

# Policy for ADR applicants and approved ADR entities - updated ~~February 2019~~[\[...\]](#)

CAP 1324 DRAFT FOR CONSULTATION



---

**Published by the Civil Aviation Authority, [20182020](#)**

Civil Aviation Authority  
Aviation House  
Gatwick Airport South  
West Sussex  
RH6 0YR

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

First published July 2015 (titled 'Guidance for ADR Applicants')  
Second edition October 2016 (titled 'Guidance for ADR Applicants – Updated')  
Third edition July 2018  
Fourth edition February 2019  
[Fifth edition \[...\]](#)

The latest version of this document is available in electronic format at: [www.caa.co.uk](http://www.caa.co.uk)

# Contents

---

<b>Contents</b>	<b>3</b>
<b>1. Introduction</b>	<b>5</b>
<b>2. General statement</b>	<b>7</b>
<b>3. Your organisation</b>	<b>8</b>
<b>4. Structure and funding of your organisation</b>	<b>8</b>
<b>5. ADR officials (independence and impartiality)</b>	<b>10</b>
<b>6. ADR scheme rules</b>	<b>10</b>
<b>7. Fees</b>	<b>15</b>
<b>8. Average length of the ADR procedure</b>	<b>16</b>
<b>9. Language</b>	<b>17</b>
<b>10. Statement of disputes covered (including monetary thresholds)</b>	<b>17</b>
<b>11. Refusal (and refusal to continue) grounds</b>	<b>18</b>
<b>12. Website information for consumers</b>	<b>19</b>
<b>13. Online dispute handling</b>	<b>22</b>
<b>14. Expertise</b>	<b>22</b>
<b>15. Review of complaints and role of the independent assessor</b>	<b>24</b>
<b>16. Customer feedback / surveys</b>	<b>27</b>
<b>17. Data requirements</b>	<b>27</b>
<b>Annex A: Application form</b>	<b>32</b>
<b>Annex B: Signed statement of a Director / sole trader / partner</b>	<b>41</b>
<b>Annex C: Application checklist</b>	<b>43</b>
<b>Annex D: Explanation of the term ‘deadlock’</b>	<b>44</b>
<b>Annex E: Consumer disputes that fall within the scope of ‘trading fairly’</b>	<b>45</b>
<b>Annex F: Complaints review process</b>	<b>47</b>

<b><u>Contents</u></b>	<b>3</b>
<b><u>1. Introduction</u></b>	<b>5</b>
<b><u>2. General statement</u></b>	<b>7</b>
<b><u>3. Your organisation</u></b>	<b>8</b>
<b><u>4. Structure and funding of your organisation</u></b>	<b>8</b>
<b><u>5. ADR officials (independence and impartiality)</u></b>	<b>10</b>
<b><u>6. ADR scheme rules</u></b>	<b>10</b>
<b><u>7. Fees</u></b>	<b>15</b>
<b><u>8. Average length of the ADR procedure</u></b>	<b>16</b>
<b><u>9. Language</u></b>	<b>17</b>
<b><u>10. Statement of disputes covered (including monetary thresholds)</u></b>	<b>17</b>
<b><u>11. Refusal (and refusal to continue) grounds</u></b>	<b>18</b>
<b><u>12. Website information for consumers</u></b>	<b>19</b>
<b><u>13. Online dispute handling</u></b>	<b>22</b>
<b><u>14. Expertise</u></b>	<b>22</b>
<b><u>15. Review of complaints and role of the independent assessor</u></b>	<b>24</b>
<b><u>16. Customer feedback / surveys</u></b>	<b>27</b>
<b><u>17. Data requirements</u></b>	<b>27</b>
<b><u>18. Complex and novel issues raised in complaints</u></b>	<b>29</b>
<b><u>19. Trust account arrangement for paying consumer awards</u></b>	<b>29</b>
<b><u>20. Handling claims on a flight basis</u></b>	<b>30</b>
<b><u>21. Non-regulated ADR schemes</u></b>	<b>30</b>
<b><u>Annex A: Application form</u></b>	<b>32</b>
<b><u>Annex B: Signed statement of a Director / sole trader / partner</u></b>	<b>41</b>
<b><u>Annex C: Application checklist</u></b>	<b>43</b>
<b><u>Annex D: Explanation of the term ‘deadlock’</u></b>	<b>44</b>
<b><u>Annex E: Consumer disputes that fall within the scope of ‘trading fairly’</u></b>	<b>45</b>
<b><u>Annex F: Complaints review process</u></b>	<b>47</b>
<b><u>Annex G: Resolving complaints that raise complex and novel issues</u></b>	<b>48</b>

## 1. Introduction

---

- 1.1 This document provides guidance for applicants wishing to be approved by the Civil Aviation Authority as alternative dispute resolution (ADR) entities for aviation under The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (the Regulations). It is also guidance on CAA policy for ADR entities which have been approved by the CAA under aforementioned Regulations.
- 1.2 The CAA is the competent authority under these Regulations for aviation. Part of our role as competent authority is to consider the competence and suitability of ADR applicants to provide an ADR service to aviation consumers.<sup>1</sup> In its role as a competent authority the CAA also maintains continuous oversight of the ADR entities which it has approved and therefore the requirements of this policy apply to both ADR applicants and ADR entities on an ongoing basis.
- 1.3 The Regulations require those organisations wishing to apply for ‘ADR entity’ status to supply the information set out in Schedule 2 of the Regulations. In addition, the Regulations require that applicants provide any other information required by the competent authority in order to assess whether the ADR applicant meets the requirements in Schedule 3. This document is intended to explain to applicants what information we are looking for,<sup>2</sup> and in what form it needs to be provided. Such information may also be required by the CAA to be submitted by approved ADR entities, whether during its annual continuation of approval process or at any other time. In order to be assessed for ADR entity approval, ADR applicants must complete the application form, provide a signed statement and supporting documentation.
- 1.4 This guidance includes [sixseven](#) annexes which provide:
- a) Annex A – Application form
  - b) Annex B – Statement to be signed by a director / sole trader / partner
  - c) Annex C – Checklist for applicants
  - d) Annex D – Explanation of the term ‘deadlock’
  - e) Annex E – Consumer disputes that fall within the scope of ‘trading fairly’
  - f) Annex F – Complaints Review Process flow chart
  - [g\) Annex G – Resolving complaints that raise complex and novel issues](#)

---

<sup>1</sup> We set out our policy on consumer complaints handling and ADR in [CAP 1286 – Consumer complaints handling and ADR updated CAA policy statement](#)

<sup>2</sup> This does not prevent us asking for further information should be see fit to do so.

- 1.5 Applicants are advised to read the full Regulations, including the Schedules, when making their application.
- 1.6 Approved ADR entities are required to inform the CAA of any subsequent changes made to information submitted at the time of application with regard to matters set out in this document.

DRAFT

## 2. General statement

---

- 2.1 The purpose of the ADR Directive is to provide ADR certified by a competent authority for consumer complaints and disputes stemming from contractual obligations where the existing availability is insufficient. As the sectoral regulator for aviation the CAA was designated as the competent authority to approve ADR entities for aviation consumers.
- 2.2 The CAA's policy, set out in this guidance, is to approve those ADR applicants that can deliver the alternative dispute resolution services that are needed by aviation consumers. The CAA is also aware that consumer and trader confidence in ADR entities is vital to the success of ADR within the aviation sector. As such, the past and current conduct of ADR applicants / approved entities, and the governance of the ADR applicant / approved entities, will be relevant to the CAA's assessment of an applicant's suitability for ADR entity approval and of an approved entity's continued suitability.
- 2.3 Unless otherwise apparent from the context, the use of the word "trader" in this document means the business with which an aviation consumer may have a dispute stemming from a contractual obligation.
- 2.4 **Application process:** our application process is set out in [CAP1426 - ADR entity approval and appeals process](#).<sup>3</sup>
- 2.5 **Dormant applications:** the CAA will generally deem an application 'dormant' should the applicant halt the application process by not submitting required information and/ or documentation within two months of feedback being provided by the CAA case worker, or by going out of communication entirely for two months or more. The applicant can also request explicitly that their application is deemed 'dormant'. Applications can only be held dormant for six months. After this time the original application will be withdrawn and no refund will be due. If the applicant wishes to 're-activate' their application following withdrawal then a new application will need to be made with the payment of a further application fee.
- 2.6 **Withdrawal of approval:** our policy is set out in [CAP 1427 - Withdrawal of ADR Entity Approval Policy](#).<sup>4</sup>

---

<sup>3</sup> [www.caa.co.uk/cap1426](http://www.caa.co.uk/cap1426)

<sup>4</sup> [www.caa.co.uk/cap1427](http://www.caa.co.uk/cap1427)

### 3. Your organisation

---

#### Requirements of the ADR Regulations

- 3.1 The Regulations require that applicants provide their registered name (and trading name if different),<sup>5</sup> contact details and website address.

#### The CAA therefore requires the following:

- 3.2 An applicant intending to operate as a corporate ADR entity must already be incorporated and we will be carrying out identity checks. ADR applicants must provide supporting information about their business structure and trading name. The information required is different depending on whether the applicant is a company, a partnership or a sole trader.
- 3.3 ADR applicants must provide their web address or addresses for consumers and traders.
- 3.4 ADR applicants must provide proof that the applicant controls, and will control, the web domain name for a minimum of 2 years ahead.

### 4. Structure and funding of your organisation

---

#### Requirements of the ADR Regulations:

- 4.1 The Regulations require that applicants provide information regarding the structure and funding of the ADR applicant, including such information as the competent authority may require regarding its ADR officials, their remuneration, term of office and by whom they are employed.

#### The CAA therefore requires the following:

##### Structure

- 4.2 The CAA will not approve an ADR applicant that appears to the CAA to be controlled by an airline or an airport.
- 4.3 Where the ADR entity is established by or financed by a trade association or a professional body the CAA will require the ADR entity to be a separate legal entity (albeit it may be wholly owned by that trade association or a professional body). ADR applicants that this applies to will need to provide evidence on their corporate structure to demonstrate that they meet this criterion.
- 4.4 Corporate applicants will need to provide information on their group structure, copies of memorandum and articles of association and details of the shareholders of the applicant including number and class of shares held.

