

The Aviation Adjudication Scheme (The Scheme)
Independent Complaint Reviewer Report
For 1 October 2019 - 30 September 2020.

1. Introduction

This is my fourth report on the Scheme - which deals with claims made against subscribing airlines and airports.

Ordinarily, as required by the Civil Aviation Authority (CAA), my reports are six monthly. However, due to the impact of the Coronavirus pandemic we agreed to suspend my April 2020 report and roll it into this one, which therefore covers 1 October 2019 to 30 September 2020.

The Coronavirus pandemic had a significant impact during the second half of this period; it continues to do so, and I'm mindful of the disruption to CEDR's (the Centre for Effective Dispute Resolution) operations. The office was closed from late March onwards with staff working from home and there have no doubt been potentially challenging demands from customers. Against this backdrop I have been impressed with the overall standard of complaint handling maintained by CEDR; and I commend their success in maintaining continuity of service throughout. I have also taken into account the extraordinary circumstances of the last few months when assessing CEDR's complaint handling performance.

2. 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 reference¹ and the Scheme's rules² I can consider complaints about certain aspects of CEDR's quality of service - such as alleged administrative errors, delays, staff rudeness or related matters.

¹ <https://mk0cedrxdkly80r1e6.kinstacdn.com/app/uploads/2019/12/Independent-Reviewer-TOR-v2.pdf>

² <https://mk0cedrxdkly80r1e6.kinstacdn.com/app/uploads/2019/10/Aviation-Adjudication-Scheme-Rules.pdf>

I can also look at two other types of complaints: (a) where the customer feels that in reaching an adjudication outcome relevant information was ignored and/or irrelevant information was taken into account; and (b) where complainants feel that an adjudicator has made an irrational interpretation of the law. 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 review and report on all complaints biannually (although exceptionally this report combines two six month periods). My reports are based on findings from reviews of individual complaints that have been referred to me; and on my examination of all or some of the complaints that CEDR has handled as I see fit.

3. The CEDR Aviation Adjudication Scheme Complaints Review Policy and Process

The Policy and Process³ 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 doesn't conclude the matter, the complaint can be referred to me for independent review.

4. This Report

I examined all 12 complaints handled under the Complaints Review Procedure between 1 October 2019 and 30 September 2020. One complaint was escalated to me during this period, which I comment on in the qualitative section of this report.

³ <https://mk0cedrxdkly80r1e6.kinstacdn.com/app/uploads/2019/11/Aviation-Complaint-review-process.pdf>

5. My Findings

(a) Quantitative

There are very few complaints about the Scheme. Of the 4781 applications handled during this reporting period, CEDR received 12 complaints - representing 0.25%, which is down from 0.38% on the previous 12 months. In terms of absolute numbers there was a reduction of 79%, from 57 to 12 complaints.

One case was referred to Stage 2; and I reviewed one complaint at Stage 3.

Of the 4781 applications during this 12 months approximately 29% (1371) received a decision from an adjudicator. (The remainder were outside the Scheme's scope.) This is 25 percentage points fewer than the previous six months. I understand that part of the reason for the reduction is that timescales were extended due to the Coronavirus pandemic.

Of the 1371 adjudicated claims, outcomes were as shown in table 1 below.

Table 1: Adjudicated Claim Outcomes

Succeeds in full	Succeeds in part	Fails
18.2%	18.4%	63.4%

The table above shows that slightly over one third (36.6%) of claims were found in the customer's favour to some extent; and just under two thirds (63.4%) were found wholly for the airline. The respective figures for the previous six months (1 April to 30 September 2019) were 50.4% and 49.6% - thus the trend of fewer successful claims continues.

It is outwith my remit to examine claims and decisions (unless directly relevant to an individual complaint issue); and it is not my role to review or comment on the number of successful/unsuccessful claims. I include this information only to give the context in which to view complaints made about CEDR itself. However, let me repeat a point that I've made previously - which is that the decrease in successful claims over time has not resulted in more complaints. This, in my view, remains 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			
0	5	5	2	12

The “review” column shows the number of complaints relating to certain aspects of the adjudication decision eligible for review under the complaints process (i.e. whether relevant information was ignored or irrelevant information taken account of; and whether the adjudicator made an irrational interpretation of the law).

