

The luggage lottery - an AUC report into compensation payments to passengers for mishandled baggage

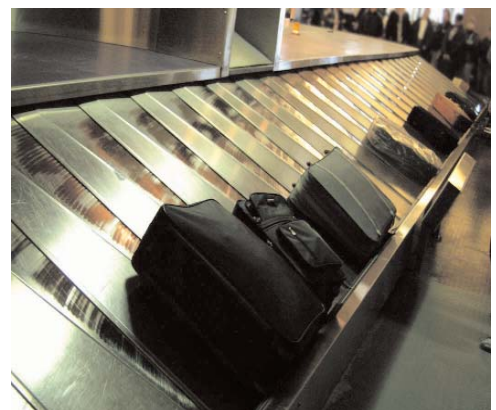
Introduction

In its “Baggage report” for 2008, SITA, the global travel solutions provider, said that airlines mishandled 42 million bags worldwide in 2007, compared to 34 million in 2006 and 30 million in 2005. And, of these, approximately 1.2 million bags, or around one bag for every two thousand passengers, were irretrievably lost. SITA estimates that because annual passenger numbers are expected to double in the next decade, at today’s mishandled baggage rates, nearly 70 million bags a year would be mishandled by 2019.

Airlines’ primary duty to their passengers, in terms of baggage handling, should be to put into place systems that will mean that they will mishandle as few bags as possible. But if something does goes wrong they also should compensate their passengers fairly.

Complaints to the AUC show that airlines are often reluctant to meet claims in full and many passengers are left out of pocket as a result. Many of the complaints are from passengers seeking reimbursement for small sums of money spent on emergency items such as toiletries and a change of clothes while their bag is delayed. But some passengers are seriously out of pocket, particularly when a bag is lost. And it’s not just about the money; there is also the inconvenience and stress from waiting for news of the whereabouts of their luggage. Mishandled baggage can affect the enjoyment of a holiday or the usefulness of a business trip.

The AUC Chairman, Tina Tietjen, said in her introduction to the 2003/04 AUC Annual Report that the Montreal Convention would potentially offer passengers “the prospect of better settlements for baggage claims” than had the Warsaw Convention that it replaced. In this short report, using complaints received by the Council as evidence of airlines’ general policies towards passengers over baggage claims, we aim to find out what difference the Montreal Convention has made to passengers whose bags are lost, delayed or damaged.



The legal background

Montreal Convention

The Montreal Convention sets out airlines' liabilities for passengers and their baggage. It applies to international travel only but many countries have similar legislation for domestic travel. It also applies to any journey within the EU (including domestic journeys within a single Member State), because its provisions have been replicated in EU legislation. The Montreal Convention covers liability for baggage (loss, damage or delay), in addition to and flight delays or death or injury to passengers .

For claims for mishandled baggage, the liability limit of airlines is 1,000 Special Drawing Rights (SDRs) per passenger. This is a maximum limit - claims are assessed individually on the basis of the "damage occasioned by delay in the carriage by air of passengers, baggage or cargo" or of the "damage sustained in the event of the destruction or loss of, or damage" to baggage.

"Damage" is generally considered by airlines to be costs such as expenses incurred by passengers buying essential items when luggage is delayed or compensation for lost or damaged baggage. However, it can also be for incidental expenses related to the mishandling of baggage; these might include reasonable telephone costs to find out whether luggage has arrived or the cost of transport to go and pick up a delayed bag from the airport.

Warsaw Convention

Some travel still comes under the Warsaw Convention - the international legislation that was replaced by the Montreal Convention for flights on most routes. As with the Montreal Convention, under the Warsaw Convention an airline is liable for "damage". But its maximum liability is based on the weight of the bag - at 17 SDRs per kilogramme. So the heavier the bag is the more money a claimant receives, whatever happens to be in it.

A Special Drawing Right (SDR) is an international unit of account defined by the International Monetary Fund (IMF). It is commonly used in international legislation and can be converted into national currency in the same way as other foreign currency conversion. SDR exchange rates are published daily in many UK national newspapers and on the IMF website. On 16 March 2009, one pound sterling was equivalent to 0.95 SDRs. The Montreal Convention limits for baggage was thus £1049 (1,000 SDRs) .

Lost baggage

SITA states that only 3% of mishandled baggage was irretrievably lost in 2007. But that is still a lot of bags. And lost bags hit passengers in their pocket hardest - they not only do not get back what was in the bag but may have to buy new items to replace those that are lost. In addition, they will have the frustration of not knowing when, and if, their bags are going to turn up.



A passenger claimed £1120 for a lost bag, but did not have any receipts to back up her claim. Because of the lack of receipts, the airline reimbursed the passenger £79.34.

An airline lost the baggage of two passengers who were sharing one checked bag. The airline offered to reimburse the passengers for £233.78, much lower than the £1233.00 claimed because the passengers had not provided receipts for all items to back up their claim.

The AUC says...

It is not practical to expect passengers to keep receipts of everything they buy for the chance that their bag will one day be lost by an airline. The airline should not refuse claims (or parts of) because a passenger does not have receipts.

We had hoped that the Montreal Convention would improve matters by increasing settlements for lost baggage. Our optimism was based on the premise that the Montreal Convention would mean that passengers would be able to get compensation that better reflected the value of the items in the luggage (and the bag itself) and was not simply based on weight (as under the Warsaw Convention).

However, complaints to the Council suggest that this has generally not happened. Passengers struggle to get back the full worth of the items they have lost. Airlines often ask for a list of the items that were in the missing bag and for original receipts as proof of damage as an insurance company would do. And, like insurers, their offer of compensation often does not match a claim in full because they have reduced the payment on the grounds of depreciation of the value of the items in the bag.

