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**'AIRLINE' SCHEME RULES  
AMENDED MAY 2021**

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## **INTRODUCTION**

Consumer Dispute Resolution Limited (CDRL) (which trades as AviationADR) is an independent non- statutory organisation that is approved by the Civil Aviation Authority as an authorised ADR provider.

The AviationADR scheme (“**the Scheme**”) is designed to reach a resolution of unresolved disputes in full and final settlement. It provides consumers with independent redress of complaints relating to acts or omissions of Airlines in relation to Passenger’s/consumer’s rights when they use the services of an Airline.

For the purposes of the Scheme Rules:

“**Airline**” shall mean an Airline which has agreed to be a member of AviationADR and be bound by AviationADR’s Scheme Rules;

“**Passenger**” shall mean an individual who is the purchaser, and/or the recipient of goods or services provided by an Airline under an aviation services contract.

### **Integrity and Independence**

Our independent status is at the heart of everything we do, as is our commitment to openness, honesty and integrity and we recognise the importance of this to everyone that relies upon our services.

### **CDRL Board of Directors (“Board”)**

To help preserve our independence, and provide an invaluable set of checks and balances on our work, the Board acts to regulate how we operate. All Board members share our vision of inspiring consumer confidence and raising industry standards and do so on a voluntary basis. The Board consists of i) executive board members (i.e who work at CDRL as part of the management team), non-executive board members, and independent non-executive board members (i.e who are entirely independent of CDRL and sit on the Board on an independent and impartial basis).

Governed by a set of internal bye-laws, the Board regularly reviews a cross section of our determinations, to ensure they are both fair and reasonable. It also oversees our rules, practices and procedures.

## THE RULES

### 1. Complaints we can deal with ('complaints in-scope')

1.1 We can only deal with complaints where the following criteria is satisfied:

- 1.1.1 the airline subscribes to work with AviationADR, an up to date list can be found at [www.aviationadr.org.uk](http://www.aviationadr.org.uk) ("**Subscribing Airlines**"); and
- 1.1.2 where either i) the Passenger has filed a complaint with the Airline, following the procedure set out within the Airline's terms of carriage (if applicable) and has not received a Deadlock Letter within eight weeks or ii) has received a Deadlock Letter where the outcome is a rejection; and
- 1.1.3 the complaint is a dispute stemming from aviation services contracts relating to a direct flight whose point of origin and/or final destination is in the United Kingdom, or aviation services contracts relating to a directly connecting flight where the point of origin, final destination or any point of connection takes place in the United Kingdom, in the following areas:
  - Denied boarding, delay, or cancellation;
  - Destruction, damage, loss, or delayed transportation of baggage;
  - Destruction, damage, or loss of items worn or carried by the Passenger;
  - Problems faced by disabled Passengers or Passengers with reduced mobility when using air transport services;
  - Any disputes arising where the Passenger alleges that the Airline has not acted fairly; that is, where the Airline has failed to provide the service as agreed under the contract for aviation services; and
  - Problems faced by disabled Passengers or Passengers with reduced mobility, either in the process of contracting with the Airline or when using the services of the Airline.

**'Deadlock Letter'** is a response from the Airline to the Passenger (or their representative) where the Airline either i) rejects the complaint or ii) does not indicate clearly that there is the potential for further consideration of their complaint.

1.2 The Scheme cannot be used to settle disputes which fall into one or more of the following categories:

1.2.1 Claims brought by someone who does not fall within the definition of a

Passenger (as defined above under 'Introduction');

1.2.2 The dispute is frivolous and/or vexatious;

1.2.3 The subject matter of the dispute is the same as an existing or previous valid application made to the Scheme by the same Passenger about the same flight;

1.2.4 The dispute has been or is the subject of court proceedings or an alternative independent procedure for the determination of disputes (unless such court proceedings or alternative procedure has been abandoned, stayed or suspended).

