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Supplementary note: CAA consultation on revisions to 'CAP1324 - Policy for ADR applicants and approved ADR entities'

Supplementary note to Which? response to CAA consultation on revisions to 'CAP1324 - Policy for ADR applicants and approved ADR entities'

Which? submitted a response to the Civil Aviation Authority's (CAA) consultation on revisions to 'CAP1324 Policy for ADR applicants and approved ADR entities' on 25th September 2020. We welcome the additional 'explanatory note' published at the reopening of the consultation in October and, in light of this, we take the opportunity to issue a supplementary note to our existing official response.

We note many of the proposals of the CAA in the revised Policy do not appear to fall within the scope of Schedule 3 of the Alternative Dispute Regulations 2015 or within any additional statutory remit of the CAA to specify requirements that go beyond those in Schedule 3. Under Regulation 9(5), requirements not within Schedule 3 must be limited to those that are 'imposed for ensuring a higher level of consumer protection'. We are concerned in particular as follows:

- We strongly believe that some of the clarifications in the 'explanatory note' further illustrate how the proposed rules fail to address the weaknesses of the current ADR regime in aviation. Ultimately, they strengthen our call for mandatory ADR membership in this sector in the form of a single statutory-backed ombudsman.
- We are concerned by the CAA's view that post-decision reviews would be an opportunity to give airlines a 'right of reply' to ADR schemes' decisions on cases. We consider this 'right of reply' analogy as problematic and question the intent of this facility. We're also disappointed by the lack of information on the mechanisms that would ensure fairness for passengers and help make ADR work better for consumers.
- We believe the objective of the proposal for post-decision reviews must be revisited and centered around achieving fair outcomes for consumers while aiming to provide a platform for learning and improving internal processes of the ADR bodies. We believe these objectives should be clearly specified in the final CAP1324 policy.
- In addition, it is unclear how the independence of these reviews will be guaranteed so as not to impact the outcomes of future similar cases; how relevant parties (including legal experts and consumer groups) will be selected for the discussions; and how passengers' views will be represented. Therefore, it is crucial that the new CAP1324 rules clarify the questions raised above, as well as the role of the CAA in these reviews, and include provisions on regulatory oversight and transparent reporting of activities and outcomes.

- As set out in our response, we strongly disagree with the proposal to create a new process for dealing with complaints of a novel and complex nature. Passengers escalating complaints to ADR schemes need to be assured that the ADR body will be able to deliver outcomes and provide them with a clear and consistent path to resolution. To argue that in some cases “there is no need for a separate body to be involved in the process to advocate for the passenger’s interests”¹ is a further blow to consumers' confidence in the sector and in the ADR schemes' ability to help passengers when things go wrong.
- The proposed rules and explanatory note fail to acknowledge that an uneven adoption of this process, whereby one ADR scheme implements it in its rules but not the other, could have a negative impact on passengers' experience when escalating a complaint, further exacerbating the inconsistencies of the current ADR regime, and could also lead to airlines switching from one scheme to another.

About Which?

Which? is the UK's consumer champion. As an organisation we're not for profit - a powerful force for good, here to make life simpler, fairer and safer for everyone. We're the independent consumer voice that provides impartial advice, investigates, holds businesses to account and works with policymakers to make change happen. We fund our work mainly through member subscriptions. We're not influenced by third parties – we never take advertising and we buy all the products that we test.

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¹ Explanatory Note on proposed revisions to CAP1324
https://consultations.caa.co.uk/cm/policy-for-adr-applicants-and-entities/supporting_documents