

**The Aviation Adjudication Scheme (The Scheme)**  
**Independent Complaint Reviewer Report**  
**For 1 April - 30 September 2019.**

## **Introduction**

This is my third report on the Scheme – which deals with claims made against subscribing airlines and airports. It covers the period 1 April to 30 September 2019, as required by the Civil Aviation Authority.

## **The CEDR Aviation Adjudication Scheme Complaints Review Policy and Process**

The Policy and Process<sup>1</sup> explains its scope along with the two internal stages of review that take place before, if necessary, a complaint is referred to me. It is articulated clearly with timescales and information about what can be expected.

In brief, if after the Stage 1 response complainants remain dissatisfied they can ask for escalation to Stage 2 of the process, where a suitably senior member of CEDR's staff will review the complaint. Where this does not conclude the matter, the complaint can be referred to me for independent review.

## **My Role**

I am an independent consultant. I am not based at CEDR, nor am I part of that organisation. There are two aspects to my role.

Firstly I can review cases that have been escalated to me where a user of the Scheme has complained and, having been through CEDR's Complaints Review Process, remains dissatisfied. Under my terms of reference<sup>2</sup> and the Scheme's rules<sup>3</sup> I can consider complaints about certain aspects of CEDR's quality of service – such as alleged administrative errors, delays, staff rudeness or related matters. I can also look at complaints where the customer feels that in terms of an adjudication outcome relevant information was ignored and/or irrelevant information was taken into account.

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<sup>1</sup> [https://www.cedr.com/docslib/Aviation\\_complaint\\_review\\_policy\\_and\\_process\\_2019.pdf](https://www.cedr.com/docslib/Aviation_complaint_review_policy_and_process_2019.pdf)

<sup>2</sup> [https://www.cedr.com/docslib/Independent\\_Reviewer\\_Terms\\_of\\_Ref\\_NOV.pdf](https://www.cedr.com/docslib/Independent_Reviewer_Terms_of_Ref_NOV.pdf)

<sup>3</sup> [https://www.cedr.com/docslib/CEDR\\_Aviation\\_Adjudication\\_Scheme\\_Rules\\_-\\_5th\\_Edition\\_171218.pdf](https://www.cedr.com/docslib/CEDR_Aviation_Adjudication_Scheme_Rules_-_5th_Edition_171218.pdf)

Cases where complainants feel that, in reaching the decision in their claim, an adjudicator has made an irrational interpretation of the law can be passed to me for review. However it is important to note that in such cases I am not expected to review an adjudicator's interpretation of the law, if that is the subject of a complaint. My role is limited to investigating whether the Stage 2 review thoroughly re-considered the issue.

Apart from referring to them where appropriate, I cannot comment on the content or validity of the Scheme's rules. I cannot consider the merits or otherwise of decisions made by CEDR's adjudicators; nor can I investigate, consider or comment on the substance or outcomes of applications made by claimants. Where appropriate, I may make recommendations based on my findings.

The second aspect of my role is to conduct biannual reviews of complaints and produce reports accordingly. These are based on findings from my reviews of any individual complaints that have been referred to me; and by examining all or some of the complaints that CEDR has handled as I see fit.

## **This Report**

I examined all complaints handled under the Complaints Review Procedure between 1 April and 30 September 2019. Two complaints were escalated to me during this period, which I comment on in the qualitative section of this report.

## **My Findings**

### **Quantitative**

CEDR continues to receive few complaints in respect of the Scheme. Of the 5262 applications handled during this reporting period, CEDR received 25 complaints – representing 0.47% (up from 0.33% compared to the previous six months). In terms of absolute numbers there was a reduction of 22%, from 32 to 25 complaints.

Three cases were referred to Stage 2, and I reviewed two complaints at Stage 3.

Of the 5262 total applications approximately 54% (2823) received a final decision from an adjudicator. This is four percentage points fewer than in the previous six months. The remainder were outside the Scheme's scope.

Of the 2823 adjudicated claims, outcomes were as shown in table 1 below.