---

<sup>5</sup> ADR applicants should be aware of the rules on using sensitive words, for example 'Ombudsman', in company names: <https://www.gov.uk/government/publications/incorporation-and-names>



## Funding

- 4.5 As part of the application process the CAA will review the documents listed at 4.7 below to assess:
- a) Whether the ADR applicant can meet its projected liabilities taking into account its projected income and expenditure over the next 12 months; and
  - b) Who is in a position of control for the ADR applicant (including names of directors).
- 4.6 If the ADR applicant is partly or wholly owned, and therefore financed, by a trade association or a professional body, the CAA will assess whether the funding arrangements appear sufficient to ensure that the ADR applicant will have sufficient resources at its disposal to carry out its functions as an ADR entity.
- 4.7 ADR applicants will need to provide the following documents:
- a) Audited financial statements with an unqualified audit report dated within six months of financial year end;
  - b) i) A projected profit and loss, cash flow forecast and balance sheet all analysed by month for the current financial year. (This should include actuals for the relevant months that have passed). If the applicant is more than 6-months through its current financial year the forecasts should be extended for an additional 12-months to the next financial year end.  
  
ii) Supporting commentary to the forecasts detailing the key assumptions used and the explanations for any significant year-on-year movements.
  - c) Details of the current funding of the applicant. Copies of any loan agreements should be provided; and
  - d) Details of access to additional sources of funding e.g. overdraft or revolving credit facility.
- 4.8 ADR applicants will need to provide information about banking arrangements to demonstrate that any consumer fee income is ringfenced from operational funds and that any such fees will be processed by the ADR entity themselves, and not by a third party.
- 4.9 ADR applicants must provide assurances that they will not profit from consumer fees, but will use income raised from the fee towards charitable aims.
- 4.10 ADR applicants will need to confirm in writing that any payments by the trader to consumers do not pass through the ADR entity's accounts, [with the exception of trust accounts created in accordance with section 19 below. Please see section 19 for guidance on the CAA's requirements for a trust account arrangement in](#)

[cases where the ADR applicant / entity is seeking hold and manage funds on behalf of a scheme member for the purpose of paying consumer awards.](#)

## 5. ADR officials (independence and impartiality)

### The CAA requires the following:

- 5.1 ADR applicants must provide evidence that conflict of interest clauses in employment contracts (or contracts for services where self-employed) contain the following (or similar):

“[ADR officials]<sup>6</sup> must not hold shares in airlines or airports.

[ADR officials] are required to disclose to [the ADR entity] a circumstance that may, or may be seen to (i) affect [the ADR official]’s independence or impartiality; or (ii) give rise to a conflict of interest with a party to the dispute which [the ADR official] is asked to resolve. Such matters include knowing someone involved in the complaint from either the consumer or [the trader] side (including having worked in the last 12 months for an airline or airport signed to [the ADR entity]’s scheme).

[ADR officials]’ remuneration or other terms and conditions are not related to the financial outcome for consumers or traders of the ADR procedures.”

- 5.2 The CAA does not require evidence of the amount of salary or wages paid to the ADR officials. However, ADR applicants must provide evidence that ADR officials are paid by the ADR entity and not by a third party.

## 6. ADR scheme rules

### Requirements of the ADR Regulations

- 6.1 The Regulations require that applicants provide the rules of the alternative dispute resolution procedure to be operated by the ADR applicant. Schedule 3 sets out specific requirements on what the rules must contain.

### The CAA therefore requires the following:

- 6.2 ADR applicants must provide copies of their scheme rules. The scheme rules must:
- a) Clearly advise the consumer and the trader:

---

<sup>6</sup> The CAA defines certain types of ADR officials as:

- a) **Case handlers:** Where the ADR official can only make a decision with the agreement of both the trader and the consumer
- b) **Case managers:** Where the ADR official can (subject to the agreement of the consumer) impose a decision on the trader

- i. About the process that will be followed once the ADR entity has agreed to accept the claim, making clear to the trader and the consumer who will/must do what and when;
  - ii. About the time they will be given to consider and respond to any documents or questions put to them by the ADR entity. It is the CAA's policy that this will be at least 14 calendar days;<sup>7</sup>
  - iii. That when the ADR entity has the complete complaint file the ADR entity will issue a notice to confirm that;
  - iv. That final decisions will be made within 90 calendar days<sup>8</sup> of the ADR entity receiving the complete complaint file, ~~unless the complaint~~except where:
- ~~the ADR entity considers that the dispute is a highly complex dispute. In cases of highly complex disputes, the ADR entity, in which case it~~ may extend the 90 day period, but must advise the consumer and the trader of the additional time that the ADR entity needs to make a decision on the claim;<sup>9</sup>; or
  - the applicable scheme rules provide for complex and novel issues to be resolved in accordance with the process specified in Section 18 (and Annex G) below and this process is invoked by the trader. In this case, the ADR entity may extend the 90 day period, but must advise the consumer of the process that will be followed for their claim, and that additional time may be required for the ADR entity to make a decision on the claim.
- v. That the decision made by the ADR entity will be binding on the trader if accepted by the consumer;
  - vi. That records will be maintained of any discussions which take place with the consumer and/or, trader, witnesses or experts as disputes are investigated, considered and determined. Oral hearings (i.e. face to

<sup>7</sup> In the case of pre-travel complaints related to disability matters this timeframe should be shortened so as to effectively deal with the complaint e.g. if the flight is due to take place in the next few weeks then the airline can be required to respond within an expedited timeframe, at the discretion of the ADR entity so as to meet the need of the passenger(s));

<sup>8</sup> In the case of pre-travel complaints related to disability matters this timeframe should be shortened so as to effectively deal with the complaint. For example, if the flight is due to take place within the next week then the ADR entity should make its decision with an effective timeframe so as to resolve the issue for the passenger prior to the flight taking place.

<sup>9</sup> As defined by ADR Regulations Schedule 3(6)(d); <http://www.caa.co.uk/Our-work/About-us/Alternative-Dispute-Resolution/> under 'Consolidated UK Regulations'.

face meetings or tele-conferences) cannot be required to take place unless the consumer agrees;

- vii. That if, after consideration of the consumer's complaint has commenced, it is discovered that the ADR official handling the consumer's complaint has a conflict of interest the case will be immediately moved to another ADR official within the same entity. Alternatively the ADR entity will cease handling the complaint. In the latter case the ADR entity will assist the consumer in transferring their complaint to another ADR entity and pay any fee payable by the consumer for doing so. If another ADR entity cannot accept the complaint (or there is not another ADR entity) the original ADR entity will only continue handling the complaint with the consent of the trader and the consumer. If that consent is withheld the ADR entity will refund the fee already paid by the consumer;
- viii. That if the consumer's complaint cannot be accepted (due to reasons set-out in the 'statement of grounds for refusing or refusing to continue applications' or due to reasons relating to conflict of interest) the consumer must be advised of this within three weeks of the ADR entity receiving the final submissions of the consumer and trader;
- ix. That consumers must allow a trader eight weeks to respond to a direct complaint before it can be submitted to the ADR entity and become eligible for consideration by that ADR entity;<sup>10</sup>
- x. That should an airline provide a response to a consumer which does not indicate clearly that there is the potential for further consideration of their complaint, then that letter will be considered a 'deadlock' letter and the consumer will have a right to take his/her complaint to ADR;<sup>11</sup>
- xi. Of the required timeframes within which traders must pay any awards to consumers as a result of the ADR process and that non-payment within the specified time period is a breach of the scheme rules;

---

<sup>10</sup> Except in the case of pre-travel complaints related to disability matters. In such cases consumers must be permitted to access the ADR scheme within a shorter time period, as necessitated by the practicalities of their complaint. For example, if the flight is due to take place within the next week then the ADR entity should not refuse the complaint as long as there is some evidence that the complainant has attempted to contact the airline to resolve the matter.

<sup>11</sup> Regulation 19(2) of the ADR regulations enable a consumer to take his/her complaint to ADR once a trader has exhausted its internal complaint handling when considering a complaint. Annex D provides further information regarding this.

- xii. That if a monetary award is an outcome of the ADR process under EC Regulation 261/2004 that the amount awarded will be as set-out in those regulations and not varied;
- xiii. Of the ADR entity's policy as regards the application of currency exchange rates (i.e. the date at which exchange rates will be calculated with reference to);
- xiv. That interest payments are not normally part of awards determined;
- xv. Of the notice period required by the ADR entity should the airline wish to leave the ADR scheme. And that, in such a situation, any complaints submitted by consumers prior to the end of the notice period will be completed through to an ADR outcome. The airline will remain bound to pay any awards determined and the scheme rules will apply to such complaints, even once the notice period is completed;
- xvi. That consumers are not bound by any confidentiality restrictions regarding their experience of the ADR process;
- xvii. That the General Data Protection Regulations apply and that all data submitted to the ADR entity with regard to consumer complaints, may be shared with the Civil Aviation Authority, including all personal data.<sup>12</sup>
- xviii. That where the ADR entity is aware of cases which are progressing through the UK or European courts which may affect the outcomes of ADR decisions:
  - The consumer will be advised and given the option to proceed with the ADR process, or place it on hold awaiting the court case final outcome.
  - The consumer will be reminded of the limitation period applicable to bring their dispute before a court and that pausing the ADR process to await the outcome may lead to their claim being timed-out for court action.
  - If the consumer chooses to proceed with the ADR process without awaiting the outcome of the court case, the consumer will be made aware that if they had consented to pause the case the eventual ADR outcome may have been different.
  - The CAA will be informed when the option to pause is given to consumers.

---

<sup>12</sup> <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

- [Where the court case in question has resulted from the process for resolving complex and novel issues specified in Section 18, the process in Section 18 will be followed.](#)

- b) Clearly advise the consumer that:
  - i. They may withdraw from the procedure at any stage
  - ii. They may bring a claim to court at any stage
  - iii. They will be given a choice (and at least 7 calendar days to consider) whether to accept the solution proposed by the ADR entity
  - iv. Court proceedings may result in a different outcome to ADR
  - v. They can submit complaints to the ADR entity in the language they used to contract with the airline, and that complaints can be handled in that language
  - vi. If payment of any award agreed as an outcome of the ADR process has not been completed within the required timeframe, how the consumer should report such to the ADR entity (which will raise the matter with the airline until payment is made)
- c) Include the 'Statement of Disputes Covered' (as at Section 10).

