

The Aviation Adjudication Scheme (The Scheme)
Independent Complaint Reviewer Report
For 1 April - 30 September 2018.

Introduction

This is my first stand-alone report on the Scheme – which deals with complaints made against subscribing airlines and airports. This report covers from 1 April to 30 September 2018, as required by the Civil Aviation Authority.

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 consider individual complaints about certain aspects of the level of service provided CEDR. Under my terms of reference¹ and the Scheme's rules² I am only able to consider points concerning CEDR's quality of service, for example in respect of alleged administrative errors, delays, staff rudeness or other such matters. Other than referring to them where appropriate, I cannot comment on the content or validity of the Scheme's rules. I can review cases where a user of the Scheme has complained and, having been through CEDR's complaint process, remains dissatisfied. I cannot consider the merits or otherwise of decisions made by CEDR's adjudicators; nor can I investigate, consider or comment on the substance or outcomes of applications made by claimants. Where appropriate, I may make recommendations based on my findings.

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

¹ https://www.cedr.com/docslib/Independent_reviewer_-_Terms_of_reference.pdf

² <https://www.cedr.com/aviation/docslib/14-cedr-aviation-adjudication-scheme-rules-4th-edition.pdf?v=1519835067>

This Report

I had one complaint referred to me under the Complaints Procedure during this reporting period, which I comment on in the qualitative findings section of this report. I also examined all of the service complaints received by CEDR in respect of aviation between 1 April and 30 September 2018.

CEDR's Complaints Procedure

The Complaints Procedure³ explains its scope along with the two internal stages of review that take place before, if necessary, a complaint is referred to me.

The procedure is articulated clearly with timescales and information about what can be expected. In brief, if after the first stage response to a complaint a customer remains dissatisfied he or she can ask for escalation to stage two of the process, where a Director will review the complaint. Where this does not conclude the matter, the complaint can be referred to me for independent review.

My Findings

Quantitative

CEDR receives very few complaints in relation to the Scheme. Of the 9775 applications it handled in this reporting period there were 19 complaints about CEDR's own service performance. This represents 0.2% (down from 0.3% for the 2017 calendar year). No complaints progressed beyond Stage 1.

Of the 9775 total applications made to the Scheme approximately 50% (4931) received a final decision from an adjudicator. The remainder were outside the scope of the Scheme.

Of the 4931 adjudicated claims, outcomes were as shown in table 1 below.

³ <https://www.cedr.com/complaints/>

Table 1: Adjudicated Claim Outcomes

Succeeds in full	Succeeds in part	Succeeds in part/fully <small>(breakdown not available prior to system upgrade – see commentary below)</small>	Fails
18.6%	7.8%	56.8%	16.8%

Before 30 July 2018 CEDR could determine only whether an award was made - not whether that award met the claim in full or in part. This is the percentage shown in the column headed: “succeeds in part/fully”. After that date CEDR upgraded its reporting so that it could separate claims that succeeded in full and those that succeeded in part – so those columns reflect the outcomes reached between 1 August and 30 September. From the table above we can deduce that 83.2% of claims were found in the customer’s favour to some degree; and 16.8% were found wholly for the respondent.

The reporting anomaly is a one off – in future all outcomes will be recorded as either succeeding in full, succeeding in part, or failing. My reports will show them accordingly.

The purpose of including this information in my report is to provide a useful context in which to view the complaints made about CEDR itself.

Table 2 below gives a breakdown of the service complaints about CEDR.

Table 2: Service Complaints about CEDR

In Scope	Partly in Scope	Out of Scope	Total
6	7	6	19

I found two cases that had been misclassified as out of scope when they should have been partly in scope. I drew this to CEDR’s attention and the records have been amended. Table 2 above shows the correct position. I am satisfied that these were isolated instances of human error.

Table 3 below gives a breakdown by outcome at Stage 1 of the Complaints Procedure for those cases that were not out of scope:

Table 3 Complaint Outcomes

Upheld	Partly Upheld	Not Upheld	Total
5	3	4	12

As with 2017 (when I examined the Scheme as part of an overall review of all CEDR's schemes and services), in quantitative terms this small proportion of complaints does not enable me to identify any trends.

CEDR did not exceed its 30 working day response target in any of the 16 complaints that reached completion in this reporting period. The average handling time was 12 working days, with a range of one to 29 days. This is commendable in my view.

In terms of compensation, payments were offered in five cases and in one case the fee to use the Scheme was withdrawn. Payments ranged from £10.00 to £25.00.

Qualitative

One complaint (which commenced before 1 April 2018) was referred to me for review during this reporting period. This was almost entirely about the outcome of a claim and an allegation that CEDR had failed to act impartially. After a thorough review I explained to the customer that I was unclear as to the grounds for complaint under CEDR's Complaints Procedure as the matters raised were outside its scope; and that I found no evidence of a failure to act impartially. I noted, too, that CEDR had done its best to answer the customer's queries (even though strictly speaking most of those queries were outwith the scope of the Procedure); and that there was no evidence of a poor standard of overall customer service.