1.2.5 Disputes where the Passenger is claiming a total sum of money which exceeds £25,000;

1.2.6 The Passenger brought the claim to AviationADR more than 12 months from the date upon which the Airline gave their final response on the Complaint (or, where no response is given, it has been more than 12 months since the Passenger's last attempt to contact the Airline); and/or

1.2.7 Where dealing with such a type of dispute would seriously impair the effective operation of AviationADR.

**NOTE:** Putting a dispute through the Scheme does not remove the Passenger's duty to pay the Airline any other amounts which are due and which are not disputed.

## **2. How to file a complaint**

2.1 There are three ways to file a complaint with AviationADR;

**By post** – where Passengers do not have access to the Internet: telephone 0203 540 8063 and ask one of our team members to post a complaint form. Completed forms should be sent to: AviationADR, 12 Walker Avenue, Stratford Office Village, Milton Keynes MK12 5TW

**Online** – complaints can be lodged via AviationADR's online portal. To access this simply go to the home page of the AviationADR website, Choose the 'Airline' sector and then locate the 'make a complaint' button.

**By telephone** –telephone 0203 540 8063 and speak to the aviation initial complaints team.

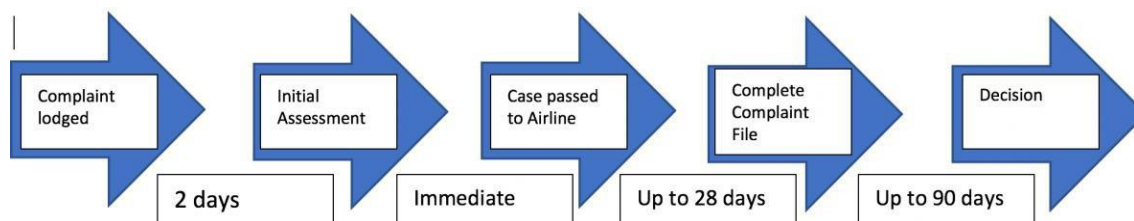
2.2 After lodging a complaint, Passengers are taken to their own personal portal page. This page provides live information about the claim so that the parties can check the progress at any time of day.

### **3. Information and Evidence**

- 3.1 Passengers must submit all relevant information and evidence in support of their complaint at the point of filing the complaint with AviationADR.
- 3.2 Airlines must submit all relevant information and evidence, in support of their defence of the complaint, within 28 days of being notified of the complaint.
- 3.3 Neither party will be permitted, without the express permission of the Chief Adjudicator of AviationADR, to submit further information or evidence after a Complete Complaint File has been announced.
- 3.4 The Adjudicator may obtain and rely upon independent evidence, such as weather reports.

#### 4. The Complaints process

4.1 Except where the process set out in section 10 below and Appendix 4 to these Scheme Rules applies, the Complaints go through a four-step process as follows:



##### Step 1 (Initial Assessment)

- 4.2 The complaint is reviewed and decision made if it falls within scope, in accordance with 1.1 of the Scheme Rules
- 4.3 In the event that a complaint cannot be accepted, the Passenger will be notified of this within three weeks.

##### Step 2

- 4.4 The complaint is passed to the Airline, which then has up to 28 days to confirm that it either wishes to defend or settle the complaint or 14 days to notify AviationADR that it considers that the complaint raises a genuinely complex and novel issue and therefore should follow the process set out in section 10 below and Appendix 4 to these Scheme Rules.
- 4.5 If the Airline agrees to settle the complaint, the Airline has 28 days to implement the agreed remedy (such as pay compensation).
- 4.6 If the Airline elects to defend the complaint, the Passenger will be given 7 calendar days to provide any comment on the defence, if it raises any new information or evidence that was not provided in the Deadlock Letter (Passenger Response).

##### Step 3

- 4.7 Following the Passenger Response, AviationADR will notify the parties that it has a 'Complete Complaint File'. From this stage, no further information or evidence may be submitted by either party, unless the Chief Adjudicator of AviationADR authorises such submission.

##### Step 4

- 4.8 At this stage, the complaint is dealt with by the Adjudicator's office where a determination is made in writing. Determinations are produced within 90 calendar days of the Complete Complaint File. If the complaint is highly complex, AviationADR may extend the 90 day period, but must advise both parties of the additional time needed to make the Determination.