I found one “review” case that should have been classified as “partly in scope”. This was a classification error only, with no bearing on the complaint outcome. CEDR have corrected the record and table 2 shows the correct position.

In reviewing the complaints it struck me that hard and fast classification can at times be difficult - customers are apt to conflate “service” and “review”, and they can be forgiven for doing so. For example, if a customer thinks an adjudicator has not taken account of relevant evidence they might characterise that as “poor service”. It is CEDR’s role to correctly classify the complaint based on the predominant issues, and in my opinion they are doing a good job in this regard. Having examined all 12 complaints I am satisfied that there were no exclusive or predominant “service” complaints during this reporting period; and I found no examples of major delays, staff rudeness or administration errors. CEDR are in my view to be commended for this.

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 nine:

Table 3 Complaint Outcomes

Fully Upheld	Partly Upheld	Not Upheld/ Out of Scope	Total
1	2	6	9

With the caveat that these numbers are far too small to draw any major conclusions, there is a higher percentage of “fully” or “partly” upheld complaints compared to my last report (33% versus 4%).

I said last time that I’d monitor this, so the increase - whilst based on a small sample - is welcome. I’m also satisfied that in all cases the complaint outcomes were fair and reasonable, and reached only after a thorough review.

(b) Qualitative

(i) Timescales

CEDR acknowledged 75% of complaints within one working day and 83% within two working days; 17% (two cases) took three working days or longer.

These results were skewed by one case that took eight working days to formally acknowledge due to technical problems with the complaint form. However, CEDR kept the customer fully informed and accepted the complaint from the initial date of submission - even though they couldn’t access it fully until eight days later, when they acknowledged it.

Nonetheless the position is very much in line with my last report and, mindful of the disruption caused by the Coronavirus pandemic, I feel that CEDR have done well to sustain this performance level. Were it not for the rogue technical issue they would have done even better.

Hopefully, as things stabilise - and especially if volumes remain low - it would be good to see no acknowledgements taking longer than two working days. I have no doubt that CEDR are capable of achieving this.

CEDR exceeded its 30 working day Stage 1 response target twice - but by only one day in both cases. The average handling time was 21 working days. Whilst this is a couple of working days slower than during the previous six months, I am not concerned given current circumstances. The range was nine to 31 days.

The one complaint that was escalated to Stage 2 was dealt with well within timescale (17 working days).

CEDR offered compensation to three complainants. The amounts were £203.50; £40.00; and £30.00. I comment on these in the next section, but I am content that they were all proportionate.

(ii) Casework and Outcomes

(a) Cases for Independent Review

One complaint (lodged in August 2019) was escalated to me during this reporting period. I upheld it in part. In the main, the customer disagreed with the airline's defence and the adjudicator's decision. The airline had initially submitted a defence relating to the wrong flight, which caused a small delay in one part of the process. This was a straightforward error, which was corrected and had no bearing on the outcome or the overall timescale for handling the case. The customer also alleged that the adjudicator ignored relevant information; and they raised a number of customer service issues.

Disagreement with a decision is outwith the scope of the complaints process, so CEDR's review was correctly limited to the customer service elements and the allegation that relevant information had been ignored.

The Stage 1 review answered the central point and included a thorough re-examination by an in-house adjudicator of the original adjudicator's treatment of the evidence in relation to the decision on the claim. However, it failed to respond to a couple of customer service points and it contained a typographical error.

After escalation to Stage 2, a different adjudicator reviewed the matter and reached the same conclusion - that is, that the customer's complaint was based on a difference of opinion and there was no suggestion that evidence had been ignored.

