

British Air Transport Association response to the consultation on the CAA's draft policy on reforming consumer complaints handling – February 2015

1. The British Air Transport Association (BATA) welcomes the opportunity to submit evidence to this consultation on the CAA's draft policy on reforming consumer complaints handling. BATA is the trade body for UK-registered airlines. Our members are British Airways, DHL, easyJet, Flybe, Jet2.com, Monarch, RVL Group, Thomas Cook, Thomson Airways, Titan Airways and Virgin Atlantic.
2. UK airlines need to provide great customer service to attract passengers in the highly competitive markets in which they operate. When things do go wrong, most complaints are resolved amicably without passengers having to resort to contacting the regulator or taking a complaint to court. For example, UK airlines served 133 million passengers in 2013, but the CAA received around 25,000 complaints (an approximate complaint rate of 0.00019%).
3. BATA and its members have been considering how to respond to the changing ADR policy landscape over the last twelve months and we welcome the close engagement and encouragement that we have received from the CAA.
4. We have agreed to explore the establishment of a privately-funded ADR scheme for airline passengers that provides an efficient and cost effective alternative to the courts for passengers and airlines. If the scheme goes ahead, all airlines serving the UK market will be invited to join the scheme. Participation will be voluntary in line with the ADR Directive and the UK Government's position. Most BATA members have indicated that they would join the scheme provided that the scheme is cost-effective and will make their decision at the end of the tender process on this basis. Some BATA members are waiting for the outcome of the tender process before stating their position. One BATA member has indicated that it is minded not to join the scheme.

Q1. Do you agree with our definition of ADR?

5. Yes – the definition broadly reflects the wording of the ADR Directive.

Q.2 Do you agree with the type of complaints that we think should be covered by our policy?

6. We agree that airline passengers have specific statutory rights, for example under Regulation (EC) 261/2004 (denied boarding, cancelled or delayed flights), under the Montreal Convention (delayed, damaged and lost baggage), and under Regulation (EC) 1107/2006 (assistance for passengers with a disability or reduced mobility). As such, an airline ADR scheme should handle unresolved disputes concerning contractual and statutory obligations between airlines and consumers.
7. We agree that the industry should be free to determine whether ADR should be extended to complaints that do not relate to statutory rights or contractual obligations.

Q.3 Do you agree with the geographical scope of our policy?

8. Yes – we agree that there is no evidence that a pan-European system will develop any time soon.

9. We note that in paragraph 12 the CAA states it is proposing to be the competent authority for ADR schemes covering complaints against airlines, airports and travel agents. BATA is seeking to create an ADR scheme for air passengers that includes airlines at first, but could be extended to airports in due course. We do not propose to extend the scheme to travel agents because the vast majority of agent sales are through members of ABTA who have access to the ABTA Arbitration Scheme.

Q.4 Do you agree with our vision for complaint handling?

10. No. The CAA's vision should recognise that the use of ADR is voluntary, not mandatory.
11. The Government has made clear that the ADR Directive does not make the use of ADR mandatory and does not require the UK to force businesses or consumers to use ADR. In sectors where the use of ADR is not compulsory it is for the business to decide whether to use ADR for a particular dispute. The Government concluded:¹

'We believe a blanket obligation on businesses to use ADR is not appropriate at this time. The fees that businesses are charged to use ADR would impose a high annual cost to business. We do not believe that there is currently sufficient evidence that the benefits of making ADR mandatory justify this cost.'

12. The CAA does not present any new evidence to prove or even suggest that the benefits of making ADR mandatory for airlines would justify the costs, yet its vision is for the use of ADR to be mandatory (paragraph 22 and paragraph 31).
13. Participation in the ADR scheme that we are seeking to establish will be voluntary, in line with Government policy and the ADR Directive.

Q.5 Do you agree that private provision for complaints handling with regulatory oversight by the CAA is the best way to achieve our vision for aviation complaints handling?

14. We do not share the CAA's vision, but we believe that private provision for complaints handling with regulatory oversight by the CAA is the best way to establish a scheme that is an attractive alternative to the courts for passengers and airlines.

Q.6 Do you agree that 50% of the market contractually committed to private ADR is an appropriate threshold for the CAA to cease the complaints handling service provided by PACT?

15. We agree that ending the PACT service is a necessary measure to enable the development of private ADR. As the draft policy acknowledges, only UK airlines pay for PACT (a position that is no longer sustainable), and they would not support the costs of PACT *and* private ADR.
16. We do not have a view on what is an appropriate threshold. We note in practice that the 50% threshold means that successful development of voluntary ADR will rest on the participation of a handful of airlines.
17. We want an aviation ADR scheme to attract as many BATA members and other airlines as possible, but participation is voluntary and our focus is on meeting the needs of our members.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377522/bis-14-1122-alternative-dispute-resolution-for-consumers.pdf

Q.7 Do you have any comments on the additional measures that the CAA could put in place to encourage airlines to participate in ADR? Are there any measures that we have not considered above that we should explore?