6.3 ADR applicants must ensure that all contracts between the ADR entity and traders:

- a) Require the trader to provide 90 calendar days notice of its intention to terminate its arrangements with the ADR entity;
- b) Allow for early termination (i.e. before the 90 calendar day period has expired) only in the event that:
  - i) The trader has entered into a contract for ADR services with an alternative ADR entity; and
  - ii) The termination date for early termination is no earlier than the day before the arrangements to provide ADR services with the new ADR entity commence.
- c) Set out that if the trader terminates their arrangement with the ADR entity this will not affect the processing of, and resolution of, any disputes submitted by consumers (and already accepted by the ADR entity) before the effective date of that termination;
- d) Ensure that the trader is obliged to comply with any binding outcome of those disputes in the ADR process;

- e) Ensure that the trader is obliged to provide evidence to the ADR entity when it pays awards to consumers (or some alternative mechanism for measuring compliance by traders with outcomes of the ADR procedures);
  - f) Require that the trader must comply at all times with the extant scheme rules (as approved by the CAA) of the ADR entity; and
  - g) Specify that, in the event on any conflict between the scheme rules and the contract, the scheme rules will prevail.
- 6.4 For fixed term contracts between ADR applicants and traders, ADR applicants must ensure that the contract requires the trader to provide 90 calendar days notice of intention to allow the contract to expire (which would thereby terminate its arrangement with the ADR entity).
- 6.5 ADR applicants must, on request by the CAA, provide the CAA with a copy of the contract between the ADR entity and the trader.
- 6.6 ADR entities must notify the CAA when a trader provides notice of its intention to terminate their arrangements with the ADR entity, and must provide the CAA with confirmation of the termination date.
- 6.7 ADR applicants must ensure that any and all financial damages due under the terms of the contract between the ADR entity and the trader due to non-compliance by the trader with the contract and/or the scheme rules continue to be due and payable once a trader has given notice of termination, during that notice period, and after termination of the contract.
- 6.8 ADR applicants must confirm that, if approved as an ADR entity, they will notify the CAA as soon as possible on becoming aware of potential or actual breaches of their scheme rules by traders.
- 6.9 ADR applicants must provide information to the CAA about all financial damages payable by traders for non-compliance with the contract and/or the scheme rules including, but not limited to, failures on the part of the trader to pay the sum awarded to a consumer in compliance with the scheme rules.

## 7. Fees

---

### Requirements of the ADR Regulations

7.1 The Regulations require that applicants provide details of any fees to be charged.

### The CAA therefore requires the following:

#### Fees to consumers

7.2 ADR applicants must confirm that any fees to consumers are:

- a) £25 or less;

- b) Only be applied per complaint and not per passenger or per issue raised in that complaint; and
- c) Only applied at the conclusion of the ADR determination.

7.3 If a consumer is charged a fee ADR applicants must confirm:

- a) That consumers with complaints that relate to EU Regulation 1107/2006<sup>13</sup> or the UK Equality Act 2010 are not charged a fee. However, if the same complaint includes a complaint in respect of other issues then the fee may be charged;
- b) That if consumer fees can be paid by pre-authorised credit/debit card transactions, it will be made clear that they will pay only if their claim is unsuccessful (as opposed to being refunded if their claim is successful); and
- c) That consumers will be told about any fee at the beginning of their transaction to submit a claim.

#### Fees to traders

7.4 ADR applicants must confirm that the fee charged to traders will not be calculated with reference to the outcome of the ADR process (which includes the amount of a financial award (if any) made to consumers). Subject to that, a scale of charges is permissible, including fee scales or amounts that incentivise early settlement/resolution by traders.

7.5 The ADR applicant must advise the CAA of the range of fees payable by traders at all stages of the ADR process.

7.6 We are aware that the specifics of commercial contracts may be sensitive and may not have been agreed at the time of the application. However, we require an overview of how the fees will be structured. ADR applicants will need to confirm (for example) whether fees are up-front per case or after the case has been closed. Should agreements be put in place with traders in the future which differ from the range of fees provided in this application the ADR entity must inform the CAA.

## 8. Average length of the ADR procedure

---

### Requirements of the ADR Regulations

8.1 The Regulations require that applicants provide information on the average length of the alternative dispute resolution procedure, where the ADR applicant already operates an alternative dispute resolution procedure.

---

<sup>13</sup> Passengers with reduced mobility



## 9. Language

---

### Requirements of the ADR Regulations

- 9.1 The Regulations require that applicants provide information on the language in which the ADR applicant is prepared to receive initial complaint submissions and conduct the alternative dispute resolution procedure.

### The CAA therefore requires the following:

- 9.2 ADR applicants must confirm that they agree to deal with the dispute both orally and in writing in the languages which may be used by consumers for entering into a contract with the applicable trader to which the complaint relates.

## 10. Statement of disputes covered (including monetary thresholds)

---

### Requirements of the ADR Regulations

- 10.1 The Regulations require that applicants provide a statement as to the types of disputes covered by the ADR procedure operated by the ADR applicant.
- 10.2 As regards airlines, the CAA recognises that the majority of disputes between consumers and airlines that stem from contracts for flights relate to the issues set out below. ADR applicants must be able to deal with complaints against airlines, and must be able to handle the following types of complaints as a minimum:
- a) Denied boarding, delay, or cancellation;
  - b) Destruction, damage, loss or delayed transportation of baggage;
  - c) Destruction, damage, or loss of items worn or carried by the passenger;
  - d) Problems faced by disabled passengers or passengers with reduced mobility when using air transport services; and
  - e) Any more general disputes arising where the consumer alleges that the trader is not trading fairly.
- 10.3 The CAA has set-out its view as regards 10.2 (e) and what constitutes such complaints about trading fairly in Annex E.
- 10.4 As regards airports ADR applicants must be able to handle complaints relating to problems faced by disabled passengers or passengers with reduced mobility when using air transport services.
- 10.5 As regards airlines, complaints relating to problems faced by disabled passengers or passengers with reduced mobility when using air transport services may include pre-contractual matters.

- 10.6 It will be a term of any approval granted that the ADR entity's contracts with airlines bind airlines to using the ADR entity for all the types of disputes listed above at 10.2 and airports to the type of complaint described in 10.4.
- 10.7 ADR applicants must confirm that they will provide alternative dispute resolution services to consumers resident in the European Union, for aviation contracts with traders, where the contracts relate to flights to or from the UK (for the avoidance of doubt, this includes flights connecting via the UK).
- 10.8 With regards to monetary thresholds, ADR applicants must confirm that:
- a) There is no minimum financial value of claim eligibility criteria; and
  - b) If they do have a maximum value of claim eligibility criteria this must be equal to or more than £10,000

## **11. Refusal (and refusal to continue) grounds**

---

### **Requirements of the ADR Regulations**

- 11.1 The Regulations require that applicants provide the grounds, if any, on which the ADR applicant may refuse to deal with a dispute. Schedule 3 sets out what those grounds may include.

### **The CAA therefore requires the following**

- 11.2 ADR applicants must confirm that they will only refuse complaints when:
- a) The consumer has made no attempt to resolve the dispute with the trader before contacting the ADR entity;
  - b) The dispute is frivolous or vexatious;
  - c) The dispute has been or is currently being considered by another ADR entity or by a court;
  - d) The dispute is outside the monetary thresholds of claims accepted by the ADR entity;
  - e) The consumer brought the claim to the ADR entity more than 12 months from the date upon which the trader has given notice to the consumer that the trader is unable to resolve the complaint with the consumer (or where no notice is given more than 12 months since the consumer's last attempt to contact the airline);
  - f) The consumer and trader held bilateral negotiations at a date before the ADR person converted to being an ADR entity; and
    - i. The trader gave the consumer a deadline for taking the complaint to the ADR person; and

- ii. That deadline was in accordance with the rules of the ADR person when the trader gave the deadline; and
  - iii. The consumer failed to bring his/her complaint to the ADR person within that deadline.
- g) Dealing with such a type of dispute would seriously impair the effective operation of the ADR entity. It should be noted that being overwhelmed with too many claims is not a valid reason for refusing to deal with complaints. However, when the ADR entity becomes aware that it is likely to be unable to meet the obligation to notify the outcome of the ADR procedure within 90 calendar days from issuing the notice of receipt of the complete complaint file, the ADR entity must advise the consumer of the likely additional time required in order that the consumer can choose whether to continue with their complaint. Valid reasons would be to do with, for example, the complexity of an individual case, or that factual issues are in dispute which would require further investigation.
- 11.3 Further to this, ADR applicants must confirm that they will only refuse to continue complaints where:
- a) There is no reply to requests for information from the consumer after 14 calendar days (unless there is a good reason);
  - b) The consumer is believed by the ADR entity to have provided false or fraudulent information or documents (at any stage);
  - c) The trader has misled the ADR entity with regard to a ground that may or may not exist for refusing to accept or continue with the resolution of a dispute;
  - d) The consumer has been abusive to any staff member of the ADR entity; and
  - e) Both the consumer and the trader agree (including where a conflict of interest has been identified and it is not possible for the reasons referred to in this policy to transfer the ADR procedure to another ADR entity approved by the CAA).
- 11.4 ADR applicants must confirm that where the complaint was received via the ODR platform they will ensure that any refusal to accept or continue with the complaint is transmitted to the ODR platform.

## **12. Website information for consumers**

---

### **Requirements of the ADR Regulations**

- 12.1 The Regulations require that ADR entities maintain an up-to-date website which provides the parties to a domestic dispute or cross-border dispute with information regarding the ADR procedure operated by the entity.

- 12.2 They also require the ADR entity to be able to send this information to the consumer by both e-mail and in paper format, if requested.
- 12.3 The website must enable a consumer to file an initial complaint submission and any necessary supporting documents online and the consumer must be permitted to file an initial complaint submission by post, if the consumer wishes.
- 12.4 Schedule 3(5) of the Regulations also lists information which must be published on the ADR entity's website and available on a durable medium, if requested.<sup>14</sup>

**The CAA therefore requires the following**

- 12.5 ADR applicants must confirm that they will place information on their website about the limitation period for bringing claims to court to enable consumers to make informed choices about whether to choose ADR or not.
- 12.6 The following information would meet the CAA's requirements:
- “ADR can be a swifter and cheaper alternative to court action for getting your claim resolved. However, if you choose ADR and are not happy with the outcome, then you may decide to pursue your claim through the courts afterwards. If so, you can only do so if you have not left it too long to bring your court claim. Any claim has a limitation period (or time period) after which a claim cannot be brought before the court.

