CAA statutory charges 2016-17

Consultation on charges (excluding air display and low flying permission charges) CAA response document

CAP 1407

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Executive summary

On 1 February 2016, the CAA set out proposals for our Schemes of Charges due to come into effect from 1 June 2016. As a cost recovery body, not funded by the tax payer, the cost of our activities must be paid by those we regulate.

Our air displays and low flying permission charges within the General Aviation Scheme have been subject of a separate earlier and now finalised consultation (see CAP 1388) and are therefore not included here.

The key proposals under this consultation were:

- 2016/17 operating costs are held at 2015/16 levels, which will enable charges to remain at current levels overall.
- Where new additional activities are required in relation to the pricing review of Heathrow Airport and extra capacity in the south east, specific charging mechanisms have been incorporated to recover these costs.
- Introduction of a new per-passenger complaint charge following the implementation of the European Alternative Dispute Resolution Directive, leading to reductions in the variable charges of the Air Transport Licensing Scheme and the licensed and non-licenced airports, within the Regulation of Airports Scheme.

The consultation ended on 4 April 2016, by which time we had received 15 responses. The majority of these focused on the introduction of the Alternative Dispute Resolution (ADR) Scheme and the proposed per-passenger complaint charge. As such, section 2 of the document has focused on this issue. However, responses to all the feedback received is detailed in appendix 1.

The CAA is grateful for those responses received and, after a CAA Board discussion, is proposing to implement all proposals made with no further amendments. However, it is clear from the responses received that there is confusion surrounding the introduction of the ADR Scheme and when the proposed per complaints charge will be levied. As such, we will be providing further guidance prior to 1 June 2016 and will work with the airlines over the coming months to

determine an effective triage process for our Passenger Advice and Complaints Team (PACT).

The CAA remains committed to controlling its costs while investing in new processes, systems and skills in order to achieve further savings in the future. The key objectives for the CAA is to provide the best possible outcome for consumers, be an efficient and effective organisation that meets the principles of Better Regulation, and to provide value for money in all its activities.

Chapter 1

Consultation responses

1.1 Number of responses

A total number of 15 respondents provided submissions through the consultation exercise. The respondent type can be broken down as follows:

Respondent	No.
Organisations	7
Representative trade organisations	5
Airlines	2
Airports	1
Total	**15**

1.2 The five representative trade organisations that responded were:

- Association of British Travel Agents
- Board of Airline Representatives in the UK
- British Air Transport Association
- British Gliding Association
- British Helicopter Association

1.3 The majority of the responses focused on the introduction of the Alternative Dispute Resolution Scheme and the proposed per-passenger complaint charge. As such, section 2 of the document has focused on this issue. However, response to all the feedback received has been detailed in appendix 1.

1.4 The submissions from the following trade associations / organisations can be found as Annexes to Appendix 1.

- Annex 1 – British Gliding Association
- Annex 2 – British Air Transport Association
- Annex 3 – Board of Airline Representatives in the UK
- Annex 4 – Flybe Ltd
- Annex 5 – Ombudsman Services

Chapter 2

CAA's responses to the consultation

The CAA's responses to the main points raised within the submissions received are detailed in this chapter.

Air Transport Licensing Scheme of Charges

UK Alternative Dispute Resolution (ADR) Scheme

2.1 Concerns over the setting up and running of the UK Alternative Dispute Resolution (ADR) Scheme and the role of the CAA's Passenger Advice & Complaints Team (PACT) going forward.

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. PACT 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).

As set out in CAP 1286 (the CAA's policy statement on consumer complaints handling and ADR, published in April 2015), the CAA had intended to use the withdrawal of the complaint handling element of PACT as an incentive for airlines to sign up to ADR schemes, which offer better outcomes for consumers. This recognised that airlines would not be prepared to bear the costs of both PACT and ADR. However, in late 2015, following enquiries from the European Commission and input from consumer bodies, CAA and the Department for Transport (DfT) reviewed CAP 1286 and the legal advice underpinning it. It was collectively determined that the role of complaint handling bodies designated under the European Regulations is to handle individual complaints (i.e.

investigate and provide a response), rather than simply receive them, as set out in CAP 1286. PACT will therefore continue to provide a complaint handling service along current lines, 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. The key difference from June 2016 is that PACT will be funded through a per-complaint charge in order to preserve incentives for airlines to sign up to ADR, a policy objective that both CAA and DfT support.

We do not consider that the recent CJEU judgement affects this position, given that it focused on the question of whether such bodies "must guarantee each individual passenger's right to obtain compensation". This implies that the process operated by the body will result in a legally binding outcome, which is not a feature of the PACT service. Although legally binding outcomes will be a feature of ADR entities that the DfT will be designating under the European Regulations, the key distinction is that airlines will enter into ADR arrangements voluntarily and outcomes will be binding by contract. As a backstop service, there is no contract between PACT and the airline and therefore no mechanism to make the outcome of the process legally binding.

We therefore consider that the decision to introduce a per-complaint charge for PACT is based on a robust understanding of what PACT, as a designated body, is required to do. The introduction of the charge also ensures that airlines that offer a designated ADR body for complaints under the European Regulations, do not bear the cost of the PACT service. As such CAA will continue to provide a complaint handling service for complaints relating to Regulations (EC) 261/2004 and 1107/2006 where ADR is not available.

Finally, it has been suggested that there is a conflict of interest between our role as a complaint handler under the European Regulations and our role as a competent authority tasked with the approval of ADR providers. We do not recognise this alleged conflict because we are effectively seeking to end our own role in complaint handling by facilitating a switch

to ADR (i.e. we are not a market participant seeking to grow our market share at the expense of ADR providers). Furthermore, our role as a complaint handler and ADR competent authority are separate – and in both cases we can only recover our costs.

2.2 Per-Passenger Complaint Charge (£150)

As a cost recovery body, not funded by the tax payer, the cost of our activities must be paid by those we regulate. Previously the cost relating to PACT was recovered from the variable charges within the Air Transport Licensing (ATL) Scheme and the Regulations of Airports (RAS) Scheme. With the introduction of the per-complaints charge, this has led to reductions within those ATL and RAS variable charges.

The per passenger charge of £150 has been set to recover the cost of PACT, and assumed that approximately 6,000 complaints would be dealt with by the PACT team. Appendix D of CAP 1373 represented 10 months (£775k) of the cost as the Scheme is not due to come into effect until 1 June 2016.

It should be noted that the presentation given by the CAA and DfT on the 18 March 2016 to the carriers highlighting the current position with regard to complaint handling, showing a total of 10,000 complaints being received through PACT. It has been assumed that in 2016/17 4,000 of the complaints will be dealt with through an ADR providers.

The CAA agrees that high levels of ADR uptake would require us to assess whether better value for charge payers could be obtained by delivering the PACT service in a different way. One option would be to outsource the function to a designated ADR provider. We will keep this under review.

2.3 Re-balancing of the Air Transport Licensing (ATL) Scheme and the Regulation of Airports (RAS) Scheme

Appendix D of CAP 1373 shows that the ATL and RAS cost base reduced by £220k and £401k respectfully when compared to the 2015/16 budget.

The reduction primarily relates to the movement of the PACT cost base to the ADR Scheme being £775k (50% of which has been reduced from each Scheme). However, each year the CAA's Consumers and Markets Group review their activities for the following year and determine the most appropriate allocation of costs to accurately reflect their forthcoming activities. This re-allocation has led to the disparity between the revised cost base and the movement in cost relating to PACT.

The income has been set to recover the revised cost base and achieve a 3.5% return on capital employed while removing the cross subsidies that existed previously.

