

The Aviation Adjudication Scheme (The Scheme)
Independent Complaint Reviewer Report
For 1 October 2020 - 31 March 2021.

1. Introduction

This is my fifth report on the Scheme – which is run by CEDR (the Centre for Effective Dispute Resolution) and deals with complaints made against subscribing airlines and airports. It covers the period 1 October 2020 to 31 March 2021, as required by the Civil Aviation Authority.

The Coronavirus pandemic continued unabated during most of this reporting period, and I'm very aware of its impact on CEDR's operations. The office has been closed since late March 2020, with staff working from home. Against this challenging backdrop I remain impressed with the overall standard of complaint handling maintained by CEDR; and I commend their success in maintaining continuity of service throughout. I have taken into account the extraordinary circumstances 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.

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.

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>

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.

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.

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

The Complaints Review 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 25 complaints handled under the complaints process between 1 October 2020 and 31 March 2021. One complaint was escalated to me for independent review during this period. One case was in the pipeline awaiting the Stage 1 response at the time of writing; and one case was in the pipeline for a Stage 2 review.

5. My Findings

(a) Quantitative

Complaints about the Scheme remain low. Of the 1409 applications it handled during this reporting period CEDR received 25 complaints – representing 1.8%. Whilst this is up from 0.25% compared to the previous 12 months the absolute numbers are still small; and the comparison isn't "like for like" due to the impact of the Coronavirus pandemic on the travel industry.

³ <https://www.cedr.com/wp-content/uploads/2021/04/Aviation-Complaint-review-process-apr21.pdf>

Three cases were escalated to Stage 2, and one was referred to me for review.

Of the 1409 applications made to the Scheme approximately 18% (260) received a final decision from an adjudicator. This is 11 percentage points lower than the previous 12 months. The remainder were outside the scope of the Scheme.

Of the 260 adjudicated claims, outcomes were as shown in table 1 below.

Table 1: Adjudicated Claim Outcomes

Succeeds in full	Succeeds in part	Fails
18.5%	19.2%	62.3%

The table above shows that 37.7% of claims were found in the customer’s favour to some degree; and 62.3% were found wholly for the airline. The respective figures for the previous 12 months were almost identical at 36.6% and 63.4%, demonstrating a high level of consistency.

I include the information above solely to provide some context in which to view the complaints made about CEDR; it is not my role to examine or comment on the success or otherwise of claims.

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	14	0	10	24

The “service” column means complaints that are wholly about an aspect of CEDR’s quality of customer service (such as delays, administration errors or staff rudeness). The “review” column shows complaints where certain other aspects of the adjudication outcome were predominant and were 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).

Of the 25 complaints CEDR received during this reporting period, one was in the pipeline at the time of my review – hence I could only review the 24 that had fully completed the process.

All 14 “in scope” complaints were about the adjudication. Three customers also raised minor elements relating to customer service, but on examination I found two of these were more to do with the outcome of the claim itself; and one related to a technical hitch rather than a customer service failing per se.

As I found in my last review, this suggests that a few customers conflate “service” and “review” – and I remain of the view that they can’t be expected to always know the difference. However, in my opinion CEDR are continuing to do a good job in correctly classifying complaints according to the predominant criteria. I’m content that during this reporting period there were no exclusive “service” complaints, which is a good achievement in my view.

I found six “in scope (review)” complaints that should have been “out of scope.” I stress that these were all straightforward classification errors that had no impact on the case outcomes, and CEDR have since amended the records. I established that the reason for this is that CEDR classify complaints on receipt, but do not always update the system if the classification changes following the Stage 1 review. Having raised this with CEDR’s Head of Consumer Services, they will now update classifications as a matter of course. I won’t therefore make a recommendation on this point, but I will monitor the situation at my next review.

Table 3 below gives a breakdown by outcome at Stage 1 of the complaints process for those cases that were within scope:

Table 3 Complaint Outcomes

Fully Upheld	Partly Upheld	Not Upheld	Total
0	3	11	14

These remain small numbers, so I’m unable to identify any trends. However, there are fewer “upheld” outcomes compared to my last report (21% versus 33%). This may well be a product of the nature of the complaints against the backdrop of the Coronavirus pandemic; and I’ve found nothing to suggest that the Stage 1 outcomes were anything other than fair and reasonable. I will however keep an eye on this at my next review.

(b) Qualitative

(i) Timescales

CEDR's performance in respect of acknowledging complaints was excellent at 96% within one working day and 100% within three working days.

Overall performance on case handling was also excellent, with 96% of complaints receiving a Stage 1 response within the target of 30 working days. The average was 11.1 working days, however the range was two to 47 working days. There was no good reason that I could see for the one Stage 1 response that took 47 working days.

That said, these are the best results I've seen since I took up this role in 2017 and CEDR are to be commended on an impressive achievement.