18. We are concerned that the proposed approach goes far beyond encouragement. We consider some elements inappropriate when the use of ADR is voluntary, not mandatory, and the Directive already contains provisions to encourage participation.
19. We believe the CAA could provide more information and evidence to convince airlines of the benefits of ADR. For example, the draft policy could explicitly set out how the closure of PACT will benefit UK airlines, and provide more of the evidence that supports the case made in paragraph 36 that ADR will deliver better information, an enhanced reputation and provide a more cost effective and consistent alternative to litigation.
20. Simply providing information to the market about which airlines are committed to using ADR may be acceptable, provided the information is presented in a way that does not place a value judgement on an airline's decision to participate or not. We strongly oppose the idea of 'naming and shaming' airlines that do not participate in ADR. This would be completely inappropriate when the use of ADR is voluntary. Consumers would be able to make their own purchasing decisions based on the information in the market.
21. Providing advice to consumers about the process of enforcing a claim against an airline through the courts is appropriate. However, we are strongly opposed to the CAA choosing to signpost the services of specific Claims Management Companies. CMCs are already aggressively targeting airline passengers and they do not offer a cost-effective way for passengers to take cases to the small claims court. In addition, it is not clear how the price and quality criteria would be set. For example, one prominent CMC charges €25 euros and subtracts 27% of the total compensation amount following payment from the airline. Would this be deemed acceptable?

Q.8 Do you have any comments on the additional criteria that the CAA will adopt beyond the minimum requirement by the ADR Directive? Do you consider that the criteria are proportionate? Are there any criteria that we have not considered above that we should explore?

22. We agree that any aviation ADR scheme should be able to make decisions that are legally binding on the company. The scheme that BATA is seeking to establish will make decisions binding on the airline. In addition, if a consumer accepts the decision it will be binding on both parties, but if the consumer rejects the decision they will have the right to have recourse to the courts.
23. We recognise that the CAA would prefer for ADR to be free at the point of use, but welcome the proposal to accept a small fee for consumers to deter frivolous and vexatious claims (fully refunded if the decision is made against the airline). We also agree that fees should be charged on a 'per booking basis'.
24. We agree that fee should be small and should present an attractive alternative to the courts, but we do not agree that the consumer fee should be fixed at £25 – the lowest fee for starting a claim in the civil court. An aviation ADR scheme would consider cases up to the value of £10,000 and the court fee for cases in the small claims court cases range from £25-410 depending on the size of claim:²

² <https://www.gov.uk/make-court-claim-for-money/court-fees>

Claim amount	Sending form to court centre	Using Money Claim Online
Up to £300	£35	£25
£300.01 to £500	£50	£35
£500.01 to £1,000	£70	£60
£1,000.01 to £1,500	£80	£70
£1,500.01 to £3,000	£115	£105
£3,000.01 to £5,000	£205	£185
£5,000.01 to £15,000	£455	£410
£15,000.01 to £50,000	£610	£550
£50,000.01 to £100,000	£910	£815

In addition, consumers have to pay a £40 court allocation fee - to get the claim to the court (if claim is over £1,500) and a £25-£325 hearing fee - paid if and when a case gets to court (when done online).³ Furthermore, we note that ABTA's arbitration scheme has three different fees (£108, 180, £264) depending on the total value of the claim.⁴

25. We do not have a specific amount in mind, but we think it should probably be between £40 and £100 based on the above.

Q.9 Do you agree that the approach the CAA intends to take will help ensure the ADR landscape is navigable for consumers?

26. Yes. We agree that the CAA should continue to provide basic consumer information on its website, and concur that providing a separate frontline advice and guidance service would no longer be necessary if the CAA ceased a complaints handling role. Citizens Advice seem well-placed to takeover these wider functions as they do in many other sectors.

Q.10 Do you agree that the approach the CAA intends to take will help ensure that it continues to meet its statutory duties to receive complaints and that it can contribute to carry out its enforcement functions effectively.

27. Yes – although we repeat our opposition to the CAA sign-posting consumers to CMCs.

Q.11 Do you have any comments at this stage on any of the fallback options available to the CAA if our preferred approach to ADR does not deliver. Are there any other options we should consider?

28. BATA is working to establish an ADR scheme that will attract as many BATA members and other airlines as possible, but participation is strictly voluntary and we do not know how the tender process will turn out, particular in terms of costs. It is prudent for the CAA to have credible contingencies in place should it prove impossible for BATA to establish a scheme.

³ <http://www.moneysavingexpert.com/reclaim/small-claims-court>

⁴ <http://abta.com/go-travel/travel-clinic/arbitration-and-mediation>

29. We would oppose the CAA pursuing a legislative approach to make ADR mandatory in aviation. As set out in paragraph 8, the Government does not believe that there is currently sufficient evidence that the benefits of making ADR mandatory justify the cost and the CAA has not presented any new evidence. Furthermore, other transport modes would also need to be put on a statutory footing to ensure a level playing field.

30. We believe there may be a case for the CAA either supporting the residual scheme or procuring an ADR scheme, but we would want to consider more detailed proposals before making a judgement.

Q.12 Do you have any other comments to make that are not covered by our other questions?

31. No.

BATA
20 February 2015