---

<sup>14</sup> The requirements of Schedule 3(5) are:

“ The person makes the following information publicly available on its website in a clear and easily understandable manner, and provides, on request, this information to any person on a durable medium— (a) its contact details, including postal address and e-mail address; (b) a statement that it has been approved as an ADR entity by the relevant competent authority once this approval has been granted; (c) its ADR officials, the method of their appointment and the duration of their appointment; (d) the name of any network of bodies which facilitates cross-border alternative dispute resolution of which it is a member; (e) the type of domestic disputes and cross-border disputes which it is competent to deal with, including any financial thresholds which apply; (f) the procedural rules of the alternative dispute resolution procedure operated by it and the grounds on which it can refuse to deal with a given dispute in accordance with paragraph 13; (g) the language in which it is prepared to receive an initial complaint submission; (h) the language in which its alternative dispute resolution procedure can be conducted; (i) the principles the person applies, and the main considerations the person takes into account, when seeking to resolve a dispute; (j) the preliminary requirements, if any, that a party to a dispute needs to have met before the alternative dispute resolution procedure can commence; (k) a statement as to whether or not a party to the dispute can withdraw from the alternative dispute resolution procedure once it has commenced; (l) the costs, if any, to be borne by a party, including the rules, if any, on costs awarded by the person at the end of the alternative dispute resolution procedure; (m) the average length of each alternative dispute resolution procedure handled by the person; (n) the legal effect of the outcome of the dispute resolution process, including whether the outcome is enforceable and the penalties for non-compliance with the outcome, if any; (o) a statement as to whether or not alternative dispute resolution procedures operated by it can be conducted by oral or written means (or both); (p) the annual activity report required to be prepared under regulation 11(2).”

As regards discrimination under the UK Equality Act 2010, this is dealt with by the County Court (in England and Wales) and the Sheriff Court in Scotland. County and Sheriff Court deadlines for discrimination cases are six months less one day from the date of the incident you are complaining about. Information about how to bring a civil claim in the County Court (England and Wales) can be found on her Majesty's Court Service website, and for Sheriff Court claims in Scotland from the Scottish Court website.

There is also the possibility of seeking legal advice as regards compensation under SI No. 2833 / 2014 "The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014. The timeframe for taking such a case is also within six months from the date of the incident.

The timeframe for taking a case to court under EU Directive 261/2004 is six years from the date of the incident (except in Scotland where it is five years.)

The time limit for bringing a breach of contract claim is six years from the date of the breach.

Detailed information about the civil procedure rules can be found on the Ministry of Justice website. Practical advice, including a helpline, on equality and human rights is available from the Equality Advisory Support Service."

- 12.7 Information held by ADR entities will need to be shared with the CAA (and potentially other regulators) for enforcement purposes. ADR applicants must confirm that they are prepared to hold and report on relevant data for three years. Applicants must also confirm that consumers will be informed about these requirements on the ADR entity's website.
- 12.8 ADR applicants must confirm that a standard rate telephone number for complaints will be available and published on their website.<sup>15</sup>
- 12.9 Information regarding the ADR entity's independence and impartiality will be published on its website. This will include the rules regarding ADR officials and the content of their contracts as per Section 5 above.
- 12.10 ADR entities will also publish information as to how they ensure the independence and impartiality of their organisation as a whole. This will include that fees to traders are not linked to the outcome of cases. The ADR entity will provide a link to the CAA website page which provides data regarding complaints handled via ADR and the average consumer uphold rates of complaints which are considered by the ADR entity. This webpage is currently here:

---

<sup>15</sup> Calls should cost no more than a national rate call to an 01 or 02 number and must count towards any inclusive minutes.

<http://www.caa.co.uk/Data-and-analysis/Data-for-passengers/Complaints-and-enforcement/Passenger-complaints-data/>

## 13. Online dispute handling

---

### Requirements of the ADR Regulations

- 13.1 The Regulations require that the ADR entity: “enables the exchange of information between the parties via electronic means or, if a party wishes, by post” and also that it “accepts disputes covered by Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on Online Dispute Resolution for Consumer Disputes”. Amending Regulations (1392/2015) have provided further requirements in relation to online dispute resolution.

### The CAA therefore requires the following

- 13.2 We will require a statement signed by director/partner/sole trader that the ADR applicant will enable the electronic exchange of information and that the ADR applicant is aware of the ODR legislation and complies with its requirements.

## 14. Expertise

---

### Requirements of the ADR Regulations

- 14.1 The Regulations require that the ADR entity ensures that ADR officials 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.

### The CAA therefore requires the following

- 14.2 ADR applicants will need to provide information on how this requirement will be met through:
- a) Recruiting staff with satisfactory knowledge and skills or by a training programme;
  - b) On-going training;
  - c) The ADR entity’s process for identifying and addressing knowledge gaps; and
  - d) The ADR entity’s decision making quality control process.
- 14.3 We expect any approved ADR entity to be able to deal with the most common types of aviation disputes. These types of disputes are listed below. ADR applicants will need to provide information on how they will ensure their ADR officials have the required knowledge and skills in consumer and aviation law needed for aviation ADR cases.
- 14.4 The types of disputes which ADR applicants must be able to deal with are:

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

14.5 The CAA will maintain a webpage providing information as regards the required knowledge and skills. The webpage can currently be found here:  
<http://www.caa.co.uk/Our-work/About-us/Alternative-Dispute-Resolution/>

14.6 The ADR applicant must confirm that in most cases the outcome of the ADR process will not be contingent upon the outcome of outstanding legal cases.

14.7 Where the ADR entity is aware of cases which are progressing through the UK or European courts which may affect the outcomes of ADR decisions, ADR applicants must confirm that:

- a) The consumer will be advised and given the option to proceed with the ADR process, or place it on hold awaiting the court case final outcome.
- b) The consumer will be reminded of the limitation period applicable to bring their dispute before a court and that pausing the ADR process to await the outcome may lead to their claim being timed-out for court action.
- c) If the consumer chooses to proceed with the ADR process without awaiting the outcome of the court case, the consumer will be made aware that if they had consented the pause the case the eventual ADR outcome may have been different.

14.8 ADR applicants must confirm that they will inform the CAA when the option to pause is given to consumers.

### **Post-decision review process**

14.9 It is a requirement of the CAA that decisions made by the ADR entity are binding on the trader if accepted by the consumer. However, ADR entities are permitted to establish processes for reviewing the decisions of ADR officials. The purpose of such a review process would be to enable the ADR body to enhance its

[expertise in handling aviation consumer disputes<sup>16</sup> rather than to overturn the decisions taken in individual cases.](#)

[14.10 It is permitted that such procedures can involve the participation of scheme members and other external parties with relevant knowledge and skills.](#)

## **15. Review of complaints and role of the independent assessor**

### **Review policy**

15.1 ADR entities will publish details of a complaints review policy which sets out the process which consumers can utilise if they feel concerned that their complaint has not been handled properly by the ADR entity. This policy will be in a user-friendly format<sup>17</sup> and in an accessible place on the ADR entity's website. This process will have 3 steps:

Step 1 The first being a triage to determine whether the complaint is suitable for review with reference to the criteria set out below at 15.6(a)-(f) and 15.7;

Step 2 A second step will be to consider the complaint itself as regards the relevant criteria under 15.6(a)-(f) below;

Step 3 A third step will be made available to consumers and will be to refer the complaint to an independent assessor. S/he will consider how the ADR entity has dealt with the complaint as regards the relevant matters under 15.6. It is important to note however that the independent assessor is not expected to consider criteria 15.6(f) in terms of the legal merits of the ADR decision, but can consider whether the review process at stage 2 thoroughly re-considered the issue.

Annex F provides a flow-chart summarising these stages.

15.2 Stage 1, the first triage stage, will be carried-out by a member of staff who has not been involved in the original handling of the complaint and who is suitably senior to consider whether the review should proceed to stage 2. This decision is not reviewable (unless specifically required by the CAA) i.e. if at stage 1 it is decided that the complaint is not suitable for stage 2 then there is no further stage which is possible for the consumer to access.

15.3 The second stage will be carried out by a suitably senior member of staff and will be someone not involved in the original handling of the complaint. It is not acceptable for the same member of staff to carry out stage 1 and stage 2.

---

<sup>16</sup> [And could lead to, for example, changes to internal processes, the development of internal policies, guidance to ADR officials, additional training, et cetera.](#)

<sup>17</sup> For example, website filtering questions or tick boxes, which inform consumers clearly if their complaint is / is not suitable for review.



- 15.4 The third stage, carried-out by the independent assessor, is an optional stage for the consumer if s/he remains dissatisfied. The third stage outcomes may include recommendations for actions to be taken by the ADR entity. These may relate to specific complaints and / or to more general matters such as processes.
- 15.5 The review policy will include the criteria by which it will be decided at stage 1 if the complaint is suitable for review, and will be in accordance with 15.6 and 15.7 below.
- 15.6 Complaint issues suitable for review:
- a) Process that has taken place is not in line with CAA-approved ADR scheme rules;
  - b) Complaint has been rejected for wrong reasons and not in line with the CAA-approved scheme rules (e.g. has been deemed 'out of scope' by ADR entity when it should be 'in scope')
  - c) Services standards have been unsatisfactory (e.g. timeframes outside those in scheme rules / treatment by staff have been unsatisfactory / systems in place very difficult to use);
  - d) Other matters at the discretion of the ADR entity or the CAA;
  - e) Relevant information has been ignored and/or irrelevant information has been taken into account;
  - f) There has been an irrational interpretation of the law by the ADR official.
- 15.7 Complaints issues not suitable for review:
- a) Except with regard to the matters listed at 15.6, the outcome of the ADR process is not one the consumer agrees with (e.g. due to different views regarding the law or facts of the case);
  - b) Those which are deemed by the ADR entity to be frivolous or vexatious;
  - c) Awards not paid by airlines/airports within the required timeframe (consumers should be directed as to how they can raise such issues with the ADR entity for resolution by other methods).
- 15.8 The review policy will include information about the potential outcomes of the review which should include, where appropriate, the provision of a goodwill payment by the ADR entity if it is decided that an error has occurred. It will also make clear that the review process is not an appeal as regards the original ADR decision. ADR remains a non-appealable process, recognising that consumers can still access court should they continue to feel dissatisfied.
- 15.9 The review policy should make clear any time limitations for submitting complaints to the review process. For example, the CAA would be satisfied with

reviewable complaints being limited to those raised within 2 months following determination / adjudication. It is also satisfied for the review process to be generally limited to closed complaints (unless the complaint is about the timeframe for decision or a significant lack of communication from the ADR entity or some other valid reason in the view of the ADR entity / the CAA).

- 15.10 Consumers who have ‘accepted’ determinations / adjudications of the ADR entities should not be barred from utilising the review process.