2.4 ADR Entities charging fees to consumers

The CAA is prepared to allow ADR entities to charge a nominal fee to consumers for the sole purpose of deterring frivolous or vexatious complaints, although we have some concerns about such a fee acting as a deterrent to consumers being able to enforce their rights. Where an ADR entity charges such a fee, we will review its impact after a year of operation to see if it is having the intended effect. If it is not then we will make changes to our terms of approval, such as reducing or removing the fee. However, given our concerns, we do not think it is appropriate to impose a fee on consumers where we are responsible for the complaint handling service, as is the case with PACT. As such, airlines should see the option to charge a nominal fee as a benefit of using ADR over PACT.

2.5 ADR annual charge

The CAA has reviewed its expected workload with regard to the annual oversight tasks of ADR providers and is content that the proposed charge of £13,440 is appropriate. This work will be closely reviewed over the coming year and should any adjustment be warranted, then revised proposals will be included in the industry consultation concerning the 2017/18 charges.

Other Schemes of Charges

Personnel Licensing Scheme

2.6 The concerns expressed by the British Gliding Association (BGA) on charges for airworthiness certification of sailplanes, sailplane licences, seminars, instructors and examiners when the BGA carries out most of the regulatory activities with regard to sailplanes.

The CAA values the important and pivotal role the BGA has, and is, playing to ensure the safety and growth of the UK gliding sector of aviation in the UK.

The CAA acknowledges the ongoing concerns that the BGA has highlighted in its submission. The future regulatory EASA requirements for sailplanes are currently being considered, but the UK must adhere to the legislation concerning sailplanes contained within the current EASA regulations. The CAA and the BGA are actively involved in the review currently being conducted by EASA on the future regulatory requirements for the General Aviation sector. Mindful of the topics being debated within EASA, the CAA is working with the BGA to resolve concerns over the current transitory period until at least 2018 when it is expected that the EASA GA regulatory direction will be known.

Chapter 3

Conclusion

3.1 The CAA would like to thank all 15 respondents for their comments to the charging proposals.

3.2 Having discussed the comments received, and due consideration having been given by the CAA Board to the points detailed above, the CAA proposes to implement the charges outlined in the consultation document for the period commencing 1 June 2016 without further change.

Appendix A

Summary of representations received from charge payers and interested parties

Ref.	Topic	Detailed comment	**CAA response**
General points (GEN)			
GEN1	Content with the proposals	**CAA Ref 0313**: No objection to the proposals. **CAA Ref 0317**: Thank you for the opportunity to respond to this consultation. The BHA recognises the achievement of the Regulator in maintaining oversight costs at the current level and is content with the proposals.	**Noted**
Aerodrome Licensing Scheme (ALS)			
ADL1	Removal of the RFFS charges is appropriate but concern over RFFS crew standardisation across EU aerodromes	**CAA Ref 0316**: Rescue and firefighting services (RFFS) - approved training providers". The removal of this charge is appropriate as the requirement for approved training providers has been removed. However, there may be a future question on how RFFS crews are standardised across EU aerodromes when provided training is the responsibility of the aerodromes.	**The CAA will incorporate checks on UK RFFS crew standards within its aerodrome oversight programme.**

Ref.	Topic	Detailed comment	CAA response
ADL2	Unfair to use a banded system of number of ATCOs to charge for a ANSP ATC service	**CAA Ref 0316**: Grant of an Article 169 approval and/or designation of an ANSP to provide air traffic control services and ANSP annual charge by aerodrome. The charge should be based on the number of controllers employed rather than a banding system. A banding system is a negative influence on the decision to recruit an additional controller(s) for small units (i.e. if an airport had 15 controllers and wished to employ one more controller, the banding would change from Charge Ref 5 to Charge Ref 4 at an additional cost of £7,534 per annum). Effectively, smaller ANSPs appear to be subsidising units with many more controllers.	**The method of charging by a banded system based upon the number of ATCOs is not subject to this charges consultation. Any banded system of charging will have a certain number of organisations that appear on the cusp of a band but overall it was based on actual time analysis that was grouped into the various bandings currently operating in order to recover the overall cost of oversight of all ANSPs.**
ADL3	Unclear as to who should pay the MET ANSP annual charge	**CAA Ref 0316**: Meteorological (MET) ANSP charges. It is not clear who is to pay this charge. Is it to be paid by all ANSPs that also provide meteorological observation that is audited by the CAA? If so, what has changed as this service has been previously considered to be part of the standard CAA changes on airports/ANSPs?	**The Scheme of Charges already has a charge for an initial application for an ANSP to provide MET services at an aerodrome. The charge proposal is to bring the ANSP charges in respect of the regulatory oversight of MET service provision into line with the other ANSP charges for ATC, CNS and AIS. The ANSP holder will be liable to pay this annual charge.**
ADL4	The proposed structural charge for ANSP certification and	**CAA Ref 0327**: The proposed structural change for ANSP certification and designation appears to be sensible because it better reflects the costs of re-certification and distributes the cost of regulation more fairly. We would be grateful if the CAA could confirm whether the current charge structure has allowed it to recover the full costs of	**The CAA is responding to the need to ensure cost recovery is achieved in the future even though any under-recovery to date has not been significant.**

Ref.	Topic	Detailed comment	CAA response
	designation is sensible	certifying BAATL at Birmingham and ANS at Gatwick.	
Air Transport Licensing Scheme (ATL)			
ATL1	It is unclear as to how the CAA will operate both an ADR Scheme as well as a PACT service	**CAA Ref 0323**: ABTA supports the concept of ADR - we have operated our own scheme for over 40 years - and support the principle of it being extended to airlines. We acknowledge that the CAA wishes to incentivise voluntary participation by airlines in certified ADR arrangements. However, we are very concerned that the CAA, which is both the EU National Enforcement Body and the competent authority for the approval of ADR entities, is itself intending providing a residual complaints handling service through PACT. **CAA Ref 0324**: The CAA has pointed out itself that it "is required to be a regulator and should therefore avoid situations where it is also a service provider as a conflict of interest could result". We understand the need for the CAA to operate a residual scheme to deal with complaints where Traders have not opted to sign up to an ADR scheme under the regulations but it appears that the residual scheme as envisaged offers no incentives, either in terms of cost or otherwise, to Traders to switch to a non-CAA scheme. We feel (*the charges proposed*) are high relative to the level of fees being charged by other competent authorities and to the likely timeframe which it will take to persuade Traders to subscribe to a non-CAA scheme. It appears to us to be unwarranted while PACT	**See section 2.1 in the main report.**

Ref.	Topic	Detailed comment	**CAA response**
		continues to operate in the market place in circumstances where it does not provide a clear incentive to airlines to switch to a non-CAA scheme. The CAA has a clear conflict in charging other ADR schemes to participate in the market while being a participant itself. **CAA Ref 0326**: It is confusing for airlines that choose not to sign up to an ADR scheme what the new scope of PACT as a residual complaints service will be for 2016/2017. Could you please provide further details on this? Charging airlines that would have correctly assessed the situation and reached the same conclusion as the PACT would be unfair. Has it been considered to charge customers in order to avoid an abusive use of the PACT/ADR system and favour a more balanced approach?	
ATL2	Charges should be paid by consumers as well as by airlines	**CAA Ref 0323**: We would question the complaints based charge of £150 payable by the airline and would ask how this figure has been arrived at. ABTA believes strongly that both parties involved in any ADR should pay for its cost. Charging a fee to consumers acts as a deterrent to frivolous or ill-prepared claims and also encourages efficiency in the resolution process. Consumers have an interest in keeping overall costs low. If no fees were payable by the consumer an even higher number of unsuccessful claims would be started and there would be an increase in frivolous and otherwise unmeritorious claims. **CAA Ref 0326**: Charging airlines £150 on a complaint on which the	**See sections 2.2 and 2.4 in the main report.**