In terms of administration, there was a delay in dispatch of the Stage 2 letter - which was down to human error and had no bearing on the outcome of the complaint. In any event, the customer had not complained about this delay – it was something that I only noticed as part of my examination of the case.

I did not uphold the complaint, and I made no recommendations.

I examined all 19 complaints CEDR received during this reporting period and I comment below on each classification.

In Scope (six complaints).

Two of the six complaints were “informal” - meaning that they were not complaints from consumers but were matters raised by the subscribing airline or CEDR itself. Both involved adjudicator errors leading to the airline paying compensation when that was, in fact, the wrong outcome. In one case an error was made about the airline against which the claim was made; and in the other, the adjudicator missed material evidence. Both cases were upheld in full and CEDR reimbursed the airline. The customers themselves were not affected. I asked CEDR about how such errors are followed up and how they are prevented in future. Follow up is handled by the lead adjudicator, who ensures that where appropriate adjudicators learn from any errors; or, if warranted, adjudicators no longer work on the Scheme.

As regards these two cases, I am satisfied that CEDR handled them appropriately and the outcomes were correct.

Of the remaining four complaints, two were upheld in full; one was upheld in part; and one was not upheld. I am satisfied that these were the correct outcomes.

Of the two complaints that were fully upheld, the first was about delays and a lack of communication from CEDR. What was unusual about this case was that the customer turned down the £25.00 compensation CEDR offered on the basis that the Stage 1 letter of explanation was satisfactory on its own. Credit should be given to CEDR here; the reply was honest and explained what the organisation was doing to improve. It clearly carried weight with the complainant.

The second fully upheld complaint concerned a small delay in the claimant receiving the outcome; problems with the on line portal; and a delay in receiving the award. The Stage 1 response was of a good quality, answering all the points and offering £10.00 compensation for the problems.

The partly upheld complaint involved a minor delay (three days) and resulted in an apology to the customer. I am satisfied this was reasonable, particularly as CEDR had proactively given notification of possible delays due to a high number of claims.

The complaint that was not upheld involved an alleged claim that was made five months previously to which no response had been received. CEDR made a thorough check of all e-mail archives and postal records but could find no trace of the application. The Stage 1 letter explained all of this; nothing further was heard from the customer.

Partly In Scope (seven complaints).

One case was upheld in full – where the customer had been advised of a successful claim but the award had not materialised. The Stage 1 response was sent within one working day and referred to the relevant Scheme rule in relation to escalation of non-payment⁴; but explained that the necessary bank transfer had been actioned by the airline and was in the pipeline. There was further contact from the customer, who confirmed receipt of the payment but then claimed further monies beyond those awarded. This did not constitute a request for a Stage 2 review under the Complaints Procedure and CEDR explained that the adjudication could not be appealed or re-opened. They did however offer £25.00 compensation in view of the delay in receiving the award. I am not entirely convinced that this was warranted because I could not see any obvious error or administrative failing by CEDR. In the event the offer was rejected as the customer acknowledged that any action was against the airline, not CEDR.

Two cases were partly upheld. The first concerned delayed compensation from the airline following an award; the second was about a delay in CEDR processing a claim and the customer having to repeatedly chase up to see what was happening (compounded by CEDR getting the customer's name wrong on one occasion). In both cases the responses were comprehensive and compensation of £15.00 and £10.00 was offered respectively.

The remaining four cases were not upheld. One concerned alleged delays, but investigation showed that all deadlines were met within prescribed timescales; one alleged that CEDR had said that there was an appeals process, but a check of the call recording proved this not to be the case; one concerned a misunderstanding about CEDR's jurisdiction when a flight touched down outside of the UK; and one concerned a delayed compensation payment, where the payment was in the pipeline. On this last case there was further contact from the customer who said that they were still awaiting an apology from the airline as directed in the adjudicator's decision. CEDR replied saying they would chase this up but I could see no evidence of them having done so. I raised this with the Head of Consumer Services who will follow it up accordingly.

Overall, I am satisfied that the outcomes on these complaints were fair and reasonable.

⁴ 4.6.3 If the customer informs CEDR that the subscribing company has not completed the required actions within the timescale set out at Rule 4.6.1 or any substitute timescale advised by the subscribing company under Rule 4.6.2, CEDR will contact the subscribing company to request compliance with the decision. In the event that the subscribing company does not respond or fails to comply with the decision within 10 working days, the matter will be escalated to a senior member of staff at the subscribing company.

Not In Scope (six complaints).

