


ADR in the aviation sector – a first review

CAP 1602

A large, abstract graphic composed of overlapping, semi-transparent blue shapes in various shades, ranging from light cyan to deep navy blue. The shapes are curved and layered, creating a sense of depth and movement. The graphic occupies the bottom two-thirds of the page.

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Contents

Contents	3
Executive summary	5
Chapter 1	9
The CAA's role in complaint handling	9
Chapter 2	12
The development of ADR in the aviation sector	12
The CAA's ADR policy	12
Implementation of ADR	14
Take-up of ADR	17
Airlines	17
Airports	17
Voluntary versus mandatory ADR	18
Chapter 3	19
Consumers' experience of ADR	19
Complaints received	19
Complaints refused	19
Proportion of complaints upheld	19
Outcomes for consumers	21
EC Regulation 261/2004	21
EC Regulation 1107/2006	22
Other types of complaint	22
Complaints to EU (non-UK) ADR schemes	22
Time to decide complaints	22
Consumer fee	23
Consumer feedback	24
Businesses' experience	25
Chapter 4	27
ADR entities' recommendations to the CAA	27

Responsibilities between airlines and third party booking agents	27
Consumer information and awareness	28
Airline terms and conditions	28
Chapter 5	29
Summary and recommendations	29
Airlines and airports signed up to ADR schemes	32
ADR entities' recommendations to the CAA	34
CEDR	34
Consumer Dispute Resolution Ltd (AviationADR)	34
Complaints data in respect of the EU (non-UK) ADR schemes	35
ARN	35
CRPC	35
Czech Trade Inspection Authority	35
SOP	35
Airlines listed by passenger numbers (top 100) signed up/not signed up to ADR	36
UK Airports listed by numbers of passengers with disabilities and reduced mobility, signed up/not signed up to ADR	39

Executive summary

“... 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...”¹

Empowering consumers is a strategic priority for the CAA. This includes ensuring that consumers have access to effective mechanisms to resolve their complaints. Historically, the CAA was the main body to which consumers could refer their complaints if they could not resolve them directly with the business. However, due to restrictions in the legal framework, the CAA had no powers to enforce its decision in the case of individual complaints. The European ADR Directive² was published in May 2013 and implemented into UK law³ in late 2015. Recognising the limits of the then existing framework, the CAA saw this as an opportunity to make significant improvements to how consumer complaints are handled in the sector and to provide consumers with a quicker, cheaper and more effective alternative than going to court.

Although it is not mandatory for businesses in the UK to use ADR to resolve consumer disputes, the take-up of ADR by airlines has been very good. Following lengthy consultation with airlines, including workshops with them and the ADR providers, the introduction by the CAA of a direct charge on airlines for handling escalated complaints, and recognition by airlines that ADR could bring benefits to their businesses in terms of more efficient complaint handling and improved customer loyalty, virtually all of the major UK airlines have now signed up to a CAA approved ADR provider, with many foreign airlines also signing up to ADR (either in the UK or in other European countries). Nearly 10,000 complaints have been received by CAA approved ADR providers since its inception.

Acknowledging another of the CAA’s strategic priorities, we have recently expanded the scope of ADR to include complaints from disabled passengers and passengers with reduced mobility in relation to accessibility issues at the airport. Although take-up of ADR in this area is still at an early stage, we are pleased to see that some of the UK’s largest

¹ CAP 1286 - Consumer complaints handling and ADR: CAA policy statement and notice of approval criteria for applicant ADR bodies www.caa.co.uk/cap1286

² DIRECTIVE 2013/11/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>.

³ 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 here: <http://www.caa.co.uk/Commercial-industry/Airlines/Alternative-dispute-resolution/>

airports have signed up with CAA approved ADR providers. In fact, 76% of disabled passengers and those with reduced mobility travelling through a UK airport are now covered by an ADR scheme.

A key feature of ADR in the aviation sector is the requirement, introduced by the CAA, that the decisions of the CAA approved ADR providers, once accepted by the consumer, are binding on the business. This is clearly a significant improvement on the previous situation where, as referred to above, the CAA could only make non-binding recommendations in respect of individual complaints. The introduction by the CAA of binding decisions, combined with its rigorous oversight of the UK ADR providers in terms of their independence and impartiality, is ensuring that the regime established by the CAA is delivering on consumers' expectations for ADR, notably that ADR providers have "[...] 'teeth' that can definitely bring about a clear, binding decision at the end" and that decisions are "[...] based on what is fair and reasonable, taking into account both sides of the story".⁴

In terms of the outcomes achieved by consumers through ADR, the average rate at which consumers have had their complaints upheld (in full or in part) by the CAA approved ADR providers is 79%. Although ADR is still developing in the sector, and although these headline figures should be treated a degree of caution, we are pleased to see that the CAA approved ADR providers are acting systematically to uphold the claims of aviation consumers where justified. Further, feedback from consumers on their experience of the ADR process shows high levels of satisfaction. For example, 77% of respondents to one of the ADR provider's surveys found the decisions to be either "extremely" or "very clear", and 81% of respondents found it "moderately, "very" or "extremely" easy to have their case decided.

A contentious issue at the time that the CAA was developing its policy on ADR was whether consumers should pay a fee to use ADR. Our consumer research 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. We chose, therefore, to allow ADR providers to charge a nominal fee of up to £25 per (unsuccessful) complaint, but we committed to keep the practice of charging consumers to use ADR under review. Analysis of the data on the types of complaints that the CAA approved ADR providers are refusing to handle suggests that the consumer fee may not be necessary to deter spurious complaints. Although further work needs to be done in this area, in particular to better understand the types of complaints that the ADR providers are not handling, in the CAA's view there is a prima facie case for reducing the maximum amount of the consumer fee or removing it entirely. We will continue to assess the impact of the consumer fee and will review this aspect of the policy by the end of 2018.

⁴ See the CAA's consumer research on ADR, which is set out in Appendix A of CAP1257, "Reforming consumer complaints handling - Consultation on the CAA's draft policy"
http://publicapps.caa.co.uk/docs/33/CAP1257_ADR_draft_policy_statement_for_consultation.pdf

As set out in more detail later in this report, our review has identified a number of other areas for further work by the CAA over the next year and beyond. One such area is transparency. We have become aware recently of a small number of instances where consumers are not being properly signposted to ADR at the point that the business rejects their complaint. A priority for us this year will therefore be to ensure that airlines and airports provide consumers with the appropriate information on ADR at the appropriate time. Also in relation to transparency, although a significant majority of the complaints that reach ADR are settled in favour of the consumer, there have been a few instances where consumers have questioned the independence and impartiality of the ADR provider, in particular where the ADR provider has ruled against the consumer. In order to try to address this perception, we intend to consider whether to enable the publication of data on the numbers of complaints received for each airline and the rate at which decisions are made in favour of the consumer. Further, we will look at whether there is any additional information which could be published about the independence and impartiality of the CAA approved ADR providers.

A small number of operational issues have also come to light over the previous twelve months. For the most part these have been technical issues, for example points of detail around the relevant scope of the ADR schemes, the correct interpretation of the law, etc, which we have been able to resolve directly with the ADR providers. More recently we became aware of an issue of late payment of claims. Having looked into the issue, and having discussed the matter with the parties involved, we have been assured that the situation is now resolved. However, we will continue to monitor this issue and we have asked the CAA approved ADR providers to report to us quarterly on any outstanding payments that they are aware of.

Overall, we are pleased with how this initial period of full operation of ADR in the aviation sector has gone. Unfortunately, we have seen a slow down recently in the number of businesses volunteering to participate in ADR. The CAA's objective in relation to ADR is for full coverage across the sector, and it is therefore disappointing that a number of large airlines such as Jet2, Emirates, and Aer Lingus (which between them carry over 16 million passengers to and from the UK) have failed to sign up to ADR. There is therefore a strengthening case for making participation in ADR mandatory across the sector. Achieving mandatory participation would require primary legislation and therefore it is a decision for Government. The Department for Transport expects to publish its draft proposals for a new aviation strategy, which we expect to consider consumer issues including ADR. Although we will continue our efforts to promote full participation in voluntary ADR, we will also work closely with Government on its aviation strategy and the issue of voluntary versus mandatory participation in ADR.

In the meantime, we will continue to build on the successes achieved so far through further expanding and enhancing ADR and ensuring that it is delivering improved outcomes for consumers. We hope that all those concerned with aviation and the consumer experience find this report of interest.

A handwritten signature in black ink, appearing to read "Tim Johnson". The signature is fluid and cursive, with the first name "Tim" and last name "Johnson" clearly distinguishable.