Ref.	Topic	Detailed comment	**CAA response**
		PACT reaches similar view and conclusion would be unfair. Could you please clarify whether the £150 charge is automatically payable by the associated airline, i.e. applicable each time a complaint is lodged by a customer regardless the outcome? Could please explain why £150 per complaint and provide a breakdown that would justify the amount?	
ATL3	Concerns over the setting up and running of the UK ADR Scheme	**CAA Ref 0324**: We believe that payment of any annual fee (other than a nominal registration fee) should only become due at the point at which an ADRE signs up a Trader. Until that point there is nothing to regulate. We also believe that any payment of any such fee should be spread across the year to which it applies (as is being proposed to the Trading Standards Institute with regard to the general consumer ADR residual scheme). **CAA Ref 0325**: We welcome the leadership that the CAA has provided in promoting the use of ADR within the airline industry. However we have concerns that the proposed fee charging mechanism, and particularly the annual charge of £13,440 for each CAA-approved ADR entity, is excessive and may well prove counter-productive. Unfortunately the consultation document provides no detail as to how this charge has been derived, other than that it is apparently based upon the fact that "there have been only three applications received to date", thus implying that the proposed charge has been derived by taking a total cost figure (c£40,000) and dividing by it the number of	**See sections 2.1 to 2.5 in the main report.**

Ref.	Topic	Detailed comment	**CAA response**
		applications. This does not appear to be a very logical approach to adopt, and we would certainly welcome clarification as to precisely what work the CAA proposes to undertake to "meet the requirements under the EU directive" and justify such a cost as in our view the resultant charge is excessive. We note, in particular, that it is significantly out of line with the fee proposals of the largest Competent Authority, the Chartered Trading Standards Institute (CTSI), which has announced that it will charge an audit fee (estimated at between £6,000 for a small case load single scheme and £10,500 for a provider delivering multiple schemes) together with a charge of £2,000 to cover its reporting and admin functions. Since CTSI intend to conduct a full audit only once every three years, with a lower scope audit in the intervening years, this means that its charges in two out of every years should be significantly lower than in year one. However, even in that first year, only a large provider delivering multiple schemes would face a charge anywhere near that proposed by the CAA. A large caseload single scheme provider would be charged around £9,500 in a full audit year, and rather less in years two and three, hence always markedly less than the CAA's figure of £13,440. The CAA will be aware that, at the present time, just two airlines have declared their intentions to sign up to the ADR schemes (one with CEDR and one with Ombudsman Services). The CAA will also be aware of the lengthy debates there have been within the industry, including a significant amount of resistance to the new ADR regime. It	

Ref.	Topic	Detailed comment	**CAA response**
		is, therefore, self-evident that, by the time that the first fee of £13,440 becomes payable, ADR activity in the sector as a whole is still likely to be minimal. Allied to the very low financial returns that airline ADR work will generate (as the CAA will know from its own operating costs for PACT), this means that there is a strong possibility that providers may not have achieved any surplus at all by 1 June 2016, and certainly not enough to cover the proposed CAA fee. This might conceivably limit the number of provider entrants into the market place, but perhaps even more importantly in the short term it is going to impact on the level of additional investment that providers are able to make to promote the new ADR regime, potentially slowing progress towards the CAA's goal of universal take-up. In summary, therefore, we recommend: 1. than operate an overly simplistic cost recovery mechanism, the CAA should follow the lead of the CTSI and develop a pricing structure that reflects the actual level of supervisory work that is required to be undertaken. 2. The nature of that work should be transparent, and should be proportionate to the scale of an ADR provider's activities rather than a single-price fits-all model. 3. Implementation of the charging regime should be deferred until 2017 so as to enable providers to focus their resources upon supporting the CAA's wishes to promote ADR take-up.	

Ref.	Topic	Detailed comment	CAA response
		One suggestion we have as to how the CAA might be able to defray some of the costs arising from our proposals would be for it to increase the per case fee for the PACT service to £210-250 per case. Such a pricing strategy, pitching PACT well above current ADR provider rates, would also assist in encouraging movement away from PACT. **CAA Ref 0645**: *See annex 2* **CAA Ref 0646**: *See annex 3* **CAA Ref 0647**: *See annex 4* **CAA Ref 0648**: *See annex 5*	
Air Travel Organisers' Licensing Scheme (ATOL)			
ATOL1	Why increase SBA renewal charges?	**CAA Ref 0312**: Why are the renewal fees for small business ATOLs (SBAs) being increased by £50 when there is zero inflation?	**Following a formal Consultation with the industry in 2014, Small Business ATOLs (SBAs) will be required to meet new financial criteria as from 1 June 2016, which will necessitate the additional analysis of key financial information by the CAA. The increase in the SBA renewal charge by £50 therefore covers the cost of the new work being undertaken by the CAA and the associated costs in managing the extra data.**
ATOL2	Change of Ownership/Control activity	**CAA Ref 0323**: Change of Ownership/Control - the CAA proposes to increase the charge from £500 to £500 plus an excess charge of £170/hour as incurred by the CAA in assessing the impact of the	**The change in Ownership and Control charges reflects the considerable additional time spent on individual cases over and above that allocated for**

Ref.	Topic	Detailed comment	CAA response
	should not be subject to excess charges	change to a maximum of £80,000. We do have some sympathy as there can be significant costs in undertaking due diligence for what is essentially a bespoke service. However, we believe that an average charge should cover the CAA's costs and there should not be excess charges. ABTA, as a regulator, charges £350.	**a regular change application. The regular charge remains at £500 and will be the only charge for a regular application. However, where the individual case requires considerable additional allocated time, i.e. in excess of a regular application these costs will be recovered from the related applicant at the rate per hour given. Therefore for the majority of cases the charge will remain at £500 only.**
ATOL3	ATOL consultants – ATOL holders should not suffer a cost penalty for taking advice	**CAA Ref 0323**: ATOL consultant - ABTA would question the need to introduce a £200 charge for consultants acting on behalf of individual ATOL holders. Licence holders should not suffer a cost penalty for taking advice; there will often be time and cost efficiencies for the CAA in dealing with represented licence holders, particularly SMEs and micro-businesses, which may be less experienced in regulatory issues. The burden of the cost is likely to fall disproportionately on SMEs and microbusinesses.	**The cost per consultant of £200 is to carry out fitness checks on the individual before they will be authorised to access to the ATOL online system. The charge is to the consultant and per consultant and not per ATOL holder that are represented by that consultant. Therefore it is possible for each consultant to represent a number of ATOL holders over which they will be able to spread the cost.**
Airworthiness Scheme (AWD)			
AWD1	Airworthiness Maintenance approval annual charges should	**CAA Ref 0322**: The Aerodrome licensing scheme provides for an annual fee, or 10 direct debit payments. The recommendation is to make this available for annual Maintenance approval fees. The CAA procedures exist in CAA Finance, and the CAA costs must arise	**The CAA does allow annual charge payers for AOC and Aerodrome License holders and Air Navigation Service Provider holders to pay equal instalments over a 10-month period April to the**

