

The Aviation Adjudication Scheme (The Scheme)
Independent Complaint Reviewer Report
For 1 October 2018 - 31 March 2019.

Introduction

This is my second report on the Scheme – which deals with complaints made against subscribing airlines and airports. It covers the period 1 October 2018 to 31 March 2019, as required by the Civil Aviation Authority.

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 only consider matters relating to certain aspects of CEDR's quality of service - for example, alleged administrative errors, delays, staff rudeness or other such issues. 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.

¹ https://www.cedr.com/docslib/Independent_Reviewer_Terms_of_Ref_NOV.pdf

² https://www.cedr.com/docslib/CEDR_Aviation_Adjudication_Scheme_Rules_-_5th_Edition_171218.pdf

This Report

I examined all complaints handled under the Complaints Review Procedure between 1 October 2018 and 31 March 2019. No complaints were escalated to me during this period.

The CEDR Aviation Adjudication Scheme Complaints Review Policy and Procedure

The Policy and Procedure³ explains its scope along with the two internal stages of review that take place before, if necessary, a complaint is referred to me.

The Policy and Procedure was updated on 1 January 2019. The main change was a widening of its scope. In particular the eligibility criteria now includes complaints about certain aspects of the adjudication itself, namely: “relevant information being ignored and/or irrelevant information being taken into account”; and “in reaching the decision in your claim, the adjudicator made an irrational interpretation of the law.”

These aspects can be reviewed during Stages 1 and 2 of the process but it is important to note that I am not expected to consider whether an adjudicator has made an irrational 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.

The new Policy and Procedure 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 Findings

Quantitative

The Complaints Policy and Procedure was updated half way through this reporting period – essentially bringing more complaints within scope. Even so, CEDR continues to receive very few complaints about the Scheme.

³ https://www.cedr.com/docslib/Aviation_complaint_review_policy_and_process_2019.pdf

Of the 9531 applications it handled during this reporting period, CEDR received 32 complaints – representing 0.33% (up from 0.2% compared to the previous six months). Four cases went to Stage 2, but none were escalated to me for review.

Of the 9531 total applications made to the Scheme approximately 58% (5499) received a final decision from an adjudicator. This is eight percentage points higher than in the previous six months. The remainder were outside the scope of the Scheme.

Of the 5499 adjudicated claims, outcomes were as shown in table 1 below.

Table 1: Adjudicated Claim Outcomes

Succeeds in full	Succeeds in part	Fails
45.6%	22.5%	31.9%

The table above shows that in total 68.1% of claims were found in the customer’s favour to some extent; and 31.9% were found wholly for the airline. The respective figures for the previous six months were 83.2% and 16.8% - so significantly fewer claims succeeded this time around.

The purpose of including this information in my report is nothing other than to provide a useful context in which to view the complaints made about CEDR itself. However, the fact that the increase in “failed” claims did not lead to a major increase in complaints can be seen as a positive finding.

Table 2 below gives a breakdown of the service complaints about CEDR.

Table 2: Service Complaints about CEDR

In Scope	Partly in Scope	Out of Scope	Total
23	1	1	25

Of the 32 complaints CEDR received during this reporting period, seven remained in the pipeline at the time of my review – hence I could only review the 25 that had fully completed the process. Of those, 14 of the 23 “in scope” complaints were wholly about the adjudication – in other words, they had only become eligible for the Complaints Procedure following the introduction of the new Policy in January 2019.

Whilst it is still early days for the new Policy, this does suggest that consumers are beginning to benefit from greater access to the Complaints Procedure. It also accounts for the increase compared to the previous reporting period (1 April to 30 September 2018), when there were 19 complaints related to the Scheme.

I found six cases that had been misclassified: one had no outcome shown and was in fact withdrawn; two that were shown as “out of scope” and “upheld in part” should have been “not upheld”; one shown as “out of scope” should have been “upheld”; one that had a case note shown under the outcome should have been “upheld”; and two that were classified as “out of scope” should have been “in scope”.

I am satisfied that these were all straightforward recording errors that had no impact on the case outcomes. I have drawn them to CEDR’s attention and the records have been amended. Table 2 above shows the correct position.

