

Consumer complaints handling and ADR: CAA policy statement and notice of approval criteria for applicant ADR bodies

CAP 1286



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Foreword

Following recent changes to our policy on consumer complaints handling and ADR, we reviewed our April 2015 policy statement and replaced it with this version.

It remains our view that the future of consumer complaints handling in aviation lies not in the Civil Aviation Authority (CAA) handling individuals' complaints, but in this important work being done by private alternative dispute resolution (ADR) schemes, such as consumer ombudsmen. These bodies are directly funded by the businesses that use them, but have clear and independent governance, with oversight provided by the relevant regulator to ensure that the quality requirements introduced by the European Directive on ADR are adhered to.¹ Private ADR has been the norm for many years in major consumer service sectors, such as financial services, telecoms and energy. We want aviation consumers to also benefit from the simple, swift and effective approach to dispute resolution that ADR brings.

There is one key difference between our sector and the aforementioned markets: ADR is not currently mandatory in aviation and the CAA has no powers to require airlines or airports to join an ADR scheme. Our policy is therefore focused on creating the conditions within which voluntary ADR can develop and thrive. As a competent authority for ADR we set the rules for the schemes in our sector and ensure they deliver better redress outcomes for consumers than we can in our 'backstop' role as a complaint handler, but we cannot force airlines to participate in ADR.

This means that in developing our policy we have had to make some compromises between what consumers and their representatives want and what the airline industry is prepared to support. Our strong preference is for ADR to be free at the point of use, as it is in other sectors. Nonetheless, we have decided to allow ADR

¹ In spite of the result of the June 2016 referendum on the UK's membership of the European Union, the current lack of clarity on the UK's future relationship with the EU means the ADR Directive (Directive 2013/11/EU) will continue to be relevant to ADR arrangements in the UK for the foreseeable future.

entities to charge a nominal fee to consumers using their services, as permitted under the European Directive on ADR.

Our approach on fees responds to industry concerns that if ADR is free then it will attract spurious and/or poorly prepared complaints, which are costly to administer – this is seen 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. However, we have balanced this concession to the industry with a requirement that if a complaint is upheld in any way, the consumer’s fee will be refunded. 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. We also intend to keep the practice of charging consumers to use ADR under review and will not hesitate to make changes to our policy if we see consumer fees deterring consumers with genuine grievances from enforcing their rights.

Airlines have also made it clear to us that they are not prepared to support the costs of both private ADR and the CAA’s current complaint handling service. This is where we have made the most significant change to our policy. Instead of withdrawing our own complaint handling service once a ‘critical mass’ of ADR coverage had been achieved, we have now decided to address this barrier to ADR uptake through changes to our regulatory charges. Following consultation with stakeholders, from 1 June 2016 we changed the way we fund our complaints handling service to a ‘user pays’ form of charging. This will ensure that only those airlines who do not offer their customers ADR pay for the service, reinforcing the ‘polluter pays’ principle. This should also mean airlines are not disincentivised from signing up to ADR because they are ‘paying twice’.

Other measures that we will take to encourage the development of ADR will include, firstly, rigorously enforcing the ADR Directive’s information requirements, which oblige businesses to tell consumers if they are not prepared to use ADR. Secondly, we will provide additional information to the market under our consumer information powers, if we feel this will sharpen incentives for industry to participate in ADR. Finally, if, having been given the chance, voluntary ADR does not develop as we

envisage, we will actively seek legislative opportunities to make participation by industry compulsory.

A handwritten signature in black ink, appearing to read "Andrew Haines". The signature is fluid and cursive, with the first name "Andrew" written in a larger, more prominent script than the last name "Haines".

Andrew Haines

Chief Executive of the Civil Aviation Authority

Introduction

What is this document?

1. This document is the Civil Aviation Authority's (CAA) policy on consumer complaints handling and alternative dispute resolution (ADR). We define ADR as a complaints handling process that:
 - Provides an out-of-court solution for disputes between consumers and traders, as specified in the European Directive on consumer ADR² (the ADR Directive);
 - Is provided by an ADR entity, which has been approved by an independent competent authority on grounds of independence (from consumers, traders and anyone else that might have an interest in the ADR outcome), and which offers impartial, transparent, effective, fast and fair alternative dispute resolution procedures – again, following the ADR Directive;
 - Is privately, rather than publicly, funded, e.g. through businesses paying membership fees, levies or case fees to the ADR entity – this is common practice in existing UK ADR arrangements.
2. In this document we explain the approach we are taking to ensure that consumers booking flights to and from UK airports have access to high quality complaints handling arrangements. Our policy encompasses both how we carry out our role as the competent authority for ADR entities in the UK aviation sector, as well as what we do to encourage as many airlines as possible to make high quality ADR arrangements available to their passengers.
3. We consulted on our draft policy in early 2015³, following the conclusion of the Government's own consultation on implementing the ADR Directive,

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1417446013180&uri=CELEX:32013L0011>

³ [CAP 1257](#)

and the publication of the Government Response in November 2014⁴. Alongside our consultation we published the findings of independent consumer research on ADR.