Ref.	Topic	Detailed comment	CAA response
	be payable by direct debit over 10 months	progressively across the year i.e. staff costs.	**following January. We limit this facility to these holders only as this brings in a high proportion, in value terms, of the annual charges from a relatively small number of controllable direct debits. To broaden out to other charge payers of annual charges would increase the administrative effort in, and costs of, overseeing direct debit arrangements. Once we obtain a new Finance system that caters for Account Management requirements then we may consider broadening out this direct debit facility.**
Instrument Flight Procedures Scheme (IFP)			
IFP1	The CAA should delegate the responsibility of checking new or re-designed IFPs, including the ATCSMACs, to the CAA Approved Procedure Designers	**CAA Ref 0316**: There is currently a requirement to regulate through compliance checking new or re-designed procedures; however, the CAA could decide to hand over this responsibility completely to a CAA Approved Procedure Design (APD) organisation (The CAA approves APDs, has regular oversight of them, and conducts audits of their work. It could also be argued that APDs could be made responsible and accountable for signing off for the whole process with no requirement for the CAA to either check the designs or, therefore, charge for this service; the CAA would be able to confirm that APD organisations were compliant through the CAA's normal audit process) and oversee their activities through audit. This would provide both PBR and Service Optimisation.	**At this relatively early stage of outsourcing the IFP design activity to the Approved Procedure Designers (APDs), there remains a requirement to approve both the APDs AND the individual outputs from them, as this delivers tangible evidence that the APD can meet the required standards. This course of action has proved to have been necessary to date, however the CAA is moving towards Performance Based Regulation (PBR) which will be driven by the quality and consistency of APD submissions.**

Ref.	Topic	Detailed comment	CAA response
		If it was felt that there was currently insufficient confidence in the APDs for the CAA to hand over this task completely, the CAA could allow the APD organisations to self-regulate the 5-Yearly Maintenance Reviews of IFPs and reviews of ATCSMAC on behalf of airports/ANSPs who own the risk. There should be no requirement for the CAA to regulate the ICAO/CAP785 requirement for a 5-Year Maintenance Review of IFPs or indeed an ATCSMAC review, especially one that did not require any fundamental design changes. This area should be managed between the aerodrome and ANSP, and the airport's appointed APD organisation to self-certify that a review has taken place and that the IFPs are still fit for purpose and/or that an ATCSMAC has been reviewed. There should certainly be no requirement for the CAA to verify this work as if it is a new or revised design or, therefore, to charge for this service (The Official Record Series (ORS) 5 Number 278 states that the charge is only for 'Preparation and Checking for New or Revised Designs', the 5-Year Maintenance review is not mentioned; however, the CAA is still charging airports as if the IFP is a new or revised design). By not doing this work the CAA could either review its manpower requirement or, preferably, be able to reduce the time taken for new or revised designs of IFPs to be agreed (especially with the increasing number of new procedures, such as Global Navigation Satellite System and Satellite Based Augmentation System).	**Over time and with continued oversight it is envisaged that each APD will progress to a level of performance where it is no longer considered that CAA approval is needed for each and every submission. At this stage the Scheme of Charges relating to IFP will be reviewed.**

Ref.	Topic	Detailed comment	CAA response
		As part of a random regulatory sampling or through formal audit of an APD, the CAA could review an airport's IFPs or ATCSMAC and if errors were found a challenge could be made to the APD.	
Personnel Licensing Scheme (PLS)			
PLS1	Concerns expressed by the BGA on charges for sailplane licences, seminars, instructors and examiners	**CAA Ref 0321**: A fundamental issue for the BGA is a desire to minimise unwieldy bureaucracy and costs to glider pilots imposed by CAA involvement in gliding. With the pressing need to focus its limited resources and attention on the real risks, it is clear that is a CAA priority too. Unfortunately and despite the strategic ambitions of both BGA and CAA, we appear to be no closer to uncoupling expensive CAA administration and associated costs from our activities. *(Please see Annex 1 for the email received from the British Gliding Association which cover a number of points.)*	**See section 2.6 in the main report.**

Annex 1

BGA response to the CAA charges consultation

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2 March 2016

Dear Sir/Madam

BGA RESPONSE TO THE CAA CHARGES 2016/17 CONSULTATION

Background

Sailplane pilot licensing and flight training are currently self-regulated under a UK opt-out from EASA regulation and will therefore continue under established BGA processes within a transition leading up to April 2018.

During the period affected by the consultation;

a. Increasing numbers of sailplane pilots, instructors and examiners will hold Part-FCL licenses, ratings, certificates and authorisations.
b. The cost of participating in the sport of gliding is increasing significantly through charges paid to CAA for administration and oversight activity that, while demonstrating compliance, adds no value.
c. The BGA will continue to work in line with UK Government policies that aim to increase active and equitable participation in sport.

Gliding, Risk and Proportionate Oversight

Gliding is a not for profit recreational air sport activity that takes place from member clubs, many of which are Community Amateur Sports Clubs. These clubs are fundamentally staffed by volunteers. Clubs try to generate a small operating surplus from their member funded activities for the sensible contingency need that one would expect in any well run sporting club. The member club and non-commercial, voluntary aspect of gliding training is perhaps unique within UK general aviation, where for example balloon, micro-light and light aeroplane flight instructors and examiners are normally paid for their efforts.

The measured historic risk to third parties from the activity remains negligible. The BGA continues to take its safety management responsibilities very seriously. Self-regulation and safety management of gliding has been in place for decades including in qualifying and authorising pilots, instructors and examiners and has resulted in an effective safety performance. The BGA is on occasions referred to by CAA as an example to others. As with any other organisation and activity, the BGA safety management system combines a number of elements that are tailored for the nature of the activity.

It is clear from the EASA management board's recent approach to industry and regulators, and from recent output from CAA, that taking a proportionate approach to the regulation of general aviation is vital for continued success. The benefits of limiting CAA involvement in regulatory oversight of general aviation by encouraging organisations to adopt responsibility for safety management that addresses the significant risks are well recognised.

Two Key Concerns

In responding to the consultation, the BGA has two key areas of concern;

1. **Justification for CAA Charges?**

   As noted in our response to the 2014/2015 CAA fees and charges consultation, the BGA is concerned that very similar airworthiness certification renewal/revalidation administration processes carried out between CAA and approved air sport organisations result in significantly different charges. It is unclear why. Similarly, the LAPL(S) and SPL administration processes are the same, but the SPL attracts a higher CAA charge. It's unclear why.

   The CAA has no expertise in gliding. Sailplane examiners are authorised by CAA from the ranks of BGA qualified examiners. The BGA facilitates the standardisation of all sailplane examiners under CAA oversight. As should be the case, there is very little CAA involvement during re-authorisation, with all the effort supplied by BGA volunteer SE's. However, the CAA charges a fee equivalent to at least two hours of CAA time applicable to each FE authorisation, around four hours of CAA time for each FIE authorisation and around six hours of CAA time for each SE authorisation (assuming around £175/hour).

2. **Air sport, not Commercial Flight Training**

   An important element of sport gliding safety management is active supervision. This requires a large number of suitably qualified volunteer personnel and supporting infrastructure including insurance. The BGA training organisation currently manages some 1000+ flight instructors including supporting examiners operating from 80+ sites who provide ground and flight training, on-going proficiency checking, testing and, importantly to us, pro-active supervision of gliding activity.

   A parallel safety management priority is the maintenance and development of standards. The BGA training organisation has access to highly experienced personnel, most of who are BGA examiners, who operate within a centrally facilitated regional structure that provides light touch oversight of gliding operations working with club management teams.

   Gliding's fundamentally volunteer instructors and examiners (in marked contrast to the UK's highly commercialised GA powered aircraft training environment) are crucially important in limiting the costs of participation. In continuing efficient and safe gliding operations it is critically important that affordable access to this experience is not lost. It is a proven fact that cost is a barrier to participation and to volunteering.

