

The Aviation Adjudication Scheme (The Scheme)
Independent Complaint Reviewer Report
For 1 April 2022 - 30 September 2022.

1. Introduction

This is my eighth 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 April to 30 September 2022, as required by the Civil Aviation Authority (CAA).

2. My Role

I am an independent consultant. I am not based at CEDR, nor am I part of that organisation. The first aspect of my role is to review cases that have been escalated to me – which happens when 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 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’s the subject of a complaint. My role is limited to seeing whether the Stage 2 review thoroughly reconsidered the issue.

The second aspect of my role is to review complaints about the Scheme as a whole and produce a report every six months. My report is based on my examination and analysis of all or some of the complaints handled by CEDR as I see fit, along with any cases that have been escalated to me.

¹ <https://www.cedr.com/wp-content/uploads/2021/10/IR-Terms-of-Reference-v2.5.pdf>

² <https://www.cedr.com/wp-content/uploads/2022/04/Aviation-Adjudication-Scheme-Rules-7th-edition.pdf>

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

CEDR's 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 provides clear information about timescales and 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 will review the complaint. Where this doesn't conclude the matter, it can be referred to me for independent review.

4. This Report

This report reviews CEDR's performance on the 12 complaints they handled between 1 April and 30 September 2022. One further complaint was in the pipeline awaiting completion of CEDR's stage 1 review.

5. My Findings

(a) Quantitative

Applications handled by the Scheme increased by 157% compared to the previous six months (from 1451 to 3733); and by 293% compared to the same period a year ago. The increase may be a reflection of the aviation industry's recovery post pandemic and it's worth noting that three years ago the equivalent figure was 5262 applications (41% higher than now).

In absolute and proportional terms there are very few complaints about the Scheme – CEDR received 13 during this reporting period, representing 0.3% of all applications. This is just over half of a percentage point down on the previous six months.

Of the 3733 applications made to the Scheme approximately 10% (367) received a final decision from an adjudicator – a 29 percentage point decrease on the previous six months. The remaining 90% were either: outside the scope of the Scheme; still in progress; settled with the airline without the need for adjudication; or withdrawn/rejected.

The outcomes of the 367 adjudicated claims are shown in table 1.

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

Table 1: Adjudicated Claim Outcomes

Succeeds in full	Succeeds in part	Fails
16.9%	25.9%	57.2%

Table 1 shows that 42.8% of claims were found in favour of the customer to some extent; and 57.2% were found wholly for the airline. The respective figures for the previous six months were 35.3% and 64.7% - so there was a 7.5 percentage point increase in fully or partially successful claims.

I include this information only to give context and background to the complaints made about the Scheme; it is not my role to examine or comment on the outcomes of claims.

Table 2 gives a breakdown of complaints that had reached an outcome.

Table 2: Complaints about CEDR

In Scope		Partly in Scope	Out of Scope	Total
Service	Review			
1	9	0	2	12

The “service” column relates exclusively to aspects 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 (that is, whether relevant information was ignored or irrelevant information taken account of; and whether the adjudicator made an irrational interpretation of the law). Occasionally customers conflate “service” and “review” and they can’t necessarily be expected to understand the distinction. However, for this reporting period I found only one case that was wholly about “service” matters – which was about alleged non-compliance with an award, and which CEDR didn’t uphold.

I found only one instance of scope misclassification – where CEDR categorised the above “service” complaint as “review”. This was a minor record keeping error, which CEDR have now corrected.

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

Table 3 Complaint Outcomes

Fully Upheld	Partly Upheld	Not Upheld	Total
0	2	10	12

I can't identify any trends from such low numbers. However, the pattern is similar to the previous six months, when CEDR fully upheld one complaint, partly upheld two and did not uphold 10.

(b) Qualitative

(i) Timescales

CEDR acknowledged 100% of complaints within one working day.

Case handling performance improved by seven percentage points compared to the previous six months - with 92% of Stage 1 reviews completed within the 30 working day target. The average was 18.8 working days – seven working days quicker than in the previous six months. The range was eight to 38 working days.

Four cases that progressed to Stage 2 were handled within the target timescale, with an average of 12.5 working days.

One Stage 3 escalation was completed in 11 working days.

CEDR offered compensation twice. Once for £50.00 because an adjudicator hadn't expressly addressed a piece of relevant information; and once for £60.00, due to an oversight in a decision and a delay in handling the complaint. I'm satisfied that these offers were fair.

(ii) Casework and Outcomes

The most common criteria for complaints were (e)⁴ and (f)⁵. Both were cited eight times, although often the underlying cause of complaint seemed to be a disagreement with the adjudicator's decision or a difference of opinion regarding the law.

⁴ In reaching the decision in your case, the adjudicator ignored relevant information and/or took into account irrelevant information.

⁵ In reaching the decision in your case, the adjudicator made an irrational interpretation of the law.

Criteria (a)⁶ and (c)⁷ were each mentioned once.

I spotted a couple of complaint themes. The first was about consistency, where some customers felt the outcome on their claim differed from that of other similar cases. There were also a couple of complaints about an airline's subsidiary. CEDR rejected one as out of the Scheme's scope and it wasn't adjudicated; but accepted the other one, which was adjudicated (albeit the claim didn't succeed).