Table 3 below gives a breakdown by outcome at Stage 1 of the Complaints Procedure for those cases that were not out of scope:

Table 3 Complaint Outcomes

Fully Upheld	Partly Upheld	Not Upheld	Total
4	9	11	24

These are small numbers and I am not able to identify any trends. That said, there is a higher proportion of “not upheld” outcomes compared to my last report (46% versus 33%). This may well be a reflection of the new Policy, but it is something I shall monitor.

CEDR acknowledged complaints promptly at 88% within one working day and nothing beyond two working days. This is commendable.

Although by only a day or two, CEDR exceeded its 30 working day Stage 1 response target on two of the 25 complaints that reached completion in this reporting period (representing 11.5%). The average handling time was 25 working days - 13 days longer than in the previous six months; and the range was 13 to 32 days.

Given the greater volume of complaints following the Policy change (which also involves more time in terms of reviewing adjudicators' decisions) these results are not surprising; however it is still the case that most complaints are dealt with within the prescribed timescale – albeit towards the upper limit of the target. I would, nonetheless, recommend that CEDR monitor this closely to avoid cases over-running, and that they endeavour to improve the average handling time.

Of the four complaints that progressed to Stage 2, two were “partly upheld”; one was “not upheld”; and one was still within timescale awaiting a response at the time of my review.

In terms of compensation, payments were offered and accepted in 12 cases. Seven concerned an administration or customer service problem, where compensation ranged between £10.00 and £25.00. Five were the result of an adjudication review with awards ranging from £60.00 to £878.88. In my assessment all these awards were proportionate in relation to the problem experienced by the customer and/or the error or issue with the adjudication decision.

It is worth pointing out that the five awards in relation to an adjudication issue represent 0.09% of the 5499 claims that were adjudicated. Whilst this is exceptionally low, the fact that these customers had successful outcomes to their complaints about a decision demonstrates that the new Policy is both worthwhile and effective.

Qualitative

Before commenting on the casework, it is worth highlighting three themes that I observed.

First, I found a number of occasions where there were typographical errors in replies, or where the drafting was slightly clumsy.

Second, I found that replies about adjudication complaints were often very long and complex.

Third, I found that in a few cases CEDR had not complied with its 15 day timescale for the initial review of a claim. In some replies to complaints about this, in my opinion, CEDR tended to discount that timescale and place more emphasis on the 90 day end to end timescale.

I expand on these themes in the “General Observations” section of my report.

Cases for Independent Review.

No complaints were escalated to me during this reporting period. In combination with my overall findings this is evidence that the process is working well and that complaints are being properly dealt with at Stages 1 and 2 of the Procedure.

In Scope (23 complaints).

In the last reporting period there were six “in scope” complaints – so 23 is a significant increase. However, 14 of these related wholly to the adjudication decision and three contained elements of the decision as well as an administration problem. With this in mind, a large part of the increase is most likely down to the wider scope of the Policy and Procedure that CEDR implemented in January 2019.

Four complaints were **upheld in full**.

Two concerned handling delays, which CEDR acknowledged and awarded £10.00 and £20.00 compensation accordingly. I am satisfied that the different amounts reflected the degrees of customer inconvenience experienced. One of the cases involved the frequency of checking the “junk email file”, which I followed up and am satisfied is being done on a daily basis with reasonable steps to identify messages relating to a claim.

One was a complex issue relating to the adjudicator not taking full account of relevant evidence, and where the customer had wanted to re-submit the claim but had been refused leave to do so. Upon review, the complaint was upheld and subsequently voided so that the customer could achieve the outcome being sought and re-file the claim. I regard this as good evidence of the new Policy working effectively, since under the old approach this complaint would have been ruled out of scope.

One complaint challenged the outcome of the adjudication on the basis that it had failed, when the claimant was one of a number of other passengers on the same flight whose claims had succeeded. I was pleased to see that the original decision was reviewed thoroughly, and the reviewing adjudicator acknowledged the existence of unexplainable inconsistencies in the original decision. The customer was awarded £878.88 compensation. Again, I regard this as good evidence of the new Policy working well for the consumer – when the Stage 1 review supports the basis of the complaint there can be an effective outcome.

