

CAA policy on assessing 'competency' of proposed airline ADR schemes with 'EU listed bodies'

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Foreword

Note on contents

Airlines carrying passengers in and out of the UK must signpost such passengers (if they complain and the airline cannot resolve their complaint) to either an ADR entity approved by the UK CAA, or to an EU listed body which would be competent to deal with the complaint. This document sets out CAA policy as to how it will assess this competency.

Chapter 1

Introduction

Under the UK ADR Regulations¹ 19(2)(b), when an airline has “exhausted its internal complaint handling procedure” it needs to signpost consumers to “the name and website address of an ADR entity or EU listed body that would be competent to deal with the complaint”. They must also state whether the airline is obliged, or prepared, to submit to an alternative dispute resolution procedure operated by an ADR entity or EU listed body.

An ‘ADR entity’ is one approved by the UK CAA²; an ‘EU listed body’ is an ADR provider approved by another European Member State (under the ADR Directive and any associated implementing legislation). This policy sets-out how the UK CAA will decide whether an EU listed body is ‘competent’ to deal with complaints regarding aviation.

The CAA recognises that there are benefits associated with the mutual recognition of ADR providers throughout Europe. However, the Directive recognises that the quality requirements of the Directive “*should not prevent Member states from adopting or maintaining rules that go beyond what is provided for in this Directive*”.

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 UK CAA including, for example, the requirement that ADR outcomes are binding upon the trader. Another example is that our assessment of the expertise and knowledge of ADR entities approved by us ensures that we are satisfied as to their level of understanding of consumer protection legislation specifically targeted at the aviation sector.

¹ The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (as amended by) The Alternative Dispute Resolution for Consumer Disputes (Amendment) Regulations 2015. A consolidated set of Regulations is provided on our website at the following link: <http://www.caa.co.uk/Commercial-industry/Airlines/Alternative-dispute-resolution/>.

² A list of ADR entities approved by the UK CAA is available here: <http://www.caa.co.uk/Commercial-industry/Airlines/Alternative-dispute-resolution/>.

Therefore, whilst not requiring EU listed bodies 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.

Chapter 2

Requirements

(i) Specific understanding of aviation

In the UK, the government has assigned a specific role to the CAA to approve ADR providers wishing to operate in the aviation sector. As such, ADR entities approved by the competent authorities in the UK (such as TSI, the Financial Conduct Authority, or the Gambling Commission for example), cannot rely upon those approvals so as to operate within the aviation sector. ADR providers must apply directly to the CAA to do so.

As such, it would be incongruent for the CAA to accept the signposting by airlines of EU listed bodies approved by competent authorities in other member states, which do not specifically include the aviation sector. Therefore, **one of the key requirements for assessing an EU listed body as ‘competent’ is that its approval must specifically cover aviation disputes.**

Following on from this, **the EU listed body will need to have sufficient knowledge and expertise in relation to the aviation sector.** The UK Regulations require that the ADR entity ensures that an ADR official possesses a general understanding of the law and the necessary knowledge and skills relating to the out-of-court or judicial resolution of consumer disputes, to be able to carry out his or her functions competently. And the Directive at Article 6 states under *“Expertise, independence and impartiality”* that *“Member States shall ensure that the natural persons in charge of ADR possess the necessary expertise and are independent and impartial.”*

This is clearly for the benefit of consumers but will also be important to airlines. For those EU listed bodies which already operate ADR within the aviation sector then this experience should be able to be demonstrated through the body’s track record in terms of its decision making. We will therefore need to know what complaint types are currently dealt with and what ratio of cases are found for and against airlines.

For any ADR bodies which do not have a past history of dealing with aviation related disputes, we will need to be provided with evidence which demonstrates their knowledge and expertise. We will therefore need written statements to demonstrate how this knowledge has been acquired and the strategies in place for keeping up to date with changes to the law.