The second theme was about unsuccessful claims regarding the re-routing of flights after the cancellation of a scheduled flight, with customers challenging CEDR's interpretation of various guidelines and laws. This featured in five complaints.

CEDR handled complaints to a generally high standard in my opinion; replies were comprehensive and explanatory. I found only one minor typographical error in the cases I examined.

I felt the complaint summaries could have been more accurate on a couple of cases; and I found one Stage 1 review where CEDR did not answer all the customer's points. These were relatively minor issues so I'm not minded to make a formal recommendation but I will monitor these areas closely at my next review.

(a) Stage 3 Reviews.

I reviewed one complaint during this reporting period, about an alleged irrational interpretation of the law in respect of re-routing after a cancelled flight. The customer also complained that the decision on his case differed from that reached on other similar cases.

I felt that CEDR's Stage 1 and 2 reviews were comprehensive and explained the basis of the original adjudicator's decision with reference to the relevant evidence.

A point that is sometimes difficult for customers to understand is that where regulations have not yet been interpreted by a definitive authority it's possible for different adjudicators to reach different decisions that can still be based on a rational interpretation of the law.

It's also the case that one adjudicator's decision does not set a precedent, and CEDR treat each claim on its merits based on the evidence submitted by both parties.

⁶ Where the process followed in your case was not in line with the process as provided for in the CEDR Aviation Adjudication Scheme Rules.

⁷ Where the quality of service by CEDR staff has been unsatisfactory.

This is, essentially, what had happened in this case – and in my opinion CEDR’s reviews set the position out clearly.

I felt that the complaint leaned more towards a disagreement over the outcome than anything else, and I was satisfied that CEDR had thoroughly reconsidered matters at Stages 1 and 2. I did not therefore uphold the complaint.

(b) Stage 2 Reviews.

Four cases reached Stage 2 – one of which I’ve already covered as it went to Stage 3.

The others also concerned re-routing issues, where the customers felt CEDR had made an irrational interpretation of the law and ignored relevant information.

On the first, CEDR gave comprehensive reviews at Stage 1 and 2 and partly upheld the complaint as it was established that the adjudicator had failed to expressly address a piece of relevant information (in relation to a regulation). CEDR awarded £50.00 compensation but explained that the claim could not be “re-heard”, which was what the customer wanted. This was the right outcome in my view.

The second case was long and complex. Too much detail may compromise confidentiality but essentially the customer disputed certain elements of the airline’s defence and the adjudicator’s treatment of evidence. They also cited another almost identical claim that had succeeded in part, when theirs had failed. The Stage 1 response was again comprehensive and explained the rationale for the decision – which was, reasonably in my view, based on a balance of probabilities.

CEDR’s Stage 2 response gave a thorough reconsideration of the case and elaborated on the nature of the Scheme (that is, it’s evidence based and more adversarial than inquisitorial). The complaint was not upheld.

In the third case, CEDR accepted the complaint eight months after the claim was closed (the time limit is two months) due to the fact that they’d neglected to respond to the customer’s comments following the final decision. I give them some credit for this, since the customer hadn’t chased a response in all that time.

The customer referred to what he felt were relevant legal rulings and CAA and other guidance, and complained that CEDR had either failed to take this information into account or had interpreted it irrationally.

CEDR's Stage 1 review went through several points thoroughly – including that CAA guidance is not a law, and that CEDR's adjudicators are not bound by it. The review also found that the adjudicator had taken account of irrelevant information on one point, although it had no bearing on the outcome.

The customer wasn't satisfied and the case went to Stage 2 based on two issues that he felt were outstanding (relating to the definition of a particular term, and his views on his "right to care" during a stopover). CEDR gave a detailed response but did not uphold the complaint.

The case has since been escalated to Stage 3 and there are some outstanding issues, so I will include my review of it in my next report.

(c) Stage 1 Reviews

In scope review (nine complaints).

Two complaints were **upheld in part**.

The first of these was dealt with at Stage 2, which I've already summarised.

The second was somewhat involved. It boiled down to the customer not understanding how part of their claim relating to the refund of expenses succeeded whereas the part relating to compensation for the same issue failed. The matter was further complicated by the adjudicator wrongly stating the customer hadn't disputed the payment of expenses point, when there was evidence that they had. It was all a bit confusing.

Given that this claim seemed to involve a subsidiary airline which is not a member of the Scheme I was not sure why CEDR accepted it as eligible for adjudication. However, from a complaint handling perspective in my view the Stage 1 review gave an honest response which acknowledged the adjudicator's error regarding the expenses dispute (which hadn't affected the outcome of the claim). The issue about compensation was to do with the fact that the operating air carrier was a subsidiary of the airline named in the claim and wasn't a member of the Scheme – so that part of the claim failed.

I noted that the customer had complained about a lack of response to an enquiry and this was not dealt with as part of CEDR's review.

CEDR awarded £60.00 compensation to the customer because the Stage 1 response was late, and in recognition of the adjudicator's error.