**Please note:**



**Oral hearings** (ie: face to face meetings or tele-conferences) will only take place if both parties agree.

## 5. Court cases

- 5.1 In the event that AviationADR becomes aware of a case (or cases) progressing through the UK or European Courts, which may affect the outcome of an ADR decision;
  - 5.1.1 The Passenger(s) affected will be advised and given the option to proceed with the ADR process, or place their case on hold pending the outcome of the court case(s) (“**On-Hold Event**”); and
  - 5.1.2 AviationADR shall inform the CAA of each On-Hold Event.
  
- 5.2 This section 5 does not apply to complaints governed by section 10 of and Appendix 4 to these Scheme Rules that raise complex and novel issues.

## **6. Rights to withdraw from complaints procedure**

6.1 Passengers have the right to withdraw from the complaints process at any stage and to bring a claim to court, by providing notice of withdrawal in writing to AviationADR.

6.2 Airlines do not have the right to withdraw from the complaints process except in relation to complaints governed by section 10 of and Appendix 4 to these Scheme Rules that raise complex and novel issues.

6.3 Passengers should note that court proceedings may result in a different outcome to the ADR process.

## **7. AviationADR's powers**

7.1 All AviationADR subscribers are bound by the final determinations of the adjudicator.

7.2 Under our powers we can direct the Airline to:

7.2.1 Issue an apology;

7.2.2 Pay compensation, in accordance with EC261, EC1107, the Montreal Convention, the Consumer Credit Act 2015 (or any other applicable legislation or regulation);

7.2.3 Refund monies;

7.2.4 take some practical action; and/or

7.2.5 Make a payment which must total no more than £25,000 (including VAT). This sum includes any claims for compensation, refunds, credits and/or waivers.

## **8. Determinations and compensation**

8.1 The adjudicator will base his or her determination on i) the facts and supporting documentation available, ii) the applicable law/regulations and iii) what is fair and reasonable in the circumstances ("**the Determination**").

8.2 Where the Passenger agrees, the determination becomes binding upon Airlines.

8.3 The Determination is not binding upon the Passenger unless it agrees to accept the decision. Passengers will be given seven calendar days to consider and confirm whether they accept the determination. If the Passenger fails to confirm its acceptance, it will be deemed to have rejected the decision.

8.4 Where the outcome of a determination is a monetary award under EC Regulation 261/2004, the amount awarded will be as set out in those regulations and not varied.

8.5 Where it is necessary to apply an exchange rate in relation to a monetary award, the date of the flight, which is the subject of the complaint, shall be the date at which the exchange rate will be calculated with reference to.

8.6 Interest will not be added to monetary awards.

8.7 Airlines must make compensation payments within 30 days of the determination and then within seven calendar days, provide AviationADR with evidence that payment has been made.

8.8 Airlines agree to accept a £100 fine for failing to comply with the Scheme Rules (including refusal to follow an adjudicator's determination), unless the Airline has a fair and reasonable explanation for such breach.

## 9. General provisions

### ***Records***

9.1 Records will be maintained of all discussions which take place between AviationADR and the Passenger or Airline or with any third party (such as an expert). All communications and documentation may be shared with both parties.

9.2 Airlines and Passengers authorise AviationADR to share information with the Civil Aviation Authority.

### ***Conflict of interest***

9.3 AviationADR operates a strict conflict of interest policy which can be seen at appendix 1.

9.4 If, after consideration of the Passenger's complaint has commenced, it is discovered that the ADR official handling the Passenger's complaint has a conflict of interest, the case will be immediately moved to another ADR Official within AviationADR or, if more appropriate, AviationADR will cease handling the complaint. In the latter case, AviationADR will assist the Passenger in transferring their complaint to another ADR entity and pay any fee payable by the Passenger for doing so. If another ADR entity cannot accept the complaint, (or there is not another ADR entity), AviationADR will only continue handling the complaint with the consent of the Airline and Passenger.