(ii) Coverage, language and scope

To ensure that there is comprehensive coverage for consumers **the proposed scheme will need to handle complaints from any EU resident related to flights in and out of the UK. To enable this the airline will need to ensure that the ADR body can communicate in writing³ with the consumer in whatever language the airline / consumer contract is in.**

It will also need to include disputes covering, as a minimum:

- i. Denied boarding, delay, or cancellation;**
- ii. Destruction, damage, loss, or delayed transportation of baggage;**
- iii. Destruction, damage, or loss of items worn or carried by the passenger;**
- iv. Problems faced by disabled passengers or passengers with reduced mobility when using air transport services; and**
- v. Any more general disputes arising where the consumer alleges that the business is not trading fairly.**

This is to ensure that consumers are not left in a position where there is no ADR provider which can deal with his/her complaint. This is a key objective of the Directive.

³ If the consumer has a disability which makes communication in writing difficult and verbal communication is preferred by the consumer, then it is expected that the EU listed body would be prepared to make a reasonable adjustment to enable that consumer to make out his/her complaint in the language of the airline / consumer contract. If there is evidence that consumers with disabilities are being excluded from the complaints process we may withdraw our assessment of competency.

(iii) Airlines compliance with ADR outcomes and consumer fees

There are a number of risks which the CAA, in its assessment of competence, aims to mitigate. Two of the key ones are:

- The risk that airlines will not comply with the outcome of the ADR process;
- The risk to consumers if fees are charged and the EU listed body subsequently experiences financial difficulties.

The following constitutes the ways in which the CAA will endeavour to mitigate these risks via its assessment of competency.

Airlines compliance with ADR Outcomes - If airlines do not comply with the outcomes/decisions of the ADR process then consumer's time (and potentially money) will be wasted and the ADR process will be gradually under-utilised and fall into disrepute.

One of the terms of the UK CAA's approval of ADR entities is that, should the consumer agree with the outcome of the ADR process, then it will become binding upon the airline.

Recognising that a balance needs to be made with the desire to recognise ADR providers approved by other European Member states, we will therefore require that **if there is a past record of the airline complying with the decisions of the EU listed body in the vast majority of cases**, then we will accept that the ADR scheme can be seen as competent. However, if evidence points to regular non-compliance then we will not.⁴

If the airline has not been part of the ADR scheme previously then we would expect the airline to commit to comply with the vast majority of outcomes in the future. If evidence shows that this has not been the case then we will remove our agreement for the EU listed body to be signposted as a means of complying with Regulation 19 of the UK ADR Regulations.

⁴ In our assessment of this we will consider airline compliance rates and the ratio of ADR outcomes found for and against airlines.

To assess levels of compliance the CAA will, as part of his assessment of competency, ask for **the ADR body's agreement to send data to the CAA**. This will comprise the annual and two yearly reports, as set out in the ADR Directive, but also with the name of the airline specifically identified for each reporting item. It will also include information on the proportion of cases that the EU listed body finds against / in favour of the consumer and the levels of compliance by that airline with decisions of the ADR body.

Consumer Fees - We will require information to be provided by the airline as to the level of any fee charged to the consumer in order to access the ADR scheme. It is important that schemes are accessible and therefore **the charge will need to be no more than €25 (or the local equivalent)**. If the fee is more than this we will not accept that body as being competent.

Further, we will ask that the airline obtains an agreement from the EU listed body that consumers will not be charged a fee where they are complaining about matters covered by EU Regulation 1107/2006 or Equalities issues. We will also ask that the airline obtains an agreement from the EU listed body that if a consumer is charged a fee, that it is refunded if the application is in any way successful (this does not have to be that a monetary award is made; it could include the provision of an apology for example.)

ADR entities approved by the UK CAA are required to send in financial accounts which are considered by us prior to any approval decision. To respect mutual recognition we shall rely on the member state's competent authority's assessment of the EU listed bodies which it has approved with regard to financial risk and potential loss of consumer fees.