4. We received 14 responses to our consultation, mainly from airlines and their trade associations and consumer bodies. We have also received ongoing input on this issue from the CAA Consumer Panel, which is independent from the CAA. We have published a separate document [CAP 1285](#) detailing the responses we received and the changes we have made to ensure that the issues and concerns raised by stakeholders are addressed in this document.
5. In this document, we explain our vision for complaints handling in the UK aviation sector. This includes the type of ADR we want to see develop if we are to end our longstanding, direct involvement in complaints handling, as well as the steps we will take to encourage as many airlines as possible to participate in ADR.
6. Stakeholders who are interested in the process and criteria we use to assess ADR entities should refer in particular to [CAP 1324](#) (CAA guidance for ADR applicants) and [CAP 1390](#) (information for ADR entities approved by the CAA). All of our ADR publications can be found on [our website](#).
7. The implementation and impact of this policy will be periodically reviewed by the CAA.

Who is this document for?

8. This document is aimed at informing all stakeholders with an interest in aviation consumer complaints handling, or consumer complaints handling in general, especially:
 - Airlines operating in the UK market, who receive consumer complaints (some 20,000 of which have been passed to the CAA

⁴ <https://www.gov.uk/government/consultations/alternative-dispute-resolution-for-consumers>

each year because they have not been resolved to the consumer's satisfaction);

- UK airports, who also receive complaints from consumers (some of which are referred to the CAA), although not usually in the volumes experienced by airlines;
- Trade bodies, particularly given the important role trade bodies have played in other sectors in setting up complaints handling schemes;
- Providers of ADR services, such as ombudsman schemes, who may be good candidates to deliver an aviation complaints handling scheme;
- Consumer bodies, due both to their broad interest in improving outcomes for consumers through efficient and effective complaints handling, and their own roles in dealing with enquiries and complaints from individual consumers;
- Legal professionals and claims management companies (CMCs), who are playing an increasingly prominent role in aviation complaints by helping consumers take court action;⁵
- The media, who play an important role in helping consumers understand their rights and the redress available to them; and
- Regulators and other authorities in the UK and Europe, who can assist us with broader perspectives on good practice, and on how the complaint handling landscape is evolving at both the national and cross-border level.

Scope of our policy

Which consumer complaints are covered by our policy?

9. The ADR Directive, which is transposed into UK law by the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and

⁵ Particularly claims against airlines for fixed sum compensation under Regulation (EC) 261/2004 (covering passenger rights in the event of denied boarding and of cancellation or long delay of flights – see <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32004R0261>).

Information) Regulations 2015⁶, as amended, (“the UK ADR Regulations”) applies to “disputes between consumers and businesses concerning contractual obligations in sales or services contracts, both online and offline”. The terms and conditions of a service contract between an airline and its passengers are set out in the airline’s conditions of carriage. Certain statutory rights flow from these contracts.⁷ The issues that dominate complaints currently handled by the CAA are all covered by airlines’ conditions of carriage. These include: delayed and cancelled flights; denied boarding; lost or damaged baggage; and disability access.⁸ We expect ADR entities to deal with all of these types of complaints.

10. Indeed, one of the core requirements of the ADR Directive is that approved ADR entities must have a general understanding of law to understand the legal implications of the disputes they deal with. Clearly, in the aviation context this must be the relevant law for resolving passenger disputes. To support this, the Directive also places an obligation on consumer protection authorities, such as the CAA, to cooperate closely with ADR entities. This cooperation includes the provision of information and guidance necessary for the handling of consumer disputes.⁹ This will help ensure that ADR entities are equipped to deal with the main issues that give rise to air passenger complaints. However, we will also expect ADR entities that we approve to build on their own knowledge and expertise over time.
11. Moreover, the ADR Directive does not prevent approved ADR entities from dealing with non-contractual complaints. In practice, we would expect any approved aviation ADR entity to be able to deal with the main issues faced by passengers, whether or not statutory protections apply. In the event of ADR becoming mandatory in aviation in the future, we would

⁶ <http://www.legislation.gov.uk/uksi/2015/542/made> and <http://www.legislation.gov.uk/uksi/2015/1392/made>

⁷ For example, compensation for denied boarding under Regulation (EC) 261/2004.

⁸ Based on data collected by the CAA’s Passenger Advice and Complaints Team (PACT), the main drivers of consumer complaints are: denied boarding, cancelled or delayed flights (these alone account for over 90% of PACT complaints); delayed, damaged and lost baggage; and assistance for passengers with a disability or reduced mobility.

