

Aviation Adjudication Scheme Independent Assessor's Report (1 October 2023 – 31 March 2024)

1. Introduction

This is my first report on the Scheme, which is run by CEDR (the Centre for Effective Dispute Resolution) as the newly appointed Independent Complaints Reviewer (ICR) (Independent Assessor for this service) and deals with complaints made against subscribing airlines and airports. This report covers the period from 1 October 2023 to 31 March 2024 as authorised by the Civil Aviation Authority (CAA) which approves the Scheme.

2. Background

I am an independent consultant working remotely who specialises in complaints handling. I have been appointed for an initial 3-year term. I am independent from any ADR scheme for the aviation sector in that I am not employed (whether directly employed or via a contract for services) in direct case handling or advice other than in my role as the Independent Assessor. I am not permitted to hold shares or other financial investments in any ADR scheme/company which provides ADR for the aviation sector.

CEDR is a registered charity and is non-profit distributing. It provides independent dispute resolution for consumers when they experience problems with a company and have exhausted their internal complaints procedure. CEDR's aim is to provide society with skills and solutions for effective dialogue and to bring about sustainable change.

3. My Role

There are two aspects to my role. The first 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

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-7thedition.pdf>

of the law, if that is 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.

4. Aviation Adjudication Scheme Complaints Review Policy and Process

CEDR's Complaints Review Policy and Process 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 where a senior manager will review the complaint. If this doesn't conclude the matter, it can be referred to me for independent review.

5. My Findings

The scheme dealt with the below during the review period:

- 6,350 applications were received by the Aviation Adjudication Scheme in the six-month period;
- 1,105 cases received a final decision from an adjudicator;
- 3,754 cases were settled by the airline or airport;
- 934 were withdrawn by consumers;
- Remaining cases are either still in progress or closed as being ineligible.

Of note, CEDR received 7 formal aviation complaints in the reporting period. 6 complaints were completed during the review period, with the seventh still in progress as it was received in late March.

In terms of the outcomes of the 6 completed complaints, I note that 2 complaints were upheld, 1 was partially upheld; and 2 complaints were not upheld and 1 was out of scope. I note that 5 complaints were closed at stage one and one was escalated to me for a stage three review.

Upheld complaints

One complaint which resulted in compensation being awarded, the customer challenged that the adjudicator had not properly assessed the claim and the evidence. Having reviewed the customer's complaint, CEDR noted that the complaint was that the adjudicator did not give adequate weight to the evidence produced in the case that showed that the customer was delayed by more than three hours, which the customer considered to constitute a failure by CEDR to conduct its assessment of the complaint with reasonable care and diligence. I will not repeat the detail of the investigation, however the customer was eventually awarded and accepted £520.00 in compensation.

For the other upheld complaint, this related to the customer's flight being brought forward by more than three hours, was deemed to be cancelled. The flight with its newly scheduled departure time could have been considered for an offer of re-routing by the company. It was noted that, as the customer's flight was deemed to be cancelled, they were entitled to compensation. Even though the flight was brought forward by less than four hours, the compensation payable under Article 7, could not be reduced by 50%. CEDR was persuaded that the adjudicator on this occasion made an interpretation of the law which was irrational. In line with rule 8.2 of the Scheme Rules, the adjudicator made a correction to the decision to amend the error and the resulting award/ compensation with a goodwill payment made.

Upheld in Part

This case had concerned the adjudicator's decision and some administration oversight on the case file. CEDR addressed all elements of the customer's complaint and awarded £75.00 as compensation. I consider the review and outcome reached on this case was appropriate.

Not upheld

These cases dealt with a number of issues raised by consumers and were initially deemed to be in scope and re-examined based on whether the adjudicator had ignored relevant information and/or taken into account irrelevant information; or made an irrational interpretation of the law. After further investigation it was concluded, correctly in my view, that these cases did not meet the criteria and were therefore out of scope for those heads of complaint. However, as there were other heads of complaint deemed within scope, the outcomes of these cases were not upheld. I agree with the assessments and classifications of these complaints.

During this review period, as noted above, I investigated one complaint about the Aviation Adjudication Scheme which was referred to me at stage 3 regarding a customer who had been denied boarding. The details of the complaint, mainly related to the following:

- Wrong application of the scheme rules by the Independent Adjudicator.
- Lack of response to enquiries about the Defence being posted by the airline.
- The complainants' view that there was bias towards the airline by the CEDR Aviation Case Officer.
- The objection to the defence being accepted after the deadline set in the Aviation Scheme rules.
- The Independent Adjudicator relying on Rule 5 to accept the evidence.
- That the payment of a case fee to CEDR by the airline indicates a bias towards the airline.

After a thorough assessment, I did not uphold the complaint. I will not repeat my findings, but it was clear that due to the complainant's unacceptable behaviour and actions towards the Lounge Manager this resulted in them being denied boarding.

Out of scope complaint

For the out-of-scope complaint, CEDR found that it was not about the adjudicator ignoring relevant information and/or taking into account irrelevant information, but about the customer's dissatisfaction with the weight attached by the adjudicator to the evidence submitted in the case. In reaching its decision, CEDR considered the statements made by the customer in their complaint. Specifically, the customer said that the adjudicator accepted the evidence of the flight attendant and did not give due weight to the customer's statements and the customer's disability. The customer also claimed that the airline's defence was "distorted and fabricated", that the adjudicator's decision was "aloof from the facts" and that the arguments put forward by the customer were not given sufficient weight. The customer requested the airline's defence to be declared a fabrication, and they reiterated their disagreement with the version of events put forward by the airline in its defence. CEDR considered very carefully whether the customer's allegations were within the scope of its Complaints Review Policy but found that the customer was not alleging that a particular piece of evidence was ignored by the adjudicator or that an irrelevant piece of evidence was taken into account. Indeed, it is clear from the adjudicator's decision that the evidence submitted by the parties, including the claim made by the customer, were taken into consideration as they are mentioned in the decision itself. CEDR concluded that this was not within the remit of its Complaints Review Policy and was therefore out of scope.

6. Conclusion

I have no specific observations and there was no evidence of any themes or causes for concern. The volume of complaints remains extremely low.

My review concludes that CEDR handled the few complaints they received to a very good standard and addressed all of the complainants' concerns in their responses.

Timescale performance was excellent with acknowledgements and Stage 1 responses at 100% within target. The Stage 2 response was very prompt. CEDR are, in my view, to be congratulated on this impressive set of results. In summary, replies to customers were of a high standard, particularly taking into account the complexity of the issues raised.

7. Recommendations

I have no recommendations to make.

I conducted my review remotely but had open and unrestricted access to the systems and records that I needed. I am grateful to CEDR for facilitating this.

Andrea Cook OBE
Independent Assessor
30 April 2024