



Department  
for Transport

**3 March 2016**

**Dear Colleague,**

**Re: Changes to the CAA's policy on consumer complaint handling and ADR**

The UK Civil Aviation Authority (CAA) and the UK Department for Transport (DfT) share the view that encouraging uptake of Alternative Dispute Resolution (ADR) in the aviation sector will improve the passenger experience when things go wrong.

We are therefore jointly writing to you to provide further details of proposed changes to the policy to encourage the use of Alternative Dispute Resolution (ADR) in the UK aviation sector (as set out in the CAA's April 2015 Policy Statement, [CAP 1286](#)), and the way the CAA charges for the Passenger Advice and Complaints Team (PACT) service (as set out in the current CAA consultation on its proposed charges for 2016-17, [CAP 1373](#)).

At the time CAP 1286 was published, the CAA envisaged closing its Passenger Advice and Complaints Team (PACT) service once a critical mass of ADR coverage was achieved. This was defined at the time as participation in ADR by airlines carrying at least half of all passengers to and from the UK.

From reading CAP 1373, you will know that the CAA's policy with respect to closing PACT has changed. In summary, following further engagement with consumer bodies and the European Commission we are proposing that PACT will remain as a service for consumers who cannot access complaints handling via an approved ADR entity.

In addition, the CAA also proposes a new approach to recovering the cost of providing the ongoing PACT service. As set out in CAP 1373, we are consulting on doing this through a fee payable by businesses whose consumers have their complaint accepted by the PACT service (i.e. businesses not participating in ADR) of £150 per complaint. Subject to consultation, this fee will be introduced in June 2016.

This letter sets out the wider context, provides further detail on the changes and offers the opportunity for further dialogue to assist colleagues in responding to the CAA's charges consultation, which closes on 4 April 2016. This letter also provides some information to airlines about their obligations under the ADR Regulations in advance of more detailed guidance which the CAA will be sending out in due course.

**Policy Objectives**

There are three key objectives driving these changes to the CAA's policy:

**Civil Aviation Authority**

CAA House 45-59 Kingsway London WC2B 6TE www.caa.co.uk  
Telephone 020 7379 7311 Fax 020 7453 6244 tim.johnson@caa.co.uk

- The first remains to improve the consumer experience when things go wrong by encouraging the uptake of ADR due to the distinct advantages it brings over the current complaint handling arrangements in the UK aviation sector. This remains unchanged from CAP 1286.
- The second is to ensure that the UK continues to comply with the requirements of the European Regulations on Denied Boarding, Cancellation and Delay (Regulation (EC) 261/2004) and Passengers with a Disability or Reduced Mobility (Regulation (EC) 1107/2006). This will be achieved by ensuring all passengers will have access to redress, either through an ADR body (which their service provider is signed up to and refers them to) designated under and applying those Regulations, or through the PACT service, which will remain available to consumers where the business concerned does not choose to offer ADR.
- The third is to ensure a fairer structure for charges for the PACT service, in order that businesses that choose to offer ADR do not 'pay twice', through subsidising the handling of complaints generated by businesses that do not. This reflects the policy principle established in CAP 1286. The CAA is required by statute to recover the costs it incurs in its regulatory role and in the services it provides. In order to meet this objective, as well as satisfy the key fairness principle, the CAA is proposing a 'user pays' funding model for PACT. In our view this will be fairer than the current approach, which uses passenger and cargo based charges levied on UK airlines and UK airports to fund the service. This policy objective is also aimed at ensuring the longer term financial sustainability of the PACT service and ensuring that businesses face strong incentives to deal with complaints properly themselves (which is a weakness of the current PACT funding model, see Annex A).

## **Background and Context**

Article 16(2) of Regulation (EC) 261/2004 and Article 15(2) of Regulation (EC) 1107/2006 require Member States to ensure that passengers can complain to a designated body about an alleged infringement of the European Regulations. The CAA is currently the only designated body for Regulation (EC) 261/2004 for the UK, and is the designated body for Great Britain for Regulation (EC) 1107/2006 (for Northern Ireland the designated body for this Regulation is the General Consumer Council for Northern Ireland).

Responding to concerns that the policy of withdrawing PACT once half of passengers have access to ADR would leave too many passengers without any opportunity of redress other than going to court we are proposing that PACT will continue to provide a complaint handling service along current lines. This will continue until such time as all passengers have access to an ADR body that is also designated as a body to which passengers can complain under the European Regulations.

Given the momentum that already exists in the industry to move towards participation in ADR, and our belief that consumers will benefit from better outcomes where their disputes can be dealt with under an ADR structure than PACT and/or court, we will ensure that businesses who agree for complaints under the European Regulations to be handled by an appropriate ADR body do not have to pay for the CAA to continue to provide the PACT service. This will be achieved by:

- The Secretary of State designating any ADR bodies that are approved by the CAA as organisations to which passengers can complain under the European Regulations. For the avoidance of doubt, the CAA will approve ADR bodies that charge consumers a nominal fee to use their services, these bodies will therefore be designated. However, in light of concerns raised, we will consider the impact of the fee in a wider review of ADR arrangements in the UK aviation sector, which we will commence by the end of 2017 at the latest.