⁹ See Article 17 of the ADR Directive.

expect that it would cover disputes over contractual and statutory obligations.

Which businesses are covered by our policy?

12. Under the UK ADR Regulations the CAA has been designated as the competent authority for ADR entities offering ADR services in:
 - Areas for which the CAA has regulatory responsibility; and/or
 - Any other areas for which the CAA has oversight under any enactment.
13. The CAA is therefore a competent authority for ADR entities covering disputes concerning contractual obligations arising from consumer contracts for air transport services provided to or from a UK civil airport. In practice, this means complaints about airlines, whether or not they are based in the UK.
14. Any ADR entity seeking approval from a UK competent authority to handle disputes relating to flights to and from the UK should apply to the CAA. ADR entities that are approved by a competent authority in another EU Member State may also handle such disputes but, in order to ensure a high standard of consumer protection in relation such disputes, the CAA may prevent airlines from signposting their services to consumers unless they meet certain standards (see paragraphs 54-58 and our separate policy on this matter, [CAP 1408](#)).
15. For clarity, although we have regulatory responsibility under certain pieces of consumer protection legislation for the sale of flight inclusive products (holidays and 'flight plus' arrangements) to UK consumers by travel agents, we do not intend to be the competent authority for ADR entities in respect of complaints regarding travel agents. This is because the vast majority of complaints about travel agents are not about activities or issues that we regulate.¹⁰ Our view is that the competent authority for

¹⁰ In respect of travel agents, the CAA primarily considers enforcement action regarding price transparency and unfair contract terms.

ADR schemes covering travel agents is the Chartered Trading Standards Institute (CTSI), which acts as a 'generic' competent authority for sectors that do not have a designated competent authority.¹¹

16. We encourage the voluntary use of ADR by airports and the ADR entities approved by us are competent to deal with complaints about airports. In the event of ADR being made compulsory in aviation at some point in the future, we would make a strong case for the inclusion of airports in such arrangements, given the statutory obligations they have towards disabled passengers and passengers with reduced mobility.

Which businesses are the focus of our policy?

17. Our policy is primarily concerned with how complaints against commercial airlines (including airlines owned by tour operators) are handled, particularly whether airlines voluntarily use ADR entities. This is because the ADR Directive is about disputes arising from consumer contracts, and it is airlines that passengers contract with. Furthermore, the vast majority of complaints currently received by the CAA are about airlines.
18. However, we think other aviation businesses should also join an ADR entity overseen by the CAA as a competent authority. For example, as noted above, ADR could be used to resolve complaints about assistance that the law requires is provided to consumers with a disability or reduced mobility at airports.

What is the geographical scope of our policy?

19. We want to see ADR arrangements that meet the criteria set out in this policy statement in place for complaints from EU residents relating to flights operated by any airline departing from or arriving at UK airports.
20. This goes beyond our duties under Regulation (EC) 261/2004 (covering the rights of passengers in the event of flight disruption) and Regulation (EC) 1107/2006 (covering the rights of disabled persons and persons with

¹¹ CTSI will perform this role on behalf of the Secretary of State for Business, Innovation and Skills.

reduced mobility when travelling by air) (“the European Regulations”) to provide facilities for consumers to complain about infringements of their rights:

- Under Regulation (EC) 261/2004, the CAA only accepts complaints about disrupted flights from UK airports (or disrupted flights from a non-EU airport to a UK airport).
- Under Regulation (EC) 1107/2006, the CAA only accepts complaints about the provision of assistance at UK airports and on flights from UK airports.
- For all other journeys where there is an alleged infringement of rights (i.e. from another EU Member State to the UK), passengers must complain to a body in that country that has been designated in law to serve that purpose.

21. These arrangements – which apply to the vast majority of complaints seen by the CAA – do not serve consumers or airlines well. UK consumers can be faced with the difficulty of trying to make their case to an organisation based in a different country and with the possibility of language barriers.¹²
22. We know that some airlines would prefer a pan-European system for ADR as it would mean having to deal with fewer organisations when resolving consumer complaints, but we see no evidence of such a system developing in the short to medium-term. However, by putting all flights in and out of the UK within the scope of our policy, our intention is that more consistent and coherent complaint handling arrangements continues to develop in the UK aviation sector in the coming years.
23. In practice, the above means that consumers flying to or from UK airports with an airline that is signed up to ADR should be able to use the same approved scheme to deal with a complaint regardless of where their flight departed from. Airlines, on the other hand, would only have to deal with a

¹² Where an airline uses an ADR entity that is not directly overseen by the CAA, we will only allow the business to signpost that provider if it meets certain requirements, including being able to communicate in writing with the consumer in the language in which the consumer made the contract with the trader. These requirements are set out in more detail in CAP 1408.

single ADR entity in order to resolve the complaint. For airlines that do not use ADR, we will ensure that our duties under European Regulations will continue to be met (see paragraph 52).