Table 1: Adjudicated Claim Outcomes

Succeeds in full	Succeeds in part	Fails
30.1%	20.3%	49.6%

The table above shows that about half (50.4%) of claims were found in the customer’s favour to some extent; and about half (49.6%) were found wholly for the airline. The respective figures for the previous six months were 68.1% and 31.9% - thus fewer claims succeeded during the current reporting period. (This continues a trend over the last eighteen months. Between 1 April and 30 September 2018 the respective figures were 83.2% and 16.8%.)

I include this information in my report only to provide a useful context in which to view the complaints made about CEDR itself. It is not for me to comment on the number of claims that succeed or fail. However, the fact that the decrease in successful claims over time has not been mirrored by an increase in complaints can be seen as a positive finding for CEDR.

Table 2 below gives a breakdown of complaints about CEDR.

Table 2: Complaints about CEDR

In Scope		Partly in Scope	Out of Scope	Total
Service	Review			
3	21	0	1	25

The table above reflects the policy that CEDR introduced in January – whereby complaints about certain aspects of the adjudication decision can be reviewed (i.e. whether relevant information was ignored or irrelevant information taken account of; and whether the adjudicator made an irrational interpretation of the law). These are shown in the “Review” column, whilst complaints wholly about CEDR’s standard of customer service are shown in the “Service” column.

I found two cases that should have been under the “Review” heading rather than “Service”. I drew these to CEDR’s attention and they have been corrected on the system. These were classification errors only, with no bearing on the complaint outcomes. Table 2 shows the correct position.

There is often a judgement to be made in respect of how best to classify a complaint if it contains equal elements of customer service and challenges to the decision under the allowable criteria. CEDR, rightly in my view, classify such cases according to which element is predominant. However, where they are equal it may be worth CEDR considering introducing a third “combined” category, so that statistical analysis may provide an even clearer picture and add more value. This may not prove necessary if the volume of such cases is very low – however, I have made a recommendation accordingly.

Table 3 below gives a breakdown by outcome at Stage 1 of the Complaints Process for those cases that were in scope. One case was still in the pipeline at the time of my review, so the total number of recorded outcomes was 23:

Table 3 Complaint Outcomes

Fully Upheld		Partly Upheld		Not Upheld/ Out of Scope		Total	
Service	Review	Service	Review	Service	Review	Service	Review
1	0	0	2	2	18	3	20

I found one case that should have been classified as “fully upheld” rather than “partly upheld”. CEDR have amended this, and the correct position is shown in the table.

Whilst these are small numbers there is a significantly higher proportion of “not upheld” outcomes compared to my last report (87% versus 46%) and there was only one case that was fully upheld (4% compared to 17% last time). I said in my last report that I would monitor this situation - and I shall continue to do so. However, my feeling is that it is a reflection of the new Policy, mainly because the reviews of decisions that complainants challenge are very thorough and identify clearly and correctly the reasons for upholding those decisions. That being the case, most complaints will not be upheld. I found no evidence to suggest that complainants were being unfairly treated or that the reviews of decisions were anything other than sound. I further found that there were fewer complaints purely about CEDR’s quality of customer service.

CEDR acknowledged 72% of complaints within one working day and 88% within two working days; 12% went beyond two working days, with the longest taking five working days. Whilst not a bad performance overall, this is not so good as the previous six months – where 88% were acknowledged within one working day and nothing went beyond two working days.

CEDR exceeded its 30 working day Stage 1 response target on one of the 24 complaints that reached completion in this reporting period (representing 4.1%). The average handling time was 19 working days – six working days better than the previous six months; and the range was 0 to 34 days. In my last report I recommended that CEDR endeavour to improve the average handling time, so it is good to see this improvement.

The three complaints that progressed to Stage 2 were dealt with within timescale. One was “not upheld”; one was ruled “out of scope”; and one was awaiting a response at the time of my review.

In terms of compensation, payments were offered and accepted in two cases. These concerned administration or customer service problems, and the amounts paid were £100.00 and £75.00. In my opinion these awards were proportionate in relation to the problems experienced by the customer.

## **Qualitative**

### Cases for Independent Review.

Two complaints were escalated to me during this reporting period, neither of which I upheld.