Comparison of charges faced by glider pilots

	BGA Charge (ie pre-conversion to FCL)	CAA Charge
Licence issue	£65	£185
Flight Instructor issue, renewal	£138*	£338
Flight Examiner authorisation	£19	£338
Flight Instructor Examiner authorisation	£19	£781
Senior Examiner	See BGA FIE	£1377

*Includes contribution to BGA facilitated aviation risks insurance policy

Proposal

Add a new item as 4.1.1.2

"For authorisation or re-authorisation as an FE, FIE or SE for the SPL or LAPL(S) supported by a recommendation made by the British Gliding Association…"

Yours sincerely

Pete Stratten
Chief Executive
pete@gliding.co.uk

Annex 2

BATA response to the CAA charges consultation

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CAA statutory charges 2016/17 consultation – March 2016

1. The British Air Transport Association (BATA) welcomes the opportunity to respond to this consultation on CAA statutory charges 2016/17 (CAP 1373). BATA is the trade body for UK-registered airlines. Our members – British Airways, Cargologicair, DHL, easyJet, Flybe, Jet2.com, Monarch, RVL Group, Thomas Cook, Thomson Airways, Titan Airways and Virgin Atlantic – employ over 74,000 people and served 138 million passengers and carried one million tonnes of cargo in 2014.

Summary

2. The CAA is right to recognise the challenges that the industry continues to face in the foreword to the consultation. It is not just the CAA that faces significant cost pressures. We welcome the fact that charges will not increase overall, but instead remain at current levels overall for 2016/17. We expect to see reductions from next year as the CAA's transformation programme and performance based regulation work streams and other efficiency measures bear fruit.

ADR and PACT

3. UK airlines need to provide good 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 CAA or taking a complaint to court. For example, BATA's member airlines served 138 million passengers in 2014, but the CAA PACT team handled around 11,500 complaints relating to our members in the year to March 2015 (an approximate complaint rate of 0.000083%).

4. Our members have not opposed the introduction of ADR into the aviation sector on a voluntary basis. Indeed, one member has already signed a contract with an ADR provider and others have stated their commitment to using ADR. Some members are waiting to see how this new market develops and are considering what is right for their customers as provided for by the ADR Directive and its implementation by the UK Government. The following comments should not be construed as indicating opposition to ADR.

5. It was disappointing to learn about a significant change of policy regarding the closure of PACT from this consultation document rather than through direct engagement given the collaborative approach that both the CAA and BATA have taken together on ADR over the last 18 months.

6. We are struggling to understand how the CAA's interpretation of its 261 and 1107 requirements could have changed so fundamentally between CAP 1286 and CAP 1373.

7. In CAP 1286, the CAA stated in paragraph 58, table 2: *'For Regulation EC 261/2004 complaints, which represent around 80% of current PACT complaints, the CAA providing any kind of complaint handling service is likely to be a disincentive to airlines using a private ADR entity.* ***Therefore, we will only do the minimum required in terms of handling complaints under the Regulation. This is likely to mean us treating the complaint as intelligence to support our enforcement work*** *(mirroring the approach we would take for airlines that do join ADR, see above). We would not seek to investigate and mediate individual complaints as PACT does at present. Instead, we would encourage consumers to report the apparent infringement to us, and provide information on our website explaining the law and how consumers can seek a remedy through the courts.'*

8. In a letter dated 3 March 2016, the CAA states: *'In summary , following further engagement with consumer bodies and the European Commission we are proposing that PACT will remain as a services for consumers who cannot access complaints handling via an approved ADR entity.'*

9. We would like to know if the CAA sought legal advice on its interpretation of its 261 and 1107 requirements before reaching the conclusion set out in CAP 1286. Has any legal advice been sought since engagement with the European Commission and consumer bodies, and if so has the advice changed? Finally, we would like to know which consumers bodies the CAA engaged with before changing its interpretation and whether any airlines were consulted during this period.

10. On 17 March 2016, the Court of Justice of the European Union issued a judgement on joined cases C-125/15 and C-146/15, K.Ruijssenaars, A.Jansen and J.H.Dees-Erf v Staatssecretaris can Infrastructuur en Milieu. The headline of the press statement on this judgement states: *'National authorities carry out general monitoring activities in order to guarantee air passengers' rights but are not required to act on individual complaints. However, that power may be given to them by national legislation.'*

11. We seek clarification as to whether this very recent judgement will have any impact on the CAA's interpretation of its requirements set out in the letter dated 3 March and given effect in CAP 1373. To the untrained legal eye, it appears to imply that retaining PACT is not an EU regulatory requirement and that the CAA's initial interpretation of its requirements was correct.

12. Having made the decision to retain PACT, we welcome the CAA's proposal to change the way it is funded. We strongly support the decision to fund PACT by a new complaints-based charge rather than through the variable charges within the Air Transport Licensing Scheme and Regulation of Airports Scheme. A per-complaint fee will ensure that the cost of PACT is shared fairly between UK and international carriers, which is not the case under the current charging system. We support also the principle of polluter pays and agree that airlines who offer ADR should not have to fund PACT in addition.

13. We urge both the CAA and Department for Transport to resolve the issues around designation by the Secretary of State of bodies that can handle 261 and 1107 claims as quickly as possible. Early adopters of ADR should not be left in situation where they risk having to pay for both ADR and PACT because their ADR provider has not been designated. Lengthy time lags between ADR providers being approved by the CAA and being designated by the Secretary of State must be avoided. Providing simplicity for the consumer and preventing airlines from paying twice are compatible objectives.

14. A charge of £150 per complaint is proposed, but CAP 1373 does not provide sufficient information to adequately scrutinise or challenge this figure.

15. The table in appendix D suggests that the CAA is forecasting that the cost of and income from passenger complaints will be £775k in 2016-17. This contrasts with the presentation given by the CAA and DfT to carriers on 18 March which suggested that the cost of dealing with 10,000 EC 261 and 1107 complaints was £1.5m (c. £1m for cost of PACT team and £500k in indirect costs).

16. If £1.5m is the correct figure based on a revised caseload estimate, this should be reflected in commensurate further reductions in the variable charges within the Air Transport Licensing Scheme and the Regulation of Airports Scheme. The reductions must be set at a level that will deliver a total reduction in costs equal to the increase in costs through the new per-complaint charge as intended.

17. We welcome the information that was provided to BATA offline about the calculations behind the proposed changes to the charges. We suggest this level of information be provided in the consultation document itself to enable scrutiny in future.

18. The CAA should take every step possible to reduce the per-complaint charge. We believe there may be opportunities to learn from the policies or processes used by ADR providers such as complaint triage.

19. We are concerned that consumers may find it difficult to understand the new arrangements. We would welcome the CAA issuing information or guidance to both consumers and airlines to clarify how PACT will operate in an environment where some airlines are using ADR. Consumers in particular will need to understand which complaints PACT will and will not handle (e.g. 261, 1107, Montreal and trading fair complaints that have reached a deadlock between an airline and the passengers and where a designated ADR provider is not offered). We strongly urge dialogue between PACT and an airline before a case is accepted (and therefore subject to a charge) to minimise the number of cases that require consideration by PACT.

Annex 3

BAR UK response to charges consultation

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April 2016

BAR UK response to CAA statutory charges 2016/17 consultation

On behalf of its members, BAR UK is pleased to present its response to the CAA consultation on statutory charges for 2016/17 (CAP 1373).

BAR UK is an airline trade organisation representing over 70 scheduled airlines undertaking business in the UK. Our members are scheduled network airlines mainly operating into Heathrow, Gatwick and Manchester, with a smaller proportion also operating across regional UK airports.

BAR UK airlines place great importance on the cost efficiency and operational performance of the CAA as the industry regulator since the operating budget is recovered from the industry through the charging regime. We therefore welcome the ongoing efficiency gains and also support initiatives that reduce costs whilst not impeding the safety and regulatory functions of the CAA.

This response focuses specifically on the main changes proposed to the statutory charges that affect our airline members.