### **Role of the Independent Assessor**

- 15.11 The ADR entity will engage the services of an independent assessor and provide him/her with data as requested as relevant to his/her role, noting any data protection safeguards.
- 15.12 The published review policy will include details of how to contact the assessor; the nature of his/her role; as well as making clear the independence criteria.
- 15.13 The independent assessor will have a role in reviewing the whole of the review process rather than being limited to only those complaints reaching him/herself.
- 15.14 The CAA’s requirements as regards independence are set out in Section 5 of this document and apply to the independent assessor (i.e. conflict of interest clause).
- 15.15 The CAA considers that independent assessors are ‘ADR officials’ for the purposes of its policy and interpretation of the ADR Regulations / Directive.
- 15.16 The independent assessor will be independent from any ADR scheme for the aviation sector in that s/he will not be employed (whether directly employed or via a contract for services) by them in direct case handling or advice other than in their role as an independent assessor. They will not hold shares or other financial investments in any ADR scheme / company which provides ADR for the aviation sector.
- 15.17 ADR entities will notify the CAA when they engage the services of an independent assessor detailing his/her identity and confirming s/he meets the criteria set-out herein.

### **Reports to be submitted to the CAA by the Independent Assessor**

- 15.18 The CAA requires that the independent assessor provides it with a 6-monthly report by end April and end October each year (covering the period October-March and April-September). This report will detail the view of the independent assessor as regards any potential improvements which could be made to aid the effectiveness of the ADR scheme, including the review process. This will be in terms of the perspective of the consumer with regard to individual complaint handling. These suggestions for improvement should be addressed to the ADR entity and / or the CAA as appropriate.

- 15.19 The independent assessor will base his/her view upon a consideration of the complaints reaching all 3 stages of the review process, including those not deemed suitable for review by the ADR entity at stage 1. The report will include case examples, data and statistics and any other information that the assessor believes will effectively demonstrate his/her findings.
- 15.20 As regards complaints reaching the independent assessor via stage 3, the report will include details as to any recommendations made, and whether these were taken up by the ADR entity.
- 15.21 The independent assessor is not expected to be an expert in the subject matter of the disputes except to the extent that s/he will identify any common themes or issues causing confusion or potential harm to consumers during the ADR process, sufficient to detail these in his/her reports.
- 15.22 The CAA may revise the required format of the report dependent upon review of the reports provided and any suggestions received.
- 15.23 Currently, the CAA will leave it to the discretion of the ADR entity whether it publishes the independent assessor's report and with whom to share it. However, all parties should be aware that the CAA is subject to Freedom of Information requests and this may include reports which it has received.
- 15.24 The CAA requires ADR applicants / entities to submit to it, for its approval, the proposed website text / screenshots detailing the ADR entity's review policy. In addition, evidence of the contractual agreement with the independent assessor will need to be submitted to the CAA which demonstrates compliance with the CAA's policy set-out herein. This could, for example, be a copy of the contract for services or a formal 'Terms of Reference' document.
- 15.25 Should the information submitted to the CAA change then the ADR entity will re-submit its proposed changes to the CAA, as a 'variation' to its approval.

## **16. Customer feedback / surveys**

---

### **Requirements of the CAA's policy**

- 16.1 ADR applicants need to submit details regarding how they will gain feedback from consumers using their ADR scheme. This will include the use of online surveys which contain feedback gained at different stages in the ADR process.

## **17. Data requirements**

---

### **Requirements of the CAA's policy**

- 17.1 Information about the data that ADR entities will need to hold and report upon are contained within CAP 1390 Guidance on regulatory and additional information requirements for ADR entities approved by the CAA. Agreement to this

requirement is contained within the signed statement of a director/ sole trader/ partner in Annex B.

- 17.2 ADR entities will ensure that they are compliant with data protection legislation including the General Data Protection Regulations which came into force in May 2018. Information held by ADR entities will need to be shared with the CAA (and potentially other regulators) for enforcement purposes and ADR applicants/entities must confirm that they are prepared to hold relevant data for three years, and that they will inform consumers about these requirements on their website.
- 17.3 ADR applicants must confirm that consumers are not subject to any confidentiality requirements as regards their experience of ADR.

DRAFT

## **18. Complex and novel issues raised in complaints**

- 18.1 It is possible that, on very rare occasions, an individual passenger complaint will raise an issue that is genuinely complex and novel in terms of its broader applicability. Such cases might involve circumstances that have not previously occurred, and/or where there is no established case law or clear principles for determining the outcome of the case.
- 18.2 In such cases, the normal ADR process may not be the most effective way to deal with the novel and complex issue underlying the complaint. Rather, an alternative approach that incorporates the views of the CAA as well as those of the airline, the ADR body and the passenger, may be more appropriate. For those complex and novel cases where a consensus cannot be reached between the CAA, the ADR body and the airline, the CAA's view is that the issue, and by extension the complaint, would be most appropriately resolved through the courts. In the CAA's view, only one or two complaints each year are likely to be considered complex and novel in this sense.
- 18.3 Annex G sets out the process to be followed in cases where the airline identifies a complaint (specifically a claim for compensation under Article 7 of Regulation EC261/2004) which it considers raises complex and novel issues and which it seeks to have resolved outside of the normal ADR process. It is not a requirement of the CAA that all CAA-approved ADR entities must offer a scheme which allows complex and novel issues raised by complaints to be considered outside of the normal ADR process. However, if CAA-approved ADR entities choose to offer a scheme which includes this option, they and the relevant member airlines must comply with the requirements set out in Annex G, which must be incorporated into the relevant scheme rules. In cases where a CAA-approved ADR entity implements a scheme which includes this option, the CAA will review the functioning of the scheme within the first two years of its implementation and will continue to keep it under review (with particular reference to the CAA's view that only one or two complaints each year are likely to be considered complex and novel in this sense).

## **19. Trust account arrangement for paying consumer awards**

- 19.1 Paragraph 4.10 above states that ADR applicants must confirm in writing that any payments by the trader to consumers do not pass through the ADR entity's accounts. The purpose of this requirement is to ensure that any such monies are ringfenced from the general funds / working capital of the ADR entity. In practice, this has restricted the ability of the ADR entity to pay awards (e.g. compensation) directly to the consumer on behalf of the trader. In principle, such an arrangement could be beneficial for consumers in that it could reduce the number of transactions between the consumer, ADR entity and trader, which in turn could reduce the risk of errors and speed up payment to the consumer.

19.2 In order to enable this facility, whilst at the same time appropriately ringfencing the funds intended to be used to pay consumer awards, the CAA has developed a standard form trust deed. This allows CAA-approved ADR entity to hold funds on behalf of a scheme member for the purpose of paying consumer awards. The standard form trust deed is available on request from the CAA.

### **The CAA therefore requires the following**

19.3 Although it is not a requirement of the CAA that all CAA-approved ADR entities offer a scheme which includes this facility, if this facility is offered to scheme members the CAA-approved ADR entity must comply with the CAA's requirements as specified in the standard form trust deed, and the ADR entity must notify the CAA in advance that it intends to establish a trust account arrangement with a particular scheme member. The CAA-approved ADR entity must also submit to the CAA copies of the signed trust deed and any other associated documentation at the time the deed is signed.

## **20. Handling claims on a flight basis**

20.1 The vast majority of aviation consumer complaints concern claims for financial compensation under Article 7 of Regulation EC 261/2004. The main factors in assessing such claims relate to the operation of the flight (and in particular whether the cancellation or long delay was the result of extraordinary circumstances) rather than the circumstances of the individual passenger.

20.2 In light of this, ADR entities are permitted to establish procedures for ensuring consistency in decision-making in relation to claims for financial compensation under Article 7 of Regulation EC 261/2004. This can include establishing procedures for handling such claims on a flight basis rather than a claim basis. Such procedures must be incorporated into the relevant scheme rules.

## **21. Non-regulated ADR schemes**

21.1 Under the ADR Regulations, ADR applicants and approved ADR entities must comply with a set of requirements for them to be approved by the relevant competent authority. This does not prohibit organisations from offering dispute resolution services to traders which do not meet the requirements of the ADR Regulations and are not approved by a competent authority. There is therefore the possibility for 'non-regulated' dispute resolution schemes to coexist with ADR schemes approved under the Regulations (i.e. 'regulated' schemes).

21.2 It is also possible for a CAA-approved ADR entity to offer both regulated and non-regulated schemes. There is therefore the potential for confusion, in particular amongst consumers seeking to access dispute resolution services, as to whether the applicable scheme is regulated or non-regulated and the rules that apply.

### The CAA therefore requires the following

21.3 CAA-approved ADR entities that offer both regulated and non-regulated schemes must provide the following information to consumers:

- a) On its website, a webpage providing information on:
  - i. The different schemes offered by the ADR entity;
  - ii. The key differences between the schemes;
  - iii. Information to allow consumers to determine which traders participate in each of the different schemes; and
  - iv. This webpage must also include a clear and prominent statement that consumers wishing to pursue a complaint against a trader that participates in a non-regulated scheme can instead request that the CAA's Passenger Advice and Complaints Team (PACT) service handles their complaint (and details on how to contact PACT).
- b) On its website, the scheme rules applicable to each scheme. The scheme rules applicable to non-regulated schemes should include a clear and prominent statement that the scheme is a non-regulated scheme and that consumers wishing to pursue a complaint against the trader can instead request that the CAA's PACT service handles their complaint (and details on how to contact PACT);
- c) In relation to non-regulated schemes, at the point in the ADR process where the consumer begins the submission of their complaint, whether online or hard copy, a clear and prominent statement that consumers wishing to pursue a complaint against the trader can instead request that the CAA's PACT service handles their complaint (and details on how to contact PACT); and
- d) In relation to non-regulated schemes, at the point in the ADR process where the consumer is informed of the outcome of their complaint by the ADR entity, a clear and prominent statement that consumers wishing to continue to pursue their complaint against the trader can request that the CAA's PACT service handles their complaint (and details on how to contact PACT).

## Annex A: Application form

A Microsoft Word version is published alongside this guidance to allow applicants to amend the size of answer fields.

