



Review of the Benchmarks for Industry-based
Customer Dispute Resolution Schemes:

Response to Issues Paper
May 2013



AIRLINE CUSTOMER ADVOCATE

Executive Summary

The Airline Customer Advocate has a vital role in providing consumers and scheme members an alternative to time consuming and often expensive formal legal processes. The Benchmarks pervade all that the Airline Customer Advocate does, and how it does it, and in achieving its vision of delivering fast and effective resolution of unresolved airline complaints across Australia.

Introduction

The Airline Customer Advocate (ACA) was established on 1 July 2012 to resolve complaints from the customers of the 5 participating airlines (members) about the services provided by the airline. These airlines are Jetstar, Qantas, Regional Express, Tiger Airways and Virgin Australia. Its role is to resolve complaints that have been unable to be resolved to the customer's satisfaction and lead customer advocacy within the Australian aviation industry.

Within the Australian consumer protection landscape, the typical industry dispute resolution scheme involves an independent ombudsman receiving a complaint about a private or public sector member (that supplies a service such as electricity, gas or water, banking, telecommunications or financial service,) and conducting an investigation with a view to resolving the consumer's complaint, or making some other binding determination.

Similarly, as an industry-based dispute resolution scheme, the ACA provides airline customers with an efficient and independent complaint process. However, it can be distinguished because it does not act within a regulatory framework and it is unable to make decisions that bind a member.

History of the Airline Customer Advocate

The genesis of the ACA is in the National Aviation Policy White Paper released in December 2009 where the policy goal was stated to be:

Protection and fairness for aviation consumers and the broader community without imposing unnecessary cost or impeding innovation in the aviation industry.¹

As a first step, the government requested the airlines to develop and implement customer charters as it considered some consumer complaints were not being effectively managed by the airlines. These charters established the airline's benchmarks for delivering responsive and efficient complaint handling, and expressly provide the circumstances in which a customer will be entitled to a refund.

¹ National Aviation Policy White Paper: Flight Path to the Future, Canberra, 2009. Available at http://www.infrastructure.gov.au/aviation/nap/files_white_paper/091215_Full.pdf

The next step was the establishment of the ACA by the participating airlines to address the government's identified gap in consumer protection. Industry members consulted with government on how the reform would be structured, and the timeframe for implementation. Their agreement to participate was arguably the most transparent way for the participating airlines to demonstrate their commitment to resolving customer complaints.

Although the members' participation in the scheme was voluntary and secured without regulatory reform, it is apparent from its first six months² of operation that the ACA is providing an accessible and efficient complaint resolution scheme for airline customers that is also responsive to the government's policy objective. As a consequence, the ACA now provides an independent source of information for consumers and other stakeholders regarding customer complaints in the aviation industry.

The Benchmarks

The Benchmarks exist as a "best practice" guide to ensure industry-based dispute resolution schemes are fair, accessible and independent. As an industry-based scheme, albeit in its infancy, the Benchmarks also influence and guide the work of the ACA.

Given the ACA's relatively short history, this response will be confined to the following consultation question:

2.1	How widely are the Benchmarks used by industry schemes? Are there any examples of how the Benchmarks are used?
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Accessibility

If ever there was a benchmark universally acknowledged as fundamental to complaints resolution, it surely is the benchmark of Accessibility. Consumers must be able to easily contact the organisation – be it an airline, the ACA or a consumer protection regulatory body. The corollary of this is that industry dispute resolution schemes must be adequately and expertly resourced to ensure customers can contact it and connect with those empowered to resolve the dispute.

The ACA is promoted via its website, media appearances, articles and through Ministerial media releases. The members also inform their customers about the ACA in their customer charters that are published on each of their websites. Other consumer protection regulators including the Australian Competition and Consumer Commission and fair trading/consumer affairs bodies also refer

² Airline Customer Advocate Annual Report 2012 available at http://www.airlinecustomeradvocate.com.au/_lib/Docs/AnnualReport/Annual_Report_2012_14_Feb.

consumers to the ACA and publish information on their websites about the ACA and the service it provides airline customers.

The airline services that can be complained about are wide ranging and include flight delays and cancellations, refunds, terms and conditions, fees and charges and inflight customer service.

The ACA complaint process has been designed to be as simple as possible, making optimal use of technology. Customers can use the online form provided on the ACA website to lodge a complaint electronically. Complaints must be lodged in writing however, if a customer is unable to lodge a complaint online, they can call its 1800 number for assistance, or write to the ACA at the postal address provided on the ACA website.³ A complaint form will be posted which can then be lodged by post. A complaint can also be made by an authorised representative of the customer. There is no charge to use the services of the ACA.

A complaint number is generated automatically and emailed to the customer and this can be used to track the progress of the complaint online at anytime. The process is informal and resolution options can be negotiated by shuttle negotiation by the ACA with the customer and the member airline.

Independence

The independence of the ACA was referred to in the Minister's Media Release announcing the appointment of the ACA in July 2012:

*"The creation of this independent position means that for the first time, airline customers will be provided with a real alternative when they are unable to resolve a complaint directly with an airline...The Airline Customer Advocate will complement existing laws and act as a link between passengers and airlines to get complaints resolved within 20 working days."*⁴

Unlike other industry dispute resolution bodies that are independent of both parties, the ACA's role is unambiguously to advocate on behalf of the customer. By virtue of this status, the ACA is in a unique position in the consumer protection landscape.