24. 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 set out in CAP 1408.

Our objectives

25. Effective and efficient complaint handling is a cornerstone of any industry that delivers choice, value and fair treatment for its consumers. If consumers know that, in the event of anything going wrong with their purchase, their complaints will be resolved quickly, fairly, professionally and transparently, they will be more confident as a result. Confident consumers are more likely to shop around, driving effective competition and economic growth. They are also more likely to hold businesses that don't meet their expectations to account, resulting in higher standards. Markets that function in this way should require less regulatory intervention, supporting the Government's agenda to reduce regulatory burdens.
26. As well as our broader interest in effective complaint handling, the CAA has specific statutory duties in this area. Under the European Regulations, unless there are other arrangements in place, we are required to receive complaints relating to denied boarding and delayed and cancelled flights, and provision of assistance for disabled persons and persons with reduced mobility.
27. Our complaint handling service is delivered through the Passenger Advice and Complaints Team (PACT) within the CAA. A key weakness of the PACT service, and one which we believe impairs the ability of consumers to drive improvements in the market by seeking and obtaining redress, is that PACT has no legal power to require airlines to adhere to the remedies it proposes (or even require airlines to participate in its complaint handling process). We believe that arrangements – whether statutory or contractual – that bind airlines to implement rulings are essential in a sector with strong consumer protections that are often disputed. Although we lack the legal powers to achieve this outcome for PACT, we can achieve it for the ADR entities that we regulate through the powers we have over others as a competent authority.

28. Our specific objectives are as follows:
- 1) To improve the consumer experience when things go wrong by encouraging the uptake of ADR. In line with the ADR Directive, ADR must be:
 - a) independent, impartial, and a quicker, cheaper and more attractive option than court action;
 - b) able to provide the consumer with a final decision on their complaint, avoiding the need for consumers to have to go to court.
 - 2) To ensure that the UK continues to comply with the requirements of the European Regulations. This will be achieved by ensuring all passengers have access to redress, either through:
 - a) an ADR entity (which their airline is signed up to and refers them to) designated under and applying the European Regulations, or
 - b) the PACT service, which will remain available to consumers where the business concerned does not choose to participate in ADR.
 - 3) To ensure that airlines that choose to participate in ADR do not 'pay twice', through subsidising the handling of complaints generated by businesses that do not participate in ADR. This is being achieved through a new 'user pays' funding model for PACT, with the exact level of the charge determined through our annual consultation on our charging scheme.

The type of ADR we want to see

29. Because ADR is voluntary in aviation, there is a need for us to balance the needs of consumers against what industry is prepared to offer, in order to maximise the chances of industry-led ADR being established at all. The responses to our consultation indicated some differences between consumer and airline views. These centred largely on the question of whether consumers should be required to pay to use ADR.

30. In this section we explain the type of ADR we want to see develop in the UK aviation sector. In the following section we set out how we will ensure that all consumers flying in and out of the UK have access to this type of ADR.

A high level of consumer protection

31. As the competent authority for the aviation sector, the CAA is required to ensure that the ADR entities that it assesses meet the minimum requirements set out in the ADR Directive (see below). However, the CAA also applies more stringent approval criteria for the purpose of ensuring a higher level of consumer protection.
32. [CAP 1324](#), a separate document, sets out the criteria the CAA uses to assess ADR entities who apply to us for approval. In the remainder of this section we explain our rationale for selecting these criteria.

Minimum requirements under the ADR Directive

33. The main operational rules that have to be followed by all ADR entities in all sectors are summarised below. As the ADR Directive is a minimum harmonisation directive, the CAA must adopt the following criteria as a competent authority:
- The individuals in charge of the ADR process must have a general understanding of the law, possess the necessary knowledge and skills in dispute resolution, and be independent and impartial.
 - The ADR procedure must be free of charge or available at a nominal fee to consumers.
 - ADR entities have three weeks from receiving a complaint file in which to inform the parties concerned if the ADR entity refuses to deal with a case.
 - Dispute resolution must be concluded within 90 days of receiving the complete complaint file. This timeframe can be extended in the case of highly complex disputes.

- ADR entities must make available specific information about their organisation, methods and cases they deal with, and provide annual activity reports.
- Consumers must have the option to submit a complaint (and supporting documentation) and to exchange information with the airline through the ADR entity either online or offline.

