedures for handling complaints on a flight basis should only be implemented in the case of claims for financial compensation under Article 7 of Regulation EC 261/2004. This is because the main factors in assessing such claims relate to the operation of the flight rather than the circumstances of the individual passenger. Consumer claims for such things as refunds of expenses incurred because of a delayed flight would need to be handled on an individual claim basis, taking into account the circumstances of the individual passenger.
- A82. In relation to the comment made by one respondent about the CAA publishing information on the cases assessed under any procedures for handling claims on a flight basis, as set out in paragraph B8 below the CAA intends to review the approaches taken to publishing information by other ADR schemes (in comparable sectors with comparable legal frameworks) to understand whether there are any simple enhancements that could be made by the CAA-approved ADR bodies to improve transparency. We will consider this comment as part of the CAA's review.

Non-regulated ADR schemes

- A83. 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.
- A84. One respondent recommended that, in the context of the CAA's proposals concerning signposting consumers to the CAA's Passenger Advice and Complaints Team (PACT), the CAA-approved ADR also explain that the PACT's

rulings are purely advisory and can only be enforced by the courts, and that PACT does not have a legal timeframe within which to handle complaints.

- A85. One respondent considered that it should not be possible for any CAA-approved ADR body to offer both regulated and non-regulated ADR schemes, as this would cause significant confusion for consumers and may bring the regulated ADR scheme into disrepute.

CAA response

- A86. The CAA agrees with the recommendation of one respondent that, in the context of the CAA's proposals concerning signposting consumers to PACT, the CAA-approved ADR bodies should make clear the scope and limitations of the PACT service.
- A87. In relation to the comment that the CAA-approved ADR bodies should not be allowed to offer both regulated and non-regulated aviation ADR schemes, in the CAA's view the ADR regulations do not permit the CAA, in its role as a competent authority under the ADR regulations, to prohibit the ADR bodies it approves from offering non-regulated ADR schemes. Enabling such a restriction would, in view of the CAA, require further legislation and, as such, is a matter of Government policy. Notwithstanding this point, the CAA agrees with the risks identified by the respondent and, for precisely this reason, has proposed the amendments in section 21 of CAP1324 as consulted upon. The CAA notes that, currently, the CAA-approved ADR bodies do not offer non-regulated aviation ADR schemes.
- A88. 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 B – Summary of responses on other issues raised by respondents and the CAA's view

- B1. Respondents raised a number of points outside the scope of the consultation, but still related to ADR. These points are summarised below, along with the CAA's views on the points raised.

The type of ADR available in aviation

- B2. A number of respondents expressed the view that a single, mandatory, aviation ombudsman should be established in place of the current ADR arrangements. One of these respondents noted that for a number of years it had called on the Government to reform the current system for ADR. This respondent also considered that the CAA and the Government should act on the recommendations set out in the Aviation Strategy and recognise that the consumer aviation sector should have mandatory ADR membership in the form of a single statutory-backed ombudsman.

[CAA response](#)

- B3. The CAA is a competent authority as defined under the ADR regulations. These regulations set out the functions that competent authorities are required to perform. The ADR regulations do not enable the CAA make ADR mandatory in the consumer aviation sector, and neither do they allow the CAA to approve only a single provider. The issue of voluntary versus mandatory ADR, and single versus multiple providers, are matters of Government policy requiring legislation to implement.

Monitoring the performance of ADR bodies

- B4. One respondent suggested that the CAA should routinely review the CAA-approved ADR bodies' approved status and monitor their performance to ensure they are accountable to consumers. This respondent suggested the review should consider service quality and the qualifications, skills and experience of the adjudicators. On this same theme, another respondent asked the CAA to undertake a review of ADR to ensure it is working in the best interests of consumers.

[CAA response](#)

- B5. In 2020 the CAA commissioned Verita, a specialist consultancy that conducts investigations and reviews, to carry out an independent audit of the two CAA-approved ADR bodies for assurance as to the quality and consistency of decision making and to determine the extent to which these decisions are transparent. Verita's report can be found in full here: [Independent expert audit of](#)

[ADR decision making for the Civil Aviation Authority conducted by Verita](#). While the report makes a number of suggestions and recommendations for incremental improvement, Verita's report concludes that these should be viewed through the lens of the overall strong performance by both CAA-approved ADR bodies. Verita's overall observation was that both CAA-approved ADR bodies provide an essentially good, fair and transparent service to complainants, with determinations that are evidence based and within guidance.

- B6. The CAA will continue to monitor the performance of the CAA-approved ADR bodies in terms of their compliance with the ADR regulations, the CAA's policy as set out in CAP1324, and their performance in terms of the quality, consistency and transparency of their decision-making.

