

Disabled Passengers And Carriage by Air

by John Balfour

This article describes the law in the UK as to both discrimination and liability for injury and damage in connection with the carriage of disabled passengers by air, both currently and after the new EC Regulation comes into effect on 26 July 2007.

The Disability Discrimination Act 1995

Under the Disability Discrimination Act 1995 it is unlawful for a provider of services to discriminate against a person on grounds of disability. However, there is an exemption in respect of the provision of a transport service, and this includes providing a vehicle, or services in a vehicle (which includes an aircraft). The exemption is limited to the provision of a transport service itself, and not services ancillary to transport, as was confirmed by the Court of Appeal in *Ross v Ryanair* ((2004) All ER (D) 333), when the court confirmed that Ryanair (and Stansted Airport) were liable for failing to provide free of charge a wheelchair for Mr Ross at the airport in order to enable him to get to the aircraft.

Liability for injury

The basic position as to the liability of airlines for injury suffered by disabled passengers has been made clear by the Court of Appeal's judgment in *Chaudhari v British Airways* (The Times 7 May 1997), concerning a claim by a disabled passenger who fell, injuring himself, when getting up from his seat in the aircraft to go to the toilet. The court, following the leading decision of the US Supreme Court in *Saks v Air France* (724 F2d 1383, 18 Avi 17,606), held that, according to Article 17 of the Warsaw Convention, the airline was only liable if a passenger was injured as a result of an "accident" – ie, an unusual and unexpected event external to the passenger, and not as a result of a pre-existing weakness in the passenger with no external causation, as was the case here.

However, disabled passengers are more prone to suffering injury through accidents than other passengers. Examples of situations which have given rise to successful claims include injury while the disabled passenger was being carried on an ambilift, carried onto or off the aircraft or lifted into a seat on the aircraft. Claims may also arise as a result of the acts or omissions of an airline's groundhandling agent, for example in respect of injury caused while a passenger is being pushed in a wheelchair through the airport terminal, or carried in a wheelchair on a bus from the terminal to the aircraft. It will normally be very difficult for the airline or its insurers to recover from the groundhandling agent, because most groundhandling agreements provide

that the handler is only liable if the damage was caused as a result of its acting intentionally or recklessly and with knowledge that damage would probably result.

Liability for damage to equipment

If a passenger's wheelchair, or other equipment, is damaged on board the aircraft, then because of the Warsaw / Montreal Convention system the airline's liability will be limited – to what may be quite a low amount compared to the value of the equipment. Under the 1929 Warsaw Convention, which does not apply so often now, but is still applicable to a few journeys, the airline's liability for “objects of which the passenger takes charge” (ie, cabin baggage) is limited to 332 Special Drawing Rights.

Under the 1999 Montreal Convention, which now applies to most international carriage, this limit has been increased to 1,000 Special Drawing Rights per passenger in respect of all the passenger's baggage (both checked baggage and cabin baggage).

EC Regulation 1107/2006

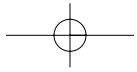
EC Regulation 1107/2006 on disabled passengers and persons with reduced mobility came into force on 15 August 2006. The anti-discrimination provisions will apply from 26 July 2007, and the other provisions from 26 July 2008.

The Regulation intends to protect a wide category of persons, as disabled persons or persons with reduced mobility are defined as “*any person whose mobility when using transport is reduced due to any physical disability (sensory or locomotor, permanent or temporary) intellectual disability or impairment, or any other cause of disability, or age ...*”. Hence, it covers, as well as persons with physical disabilities which make it difficult or impossible for them to walk, the blind, the old, those temporarily injured and those suffering from “*intellectual disability or impairment*”.

As regards geographical scope, it applies to all air services departing from an airport in the EC, and as regards obligations at airports also those arriving or transiting through an airport in the EC. It also applies to air services departing from an airport in a country outside the EC to an airport in the EC where the operating carrier is an EC airline.

Under the Regulation, the airlines (and tour operators and travel agents) have three basic obligations:

- to accept passengers with reduced mobility, unless justified by legal safety requirements or the size of the aircraft (in which case certain conditions apply);

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- to provide a system for the reception of notifications of special needs at points of sale, and also transmit such information to the relevant airports and the operating carrier (if different);
 - to provide various facilities free of charge, ie:- the carriage of assistance dogs; the carriage of mobility equipment; reasonable seating arrangements; communication of essential flight information; and assistance in moving to toilets on the aircraft.

Obligations are imposed on airports in respect of assistance on the ground, but do not apply until 27 July 2008, and are beyond the scope of this article.

Comment

While accepting that genuinely disabled passengers merit protection as provided by the Regulation, airlines are nevertheless concerned that the wide definition could lead to significant abuse, by passengers claiming disability or reduced ability in order to obtain benefits, such as priority boarding or carriage in a wheelchair or buggy, although not really justified.

It is presently unclear exactly how the exception for legal safety requirements will work in practice. It may be argued that carriage of any disabled passenger would compromise safety and even contravene cabin evacuation requirements, but as this could be used to justify a total ban on the carriage of disabled passengers, this cannot be the intention of the exemption.

Implications for insurers

While the principal implications of the new EC Regulation are for airlines, and as a general rule airlines' obligations and liability under the Regulation will not fall under standard aviation insurance policies, they may well do so if the policy includes the AVN60 personal injury extension, which covers, among other things, inadvertent discrimination in refusing transport (although quite what "inadvertent" means in this context may have to be clarified). Insurers will continue to be involved in claims by disabled passengers for injury and damage to equipment.

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