Additional CAA requirements for approval

34. Following consultation, the CAA has chosen to apply the following additional criteria for ADR entities who apply to us for approval:

- ADR must be available for the most common types of disputes between passengers and airlines (see paragraph 34 below);
- If ADR entities are unable to reach a mutually acceptable settlement, they must make a decision that is binding on the airline (if the consumer agrees with the decision);
- Fees for consumers must be kept to a minimum;
- Fees for consumers must be refunded by the ADR entity if the complaint is upheld by the ADR entity in any way;
- Fees must not be charged to consumers whose complaint relates to access or equality issues.

ADR must be available for the most common types of disputes between passengers and airlines

35. We expect any approved ADR entity to be able to deal with all of the most common causes of complaints currently handled by the CAA. At a minimum, consumers must be able to use ADR to resolve disputes relating to a flight to or from the UK in the following areas:

- Denied boarding, delay, or cancellation;
- Destruction, damage, loss, or delayed transportation of baggage;
- Destruction, damage, or loss of items worn or carried by the passenger;
- Problems faced by disabled passengers or passengers with reduced mobility when using air transport services; and

- Any more general disputes arising where the consumer alleges that the business is not trading fairly.

ADR decisions must be binding on businesses

36. Aviation consumers have robust rights. These rights, and particularly the availability of substantial compensation for certain infringements, means the possibility of litigation is perhaps greater in aviation than some other consumer markets. Civil court action provides a route to a binding outcome and therefore ADR needs to offer an attractive alternative. (This should not prevent an ADR process from also being able to negotiate mutually acceptable settlements between parties – many ADR complaints are resolved this way, see paragraph 44).
37. As such, we see it as essential that, if a mutually acceptable settlement cannot be found, any ADR entity we approve should make a decision that is legally binding on the airline, if the consumer agrees with the decision. This is common practice in other UK ADR schemes. We set out below why we will not approve ADR entities that propose to resolve disputes by also imposing a decision on the consumer.
38. Our consumer research on ADR¹³ found strong support for the proposition that if the consumer accepts an ADR entity's decision it should be binding on both parties, but if the consumer rejects the decision there should be the right to have recourse to court. This arrangement is standard practice in most UK ADR schemes.
39. Airlines generally support such 'one way' binding decisions, although some have claimed that these arrangements would be unfair to airlines. We do not agree with this minority view for the following reasons:
- Consumer confidence in industry-funded ADR arrangements (and consumers' willingness to use ADR as an alternative to the courts) will be enhanced if consumers have a fallback option.¹⁴ This should

¹³ We published this research in our consultation document ([CAP 1257](#)).

¹⁴ Research has found a clear link between ADR schemes in which businesses are bound to accept the decision and the level of consumer trust in the scheme, as measured by the level of

be seen as a way of building trust in new arrangements, rather than giving consumers any real advantage over businesses. This is because feedback from established ADR entities strongly suggests that consumers very rarely do take court action, even if an ADR decision is not in their favour. This appears to be because, through use of the scheme, consumers come to view the ADR scheme as independent and impartial.

- There is the potential for consumer confidence in ADR provision in general to be undermined if consumers can incur time and effort in pursuing a dispute through ADR only for the business not to comply with the ADR entity's decision. If cases such as this receive public attention, the result could be many consumers deciding to go directly to court.
- There is also the potential for consumers to be misled into making purchases from businesses which refer to ADR membership as a benefit of buying from them, but who do not comply with ADR decisions arising from those purchases.

40. It should also not be the case that an ADR decision is completely immune from challenge and we would encourage ADR entities and participants to explore ways for legal issues that emerge from ADR cases to be referred to the courts for a ruling to provide legal certainty. For example, the UK Pensions Ombudsman is able to refer any question of law to the high court for determination.¹⁵ However, this should be on the basis that the parties agree that the court's ruling would not affect the outcome of the specific ADR case in hand but would provide certainty for future cases.

Fees must be kept to a minimum

41. As set out above, airlines believe that charging consumers to use ADR will discourage spurious and poorly prepared claims and limit the

complaints directed to the scheme. See: Hodges, C., Benöhr, I. and Creutzfeldt-Banda, N. *Consumer ADR in Europe* (Hart Publishing, 2012).

¹⁵ Pension Schemes Act 1993, s 150(7)

involvement of CMCs, since a fee would have to be paid for each individual claim.