The first, among other things, in essence alleged that the adjudicator had taken account of irrelevant information. CEDR’s Stage 1 and 2 reviews were comprehensive and I could find no fault with the explanations they gave; or with their decision not to uphold the complaint. My independent review found that the adjudicator did not consider new or irrelevant evidence; and that all relevant evidence was available to both parties. I further found no evidence of administrative errors. I did however recommend that CEDR should encourage airlines to present their defences clearly, so that a layperson could better understand the evidence. CEDR have acted on this.

The second complaint I reviewed hinged on the calculation in respect of the length of a flight delay. Without going into detail, the nub of the original complaint was a disagreement with the adjudication outcome. Arguably this could have placed the complaint outwith the scope of the complaints process but CEDR accepted it on customer service grounds. The case proved complex because the adjudicator did in fact make an error - albeit one that had no effect on the outcome of the claim; and as the complaint progressed the customer raised a wide range of other issues that warranted investigation, including some service failures by CEDR and an allegation that escalation of the complaint was being blocked. I did not find this to be the case; rather CEDR initially applied the process to the letter and they later extended the timescale for escalation due to the customer's particular circumstances. However, that extension could perhaps have been given earlier. The customer also complained about the time allowed for responses, and felt that CEDR could have been more proactive in terms of advice about those timescales.

The Stage 1 review could, in my opinion, have better clarified the situation and it overlooked responding to a point the customer made about a telephone call to CEDR. Whilst the Stage 2 response dealt with all the issues, I felt that it could have set out some points even more clearly. However, in summary, the claim itself ended up being looked at by three different adjudicators (all of whom reached the same conclusion) and the outcome of the complaint was: no change to the adjudication decision; the recognition of, and apology for, certain service failings by CEDR; and the offer of £100.00 compensation. In my view this response was reasonable and the compensation offer was in proportion to the errors identified. I did not therefore uphold the complaint that was escalated to me - which included matters beyond my remit and/or the scope of the complaints policy; and issues that CEDR had addressed during the earlier review stages.

I nonetheless made three recommendations following my review:

- That CEDR ensure that they respond to all substantive points on complaint forms;
- That CEDR bear in mind special circumstances and show a little leeway in future if appropriate when applying timescales for escalation;
- That CEDR give consideration to indicating relevant timescales in correspondence when appropriate.

CEDR accepted all three recommendations. They have acted on the first two and the third is under review.

### In Scope (24 complaints).

Three complaints were about CEDR's customer service and 21 were predominantly about the adjudication itself.

#### "Service Complaints".

One service complaint was **upheld in full**. This concerned CEDR not advising the customer clearly about timescales and what documentation was required. The situation was exacerbated by the fact that the airline in question had recently ceased to subscribe to CEDR's Scheme. I found the Stage 1 response to be of very good quality, offering a full explanation and apology along with £75.00 compensation - which in my view was proportionate in respect of the inconvenience the customer had experienced.

Two cases were **not upheld/out of scope**. The first case was clear cut in that the customer had provided neither a deadlock letter nor evidence that the complaint with the airline concerned remained unresolved after eight weeks. The Stage 1 reply was succinct but informative. (The claim was later accepted once the eight weeks had elapsed.) Having been initially accepted as within scope, the second case was correctly adjudged "out of scope" at the Stage 1 review, as it became clear that the grounds for complaint were wholly to do with the claimant not liking the decision.

#### "Reviews".

20 complaints led to adjudication reviews.

Half of these were from third party "claim firms" on behalf of the actual passenger, with six coming from just one such company. I observed that for the most part these complaints amounted to a disagreement with the decision and a desire for the original decision to be reversed. CEDR reviewed each of these cases on its merits.

No "review" complaints were **upheld in full**. Having examined all the cases, I am satisfied that this was correct.

Two complaints were **upheld in part**. The first was a long and complex case, the details of which I shall not rehearse here. It contained nine issues in relation to the adjudication and three about customer service (hence on balance CEDR, rightly in my view, classified it as a "review" complaint). The adjudication elements were not upheld as there was nothing wrong with the original decision, save that certain points could have been better explained. However, £100.00 compensation was offered for the service elements - which included delays in handling the claim and confusion over eligibility. I am satisfied that this was proportionate and took full account of the customer's views.