### ***Subscribing Airline withdrawal from the Scheme***

9.5 In the event that i) AviationADR expels a Subscribing Airline from the Scheme or ii) a Subscribing Airline withdraws from the Scheme (in both cases '**the Cessation Date**'), all complaints filed with AviationADR prior to and up to the Cessation Date, will be completed through to Determination and the Airline will remain fully bound by the Scheme Rules, including in relation to payment of awards.

### ***Confidentiality***

9.10 Passengers will not be bound by any confidentiality restrictions regarding their experience of the Scheme.

### ***Reasonable adjustments***

9.11 Complaints will be dealt with, both orally and in writing, in the language used by the Passenger when entering into a contract with the Airline.

## ***Breaches***

9.12 AviationADR will notify the CAA as soon as possible upon becoming aware of potential/actual breaches of the Scheme Rules by Airlines.

## ***Complaining about AviationADR***

9.13 Passengers can file service complaints about AviationADR by following the Service Complaint Review Procedure, set out at Appendix 2

9.14 In the event that AviationADR is unable to resolve a service complaint to the Passenger's satisfaction, the complaint shall be escalated to an Independent Assessor. The Independent Assessor shall review the complaint in accordance with the Independent Assessor Terms of Reference, set out at Appendix 3.

## ***Time extensions***

9.15 The Chief Adjudicator has the right to grant a 'reasonable' extension of time, in relation to any procedural deadline set out within these Scheme Rules, if the Passenger makes an application for an extension of time and demonstrates that the reason for such application is because of an unexpected circumstance that's outside of his/her control.

9.16 The Chief Adjudicator, after obtaining express authority from the Civil Aviation Authority, has the right to grant a 'reasonable' extension of time, in relation to any procedural deadline set out within these Scheme Rules, if the Airline makes an application for an extension of time and demonstrates that the reason for such application is because of an unexpected circumstance that's outside of its control.

9.17 For the purposes of 9.15 and 9.16 above, 'unexpected circumstances' must be one or more of the following:

### In relation to the Passenger only:

**Death** of the Passenger or an immediate family member, or caregiver. In these circumstances the Passenger or their representative will be asked to provide one of these documents:

- Death certificate
- Obituary
- News article naming the deceased
- Police report

**Unexpected serious illness or injury** affecting the passenger. In these circumstances, the Passenger will be asked to provide a statement from a physician confirming that they cannot partake in the ADR process due to an unexpected, serious illness or injury.

### In relation to the Passenger or Airline:

**Natural disasters, terrorist activity, and civil/political unrest** that prevent either party from actively partaking in the ADR process or causes delays in this regard.

**Epidemic disease or illness** that suddenly affects a region or an entire group of people and the effect is so great that it affects either party's ability to partake in the ADR process or causes delays in this regard.

9.18 The decision as to whether a reason for a request for an extension falls within any of the cited grounds set out at 9.17 above will rest solely with the Chief Adjudicator and shall not be subject of appeal.

**10. Complex and novel issues raised in complaints** 10.1 It is possible that an individual passenger complaint will raise an issue that is genuinely complex and novel in terms of its broader applicability.

10.2 Appendix 4 sets out the process to be followed in cases where the Airline identifies a complaint (specifically a claim for compensation under Article 7 of Regulation EC261/2004) which it considers raises complex and novel issues and which it seeks to have resolved outside of the normal ADR process. The process in Appendix 4 follows that as set out in Annex G to CAP 1324, "Policy for ADR applicants and approved ADR entities – updated February 2021", version 5 published by the Civil Aviation Authority.



**APPENDIX 1**  
**CONFLICT OF INTEREST POLICY**  
**(as at 1 May 2016)**

**Key**

**ISB:** Independent Standards Board of CDRL

**Chief Executive:** Dean Dunham or anyone holding such title.

**Line Manager:** Your immediate superior

This conflict of interest policy applies to:

- All personnel involved in the ADR process (including complaint handlers and adjudicator)
- The Chief Executive
- All members of the management team of AviationADR
- All members of ISB
- Any contractor employed by AviationADR

**(“Applicable Persons”)**

**Purpose**

All Applicable Persons will strive to avoid any conflict of interest between the interests of AviationADR, complainants and airlines on the one hand, and personal, professional and business interests on the other. This includes avoiding actual conflicts of interest as well as the perception of conflicts of interest.