Transparency

- B7. One respondent expressed the view that the CAA should seek and promote greater transparency of ADR bodies' complaint handling and decision-making processes and their engagement with the industry. Another respondent considered that one of the benefits of ombudsman schemes over ADR is that they aim to help consumers with information and help industry to raise standards by being transparent with their decision-making. In the view of this respondent, the two CAA-approved aviation ADR schemes do little of this, seeing themselves instead as offering a limited private commercial dispute adjudication function rather than a public service. The respondent acknowledged that it is not within CAA's gift to mandate ADR in the aviation sector, and neither is it within the CAA's gift to introduce a flight ombudsman in place of the two ADR schemes currently available. However, on the issue of transparency, the respondent considered that the CAA should publish more guidance about the established principles and case law covering Regulation EC 261/2004, and in particular that relating to the test of 'extraordinary circumstances', that it sees as applicable in regularly encountered circumstances, showing how different factors lead to different outcomes. On this point, another respondent recommended that the CAA should establish a list of issues that are considered to be, and considered not to be, extraordinary circumstances, and that this should be shared on the ADR entity's website so that the consumer is well informed.

CAA response

- B8. The CAA notes the points raised in relation to transparency generally, and the benefits of ombudsman schemes, more specifically. The CAA is not aware of any evidence, for example in the form of a comparative analysis between ombudsman schemes and other ADR models, that demonstrates that the levels of transparency provided by ombudsman schemes deliver the substantive additional benefits described in the response. However, the CAA will itself review the approaches taken to publishing information by other dispute resolution schemes (in comparable sectors with comparable legal frameworks) to

understand whether there are any simple enhancements that could be made by the CAA-approved ADR bodies to improve transparency.

- B9. On the point raised about the CAA publishing more guidance about the established principles and case law covering Regulation EC 261/2004, the CAA would like to note that it already publishes a range of information on consumers' rights on its website and in various reports. Notwithstanding this, the CAA agrees that a 'one-stop shop' guide to the principles and case law covering Regulation EC 261/2004, and in particular the test of 'extraordinary circumstances', would assist both consumers and industry in understanding and navigating what is a relatively complex legal area. In the CAA's view this is likely to take some time to develop and careful consideration to make sufficiently plain and simple form consumers to understand without losing any essential details. The CAA would also like to stress that such a guide would not be a substitute for consumers obtaining their own legal advice. The CAA will consider the best options for taking this piece of work forwarded.

Data reporting to the CAA

- B10. One respondent expressed the view that the CAA should improve and expand its requirements for data reporting.

CAA response

- B11. The CAA is satisfied that the current reporting requirements, as set out in <http://www.caa.co.uk/cap1390>, meet the CAA-approved ADR bodies statutory obligations and the CAA's needs in terms of understanding the volume and nature of the cases being handled by the two CAA-approved ADR bodies.

Encouraging businesses to act on their complaints

- B12. One respondent expressed the view that the CAA should promote improvements by encouraging businesses to act on their complaints data.

CAA response

- B13. In the CAA's view, the current ADR arrangements already do provide an incentive for businesses to act on information gathered from passenger complaints. As well as being an opportunity to demonstrate good customer service, if a complaint is handled well in the first instance the business can avoid the costs associated with escalation to ADR.
- B14. However, as acknowledged by the CAA in its response⁶ to the Government's 2019 consultation "Aviation 2050: the future of UK aviation", the complaints and redress landscape in aviation is currently fragmented, lacks a clear pathway to follow, and can result in consumers with the same or similar issues obtaining

⁶ www.caa.co.uk/CAP1813

different outcomes. In addition, the CAA's Aviation Consumer Survey has highlighted consumer dissatisfaction with the complaint handling process. In light of this, and as explained in the CAA's response to the Government's consultation, the CAA was supportive of the Government's proposal to implement standards for complaint handling, and to include commitments for best practice in complaints handling, promoting compensation rights and improving accessibility. The CAA would like to reiterate its commitment to work closely with the Government on these matters.

Charging a consumer fee

- B15. A number of respondents expressed the view that ADR bodies should not be allowed to charge the consumer a service fee, and that the service should be free to the consumer at all times.

CAA response

- B16. The CAA acknowledges that there is an 'in principle' argument that ADR should be free to the consumer at all times. In traditional regulated sectors, such as financial services, energy, etc, where participation in ADR is mandatory for businesses, it is more straightforward to implement ADR in a way which is free to consumers at the point of use. In aviation, however, participation in ADR by businesses is on a voluntary basis. A balance must therefore be struck between encouraging airlines to participate in ADR (which clearly delivers benefits for consumers in providing them with an expert, independent and effective mechanism for resolving their complaints), and not discouraging consumers from raising legitimate disputes.
- B17. At the time that the CAA was developing its ADR policy in 2015/16 it considered the issue of whether the CAA-approved ADR bodies should be allowed to charge consumers a fee to use the ADR service. The CAA's consumer research at the time showed that consumers overwhelmingly supported free access to ADR. However, many airlines were of the view that charging consumers to use ADR would discourage spurious and poorly prepared claims, which can be costly for airlines to administer – this was seen by airlines as a particular risk in aviation because the vast majority of disputes relate to claims for substantial fixed sum compensation under the sector's consumer protection rules. The CAA chose, therefore, to allow ADR providers to charge a nominal fee of up to £25 per (unsuccessful) complaint, and this was incorporated into our policy.
- B18. The CAA balanced this with a number of additional requirements. First, that if a consumer's complaint was upheld in any way, the consumer fee would be not be charged. Second, that the fee could only be charged on a per booking basis. Therefore, if a single booking covered a claim for compensation for four passengers (as is frequently the case with complaints related to Regulation EC 261/2004), the consumer fee would be charged only once, not four times. Third,

in order to protect vulnerable consumers, a requirement was added that the consumer fee would not be charged for any complaints relating to accessibility or disability matters. Finally, the CAA would keep the consumer fee under review to ensure that it was not deterring consumers with genuine claims from enforcing their rights.

