

## **Justice Committee**

### **Alternative Dispute Resolution**

#### **Written submission from the Association of British Travel Agents**

##### **About ABTA**

This response is submitted on behalf of the membership of ABTA – The Travel Association. ABTA was founded in 1950 and is the largest travel trade association in the UK, with almost 1,200 members operating from over 4,500 locations. Our Members range from small, specialist tour operators and independent travel agencies specialising in business and leisure travel, through to publicly listed companies and household names.

Annually, ABTA Members' turnover is in excess of £37 billion. ABTA's focus is ensuring that Members can operate their businesses in a sustainable and successful manner, enabling their customers to travel with confidence.

ABTA welcomes this opportunity to provide information to the Justice Committee around the availability of ADR and any barriers to its use, and we hope this briefing will prove useful.

##### **Alternative Dispute Resolution and the travel industry**

Regulation 15 of the 1992 Package Travel Regulations (PTRs) places liability on package holiday providers for the proper performance of all services sold as part of the package (regardless of the fact that those services are supplied by third parties such as hoteliers and airlines). This is a long-standing regulation, and one that the industry values highly. The PTRs underpin the consumer confidence on which the industry relies as UK consumers are able to make claims against the organiser of their package holiday, rather than having to litigate in the holiday jurisdiction.

The UK government approves ABTA as a Consumer ADR body under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. The ADR services described below are available to Scotland based consumers who have a complaint against an ABTA Member.

##### **The ABTA Alternative Dispute Resolution (ADR) service**

Before the consumer starts this process, they must first have been through the travel company's in-house complaints procedure.

ABTA's dispute resolution service is an online process and ABTA communicates with the consumer through our website, email and SMS text message (postal arrangements can be made for consumers unable or unwilling to use the online system). The purpose of this scheme is to bring consumers and ABTA Members together and ensure that the ABTA Member responds within set timescales to the consumer's complaint.

The ABTA ADR service is free of charge and can take on average up to 50 calendar days to conclude, depending on the information and documents supplied.

Further details of the process are available here:

<https://abta.com/assets/uploads/general/ABTA-complaints-process-large.jpg>

ABTA's Customer Support department opened 14,182 (12,962)<sup>1</sup> cases in relation to customer issues concerning ABTA Members during the period 1 July 2016 to 30 June 2017. The vast majority of these were resolved through the ABTA ADR service (see below for numbers of cases that went on to be resolved by arbitration).

Where an ABTA Member and its customer are unable to resolve their differences through the initial complaints process, ABTA provides an opportunity for the parties to have their dispute considered and managed through its arbitration or conciliation scheme. Both schemes are administered independently by the Centre for Effective Dispute Resolution (CEDR).

### **The ABTA Arbitration Scheme**

Arbitration can be used to settle alleged breaches of contract and/or negligence between consumers and ABTA Members. If the claim includes an element of minor illness or personal injury then this can also be considered by the arbitrator, but is limited to £1,500 per person.

ABTA's arbitration scheme has helped consumers for over 40 years. The scheme allows consumers to resolve disputes without going to court; it is faster, less formal and costs less than instructing solicitors. Arbitration is conducted privately, based on written documentation and evidence. It is a mandatory requirement for ABTA Members to participate in the scheme.

To use the scheme, the consumer must have registered their complaint first, and have reached deadlock with the ABTA Member. A neutral, independent arbitrator considers evidence submitted by both parties and makes a decision about compensation. This decision is final and legally binding but can be appealed by either party within 14 days of the award being issued. If the consumer loses or is awarded less than previously offered by the ABTA Member, they will be ordered to pay an amount equal to their registration fee.

Current registration fees:

Value of claim	Fee
£1.00 – £2,999.99	£108.00
£3,000 – £7,499.99	£180.00
£7,500 – £25,000	£264.00

<sup>1</sup> Code of Conduct Report 2016-2017, published September 2017 (previous year figures in brackets)

[https://abta.com/assets/uploads/general/Code\\_Report\\_2016-2017.pdf](https://abta.com/assets/uploads/general/Code_Report_2016-2017.pdf)

The Rules of the Scheme can be found here:

[https://abta.com/assets/uploads/general/ABTA\\_Arbitration\\_Rules\\_May\\_2016.pdf](https://abta.com/assets/uploads/general/ABTA_Arbitration_Rules_May_2016.pdf)

During the period 1 July 2016 – 30 June 2017, there were 666 (431)<sup>2</sup> cases that were the subject of an arbitration award.

### **The ABTA Conciliation Scheme**

The ABTA conciliation scheme was launched early in 2017 and handles disputes related to personal injury and sickness.

One of the reasons for launching the scheme was to offer consumers an alternative to claims management companies, who would take a proportion of the consumer's damages as their fee. ABTA supports a mandatory obligation for claims management companies to signpost the availability of any available ADR schemes to consumers, before a legal claim can be progressed. The relevant regulatory authority for oversight of claims management activities should enforce the obligation to notify consumers of available sources of ADR, as part of their authorisation process.

Conciliation is a process through which a neutral third party, the Conciliator, seeks to help both sides to a dispute come to a mutually satisfactory settlement by negotiation and compromise, but is limited to £10,000 per booking.

It is a voluntary process conducted on a "without prejudice" basis, meaning that any compromises made during the process cannot be used as evidence should the process not be successful and the matter proceed to court.

Conciliation is a flexible and confidential process whereby the Conciliator will actively facilitate negotiations between the parties, in an independent and impartial manner, working towards a settlement.

The conciliation process is conducted via telephone or in writing, which makes it flexible and efficient. During contact, the Conciliator will advise the parties of their role, the timeframes in which contact will be made and the things to consider which will assist the parties in reaching a settlement. In some cases, the Conciliator may propose a solution in an attempt to close the matter.

Where a settlement is agreed, the Conciliator will record the terms of the agreement and send it to the parties in the form of identical Confirmation of Outcome Statements for signature. There will be a short "cooling off" period to allow the parties to seek legal advice should they require it.

The settlement will only become legally binding once the Confirmation of Outcome Statements are signed by both parties and returned to CEDR.

Should the parties be unable to agree on a mutually acceptable outcome, the Conciliator may issue recommendations for settlement. The parties can accept the

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<sup>2</sup> Code of Conduct Report 2016-2017, published September 2017 (previous year figures in brackets)

[https://abta.com/assets/uploads/general/Code\\_Report\\_2016-2017.pdf](https://abta.com/assets/uploads/general/Code_Report_2016-2017.pdf)

recommendation made by the Conciliator and both must confirm this in writing by returning the signed declaration to CEDR.

The fee for the conciliation will be paid by the ABTA Member and scheme rules can be found here:

[https://abta.com/assets/uploads/general/The\\_ABTA\\_Conciliation\\_Scheme\\_Rules\\_21022017.pdf](https://abta.com/assets/uploads/general/The_ABTA_Conciliation_Scheme_Rules_21022017.pdf)

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