

The Aviation Adjudication Scheme (The Scheme)
Independent Complaint Reviewer Report
For 1 October 2022 - 31 March 2023.

1. Introduction

This is my ninth 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 2022 to 31 March 2023, 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. This 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 complaints where the customer: (i) believes that in reaching an adjudication outcome relevant information was ignored and/or irrelevant information was taken into account; and/or (ii) feels that an adjudicator has made an irrational interpretation of the law. I am not expected to review an adjudicator’s interpretation of the law, if that’s the subject of a complaint. My role is only to establish whether CEDR’s 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. This 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 were 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 seek escalation to Stage 2 of the process where a senior manager will review the complaint. If this doesn't conclude the matter, it can be referred to me for independent review.

4. This Report

CEDR received 12 aviation complaints in this reporting period, two of which were in the pipeline for a Stage 1 review at the time of my review. I therefore examined 10 complaints (an 83% sample).

One case was escalated to Stage 2; and I reviewed one at Stage 3.

5. My Findings

(a) Quantitative

Applications handled by the Scheme increased by 33% compared to the previous six months (from 3733 to 4973); and by 243% compared to the same period a year ago (when the corresponding figure was 1451). However, volumes are well below pre-pandemic levels – the Scheme handled 48% more applications (9531) in the same period four years ago.

CEDR received 12 complaints during the current reporting period, representing 0.2% of all applications. This is 0.1 of a percentage point less than the previous six months.

Of the 4973 applications made to the Scheme approximately 1190 (24%) received a final decision from an adjudicator – a 14 percentage point increase on the previous six months. The remaining 76% were either: outside the scope of the Scheme; still in progress; settled with the airline without the need for adjudication; or withdrawn/rejected.

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

The outcomes of the 1190 adjudicated claims are shown in table 1.

Table 1: Adjudicated Claim Outcomes

Succeeds in full	Succeeds in part	Fails
14.9%	28.1%	57.0%

Table 1 shows that 43% of claims were found in favour of the customer to some extent; and 57% were found wholly for the airline. Within one percentage point, this is the same as the previous six months.

This information is for contextual purposes in respect of 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	7	2	0	10

The “service” column relates exclusively to CEDR’s quality of customer service (such as delays, administration errors or staff rudeness). The “review” column shows cases where aspects of the adjudication 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).

I found one misclassification – where CEDR incorrectly categorised a partly in scope complaint as in scope. This was a record keeping error only, which CEDR have 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	3	7	10

This is in line with the norm and similar to the previous six months, when two complaints were partly upheld and 10 were not upheld.

(b) Qualitative

(i) Timescales

CEDR acknowledged 92% of complaints within one working day, and 100% within two working days.

CEDR completed 90% of Stage 1 reviews within 30 working days (similar to 92% in the previous six months). The average was 15.6 working days – roughly three working days faster than in the previous six months. The range was three to 31 working days. In other words, one case exceeded the 30 working day target but only by one day.

Two cases that progressed to Stage 2 were handled within an impressive average of 5.5 working days.

The one Stage 3 escalation was completed in 20 working days.

(ii) Casework and Outcomes

Complainants cited criteria (e)⁴ eight times and (f)⁵ four times – although sometimes the two were conflated, and often it was a disagreement with the adjudicator’s decision that seemed to be the issue.

Criterion (a)⁶ came up three times and criterion (c)⁷ five times.

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.

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.

I found no particular complaint themes, and CEDR handled their reviews to a high standard overall in my view. I found no typographical errors in the replies that I examined.

CEDR offered compensation in three cases. Once for £100.00 because of a minor delay and a failure to address a point; once for £20.00 due to a call being cut off; and once for £15.00 due to a minor administrative error that led to an unnecessary contact with the customer. I'm content that these offers were fair and reasonable.

At my last review I said I'd monitor the accuracy of complaint summaries in CEDR's Stage 1 replies and I'm pleased to say that I found these to be of a consistently high quality. In one case CEDR overlooked one element of a customer's complaint – but it was minor.

(a) Stage 3 Reviews.

I reviewed one complaint. Although the time limit is two months, CEDR accepted it eight months after the claim was closed because they'd not responded to the customer's queries following the final decision. I gave them credit for doing so, especially as the customer hadn't chased a response in all that time.

The customer raised several legal points. CEDR's Stage 1 review was in my view thorough and it reconsidered whether there had been an irrational interpretation of the law. The complaint went to Stage 2 based on two issues that the customer felt were outstanding – about the definition of a particular term, and the "right to care" during a stopover. CEDR gave a detailed response and did not uphold the complaint.

I was unclear about the grounds for escalation to Stage 3 as there didn't seem to be any outstanding issues. However, the customer disagreed with CEDR's findings and revisited several points which I took into consideration.