- PACT not accepting consumer complaints in respect of airlines signed up to designated ADR entities.
- The CAA introducing from June 2016 a charge of £150 for every complaint under the the European Regulations, which is accepted by PACT. This will ensure that businesses who use ADR will not pay for PACT, and that those businesses whose consumers continue to refer complaints to PACT (due to the absence of ADR) will pay in line with the demand that they individually place on the service.

We have set out in Annex A (enclosed) further details of how these measures would operate in practice and are keen to hear your views both in advance of and in your responses to the CAA consultation on charges (CAP 1373). Our intention is to operate this new system for a period of at least 12 months before reviewing its function, learning lessons and potentially consulting stakeholders on further changes to optimise it.

We appreciate the comments we have received to date and would very much like to hear more. To this end we would like to propose a stakeholder meeting with the DfT, CAA and airline colleagues as part of this process of consultation on the CAA's charges, with a view to discussing the details of these policy changes. We would therefore be very pleased if you would join us at Great Minster House on Friday 18 March at 2pm. Further details will be circulated in due course but we would appreciate it if you could let us know whether you will be attending by Friday 11 March by emailing Jonne Olkinuora ([jonne.olkinuora@dft.gsi.gov.uk](mailto:jonne.olkinuora@dft.gsi.gov.uk)). Those of you wishing to respond formally to the CAA consultation on charges (CAP 1373) can do so until 4 April 2016 via the CAA website at [www.caa.co.uk/cap1373](http://www.caa.co.uk/cap1373).

Yours Sincerely



Tim Johnson  
Director of Policy, CAA



Eirik Pitkethly  
Deputy Director, Aviation Strategy and  
Consumers, DfT

## **ANNEX A – SUMMARY OF CHANGES TO COMPLAINT HANDLING IN AVIATION AND IMPLEMENTATION OF ARTICLE 16(2) OF REGULATION (EC) 261/2004 AND ARTICLE 15(2) OF REGULATION (EC) 1107/2006 (THE “EUROPEAN REGULATIONS”)**

In summary, the main points to note from these changes are as follows:

- The key change is that PACT will now not be withdrawn once half of passengers have access to ADR. Instead, from June 2016 PACT will be funded through a charge of £150 levied on the business for every complaint that PACT accepts relating to an alleged infringement by a business of the European Regulations.
- PACT will refuse to accept complaints under the European Regulations from consumers whose service provider has signed a contract with a designated ADR body to handle them. Businesses without such a contract in place will be charged £150 for every complaint accepted by PACT from their customers. This funding mechanism will replace the current arrangements where PACT is funded through charges levied by the CAA on UK airlines and UK airports, which relate to passenger and cargo volumes and have no direct link to complaints referred to PACT.
- After at least 12 months of operation the operation of these revised arrangements (PACT alongside ADR) will be reviewed, optimised, and changed as necessary.

### **1. PACT will remain indefinitely but will now be funded through a direct per-complaint charge**

The CAA will continue to provide a complaint handling service for complaints relating to Regulations (EC) 261/2004 (the Denied Boarding Regulation) and 1107/2006 (the PRM Regulation) where ADR is not available. (Previously, the CAA had intended to withdraw the PACT service if airlines carrying at least half of all passengers to and from the UK signed up to ADR.)

To ensure that PACT is funded in an efficient and equitable way, the CAA is changing the PACT funding model to ensure that businesses who agree to use a designated ADR body for complaints under the European Regulations do not bear any costs of the PACT service. The CAA is proposing to do this by introducing a separate PACT charge in its scheme of charges for 2016-17 (due to take effect in June 2016), and making adjustments to the Air Transport Licence and Regulation of Airports charging schemes, from which PACT is currently funded. The CAA has proposed a charge of £150 per complaint, which reflects the costs to the CAA of running the PACT service.

### **2. ADR bodies, designated in law will be able to handle complaints under the European Regulations and so businesses who agree to use such ADR bodies will not be liable for the PACT charge**

Under the European Regulations Member States must designate bodies to handle complaints. In the UK this process requires the Secretary of State to make and lay a statutory instrument in the Houses of Parliament. Under the revised proposals the Secretary of State will designate ADR bodies in addition to PACT's continuing designation. Given the constraints of Parliamentary timetables the process to designate new ADR bodies will take time. We envisage there may be only limited periods in a year when new bodies can be designated.