Nine complaints were **upheld in part**.

These were a mixture of complaints about the adjudication itself, administration/customer service or a combination of both.

Most of the administration/service complaints concerned more than one issue – with four featuring handling delays. Other complaints were about: poor advice/treatment given by CEDR staff; having to chase information/updates; problems with the portal; or getting a customer's name wrong. To keep these in context, they were few and far between and were handled appropriately – and I was impressed to see that where necessary call recordings were listened to in order to establish the facts. In all cases some degree of culpability was identified (albeit mostly relatively minor) and compensation ranging from £10.00 to £25.00 was awarded. I examined each case, and am satisfied that the correct outcomes were reached.

Where the complaint involved the adjudication decision responses were very detailed and thorough. In one case errors were identified - and although they had no material effect on the decision £60.00 compensation was awarded and accepted. In one case the deadline to accept or reject a decision was extended due to the claimant wanting to hold fire whilst their complaint was in progress. I regard this as a flexible and pragmatic approach by CEDR. And in one case, after review, it was established the original adjudicator had erred and the customer was awarded compensation of £269.90. As with a couple of the “upheld in full” outcomes, this is good evidence of the new Policy working well for consumers when their complaints are well founded.

Two cases were “upheld in part” following a Stage 2 review. Both concerned the adjudication decision. The first recognised that confusion had been caused when an extract from an internal email was accidentally included in the Stage 1 response; £75.00 compensation was offered and accepted. And I was impressed with the second response – which gave a very honest view from the Director of Dispute Resolution Services that the original adjudication was difficult to follow; and that there were some problems caused by entries being made on the customer portal whilst the matter was still in progress. I was also pleased to see that feedback would be given to the adjudicator in question and additional training arranged. The customer was awarded £100.00 compensation.

10 complaints were **not upheld**.

Apart from two, these complaints concerned adjudication decisions. Of the two that did not, one was about a delay in the initial assessment of the claim – which proved to be unfounded; and one was about CEDR not keeping the customer informed – of which there was no evidence that I could find.

The remainder that were about adjudication decisions were all reviewed thoroughly. Some consumers took a very robust position but CEDR gave full explanations, with input from a reviewing adjudicator where appropriate. One or two consumers made compelling complaints and it was possible to appreciate their strong views – but the reviews were very thorough and the outcomes were in accordance with the Scheme's rules and were, in my opinion, correct.

Two complaints went to Stage 2. One effectively alleged that the adjudicator had re-written the airline's defence and in so doing had included irrelevant information. It is not my role to review such matters, but I did examine the Stage 2 response in which it was clear that the adjudication had been reconsidered fully and due account of the customer's points had been taken. It was clear that the original decision was safe, and the customer's allegations were without foundation.

The other Stage 2 complaint had not reached a conclusion at the time of my review, but had been referred to the Lead Adjudicator.

Partly In Scope (one complaint).

The customer complained that CEDR had accepted a late submission from the airline; and that CEDR had "lied" about the customer's rejection of the decision. (This aspect of the complaint was a little difficult to grasp in terms of what outcome the customer was seeking.)

The complaint was correctly not upheld. The system showed clearly that the airline's response was within the prescribed timescale; and that initially the customer had neither accepted nor rejected the decision – choosing instead to enter a comment via the portal. Once the customer's intention to reject the decision was known, the system was updated accordingly.

Not In Scope (one complaint).

This case related to an adjudication decision, but pre-dated the new Policy and Procedure by some two and a half months – so was correctly classified as out of scope.

General Observations

I have four general observations.

1. In my last report I said I would monitor the situation in respect of complaints about apparently different outcomes on different claims about exactly the same issues relating to the same flights. I have done so, and I found six examples of this during this reporting period.

I understand that the reason is largely due to inconsistent responses from the airlines. In essence, if an airline submits a poor defence, it is more likely to lose; if, however, for whatever reason, it puts in a stronger defence on a related but separate claim then its chances of winning are greater.