I found that CEDR had responded reasonably, whilst recognising that the customer disagreed strongly with their position. He raised a new legal point to which CEDR, in my opinion, couldn't have been expected to respond at Stages 1 or 2.

I did not uphold the customer's substantive complaint. However I recommended £100.00 compensation due to CEDR's failure to respond to his comments on the final decision; and because I found that the original adjudicator took account of some irrelevant information.

The customer made further legal arguments, which I was persuaded were worth another look. Exceptionally therefore I asked CEDR to provide an addendum to their Stage 2 review.

This they did, but found no grounds on which to uphold the complaint. I was therefore content that CEDR met their obligations to thoroughly reconsider whether there had been an irrational interpretation of the law.

(b) Stage 2 Reviews.

Two cases reached Stage 2.

In the first, the customer really wanted to appeal against the adjudication outcome but framed his complaint on the grounds of a breach of process (timescales not met); the absence of a “draft decision”; and the handling of the evidence relating to his claim.

CEDR’s Stage 1 review partly upheld the complaint on two grounds. First, there was a slight delay in one part of the process. This hadn’t materially disadvantaged the customer, but CEDR awarded £25.00 compensation for the inconvenience caused. They also explained that the process had no “draft decision” stage and pointed out that the customer had declared that he’d read and understood the Scheme’s rules at the outset.

Second, in terms of the evidence (mostly regarding a flight cancellation) CEDR established that it had all been taken into account – but they did find that one point hadn’t been addressed in the final decision. This related to whether or not an alternative flight had been offered – but since the customer had already accepted a refund and had no right to an alternative flight there was no effect on the outcome of the claim. Nonetheless, the Stage 1 reviewer took the view that the omission of this point in the adjudication amounted to a failing on CEDR’s part and offered the customer £75.00 compensation.

The customer rejected this, but was unclear about what was outstanding from CEDR’s Stage 1 review. He basically disagreed. CEDR conducted a Stage 2 review, which supported the Stage 1 finding and gave what was in my opinion a very good explanation of the matters that vexed the customer. In the event, he reluctantly accepted the £100.00 compensation that CEDR offered.

The second case was long and complex. The customer complained about the application of the law; bias in favour of the airline; the adjudicator's consideration of evidence; and a disregard for the inconvenience he suffered.

CEDR's Stage 1 review was comprehensive, and in my view did a good job of distilling the key issues – each of which received a detailed response. The customer hadn't provided evidence in support of some of his contentions, and CEDR established that the law had been interpreted rationally. The complaint was thus not upheld.

The customer claimed that CEDR had got it wrong, and that the airline had breached certain regulations in respect of his being denied boarding to his flight; that Covid guidelines at the time hadn't been taken into account; and that he wasn't offered a free re-route.

CEDR's Stage 2 review gave a thorough explanation of the relevant regulations, demonstrating that there had been no breach. It was also established that Covid guidelines had no impact on the legal position regarding denial of boarding, and that the customer had no entitlement to a free re-route. The complaint was again not upheld – which in my opinion was the correct outcome.

(c) Stage 1 Reviews

In scope review (seven complaints).

One complaint was upheld in part.

This case went to Stage 2, and I summarised it earlier.

I'm satisfied that CEDR were right to not uphold the other six cases.

In the first, the customer expected a claim to do with baggage to be handled alongside his claim about a delay. It seems that he didn't actually include the baggage claim, as he'd complained about that to the airline and thought that they would incorporate it in their defence to the claim about the delay. It all seemed a bit odd to be honest, but CEDR's response was very clear about what had been claimed and what the adjudication covered.

The second case concerned someone who'd missed their flight. Despite complaining about poor quality of service the customer was actually unhappy with the adjudicator's consideration of the evidence.

There were some strong emails from the customer before they lodged their complaint, including allegations of racial discrimination which were clearly wholly groundless. I was pleased to see that early on CEDR proactively signposted their complaints procedure. The Stage 1 review was very good – in particular pointing out an entry on the on-line case management system which confirmed that all relevant evidence had been considered.

The third case concerned a dispute about the length of a flight delay; and the airline's alleged refusal to forward luggage after a re-routed flight. The crux of the complaint was a disagreement with the decision – but it was alleged that evidence hadn't been considered and that the law regarding compensation had been irrationally interpreted. CEDR's Stage 1 review was thorough, with an especially good summary of the issues by their In House Adjudicator. The timing calculations were rehearsed in the context of the relevant regulations and it was clear that there had been no error. As regards the luggage, the finding was that the adjudicator reached a reasonable decision on the balance of probabilities based on an assessment of the relevant evidence.