42. Our strong preference is that ADR is free at the point of use. Nonetheless, the ADR Directive does permit a 'nominal fee' to be charged to consumers and we have decided to allow this for ADR entities that we approve in order to maximise the chances of voluntary ADR developing. However, we recognise consumer groups' strong opposition to 'charging consumers to complain', and would emphasise that any reputational benefits to businesses from voluntarily joining ADR are likely to be diminished if the scheme they join charges consumers a fee.
43. Neither the European Commission, nor the UK Government, has defined what 'nominal' means in the context of consumer fees for using ADR. In practical terms, our view is that a nominal fee should be much lower than the fee charged to the business for using the ADR process and its sole purpose should be to help deter consumers or their representatives from submitting frivolous complaints.
44. As ADR in the UK is typically free at the point of use, there are no direct comparators from other sectors, against which an ADR fee for aviation complaints could be benchmarked. However, we consider that the lowest fee for starting a claim in the civil court provides a relevant yardstick in the sense that it represents an existing direct cost to the consumer to access a dispute resolution process. This fee is currently £25¹⁶ and we would be very unlikely to approve an ADR entity proposing a higher fee.¹⁷ Additionally, if an identical complaint has been submitted by multiple passengers on the same booking (as is frequently the case with complaints related to EC 261/2004), the fee should only be charged once.¹⁸

¹⁶ <https://www.justice.gov.uk/courts/fees>

¹⁷ We would only consider revising this position if we were presented with sound evidence that a fee of this level was failing to prevent spurious or vexatious complaints.

¹⁸ For the avoidance of doubt, this would mean a family of four travelling on the same booking would pay £25 to submit four compensation claims, not £100.

45. Some stakeholders have argued that this approach ignores the fact that civil court claims attract additional fees if the case proceeds to a hearing. However, we do not accept this argument, because ADR is not bound by the rules of civil procedure, which increase the handling time and cost of cases in court. These include an ordered sequence of investigation and presentation of evidence and arguments, and a hearing with a judge in the presence of all parties.¹⁹ (In fact, according to the most recent figures from Ombudsman Services, over half of the complaints investigated by its energy and telecoms ADR schemes are resolved without the need for any kind of formal determination.²⁰ For the Financial Ombudsman Service, the proportion is even lower: the latest figures show that just 6% of cases required an ombudsman to make a final decision.²¹)

Fees must be refunded if the consumer's complaint is upheld in any way

46. There is a risk that allowing consumers to be charged to use ADR may deter consumers with genuine grievances from seeking redress. In order to ensure that only consumers whose complaints are entirely without merit have to pay a fee we will require that:
- Any fee charged to the consumer is refunded if their complaint is upheld in any way by the ADR entity; and
 - This refund arrangement is made clear to consumers by the ADR provider before they agree to enter into the ADR process.
47. We also encourage ADR entities to explore whether pre-authorisation of debit and credit cards could be used so that the consumer is not out of pocket until their complaint has been resolved.

¹⁹ Hodges, C., Benöhr, I. and Creutzfeldt-Banda, N. Consumer ADR in Europe (Hart Publishing, 2012)

²⁰ For energy the proportion of complaints requiring a binding 'Ombudsman Services decision' in 2013-14 was 44%. For telecoms the equivalent figure was 48%. Reports available from <https://www.ombudsman-services.org/annual-reports-os.html>.

²¹ <http://www.financial-ombudsman.org.uk/publications/ar14/index.html>

Fees must not be charged to consumers complaining about access or equality issues

48. Under Regulation (EC) 1107/2006, airlines and airports are required to provide assistance to consumers with a disability or reduced mobility to enable them to participate in the market on the same basis as other consumers. The Equality Act 2010 also provides individuals with protected characteristics with protection from unfair treatment by businesses.
49. We do not believe consumers should be charged to make a complaint about their fundamental right to access air travel services. As such, a consumer fee should not be charged in these types of cases.

How the CAA will facilitate the development of ADR

50. We have set out above the type of ADR that we wish to see develop in the UK aviation sector. Because the CAA currently has no power to mandate industry participation in ADR, we will need to implement strong incentives for industry to voluntarily join an ADR entity that meets our requirements. This is a key difference between aviation and other major consumer service sectors in the UK, such as financial services, legal services, energy and telecoms, where ADR is mandatory. In addition to allowing ADR entities to charge a nominal fee to consumers to deter spurious or frivolous complaints (see paragraphs 40-48), we have put in place the following incentivising measures:
- The introduction of a 'user pays' charging model for PACT to ensure that airlines that sign up to an ADR entity that is approved by the CAA are exempted from making any contribution towards the cost of PACT, and that under the polluter pays principle, those airlines that aren't signed up to ADR cover the costs to the complaints made by their passengers to the CAA;
 - Our policy ([CAP 1408](#)) setting out how we will assess whether ADR entities that are approved by competent authorities in other member states are competent to handle complaints relating to flights to and

from the UK, enabling airlines using non-UK ADR entities are able to signpost consumers to these providers;

- Our commitment to rigorously enforce the requirements in the UK ADR Regulations for airlines to tell consumers about ADR in the event of an unresolved dispute, regardless of whether the airline agrees to use ADR;
- Making the case to Government for the introduction of mandatory ADR if we consider that a voluntary approach is failing to provide sufficient coverage; and
- Supporting the development of a simple ADR 'landscape' in order that consumers can easily obtain information about their rights and redress options.