I found that CEDR followed the process correctly and that the Stage 1 and 2 reviews properly dealt with the main complaint. I found nothing to suggest that the adjudicator had ignored any evidence and I did not uphold the customer's complaint in this regard. However, I found that CEDR failed in some aspects of its customer service - for example, a slight delay in responding to a query; poorly worded advice about a deadline; a delay in obtaining the correct defence from the airline; and failure to address a point about use of customers' data. I felt that, on their own, these were all minor issues and they had no material impact on the outcome. But they were not all addressed at Stages 1 and 2, so taken collectively I upheld these aspects of the complaint and awarded the customer £50.00 compensation.

I made two recommendations, that CEDR:

- Consider introducing a process to check defences on receipt to ensure that they relate to the correct flight; and if they do not, that the correct defence can be immediately requested from the airline; and

- Make efforts to ensure they respond to all the points that complainants raise on the complaint form.

On the first of these, CEDR reported back to me that it is not a straightforward issue - due to system limitations, and some issues with the airline. CEDR considered my recommendation, but felt unable to implement it. In essence, as I understand it, the necessary system changes would have been disproportionate to the scale of the problem - which is a fair point. So as this is the first and so far only time that I've come across this issue I decided to monitor the position for the time being. If further cases like this occur, I will revisit the matter with CEDR.

On the second, CEDR accepted my recommendation and are making renewed efforts to ensure that all points (however minor) are addressed at Stages 1 and 2 of the review process.

(b) In scope (review) (four complaints).

One complaint was **upheld in full**. Basically, the airline had already admitted liability for some fuel costs incurred by the customer and agreed reimbursement. But the adjudicator, in effect, "unawarded" that reimbursement. I was very impressed with CEDR's review - in essence it said that where the airline had admitted liability the adjudicator should accept that admission and consider that the issue is no longer in dispute. I was also pleased to note that CEDR used this case for continuous learning purposes by giving feedback to its adjudicators more widely. CEDR upheld the complaint in full and awarded £203.50 compensation - in effect, reimbursing the customer and adding a small token of goodwill.

One complaint was **upheld in part**. The customer felt that the adjudicator had taken account of irrelevant facts (provided by the airline) in respect of a dispute over late arrival at the boarding gate, leading to boarding being denied. I need not rehearse the detail here but CEDR's review showed, correctly in my view, that this was not the case. However, it did show that the adjudicator had overlooked a disparity regarding flight numbers in the airline's defence. This had no impact on the outcome of the claim; in fact, there was clear evidence from the complainant that they had arrived late. Nonetheless, because the adjudicator hadn't picked up and addressed the flight number disparity, CEDR awarded the customer £30.00 compensation (and waived the £25.00 fee that the customer would ordinarily have paid for an unsuccessful claim).

The remaining two “in scope” complaints were **not upheld**. In one case the customer complained about the adjudicator ignoring evidence that hadn’t actually been submitted at the time of the claim. It was to do with the customer giving incorrect bank details to the airline, but I was very pleased to see that CEDR acted on a “good offices” basis and informally brokered a satisfactory solution for the customer; credit also goes to the airline for taking a reasonable approach.

In the second case, the complainant felt that the adjudicator hadn’t taken account of relevant information but failed to specify any details - other than a general disagreement in respect of part of the airline’s defence relating to an extraordinary circumstance. CEDR nonetheless reviewed the complaint, but found no fault with the adjudicator’s decision.

(c) Partly in scope (five complaints).

One complaint was **upheld in part**. This was a lengthy and complex complaint in which the customer disagreed with the adjudication decision and, among other things, accused CEDR of lying; using irrelevant evidence; poor customer service; bias in favour of the airline; and ignoring evidence. CEDR’s Stage 1 review was thorough and, indeed, it identified a couple of minor points that the original adjudicator had not addressed. These were omissions rather than errors per se, which the review dealt with in addition to establishing clearly that they had no material effect on the outcome of the claim. It was also the case that there was no evidence to substantiate the majority of the customer’s complaints. However, CEDR offered £40.00 compensation in view of the minor oversights by the adjudicator - but the customer declined this.