I commented last time that this creates the conditions, beyond CEDR's ambit, where consumers may perceive potentially inconsistent outcomes - and therefore be dissatisfied. I know that CEDR have taken steps to militate against this happening - 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.

But it is disappointing to still see the same issue. It is not CEDR's fault – they must work with the defences they are given and apply the Scheme's rules accordingly. And I cannot make recommendations for airlines - the quality of their defence submissions remains a matter for them. But this situation has consequences for consumers and in my opinion it does not reflect well on the industry as a whole. Whilst stepping well beyond my remit, I would urge all stakeholders to see what can be done to improve the situation.

2. I found some inconsistencies in the quality of CEDR's replies to customers. This was less in terms of tone (which was overall good) and more to do with typing errors and what appeared to be clumsy drafting. We are all human and mistakes happen but I found a number of errors that, while not major, could impact on CEDR's reputation. The higher volume of complaints following the implementation of the new Policy and Procedure, along with the requirement to respond to very detailed issues about adjudications where appropriate, may in part account for the errors. I have separately given examples to CEDR and, whilst this is not currently a major concern, I am recommending that they make efforts to attain a consistently high standard – perhaps by strengthening the proof reading process.

3. In some cases CEDR had not complied with its own timescale to initially review and accept or reject a claim. That in itself is purely an observation. But in responding to complaints on this some replies seemed to me to focus too much on the 90 day end to end timescale and perhaps gave the impression of diminishing the importance of the delay about which the customer was actually complaining. This said, I could see no evidence of customers complaining about the replies and, where appropriate, compensation was offered. So I am not minded to make a recommendation, as it is perhaps more of a presentational point. I therefore leave it with CEDR as constructive feedback but I will monitor at my next review.
4. I liked the way some of the replies clearly identified which criterion the complaint fell under. This is helpful as it confirms understanding of the consumer's issue, and avoids confusion. So that is positive feedback, and I recommend that CEDR adopt that approach in all replies they send in relation to the Scheme.

Conclusion

The advent of the new Policy and Procedure in January has clearly increased complaint volumes, and much more work is required when a complaint is about an adjudication decision. CEDR have coped well with this: complaints are acknowledged quickly; most replies are within the target timescale; and there is evidence of good outcomes for consumers. It is still early days, and it will be a while before the long-term impact can be assessed but based on this review I have no concerns about CEDR's capability to provide an overall high standard of complaint resolution.

As with the previous six months (and allowing for the Policy change) in the context of the total number of claims handled by the Scheme the frequency of complaints about CEDR remains very low at 0.33%. All except two complaints were handled within prescribed timescales; four complaints progressed to Stage 2; and none were escalated for independent review.

The new Policy and Procedure is well articulated and the evidence from my review shows it to be working effectively for consumers. A number of complaints that would have previously been "out of scope" were accepted as "in scope"; two decisions were amended following review; and compensation for errors was paid in three further cases. In all cases I felt that compensation was proportionate and responses to consumers gave clear explanations and apologies, supported by thorough investigations. However, in some instances I felt that the drafting could be improved and typing errors avoided.

The handful of minor classification errors that I found concerned record keeping matters that had no impact on complainants.

CEDR have responded very positively to the issues I have drawn to their attention – either correcting errors, or welcoming feedback.

The recommendations I have made are aimed at maintaining and improving a good performance and are not the result of any systemic or underlying problems. CEDR clearly remain focussed on giving complainants a high quality service.

Follow up on previous recommendations

I made no recommendations in my last report. However I did make a couple of observations on which I'd like to comment briefly.

Firstly, last time I'd noticed one or two cases where I couldn't tell whether a customer had accepted a compensation offer. I am pleased to report that I noticed no such cases in this review.

Secondly, last time I observed two cases where airlines had told a customer that it was CEDR who paid the compensation awarded by an adjudicator – which is completely wrong. CEDR were working with the relevant airlines to ensure that customers were advised correctly, and I am pleased to say that I found no cases of incorrect advice being given by airlines on this point during this review.

Recommendations

I have five 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.
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.

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

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.



Chris Holland

Independent Complaint Reviewer

25 April 2019