The purposes of this policy is to protect the integrity, impartiality and independence of AviationADR’s decision-making process and the ADR process, to enable our stakeholders to have confidence in our integrity, impartiality and independence and to protect the integrity and reputation of all those involved in AviationADR.

## **What is a conflict of interest?**

A conflict of interest will arise in the following circumstances:

- 1 An Applicable Person is related to or personally knows a complainant (ie: the consumer) or related to or personally knows a key decision maker from an airline – in relation to an ongoing complaint subject of the ADR process;
- 2 An Applicable Person worked for an airline within the last 12 months that is a member of the AviationADR scheme;
- 3 An Applicable Person holds shares in any business in the aviation sector;
- 4 An Applicable Person has raised a grievance/complaint against an airline that is subject to our ADR process in the past 24 months;
- 5 An Applicable Person has submitted an application for employment to an airline, in the last 12 months, that is subject to the ADR process; or
- 6 Any other matter that would affect the independence or impartiality of AviationADR.

The above is not an exhaustive list of circumstances that will give rise to a conflict of interest but instead illustrations.

## **Disclosure of Interests**

Upon appointment and on an ongoing basis, all Applicable Persons will, without undue delay, make a full written disclosure of any circumstance that may, or may be seen to—

(i) affect the ADR official's independence or impartiality; or

(ii) give rise to a conflict of interest with a party to the dispute which the ADR official is asked to resolve;

### **Procedure following conflict of interest**

In the event that an Applicable Person has a conflict of interest:

(a) where possible, the ADR official shall be replaced by another ADR official to handle the particular dispute;

(b) if the ADR official cannot be replaced by another ADR official—

(i) the ADR official shall refrain from conducting the alternative dispute resolution procedure, and

(ii) AviationADR shall, where possible, propose to the parties that they submit the dispute to another ADR entity which is competent to deal with it;

(c) if the dispute cannot be transferred to another ADR entity, AviationADR—

(i) will inform the parties to the dispute of the circumstances of the conflict of interest,

(ii) will inform the parties to the dispute that they have the right to object to the conflicted person continuing to handle the dispute, and

(iii) will only continue to deal with the dispute if no party to the dispute objects.

This policy is meant to supplement good judgement and staff, volunteers and management committee members should respect its spirit as well as its wording.



**APPENDIX 2**

**SERVICE COMPLAINTS REVIEW POLICY**

**(October 2018)**

We have very high standards in relation to the service we provide and strive to ensure that these standards are always maintained.

Naturally there will always be a party, in every dispute we process, who will be unhappy with the outcome. In most of these cases we will have processed the case within specified timelines, following all correct procedures, in a fair and reasonable manner, and the outcome will be in accordance with i) the applicable laws/regulations ii) the evidence we have received from the parties and iii) what is fair and reasonable in the circumstances. However, if you feel that this is not the case, you have the right to raise a service complaint with us.

Please note, there is no right of appeal in relation to final determinations, and this process relates to the way we handled your case.

**What you can complain about**

We are able to consider complaints which fall into one or more of the following categories:

<b>Complaint</b>	<b>Example</b>
<b>Start of the process</b>	
You were unable to lodge your claim with us or found it very difficult to do so	You found that our online complaints portal was difficult to use, or something went wrong when you lodged your claim.
We rejected your claim and stated that it was out of scope and you believe that this was wrong and therefore not in accordance with the scheme rules	We rejected your complaint on the basis that you had not complained to the airline first (as required by the scheme rules). However, you did complain to the airline first but didn't get a response and more than eight weeks has passed since you filed your complaint with them.
<b>During the process</b>	
We did not follow the process set out within the scheme rules	We only allowed you seven days to respond when the scheme rules provide that you have 14 days
<b>Our staff</b>	
Your complaint handler or another member of our team was rude or generally unhelpful	One of our team members was rude during a phone call, or within an electronic communication, or failed to assist you.
<b>Timing</b>	