The customer was clearly unhappy and via a series of somewhat strongly worded and unclear emails requested escalation to Stage 2 of the process. This duly happened, and CEDR’s Principal Adjudicator reviewed the matter and was able to comprehensively rebut the customer’s allegations about CEDR’s handling of the claim. As a footnote, I was impressed with CEDR’s firm but professional response to further intemperate emails from the complainant. These included the submission of apparently new evidence from the customer long after the claim had been closed. To their credit CEDR had the Principal Adjudicator look again at the complaint and the conclusion was that, even if the customer’s new evidence had been available when the claim was first submitted, it would not have altered the outcome.

Four “partly in scope” complaints were **not upheld**. One of these alleged that an adjudicator had made an irrational interpretation of the law because the complainant had seen information posted on-line about other claims relating to the same flight where a different outcome had been reached. In short, it was alleged that other claims had succeeded where this one had failed. The Stage 1 review was comprehensive. It established that the adjudicator had not made an irrational interpretation of the law; and explained that claims are individual (and under the Scheme’s rules are specific to that claimant’s dispute) and may feature different circumstances. Therefore different outcomes may be equally correct. The detail of the complaint itself was quite technical in nature, but my reading of it left me satisfied that CEDR had reviewed fully all aspects of the matter and the outcome was fair.

A further case was on the same theme. Essentially two passengers on the same delayed flight, in exactly the same circumstances, had different outcomes on their claims. The passenger whose claim failed complained both that evidence had been ignored and that the law had been irrationally interpreted in respect of his unsuccessful claim. The Stage 1 review found no evidence of either having happened, and explained that it was possible for different decisions to be reached on similar complaints. I felt the response itself was fine, and strictly speaking it was accurate in that it had (correctly to my mind) found no evidence of any errors.

Ordinarily I don’t examine claims and decisions; my role is limited to checking that the complaint process has been followed and properly executed. However, in this instance I could see the customer’s point and took the liberty of looking at the airline’s defences and the decisions in both cases.

The defences were very similar indeed, and identical in many places. At the same time, both decisions were in my view well reasoned and based on rational interpretations of the law with nothing to suggest that evidence was ignored. It was simply that different adjudicators reached different conclusions based on the same evidence.

To satisfy myself that this was the case, I asked CEDR to review both cases and report back to me. This they did, at a senior level. Their view was that the conclusions reached by both adjudicators were fair and reasonable, even though they had arrived at different outcomes on whether a particular element of the airline’s defence (a crew member’s sickness) amounted to an “extraordinary circumstance”. The matter itself isn’t one that has been definitively settled by the courts - therefore it’s possible to see how different adjudicators might come to different views.

So - while it's regrettable that this situation arose, and it understandably aggrieved the complainant - neither decision was in and of itself the result of an irrational interpretation of the law or failure to take account of the evidence.

This situation might be avoided if CEDR appointed the same adjudicator to claims relating to the same flight. I've raised this with them previously and I know that they try to do this wherever possible. However, the Coronavirus pandemic has impacted on the availability of adjudicators and it isn't always possible in the current environment. That said, I've been in touch with the Head of Consumer Services who has confirmed that CEDR will endeavour to assign the same adjudicator to the same flight numbers; and that where that cannot happen cases will be flagged up so that CEDR can monitor the situation and be aware of the possibility of different decisions being reached.

The complaint that highlighted this matter was dealt with properly, and the decision in question was not faulty. Given that CEDR are aware of the issue at Director level and have told me that they are making efforts to militate against it, I am not minded to make a formal recommendation on this occasion. I will, however, continue to monitor the situation.

The third complaint that CEDR did not uphold contained an array of issues that was somewhat difficult to unpick. I was pleased to see that on balance CEDR treated it as "partly in scope" - although when it was reviewed in detail it boiled down to a disagreement with the outcome. Nonetheless, the review made sure that there had been no irrational interpretation of the law (which was one reading of why the customer had complained), and dealt with a number of other issues. One of these was that the customer felt that the language used in the decision rendered it inaccessible to the layman. The adjudicator who carried out the Stage 1 review fed this back and reminded all adjudicators to bear it in mind. (I looked at this decision myself, and did not find it particularly difficult to follow save for one section that necessarily quoted various regulations. However, I'm glad that CEDR acted on the customer's comments.)