CAA ADR Entity Application Form			
	Contact Information		Ref
1	Business name:		3.1
2	Business address:		3.1
3	Application contact name:		3.1
4	Application contact email:		3.1
5	Application contact telephone number:		3.1
6	Website address or addresses for consumers and traders:		3.3
<b>If you are a corporate applicant, please provide copies of the following documents annexed to your application:</b>		<b>Tick to confirm attached ✓</b>	
7	Copy of certificate of registration (including company registration number) or national equivalent		3.2
8	Evidence of registered office or national equivalent		3.2
<b>If you are a partnership applicant, please provide copies of the following document annexed to your application:</b>		<b>Tick to confirm attached ✓</b>	
9	Copy of partnership agreement		3.2
10	Copies of passports of partners		3.2
11	Evidence of trading address, phone number and business email address (e.g. headed notepaper or utility bills)		3.2
<b>If you are a sole trader applicant, please provide copies of the following documents annexed to your application:</b>		<b>Tick to confirm attached ✓</b>	
12	Copy of passport		3.2
13	Copy of utility bill as proof of name and address		3.2
14	Evidence of phone number registered to sole trader		3.2



<b>All applicants please provide the following annexed to your application:</b>		<b>Tick to confirm attached ✓</b>	
<b>15</b>	Evidence of ownership of web domain name and period of ownership		3.4
<b>16</b>	Details of your trading name(s)		3.2
<b>Please provide information about the structure and funding of your organisation</b>			
<b>17</b>	Who is the employer of your ADR officials?		4.1
<b>18</b>	How long are your ADR officials employed for?		4.1
<b>19</b>	Who pays your ADR officials?		4.1
<b>20</b>	Does any airport/airline control your business?		4.2
<b>21</b>	Is your ADR entity established or financed by a trade association or a professional body?		4.3
<b>22</b>	If yes, is your business a separate corporation or company from that trade association or professional body?		4.3
<b>If you are a corporate applicant, please annex the following to your application:</b>		<b>Tick to confirm attached ✓</b>	
<b>23</b>	If part of a group, a diagram showing group ownership structure		4.4
<b>24</b>	Copies of memorandum and articles of association		4.4
<b>25</b>	Details of the shareholders of the applicant including number and class of shares held (please indicate the differences between share classes if applicable, e.g. voting rights)		4.4
<b>26</b>	Will you ringfence consumers' fees from your general funds / working capital?		4.8
<b>27</b>	Will payments from the trader to consumers pass through your accounts? <a href="#">If you have implemented a trust account arrangement in accordance with section 19, please confirm that here.</a>		4.10

28	Will your business process consumer fees itself or will you rely on the services of a third party for this?	4.8
29	How is the income from consumer fees distributed / utilised?	4.9
30	Is income raised from consumer fees used for charitable aims?	4.9
31	Does your business believe that it can meet its projected liabilities taking into account your project expenditure and case load over the next 12 months?	4.5
32	Who are the directors of the ADR applicant?	4.5
<b>Please annex the following documents to your application:</b>		<b>Tick to confirm attached ✓</b>
33	Audited financial statements with an unqualified audit report dated within six months of financial year end	4.7
34	A projected profit and loss, cash flow forecast and balance sheet all analysed by month for the current financial year (this should include actuals for the relevant months that have passed). If the applicant is more than 6 months through its current financial year the forecasts should be extended for an additional 12 months to the next financial year end.	4.7
35	Supporting commentary to the forecasts detailing the key assumptions used and the explanations for any significant year-on-year movements	4.7
36	Details of the current funding of the applicant. Copies of any loan agreements should be provided.	4.7
37	Details of access to additional sources of funding, e.g. overdraft or revolving credit facility	4.7
38	Details of banking arrangements to demonstrate: <ul style="list-style-type: none"> <li>▪ That any consumer fees are ringfenced from operational funds; and</li> </ul>	4.8 – 4.10

	<ul style="list-style-type: none"> <li>That any payments by the trader to consumers do not pass through the ADR entity's accounts, <a href="#">except where a trust account arrangement has been implemented in accordance with section 19.</a></li> </ul>		
<b>ADR officials</b>		<b>Tick to confirm attached ✓</b>	
<b>39</b>	<p>Please provide a copy of an employment contract and/or contract for services and confirm:</p> <ul style="list-style-type: none"> <li>That it will be utilised for all your ADR officials; and</li> <li>Contains the text listed in 5.1(a)</li> </ul>		5.1
<b>40</b>	Please provide a copy of a pay slip (with amounts, and personal data deleted) so that we can see that ADR officials are/will be paid by the ADR entity		5.2
<b>ADR scheme rules</b>		<b>Tick to confirm ✓</b>	
<b>41</b>	Please provide a copy of your scheme rules <a href="#">for all schemes (either regulated or non-regulated) covering aviation consumer disputes.</a>		6.1
<b>42</b>	Please confirm that your scheme rules contain text which meets the CAA requirements listed in 6.2		6.2
<b>43</b>	Please confirm that the contract between the ADR entity and the trader will contain the information listed at 6.3		6.3
<b>44</b>	Detail any penalties including all financial penalties on traders for non-compliance		6.4
<b>45</b>	Please confirm that if approved as an ADR entity, you will notify the CAA as soon as possible on becoming aware of potential/actual breaches of your scheme rules by airlines/airports		6.5
<b>Fees</b>		<b>Tick to confirm ✓</b>	
<b>46</b>	Do you charge consumers a fee? If so, how much is the fee?		7.2
<b>47</b>	Please confirm that any fee charged to consumers will be on the basis of arrangements conforming with CAA requirements set out at 7.2 and 7.3		7.2 – 7.3

48	Please confirm that the fee charged to traders will not be calculated with reference to the outcome of the ADR process (which includes the amount of a financial award (if any) made to consumers)		7.4
49	Please provide information on your scale of charges to traders at all stages of the ADR process		7.5
50	Will traders need to pay fees up front per case or after the case has been closed?		7.6
<b>Average length of the ADR procedure</b>			
52	What is the average length of the alternative dispute resolution procedure, if you already operate an alternative dispute resolution procedure?		8.1
<b>Language</b>		<b>Tick to confirm</b> ✓	
53	Please confirm that you will deal with consumers' disputes both orally and in writing in the languages which may be used by consumers for entering into a contract with the applicable trader to which the complaint relates		9.2
54	Please provide more information on how you will manage translation / handling complaints in multiple languages		9.1
<b>Statement of disputes covered</b>		<b>Tick to confirm</b> ✓	
55	Please provide a copy of your "Statement of disputes covered" (which should form part of your scheme rules) and confirm that it contains text which makes it clear that consumers will be able to use ADR to resolve disputes relating to a flight to or from the UK in accordance with the CAA requirements set out in 10.2 – 10.7		10.2 – 10.7
56	Please confirm that your contracts with airlines bind airlines to using your business for all the types of disputes listed in 10.2 and airports to the type of complaint listed in 10.4		10.2, 10.4, 10.6
57	Please confirm that you will provide alternative dispute resolution services to consumers resident in the European Union, for aviation		10.7

	contracts with traders, where the contracts relate to flights to or from the UK (including flights connecting via the UK)		
58	With regards to monetary thresholds, ADR applicants must confirm that there is no minimum financial value of claim eligibility criteria		10.8
59	If you do have a maximum value of claim, how much is it?		10.8
<b>Refusal (and refusal to continue) grounds</b>		<b>Tick to confirm</b> ✓	
60	Please provide a statement of Refusal (and refusal to continue) Grounds and confirm that it is in accordance with CAA policy set out at 11.2 and 11.3		11.2, 11.3
61	Please confirm that where the complaint was received via the ODR platform you will ensure that any refusal to accept or continue with the complaint is transmitted to the ODR platform		11.4
<b>Website information for consumers (if screenshots / 'mocked up' web pages are available, please annex to your application)</b>		<b>Tick to confirm</b> ✓	
62	Please confirm that you will maintain an up-to-date website which provides the parties to a domestic dispute or cross border dispute with information regarding the ADR procedure operated by your business		12.1
63	Please confirm that you are able to send information about your ADR procedure to the consumer by both email and in paper format, if requested		12.2
64	Please confirm that consumers can file initial complaint submissions and any necessary supporting documents online		12.3
65	Please confirm that consumers can file an initial complaint submission by post if they wish		12.3
66	Please confirm that you will publish the information required by schedule 3(5) of the ADR Regulation on your website and available by email or paper if a consumer requests		12.4
67	Please confirm that you will place information on your website about the limitation period for bringing claims to court to enable consumers to make informed choices about whether to choose ADR or not (12.6 provides text that would meet the CAA's requirements		12.5
68	Please confirm that you are prepared to hold and report on relevant data for three years		12.7

69	Please confirm that consumers will be informed that you will hold and report on relevant data mentioned above on your website		12.7
70	Please confirm that a standard rate telephone number for complaints will be available and published on your website		12.8
71	Please confirm that information regarding the ADR entity's independence and impartiality will be published on your website. This will include the rules regarding ADR officials and the content of their contracts as per section 5 above		12.9
72	Please confirm that you will publish information as to how you ensure the independence and impartiality of your organisation as a whole. This will include that fees to traders are not linked to the outcome of cases		12.10
73	Please confirm that you will provide a link to the CAA of a website page which provides data regarding complaints handled via ADR		12.10
<b>Online dispute handling</b>		<b>Tick to confirm</b> ✓	
74	Please confirm that you will enable the electronic exchange of information between consumers and traders		13.1
75	Please confirm that you are aware of the online dispute resolution legislation and comply with its requirements		13.1
<b>Expertise</b>		<b>Tick to confirm</b> ✓	
76	<p>How will you meet the requirement that your ADR officials possess:</p> <ul style="list-style-type: none"> <li>▪ 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</li> <li>▪ The required knowledge and skills in consumer and aviation law that they will need to make good decisions on aviation ADR cases?</li> </ul> <p>In answering this question, please include information as to how you will:</p> <ul style="list-style-type: none"> <li>▪ Recruit staff with satisfactory knowledge and skills;</li> <li>▪ Train new recruits;</li> <li>▪ Provide on-going training;</li> <li>▪ Identify and address knowledge gaps; and</li> <li>▪ How you will ensure quality decision making</li> </ul>		14.2

77	Please confirm that in most cases your decisions would not be contingent upon the outcome of legal test cases		14.6
78	Please confirm where you are aware of cases which are progressing through the UK or European courts which may affect the outcome of ADR decision; that you will take the action as set out at 14.7 and that you will inform the CAA when the option to pause is given to consumers		14.7, 14.8
<b>Review of complaints and role of independent assessor</b>			
79	Please provide a copy of your complaints review policy and confirm that it meets CAA requirements as set out at 15.1 – 15.10 and 15.12		15.1, 15.10, 15.12
80	Please provide a link/screenshot showing where your complaints review policy will be made available on your website		15.23
81	Please confirm that you will: <ul style="list-style-type: none"> <li>▪ Engage the services of an independent assessor in accordance with CAA policy as set out at 15.11 – 15.24</li> <li>▪ Will inform the CAA when you do so and provide details of his/her identity; and</li> <li>▪ Will provide a copy of the contractual agreement as detailed at 15.23</li> </ul>		15.11 – 15.24
82	Please confirm that you will ensure that the independent assessor provides the CAA with the reports set out in 15.17 – 15.23		
<b>Customer feedback / surveys</b>			
83	Please provide details of how you will gain feedback from consumers as per section 16		16.1
<b>Data requirements</b>			
84	Please confirm that you will provide CAA with access to data and provide any reports required as set out in CAP 1390 – Guidance on regulatory and additional information requirements for ADR entities approved by the CAA		17.1
85	Please confirm that you will act in accordance with the EU General Data Protection Regulation, will share information with the CAA, will hold data for three years, and will inform consumers of this via your website (as per 16.2)		17.2

<b>86</b>	Please confirm that consumers are not subject to any confidentiality requirements as regards their experience of ADR and are therefore free to share details of their complaint with consumer organisations, charities (e.g. disability support groups), media, or a solicitor (if considering taking to court)		17.3
-----------	---	--	------

DRAFT



## Annex B: Signed statement of a Director / sole trader / partner

---

To be completed by a Board Director of a corporate applicant, sole trader or partner.