There was a further exchange of emails as, regrettably, the CAA advised the customer that the subsidiary was a member of CEDR when that wasn't the case. CEDR's response was helpful in explaining the situation and I understand that the CAA subsequently confirmed the correct position.

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

Most of these concerned disagreements with the adjudicator's decision; customers challenged CEDR's interpretation of the law – particularly regarding their right to re-routes under comparable transport conditions.

As I understand it much of the regulation in this area hasn't been tested in the courts and there's an absence of legal interpretation by what's known as a definitive authority. Thus, quite reasonably under the Scheme, adjudicators can interpret the law differently so long as their findings can be justified and are demonstrably rational.

I have some sympathy with customers who struggle to accept this – they are not experts in aviation law or adjudication schemes. However, CEDR's responses set out the position clearly and accurately in my opinion and their reviews were always thorough. They also made the important point that each claim is unique and is treated on its own merits in relation to the evidence submitted.

In one case part of the customer's complaint was that he'd accepted a travel voucher rather than a refund "under duress." His claim failed, but he mentioned two other similar cases that had partly succeeded. The stage 1 review explained that the other cases didn't represent a precedent; and it was established that the customer had not showed up for a flight, so a voucher rather than a refund was reasonable.

One customer claimed a fee for preparing his case and suggested that CEDR had failed to take into account the Consumer Rights Act (2015) in this regard. Arguably CEDR could have rejected this as out of scope, but they reviewed it and found that the customer had not actually cited the Act in his claim; and in any event they explained that both parties to a claim are responsible for their own costs.

In scope service (one complaint).

The complaint was not upheld.

The customer found CEDR's service to be excellent until he queried a delay in the airline complying with their settlement offer. In short, he felt CEDR hadn't done enough to chase this up.

The Stage 1 response was in my view very good and established that CEDR had in fact followed up the matter on the customer's behalf. The airline's payment had been delayed due to the knock on effect of the coronavirus pandemic but CEDR had, as far as I could see, kept the customer informed and confirmed compliance was ultimately met.

I wasn't quite sure why the customer had complained – but since the matter was resolved without any obvious customer service failings CEDR, rightly in my view, did not uphold the complaint.

Out of scope (two complaints).

The first case involved a subsidiary airline that wasn't a member of the Scheme. This was clear cut and was rightly ruled out of scope.

In the second case, the customer was dissatisfied with the way the adjudicator had framed the decision (even though reimbursement of the amount claimed had been agreed by the airline). This was clearly out of scope.

6. General Observations

I have four general observations, which may be useful to CEDR; none warrant a formal recommendation.

- a) Some complainants felt the outcome of their claim was inconsistent with those on other similar cases. One concerned two family members on the same flight, but others seemed to be based on what complainants had read on various public forums on the internet. Overall I'm satisfied that CEDR reviewed these cases fairly; and in my view the position that each claim is unique and adjudicated on its merit is sustainable.
- b) On the theme of consistency, I found two complaints about an airline's subsidiary that seemed to be treated differently (one was rejected and one was accepted). There may be an explanation for this but I've made CEDR aware of the cases so that they can satisfy themselves that adjudicators are making consistent decisions. Meantime, I understand that the subsidiary in question is now within the Scheme's membership – so this issue should not arise in future.
- c) Five complaints concerned unsuccessful claims regarding flight re-routing following the cancellation of a scheduled flight. The complainants generally disagreed with CEDR's interpretation of various guidelines and laws.

CEDR's responses were reasonable and set out their reasoning – but my sense is that customers were very unhappy with the outcome of their claims and their complaints.

- d) On a couple of Stage 1 responses where the customer had used CEDR's general complaint form rather than the aviation one, the summaries suggested that the customer had selected a complaint criterion box on the form. This wasn't the case. I had the impression that a "standard" paragraph had been used, and whilst this is a small point that didn't affect the quality of the case handling I'd urge CEDR to ensure their summaries accurately reflect the customer's form.

7. Conclusion

The volume of complaints remains low (at 0.3% in relation to applications received) and my review suggests that CEDR are handling those complaints to a good standard.

Acknowledgment timescales were impressive at 100% within one working day (for the second consecutive six month period); and compared to the previous six months Stage 1 timescales improved from 85% to 92% within 30 working days. The average time taken to complete reviews was seven working days quicker.

I felt that responses to customers were of a good quality, especially as several complaints involved strong disagreements between the complainant and CEDR. I found only one very minor typographical error in the replies that I examined.

I found only one minor classification error and am satisfied that overall CEDR's record keeping is accurate.

My observations in section 6 are for CEDR's information and are not major issues in terms of their complaint handling performance. I will however monitor these areas at my next review.

8. Recommendations

I have no recommendations.

Acknowledgements

I conducted my review remotely and am grateful for CEDR's support in facilitating this. As is customary, I've had open and unrestricted access to the systems and records that I needed. I'm grateful for the assistance with any queries that came up as I conducted my review – in particular from CEDR's Head of Consumer Services and the Complaints Manager.

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

Chris Holland
Independent Complaint Reviewer

26 October 2022