The final complaint that CEDR did not uphold was straightforward. In essence the customer disagreed with the decision, and in doing so felt certain evidence hadn't been taken into account. The Stage 1 review established that this was not the case. The customer also complained about poor customer service from CEDR and said he had proof of this - but gave no detail whatsoever about what form this took, and did not submit any proof as part of the complaint. CEDR found no delays, issues or complaints in relation to the case before this point so gave a generic response about their service levels. In my view this was fair enough in the circumstances. There was no further response from the customer.

6. General Observations

I have four general observations.

1. Overall I found replies to customers to be of a good quality, with evidence of a customer centric approach. This continues an improving trend, for which CEDR deserve credit. For the most part, letters included an accurate summary of the complaint and a helpful explanation of the Scheme's scope. On the odd occasion I felt the summary was a little too brief, and as a matter of good practice I'd urge CEDR to reflect the customer's complaint(s) as fully as possible in the Stage 1 responses.
2. Similarly, I'd encourage CEDR to always state in replies whether the complaint is "in scope" or "partly in scope". This was always implicit, but stating it explicitly would leave no room for doubt. (I stress that there was no evidence of this causing problems - it's a proactive observation only on my part and certainly doesn't warrant a recommendation.)
3. I found one or two minor typographical errors in replies to customers; and one where a particular paragraph was in my view difficult to comprehend (although the customer didn't query it). This appears to be a one off so I'm not making a formal recommendation; but I do urge CEDR to continue to focus on readability and accuracy of proof reading. (I've given the specific details to CEDR.)
4. Following on from an observation in my last report, I've continued to monitor examples of different claimants getting different decisions on the same issue relating to the same flights. I highlighted two such cases in section 5. However, the incidence is diminishing - this is two fewer over 12 months than during the previous six-month period; and in both cases, I was satisfied that the complaint reviews established correctly that there was nothing amiss in the adjudicators' handling of the claims. But it's easy to see how an unsuccessful claimant would be upset by this situation, and it's best avoided in my view. CEDR have reported back to me that they try to assign claims relating to the same flight to the same adjudicator, but that this isn't always possible - especially at the moment. Strictly speaking this area falls outwith my remit and I'm only required to satisfy myself that any resultant complaints are handled correctly. However, I intend to continue monitoring the situation.

7. Follow up on previous 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.)*

CEDR considered this, but on balance felt that there was no overwhelming business case for making the change and no clear customer benefit. They are however keeping it under review. I'm happy with CEDR's response - on current volumes there is no value in creating a further complaint 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.*

CEDR have acted on this and are ensuring that all points are addressed. The evidence from my review suggests their efforts have been successful - I found no evidence of points going unanswered on the complaints that I looked at.

8. Conclusion

The sample is small, but the complaints trend remains downward. In the context of the number of claims the Scheme handles the complaint rate of 0.25% is in my view impressive.

CEDR is sustaining a good complaint handling performance: timescales are pretty good given current circumstances; Stage 1 reviews are thorough and customer focussed; and replies are of a generally high standard.

CEDR offered compensation in three cases, which is about what I'd expect based on previous reviews. The amounts were in my opinion proportionate.

I found just one minor classification error, which only affected record keeping and had no impact on the complaint outcome.

On the evidence of this review CEDR is sustaining a good complaint handling service and remains committed to further improvement. The fact that I've made no recommendations is a positive sign; and my observations will hopefully be useful to CEDR.

9. Recommendations

I have no recommendations.

Acknowledgements

Even though I conducted this review remotely, CEDR provided me with the same level of open and unrestricted access to the systems and records that I needed just as if I'd been in their offices. I am grateful for the efforts that they went to in order to set this up for me securely, and for giving me technical support as required. As usual, I therefore had carte blanche in respect of conducting this audit as I saw fit. I have also had the usual level of assistance with any queries I had as I conducted my review and I appreciate in particular the responses from the Head of Consumer Services and the Complaints Manager to the occasional points that I raised as I examined the casework.

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

Chris Holland

Independent Complaint Reviewer

23 October 2020