We have taken more than 90 days, from the date we informed you that we had a 'complete complaint file' to finalise your claim.	We notified you that we had a complete complaint file on 1 February but did not send you the final determination until 1 June.
<b>The outcome</b>	
We failed to take account (when finalising the determination) of all information and evidence that you uploaded to the portal or sent to us	We determined that you were not entitled to be reimbursed expenses due to a lack of evidence, but in fact you had provided us with receipts.
We took account of information that we should not have taken account of	
We applied the facts incorrectly	
We applied an irrational interpretation of the law/regulations	

### What you cannot complain about

We cannot consider complaints that fall into one or more of the following categories:

Complaint	Example
You are unhappy with the determination (save for in any of the circumstances set out in the table showing complaints we can deal with)	
The airline has failed to pay your compensation on time.	

### How to file your service complaint and the process

#### **Eligibility**

To be eligible to file a service complaint:

- a) Your complaint must be a complaint that we can deal with (as set out in the tables above);
- b) Your case with us must now be closed (unless your complaint is that we have gone over 90 days and you still do not have a final determination); and
- c) You must file your complaint within two months of the date the final determination was issued.

#### **The process**

If you are eligible to file a service complaint, you can either file your complaint online [here] or download a complaint form and post it to us [download form here]

We will provide a response to your service complaint within 30 calendar days.



If you remain dissatisfied following our initial response, you can request, within 4 weeks, for your service complaint to be reviewed by the Chief Adjudicator, who will respond within 30 days.

If you remain dissatisfied following the Chief Adjudicator's review, you can request, within 4 weeks, for your service complaint to be referred to our Independent Assessor.

The Independent Assessor is not employed by CDRL and will therefore review your service complaint on an independent and impartial basis. The Independent Assessor will respond to you in writing within 30 working days of your request and their response will be the final response in relation to your claim.

### **Potential outcomes of your service complaint**

In most cases where the service complaint is valid, we will i) explain what went wrong and why ii) issue an apology iii) take corrective action (such as amend a determination), if appropriate and iv) make sure that we learn from the error to help continue to improve the service that we provide.

If it is determined that you have suffered considerable detriment as a consequence of the matter you have complained of, either we, or the Independent Assessor, may decide that a goodwill payment is appropriate.



## APPENDIX 3

# Independent Assessor – Terms of Reference (October 2018)

### Introduction

CDRL (operating as AviationADR) is approved by the Civil Aviation Authority (CAA) to provide alternative dispute resolution services in the aviation sector. As part of the approval, AviationADR must have an independent assessor, whose role it is to carry out a review of all eligible service complaints, from an independent and partial point of view.

### Terms of Reference

#### *The role*

1. The Independent Assessor may only consider service complaints that are 'eligible' in accordance with the Service Complaints Review Policy ("**the Policy**"). A complaint may be referred to the Independent Assessor by the complainant, in accordance with the Policy or by the Chief Adjudicator of AviationADR, who may not unreasonably refuse to make such referral.
2. The Independent Assessor shall review each complaint, taking account of i) the complainant's grounds of complaint and any evidence submitted in support and ii) the responses to the complaint provided by AviationADR.
3. When a complaint is referred to the Independent Assessor for investigation, the Independent Assessor shall have access to all related files, computer records and persons relevant to the investigation, subject only to compliance with data protection legislations. The Independent Assessor shall have complete freedom to decide how to investigate the complaint but will normally be expected to report the outcomes and to produce a final recommendation/proposal letter within 30 working days of referral.

#### *Outcomes*

4. If the Independent Assessor decides that a complaint should be upheld then he or she may recommend that AviationADR make an apology or take some other corrective action and/or make an appropriate goodwill payment, for damage, distress or inconvenience to the person or organisation making the complaint.
5. Except where it contains obvious error, which may be identified by either the complainant or the Company, the Independent Assessor's "Final Report" and any recommendations within it will be binding on AviationADR.