For businesses not signed up to a designated ADR body due to the potential time lag between CAA approval and Secretary of State designation (or businesses not signed up to any ADR body at all), if the consumer contacts PACT their complaint will always be accepted (and the business charged accordingly). For the avoidance of doubt, a business that is signed up to an ADR body which is not designated would still be able to signpost the

consumer to that ADR body and encourage them to use its ADR process. However, if the consumer chose to refer their complaint to PACT instead the complaint would be accepted by PACT and become liable for the PACT charge.

There may be instances where a business is signed up to a designated ADR body but a complaint is rejected by the ADR body because the complaint had not been submitted to the ADR body within the time period agreed between the ADR body and the business (see Section 4, below). In such cases, the complaint will always be accepted into PACT (and the business charged accordingly). The only exception would be where the six year limitation period (five years in Scotland) for bringing court action has passed, or where it would pass before PACT had had the opportunity to fully review the complaint. We cover the issue of time periods in more detail in Section 4, below.

Finally, in line with The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 ('the ADR Regulations'), ADR bodies which charge a nominal fee to consumers to use the ADR service can be approved as competent by the CAA and would therefore be designated under the arrangements set out above. We are aware of concerns that such a fee may have a negative impact on consumers' propensity to complain. The CAA therefore intends to commence a review of ADR arrangements in the UK aviation sector by the end of 2017, which will include consideration of the impact on consumers of ADR fees, which could result in the CAA making changes to its approval criteria if the review finds evidence of unwarranted consumer deterrence. These changes could include reducing the maximum fee that can be charged, or removing the ability to charge a fee altogether.

### **3. Compliance with the trader information requirements under the ADR Regulations means signposting a competent ADR body**

Businesses do not have to use ADR but in the event of an unresolved complaint they must inform the consumer whether or not ADR is available. This is a requirement under Regulation 19 ("Consumer information by traders") of The Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 ("the ADR Regulations"). Regulation 19 states that businesses may only signpost ADR bodies that "would be competent to deal with the complaint".

In line with the CAA's stated policy to promote uptake of ADR which meets high standards of consumer protection, the CAA will only consider an ADR body to be "competent" as a matter of course if it has approved that body. Businesses wishing to signpost to ADR bodies approved in other member states will need to liaise with the CAA and provide information about the ADR bodies which they wish to signpost consumers to. Otherwise, those businesses may be at risk of being non-compliant with the trader information requirements (and therefore at risk of enforcement action being taken against them by the CAA).

Businesses are free to signpost consumers to competent ADR bodies that are not designated by the Secretary of State for Transport (as described above) for any dispute relating to their operations. However, if consumers choose not to use such a body for a complaint relating to the European Regulations and choose instead to refer their complaint to PACT, PACT will accept their complaint and charge the business accordingly. Under Article 14(2) of Regulation (EC) 261/2004 all businesses will continue to be required to provide consumers with information about designated complaint handlers at the time of denying a passenger boarding or where there is a long delay or cancellation. Businesses signed up to a designated ADR body may inform consumers of the existence of this body at this point.

For consumer complaints under Regulation (EC) 261/2004 and Regulation (EC) 1107/2006, for those businesses not signed up to any ADR body at all, we request that they continue to signpost the PACT service at the point that they reach 'deadlock' with the consumer

through their own complaint handling process. In addition to being good customer service, it is the CAA's view that this additional signposting can mitigate the enforcement risk for businesses as a result of any isolated failure to comply with Article 14(2) of Regulation (EC) 261/2004.

The CAA will be sending more detailed guidance on the trader information requirements in due course.

#### **4. ADR bodies cannot reject complaints that are less than 12 months old**

Under Regulation 13(e) and 13A(1) of the ADR Regulations 2015, an ADR body may refuse to deal with a complaint that was not submitted to it in good time. This time period cannot be less than "12 months from the date that the trader informs the consumer that the trader is unable to resolve the consumer's complaint (the 'notice date')".

The CAA's view is that the time period can only start to run from the date a business has started to use ADR and not before. For example, if a business joined an ADR body on 1 April 2016, the ADR body could refuse to deal with any complaint where the notice was issued by the business prior to this date (i.e. up to and including 31 March 2016). However, the ADR body could not refuse to deal with a complaint where the notice was issued on or after 1 April 2016 (e.g. a consumer receiving notice from the business on 1 April 2016 would have at least until 1 April 2017 to bring their complaint to the ADR body).

Furthermore, the CAA does not believe a consumer can simply 'reopen' a dispute and obtain a new notice that would provide an entitlement to ADR unless there has been a material change in the circumstances surrounding the complaint.

As set out in Section 2, any complaint where a notice was issued to the consumer before the business joined an ADR body, and the ADR body is exercising its right not to deal with, it would be accepted by PACT and the business charged accordingly (subject of course to the complaint being within PACT's terms of reference). As businesses are free to come to their own arrangements with their ADR bodies to handle complaints that either pre-date the business's participation in ADR, or which fall outside the 12 month timeframe, where such arrangements exist the CAA would need to be informed to ensure PACT does not inadvertently accept complaints that would be eligible for ADR.