- B19. Although the issue of the consumer fee was not directly within the scope of Verita's recent work for the CAA on the quality, consistency and transparency of decision-making of the CAA-approved ADR bodies, Verita's audit did consider the degree to which the complaints received by each of the two CAA-approved ADR bodies were within the scope of each scheme. Based on an audit sample, Verita's analysis showed that AviationADR, which does not charge a consumer fee, receives a substantially greater proportion of complaints that are out of scope than does CEDR, which does charge a consumer fee (for cases that are not upheld in favour of the consumer in whole or in part). Although, on its own, this is not conclusive evidence, it does suggest that the consumer fee could be discouraging spurious and poorly prepared claims, which can be costly to administer.
- B20. On the question of whether the consumer fee is discouraging consumers from raising legitimate disputes, this is more difficult to determine as it is not possible to identify the nature or magnitude of the issue. However, the CAA would like to note that it does not receive complaints from consumers about the consumer fee, either that it is being charged inappropriately or that it is discouraging them from raising legitimate disputes.
- B21. On this basis, the CAA will continue with its policy of allowing the CAA-approved ADR bodies to charge consumers a nominal fee in line with the requirements set out in paragraph B31.

The process for approving ADR bodies in aviation

- B22. Some respondents considered that the CAA should carry out a "fit and proper person" test on all directors of CAA-approved and applicant ADR bodies to ensure that they do not have a criminal record and do not have a background of financial problems, either individually or at companies with which they have previously been involved.

[CAA response](#)

- B23. In the context of approving applications from bodies seeking to become ADR bodies, the ADR regulations do not include a requirement on fitness.

ADR timescales

- B24. A respondent expressed the view that the standard ADR decision timeframe of 90 days is too long. Further, a number of respondents considered that disputes

should never be allowed to go beyond the 90-day timeframe under any circumstances.

- B25. One respondent was of the view that it was unfair to require consumers to allow businesses eight weeks to respond to a direct complaint before it can be submitted to the ADR entity. In the view of this respondent, the eight-week timeframe should be reduced in line with changes in other consumer sectors.

CAA response

- B26. On the issue of the 90 day timeframe, the ADR regulations specify that ADR bodies must notify the parties of the outcome of the ADR process within a period of 90 days from the date on which the ADR body has received the complete complaint file. The exception to this is in the case of a highly complex dispute, where the ADR body may extend the 90 day period (but must inform the parties of this extension and the expected length of time that it will need to conclude the alternative dispute resolution procedure). Given that the 90 day timeframe is explicitly permitted under the ADR regulations, to strictly enforce a shorter timescale would likely require a change to the regulations themselves, and this is therefore a matter of Government policy.
- B27. Notwithstanding this, the CAA would like to note that the recently published report by Verita on the quality, consistency and transparency of the decision making of the two CAA-approved ADR bodies, shows that the vast majority of cases are resolved within the 90 day timescale, and the average number of days to completion is comfortably within the 90 day target. The analysis shows that one provider outperformed this significantly with an average of 20 days to completion, and the other, which serves a wider the range of businesses with varying levels of engagement, still completes on average within 76 days.
- B28. In relation to the point made by one respondent on the 8-week timeframe, the CAA is aware of strong arguments for reducing this timeframe in other sectors, including essential utilities, finance or communications. The consequences of a delay in reaching a solution or gaining redress in these areas can be significant, where the complaints may concern an ongoing payment obligation or restricted access to an essential service. In aviation, the majority of consumer spend is discretionary, and in most cases the claims are for amounts unrelated to a personal loss and unrelated even to the cost of the service. In many cases 'deadlock' is reached before this 8-week period as it is common for an airline to accept or decline a request for a refund or compensation in its initial correspondence with the consumer. Where more time is required, this may be where the airline is investigating the specific technical details of the disruption to establish if they are responsible under the legislation.
- B29. Reducing the time available, even where it is rarely relied upon, could further disincentive airlines from participating in a voluntary ADR scheme and the

arguments for this move are not sufficiently compelling to risk the detriment that would occur from lower industry participation in ADR. The CAA therefore do not consider this to be a priority at this time.

Charging ADR bodies an annual continuation fee

- B30. One respondent expressed the view that the CAA should not charge the CAA-approved ADR bodies an annual continuation fee.

CAA response

- B31. The CAA is required, as a matter of law, to recover the costs of providing regulatory services through the fees it charges for those services. The annual continuation fee reflects the ongoing oversight that the CAA performs in relation to the CAA-approved ADR bodies. The charges are set annually, following consultation with stakeholders.