User pays funding for PACT

51. The CAA is required by statute to recover the costs we incur in our regulatory role and in the services we provide. In order to meet this requirement, as well as to satisfy the key principle that airlines that sign up to ADR should not contribute to the costs of PACT (see paragraph 27), we have introduced a user pays funding model for PACT. As of 1 June 2016, we have introduced a charge for every complaint under the European Regulations that is accepted by PACT. Further information about this charge can be found in the current CAA Scheme of Charges²².
52. In our view, a user pays approach is fairer than the previous approach, which used passenger and cargo-based charges (as opposed to complaints-based charges) levied on UK airlines and UK airports to fund the PACT service. A user pays approach will help ensure that businesses face strong incentives to deal with complaints properly themselves because they will bear directly the cost of complaints referred to PACT by their customers.
53. PACT will continue to provide a complaint handling service for complaints within its geographical scope (see paragraph 19) that relate to the

²² www.caa.co.uk/ORS5

European Regulations and lost, damaged and delayed baggage until such time as all passengers have access to an ADR entity that is also designated as a body to which passengers can complain under the European Regulations.

54. We will ensure that businesses who agree for complaints to be handled by an appropriate ADR entity do not have to pay for the CAA to continue to provide the PACT service. This will be achieved by:
- The Secretary of State designating through secondary legislation any ADR entities that are approved by the CAA as organisations to which passengers can complain under the European Regulations, alongside PACT; and
 - PACT not accepting consumer complaints in respect of airlines signed up to designated ADR entities.

Supporting the use of non-UK providers

55. Under the UK ADR Regulations, when an airline has “exhausted its internal complaint handling procedure” it is required to signpost consumers to “the name and website address of an ADR entity that would be competent to deal with the complaint”. The airline must also state whether or not the airline is obliged, or prepared, to submit to an alternative dispute resolution procedure operated by an ADR entity.
56. We recognise that there are benefits in supporting the mutual recognition of ADR providers throughout Europe. We are therefore keen to support airlines who wish to signpost consumers to ADR entities that are not directly overseen by the CAA in order that they can deal with complaints about flights to or from the UK. However, this objective must be balanced against the recognition in the ADR Directive that the ADR Directive “should not prevent Member States from adopting or maintaining rules that go beyond what is provided for in this Directive”.
57. As set out above, to promote a high level of consumer protection in the aviation sector there are a number of specific requirements placed upon ADR entities approved by the CAA. Therefore, while we will not require

ADR entities that are not approved by the CAA to meet exactly the same criteria as UK approved ADR entities, our assessment of competency will ensure that an appropriately high standard of consumer protection is maintained. We have developed a separate policy ([CAP 1408](#)) on how the CAA will decide whether an ADR entity that has been approved by a competent authority in another Member State (but not by the CAA) is 'competent' to deal with aviation complaints and can therefore be signposted to consumers in the event of an unresolved complaint about a flight to or from the UK.

58. Our policy on non-UK ADR considers whether:

- the ADR provider has sufficient knowledge and expertise in relation to the aviation sector, including being able to deal with the most common type of aviation consumer disputes;
- the ADR provider is able to communicate in writing with the consumer in the language in which the consumer made the contract with the trader
- airlines routinely comply with the remedies proposed by the ADR provider; and
- any fees charged to the consumer or airline to access the ADR process are appropriate and not likely to distort behaviour to consumers' disadvantage.

59. As only ADR entities approved by the CAA will be designated (see paragraph 53), airlines using ADR entities approved by a competent authority in another Member State will not be able to avoid the PACT charge if the consumer insists on using PACT and the complaint is within PACT's scope (i.e. there will be no exemption, as there would be if the airline was using a designated ADR entity). However, if the relevant ADR entity has been recognised by the CAA as competent under our policy ([CAP 1408](#)), PACT will make best efforts to encourage the consumer to use ADR, which should minimise the airline's exposure to the PACT charge.

Consumer information

Information obligations under the UK ADR Regulations

60. The ADR Directive introduces a range of information obligations on businesses. These are intended to encourage voluntary participation in ADR, principally by raising consumer awareness of ADR and requiring businesses to make a potentially undesirable disclosure on whether they are willing to use it. Businesses should be aware of the following requirements:
- a. Since October 2015, any business that is obliged or has voluntarily committed to using an approved ADR entity to resolve disputes, must provide information about that ADR entity on their website and, if applicable, in the terms and conditions of sales or service contracts.
 - b. Since October 2015, in the event of an unresolved dispute, all businesses must provide information about an ADR entity that would be competent to deal with the complaint, and advise whether or not the business will use ADR in an attempt to settle the dispute in question. This means that businesses operating in sectors where the use of ADR is voluntary will have to advise their customers whether or not they are willing to refer the complaint to an appropriate ADR entity.²³
 - c. Since January 2016, all businesses who sell their goods or services online (e.g. airlines) must provide a link to the Online Dispute Resolution (ODR) platform on their website, whether or not the business has voluntarily committed to using ADR.²⁴ All websites which act as a platform for businesses to sell their goods and/or