The change in CAA policy on ADR and PACT since CAP 1286 (Consumer complaints handling and ADR) was published in April 2015 was unexpected. We are disappointed that an important policy change was not sufficiently communicated or proposed with the level of industry engagement that we would expect of our regulator. We note that a letter to airlines was sent some four weeks after the consultation was published.

The following views put forward in this response have the agreement of our members. Being an association, our responses are general in nature as we are unable to respond on specific competition issues, carrier economic data or to present views of an individual airline.

Contact

Dale Keller
Chief Executive
BAR UK

Email: dale.keller@bar-uk.org
Tel: 07740 174 815

A) Alternative Dispute Resolution (ADR)

The introduction of ADR for the airline sector on a voluntary basis provides a consumer focused dispute resolution service that is of interest to airlines in reducing the number of customers unnecessarily paying fees to law firms in order to claim compensation due under EU regulation EC261/2004, minimising the incidence of court cases and further aiding customer service.

Airlines consistently deliver a high level of service in a fiercely competitive market and where brand reputations are a vital element to success. The vast majority of customer feedback and complaints are responded to and resolved amicably. Only the most complex cases, where legality is in question or where the airline and consumer fail to agree, end up being presented to the CAA or to the courts. These cases represent only a tiny fraction of the correspondence between airlines and their customers and would scarcely register in percentage terms against the total UK air travel market.

Each airline will undertake its own detailed evaluation of the benefits of joining a specific ADR scheme provided by a CAA approved ADR entity. BAR UK has communicated previously to the CAA that member airlines indicated they were waiting for more than one ADR entity to be approved by the CAA since procurement procedures would make it difficult to engage with a monopoly provider for a voluntary service. It was also evident from the outset that smaller and foreign airlines would most likely evaluate how the larger UK registered airlines implemented ADR in the UK before coming to decisions.

Challenges also exist for many member airlines that operate across numerous EU member states that are experiencing different interpretations or procedures being implemented by NEB's. There is a strong desire from airlines for uniformity in processes and procedures for such EU wide regulations. This is in the spirit of Article 26 of the EU ADR Directive stating that *'This Directive should allow traders established in a Member State to be covered by an ADR entity which is established in another Member State.'*

It is concerning that the CAA has stated a requirement for airlines to provide proof that an ADR entity they are using in another member state meets the approval and designation requirements of the CAA. It is surely sensible that NEB's should communicate with each other and to publish lists of approved and designated ADR entities in each EU member state, as required under the EU ODR Directive.

BAR UK also questioned the UK requirement that ADR entities become designated as ADR bodies by the Secretary of State for Transport. This requirement is not directly referred to in the EU ADR Directive but designated bodies are referred to in Article 16 of EC261/2004. That body in the UK is currently the CAA.

It is important that approved ADR entities in the UK are granted designation at the earliest opportunity since there would be no incentive for an airline to join a non-designated ADR if that airline would still be subject to PACT determinations and charges.

It should also be noted that airlines are generally concerned about the high costs being quoted for ADR schemes in the UK compared with other EU member states. In many cases court costs would be lower than the cost of ADR, although the difference in objectives and perceptions of using courts over an ADR is well noted by both parties.

Whilst we appreciate that the CAA are actively encouraging all airlines to participate in ADR, such encouragement should firmly remain within the legal scope of a voluntary scheme.

B) Legal requirement for the CAA to provide determinations on individual consumer complaints

The unexpected change in policy by the CAA on PACT has been cited by the CAA as a belief that the proposals are sufficient to comply with Article 16 of EC261/2004 and the requirement to cover costs under the Civil Aviation Act 1982 section 11. Fundamental to future policy should be establishing the legal requirement for the CAA to investigate and provide determinations on individual consumer complaints as opposed to accepting complaints that feed into the wider compliance requirements of the NEB.

The recent ECJ judgment supports the BAR UK position that there is no requirement under EU261/2004 for the Article 16 body to engage in complaints handling of individual cases. The Court of Justice of the European Union issued a judgement on joined cases C-125/15 and C-146/15, K.Ruijssenaars, A.Jansen and J.H.Dees-Erf v Staatssecretaris can Infrastructuur en Milieu. This judgement states *'National authorities carry out general monitoring activities in order to guarantee air passengers' rights but are not required to act on individual complaints. However, that power may be given to them by national legislation.'* The judgement makes very clear that the sections of Article 16 have to be read together. ***Para 30:*** *'As the individual components of Article 16 of Regulation No 261/2004 form a coherent whole, Article 16(2) and Article 16(3) must be read as specifically identifying the various aspects of the task entrusted to the body referred to in Article 16(1).'* Together with ***Para 31:*** *`In particular, the 'complaints' which any passenger may make to that body pursuant to Article 16(2) of Regulation No 261/2004 are to be regarded as a form of alert signal intended to contribute to the proper application of the regulation in general, without that body being required to act on such complaints in order to guarantee each individual passenger's right to obtain compensation.'*

The judgement indicates that the complaints function is a feature and an ingredient of the enforcement function under 16(1), not a separate dispute resolution process which the CAA is envisaging via PACT.

We also note that in CAP 1286, the CAA stated in paragraph 58, table 2: *'For Regulation EC 261/2004 complaints, which represent around 80% of current PACT complaints, the CAA providing any kind of complaint handling service is likely to be a disincentive to airlines using a private ADR entity. Therefore, we will only do the minimum required in terms of handling complaints under the Regulation. This is likely to mean us treating the complaint as intelligence to support our enforcement work (mirroring the approach we would take for airlines that do join ADR, see above). We would not seek to investigate and mediate individual complaints as PACT does at present. Instead, we would encourage consumers to report the apparent infringement to us, and provide information on our website explaining the law and how consumers can seek a remedy through the courts.'*

C) Retention of PACT as a residual service

We agree with the CAA statement on page 33 of CAP 1373 that *'The CAA believes that the future of consumer complaints handling in aviation lies not in the CAA handling individuals' complaints as it currently does, but in private ADR schemes, such as consumer ombudsmen.'*

BAR UK believes that the CAA has been inadequately resourced and does not have the IT software in place to manage customer complaints on an individual casework basis whereby a determination is provided that is not legally binding. It is also important to note that a residual service by PACT for customers of airlines that are not participating in a voluntary ADR scheme does not meet the specification of a Residual ADR as specified under Article 24 of the EU ADR Directive.

It therefore appears that the UK Government has expressed a preference not to appoint a Residual ADR to cover aviation, presumably on cost grounds.

We have to again refer to the legal requirement as determined by the ECJ judgement above in respect to Article 16 of EC261/2004.

D) Introduction of charges for PACT

Should the legal requirement referred to in section B) be upheld, the proposal to charge airlines for this individual casework only then becomes relevant.

BAR UK airlines do not oppose the principle of fairness in charging where it can be determined that costs incurred by the CAA are directly proportionate to compliance work for specific airlines. Under the Civil Aviation Act 19822 (CAA82) the legislation gives the power to charge (and where charges are imposed, they should be referable to expenses incurred) but it does not impose a requirement or an obligation to charge. However, we have significant concerns as to the methodology of how the CAA has determined the proposed charge of £150 per customer complaint received and note that there were no supporting justifications supplied with the CAP 1373 document.

With a number of large airlines, including Ryanair, British Airways and EasyJet, advising their intention to join ADR since the CAA calculations were made in preparation of CAP 1373, well over 50% of the market is due to be covered under ADR and we would thus expect that the complaint volumes will fall significantly short of the CAA's initial projections. Appendix D of CAP 1373 forecasts that the income from passenger complaints will be £775,000 in 2016-17. However, in the CAA presentation to airlines on 18 March it was suggested that the cost of handling the estimated 10,000 EC 261 and 1107 complaints was £1.5m (c. £1m for cost of PACT team and £500k in indirect costs). The legal requirement to receive and monitor customer complaints and the costs of monitoring the designated ADR providers should be significantly lower. The review of the legal requirements and level of participation in voluntary ADR schemes should result in a detailed reassessment of the PACT structure, resources and costs.