All six cases were correctly classified. Five related wholly to a disagreement with the adjudication decision and one was about a non-UK flight.

One Stage 1 reply mentioned that the complaint was partially in scope as it related to guidance given by CEDR. However, as far as I could tell the customer had made no such complaint. I queried this with the Head of Consumer Services, and we established that this was a drafting error and the case was correctly classified.

General Observations

I have three general observations, all of which I have raised with CEDR.

1. Although beyond the scope of the Complaints Procedure as it stands, and therefore outwith my remit, three of the out of scope cases involved complaints about apparently different outcomes on the same issues relating to the same flights. In one case two members of the same family had made separate claims about the same flight and one had succeeded and one failed. The circumstances appeared identical, so it's easy to see why the failed claimant was aggrieved. In that case CEDR's lead adjudicator thoroughly reviewed the issue and it turned out that in fact both claims should have failed. The reason that they didn't boiled down to inconsistent responses from the airline.

I discussed the situation with CEDR and it is clear that an adjudication outcome is largely contingent on the airline's defence. If it puts in a poor submission, it is more likely to lose; if separately, for whatever reason, it puts in a stronger submission then its chances of winning are greater.

Thus we have the conditions, beyond CEDR's ambit, for what consumers may see as potentially inconsistent outcomes - and therefore be dissatisfied. I cannot make recommendations for airlines; and the quality of their defence submissions to CEDR is a matter for them. But it would be so much better for all concerned if they took a more consistent approach.

In discussion it was apparent to me that CEDR itself has taken steps to mitigate the impact on claimants by: (a) implementing a system where they group the same flights to the same adjudicator wherever possible; and (b) providing staff with guidance to give to consumers if queries arise about apparent inconsistent outcomes.

This area does not currently warrant any recommendations from me in respect of the Complaints Procedure; however, I will continue to monitor complaints of this nature should there be any.

2. I found a couple of cases where I couldn't tell whether a customer had accepted CEDR's compensation offer. These struck me as loose ends and the Head of Consumer Services will follow them up. This does not warrant a formal recommendation – but I shall monitor the situation in my next report.
3. In two cases the airline against which an award was made had told the customer that CEDR pay the compensation to the customer. This is plainly wrong. CEDR are aware of this issue and are working with the airlines accordingly to ensure the correct position is understood and that customers are not given incorrect advice.

Conclusion

In the context of the total number of claims handled by the Scheme the frequency of complaints about CEDR's own service levels is very low at 0.2%. All complaints were handled within prescribed timescales, and none of the complaints received during this reporting period progressed beyond Stage 1. Taken together, this is evidence of a good performance.

The complaints process is well articulated and the evidence from my review shows it to be working effectively. The responses to consumers are largely clear and well written and are supported by thorough investigations.

The very few errors that I found were minor; and more often than not concerned record keeping matters that had no impact on complainants. I found no evidence of any underlying problems – quite the opposite in fact. CEDR are focussed on giving customers good responses in a timely fashion.

CEDR responded very positively when I drew any issues to their attention – either correcting errors, or giving me a full explanation. They were open to my observations and feedback. I welcome this commitment to continuous improvement.

Follow up on previous recommendations

Here I comment on the two recommendations I made in respect of Aviation in my report for 2017 covering all CEDR's schemes and services.

1. *That CEDR should continue to monitor aviation cases where an award has been made to ensure that airlines make payments in a timely fashion.*

Although there were some complaints about delayed awards, they were much fewer than in 2017. I understand that CEDR have been working with the airlines on this. CEDR also have a form of words used to explain the situation to customers; and a process for chasing up delays. Some of the cases I looked at showed this to be used effectively. I am therefore satisfied that CEDR have acted on my recommendation; however I shall continue to monitor the situation.

2. *That CEDR should monitor the timescales in which aviation claims are handled so that delays in appointing adjudicators can be avoided.*

Of the 19 cases I looked at in this reporting period, only four mentioned a delay in claim handling (which equates to only 0.08% of all adjudicated claims). Unlike 2017, I did not get any sense that this was a theme running through the complaints made to CEDR. I am therefore satisfied that this issue had been largely dealt with either by reducing delays or keeping claimants better informed so that they are not moved to complain.

Recommendations

I have no formal recommendations and would urge CEDR to maintain or improve current service levels in terms of complaints handling; and as far as possible strive to avoid the infrequent and minor errors in classification.

Acknowledgements

I have been given open and unrestricted access to the Scheme's and CEDR's systems and records along with carte blanche in respect of conducting this audit as I saw fit. I am very grateful for the patience and assistance given to me in terms of navigating systems and dealing with my various questions. I am grateful, too, for the thorough responses to the various points that I raised as I examined the casework; and the positive responses to my comments and observations as I undertook this review.

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

Chris Holland

Independent Complaint Reviewer

29 October 2018