

The Aviation Adjudication Scheme (The Scheme)
Independent Complaint Reviewer Report
For 1 April - 30 September 2021.

1. Introduction

This is my sixth 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. This report covers from 1 April to 30 September 2021, as required by the Civil Aviation Authority.

The impact of the Coronavirus pandemic continues. CEDR's office has been effectively closed since late March 2020, with staff working mostly from home. Although they have now had a long time to get used to this way of working, I remain mindful of the ongoing challenges presented to CEDR's operations.

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 review 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; rather, 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 my findings 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/wp-content/uploads/2021/10/IR-Terms-of-Reference-v2.0-oct-21.pdf>

² <https://www.cedr.com/wp-content/uploads/2021/10/Aviation-Adjudication-Rules-Nov-2020-v2.pdf>

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 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 20 complaints handled under CEDR’s complaints process between 1 April and 30 September 2021. Four complaints were escalated to me for independent review during this period.

5. My Findings

(a) Quantitative

Complaint levels remain low. Of the 949 applications the Scheme handled during this reporting period CEDR received 20 complaints. This represents 2.1%, a marginal increase (0.3 of a percentage point) on the previous six months.

Of those 949 applications made to the Scheme approximately 22% (206) received a final decision from an adjudicator – an increase of four percentage points on the previous six months. The remainder were outside the scope of the Scheme.

The outcomes of the 206 adjudicated claims were as shown in table 1 below.

Table 1: Adjudicated Claim Outcomes

Succeeds in full	Succeeds in part	Fails
17.0%	12.1%	70.9%

Table 1 shows that 29.1% of claims were found in the customer’s favour to some extent; and 70.9% were found wholly for the airline.

³ <https://www.cedr.com/wp-content/uploads/2021/10/Aviation-Complaint-review-process-oct-21.pdf>

The respective figures for the previous six months were 37.7% and 62.3% - in other words, an 8.6 percentage point decrease in successful claims.

I include this information to give some context to 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	16	1	3	20

The “service” column means complaints that are exclusively about an aspect of CEDR’s quality of customer service (such as delays, administration errors or staff rudeness). The “review” column means cases 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). As I’ve noted in previous reports, I have a sense that some customers conflate “service” and “review” – which is understandable, as they can’t be expected to know the distinction. For this reporting period I found no evidence of any complaints that were wholly about “service” matters, which continues to be a good trend.

I found three “in scope (review)” complaints that should have been “out of scope”; and one that should have been “partly in scope.” These were classification errors that had no impact on the case outcomes, and CEDR have now amended their records accordingly. However, such errors could affect CEDR’s internal reporting or analysis; or give a less than accurate picture if the figures were required by an external agency.

At my last review I established that the reason for these errors is that CEDR classify complaints on receipt, but do not always update the record if the classification changes following the Stage 1 review. After I’d raised this with CEDR I understood that they would be updating the classifications post Stage1 review as a matter of course. However, my review suggests that this is not happening, so I’m making a formal recommendation for CEDR to take action.

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	2	15	17

I can't identify any particular trends from such low volumes, save to say that the absolute numbers are pretty consistent with the previous six months. The percentage of "partly upheld" complaints fell from 21% last time to 12% this time – but I'd caution against drawing any conclusions given the small numbers. I will continue to monitor.

(b) Qualitative

(i) Timescales

CEDR's performance in terms of acknowledging complaints was excellent at 95% within one working day and 100% within two working days.

Case handling performance was similarly excellent, with 100% of complaints receiving a Stage 1 response within the target of 30 working days. The average was 10.8 working days, with a range of one to 29 working days.

These are "best ever" performances, for which CEDR are to be congratulated.

There were three cases that progressed to Stage 2 of the complaints procedure, all of which were handled within CEDR's 30 working day target. The average was 12 working days, with a range of two to 26 working days.

The four Stage 3 escalations were completed on average within 14 working days, with a range of seven to 22 working days.

CEDR offered compensation in four cases. Two of these were for £25.00 for minor issues. A third was in recognition that relevant evidence was not taken into account; and the fourth involved an error in calculating the amount awarded on a successful claim. CEDR offered compensation of £520.00 and £180.00 respectively. I comment on the cases in the next section – but I’m content that these amounts were fair.

(ii) Casework and Outcomes

The most common criterion for 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 18 of the 20 complaints CEDR reviewed. Criterion (f): “In reaching the decision in your case, the adjudicator made an irrational interpretation of the law” was cited seven times. However, in many cases the root cause of complaints under these criteria seemed to be a disagreement with the decision on a claim.

Criterion (c): “Where the quality of service by CEDR staff has been unsatisfactory” was cited three times; as was 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.”

The proportion of complaints relating in some way to the airline issuing vouchers versus refunds fell from 42% at my last review to 20% this time. The issue itself is outwith my remit, but this is a welcome reduction.

Otherwise I found no discernable themes from the complaints CEDR received during this reporting period.

(a) Cases for Independent Review.

Four complaints were escalated to me for review, which I comment on below. In all four cases CEDR followed the complaints procedure correctly. I partly upheld one case.

The first case was about the quality of onboard service a passenger received. They felt that the adjudicator had ignored information, had made an irrational interpretation of the law and had made other errors in deciding the claim. The complainant also raised new matters relating to their original claim after it had been concluded – and CEDR rightly explained that these could not be considered.

CEDR showed flexibility in allowing escalations to take place even though the prescribed time limits had expired and I found their Stage 1 and 2 reviews to be comprehensive and reasonable. I agreed that the root of the complaint was a disagreement with the outcome of the claim rather than any failures on CEDR's part, and I did not uphold the complaint. I did however notice that the adjudicator made a number of typographical errors in the decision document. These had no material impact on the outcome of the claim, but I recommended that CEDR take steps to improve proof reading of decisions.

The second case was about a cancelled flight and the timing of the airline's advice to the passenger in respect of seeking a refund rather than a voucher for future use. Due to different time zones being referred to, the complainant felt the adjudicator had miscalculated the time when a particular email was received. I was satisfied that this wasn't the case. CEDR considered all the evidence properly in my view and the dispute boiled down to the claimant disagreeing with the outcome of the claim; I therefore did not uphold the complaint. CEDR again showed a degree of latitude over escalation timescales with this case.

The third case involved a substantial number of legalistic submissions about a wide range of issues relating to a cancelled flight. The customer felt that the Scheme's Rules had been breached; and that the adjudicator had taken account of irrelevant information and made an irrational interpretation of the law. After what I considered to be a comprehensive and fair Stage 2 review CEDR rejected these complaints but offered the customer £75.00 compensation for a delay in the overall processing of the original claim. The details of the case are far too complex to even summarise here. However, although after a thorough investigation I found that the central arguments the customer raised were unsustainable, I partly upheld the complaint because of some customer service failings by CEDR. I recommended they increase the compensation to £150.00 as a result.

The final case was about a passenger receiving vouchers rather than being offered a refund for a cancelled flight. The complainant felt that irrelevant information had been taken into account, and questioned the adjudicator's approach to decision making. In my view CEDR's Stage 1 and 2 reviews were faultless, the latter in particular giving a helpful explanation to the customer. Whilst accepting the customer's strong opinions, I found that CEDR took a balanced view of the claim; and I found nothing to suggest that they took account of anything other than relevant evidence. I therefore did not uphold the complaint.

(b) In scope (review) (16 complaints).

One complaint was **partly upheld** at Stage 1.

The nub of the case was that the customer felt that the decision on their claim in respect of a cancelled flight was reached without the adjudicator taking account of all the relevant information. The customer also complained of difficulties with the Scheme's on-line case management system, although CEDR's Stage 1 review established that all documentation had been uploaded successfully and was seen by the adjudicator. The review found, however, that the adjudicator had indeed failed to consider all the relevant information and compensation was offered to the customer accordingly. There followed a dispute regarding the amount – there was some confusion about compensation already paid by the airline and the total the customer was due. CEDR offered the customer a higher amount (£180.00), which in my view was the right result.

One complaint was **upheld in full** at Stage 2.

In this case the customer felt the adjudicator had ignored information about the timing of restrictions that were placed on flights as a result of the Coronavirus pandemic; and had made assumptions about whether or not a refund for a cancelled flight had been rejected. CEDR's Stage 1 review found that this wasn't the case but did explain how a typographical error in the decision document might have caused confusion. (As a side note, I felt that a small goodwill payment would have been appropriate at this point as I could see why the error had confused the customer.) CEDR did not uphold the complaint and the customer escalated it to Stage 2 as they didn't feel the main issue had been sufficiently grasped. The Stage 2 response was excellent in my view and in giving a thorough review it overturned the Stage 1 outcome because, in the reviewer's judgement, there was evidence that the original adjudicator hadn't addressed fully the timing discrepancy. CEDR awarded the customer the equivalent of the value of the cancelled flight (£520.00) by way of compensation. This case shows the escalation process to be fulfilling its purpose.

The remaining 14 complaints were **not upheld**.

In one case a customer claimed compensation for a booking that they'd voluntarily cancelled before the flight itself was cancelled some time later by the airline. Unsurprisingly the claim failed. Nonetheless the customer complained that relevant evidence had been ignored (as there had been a minor, non material, error in the airline's defence).

CEDR treated the matter at face value and I was pleased to see a comprehensive Stage 1 review and explanatory response to the customer.

In one case, as well as complaining that information had been ignored, the customer mentioned a problem with entering the date on CEDR's on-line complaint form. Whilst the complaint itself was rightly not upheld, I was disappointed to see that CEDR failed to address this point in their Stage 1 review. The issue was mentioned in passing (not as a complaint) by at least one other customer and when looking at the forms myself I could see that some dates were hard to read. I am recommending that CEDR investigate remedying this.