The fourth complaint was that the adjudicator failed to take into account that the airline hadn't provided the customer with "laws and guidelines" prior to "contract". This related to the time allowed to make a baggage claim. CEDR's Stage 1 review agreed that there was no evidence of this being provided but found that the adjudicator had taken into account that the relevant information was on the airline's website, which had been included in the customer's itinerary.

The fifth complaint concerned alleged damage to, and theft from, the customer's luggage. He accused CEDR of siding with the airline and failing to review the evidence he provided. The Stage 1 review established that the customer had supplied a receipt for the purchase of the luggage – but submitted no evidence regarding the alleged damage.

The final complaint was the second case that progressed to Stage 2, which I covered earlier.

In scope service (one complaint).

The complaint was partly upheld.

The customer complained of poor service because, before accepting his claim, CEDR asked him twice for clarification of information that he'd already given them. He responded to both requests on the day they were made, but heard nothing more from CEDR despite sending them two messages via the on-line case management system.

CEDR's Stage 1 review found that there was an administration error in that their first enquiry was valid in terms of accepting the claim, but the second was unnecessary. CEDR apologised, confirmed the claim had progressed to the airline and offered £15.00 compensation. I'm satisfied this was reasonable, but disappointed that CEDR did not address the complaint about the two unanswered messages on the on-line system.

Partly in scope (two complaints).

One complaint was partly upheld and one was not upheld.

The partly upheld complaint was about CEDR's customer service, and the adjudicator's decision to uphold the airline's objection to a claim. The customer felt that she'd been given unhelpful advice about progressing her claim and said that one of CEDR's staff hung up on her during a call. She also disagreed with the decision about the objection.

CEDR reviewed two calls from the customer and found that one had "dropped out" due a technical problem rather than being deliberately terminated. They were satisfied that the other was handled professionally, with the customer being advised that she had to first raise her complaint with the airline before she could bring it to CEDR. This is correct. CEDR nonetheless awarded £20.00 compensation regarding the call that "dropped out".

As regards the objection, the Stage 1 reviewer explained that the airline had demonstrated that they'd advised the customer how to make a complaint; and that a claim couldn't be accepted until that was done and the matter remained unresolved.

The complaint that wasn't upheld was about a delay in receiving the adjudicator's decision; information from the airline not being shared with the customer; and the fact that his claim failed when his travelling companions on the same flight made a claim that succeeded.

CEDR's Stage 1 review rightly pointed out that disagreement with the outcome per se was out of scope. It also established that no evidence had been ignored, nor had any laws been interpreted irrationally. As regards the timescales, in line with the Scheme's rules which give them the power to do so, the adjudicator had allowed an extension in order to request further information. CEDR also established that the customer had made comments on the additional information provided by the airline (which made the customer's complaint that the information hadn't been shared with him seem somewhat odd).

CEDR explained that every case is unique and that it is possible for different adjudicators to reach different conclusions on claims relating to the same flight, depending on what evidence is presented.

6. General Observations

I have no new observations, but will comment briefly on the four that I made last time.

- a) There was only one complaint where the customer felt the outcome of their claim was inconsistent with that of another where the circumstances were the same. I'm satisfied that CEDR reviewed the case fairly and I agree with their position that each claim is unique and adjudicated on its own merits. I also accept that two different adjudicators could reach a different view on a claim without necessarily interpreting the law irrationally.
- b) Last time I found two complaints about an airline's subsidiary that seemed to be treated differently. There were no such issues this time.
- c) Compared to last time, unsuccessful claims regarding flight re-routing did not feature as prominently.
- d) Where the customer had used CEDR's general complaint form rather than the aviation one, the Stage 1 summaries did not suggest that the customer had ticked an aviation complaint criterion box on the form. This was a small point I'd raised last time, but I'm pleased to see it's been addressed.

7. Conclusion

The volume of complaints is low at 0.2% of all applications handled by the Scheme. This is a consistent trend, and my review suggests that CEDR continue to handle the few complaints they receive to a good standard.

Timescale performance was strong: CEDR acknowledged 92% of complaints within one working day, and 100% in two working days; and they completed 90% of Stage 1 reviews within 30 working days. At 15.6 the average review time was about three working days quicker than the previous six months. Stage 2 reviews were very timely.

In my opinion replies to customers were of a good quality, with excellent summaries and helpful explanations. I found only one instance where one point made by a customer went unanswered.

I found one classification error but am satisfied that overall CEDR's record keeping is sufficiently accurate.

8. Recommendations

I have no recommendations.

Acknowledgements

I conducted my review remotely and am grateful to CEDR for facilitating this. I've had the customary level of open and unrestricted access to the systems and records that I needed; and I'm grateful for the assistance with any queries – 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

12 April 2023