I, the undersigned, confirm that:

- All employment contracts of ADR officials,<sup>18</sup> as well as contracts for services where ADR officials are self-employed, contain (or will contain) the sample conflict of interest clause as notified to the CAA in the ADR entity's application, before ADR procedures are commenced.
- All ADR officials are paid by the same entity identified in the sample pay slip.
- No ADR officials are employed by any airline/carrier that flies to or from the UK, any UK airport, or any ATOL holder.
- ADR officials' remuneration or other terms and conditions are not related to the financial outcome for consumers/traders of the ADR procedures.
- Information regarding the ADR entity dispute resolution scheme rules, as well as the information set-out under 'transparency' in the ADR Regulation 542/2015 schedule 3(5), will be available by e-mail and post, where requested.
- Initial complaint submissions will be able to be submitted by post if the consumer wishes.
- The exchange of information between the parties, during the alternative dispute resolution procedure, will be via electronic means, or by post if the consumer wishes.
- I am aware of Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on Online Dispute Resolution for Consumer Disputes, and will ensure that we comply with its requirements.
- I will ensure that we comply with the requirement to make the consolidated list of ADR entities, published by the European Commission, publicly available on our website by a link to the relevant European Commission website; and at our premises on a durable medium.

---

<sup>18</sup> ADR officials are defined in Regulation 542/2015 as 'an individual employed, contracted or appointed by an ADR entity to oversee its alternative dispute resolution procedure, whether as a case-handler or in a management capacity.'

- I will ensure that the ADR entity will inform the CAA when it has agreed to undertake dispute resolution services for customers of particular airlines, and also when such agreements are terminated.
- I note that the ADR entity application fee is currently £5,832 and that this charge is non-refundable if the application is unsuccessful or if we decide to withdraw our application.
- I am also aware that if our application is successful there will be an annual fee payable as a condition of retaining our ADR entity CAA approval (currently £13,997).
- In consideration of the CAA considering our application, and on behalf of the ADR applicant named below, I agree to pay the CAA's ADR entity approval charge set out above.
- There are, to my knowledge, no other provisions or instruments that purport to override or change the impact of the information the CAA will be assessing as part of this application.
- I will ensure that the ADR entity undertakes to advise the CAA, within 3 working days of changes to any of the aspects of any of the documents submitted, that are relevant to the CAA's assessment of the issues set out in their policy (as contained in the CAA's guidance for ADR applicants).
- I will ensure that the ADR entity provides information to the CAA, as required and set out in CAP 1390 - Guidance on regulatory and additional information requirements for ADR entities approved by the CAA.<sup>19</sup>

Signed..... Date.....

Name.....

Position at ADR applicant.....(Board Director/sole trader/partner)

Name of ADR applicant.....

---

<sup>19</sup> [www.caa.co.uk/cap1390](http://www.caa.co.uk/cap1390)

## Annex C: Application checklist

Item	Tick to confirm ✓
To assist with your application, please confirm that you have read:	
<ul style="list-style-type: none"> <li>▪ ADR Regulations 542/2015 and amending Regulations 1392/2015</li> </ul>	
<ul style="list-style-type: none"> <li>▪ CAA policy statement - CAP 1286 (<a href="http://www.caa.co.uk/cap1286">www.caa.co.uk/cap1286</a>)</li> </ul>	
<ul style="list-style-type: none"> <li>▪ CAA guidance for ADR applicants – CAP 1324 (this document)</li> </ul>	
<ul style="list-style-type: none"> <li>▪ CAA Guidance on regulatory and additional information requirements for ADR entities approved by the CAA – CAP 1390 (<a href="http://www.caa.co.uk/cap1390">www.caa.co.uk/cap1390</a>)</li> </ul>	
Completed the application form set out in Annex A (a Microsoft Word version is available to allow applicants to amend the size of answer fields)	
Provided a signed statement as per Annex B	
Read published CAA information on fees and paid the application fee <sup>20</sup>	

<sup>20</sup> [Official Record Series 5 No. 341 – Air Transport Licensing Scheme](#) paragraph 2.8 (ADR Scheme)

## Annex D: Explanation of the term ‘deadlock’

---

### ‘Deadlock’<sup>21</sup>

Regulation 19(2) sets out information which all airlines must provide when they have completed their consideration of a consumer’s complaint. Airlines must inform the consumer on a durable medium:

- That the airline cannot settle with the consumer;
- The name and web address of an approved ADR entity;
- Whether the airline is obliged or prepared to use the services of this ADR entity.

A number of airlines have requested clarification on the point at which they should provide the information required by Regulation 19(2) to the complainant.

Regulation 19(2) states that this should take place when "the trader has exhausted its internal complaint handling procedure when considering a complaint". That is to say that the airline's final offer has been made and there is no further consideration of the complaint. This is often referred to as ‘deadlock’.

It is the CAA’s view that if letters to complainants do not inform them that further consideration by the airline is possible, and how they can go about requesting this, then that such letters are ‘deadlock’ letters and should therefore include the Regulation 19(2) information.

The systematic absence of the Regulation 19(2) information at this point will be seen by the CAA as a breach of the ADR Regulations. Further, the absence of this information at the relevant point does not prevent ADR entities from considering the complaint.

---

<sup>21</sup> This information concerning ‘deadlock’ letters was first sent out to airlines via a letter dated 10 March 2016

## Annex E: Consumer disputes that fall within the scope of ‘trading fairly’

---

1. As set out in the CAA’s policy statement covering consumer complaints handling and ADR,<sup>22</sup> the CAA has chosen to apply certain additional criteria for ADR entities who apply to the CAA for approval. One of these criteria is that ADR must be available for the most common types of disputes between passengers and airlines and that, at a minimum, consumers must be able to use ADR to resolve disputes relating to a flight to or from the UK in the following areas:
  - Denied boarding, delay, or cancellation;
  - Destruction, damage, loss, or delayed transportation of baggage;
  - Destruction, damage, or loss of items worn or carried by the passenger;
  - Problems faced by disabled passengers or passengers with reduced mobility when using air transport services;
  - Any more general disputes arising where the consumer alleges that the business is not trading fairly.
2. The CAA has been asked for further clarity over the nature of the types of consumer disputes which it considers fall within the scope of “trading fairly”. In order to ensure consistency between ADR entities in their interpretation of the scope of complaints falling under the “trading fairly” heading, the CAA has set-out its view on this point.
3. Put simply, such disputes are disputes arising from an alleged breach of consumer protection legislation by a business that has given rise to financial or economic harm<sup>23</sup> on the part of a consumer and for which the consumer is seeking a remedy.
4. The CAA maintains a non-exhaustive list of the consumer protection legislation (both general and aviation specific) which we consider ADR must cover:<sup>24</sup>
  - EC Regulation 261/2004 on the rights of passengers in the event of denied boarding, cancellations or long delays<sup>25</sup>

---

<sup>22</sup> CAP 1286 – Consumer complaints handling and ADR: CAA policy statement and notice of approval criteria for applicant ADR bodies ([www.caa.co.uk/cap1286](http://www.caa.co.uk/cap1286))

<sup>23</sup> Which can include inconvenience, loss of enjoyment, etc.

<sup>24</sup> <https://www.caa.co.uk/WorkArea/DownloadAsset.aspx?id=4294976197>

<sup>25</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2004.046.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2004.046.01.0001.01.ENG)

- EC Regulation 1107/2006 on the rights of passengers with disabilities/reduced mobility when travelling by air<sup>26</sup>
  - The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014 (see specifically Regulation 24, which covers compensation claims by disabled persons for a damages award)<sup>27</sup>
  - EC Regulation 1008/2008 on common rules for the operation of air services in the EU (see specifically Article 23)<sup>28</sup>
  - EC Regulation 2111/2005 on, amongst other things, informing air transport passengers of the identity of the operating air carrier (see specifically Chapter III)<sup>29</sup>
  - The Consumer Protection from Unfair Trading Regulations 2008, which prohibit commercial practices that contravene the requirements of professional diligence, misleading actions, misleading omissions, aggressive commercial practices<sup>30</sup>
  - The Consumer Rights Act 2015<sup>31</sup>
  - The Electronic Commerce (EC Directive) Regulations 2002<sup>32</sup>
  - The Consumer Rights (Payment Surcharges) Regulations 2012<sup>33</sup>
  - The Payment Services Regulations 2017<sup>34</sup>
  - Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013<sup>35</sup>
  - Package Travel, Package Holidays and Package Tour Regulations 1992<sup>36</sup>
  - The Montreal Convention 1999<sup>37</sup>
5. The CAA will continue to maintain this list as the consumer landscape changes and new consumer protection legislation is introduced.