There are requirements in the ADR Directive intended to ensure the independence and impartiality of ADR providers. To ensure this principle is maintained **airlines will need to inform the CAA of any fees which the EU listed body charges it to use its scheme and will need to demonstrate that these fees are not linked to outcomes of the ADR process.**

Chapter 3

Cooperation between EU listed bodies and the CAA as a national consumer protection authority

Article 17 of the ADR Directive requires cooperation between ADR entities (including EU listed bodies) and national authorities enforcing Union legal acts on consumer protection. The CAA is such a national authority in relation to the aviation sector. Acting in this capacity, the CAA may, from time to time, request information from EU listed bodies in order to inform its understanding of airlines' compliance with the relevant consumer protection legislation in the aviation sector. Our continuing assessment of competency relies on EU listed bodies complying with such requests.

Chapter 4

Removal of our assessment of 'competency'

If we assess as competent an EU listed body then we are relying on the expertise of other member states' competent authorities to ensure that the EU listed bodies are meeting the requirements of the Directive. This is in line with an ideal of mutual recognition which we accept. However, if the CAA believes that the body is not compliant with the Directive; is not meeting the requirements that we have set out above (on an ongoing basis) in order to ascertain its level of competency; or is not cooperating with the CAA in its role as a national consumer protection authority; we may inform the airline that we are not satisfied that it signposts the EU listed body as a means of complying with Regulation 19 of the ADR Regulations. We would also undertake to inform the relevant competent authority, where possible, of our concerns.

Chapter 5

Forms to be completed by airline and EU listed body

Appendices A and B to this document provide two forms – one which must be completed by the airline and one which must be completed by the EU listed body. The airline is responsible for ensuring that both completed documents are submitted to the CAA. Once the forms are submitted the information provided should enable the CAA to make its assessment of competency.

It should be noted by airlines that until such a decision has been made and informed to the airline in writing by the CAA, the airline will need to signpost a UK approved ADR entity.

Airlines will also need to ensure that the information in the forms is up to date. Any changes to the information supplied to the CAA in the forms should be notified to the CAA. The CAA will also re-assess the EU listed body by asking the airline to secure completion of forms every 2 years.

Airlines should submit the completed forms to the following email address. Queries can also be addressed to the following person:

katherine.smith@caa.co.uk

Tel: 020 7453 6242

Chapter 6

Complaint handling by PACT

It should also be noted that should consumers request that the CAA's Passenger Advice and Complaints Team (PACT) service handle their complaint, the CAA will only be able to refuse to do so for those airlines signed up to ADR schemes provided by UK approved ADR entities designated by the UK's Secretary of State for Transport as complaint handlers for EU Regulations 261/2004 and 1107/2006. It is the CAA's understanding that only those ADR providers approved by the UK CAA as ADR entities will be eligible for consideration for such designation. PACT will charge a fee for complaint handling from 1st June 2016⁵.

⁵ CAA's consultation on its Schemes of Charges refers to a complaint handling fee of £150 per complaint: <http://www.caa.co.uk/Our-work/Consultations/Open/CAA-statutory-charges/>

Appendix A

Airline Declaration

1. Name of airline:

2. Contact details of airline (for use by the CAA as regards ADR):

Name:

Job title:

Email address:

Direct tel.:

Postal address:

.....

3. Name of EU listed body:

4. EU listed body form completed and submitted: Yes

5. Intended start date of scheme:

6. Confirmation that the scheme will handle complaints from any EU resident
related to flights in and out of the UK:

Yes

7. Confirmation that the disputes the scheme will handle will include, as a minimum:
- i. Denied boarding, delay, or cancellation;
 - ii. Destruction, damage, loss, or delayed transportation of baggage;
 - iii. Destruction, damage, or loss of items worn or carried by the passenger;
 - iv. Problems faced by disabled passengers or passengers with reduced mobility when using air transport services; and
 - v. Any more general disputes arising where the consumer alleges that the business is not trading fairly.