The second case mainly alleged that the adjudicator did not take account of relevant information, which after review proved not to be the case. The customer also complained of not having the full amount of time to accept or reject the decision. It emerged that this was due to an administration error - however, since the claim had not succeeded there was in effect nothing to accept or reject so there was no disadvantage to the customer. CEDR therefore upheld the complaint in part, gave a full explanation and apologised for the administration error. I am satisfied that in this case there were insufficient grounds for anything further as there was no evidence of consumer harm.

18 complaints were **not upheld/out of scope**. I will not go through these individually, since in the main they shared two common themes:

- Complaints that fell under criteria (e) and (f) of the procedure - i.e. whether relevant information was ignored or irrelevant information taken account of; and whether the adjudicator made an irrational interpretation of the law. In all these cases I found that an in-house adjudicator who had no involvement in the original decision undertook a very thorough review. I further found these reviews to be very comprehensive and cognisant of the main customer concerns. Given that by definition some of the responses were based on complex issues (for example case law, or aviation regulations) I was pleased to see what I considered to be clear explanations that for the most part ought to have been understandable to the layman.
- Complaints that were basically disagreements with the adjudication decision but seemed to be based on grounds that were not sustainable under the criteria set out within CEDR's process. Notwithstanding this, an in-house adjudicator examined the complaints and replies explained the reasoning why they were either not upheld, or after review deemed to be "out of scope".

There were four cases (fewer than I have previously seen) where the complaint involved a different adjudication decision being reached on different claims involving the same flight. These were not upheld because in one case it was shown that the airline had chosen to submit a better defence on a later claim than they did on an earlier one; and on the other three linked complaints it was the case that an earlier claim that succeeded should not in fact have done so. I am content that these complaints were correctly not upheld.



I found four cases where the complainant (which in each case was the same third party “claims firm”) mentioned that it was not possible to enter more than one complaint criterion on the on-line complaint form. I asked CEDR to look into this, which they did promptly. They reported back to me that they had checked and found that this was not the case – in other words, any number of criteria could be ticked on the form. They provided me with a screenshot that illustrated this. Separately, I tested the form out myself, as if I was a complainant submitting a form, and I found that I could enter any number of criteria.

Given this outcome - and since there were no other reports of this problem, and all four instances were from the same person - I can only conclude that this was a case of user error. There is no action for CEDR to take.

### General Observations

I have five general observations.

1. Whilst not strictly within my remit, I have been monitoring the situation in respect of complaints about different outcomes on different claims about the same issues relating to the same flights. I found four examples of this during this reporting period, compared to six last time. However, three of those were due to an erroneous *successful* adjudication by CEDR; only one was due to an airline submitting a differing quality of defence in relation to the same flight.

I am pleased to see progress in this area and hope it can be sustained. I know that CEDR have taken action - for example by where possible allocating complaints about the same flight to the same adjudicator; and giving guidance to staff so that they can better explain discrepancies to consumers. This seems to be paying off - although I would still like to see 100% consistency from airlines so that this issue cannot arise at all.

2. In my last report I commented on inconsistencies in the quality of CEDR’s replies to customers. I recommended that they make efforts to achieve a consistently high standard. On the evidence of my latest review, there has been good progress in this area. I found three or four minor typing errors, but they were few and far between and not significant. I urge CEDR to keep paying attention to this.

3. I noted in my last report that in some cases CEDR had not complied with its own timescale to initially review and accept or reject a claim; and that in responding to complaints about this some replies seemed to focus overly on the 90 day end to end timescale - thus diminishing the importance of the delay about which the customer was actually complaining. I am pleased to say that I found no evidence of this being an issue during the latest reporting period.
4. I was similarly pleased to note that in every reply I looked at CEDR had clearly and accurately identified which criterion the complaint fell under. This is useful as it confirms understanding of the consumer's issue, and avoids confusion.
5. Notwithstanding the recommendation I made on one of the cases I reviewed, I still found a couple of cases where not every point raised by the customer on the complaint form was dealt with in the Stage 1 response. Although these were relatively minor issues that did not seem to unduly concern the customer, it is good practice to respond to every point made by a complainant (even if only to explain why a matter cannot be dealt with). I therefore recommend greater attention be paid to this area.