Of the three cases that progressed to Stage 2, one was completed within three working days; one was still within timescale awaiting completion at the time of my review; and one took 46 working days (exceeding CEDR's target by 14 working days). Again, I could see no good reason for this.

The one Stage 3 escalation was completed within 12 working days.

In terms of compensation, payments were offered in four cases (on which I comment later). One of these was the case that I reviewed; one concerned an adjudicator making a flawed assessment of evidence; one concerned an adjudicator both failing to take account of relevant evidence (due to a system error) and irrationally interpreting a regulation; and one concerned an adjudicator failing to take account of evidence submitted by the claimant. CEDR awarded compensation ranging from £125.00 to £2492.62. I'm satisfied that these awards were proportionate and fair, and I'm pleased to see CEDR's complaints procedure working effectively in respect of providing meaningful outcomes for customers when warranted.

(ii) Casework and Outcomes

Before looking at the casework, it's worth mentioning a couple of themes that I noticed. First, 10 complaints (42%) related to claims involving the circumstances under which the airline issued vouchers rather than refunds for cancelled flights. Whilst this falls outwith my remit, it was clearly an issue for customers of the airline and it appears to have impacted on CEDR's complaints workload.

Second, the most common criterion on which customers made their complaints was (e): “In reaching the decision in your case, the adjudicator ignored relevant information and/or took into account irrelevant information”. This was cited in 23 of the 24 complaints CEDR reviewed.

Criterion (f): “In reaching the decision in your case, the adjudicator made an irrational interpretation of the law” was cited 11 times; criterion (c): “Where the quality of service by CEDR staff has been unsatisfactory” was cited three times; and criterion (a): “Where the process followed in your case was not in line with the process as provided for in the CEDR Aviation Adjudication Scheme Rules” was cited once.

Whilst in the vast majority of cases CEDR’s review of a complaint did not find that an adjudicator had ignored relevant information, customers’ perceptions to the contrary are clearly a trigger for complaints.

(a) Cases for Independent Review.

One complaint was escalated to me for review, which I partly upheld. The matter concerned a cancelled flight and the customer felt that the adjudicator had ignored relevant information, and had made an irrational interpretation of the law. It was a complex case, but I found that CEDR had failed to take account of relevant information in respect of one particular aspect of the complaint. I also found that CEDR had breached the Scheme’s complaints policy and process, as there was no evidence that its Stage 2 review had reconsidered whether there had been an irrational interpretation of the law. I was satisfied that had the matter been reconsidered at Stage 2 it would not have altered the outcome of the case, but I nonetheless found against CEDR for what in my opinion was a serious breach of the policy and process. I awarded the customer several hundred pounds compensation in total, which they accepted.

(b) In scope (review) (14 complaints).

Three complaints were **upheld in part**.

The first of these was a long and complex case, the rehearsal of which will serve no useful purpose here. It revolved around a refund for a cancelled flight, but was complicated by confusion about where the liability rested and was not helped by the fact that the adjudicator missed a file of evidence due to a system problem. This was compounded by a number of typographical errors in the decision.

The Stage 1 response was in my opinion first class. It dealt comprehensively and honestly with every point the customer raised and, whilst not upholding every element of the complaint, on the key issue it found that the adjudicator had irrationally interpreted the relevant law. The customer was awarded and accepted in excess of £2,000.00 compensation, comprising of the value of the refund originally sought plus a goodwill element for CEDR's failings. (I followed this case up with CEDR and was pleased to note that appropriate action had been taken in respect of learning from the errors that had occurred.)

The second case turned on the interpretation of a rebooking fee in the context of the airline's General Conditions of Carriage. CEDR's Stage 1 review found that the adjudicator had not ignored information as the customer had claimed; however, it did find the adjudicator had failed to explain sufficiently part of the decision and that on balance there had been an irrational interpretation of the evidence in relation to the legal situation. CEDR awarded the customer the several hundred pounds compensation that they sought. This was, in my view, another good quality response.

The third partly upheld complaint concerned the treatment of evidence in relation to a claim from a customer who had been given a voucher by the airline when they wanted a refund. In this case CEDR's Stage 1 review found that evidence submitted by the customer had been overlooked – it had been attached as annexes to the claim, and the adjudicator had failed to read the whole submission. On review, CEDR established that had the evidence been taken into account it would not have altered the outcome of the claim. However, as it was clear that all the customer's evidence ought to have been considered CEDR awarded £100.00 compensation for the oversight. This seemed very reasonable to me. For no good reason that I could see, CEDR took 47 working days to complete this case – but they gave the customer an additional £25.00 compensation in recognition of the delay.

The remaining 11 complaints were **not upheld**.