6. Subject to paragraph 5 above, there is no appeal against the Independent Assessor's "Final Report".

### ***Independence***

7. The Independent Assessor is engaged by CDRL on an independent basis. The Independent Assessor is therefore not answerable or accountable to CDRL and is free to report any concerns about the operation of the AviationADR scheme directly to the CAA.
8. The Independent Assessor must not hold shares or have any other form of interest in any airline or airport that subscribes to the AviationADR scheme. The Independent Assessor shall immediately notify AviationADR of any potential conflict of interests.

### ***Reporting***

9. The Independent Assessor shall provide the CAA with a 6-monthly report by the end of April and October each year (covering the period October – March and April – September). This report will detail the view of the Independent Assessor as regards any potential improvements which could be made to aid the effectiveness of the AviationADR scheme, including the review process ("**the Report**").
10. The Report shall include case examples, data and statistics and any other information that the Independent Assessor believes will effectively demonstrate his/her findings.
11. The Report shall include details of all recommendations made.
12. The Report shall identify any common themes or issues causing confusion or potential harm to consumers during the ADR process.

**If you are claiming compensation on behalf of another passenger,  
please complete the Letter of Authority Form below.**



**LETTER OF AUTHORITY FORM**

**AviationADR Case ID:**

Please complete this form if you (“the Complainant”) want to authorise another person to act on your behalf (“the Authorised Person”). For example, this Authorised Person may be a friend, relative or a lead passenger who is booked under the same booking reference.

You can change or cancel this authority at any time by contacting us on 0203 540 8063.

**Declaration:**

- I authorise the Authorised Person to act on my behalf in relation to my complaint.
- I understand that any information given to the Authorised Person will be deemed to have been given to me.
- I give permission to the Authorised Person to discuss all aspects of my complaint on my behalf.
- This will confirm the Authorised Person is entitled to accept any remedy or award provided, if appropriate.
- I confirm the Authorised Person will receive, if appropriate, the full payment of compensation and they shall then be responsible for distributing the payment accordingly.

**About you, the Complainant:**

Name:.....	Signature:.....	Date:..... /..... /.....
Name:.....	Signature:.....	Date:..... /..... /.....
Name:.....	Signature:.....	Date:..... /..... /.....
Name:.....	Signature:.....	Date:..... /..... /.....
Name:.....	Signature:.....	Date:..... /..... /.....

\* Please use a second Letter of Authority form if required

**About the Authorised Person:**

<b>Authorised Person’s title:</b>	<b>First name:</b>	<b>Last name:</b>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Full postal address:**

<b>Email address:</b>	<b>Telephone number:</b>	<b>Alternate telephone number:</b>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<b>Airline name:</b>	<b>Booking reference:</b>
<input type="text"/>	<input type="text"/>
<b>Flight number:</b>	<b>Date of flight:</b>
<input type="text"/>	<input type="text"/>

## **APPENDIX 4**

### **Complex and Novel cases procedure**

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

1. The CAA has established a list of common issues underlying passenger complaints that, based on Regulation EC 261/2004 as clarified by existing domestic and EU case law and the European Commission Interpretative Guidelines (including through applying established principles), it considers are **not** by default complex and novel for the purposes of establishing extraordinary circumstances under Regulation EC 261/2004. This list is published here:

[https://publicapps.caa.co.uk/docs/33/Issues%20which%20the%20CAA%20does%20not%20consider%20to%20be%20complex%20or%20novel%20\(CAP1324A\).pdf](https://publicapps.caa.co.uk/docs/33/Issues%20which%20the%20CAA%20does%20not%20consider%20to%20be%20complex%20or%20novel%20(CAP1324A).pdf)

2. From time to time, following consultation with airlines and CAA-approved ADR entities such as Aviation ADR, the CAA will amend this list to take into account new legal and other developments as the CAA considers appropriate.

3. In the event that the Airline considers that an individual passenger complaint submitted to AviationADR raises a genuinely complex and novel issue that is not covered by this list, it will notify AviationADR within 14 calendar days of AviationADR first submitting the complaint to the Airline for its defence. If the Airline does not so notify AviationADR, the complaint will proceed through the normal ADR process. The Airline shall not be precluded from exercising its entitlement under this provision simply because it had failed to notify a previous complaint which raised a similar complex and novel issue.