## **Conclusion**

I found evidence of a sustained good performance, with improvements in various areas - for example, fewer errors in replies, clearer explanations of adjudication reviews and consistently accurate identification of complaints criteria. All this enhances the consumer experience in my view.

The introduction of classifying complaints according to whether they are about customer service per se or about aspects of the adjudication itself is a helpful development. It gives a clearer picture of what users of the Scheme are complaining about - which on the basis of my findings centres far more on the adjudication decision than on the quality of customer service provided by CEDR. When aspects of the adjudication were reviewed, overall I felt that CEDR provided comprehensive and well written responses.

In the context of the total number of claims handled by the Scheme the frequency of complaints about CEDR continues to remain very low at 0.47%.

One complaint took longer than the prescribed timescale to close; three complaints progressed to Stage 2; and I independently reviewed two cases.

Compensation was offered in fewer cases during these six months but my view is that this was warranted, as there were fewer customer service complaints. Where compensation was offered it was proportionate, and in all cases responses to consumers gave clear explanations and apologies, supported by thorough investigations.

I found a few minor classification or data entry errors that only affected record keeping and had no impact on complainants. CEDR have corrected these.

On the evidence of my review CEDR remain committed to providing a high quality service in terms of their complaints handling, and they have made a number of improvements over the last six months. The recommendations I have made are aimed at helping CEDR maintain this position, and improve further.

### **Follow up on previous recommendations**

- 1. That CEDR consider setting up new coding categories for complaints that are wholly about adjudication decisions, wholly about administration or customer service matters, or about a combination of both adjudication and administration/customer service. This is so that consumer concerns can be more easily identified; and performance and root cause activity undertaken if necessary.*

CEDR have established a new category for complaints that are predominantly about adjudication decisions (“review” cases). This appears to be working well. It may be worth considering a third category to capture those complaints that contain equal elements of customer service and decision review.

- 2. That CEDR place greater focus on the accuracy of drafting replies so that mistakes are avoided. I recommend CEDR consider a more robust proof reading stage to help with this.*

CEDR have acted on this. There are far fewer errors.

- 3. That CEDR consider whether there is a better way to present responses to complaints about adjudication decisions, so that they are more accessible to consumers. Currently such replies are often long and complex. One idea may be to include the full adjudication review as a separate enclosure for reference, with a “plain English” summary within the body of the letter. Such a summary could highlight any key points and the outcome.*

Overall I found the presentation of responses to complaints about adjudication decisions to be much clearer, and I found no evidence of customer complaints about this aspect. I am therefore satisfied that no further action is required for the time being.

- 4. That CEDR monitor timescales closely and make efforts to avoid any cases over-running even slightly, so that the average handling time can be improved. (It should be noted that timescales were mostly within target and the average was 25 working days. This recommendation is therefore pre-emptive and intended to help ensure timely responses for consumers.)*

There has been a marked improvement in timescales. The current average is 19 working days compared to 25 last time. Only one case over-ran (by four working days).

- 5. That CEDR identify which criterion complaints fall under in all replies, so that clarity is ensured.*

This is now happening consistently.

## **Recommendations**

I have two recommendations.

1. That CEDR consider a third classification category to capture those complaints that contain equal elements of customer service and decision “review”, so that there can be clear identification of complaint causes. (I stress that this is for consideration only; it may be that the volumes do not warrant a third category.)
2. That CEDR ensure that on every occasion every point raised on a complaint form is addressed, so that complainants always receive a comprehensive response.

## **Acknowledgements**

I have been given full and unrestricted access to the Scheme's and CEDR's systems and records along with carte blanche in respect of conducting this audit as I saw fit. As ever, I am very grateful for the patience and assistance given to me in terms of navigating systems and dealing with my various questions. I am grateful, too, for the thorough responses to the various points that arose from my examination of casework; and the positive responses to my comments and observations that formed part of this review.

A handwritten signature in black ink, appearing to read 'CA Holland'.

Chris Holland

Independent Complaint Reviewer

29 October 2019