Tim Johnson, **Director of Policy**

Chapter 1

The CAA's role in complaint handling

Historically, passenger complaints in the UK were handled by the AUC (Airport Transport Users Council), which had since the 1970s acted as the CAA's consumer 'watchdog'. The AUC had two functions: first, to act as an advocate for consumers' interests; and second, to resolve passenger complaints. The numbers of complaints submitted to the AUC prior to 2005 were around 500-1,000 per year. However, when EC Regulation 261/2004⁵ came into force (which provided for compensation for passengers for denied boarding and flight cancellations), complaint volumes increased to between 5,000 and 6,000 per year and remained consistently at this level until the Eyjafjallajökull volcanic eruption in 2010. This event significantly impacted air travel and, in that year, the number of complaints submitted by consumers to the AUC jumped to nearly 12,000.

The consumer advocacy role of the AUC was taken over by the CAA's Consumer Panel in 2011. At the same time, complaint handling was brought in-house into the CAA's newly-formed Passenger Advice and Complaints Team (PACT). Following the Eyjafjallajökull volcanic eruption, complaint volumes returned to a level of around 6,000-7,000 per year. However, in 2012 the European Court of Justice made a significant ruling in the case of *Tui/Nelson*, which extended the rules on financial compensation in EC Regulation 261/2004 to long delays.⁶ As a direct result of this ruling, complaint volumes in 2013 jumped to nearly 27,000 per year, which put a significant strain on the CAA's complaint handling capability and started to expose a number of structural weaknesses in how the CAA was set up to handle individual passenger complaints.

In relation to this latter point, although the CAA is a national enforcer for consumer protection legislation in the aviation sector, in particular in relation EC Regulation 261/2004, its role in handling individual complaints was not clear – in fact, there is no explicit statutory requirement for the CAA to mediate or resolve individual consumer complaints and, as a result, the CAA has no legal powers to enforce its decisions in respect of individual passenger complaints. As the volumes of complaints increased over the years, especially following the *Tui/Nelson* ruling, so did their complexity, in particular in relation to whether a technical fault with an aircraft should be considered to be an 'extraordinary circumstance' and therefore exempt from compensation.⁷ The propensity of

⁵ 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: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004R0261&from=EN>

⁶ Joint cases [Nelson \(C-581/10\)](#) and [TUI Travel \(C-629/10\)](#). This confirmed the earlier ruling of the European Court of Justice in [Sturgeon](#).

⁷ The issue was subsequently clarified in the 2014 *Jet2 v Huzar* Court of Appeal case.

airlines to vigorously defend compensation claims using the 'extraordinary circumstance' exemption exposed the CAA's inability to issue binding rulings in what was an admittedly complex and difficult area.

Compounding this issue was the compatibility of the CAA's complaint handling role with that of its consumer enforcement role. Our role as an enforcer of consumer protection legislation requires us to address systematic issues of non-compliance and concerns the general applicability of consumer protection legislation to the typical issues encountered by consumers. And indeed the CAA has been active in this area.⁸ In contrast, in its complaint handling role, the CAA was being required to apply the law to a myriad of different individual circumstances and in which, often, the facts of the case were not clear or there was legitimate uncertainty in the application of the law to the specific set of facts. The confusion between these two roles in the eyes of the public had created an expectation that the CAA would take enforcement action in relation to each individual consumer complaint where, in its complaint handling role, it had found against the airline. In this context it is worth noting that regulators in the UK do not generally handle individual consumer complaints. For example, in financial services, the Financial Conduct Authority co-exists with the Financial Ombudsman;⁹ in energy, Ofgem directs consumers to the Energy Ombudsman;¹⁰ and Ofcom signposts complaints to CISAS (CEDR) or Ombudsman Services for telecoms complaints.¹¹

A further weaknesses in how the CAA was set up to handle individual passenger complaints related to its charging framework. Given that the CAA's role in complaint handling was not fully clear, and given that, historically, complaint volumes had been low, its charging framework had not been designed in a way to encourage airlines to get their own complaint handling 'right first time'. In particular, airlines were not charged on a per complaint basis and were instead funding PACT as part of the CAA's overall charging regime whereby costs fall most heavily on UK airlines. As such, the costs incurred by the CAA in handling complaints were not being passed on to the airlines which the complaints were about. This reduced the incentive on airlines to handle complaints effectively and thereby avoid consumers escalating their complaints to the CAA. Further, as the costs were primarily falling onto UK airlines, this was resulting in non-UK airlines receiving a

⁸ We have published a number of reports on airline compliance and subsequent enforcement action: www.caa.co.uk/cap1227; www.caa.co.uk/cap1275; www.caa.co.uk/cap1305; www.caa.co.uk/cap1500; <http://www.caa.co.uk/News/Ryanair-faces-CAA-enforcement-action-for-breach-of-consumer-law/>; <http://www.caa.co.uk/News/CAA-action-leads-to-airlines-changing-policies-and-means-passengers-will-get-better-support-in-the-future/>; <http://www.caa.co.uk/News/Five-major-airlines-face-enforcement-action-for-denying-passengers-compensation-for-delayed-flights/?catid=4294967496>.

⁹ <https://www.fca.org.uk/consumers/how-complain>; <http://www.financial-ombudsman.org.uk/>.

¹⁰ <https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/complain-about-your-gas-or-electricity-bill-or-supplier>; <https://www.ombudsman-services.org/sectors/energy/complain-now>

¹¹ <https://www.ofcom.org.uk/phones-telecoms-and-internet/how-to-report-a-complaint/dispute-resolution>; <https://www.cedr.com/cisas/>; <https://www.ombudsman-services.org/sectors/communications>.

'free ride', which again distorted incentives. A 'user pays' model of covering CAA complaint handling costs was preferred.

The implementation into UK law of the European ADR Directive in 2015 provided the CAA with an opportunity to address the structural weaknesses in how the CAA was set up to handle individual passenger complaints and, ultimately, to make significant improvements to how consumer complaints are handled in the sector by providing consumers with a quicker, cheaper and more effective alternative to going to court. The development of ADR in the aviation sector is covered in the next section.

Chapter 2

The development of ADR in the aviation sector

The CAA's ADR policy

Following consultation, in April 2015 the CAA published its initial policy statement regarding the new ADR framework which we intended to establish as a response to the European ADR Directive and UK ADR Regulation.¹² As set out in the consultation, the CAA's vision was simple. In the first instance we wanted airlines to have strong incentives to handle complaints properly in-house. And if this was not happening, we wanted consumers to have access to independent, impartial and low-cost dispute resolution arrangements that would offer consumers an easier alternative to court action.

Recognising that private ADR had been the norm for many years in major consumer service sectors such as financial services, telecoms and energy, we wanted aviation consumers to also benefit from the simple, swift and effective approach to dispute resolution that ADR brings. We felt that a system of private ADR, which is to say a scheme set up and directly funded by the aviation industry but with clear and independent governance and regulatory oversight by the CAA, would be the best way to bring about the improvements needed to achieve the CAA's vision.

The European Directive on ADR provided a legal framework for such an arrangement, along with specific information tools to encourage clarity and transparency. However, the Directive did not make it mandatory that businesses should participate in ADR, a feature which was carried forward into the UK implementing legislation. A major focus of our policy was therefore on creating the conditions within which voluntary ADR could develop and thrive. This meant that, in developing our policy, we had to find a compromise between what consumers and their representatives wanted versus what the airline industry was prepared to accept in order for it to participate voluntarily in ADR.

Our research with aviation consumers found that they were open to an independent, neutral body providing ADR, but that they preferred a model where consumers would receive a clear, concrete resolution to their complaint and where the ADR provider had the ability to enforce that decision (that is, decisions that would be legally binding on the company, not the consumer who could still go to court).¹³ As set out earlier, this feedback aligned with our own experience of handling individual consumer complaints and was an issue on which we were not prepared to compromise. Therefore, although a number of

¹² CAP 1257 – ADR draft policy statement for consultation, www.caa.co.uk/cap1257 and CAP 1285 - Summary of consultation responses, www.caa.co.uk/cap1285

¹³ See CAP 1257 Appendix A

airlines claimed that such an arrangement would be unfair to airlines, the requirement for 'one way' binding decisions became a central feature of our ADR policy.

The main contentious issue in terms of encouraging airlines to participate in ADR was not the binding nature of the decisions made by ADR bodies, but rather was whether consumers should pay a fee to use ADR. Unsurprisingly, our consumer research 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. We 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.

However, we balanced this concession with a number of additional requirements. First, that if a consumer's complaint was upheld in any way, the consumer's fee would be refunded in full. On the assumption that complaint outcomes from ADR schemes in aviation would be similar to those in other sectors, we were confident that this would mean that the vast majority of consumers would not pay to use ADR. 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, we added a requirement that the consumer fee would not be charged at all for any complaints relating to disability matters. Finally, we committed to keep the practice of charging consumers to use ADR under review to ensure that it was not deterring consumers with genuine claims from enforcing their rights.

The issue of introducing 'user pays' charging into the CAA charging framework was also a controversial issue for some airlines.¹⁴ From the CAA's perspective, 'user pays' charging was a key requirement since the costs incurred by the CAA in handling complaints needed to be correctly passed on to the airlines causing the costs to be incurred. Not only would this ensure that the costs incurred by the CAA would be fully recovered, but it would also encourage airlines to get their own complaint handling 'right first time'. Many non-UK airlines did not support 'user pays' charging, not least because the costs incurred by the CAA in handling complaints were primarily falling onto UK airlines at that time, due to the way that the CAA charging regime is established. However, UK airlines made it clear to us that they were not prepared to support the costs of both private ADR as well as the CAA's complaint handling service (which, if they participated in ADR, they would not be using). Having considered the arguments for and against, the CAA's view was that 'user pays'

¹⁴ This was not an issue for those airlines seeking to participate in ADR since ADR providers tend to charge on a 'user pays' – i.e. per complaint – basis (although some also have a flat fee, e.g. an annual membership fee).

charging should be incorporated into its charging framework for the provision of its complaints handling service. This was incorporated into our policy and the ‘user pays’ charging arrangement was implemented from 1 June 2016.

Our research with aviation consumers had highlighted a number of other issues important to consumers but which we chose to not take forward at that time. Significantly, concerns were raised by consumers over the potential for airlines to choose between competing ADR models as they felt this might dilute the idea of ADR. As set out above, the underlying legislation limited the discretion available to the CAA in its implementation of ADR and we therefore took the view that, should a voluntary approach to ADR, with the potential for multiple ADR providers, not deliver the net benefits we were seeking, we would consider asking central government to put in a place a mandatory framework.

Consumers also expressed views on a number of other, more general, features of ADR. For example, consumers were not happy that their only option following an ADR determination was to take their claims to the small claims court. In addition, although consumers felt that details of individual cases should not be published (unless anonymous), the data on decisions should be used by public authorities (e.g. regulators) to improve firm and industry performance. Consumers also felt that ‘naming and shaming’ might be appropriate in some cases, for example they expected to know which airlines had signed up to ADR and which had not. Further, our research showed that consumers’ preference was for a model where they could submit and manage their complaints online and one which offered an empathetic approach to consumers and the issues they raise through complaints. We chose not to take a specific position on these issues during the development and implementation of our policy, but rather to keep the issues under review as ADR progressed.

The CAA’s policy on ADR was updated and finalised in October 2016.¹⁵

Implementation of ADR

The CAA’s principal role in ADR is as the ‘competent authority’ for the sector it regulates. As set out in the UK ADR Regulations, the key function in this regard is the approval of organisations to be ‘ADR entities’ to which consumers can take their complaints. To this end the CAA published, initially in July 2015, a set of detailed approval criteria which applicants needed to demonstrate they met before being approved by the CAA to handle consumers’ complaints.¹⁶ It is through its competent authority role that the CAA has been able to implement its ADR policy, in particular its requirement for ADR decisions to be binding on airlines, its rules on charging a consumer fee, and the scope of complaints that should be handled by ADR.

¹⁵ CAP 1286 – Consumer complaints handling and ADR: CAA policy statement and notice of approval criteria for applicant ADR bodies, www.caa.co.uk/cap1286

¹⁶ CAP 1324 – Guidance for ADR applicants, www.caa.co.uk/cap1324

Currently, two providers are approved by the CAA as ADR entities¹⁷ in the aviation sector: [CEDR](#) and [Consumer Dispute Resolution Ltd \(trading as AviationADR\)](#).¹⁸ CEDR was approved in January 2016 and Consumer Dispute Resolution Ltd in May 2016. Each of these underwent a rigorous approval process designed by the CAA to ensure that consumers would be provided with an expert, independent and effective mechanism for resolving their complaints. Through the approval process, scheme rules are specified and checked against; funding mechanisms examined; impartiality provisions required; financial position considered; and minimum scope assured. As a condition of its approval, a number of further checks are made each year as part of the CAA's continuation of approval process. This includes data submission to the CAA, which also assists us in our other role as an enforcer of consumer protection legislation, as well as further on-going checks as regards the ADR entity's financial position.

Whilst an 'ADR entity' is one approved by the UK CAA; an 'EU listed body' is an ADR provider approved by another European Member State.¹⁹ The underlying ADR legislation provides for the recognition by Member States of other European countries' ADR providers. This presented the CAA with some cause for deliberation as the requirements which the CAA had put in place for those ADR entities which it approved were specific and intended to deliver improved consumer outcomes and a high level of consumer protection. For example, as set out previously, in developing our ADR policy we felt that it was necessary to provide ADR entities with the ability to enforce their decisions on the airline and the requirement for 'one way' binding decisions became a central feature of our ADR policy as a result. In contrast, many European Member States had not gone this far in implementing ADR in their own countries, and the decisions of their approved ADR providers were either not binding or binding only if both sides agreed. We were therefore concerned that if airlines were allowed to signpost their consumers to any ADR provider throughout Europe, they might select the least onerous option (so called 'regulatory shopping').

We therefore decided that we would be open to airlines requesting that they signpost a European (non-UK) ADR provider, but only as long as certain quality measures were met, both upon initial approval and on an on-going basis. CAA policy publication CAP 1408 sets-out our full policy in this regard.²⁰ Our key requirements are that complaints relating to

¹⁷ Whilst we use the term 'ADR provider' and 'ADR entity' in this document the latter is the formal, legal term for those ADR providers approved by the CAA as a competent authority.

¹⁸ It is worth noting that a number of organisations/individuals enquired about or applied for ADR entity status but found that they did not meet our comprehensive criteria. Two organisations also formerly held an approval from the CAA but subsequently volunteered to have their approvals revoked (Ombudsman Services and Net Neutrals).

¹⁹ A list of ADR entities approved by the UK CAA is available here: <http://www.caa.co.uk/Commercial-industry/Airlines/Alternative-dispute-resolution/>

²⁰ CAP 1408 – CAA policy on assessing 'competency' of proposed airline ADR schemes with 'EU listed bodies', www.caa.co.uk/cap1408

flights into and out of the UK will be dealt with; data must be submitted by the ADR provider to the CAA annually; airlines must comply with the decisions of the ADR provider in the “vast majority” of cases; complaints will be dealt with in English where requested; the minimum scope for complaints must align with that implemented in the UK; and there must be a limit on the maximum fee charged to consumers. We maintain oversight of these non-UK ADR schemes, and those airlines signposting consumer to them, to ensure consumer outcomes are of a sufficiently high standard. If this proves not to be the case then we can remove our approval for consumers to be directed to those providers.²¹ If this happens, the CAA’s own complaints handling service will step in to take up consumer complaints about the relevant airline, or the airline can consider other ADR providers.²²

Another priority for the CAA in its implementation of ADR was to ensure that consumers would be made aware of the existence of ADR, how to access it, and what to expect.²³ The legislation underpinning ADR in the EU and the UK places certain obligations on businesses to provide consumers with information on ADR. In its other role as a national authority for the enforcement of sector specific and general consumer protection legislation, the CAA has made considerable efforts to ensure that businesses meet these trader information obligations. We have become aware recently of a small number of instances where consumers are not being properly signposted to ADR at the point that the business rejects their complaint. A key priority for us in this next year will therefore be to ensure that the airlines concerned comply with their legal obligations to signpost consumers with outstanding complaints to the correct ADR provider (and also to include information on ADR on their websites and in their terms and conditions, as is required by the underlying legislation). Further, we will continue undertake regular compliance checks on an on-going basis, working in conjunction with the ADR entities themselves.

In addition, recognising that ADR was new to the aviation sector and, in this context, would not be familiar to aviation consumers, and recognising that allowing multiple ADR providers to operate in the sector could lead to confusion amongst consumers (an issue that was raised by consumers in our research on ADR), we decided to provide a range of consumer information on ADR on our website. Further, we decided to use our website to maintain a list of airlines and airports that are participating in ADR, the ADR providers to

²¹ Note that the CAA’s approval of an airline signposting a European (non-UK) ADR provider is specific to that airline and is not to be construed as an ‘approval’ of the ADR provider per se. This is because each airline needs to commit to meeting the CAA’s policy requirements. Appendix A provides a list of each ADR provider and the airlines which signpost to them.

²² This situation has arisen recently in relation to SAS airlines and the Swedish ADR scheme, ARN.

²³ The CAA maintains a webpage listing the ADR schemes signed up to by individual airlines and airports: <http://www.caa.co.uk/Passengers/Resolving-travel-problems/How-the-CAA-can-help/Alternative-dispute-resolution/>.

It is also worth noting that additional funding was provided by the Government to the Citizens Advice telephone and online consumer advice service by central Government, to assist consumers with identifying the appropriate ADR provider to handle their complaint.

which they are signed up (including those using ADR providers in other EU countries), and their contact details.²⁴

Take-up of ADR

Airlines

Since the vast majority of consumer complaints in the aviation sector arise in relation to financial compensation for flight cancellations and long delays, we chose to focus our efforts first on airlines, both in terms of promoting ADR in the aviation sector and encouraging aviation businesses to participate in ADR. The CAA consulted with airlines and other stakeholders on its ADR policy over the course of 2014 and early 2015. During that time there was significant debate in the sector on ADR and its applicability to aviation, in terms of both the principal and the practicality, as well as the ongoing role of the CAA in handling consumer complaints. As set out above, in January 2016 CEDR was approved by the CAA to handle aviation complaints. From that point we started to hear from airlines which had either decided to participate in ADR with CEDR or which were in discussions to do so. This was very encouraging and we were keen to see whether others ADR providers would follow; indeed a number did. Consumer Dispute Resolution Ltd (trading as AviationADR) was approved in May 2016.

The first airline to sign up to ADR was Thomson Airways, in January 2016. In June that year a number of other airlines informed us that they had decided to participate in ADR, including British Airways and Ryanair.²⁵ Thomas Cook and Wizz Air followed in July 2016, with easyJet signing up in August 2016, and Flybe in September that year. This year we have seen Virgin sign-up in January; Air France / KLM in April; and Monarch in July 2017. Delta and Small Planet have also recently signed up. Based on 2016 passenger data, currently 78% of passengers flying into and out of the UK are covered by an ADR scheme.

Although the take-up of ADR by airlines has, to date, been very good, we have seen a slow down recently in the number of businesses volunteering to participate in ADR. The CAA's objective in relation to ADR is full coverage across the sector, and it is therefore disappointing that a number of large airlines such as Jet2, Emirates, and Aer Lingus (which between them carry over 16 million passengers to and from the UK) have failed to sign up to ADR.

Airports

Although our initial focus in implementing ADR was on airlines, our ADR policy statement envisaged that the ADR schemes which we would go on to approve would be able to deal with airport related passenger disputes concerning disability issues. Therefore, following the successful introduction of ADR for airlines, we re-examined our role in complaints

²⁴ <http://www.caa.co.uk/Passengers/Resolving-travel-problems/How-the-CAA-can-help/Alternative-dispute-resolution/>

²⁵ Appendix A provides a list of airlines that are currently participating in ADR.

handling regarding UK airports for matters relating to EC Regulation 1107/2006 (concerning the rights of disabled persons and persons with reduced mobility when travelling by air). We concluded that it would be appropriate to extend ADR to these types of complaints, and to introduce a 'user pays' model of charging for airports (as we had done with airlines). On this basis, the CAA decided that it should stop handling any complaints about airports participating in ADR. But, we would continue to provide a backstop service for those airports that decided not to, and would charge them accordingly.

The first airport to sign-up to an ADR scheme was London City Airport in March 2017. London Heathrow airport, the UK's busiest airport for passengers needing mobility assistance, signed up to ADR in June this year.²⁶ The proportion of disabled passengers and those with reduced mobility travelling through UK airports and covered by a CAA approved ADR scheme stands at 76%.²⁷

Although it is relatively early days in terms of airports' participation in ADR, we are pleased to see that a number of large airports have elected to do so. As with airlines, the CAA is keen to see full coverage of ADR across the sector. However, recognising that, for smaller airports, the number of passenger complaints relating to EC Regulation 1107/2006 is likely to be extremely small, the CAA intends to focus its efforts on encouraging the larger airports such as Birmingham, Luton, Glasgow and Edinburgh to sign up to ADR.

Voluntary versus mandatory ADR

As set out previously, the CAA's policy position on making participation in ADR mandatory for airlines and airports is dependent on the existing voluntary approach delivering the net consumer benefits that we were originally seeking from ADR. Although the take-up of ADR by airlines and airports has been good, participation in ADR is still well short of the CAA's ultimate goal, which is for full coverage across the sector, and as a result a significant proportion of consumers are still not covered by ADR. Making participation in ADR mandatory in aviation would require further consideration, not least in relation to the legal and practical implications of doing so. Further, achieving mandatory participation would require primary legislation and therefore it is a decision for Government. It should be noted that the Department for Transport expects to publish a new aviation strategy in draft, which we expect to consider consumer issues including ADR. Although we will continue our efforts to promote full participation in voluntary ADR, we will also work closely with Government on its aviation strategy and the issue of voluntary versus mandatory participation in ADR.

²⁶ More than one-third of passengers that need mobility assistance when travelling by air travel through Heathrow airport.

²⁷ A full list of airports currently signed-up to ADR is provided at Appendix A.

Chapter 3

Consumers' experience of ADR

Complaints received

Between January 2016 and the end of March 2017 the UK approved ADR entities received just under 10,000 complaints from consumers.²⁸ The vast majority (nearly 9,000) of these have been related to EC Regulation 261/2004 regarding flight delays and cancellations. Approximately 1,000 come under the category 'Other', of which most relate to baggage complaints (claims for damaged or lost luggage, for example). Around 30 complaints relate to passengers with disabilities or reduced mobility.

Complaints refused

ADR entities have only very limited grounds for refusing to handle a complaint and they must report regularly to the CAA on the numbers of complaints refused. Analysis of this data shows that the proportion of complaints refused by the CAA approved ADR entities are 12% for CEDR and 11% for AviationADR. The most common ground for refusal by CEDR is that the complainant has either not contacted the business first or that they have not given the business sufficient time to respond to their complaint. In contrast, CAA understanding is that AviationADR does not accept a complaint unless the consumer has waited long enough for the airline to reply and therefore such complaints are not counted as refused complaints. Taking this into account, the second most common ground for refusal by both ADR schemes is that the complaint is out of scope. Over the next year we plan to enhance our understanding of how the ADR entities apply their rules for refusing complaints.

Proportion of complaints upheld

We also receive data from the ADR providers on the rate at which consumer complaints are upheld. Our analysis of this data shows that the average rate for consumer complaints being upheld by CEDR over the time period is 89% and for AviationADR it is 71%. Although ADR is still developing in the sector and therefore these headline figures should be treated with some caution, we are pleased to see that ADR providers are acting systematically to uphold the claims of aviation consumers where there is justification for doing so.

It is noticeable that there is a sizeable difference between the two CAA approved ADR providers in terms of the rate at which consumer complaints are upheld. Even greater differences in upheld rates can be observed when comparing between the airlines participating in each scheme. For both of the CAA approved ADR providers, upheld rates

²⁸ Note that ADR scheme start dates vary for each airline – see Appendix A.

by airline range from around 50% to well over 90%. Further, it can be observed that, for a number of the airlines participating in the ADR scheme run by CEDR, the rates at which complaints have been upheld have decreased over time.

It is the CAA's view that the differences in uphold rates currently being observed are driven by how well airlines are dealing with complaints the first time round. In principle, if airlines are assessing complaints properly when they are first submitted to them by consumers then, other things being equal, a lower proportion of complaints will find their way to ADR. Under such circumstances, the complaints that reach ADR could be expected to be more complex, whether in relation to the factual situation underlying the complaint or how the relevant legislation is applied in that particular case. In such cases, uphold rates could be expected to be significantly lower than for airlines that are not assessing complaints properly the first time round.

At first glance, this may sound like a weakness in the legal framework for delivering sector wide compliance with consumer protection law. Having a process in place whereby consumer complaints are properly assessed on a routine basis is a necessary condition for running a compliant business. However, it should be remembered that airlines pay for ADR providers to consider complaints and so there is a clear financial incentive on them to assess complaints properly first time round, and to provide appropriate redress to consumers in the clear-cut cases. For this reason, ADR should, over time, have a beneficial impact on airlines' own complaint handling.²⁹ The financial incentive provided by ADR aligns well with the other regulatory and commercial incentives on businesses to comply with consumer law and treat their customers fairly. Indeed, we are aware anecdotally of some airlines making more resources available to handle consumer complaints in response to this combination of incentives.

As set out previously, as part of its ongoing oversight of the CAA approved ADR providers, the CAA sets and upholds rigorous standards in terms of expertise, independence and impartiality of the ADR providers and their staff. We are therefore confident that the differences in the rates at which consumer complaints are being upheld are not due to one ADR provider being more 'pro-consumer' or 'pro-industry' than the other, but rather are due to differences in airlines' own complaint handling processes. However, through our ongoing oversight role, in particular through ad-hoc reviews of ADR decisions as well as regular discussions with the ADR entities regarding their decision-making, we will continue to provide assurance that the ADR providers consider all the facts of each case and make objective judgements based upon the law, policy, and principles such as fairness.

As noted, the CAA has received a small number of complaints from consumers seeking to overturn the decisions of the CAA approved ADR providers. As part of our general oversight role we are dedicated to ensuring that the CAA approved ADR providers are

²⁹ The UKRN's review of ADR in July 2014 noted the potential for ADR to incentivise good customer service so that traders resolve complaints themselves: <http://www.ukrn.org.uk/wp-content/uploads/2016/09/20140728-ReviewingBenefitsADR.pdf>

systematically upholding consumers' rights. Therefore, over the coming year we will consider options to enhance our oversight in this area. One option is to instigate a review of complaints decided by the ADR entities to consider quality of decision making; internal consistency of ADR entities; and a comparison between the decision-making at the ADR entities. Other regulators have carried out similar initiatives.³⁰

Outcomes for consumers

EC Regulation 261/2004

It is of no surprise that the vast majority of complaints dealt with by the CAA approved ADR providers concern EC Regulation 261/2004. This regulation provides for statutory compensation amounts for passengers experiencing certain delays and cancellations, as well as covering provisions regarding denied boarding, downgrading and care of passengers with disabilities during disruption. Around 1% of all flights leaving from, and arriving at, UK airports are either cancelled or suffer a long delay, and therefore a significant number of passengers are potentially eligible for this compensation each year.

Between January 2016 and the end March 2017 around 9,000 complaints concerning EC Regulation 261/2004 were received by CEDR and AviationADR, with a roughly 60:40 split in numbers between CEDR and AviationADR. CEDR concluded 1,591 complaints relating to EC Regulation 261/2004 (whether via a determination, discontinuation or refusal) and AviationADR concluded 2,016.³¹

The average value of awards was just over £800 per complaint. Monetary awards by AviationADR are lower (just under £500 per successful complaint) than those settled by CEDR (£1,185). Differences such as this are to be expected given the nature of the airlines participating in each of the schemes. Most of the complaints which AviationADR deals with are in relation to Ryanair and Wizz Air flights. Both of these carriers typically fly short haul routes within Europe, which attract lower compensation amounts under EC Regulation 261/2004. CEDR deals with complaints about airlines such as British Airways, Thomas Cook and Thomson, which operate a greater proportion of long-haul flights and which attract greater compensation amounts. It should also be borne in mind that the award amounts given above are calculated on a per complaint (i.e. per booking) basis rather than per person basis.³² Finally, it should be noted that the differences observed are not due to any discretion on the part of the CAA approved ADR providers in the financial compensation amounts of that can be awarded – EC Regulation 261/2004 specifies the rules for calculating the amounts that can be awarded for flight cancellations and long

³⁰ https://www.ofcom.org.uk/_data/assets/pdf_file/0014/54032/mott-may-2011.pdf

³¹ The vast majority of the complaints were received during the last 3 months of 2016 and the first 3 months of 2017 and therefore were not concluded at the time the ADR providers reported to the CAA.

³² A single complaint can cover claims from more than one passenger – for example, for the holiday companies like Thomas Cook and Thomson, there could be claims covering whole families.

delays (and denied boarding) and the CAA requires the ADR providers it approves to adhere to these rules.

EC Regulation 1107/2006

Another area of complaints which the CAA requires the ADR providers it approves to handle are those concerning the rights of passengers with disabilities and reduced mobility under EC Regulation 1107/2006. Whilst comparatively low in number (within the time period considered the ADR providers had dealt with only around 30 complaints) these complaints are a high priority for the CAA as they relate to access to air travel for the public. Oversight of these types of complaints and their handling by the ADR providers will be a focus for the next year.

Other types of complaint

Other complaints which the CAA has required the ADR providers to take up include passenger rights under the Montreal Convention for damage, delay, and loss of baggage (this also relates to the ability to make a claim for damaged electric wheelchairs), as well as complaints relating to unfair trading. The number of complaints falling under the 'others' category reported by the CAA approved ADR providers is around 1,000, of which the vast majority are baggage related. We will be looking in more detail at complaints classified at 'others' over the next year and we will work with the ADR providers to ensure they are being categorised and dealt with correctly.

Complaints to EU (non-UK) ADR schemes

Information on complaints to the EU (non-UK) ADR schemes can be found in Appendix C.

Time to decide complaints

The ADR Directive and UK Regulation require complaints to be decided within 90 days from the 'complete case file' being obtained. As it can take time to secure all the required documents, this means that timeframe for resolving complaints can be quite a lot longer than 90 days. Under the ADR Regulations the ADR entities must include the average length of time it has taken them to decide complaints in their annual reports. CEDR has stated that its average time to decide complaints is 71 days; AviationADR is 58 days.³³

ADR providers do have an exemption to this rule for a dispute which is "highly complex". The CAA has been made aware of a few complaints where timescales have been especially long. These are very low numbers (under 5) and, having investigated the matter, we are confident that the issue has been resolved. We are amending our

³³ On investigation it appears that the ADR providers are 'starting the clock' differently as regards when the timeframes are measured from i.e. when the 'complete complaint file' is obtained; this is something the CAA will need to look into further.

information requirements on the UK ADR providers to include a statement on any complaints which have taken greater than 90 days to process.

Recently we became aware of an issue of late payment of claims in relation to two airlines where the ADR provider had decided in favour of the consumer. Having looked into the issue, and having discussed the matter with the parties involved, we have been assured that the issues are now resolved. We will continue to monitor this issue and have asked the CAA approved ADR providers to report to us on any outstanding payments that they are aware of.

Consumer fee

As set out previously, the main contentious issue in terms of encouraging airlines to participate in ADR was whether consumers should have to pay a fee to use it. Consumers overwhelmingly supported free access to ADR, but many airlines were of the view that charging consumers to use ADR would discourage spurious and poorly prepared claims. Although we allowed ADR providers to charge a nominal fee of up to £25 per (unsuccessful) complaint, and this was incorporated into our policy, we committed to keep the practice of charging consumers to use ADR under review.³⁴ Analysis of the data on complaints refused shows that CEDR, which does charge the consumer fee, did not receive any frivolous or vexatious complaints over the period covered by the data. On the face of it, therefore, it could be argued that the consumer fee has achieved its objective in deterring spurious claims. However, AviationADR, which does not charge the consumer fee, itself only received a handful of complaints that it refused to handle as they were deemed to be frivolous or vexatious. Given this, it appears that the consumer fee may not be necessary, certainly in terms of deterring spurious complaints.

The issue of poorly prepared complaints is more complicated, however. The fact that both of the CAA approved ADR entities refuse to handle around 10% of the claims that they receive indicates that a proportion of consumers are not particularly well informed of when and how they can make a complaint or a claim. In the CAA's view, however, this is unlikely to be influenced by the existence or otherwise of a consumer fee. Rather, the key to ensuring that consumers make well-founded claims is better consumer information. As set out previously, a key priority for us in this next year is to ensure that all airlines provide consumers with the appropriate information on ADR at the appropriate time. Further, we will continue our efforts to promote ADR in general and to inform consumers of their rights and options when making a complaint.

We will continue to assess the impact of the consumer fee and will review this aspect of the policy by the end of 2018.

³⁴ There are a number of policy provisions regarding the consumer fee including that it is not charged for passengers complaining about matters relating to disability. See [CAP 1286](#) point 34

Consumer feedback

Through its ongoing oversight of the UK ADR providers the CAA has been seeking information on consumers' experiences of using ADR. Although it is not a requirement for the CAA approved ADR providers to collect such information, for example via a survey of consumers that have used the ADR service, the CAA is keen to encourage this type of engagement and intends to work with the ADR providers this year to develop this area further.

One of the UK ADR providers, CEDR, collects feedback on service quality directly from users of the service via a survey (AviationADR is in the process of implementing a feedback IT solution). The data collected shows that a significant majority of the respondents to the survey found the process easy to utilise.³⁵ When asked whether it was easy to have their case decided by the ADR provider, 81% of respondents said that it was extremely, very, or moderately easy (with 62% of respondents saying that it was either extremely or very easy). In addition, when asked whether the adjudicator's decision was clear, 88% of respondents said that it was extremely, very or moderately clear (with 77% of respondents saying that it was either extremely or very clear). Further, 67% of respondents said that they were very or somewhat satisfied with CEDR overall (with 59% of respondents saying that they were very satisfied). Although we are not able yet to benchmark this performance against AviationADR or any other ADR providers, it is interesting to note the high levels of consumer satisfaction with the service provided by CEDR, despite it charging a consumer fee for most types of complaints.

It should be noted that the levels of satisfaction with the service expressed through the survey are closely linked to whether the consumer was successful or not in their complaint. For example, users of the service that received compensation for a delayed flight tended to be more satisfied with the different elements of the service. Conversely, respondents to the survey that were not awarded anything through the process were more likely to be dissatisfied – 26% of respondents to the ADR provider's survey said that they were very dissatisfied with CEDR overall; this figure aligns almost exactly with the number of respondents that were not awarded anything through the process. An idea from one of the ADR providers was to survey consumers during the process of their complaint, rather than asking for feedback following determination. We agree that this is a good idea and will be discussing it further with the ADR providers during this next year. We will also look at the feedback which other regulators receive from their ADR schemes.

Although a significant majority of the complaints that reach ADR are settled in favour of the consumer, and although consumers appear to be satisfied overall with their ADR experience, there have been a few instances where consumers have questioned the independence and impartiality of the ADR provider, in particular where the ADR provider has ruled against the consumer. In order to try to address this perception we intend to

³⁵ The data collected covers around 200 survey responses over the period January to July 2017.

consider whether to enable the publication of data on the numbers of complaints received for each airline and the rate at which decisions are made in favour of the consumer. Further, we will look at whether there is any additional information which could be published to make clear the independence and impartiality of the CAA approved ADR providers.

Businesses' experience

As set out previously, since full implementation of ADR in the aviation sector in June 2016, virtually all of the major UK airlines have now signed up to CAA approved ADR providers, with many foreign airlines also signing up to ADR (either in the UK or in other European countries). Similarly, although take-up of ADR in the airport sector is still at an early stage, we are pleased to see that some of the UK's largest airports have signed up with CAA approved ADR providers. In terms of businesses' experience of ADR, it is self-evident that they will not continue to participate in it if they are not satisfied overall with the experience. In this context, it is positive to note that none of the airlines or airports participating in ADR have made any moves to end their involvement in ADR.

In developing this report, the CAA consulted with airlines directly to find out more information on their experiences. The feedback we received from airlines was generally positive. One airline stated that "So far it seems to be working well and we have developed a good working relationship with the dedicated complaint handlers. The decisions made so far have been fair and reasonable." A number of airlines noted that the ADR process was more cost effective than going to court, and very much quicker – one airline suggested that takes about a third of the time than court decisions do. In terms of the impact upon airlines own complaint handling, here it was noted that ADR brings with it a clear route to closure for complaints, which helps airlines keep control over their own internal resources and provides consumers with a final decision. In support of this, one airline commented that "ADR allows us to reach deadlock with a complaint that we feel can go no further." A number of airlines drew attention to new internal processes that they have introduced following ADR, for example a new triage stage in the complaints process and a review of existing customer relations procedures. Airlines also felt that ADR had led to a decrease in the involvement of claims management companies and law firms, which they welcomed. Generally, airlines believed that ADR saves money for both the airline and the consumer.

An area of concern for some airlines is the 'one way' binding nature of the decisions of the ADR providers. These airlines would prefer decisions to be binding on both sides – i.e. once consumers enter into ADR then they cannot also take their claim to court. One airline stated that "...any decision made by ADR is not binding on a passenger so if they are unhappy with the ADR decision they can still pursue the matter through the Courts. Effectively this means we are paying twice for a Judgment on a claim."

As regards airports, it is too early to gain feedback of their experience of ADR. However, it is worth noting that Gatwick Airport's press release on their reasons for participating in ADR stated that "While the airport strives to make sure that passengers receive the very

best service, we recognise that things can sometimes go wrong. In these situations, it's important to have a fair, simple and clear process in place to resolve difficult disputes, and we are delighted to enlist the help of CEDR – a respected, independent adjudicator that has a reputation for resolving disputes fairly.”³⁶

³⁶ Stewart Wingate, CEO, Gatwick Airport press release http://mediacentre.gatwickairport.com/press-releases/2017/17_04_04_ombudsman.aspx.

Chapter 4

ADR entities' recommendations to the CAA

Under the ADR Regulations (and Directive) the ADR entities must include in their annual reports information about systematic or significant problems that appear to frequently result in disputes, and to make any recommendations that they have to the CAA so as to avoid or resolve these problems. We have provided the full text of the statements in this regard (in Appendix B) from both CEDR and AviationADR. In general, they fall into 3 main areas:

1. Responsibilities between airlines and third party booking agents resulting in airlines not informing passengers or not having access to passenger contact details in event of cancellations.
2. Consumer information and awareness needing to be increased as regards matters relating to when consumers can and cannot claim compensation, for example how 'delay' is defined and what 'extraordinary circumstances' are.
3. Airline terms and conditions being unclear to consumers.

The CAA welcomes this feedback as an important source of information for informing the prioritisation of its consumer protection work. The CAA's initial response to the issues identified is set-out below.

Responsibilities between airlines and third party booking agents

For a number of years the CAA has been aware that third party booking agents do not always pass on the contact details of passengers to the airline with whom they are booking a flight. Airlines have complained to the CAA about this issue on a number of occasions. We agree that it is important for consumers to be made aware of any changes that are made to their flight, whether schedule changes, long notice cancellations, or disruption on the day. In the first instance, we would expect third party booking agents to do this as part of the general service that they offer to their customers. Where third party booking agents are not able to provide this service, we would expect them to pass on consumers' contact details to the airline (and we would expect airlines to respect the interests of both the third party booking agents and consumers by using the contact details only in certain limited circumstances, e.g. to notify them of a schedule change). Although we have made our expectations in this area clear to both third party booking agents and airlines, unfortunately the CAA has no legal powers to bind them into such an arrangement.

Notwithstanding the broader issue set out in the previous paragraph, a recent court case (C-302/16 Krijgsman v SLM) has at least clarified the law in this area as it relates to EC Regulation 261/2004. The decision made clear that, if an airline notifies a travel agent of a

cancelled flight more than two weeks in advance, but the agent fails to pass that information on to the consumer, the airline remains liable to compensate the passenger. The CAA has informed the ADR entities of this decision so that they can take it into account in their decision making process.

Consumer information and awareness

The CAA maintains a number of website pages providing passengers with information about their rights.³⁷ Further, the European Commission regularly runs passenger rights campaigns and has produced apps setting out passenger rights.³⁸ In addition, the CAA publishes regular compliance reports which are often reported in both national and local media. The CAA also publishes a leaflet for passengers to inform them of their rights.³⁹

However, we recognise that more could be done in this area and we are currently reviewing our approach to providing consumers with information on their rights, how to complain, etc. Clearly, the CAA will not always be best placed to provide such information; other bodies (e.g. Which?) often have a greater presence in this domain. As part of our review we will also consider the best partners and channels through which we can reach consumers, including the use of social media. It should be noted that the CAA already tweets information via @UK_CAA when we are aware of substantial disruption.

Airline terms and conditions

The Consumer Rights Act 2015 includes provisions on unfair contract terms which mean that terms that are unfair cannot be enforced by the trader. It also requires terms to be transparent, easy to find and easy to understand. The CAA is currently looking into the issue of unfair terms, focussing initially on the charges levied by airlines for e.g. correcting and spelling mistake in the booking or for processing a refund of the taxes, fees and charges for an unused ticket. As part of this process we will be assessing the extent to which airlines are compliant with the requirements on unfair terms and seeking improvements where necessary. Work on other potentially unfair terms will continue following this first phase.

³⁷ <http://www.caa.co.uk/Passengers/Resolving-Travel-Problems/Delays-and-cancellations>

³⁸ https://ec.europa.eu/transport/themes/passengers/campaign_en

³⁹ CAP 1126 – Your rights when there is a problem with your flight, www.caa.co.uk/cap1126

Chapter 5

Summary and recommendations

As set out previously, overall, we are very pleased with how this first period of full operation of ADR in the aviation sector has gone. We will continue to build on this success through further expanding and enhancing ADR and ensuring that it is delivering improved outcomes for consumers.

As described in the earlier chapters of this report, our review has highlighted a number of areas where additional work is required. In summary, these are:

Mandatory versus voluntary participation in ADR

- As set out previously, the CAA's objective in relation to ADR is for full coverage across the sector. In developing its policy on ADR, the CAA considered whether participation should be made mandatory. The CAA has not yet concluded its thinking on this point, but the slow down in the number of businesses volunteering to participate in ADR is strengthening the case for making participation in ADR mandatory across the sector. Ultimately this is a decision for Government and we will be working closely with the Department for Transport on this issue as it develops its new aviation strategy.

Consumer fee

- Although to date we have allowed ADR providers to charge a nominal fee of up to £25 per (unsuccessful) complaint, we committed to keep the practice of charging consumers to use ADR under review. Analysis of the data on the types of complaints that the CAA approved ADR providers are refusing to handle suggests that the consumer fee may not be necessary to deter spurious complaints. Although further work needs to be done in this area, in particular to better understand the types of complaints that the ADR providers are not handling (as pointed out earlier in this report, the fact that both of the CAA approved ADR entities refuse to handle around 10% of the claims that they receive indicates that a proportion of consumers may not be particularly well informed of when and how they can make a complaint or a claim), in the CAA's view there is a prima facie case for reducing the maximum amount of the consumer fee or removing it entirely. We will continue to assess the impact of the consumer fee and will review this aspect of the policy by the end of 2018.

Ensuring that consumers are informed about ADR

- As set out previously, although ADR is already well known in other sectors, it remains a relatively new concept for aviation. Given also that there is more than one complaint handler active in the sector, there remains a risk of confusion amongst consumers should they need to make a complaint. Further, we have become aware recently of a small number of instances where consumers are not being properly signposted to ADR at the point that the business rejects their complaint. A key priority for us in this next year will therefore be to ensure that all airlines provide consumers with the appropriate information on ADR at the appropriate time. We will also continue to maintain the CAA webpage detailing which airlines and airports are signed up to which ADR schemes.

Enhancing transparency

- Recent media interest in ADR demonstrates that there is a degree of public interest in information about the performance of ADR. Further, although a significant majority of the complaints that reach ADR are settled in favour of the consumer, and although consumers appear to be satisfied overall with their ADR experience, there have been a few instances where consumers have questioned the independence and impartiality of the ADR provider, in particular where the ADR provider has ruled against the consumer. Over the next year we will therefore be seeking to publish additional information on ADR, for example the numbers and types of complaints that are being handled through ADR and the rates at which these complaints are upheld in favour of consumers. We will also consider whether there is any other information which could be published to make clear the independence and impartiality of the CAA approved ADR providers.

Oversight of complaint handling

- To date, the CAA has received a small number of complaints from consumers seeking to overturn the decisions of the CAA approved ADR providers. Although the decisions of the ADR entities are not formally open to appeal to the CAA, there are some grounds on which matters can be reviewed by the ADR entities themselves through their own complaint and escalation procedures. We have recognised that more could be done to make these mechanisms clear and to ensure their effectiveness and this will be a focus for us in the coming year. Further, as part of our general oversight role, we are concerned with ensuring that the CAA approved ADR bodies are systematically upholding consumers rights and we will be considering options to enhance our oversight in this area, for example through the use of an independent reviewer.

Improved consumer feedback mechanisms by ADR providers

- As set out previously, although the rates at which complaints are being upheld in favour of consumers is currently high (and in line with our expectations for this first year of operation), participation in ADR is likely to drive improvements in airlines' own complaint handling and therefore the upheld rate can be expected to change over time. Other mechanisms will therefore become necessary for determining whether consumers are seeing improved outcomes through ADR, for example a survey of users of the service. We are discussing this issue with the CAA approved ADR providers, which themselves recognise the need to understand the experiences of users of their service.

Focus on complaints about disability access and complaints classified as 'others'

- A priority policy area for the CAA is access to air travel for disabled people and those with reduced mobility. Although the CAA approved ADR providers have received a relatively low number of complaints to date in this area, oversight of these types of complaints and their handling by the ADR providers will be a focus for the next year. Complaints categorised under 'others', which can include, for example, complaints relating to damaged mobility equipment, is also likely to be a focus over the period.

Additional reporting from the ADR providers

- In the context of the CAA's role as an enforcer of consumer protection legislation, we have made a number of changes recently to the information that ADR providers must submit to us to enable us to better identify areas of systematic non-compliance by airlines and airports. In addition, we have recently placed additional requirements on the CAA approved ADR providers in relation to the payment of awards to consumers and the timeframes for dealing with complaints. This will allow the CAA to maintain closer oversight of scheme compliance in these areas. We intend also to improve on the data that we collect from European (non-UK) ADR providers. We will also look to enhance our understanding of how the ADR entities apply their rules for refusing complaints.

Consideration of extending ADR to other areas of CAA regulatory responsibility

- We are considering whether there are others areas of the CAA's regulatory remit where the introduction of ADR would benefit consumers.

In addition to these specific areas of work, we will continue our general oversight of ADR to ensure that it is continuing to provide improved outcomes for consumers.

APPENDIX A**Airlines and airports signed up to ADR schemes**

UK approved schemes - Airlines	
Thomson (TUI)	25 January 2016
British Airways	01 June 2016
Turkish Airlines	01 June 2016
EgyptAir	01 June 2016
Air Astana	10 June 2016
Asiana Airlines	10 June 2016
SkyWorks Airlines AG	10 June 2016
Ryanair	14 June 2016
Garuda	16 June 2016
TAP Portugal	27 June 2016
Thomas Cook	11 July 2016
Wizz Air	20 July 2016
South African Airways	29 July 2016
EasyJet	01 August 2016
Air Canada & Air Canada Rouge	08 August 2016
Flybe	08 September 2016
Air India	30 September 2016
Air China	10 November 2016
CityJet	26 January 2017
Virgin Atlantic	24 January 2017
Air France/KML	24 April 2017
Monarch (ceased trading October 2017)	24 July 2017
Small Planet	13 September 2017
Delta	01 October 2017
Norwegian Air Shuttle / International	21 December 2017
UK approved schemes - Airports	
London City Airport	31 March 2017
Bristol Airport	01 April 2017
London Gatwick Airport	01 April 2017
East Midlands Airport	01 May 2017
Manchester Airport	17 May 2017
London Heathrow Airport	01 June 2017
Stansted Airport	15 September 2017

EU (non-UK) schemes		
<u>Czech Trade Inspection Authority</u>	Czech Airlines	26 August 2016
	Smartwings/Travelservice	16 January 2017
<u>CRPC (Latvian Consumer Rights Protection Centre)</u>	Air Baltic	26 June 2017
<u>SOP</u>	Austrian Airlines	26 August 2016
	Brussels Airlines	24 October 2016
	Eurowings/Germanwings	01 August 2016
	Germania	01 August 2016
	Lufthansa	01 August 2016
	Scandinavian Airlines	13 October 2017 ⁴⁰
	Swiss Airlines	01 August 2016

⁴⁰ Previously signposted passengers to ANR – Swedish National Board for Consumer Complaints

APPENDIX B

ADR entities' recommendations to the CAA

CEDR

- The wording of traders' conditions of carriage are not always as clear and watertight as they could be, which leads to disputes over their interpretation.
- Traders' conditions of carriage are also not always made clear to consumers, which leads to disputes over their applicability, particularly when a particular term is to the consumer's detriment.
- Traders' conditions of carriage should be written in plain English and easy for consumers to understand. This may avoid disputes about the interpretation of conditions of carriage from arising.
- Traders should ensure that conditions of carriage are made clear to consumers at the point that the contract is entered into. This may avoid disputes regarding the applicability of particular conditions from arising.

Consumer Dispute Resolution Ltd (AviationADR)

- Airlines are relying on third parties (travel agents/booking agents) to inform the passenger of flight cancellations due to the fact that they do not have the passengers contact details. Often the agent fails to do this.
- Flight delay: passengers not always appreciating that the flight must 'arrive' into its final destination at least three hours late for compensation under EC261 to be payable.
- Flight delay: disputes around what is and what is not an extraordinary circumstance.
- Non-EU carriers and when they fall within EC261.
- Airlines' terms and conditions of carriage being unclear or difficult to understand.
- A guidance note or equivalent from the CAA confirming that the carrier has ultimate responsibility for informing passengers of cancellations, not the third-party booker. Assistance for airlines so that it is a requirement of such booking agents to pass passenger details to the carrier.
- More needs to be done publicly to increase passenger's awareness of their rights, including when a claim cannot be made.
- Airlines need to review their terms and conditions, particularly now with the introduction of the Consumer Rights Act 2015 which provides that 'key terms' must be made prominent to the consumer.

APPENDIX C

Complaints data in respect of the EU (non-UK) ADR schemes

A full year's complaints data is not available as most of the airline's schemes were only approved by the CAA to be signposted during Summer 2016. The next set of data to be reported to the CAA will be in April 2018.

ARN

Reporting to the CAA in April 2017 ARN reported that it had received 11 complaints in total all related to EC Regulation 261/2004. 2 were not accepted; 1 was decided in favour of the passenger; 2 in favour of the airline and 2 were resolved by 'amicable solution'. 4 complaints were outstanding in terms of outcome at the time of the report.

CRPC

It is too early for any data to be available as yet with the scheme only commencing at the end of June 2017.

Czech Trade Inspection Authority

The data reported to the CAA currently does not differentiate between those flights in/out of the UK and other countries. The CAA will review on consideration of the UK specific data due to be reported next year.

SOP

Between 01 August 2016 and 31 December 2016 180 complaints were received and they were mainly related to EC Regulation 261/2004, with the second largest category of complaints being those about baggage. Half of these complaints had been processed by the time of the report with nearly 92% being resolved in a manner to which the consumer agreed. No complaints were received regarding EC Regulation 1107/2006.

APPENDIX D**Airlines listed by passenger numbers (top 100) signed up/not signed up to ADR**

	Year	Airline	Terminal passengers	Market (% of total)	Signed up?	ADR body
1	2016	BRITISH AIRWAYS PLC	43,351,412	17.41	Yes	CEDR
2	2016	EASYJET AIRLINE COMPANY LTD	40,777,352	16.37	Yes	CEDR
3	2016	RYANAIR	40,451,798	16.24	Yes	AviationADR
4	2016	THOMSON AIRWAYS LTD	10,842,399	4.35	Yes	CEDR
5	2016	FLYBE LTD	8,705,195	3.50	Yes	AviationADR
6	2016	JET2.COM LTD	6,687,451	2.69		
7	2016	THOMAS COOK AIRLINES LTD	6,631,208	2.66	Yes	CEDR
8	2016	WIZZ AIR	6,365,147	2.56	Yes	AviationADR
9	2016	MONARCH AIRLINES ⁴¹	5,447,492	2.19	Yes	AviationADR
10	2016	VIRGIN ATLANTIC AIRWAYS LTD	5,304,609	2.13	Yes	AviationADR
11	2016	EMIRATES	4,958,571	1.99		
12	2016	AER LINGUS	4,429,267	1.78		
13	2016	KLM	3,723,611	1.50	Yes	AviationADR
14	2016	NORWEGIAN AIR INTERNATIONAL	3,508,987	1.41	Yes	AviationADR
15	2016	LUFTHANSA	3,315,590	1.33	Yes	SOP
16	2016	AMERICAN AIRLINES	3,105,280	1.25		
17	2016	UNITED AIRLINES	2,348,470	0.94		
18	2016	SAS	2,080,892	0.84	Yes	SOP
19	2016	VUELING AIRLINES	1,949,436	0.78		
20	2016	BA CITYFLYER LTD	1,935,231	0.78	Yes	CEDR
21	2016	QATAR AIRWAYS	1,754,374	0.70		
22	2016	AIR CANADA	1,732,588	0.70	Yes	AviationADR
23	2016	SWISS AIRLINES	1,656,475	0.67	Yes	SOP
24	2016	AIR FRANCE	1,612,128	0.65	Yes	AviationADR
25	2016	THY TURKISH AIRLINES	1,575,419	0.63	Yes	AviationADR
26	2016	NORWEGIAN AIR SHUTTLE	1,425,835	0.57	Yes	AviationADR
27	2016	ETIHAD AIRWAYS	1,405,175	0.56		
28	2016	DELTA AIRLINES	1,273,234	0.51	Yes	AviationADR
29	2016	GERMANWINGS	1,199,190	0.48	Yes	SOP
30	2016	CATHAY PACIFIC AIRWAYS	1,080,577	0.43		

⁴¹ Monarch Airlines ceased trading in October 2017

31	2016	CITY JET	995,772	0.40	Yes	AviationADR
32	2016	SINGAPORE AIRLINES	906,830	0.36		
33	2016	IBERIA	852,194	0.34		
34	2016	EUROWINGS LUFTVERKEHRS	795,493	0.32	Yes	SOP
35	2016	AIR PORTUGAL	777,984	0.31		
36	2016	BRUSSELS AIRLINES	702,058	0.28	Yes	SOP
37	2016	ALITALIA (CAI)	701,818	0.28		
38	2016	AIR INDIA	691,366	0.28	Yes	AviationADR
39	2016	JET AIRWAYS	676,945	0.27		
40	2016	FINNAIR	630,377	0.25		
41	2016	LOGANAIR LTD	592,851	0.24		
42	2016	ICELANDAIR	591,357	0.24		
43	2016	AIR TRANSAT	566,627	0.23		
44	2016	KLM CITYHOPPER	557,938	0.22		
45	2016	AURIGNY AIR SERVICES	552,758	0.22		
46	2016	QANTAS	530,595	0.21		
47	2016	AEGEAN AIRLINES	518,336	0.21		
48	2016	PAKISTAN INTL AIRLINES	509,131	0.20		
49	2016	MALAYSIAN AIRLINES SYSTEM-MAS	484,396	0.19		
50	2016	BLUE AIR TRANSPORT AERIAN	453,786	0.18		
51	2016	AUSTRIAN AIRLINES	441,963	0.18	Yes	SOP
52	2016	THAI AIRWAYS INTERNATIONAL	438,780	0.18		
53	2016	EL AL	404,046	0.16		
54	2016	PEGASUS AIRLINES	390,743	0.16		
55	2016	STOBART AIR	389,130	0.16		
56	2016	SAUDI ARABIAN AIRLINES	387,540	0.16		
57	2016	AEROFLOT	378,141	0.15		
58	2016	WEST JET AIRLINES	364,904	0.15		
59	2016	AIR MALTA	355,716	0.14		
60	2016	BRISTOW HELICOPTERS LTD	322,246	0.13		
61	2016	AIR CHINA	322,184	0.13	YES	AviationADR
62	2016	EASTERN AIRWAYS	302,046	0.12		
63	2016	SOUTH AFRICAN AIRWAYS	282,977	0.11	YES	AviationADR
64	2016	IBERIA EXPRESS	272,104	0.11		
65	2016	BMI REGIONAL	262,382	0.11		
66	2016	AIR EUROPA	255,493	0.10		
67	2016	WOW AIR	245,039	0.10		
68	2016	TAM LINHAS AEREAS	242,985	0.10		
69	2016	EGYPT AIR	241,994	0.10	YES	AviationADR
70	2016	LOT-POLISH AIRLINES	226,106	0.09		
71	2016	GERMANIA FLUGGESELLSCHAFT	217,299	0.09	YES	SOP
72	2016	OMAN AIR	209,221	0.08		

73	2016	SRILANKAN AIRLINES	208,816	0.08		
74	2016	BLUE ISLANDS LIMITED	208,482	0.08		
75	2016	AIR NEW ZEALAND LTD	202,415	0.08		
76	2016	KOREAN AIR	199,847	0.08		
77	2016	TITAN AIRWAYS LTD	198,219	0.08		
78	2016	EVA AIR	193,774	0.08		
79	2016	CHC SCOTIA LTD	189,183	0.08		
80	2016	LUXAIR	186,024	0.07		
81	2016	SUN AIR OF SCANDINAVIA	183,689	0.07		
82	2016	GULF AIR	183,406	0.07		
83	2016	MIDDLE EAST AIRLINES (AIR LIBAN S A L)	181,480	0.07		
84	2016	ETHIOPIAN AIRLINES	176,975	0.07		
85	2016	BABCOCK MISSION CRITICAL SERVICES OFFSHORE LTD	174,192	0.07		
86	2016	JAPAN AIRLINES	163,403	0.07		
87	2016	ROYAL AIR MAROC	158,056	0.06		
88	2016	SMALL PLANET AIRLINES POLSKA	157,882	0.06	YES	AviationADR
89	2016	UKRAINE INTERNATIONAL AIRLINES	157,817	0.06		
90	2016	VIRGIN ATLANTIC INTERNATIONAL	150,348	0.06		
91	2016	AVIANCA COLOMBIA	149,723	0.06		
92	2016	ASIANA AIRLINES	148,983	0.06		
93	2016	SMARTWINGS	148,579	0.06	YES	CTIA ⁴²
94	2016	KENYA AIRWAYS	144,784	0.06		
95	2016	BH AIR	136,837	0.05		
96	2016	CHINA SOUTHERN	134,854	0.05		
97	2016	CHINA EASTERN AIRLINES	134,503	0.05		
98	2016	VIETNAM AIRLINES	132,838	0.05		
99	2016	EASYJET SWITZERLAND	132,795	0.05		
100	2016	ROYAL BRUNEI AIRLINES	131,353	0.05		

⁴² Czech Trade Inspection Authority

APPENDIX E

UK Airports listed by numbers of passengers with disabilities and reduced mobility, signed up/not signed up to ADR

Airport	PRM⁴³ passenger numbers	Signed up?	ADR body
London Heathrow	1,150,489	Yes	CEDR
London Gatwick	609564	Yes	CEDR
Manchester	329040	Yes	CEDR
Birmingham	151744	No	
London Stansted	142619	Yes	CEDR
Glasgow	103,232	No	
Luton	100383	No	
Bristol	82181	Yes	CEDR
Edinburgh	69847	No	
Belfast International	54392	No	
Newcastle	50613	No	
East Midlands	46601	Yes	AviationADR
Leeds Bradford	40297	No	
Liverpool	34104	No	
Belfast City	22886	No	
Cardiff	21437	No	
Aberdeen	21186	No	
Southampton	17558	No	
London City	14572	Yes	AviationADR
Exeter	13045	No	
Inverness	10645	No	
Doncaster Sheffield	10043	No	
London Southend	7581	No	
Bournemouth	6548	No	
Norwich	5444	No	
Prestwick	5130	No	
Newquay	3,999	No	
City of Derry	1608	No	
Humberside	854	No	

⁴³ Passengers with disabilities or reduced mobility as defined under EC Regulation 1107/2006