We also have concerns over the economy of scale in maintaining PACT should, for example, 90% of the market be covered under ADR. The fixed costs of operating PACT over a small number of airlines would create a unit cost per complaint that is simply not viable. It is also important that the costs of monitoring and regulating the designated ADR providers do not fall upon these remaining airlines.

Should such charges be introduced, we note the following confirmations by the CAA:

- The CAA will not charge a fee if the passenger fails to first file his or her claim directly with the airline and has not received a letter containing the requirements of a deadlock.

- The CAA will not charge a fee if the claim filed is clearly frivolous or outside the scope of the Regulation, such as a flight from outside the EU on a non EU airline.

E) Clarity and communications

We are concerned that consumers may find it difficult to understand the new arrangements.

For example, the CAA has issued instructions on 10 March 2016 to airlines that PACT must be referenced on websites and in notice provisions by airlines that fall within the requirements of annexes 3 to6. This could result in a significant number of customer queries and complaints

being directed to PACT instead of first to the airline and thus immediately fall outside the scope of acceptance by the CAA requiring that deadlock has been reached.

We would welcome the CAA issuing information or guidance to both consumers and airlines to clarify how PACT will operate in an environment where some airlines are using ADR. Consumers in particular will need to understand which complaints PACT will and will not handle (e.g. 261, 1107, Montreal and trading fair complaints that have reached a deadlock between an airline and the passengers and where a designated ADR provider is not offered).

F) Claims Management Companies

Airlines recommend that the CAA investigate the potential for consumer harm from the direct touting of claims management companies (CMC's) within airport terminals. Airlines will raise this issue with the Airport Operators Association (AOA).

One of the objectives of the EU ADR Directive is to unblock the court system from these types of consumer disputes, particularly where a regulated compensation amount is involved. Airlines therefore raise the issue whereby CMC's are regularly splitting bookings of multiple family members or companions into individual court claims in order to increase their cost recovery.

Annex 4

Flybe response to charges consultation

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Civil Aviation Authority
CAA House
45-59 Kingsway
London WC2B 6TE

For the attention of:

4 April 2016

Consultation on Changes to the CAA's policy on consumer complaint handling and ADR

Dear Sirs,

We refer to your letter dated 3 March 2016 seeking formal response to the CAA consultation on charges (CAP1373). We attended the meeting on 18 March 2016 with the DFT, the CAA and other airline colleagues at which the following points were confirmed:

- The CAA is not looking to close the PACT and the PACT will remain as a service for consumers.
- The airline has a choice on whether to subscribe to the ADR procedure. If an airline does not wish to use ADR then the consumer has the ability to use the PACT, with the option of civil action available to an aggrieved passenger in the event that the complaint cannot be resolved before the PACT.
- The ADR decision is binding on the airline but not on the passenger.
- There will be no nominal fee charged to the passenger for either the PACT service or ADR.
- The PACT will charge the airline £150 per claim.
- The PACT or ADR provider will be dealing with EU261, Montreal convention, PRM or trading fairly type of claims

We comment on these points as follows:

- The calculation of the £150 per claim should be transparent and clearly explained how it is calculated.

- Flybe do not receive the same number of claims as a large airline does. The PACT charges of £150 per claim do not reflect the fact the PACT handle a small volume of claims for Flybe comparing to the other larger airlines. This charge is clearly disproportionate to the number of claims received. We feel that the charges should take this into account and be readjusted to a lower charge. With this £150 per claim we will incur a significant increase of costs which has a bigger impact on Flybe being a small airline.

- The passenger's application to have a matter referred to PACT should only be permissible (and hence charges should only be payable) if:
  - ✓ There has been prior contact with Flybe to try to resolve the claim
  - ✓ There is a valid claim on the face of the complaint

- There should be a charge to passenger as a deterrent to spurious claims. The courts charges

court fees to deal with cases so it should be similar with the PACT. The passengers should contribute to the costs of the PACT by paying a fee, even if it is less than that payable by the airline. Even a £25 fee would be a sensible compromise.

- The finding by the ADR provider/PACT is not binding on the consumer but only on the airline. The consumer may still choose to issue proceedings. We would therefore, incur the cost of the ADR process, in addition to the legal costs associated with court action which is not a cost effective approach to us.

- We believe that it is unlikely that the approved ADR entity, will have sufficient knowledge or expertise on the issues that will arise, and will therefore rely on the airline to provide necessary guidance on the bespoke areas of law, and technical issues.

We have considered the advantages and disadvantages of implementing ADR and came to the conclusion that at this stage the PACT is a better solution for us as the ADR provider is more expensive and the decision is binding on the airline. However, we would urge the CAA to revise the charge per claim to take into account the small volume of claims received from Flybe as the costs will affect significantly our business.

Yours faithfully,

Legal Department
FLYBE LIMITED

Annex 5

Ombudsman services response to charges consultation

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Ombudsman Services

Good for consumers – Good for business

Response to Civil Aviation Authority consultation on Statutory Charges 2016/17

6 April 2016

CAA consultation on Statutory Charges 2016/17

Ombudsman Services' (OS) response

1 Summary - About OS

Established in 2002, The Ombudsman Service Ltd (TOSL) is a not for profit private limited company which runs a number of discrete national ombudsman schemes across a wide range of sectors including energy, communications, and property.

We are an independent organisation and help our members to provide independent dispute resolution to their customers. Each scheme is funded by the participating companies under our jurisdiction. Our service is free to consumers and, with the exception of an annual subscription from Department of Energy and Climate Change (DECC) for the Green Deal, we operate at no expense to the public purse. OS governance ensures that we are independent from the companies that fall under our jurisdiction and participating companies do not exercise any financial or other control over us.

We have in the region of 10,000 participating companies. Last year we received 220,111 initial contacts from complainants and resolved 71,765 complaints. We saw a year on year increase in complaints of 118% between 2013 and 2014 and a further 35% increase between 2014 to 2015. In the energy industry alone we have witnessed a 336% increase in complaint volumes between 2013 and 2015. The company currently employs more than 600 people in Warrington and has a turnover in excess of £27 million.

In July 2015 the EU Alternative Dispute Resolution Directive (the ADR Directive) came into force requiring all member states to ensure that ombudsman or ADR schemes are available in every consumer sector. The Department for Business Innovation and Skills, the government department responsible for implementing the ADR Directive in the UK, called upon the market to plug the gaps where no ADR provision existed and

to coincide with this in August 2015 we formally launched our new portal (http://www.consumer-ombudsman.org). The launch of this website was welcomed by BIS and means that consumers can raise a complaint about a product or service in any sector where there is no existing redress provision - including retail, travel and home improvement.

Our complaints resolution service operates once a company's own complaints handling system has been exhausted, and we have the authority to determine a final resolution to each complaint. Our enquiries department handles primary contacts and makes decisions on eligibility. If a complaint is not for us, or has been brought to us too early, we signpost the consumer and offer assistance. Eligible complaints are then triaged. The simplest can be resolved quickly, usually by phone in two or three hours. Around 10% are dealt with in this way. For the majority of complaints we collect and consider the evidence from both parties, reach a determination and seek agreement; about 55% are settled like this. The most complex cases require a more intensive investigation; they may require more information and lead to further discussion with the complainant and the company to achieve clarification. The outcome will be a formal and binding decision.