---

<sup>26</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2006.204.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2006.204.01.0001.01.ENG)

<sup>27</sup> [http://www.legislation.gov.uk/ukxi/2014/2833/pdfs/ukxi\\_20142833\\_en.pdf](http://www.legislation.gov.uk/ukxi/2014/2833/pdfs/ukxi_20142833_en.pdf)

<sup>28</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R1008&from=EN>

<sup>29</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R2111&from=EN>

<sup>30</sup> <https://www.legislation.gov.uk/ukxi/2008/1277/contents/made>

<sup>31</sup> <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>

<sup>32</sup> <http://www.legislation.gov.uk/ukxi/2002/2013/contents/made>

<sup>33</sup> <http://www.legislation.gov.uk/ukxi/2012/3110/contents/made>

<sup>34</sup> <http://www.legislation.gov.uk/ukxi/2017/752/contents/made>

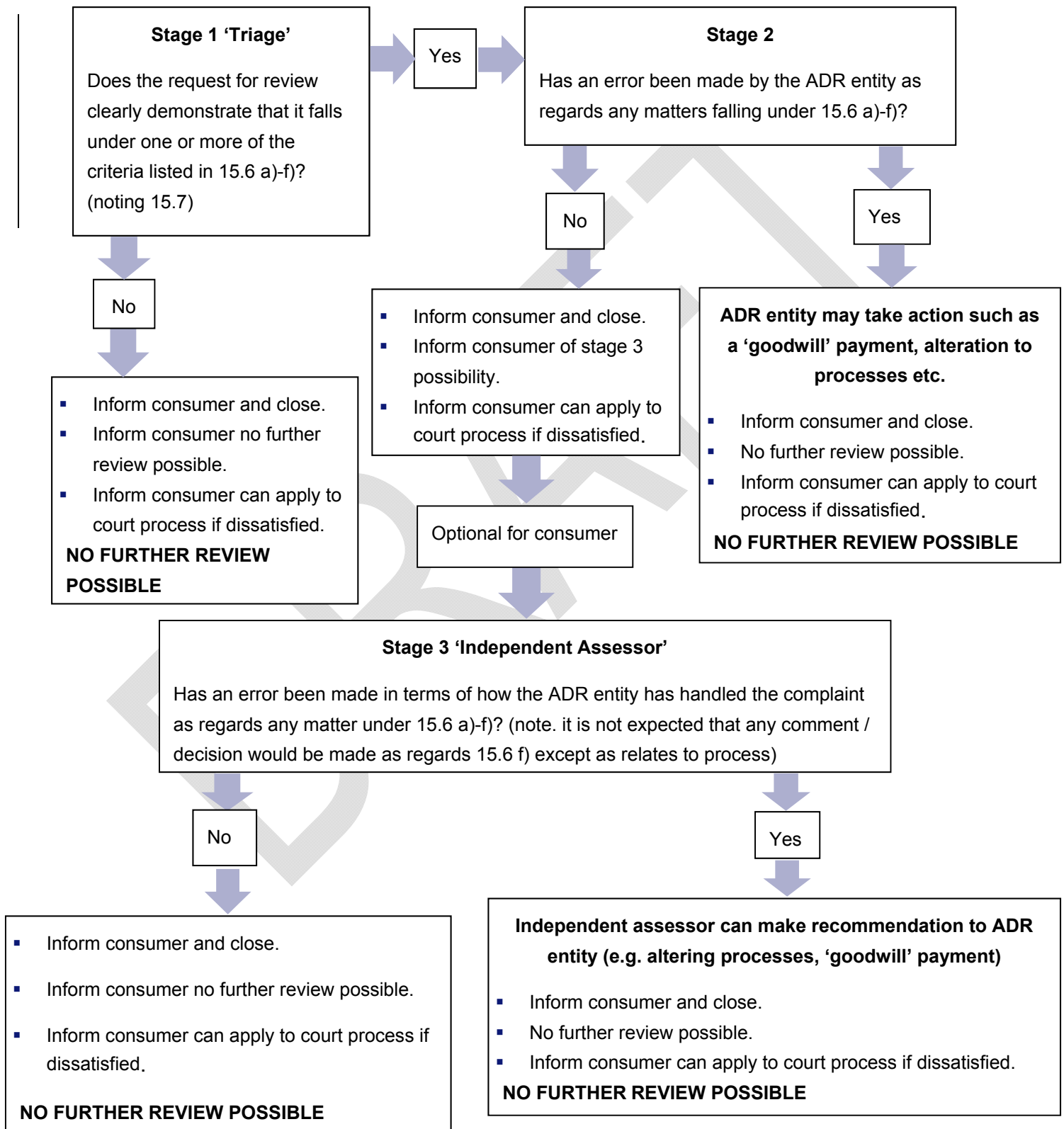
<sup>35</sup> <http://www.legislation.gov.uk/ukxi/2013/3134/made#f00009>

<sup>36</sup> <http://www.legislation.gov.uk/ukxi/1992/3288/contents/made>

<sup>37</sup> [https://www.iata.org/policy/Documents/MC99\\_en.pdf](https://www.iata.org/policy/Documents/MC99_en.pdf)

# Annex F: Complaints review process

The following diagram summarises the detail set out in section 15 (15.1–15.10)



## Annex G: Resolving complaints that raise complex and novel issues

---

This Annex applies in cases where a CAA-approved ADR entity offers a scheme which allows the member airline to identify complaints (specifically claims for compensation under Article 7 of Regulation EC 261/2004) which it considers raise complex and novel issues and which it seeks to have resolved outside of the normal ADR process. In such cases, this Annex must be incorporated into the relevant scheme rules.

### Identifying complaints that potentially raise genuinely complex and novel issues

1. The CAA has established a list of common issues underlying passenger complaints that, based on Regulation EC 261/2004 as clarified by existing domestic and EU case law and the European Commission Interpretative Guidelines (including through applying established principles), it considers are **not** by default complex and novel for the purposes of establishing extraordinary circumstances under Regulation EC 261/2004. This list is published here [insert link to CAA website].
2. From time to time, following consultation with airlines and CAA-approved ADR entities, the CAA will amend this list to take into account new legal and other developments as the CAA considers appropriate<sup>38</sup>.
3. In the event that a member airline considers that an individual passenger complaint submitted to an ADR body raises a genuinely complex and novel issue that is not covered by this list, it will notify the ADR body within [14] calendar days of the ADR body first submitting the complaint to the member airline for its defence. If the member airline does not so notify the ADR body, the complaint will proceed through the normal ADR process. A member airline shall not be precluded from exercising its entitlement under this provision simply because it had failed to notify a previous complaint which raised a similar complex and novel issue.

### Reaching a consensus on whether the complaint raises a genuinely complex and novel issue

4. Within [7] calendar days of the member airline notifying the ADR body of such a complaint, the ADR body will contact the CAA to confirm whether the ADR body agrees that the complaint raises a genuinely complex and novel issue. The CAA will arrange a meeting (which can be attended by telephone or video conference)

---

<sup>38</sup> We will continue to consider the case law of the CJEU during the EU exit transition period.



between the CAA, the member airline and the ADR body to discuss the complaint.

5. The CAA, the member airline and the ADR body will then have [21] calendar days to reach agreement on whether the complaint does indeed raise a genuinely complex and novel issue. If agreement cannot be reached, then the member airline can instead confirm its view that the complaint raises genuinely complex and novel issues.
6. In the event that it is agreed that the complaint does indeed raise a genuinely complex and novel issue or the member airline confirms its view that it does, within [7] calendar days of that agreement or confirmation the ADR body will transfer the complaint file to the CAA for the CAA to put forward a view on the application of extraordinary circumstances. The ADR body will inform the complainant that consideration of its complaint will be informed by an assessment by the CAA (unless the complainant wishes to withdraw their complaint at this point).
7. Any further passenger complaints submitted to the ADR body concerning the same complex and novel issue will be put on hold by the ADR body until the issue has been resolved. The ADR body will advise the passengers accordingly (including that they may take legal action themselves against the airline). The ADR body will also ensure that it can easily identify these complaints on hold and that it has the contact details of relevant passengers to provide updates.

#### **CAA's view on complaints that raise genuinely complex and novel issues**

8. In considering the complaint, the CAA will focus its consideration on the genuinely complex and novel issue arising from the complaint. The CAA will not adjudicate on the complaint but will provide its view to the ADR body on how to interpret the genuinely complex and novel issue when the ADR body adjudicates on the complaint and other complaints raising the same issue. As such, the CAA is considering a specific complaint as, in effect, a 'sample' case, but it will be the ADR body that issues the final adjudication on the case, taking account of the CAA's advice.
9. The passenger, member airline and ADR body will be allowed [35] calendar days to provide written evidence and submissions to the CAA. All evidence and submissions provided will be shared with the other parties. The CAA will consider whether to have meetings with the parties to discuss their evidence and submissions, and whether to invite replies to the other parties' evidence and submissions, on a case by case basis. Any such meetings must be held, and any such replies must be submitted, within [28] calendar days of the expiry of the [35] calendar day deadline referred to above, with the parties being granted at least [14] calendar days' notice of meeting or reply.

10. The CAA will issue its assessment of the complex and novel issue to the passenger, member airline and ADR body as soon as reasonably practicable following the expiry of the second deadline referred to in section 9 above.

#### **Achieving a resolution of the complaint**

11. In the event that the CAA's advice does not uphold the member airline's view in part or in full, the member airline will have [14] calendar days to raise an objection.
12. If the member airline does not object within this period, the member airline will be deemed to have accepted the CAA's view. The ADR body will then proceed to finalise its adjudication and the member airline will have [14] calendar days to comply with the adjudication and to provide evidence which satisfies the CAA of compliance.
13. Should the member airline raise an objection within this period, it will have [14] calendar days to confirm to the CAA that it will issue legal proceedings. The member airline must issue proceedings within three months of the member airline receiving the CAA's assessment. Should it fail to confirm this, or fail to subsequently issue proceedings within the time period specified, the ADR scheme rules will set out that the member airline will be deemed to have accepted the CAA's view and the final adjudication by the ADR body. The member airline will then have [14] calendar days to comply with the adjudication and to provide evidence which satisfies the CAA of compliance.

#### **Closing the complaint**

14. For those complaints that are considered by the CAA pursuant to this process and which are ultimately resolved through the courts, the CAA will notify the ADR body of the outcome. The ADR body will then issue its decision on the complaint (and any similar pending complaints) in accordance with the court judgment.

#### **Enforcement action**

15. For the avoidance of doubt, this proposed process does not impact the CAA's power to take enforcement action at any time in respect of passenger rights legislation and general consumer law, including those issues considered as part of this process, or the application of the CAA's discretion to apply its prioritisation principles to any matter.

#### **Transparency**

16. From the point at which the member airline notifies the ADR body of such a complaint which it considers raises genuinely complex and novel issue (see paragraph 4 of this Annex G above), the member airline, the ADR body, and the CAA will share with each other relevant communications and correspondence between the parties that fall within the scope of the process set out in this Annex.

17. Following the final adjudication on the complaint by the ADR body, it will publish on its website a summary of the case, including a summary of the complex and novel issues considered, its views on these issues, and the views of the CAA and the member airline.

**Independence of the ADR body**

18. As a competent authority, the CAA oversees the overall performance of ADR providers and their compliance with the ADR Regulations, but the CAA does not intervene in their processes to direct them to take a decision in individual cases. In relation to the process described in this Annex, although the CAA would expect the ADR body to follow the CAA's advice where this approach has been agreed between the member airline and the ADR body through the ADR scheme rules, it will be for the ADR body to determine and issue the final independent adjudication on the case, having taken into account the CAA's advice.

DRAFT