Yes

8. Will the consumer be charged a fee for using the ADR scheme? Yes No

If Yes, what is the fee?

.....

If Yes, has the airline confirmed with the EU listed body that fees will not be charged to consumers complaining about matters covered by EU Regulation 1107/2006 or Equalities issues?

Yes No

.....

.....

If Yes, will the fee be re-paid if the consumer is in any way successful?

Yes No

.....

.....

9. What languages will the scheme offer to communicate with consumers in?

.....

.....

.....

.....

10. What fees will your airline need to pay the ADR provider?

.....

.....

.....

.....

11. Has your airline used this ADR provider before? Yes No

If yes, how long for?

.....
.....
.....

12. Has your airline always complied with the decisions / outcomes of the ADR scheme?

Yes No

If No, what is your average rate of compliance?

.....
.....
.....

13. Will your airline comply with the outcomes / decisions of the ADR provider in the future?

Yes No

If No, please provide further details:

.....
.....
.....

Signed by and on behalf of the airline

I, the undersigned, confirm that:

- The information provided is, to the best of my knowledge, true.
- Any changes to the information provided will be notified to the UK CAA as soon as reasonably practicable.

Name:

Job title:

Date:

Appendix B

EU listed body Declaration

1. Name of EU listed body:

2. Contact details of EU listed body (for use by the CAA):

Name:

Job title:

Email address:

Direct tel:

Postal address:

.....

3. Name and contact details of the individual at the Competent Authority which has approved your organisation as an 'ADR entity' under the ADR Directive:

Name:

Job title:

Email address:

Direct tel:

Postal address:

.....

- 4. Evidence that your organisation has been approved by the Competent Authority and that this includes consumer aviation disputes (i.e. copy of Directive Article 22 list)

Evidence provided? Yes

.....
.....

- 5. Confirmation that the scheme will handle complaints from any EU resident related to flights in and out of the UK:

Yes

- 6. Will the consumer be charged a fee for using the ADR scheme?

Yes No

If Yes, what is the fee?

.....
.....

If Yes, are there any situations where a consumer will not be charged a fee?

Yes No

.....
.....
.....

If Yes, will the fee be re-paid if the consumer is in any way successful?

Yes No

.....
.....

7. Confirmation that the disputes the ADR scheme will handle will include, as a minimum:

- i. Denied boarding, delay, or cancellation;
- ii. Destruction, damage, loss, or delayed transportation of baggage;
- iii. Destruction, damage, or loss of items worn or carried by the passenger;
- iv. Problems faced by disabled passengers or passengers with reduced mobility when using air transport services; and
- v. Any more general disputes arising where the consumer alleges that the business is not trading fairly.

Yes

8. What languages will the scheme offer to communicate with consumers in?

.....
.....
.....

9. What fees do airlines need to pay to you for provision of your ADR scheme?

.....

.....

.....

10. Has your organisation provided ADR for consumers in the aviation sector previously?

Yes No

If yes, how long for?

.....

Have you dealt with the following types of airline complaints: ✓ = yes; x = no

- 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
- Disputes arising where the consumer alleges that the business is not trading fairly

11. Has your organisation provided ADR for customers of this airline previously?

Yes No

If yes, how long for?

.....

.....

.....

If yes, what has been this particular airline's rate of compliance with your decisions / outcomes of the ADR process?

Full compliance?

Yes No

If not full compliance, what has been the average rate of compliance?%

What % of complaints have been decided against the airline?%

12. Will you confirm that you are willing to send the CAA data concerning the complaints relating to this airline? i.e. the annual and two yearly reports set out in the ADR Directive, with the airline name to which the complaints relate, clearly identified; as well as future rates of compliance by this airline with the outcomes of the ADR process.

Yes No

Signed by and on behalf of the EU listed body

I, the undersigned, confirm that:

- The information provided is, to the best of my knowledge, true.
- Any changes to the information provided will be notified to the UK CAA as soon as reasonably practicable.

Name:

Job title

Date: