

**The Aviation Adjudication Scheme (The Scheme)**  
**Independent Complaint Reviewer Report**  
**For 1 October 2021 - 31 March 2022.**

**1. Introduction**

This is my seventh 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 1 October 2021 to 31 March 2022, as required by the Civil Aviation Authority.

**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 review cases that have been escalated to me where a user of the Scheme has complained and, having been through CEDR's Complaints Review Process, remains dissatisfied. Under my terms of reference<sup>1</sup> and the Scheme's rules<sup>2</sup> I can consider complaints about certain elements 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: (i) where the customer believes that in reaching an adjudication outcome relevant information was ignored and/or irrelevant information was taken into account; and/or (ii) 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.

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

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<sup>1</sup> <https://www.cedr.com/wp-content/uploads/2021/10/IR-Terms-of-Reference-v2.0-oct-21.pdf>

<sup>2</sup> <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**

CEDR's Complaints Review Policy and Process<sup>3</sup> explains its scope along with the two internal stages of review that take place before, if necessary, a complaint is referred to me. It is articulated clearly with timescales and information about what can be expected. In brief, if after the Stage 1 response complainants remain dissatisfied they can ask for escalation to Stage 2 of the process and a senior manager or director 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 13 complaints handled under CEDR's complaints process between 1 October 2021 and 31 March 2022. One complaint was escalated to me for independent review during this period. This report reviews CEDR's complaint handling performance.

### **5. My Findings**

#### **(a) Quantitative**

Applications handled by the Scheme increased by 53% compared to the previous six months (from 949 to 1451). However, in absolute and proportional terms, complaints remained very low. CEDR received 13 complaints during this reporting period, representing 0.9% of all applications. This is a decrease on the previous six months when CEDR received 20 complaints representing 2.1%.

Of the 1451 applications made to the Scheme approximately 39% (561) received a final decision from an adjudicator – an increase of 17 percentage points on the previous six months. The remainder were outside the scope of the Scheme.

The outcomes of the 561 adjudicated claims are shown in table 1 below.

**Table 1: Adjudicated Claim Outcomes**

Succeeds in full	Succeeds in part	Fails
16.4%	18.9%	64.7%

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

Table 1 shows that 35.3% of claims were found in favour of the customer to some extent; and 64.7% were found wholly for the airline. The respective figures for the previous six months were 29.1% and 70.9% - in other words, there was a 6.2 percentage point increase in fully or partially successful claims.

I include this information only to give some context to the complaints made about CEDR; it is not my role to examine or comment on the outcomes 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			
1	11	1	0	13

The “service” column shows complaints exclusively about an aspect of CEDR’s quality of customer service (such as delays, administration errors or staff rudeness). The “review” column shows cases where certain other aspects of the adjudication outcome were predominant and 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). Some customers seem to conflate “service” and “review” and they can’t be expected to know the distinction. However, for this reporting period I found only one case that was wholly about “service” matters – which turned out to be an unsustainable complaint that CEDR had ignored a customer’s enquiries.

I found only one instance of scope misclassification – where CEDR categorised the above “service” complaint as “out of scope”. This was no more than a record keeping error, which CEDR have now corrected.

Table 3 overleaf gives a breakdown by outcome at Stage 1 of the complaints process.

Table 3 Complaint Outcomes

Fully Upheld	Partly Upheld	Not Upheld	Total
1	2	10	13

I'm unable to identify any trends from such low numbers. However, the distribution is similar to the previous six months, when two complaints were partly upheld, and 15 were not upheld.

**(b) Qualitative**

**(i) Timescales**

CEDR's performance in terms of acknowledging complaints was excellent at 100% within one working day. This is a "best ever" performance on acknowledgement speed.

Case handling performance was less good, with CEDR completing 85% of Stage 1 reviews within their 30 working day target. The average was 26.1 working days – 15.3 working days longer than in the previous six months. The range was five to 93 working days. I would add the caveat that with such a low number of complaints, one or two exceeding the target has a disproportionate impact on the averages. There was one outlier at 93 working days (and another at 38 working days) that skewed these results.

One case progressed to Stage 2 of the complaints process, but had not reached its conclusion at the time of my review.

The one Stage 3 escalation was completed in 14 working days.

**(ii) Casework and Outcomes**

The most common criterion for complaints was again (e): "In reaching the decision in your case, the adjudicator ignored relevant information and/or took into account irrelevant information." This was cited in 12 of the 13 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, the root cause of most complaints under these criteria often seemed to amount to a disagreement with the decision on a claim.

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

CEDR offered compensation in three cases. One was for £25.00 for a minor issue; one was for £100.00, which was in recognition of the response that took 93 working days; and one was for £270.55, which was the result of an adjudicator’s error in failing to take account of relevant evidence. I comment on the cases below – but I’m satisfied that these awards were fair.

#### (a) Cases for Independent Review.

One complaint was escalated to me for review, which I partly upheld for quality of service reasons.

The case was complex and mostly amounted to a challenge to the adjudicator’s decision. However the customer also complained that relevant information had been ignored; that there had been an irrational interpretation of the law; that CEDR had deviated from its own process; and that the quality of service from CEDR’s staff was poor.

To go into too much detail might compromise confidentiality, but the root of the matter was a dispute over which airline was operating a particular leg of a South African flight that was disrupted at the beginning of the Coronavirus pandemic. The rest of the complaint flowed from this point.

CEDR’s Stage 1 review was in my view comprehensive on the legal and regulatory issues, but it overlooked the quality of service complaint and contained some errors (relating to timescales). The customer raised four broad areas in their escalation request. CEDR dealt with three of these to what I consider to be a very high standard – essentially explaining in detail the reasoning behind the decision, the treatment of relevant evidence and showing that they had thoroughly reconsidered whether there had been an irrational interpretation of the law. However, CEDR’s Stage 2 review failed to respond to the customer service issues.

Whilst I found no suggestion that CEDR had deviated from its process I upheld the customer service elements of the complaint and awarded a total of £300.00 compensation. I also asked CEDR to contact the customer direct to deal with the outstanding customer service issues – which they did, and as a result they increased the compensation by a further £50.00.

(b) In scope review (11 complaints).

One complaint was **upheld in full**.

This case concerned whether or not the airline had issued a voucher to the customer. The customer had provided evidence showing that this wasn't the case, but complained that the adjudicator had ignored it in favour of less conclusive evidence from the airline. CEDR's Stage 1 review upheld the complaint as it seemed clear that the adjudicator had overlooked relevant evidence that would have affected the outcome of the claim. CEDR paid £270.55 compensation, which was the equivalent of the amount of reimbursement the customer originally sought.

Whilst it's unfortunate that the adjudicator made an error, I was pleased to see that CEDR's complaints process was effective in achieving the right remedy for the customer.

Two complaints were **upheld in part**.

In the first case, the customer complained under criteria (a), (e) and (f) – that is, that CEDR hadn't followed its own process; that relevant information was ignored; and that the law had been applied irrationally. The crux of the matter was that the customer felt that CEDR was biased in favour of the airline by granting them an extension for the submission of their defence. In truth, the other issues amounted to a disagreement with the decision (which is outwith the Scheme's scope) and there was nothing to suggest information had been ignored. As for an irrational interpretation of the law, CEDR's review established that this wasn't the case and it set out the legal position clearly. The issue was somewhat complicated by flight restrictions in Italy at the time, but I'm satisfied that CEDR's findings were correct.

The timescale for submission of the airline's defence was extended by one working day only, which is permissible under the Scheme's rules, and the customer was notified via CEDR's on-line case management system. This had no impact on the customer's right of reply – indeed, he responded to the airline's defence document.

CEDR therefore did not uphold the main grounds of the complaint, however they partly upheld the case as they had unduly delayed their response – which took a total of 93 working days. CEDR apologised and explained to the customer that this was down to a failure to enter the due date on their system, and they awarded £100.00 compensation. Given the length of the delay I'm satisfied that this was proportionate and the customer accepted it.

The second case hinged on whether or not the customer accepted a voucher after cancelling a flight due to Covid-19 self-isolation. The matter was complex and the customer had provided evidence relating to UK Government guidance and Argentinean Government guidance issued at the time (March 2020). CEDR did not uphold the main complaint, as their review found that the self-isolation guidance in and of itself had no bearing on the customer's cancellation of his flight booking. The review also established that relevant information had been taken into account when the original adjudicator concluded that, on the balance of probabilities, the customer needn't have cancelled his booking as the self-isolation requirements in force at the time would not have precluded him from flying.

However, CEDR's review did identify an error on a date mentioned in the adjudicator's decision. Whilst this did not affect the adjudication or the outcome, because of the error CEDR partly upheld the complaint and awarded £25.00 compensation. This was reasonable in my view.

The customer went on to ask about next steps in the complaints process, but in the event did not take the matter further.

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

Even though most of these customers complained that evidence had been ignored or the law irrationally applied, I felt that the underlying cause of their complaints was a disagreement with the adjudicator's decision. I was however pleased to see that CEDR didn't rule them out of scope but took the customers' complaints at face value and reviewed them comprehensively. I'm satisfied that CEDR reached the correct conclusions in not upholding them - so I won't précis every case here. But I will comment on a few cases that caught my eye.

In one case concerning a disputed refund for a flight cancellation, among other things the customer ticked criterion (d) on the complaints form – which covers “other matters”. However, the customer didn't say what those other matters were. I was pleased to see that in the Stage 1 response CEDR's Complaints Manager mentioned this and asked the customer to let her know if anything hadn't been dealt with in the review. The complaint was rightly not upheld in my view, as there was clear evidence that the booking was cancelled of the customer's own volition, and there was no further contact.

One customer complained about a timescale extension given to the airline for the submission of their defence; and made strong allegations about the veracity of the airline's evidence.

CEDR's review correctly established that the extension was allowable and that the Scheme's website and on-line case management system carried appropriate messaging in this regard. However, CEDR did take the customer's feedback on board and sometime later made some minor amendments to the on-line messaging. CEDR also found the customer's allegations about the airline's evidence to be unsustainable.

One complaint was about the level of a refund given by the airline. The customer felt that the adjudicator had misunderstood the basis of the claim. He also accused CEDR of bias towards the airline and believed, among other things, that the adjudicator had taken account of irrelevant information (relating to a reservation fee that didn't form part of the complaint). I'm satisfied that the review established sufficiently that the complaint could not be upheld, but CEDR's Stage 1 response gave rise to a couple of observations.

Firstly, I noted that there were four typographical or grammatical errors in the response sent to the customer by CEDR's in-house adjudicator. Secondly, the response seemed to suggest that adjudicators can assist customers in obtaining redress in respect of issues on which no specific submission or claim had been made. This is not the case, nor is it an adjudicator's role to assist customers in this way – so I was concerned that one of CEDR's in-house reviewers should give such an impression.

I gave CEDR constructive feedback on these points at a senior level, and I'm content that appropriate action will be taken. Let me also stress that in my experience it's unusual to come across something like this in any of CEDR's schemes or services – so hopefully it's a one off lapse.

(c) In scope service (one complaint).

The customer complained that CEDR had ignored three messages in respect of non-compliance with an award, and were biased toward the airline. CEDR were able to demonstrate that this was not the case, and established that compliance had in fact been met via a bank transfer after a cheque had to be cancelled. CEDR did not therefore uphold the complaint, and there was no further contact from the customer.

(d) Partly in scope (one complaint).

The customer's main complaint was that the adjudicator's decision was "wrong" (which is out of scope); but the customer also felt certain evidence was ignored – hence the case was partly in scope overall. The issue chiefly concerned an incorrect email address for the customer, which he said led to him not receiving notification of a cancelled flight.

CEDR's review established that on balance there was sufficient evidence to suggest that the customer had made a mistake when he entered his email address on the airline's system; there was also evidence that the airline had attempted to contact the customer. CEDR did not uphold the complaint.

## **6. General Observations**

I have two general observations.

- a) A couple of complaints involved guidance issued by overseas Governments when the pandemic was at its peak, and it's easy to see how this allowed room for confusion in a rapidly changing situation. However, CEDR's judgements on these cases were in my view fair and reasonable and the outcomes were evidence based.
- b) Overall I found CEDR's reviews to be comprehensive and well written. The scope was accurately identified at the start of the Stage 1 responses, and reflected the criteria under which customers had complained. This is something that's improved since my last review. Apart from the one response that contained four grammatical or typographical errors, I found only one very minor mistake in all the responses I examined.

## **7. Follow up on previous recommendations**

I made two recommendations in my last report. These are shown below in italics, followed by an update.

- 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.*

CEDR are doing this and have set up a reporting function to help improve accuracy. They are also monitoring classifications on a monthly basis. I found only one error during this reporting period, so am content to close this recommendation and monitor the situation at my next review.

- b) *That CEDR investigate the problem with entering the date clearly on the on-line complaint form, so that a remedy can be found.*

CEDR have corrected this.

## **8. Conclusion**

Complaints about the Scheme remain low in absolute and proportional terms and in my opinion CEDR are maintaining a good complaint handling performance. The quality of the Stage 1 reviews I looked at was generally high, and the process continues to work well.

Stage 1 timescale performance was skewed by a couple of outlying cases, with one case taking 93 working days – in other words 63 working days beyond CEDR’s target. This is unusual, and hopefully a one off; but I will monitor. Speed of acknowledgement was outstanding, at 100% within one working day.

I found just the one classification error, so am content that CEDR have taken action to improve the accuracy of their record keeping.

I found no particular complaint themes, and there was only one complaint about CEDR’s customer service – which, after review, was in my opinion rightly not upheld.

## **9. Recommendations**

I have no recommendations.

## **Acknowledgements**

I conducted my review remotely and I’m grateful to CEDR for facilitating this with the necessary, and helpful, technical support. I’ve had open and unrestricted access to the systems and records that I needed so as usual I had carte blanche in respect of conducting this audit as I saw fit. I also had the customary high level of assistance with the few 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

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