A number of protections are in place to ensure the ACA is able to act independently:

- The ACA is accountable to the members only in relation to the administration of the scheme and not in relation to any decisions made about complaint handling;

³ Available at <http://www.airlinecustomeradvocate.com.au/General/Default.aspx>

⁴ Available at http://www.minister.infrastructure.gov.au/aa/releases/2012/july/aa141_2012.aspx

- The ACA is responsible for the management of the complaint process and ensures no conflict of interest arises; and
- The ACA has established effective links with stakeholders including other complaint handling bodies and government agencies to consult about the scheme and decisions about any changes to the scheme including reporting.

Unlike other schemes, the ACA does not have oversight by a Council or Board comprising scheme members and other stakeholders representing community and consumer protection groups. While the absence of consumer representation in the ACA's governance structure has been commented on elsewhere,⁵ currently the ACA's focus is on ensuring complaint outcomes for customers (whether resolved or unresolved) are fair and timely, and also accord with the relevant law.

Given the ACA has existed for less than 12 months, it may be premature to comment on whether the absence of such oversight compromises its independence or more significantly, impacts on its ability to perform its core work of resolving complaints and delivering improved standards of customer service for airline customers.

On finalisation of a complaint, ACA customers are surveyed about the Benchmarks and whether they agree it is independent from the members that fund it. The Customer Satisfaction Survey includes a request to rate the following statement on a scale from "strongly agree" to "strongly disagree":

The Airline Customer Advocate was independent in all its interactions with me.

As reported in the ACA's first Annual Report released in February 2013, 87.60% of customers strongly agreed or agreed with this statement.⁶

Fairness

The benchmark of Fairness is often referred to as procedural fairness. In order for this to be facilitated, all the information relevant to the complaint must be provided to the body receiving the complaint for investigation and/or resolution. This means that if more information is required to understand the complaint, it can be asked for.

Fairness drives the ACA process. Taking into account the law and aviation industry practice, negotiated outcomes result from a consideration of what is fair

⁵ Available at <http://www.choice.com.au/media-and-news/media-releases/2012-media-releases/national%20airline%20customer%20advocate%20two%20steps%20forward%20one%20step%20back.aspx>

⁶ See page 8, Airline Customer Advocate Annual Report 2012 available at http://www.airlinecustomeradvocate.com.au/_lib/Docs/AnnualReport/Annual_Report_2012_14_Feb.

and reasonable in the circumstances and can include an apology, refund or other goodwill gesture by the member.

Specific guidelines are in place to ensure the process is fair from the outset when the complaint is received. If necessary, the ACA can ask the customer for more information to clarify the complaint or the outcome sought. It can also request additional information or clarification following receipt of the member's response to the complaint.

The ACA also provides customers with information about the eligibility criteria for lodging a complaint and the airline services that can be complained about on its complaint form and website. Before a complaint can be accepted, the member must have been given 2 opportunities to directly resolve the complaint with the customer.

Accountability

The ACA is accountable to its scheme members, customers and other stakeholders including the wider consumer protection community and government.

In order to be accountable and secure stakeholder confidence in its dispute resolution role, the ACA provides regular statistical reports to members and publicly reports on an annual basis about the scheme, including individual member performance.

Efficiency

The benchmark of Efficiency is also relevant to the ACA given stakeholders need to be confident the scheme is delivering value for customers and its members by resolving complaints.

In keeping with this benchmark, it publishes the criteria for complaint eligibility on its website and on the complaint form.

The complaint management system also enables customers and members to track the progress of a complaint. Customers receive a response from the ACA within 20 working days from the date the complaint was lodged, excluding any period where additional information is sought from the customer.

The ACA also monitors its performance by requesting feedback. Customers are provided an electronic Customer Satisfaction Survey on finalisation of their complaint and the results of this survey are also included in the Annual Report.

Effectiveness

The Issues Paper states:

*“The benchmark of Effectiveness concerns an industry scheme’s capabilities. ... For example, a scheme may be less effective at its task of resolving customer disputes if it does not possess the authority to enforce a determination on a scheme member”.*⁷

Although the ACA does not have power to make decisions that are binding on its members, it resolved almost two thirds of the complaints it received during its first six months of operation.⁸ Undoubtedly other factors also impact on a scheme’s effectiveness in resolving a dispute such as the complexity of the issue, the outcome sought and the willingness to negotiate. Notwithstanding the ACA’s inability to make decisions, awards or recommendations, its evolving effectiveness in fulfilling its role as a credible and efficient industry-based dispute resolution scheme will undoubtedly be watched with interest by its stakeholders.

If the ACA cannot resolve a complaint, or assist a person who makes contact by telephone, the customer is referred to another person or body that can. This could be another consumer protection regulatory body, government agency, or other aviation or travel industry body.

Should you have any questions in relation to this submission, please contact Julia Lines on 02 8267 4648.



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⁷ pp. 20-21.

⁸ Airline Customer Advocate Annual Report, *op.cit.*,p.6.