²³ <https://www.gov.uk/government/consultations/alternative-dispute-resolution-for-consumers>

²⁴ [Regulation \(EU\) No 524/2013](#) obliges the Commission to establish an online platform (the ODR platform) to facilitate communication between the parties and an approved ADR entity, in the event of a contractual dispute arising from an online transaction. A translation service will be available on the platform to assist with disputes involving parties based in different EU member states. The ODR platform will not seek to resolve the dispute itself; rather it will (if both parties agree) channel such disputes to a relevant ADR scheme.

services (e.g. online travel agents; price comparison websites) must also provide a link to the ODR platform.

Information obligations under the Civil Aviation Act 2012

61. We will give serious consideration to whether there is a need for disclosure of information regarding ADR provision beyond the requirements of the ADR Directive, particularly if those requirements do not appear to be having the desired effect in terms of airlines joining ADR.
62. The CAA has a duty under the Civil Aviation Act 2012 to make information available to help consumers compare the offers available to them in the market; this may include whether a business is committed to using ADR to resolve any disputes. Our information duties policy statement ([CAP 1143](#)) explains our duties and the powers that underpin them in more detail.
63. It is not possible to say what the appropriate intervention would be at this stage (or indeed whether we would need to intervene at all), but the options available to us include:
 - Simply providing information to the market (including other providers of consumer information) about which airlines are committed to using ADR;
 - ‘Naming and shaming’ airlines that do not participate in ADR (an approach that may be more appropriate where airlines also have a poor record of compliance with consumer protection legislation);
 - Requiring airlines to actively disclose in an appropriate place on their website²⁵ whether or not they are a member of an approved ADR scheme (rather than only in response to an unresolved complaint, as required by the ADR Directive).

Other consumer information

64. Our dialogue with airlines found that ADR was seen by airlines as an effective way to respond to an increasingly high profile claims management industry in the aviation sector. Airlines told us they are

²⁵ E.g. ‘Customer services’, ‘complaints’, ‘feedback’ areas.

particularly concerned about the cost of investigating spurious or poorly prepared claims for financial compensation. Some airlines see these risks as greater when claims management companies (CMCs) are involved.

65. We do believe, however, that CMCs will remain a viable option for some customers of airlines that have not joined an ADR scheme. We provide clear information on our website about the option of enforcing a claim against an airline through the courts to encourage consumers to take action themselves. This includes information about CMCs, including the advantages and disadvantages of using them.

Making the case for mandatory ADR

66. We believe that consideration should be given to making the use of ADR in the aviation sector mandatory if the approach set out in this policy statement fails to deliver our vision. We note that legislation was required to deliver aviation ADR in Germany when voluntary approaches failed. We note that Government intends to continue to consult with stakeholders and to carry out further work to assess the costs, benefits and impacts of any future simplification of ADR provision in the UK, including making ADR compulsory for all sectors of the economy.²⁶ We will therefore remain in close contact with the Government on this issue.

A simple ADR landscape

67. Regardless of the sector in which a dispute arises, there should be a consistent way for consumers to understand the responsibilities of businesses and their rights to redress, and to obtain assistance in accessing ADR and contacting a relevant ADR entity. This will help ensure that ADR can deliver the widest possible benefits to consumers and the economy.
68. The Government sees a single point of contact as key to making the ADR landscape easier for consumers to navigate. The Government has announced that it will be providing additional funding to the Citizens

²⁶ <https://www.gov.uk/government/consultations/alternative-dispute-resolution-for-consumers>

Advice telephone and online consumer advice service²⁷ so that it can provide specific advice and assistance to consumers attempting to resolve disputes, including referring them directly to ADR entities where appropriate. We consider that a single point of contact can also help realise the benefits of a competitive (i.e. multi-provider) ADR sector, such as innovation and lower costs for businesses, while the addressing the obvious risk of consumers finding it difficult to identify which ADR entity to refer their complaint to (which could reduce the overall benefit of ADR).

69. The CAA supports the Government's objective to make the ADR landscape easier for consumers to navigate. Although we will continue to provide consumer information on the CAA website, we do not see that providing a separate frontline advice and guidance service for aviation consumers is conducive to this aim, particularly when we have a reduced complaints handling role. We have therefore begun to explore how this advice function could be provided in future by Citizens Advice.

²⁷ The Citizens Advice consumer advice service replaced the OFT's Consumer Direct service in 2012.