Traditionally our key focus has been on handling individual complaints and ensuring that consumers, where appropriate, receive redress. In future we will take a much more proactive role. Firstly, through identifying and tackling issues in individual companies, and making recommendations to improve customer service and complaint handling. Secondly, by identifying systemic industry wide issues and either making recommendations for improvement, or referring them to the appropriate body for action. This will allow us to make a stronger contribution to tackling consumer detriment in the sectors in which we operate, and in addressing emerging problems before they become systemic.

We are 'Good for Consumers and Good for Business'.

For consumers, we offer a free, fast and accessible form of civil justice with no requirement for legal representation or specialist knowledge, and with a particular focus on access for vulnerable consumers. We ensure that complaints are dealt with swiftly

in an impartial manner, and we make decisions based on what is fair and reasonable, not just the narrow remit of the law.

For businesses, we offer a fast and low-cost alternative to the courts, and make decisions based on expertise in industries. By looking to resolve disputes, we promote brand loyalty and repeat purchasing as well as building reputation and trust. We offer guidance on improving standards of service hence sharpening competitiveness. We go beyond individual complaints to find broader trends which can be a source of innovation.

More broadly, we provide an efficient and effective means of addressing consumer detriment and building business capability without recourse to the public purse. We take pressure and cost away from small claims court and legal system and help to build consumer confidence which bolsters the economy.

2 Specific response to the questions

OS welcomes the opportunity to respond to the consultation. We have the following points to put forward:

Proposed Changes to Air transport licensing scheme

OS supports CAA's aim to transition the provision of redress in the aviation sector to independent, private ADR schemes with the regulator fulfilling an oversight and monitoring role. We note CAA's plan to eventually close the existing PACT scheme once a sufficient number of airlines have signed up to private ADR.

We note that the costs of PACT are currently covered by the fees paid under the Air Transport Licensing Scheme and the Regulation of Airports Scheme. We understand from the consultation document that in order to incentivise airlines to move away from PACT and encourage them to sign up to private ADR schemes, CAA intends to make changes to the Air transport licensing scheme so that airlines are charged a £150 per complaint case fee. We note that the proposed changes would come into effect from 1 June 2016.

While we support the principal of introducing a separate charge for PACT, we believe that in order to create a compelling reason for airlines to voluntarily sign up to private ADR, CAA may wish to consider increasing the PACT case fee from the £150 figure proposed in the consultation document.

As long as PACT remains an agreeable option for the industry, we are concerned that there will be little to incentivise airlines to seek out alternative arrangements and engage proactively with private schemes. Many airlines may be inclined to simply continue with their current redress arrangements under PACT. We believe that this would be detrimental to the industry, as our extensive experience as a multi sector ombudsman tells us that for an ADR scheme to deliver maximum benefits for both consumers and businesses, it should go beyond the basic complaint handling function (as performed by PACT) and use its insight and expertise to deliver industry improvement. Our experience in regulated industries also shows us that the information collected by ADR schemes can form an important part of the regulatory framework around identifying and managing risks. Therefore, we believe that guiding the aviation sector towards adopting high quality ADR should be a priority for CAA to allow both airlines and passengers to benefit from it.

We also note that, as part of its role as a competent authority under the EU ADR Directive, CAA is proposing a charge of £5,600 to consider applications from private schemes wishing to become ADR entities in the aviation sector.

As a multi-sector ADR provider, Ombudsman Services is approved by several competent authorities including the Chartered Trading Standards Institute (CTSI), the UK's competent authority covering all ADR schemes in non-regulated sectors. We note that CAA's proposed fee for initial applications is in line with that of CTSI, which currently charges prospective schemes £5,000-£5,750 (+vat) to consider initial applications. OS therefore agrees that CAA's proposed application fee is reasonable and is consistent with the charges of other competent authorities.

However, we note that CAA is also proposing to charge approved ADR entities an annual fee of £13,440. This figure is considerably higher than the £2,750 (+vat) annual fee which CTSI will be charging the ADR entities under its jurisdiction. We

acknowledge that, due to the nature of its role as a 'catch-all' competent authority, CTSI has naturally approved significantly more ADR entities than CAA. This no doubt means that CTSI will benefit from greater economies of scale than CAA when it comes to carrying out regular audits/reviews of approved ADR schemes as dictated by the EU ADR Directive. However, OS would nevertheless be keen to see a breakdown of how CAA intends to use this fee. We would suggest that a large part of this fee should be used to ensure that robust processes are in place to verify that all ADR schemes in the aviation sector are performing to high standards.

We would also suggest that CAA uses part of this fee to go beyond the information obligations in the ADR Directive itself and use its own information powers under the Civil Aviation Act 2012 to ensure that consumers are informed about which airlines offer ADR (and which do not) at every stage of the consumer journey, from searching to purchasing air travel arrangements.

We note that in its document 'CAP 1286: Consumer complaints handling and ADR - CAA policy statement and notice of approval criteria for applicant ADR bodies', CAA has stated:

'1. The CAA will rigorously enforce the ADR Directive's information requirements, which oblige businesses to tell consumers if they are not prepared to use ADR; 2. We will provide additional information to the market under our consumer information powers, if we feel this will sharpen incentives for industry to participate in ADR.'

We would suggest that 2, above, should also take priority over 1 as we believe that the information obligations in the ADR Directive (by comparison to those CAA has under the 2012 Act) are limited in their potential to drive change in consumer choice/behaviour and to drive change in the willingness of airlines to sign up to ADR. This is because under the ADR Directive, this information only has to be provided *after* a dispute has arisen.

We believe that CAA should use part of the annual fee to deliver 2, above, in a consistent and transparent manner to ensure that consumers are aware of ADR and which airlines have signed up to it at the point of sale or earlier. Our experience in other

sectors tells us that well informed consumers make better choices, not just based on price but on the quality of customer service, including whether a company offers ADR to help resolve disputes should things go wrong.

In respect of the annual fee, we would also like to make the point that unless airlines are incentivised to move away from PACT and sign up to private ADR, approved ADR entities could potentially be paying a £13,440 annual fee while receiving little or no revenue from the sector. This would clearly not be viable in the long term and may force providers to consider relinquishing their approval. Even if airlines do begin signing up to private schemes, the £13,440 fee would have to be passed on to the airlines either as part of the case fee or through some form of subscription fee. This may make it even more difficult for private schemes to offer an attractive alternative to PACT's pricing, and further supports the point made earlier in this response in respect of increasing the proposed £150 PACT case fee.

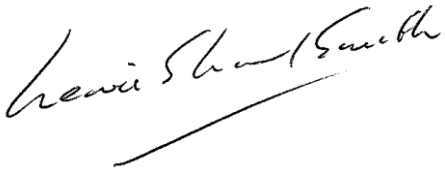
We believe that the take up of private, high quality ADR could deliver real benefits in this sector and an ombudsman scheme in particular could add the greatest value. In addition to the primary complaint handling role carried out by all ADR bodies, an ombudsman scheme also uses the information it collects to identify both company-wide issues and more systemic, industry-wide issues. An ombudsman uses its insight to make recommendations or to take action to improve things. For consumers, this helps deliver benefits to a much larger group of people, not just those who have turned to the ombudsman for help. For individual companies, ombudsmen help to identify areas for improvement, sharpening competitiveness and building brand loyalty and reputation. And for whole sectors, an ombudsman can help drive improvements and innovation, leading to increased trust and confidence and therefore greater consumer engagement in the market.

We would therefore urge CAA to take steps to ensure that private ADR schemes such as OS are able to offer an attractive alternative to PACT without having to compromise on the quality and value that we can offer to this sector.

I trust that this answers the consultation questions in full, but if you would like us to clarify any of the points made in this response please don't hesitate to get in touch.

Ombudsman Services
Good for consumers – Good for business

Yours sincerely



Lewis Shand Smith
Chief Ombudsman & Chief Executive

6 April 2016