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

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

5. The CAA, the Airline and AviationADR will then have 21 calendar days to reach agreement on whether the complaint does indeed raise a genuinely complex and novel issue. If agreement cannot be reached, then the Airline can instead confirm its view that the complaint raises genuinely complex and novel issues.

6. In the event that it is agreed that the complaint does indeed raise a genuinely complex and novel issue or the Airline confirms its view that it does, within 7 calendar days of that agreement or confirmation AviationADR will transfer the complaint file to the CAA for the CAA to put forward a view on the application of extraordinary circumstances. AviationADR will inform the complainant that consideration of its complaint will be informed by an assessment by the CAA (unless the Passenger wishes to withdraw their complaint at this point).

7. Any further passenger complaints submitted to AviationADR concerning the same complex and novel issue will be put on hold by AviationADR until the

issue has been resolved. AviationADR will advise the passengers accordingly (including that they may take legal action themselves against the airline). AviationADR will also ensure that it can easily identify these complaints on hold and that it has the contact details of relevant passengers to provide updates.

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

8. In considering the complaint, the CAA will focus its consideration on the genuinely complex and novel issue arising from the complaint. The CAA will not adjudicate on the complaint but will provide its view to AviationADR on how to interpret the genuinely complex and novel issue when AviationADR adjudicates on the complaint and other complaints raising the same issue. As such, the CAA is considering a specific complaint as, in effect, a 'sample' case, but it will be AviationADR that issues the final adjudication on the case, taking account of the CAA's advice.

9. The Passenger, Airline and AviationADR will be allowed 35 calendar days to provide written evidence and submissions to the CAA. All evidence and submissions provided will be shared with the other parties. The CAA will consider whether to have meetings with the parties to discuss their evidence and submissions, and whether to invite replies to the other parties' evidence and submissions, on a case by case basis. Any such meetings must be held, and any such replies must be submitted, within 28 calendar days of the expiry of the 35 calendar day deadline referred to above, with the parties being granted at least 14 calendar days' notice of meeting or reply.

10. The CAA will issue its assessment of the complex and novel issue to the Passenger, Airline and AviationADR as soon as reasonably practicable following the expiry of the second deadline referred to in section 9 above.

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

11. In the event that the CAA's advice does not uphold the Airline's view in part or in full, the Airline will have 14 calendar days to raise an objection.

12. If the Airline does not object within this period, the Airline will be deemed to have accepted the CAA's view. AviationADR will then proceed to finalise its adjudication and the Airline will have 14 calendar days to comply with the adjudication and to provide evidence which satisfies the CAA of compliance.

13. Should the Airline raise an objection within this period, it will have 14 calendar days to confirm to the CAA that it will issue legal proceedings. The Airline must issue proceedings within three months of the Airline receiving the CAA's assessment. Should it fail to confirm this, or fail to subsequently issue proceedings within the time period specified, the Airline will be deemed to have accepted the CAA's view and the final adjudication by AviationADR. The Airline will then have 14 calendar days to comply with the adjudication and to provide evidence which satisfies the CAA of compliance.

### **Closing the complaint**

14. For those complaints that are considered by the CAA pursuant to this process and which are ultimately resolved through the courts, the CAA will notify AviationADR

of the outcome. AviationADR will then issue its decision on the complaint (and any similar pending complaints) in accordance with the court judgment.

### **Enforcement action**

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

### **Transparency**

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

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

### **Independence of AviationADR**

18. As a competent authority, the CAA oversees the overall performance of ADR providers and their compliance with the ADR Regulations, but the CAA does not intervene in their processes to direct them to take a decision in individual cases. In relation to the process described in this Appendix 4, although the CAA would expect AviationADR to follow the CAA's advice where this approach has been agreed between the Airline and AviationADR through the ADR scheme rules, it will be for AviationADR to determine and issue the final independent adjudication on the case, having taken into account the CAA's advice.