On the same case, the original adjudicator appeared to have led the customer to believe that they could have a cash refund from the airline if a voucher expired before being used. The customer said that the airline later confirmed this wasn't the case. In terms of the Stage 1 review, CEDR did not uphold this aspect of the complaint on the grounds that it was unrelated to the treatment of evidence (which was the criterion under which the complaint had been made.) Whilst this is strictly true, in my view CEDR could perhaps have made a goodwill gesture as they had effectively (although possibly unwittingly) given the customer the wrong impression. Whilst outwith my remit, I would also urge adjudicators to take care when commenting on an airline's policies.

Otherwise, I found nothing remarkable about these complaints and in my view CEDR reached the right outcome in not upholding them. As tends to be the case, most of the complainants felt that CEDR had ignored evidence, and some felt that they had interpreted the law irrationally. I was satisfied that CEDR's Stage 1 reviews were thorough in establishing this was not the case, and full explanations were given to customers.

(c) Partly in scope (one complaint).

This complaint was **partly upheld**.

The crux of the matter was that the airline had been given extra time to lodge its defence and that the customer hadn't had a chance to submit comments. The customer had raised this with CEDR but hadn't had a response. CEDR's Stage 1 review explained that under the Scheme's rules the adjudicator can accept "late" submissions, but acknowledged that due to an administration error the customer had not been able to make comments on the defence. A further oversight had meant that the customer's email querying this had gone unanswered. In terms of the latter, CEDR offered £25.00 compensation.

As regards commenting on the defence, CEDR invited the customer to do so even though the claim had closed; and said that the adjudicator would consider whether any input from the customer at that stage would have made a difference to the outcome. I felt this was a very reasonable approach by CEDR, although in the event the customer did not take up the offer to comment.

(d) Out of scope (three complaints).

Although CEDR initially classified these complaints as “in scope”, they were clearly the opposite. (CEDR have amended the records.)

All three were wholly about a disagreement with the decision, with no supporting reasoning. One customer simply stated: “your adjudicator’s decision is wrong”; one provided no evidence with their claim or subsequent complaint; and one was about a matter that was outside the scope of the Scheme.

That said, in each case CEDR’s Stage 1 response gave a well-reasoned and clear explanation to the customer as to why their complaint could not be considered under the terms of the procedure.

6. General Observations

I have four general observations.

- a) I found CEDR’s replies to customers to be of a consistently high standard. There were no typographical errors that I could see, and the Stage 1 reviews from CEDR’s in-house adjudication team were thorough and well reasoned. I was particularly impressed by the accurate summaries of complaints.
- b) The complaints procedure seems to be working effectively as evidenced by the cases that travelled through the escalation process when appropriate.
- c) Whilst I found CEDR’s reviews to be of a high standard, I noticed that once or twice the scope wasn’t accurately identified at the start of the Stage 1 response. For example, in one case it said that the customer had made complaints under criteria (e) and (f), when the customer had only mentioned criterion (e); in another, inter alia, the customer felt CEDR hadn’t followed the claims process properly (which would come under criterion (a)), but the Stage 1 introduction didn’t mention that when summarising the scope.

- d) This wasn't widespread and it didn't affect the substance of CEDR's reviews – but I'd urge CEDR to ensure accuracy when advising customers of their complaint criteria.
- e) I'm pleased to report that I found no examples of different claimants receiving different outcomes on the same issue relating to the same flight. This is something I've been monitoring over my last two or three reports and it would appear that CEDR's efforts to militate against it have paid off.

7. Follow up on previous recommendations

There are no outstanding recommendations.

8. Conclusion

The number of complaints about the Scheme remains low and from my perspective CEDR are performing well in respect of handling those complaints. The quality of replies was high, and the process seems to be working well. Timescales were excellent across the board.

The four classification errors that I found were record-keeping matters only, and had no impact on the handling or outcomes of the complaints. However, CEDR should work to eliminate those errors and I have made a recommendation accordingly.

I found no particular complaint themes, although issues to do with vouchers or refunds for cancelled flights featured in 20% of complaints (down from 42% at my last review).

In respect of CEDR itself, there were very few complaints about their service and those that did arise were about minor administrative matters. I found no evidence of complaints about staff or overall levels of customer service.

All in all, then, from my perspective CEDR's complaint handling performance was strong during this reporting period.

9. Recommendations

I have two recommendations: -

- a) That CEDR ensure that their system reflects the outcomes of the Stage 1 reviews, so that complaint classification data is accurate. This could be achieved by updating classifications on completion of reviews.
- b) That CEDR investigate the problem with entering the date clearly on the on-line complaint form, so that a remedy can be found.

Acknowledgements

I conducted my review remotely, but had open and unrestricted access to the systems and records that I needed. I am very grateful to CEDR for facilitating this - and I had carte blanche in respect of conducting this audit as I saw fit. I also had the usual high level of assistance with any queries that came up as I conducted my review. I appreciate in particular the responses from the Head of Consumer Services and the Complaints Manager to the enquiries that I made as I examined the casework.



Chris Holland
Independent Complaint Reviewer

22 October 2021