In the main these complaints were from customers who felt that evidence or information had been ignored, with some also claiming that there had been an irrational interpretation of the law. One customer complained that CEDR had not followed its own process/rules in respect of granting the airline extra time to provide its defence. This was not the case. CEDR can grant either party additional time, and in any event they had posted a message on their website explaining that this was a possibility due to the impact of the Coronavirus pandemic.

A number of complaints that were not upheld related to the voucher versus refund issue I mentioned earlier. Each case was looked at on its own merits and I'm satisfied that the Stage 1 reviews established correctly that all relevant evidence was considered and/or that there hadn't been an irrational interpretation of the law. In some cases, customers felt that evidence in the form of media coverage of the issue was relevant; it is not, and CEDR explained this accordingly.

One case was escalated to Stage 2 of the process. This related to an alleged price differential in respect of food and beverages, but the customer introduced new information after the claim had concluded. CEDR correctly did not uphold the complaint at Stage 1 as there was nothing to suggest that any evidence had been ignored in adjudicating the claim. The customer sought to escalate the complaint well outside the prescribed time limit for doing so; however, as there were extenuating circumstances, I was pleased to see CEDR use its discretion and allow the escalation. In the event, the Stage 2 review – which was comprehensive – did not uphold the complaint. I am satisfied that this was the right outcome.

(c) Out of scope (10 complaints).

I'm satisfied that all 10 complaints amounted wholly to a disagreement with the adjudicator's decision. As such, they do not fall within the scope of the policy and process. However, I was pleased to note that CEDR examined each case carefully and explained to the customers why their complaints were out of scope.

I did see one case where the customer was twice given incorrect advice about the complaints process. Fortunately this did not impair the complaint being submitted – albeit it turned out not to be within scope. This was the only example I found of CEDR giving poor advice, so I'm inclined to view it as a "one off". I will however monitor this at my next review.

I found one instance where CEDR's response implied that if a customer ticked the box on the form to say the complaint was about the decision outcome, then that automatically placed the complaint out of scope. This is not the case as customers can complain about a decision, for example, on the basis that information has been ignored or that the law has been interpreted irrationally. Again, this appeared to me to be a "one off" but I fed it back to CEDR who will take action in the form of appropriate training.

6. General Observations

I have two general observations.

1. Overall CEDR's replies to customers were of a good standard. I found only one or two typographical errors, and the Stage 1 replies concisely summarised the complaint and identified the criteria in relation to the policy and process. That said, very occasionally CEDR did not accurately reflect the criteria in the Stage 1 response. This is a minor observation not affecting CEDR's complaint handling itself, and it doesn't warrant a formal recommendation. But I'd urge CEDR to go for 100% accuracy.

I was pleased to see that, for the most part, the In-House Adjudicator reviews at Stage 1 summarised customers' complaints – which gave clarity and structure to the reviews. Occasionally, I noticed that the summary referred to a criterion that the customer hadn't actually mentioned on the complaint form (for example, citing "irrational interpretation of the law" when the customer had only complained of information being ignored). Again, this is a minor observation and it didn't affect the quality of the reviews.

2. In previous reviews I've monitored examples of different claimants receiving different outcomes on the same issue relating to the same flight. I'm pleased to report that I found only one such case this time, and even then the comparison cited by the customer was based solely on something he'd read on a social media platform and no details of the alleged other cases were provided. I will continue to monitor this issue – but the incidence of complaints of this nature has vastly reduced over the last year or so and based on this review I have no current concerns.

7. Follow up on previous recommendations

There are no outstanding recommendations.

8. Conclusion

Complaint volumes remain low at 1.8% of all claims handled by the Scheme; and from my perspective CEDR have maintained good service levels despite the challenges presented as a result of the Coronavirus pandemic.

Overall acknowledgment and Stage 1 timescales were impressive (96% in one working day and 96% in 30 working days respectively). However, one Stage 1 response took 47 working days; and one Stage 2 response took 46 working days.

The six classification errors that I found were record-keeping matters only, and had no impact on complaint handling or outcomes. CEDR are taking steps to avoid future errors by updating classifications on completion of reviews.

Responses to customers were of a good quality overall and I found evidence of comprehensive reviews taking place. I found the Complaint Review Policy and Process to be working effectively. Most complaints were in my view rightly not upheld. However, I found evidence of CEDR identifying and explaining adjudication failings when they occurred under the prescribed criteria; and they awarded customers proportionate compensation in such cases.

There were no complaints that were wholly about CEDR's quality of customer service, and very few complaints where this was even an element. This is, in my view, a creditable position.

9. Recommendations

I have no recommendations.

Acknowledgements

I conducted this review remotely. I'm grateful for CEDR facilitating this, and providing technical support. CEDR provided me with the same level of open and unrestricted access to all the systems and records that I needed as if I'd been in their offices. As usual, I therefore had carte blanche in respect of conducting this audit as I saw fit. I've also had the customary high level of assistance with any queries that came up 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.



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