Delayed baggage

The impact of delayed baggage is often felt more by passengers in terms of the disruption to the trip itself than in monetary loss. The Association of European Airlines says that, on average, 85% of bags delayed by its airlines (mainly European network carriers) are reunited with their owners within 48 hours. That still leaves 15% of bags being delayed by more than two days. Complaints to the AUC suggest that even a one or two day delay can severely disrupt a trip - particularly if a passenger is planning to head off straight away from their arrival point and won't want to wait to pick up their bag when it arrives.

But it's not just the inconvenience - the cost of replacement items that passengers might have to buy can soon add up.

Compensation payments for delayed baggage under the Montreal Convention have not changed significantly from those under the Warsaw Convention because airlines have generally continued to pay out (either by giving passengers money upfront to spend or reimbursing them afterwards) for emergency items that passengers buy while their bag is delayed; and they rarely pay anywhere near their maximum liability (of currently around £1000 per person).

Some airlines set their own limits on how much passengers can spend while their bag is delayed. For example, complaints to the AUC show that Ryanair often limits passengers to £15 whatever the length of the delay. Whilst we understand why airlines want to stop passengers spending excessive sums, the Montreal Convention sets a maximum limit for a good reason - each situation is different so passengers' needs are likely to vary. For example, a passenger may be likely to incur more costs if their bag is delayed on a city break than on a beach holiday.

A passenger's bags did not arrive with him on a flight to Turkey. So he purchased emergency clothes and toiletries for 50 Turkish Lira, about £21. The following day he received a phone call from the airline saying that his bags had arrived but it would not arrange for his bags to be sent to him. The passenger had to arrange for his luggage to be collected from the airport at a cost of 220 lira (£85). The airline offered its standard delayed baggage amount of £25.00 (based on £25 per day), considerably less than the £100 that he had claimed.

The AUC says...

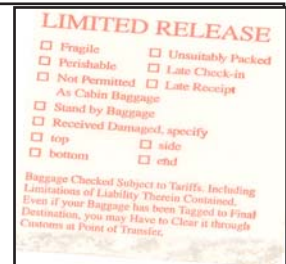
We believe that airlines should be liable under the Montreal Convention for the cost of transporting the bag to where the passenger is staying .

Damaged baggage

There is no industry data for how many claims against airlines for mishandled baggage relate to damaged bags or items. But in practice, it is the bag itself that is most likely to be damaged and airlines generally replace a damaged bag with a new one on a like-for-like basis. As with settlements for lost bags, airlines are liable for damage up to 1000 SDRs under the Montreal Convention; again (in theory) making it easier for passengers to secure compensation more in line with the value of the damaged bag or items. But, again, as with lost baggage, airlines generally want evidence of ownership and often take into account wear and tear.

In addition, some airlines do not accept liability for certain items (typically musical or sporting equipment) that they only carry on a “limited release basis”. These airlines also usually charge passengers to carry the items. It doesn't seem fair for airlines to charge passengers to take items and then not compensate should they be damaged. Moreover, we believe that LRTs contravene the Montreal Convention - airlines should not withhold liability for items (or bags) they agree to carry (unless the items already have a defect). Similarly airlines cannot arbitrarily limit their liability, as Jet2 does by refusing to reimburse passengers for claims under £30.

Limited release tags



There are some fragile or expensive items which airlines only accept on a limited release basis, where the carrier will attempt to avoid its liability should the item be lost or damaged. They also often charge their customers to carry the items.

We have had success in getting some airlines to stop using Limited Release Tags but airlines, such as Jet2 and Air Southwest, still do. We recommend that passengers who are carrying expensive items do not fly with airlines that still use these tags. In the meantime we will keep on with our efforts to get airlines to stop using them.

A passenger found that his surfboard and surfing accessories had been crushed during a flight. His claim totalled £768.99 and he was able to provide a receipt for the surfboard. However, the airline offered a cheque for only £66.95; it had taken account of wear and tear because the surfboard was over three years old.

The AUC says...The airline has exaggerated the depreciation of the surfboard and had taken no account of the replacement costs of buying a new board.

What do we want?

We are disappointed to conclude that, on the basis of over 2,000 written complaints to the AUC about baggage since 2004, the Montreal Convention appears not to have brought about the benefits to passengers that we had hoped for. This is because complaints to the AUC suggest that, even after the coming into force of the Montreal Convention, too many settlements from airlines continue to not meet the claim made by the passenger.

When passengers hand over suitcases to an airline they should be able to expect their bags to arrive, firstly, with them at their destination airport, and secondly, in as good condition as when they handed them over. But, if, for some reason, their bag is lost, damaged or delayed, airlines should do more to ensure that passengers are not out of pocket as a result.

Complaints to the AUC show that airlines often act like insurers when dealing with baggage claims about lost or damaged bags. But we think this is inappropriate; airlines, unlike insurance companies, are responsible for the bag being mishandled. They should not expect passengers to keep receipts for all items in their bag as proof of ownership - this is not practical. And they need to remember that by taking account of depreciation they will not cover the costs to passengers of buying a new item as a replacement.

With delayed baggage, we want airlines to commit to reimbursing passengers for reasonable (and practical) expenses for replacement items purchased whilst they are without their bag. Airlines may want to offer guidance, but they should not set absolute limits on what a passenger can spend.

Of course, of most benefit to passengers would be for airlines to mishandle fewer bags in the first place. We know that a number of airlines have gone to great lengths to address their baggage handling performance. We commend these efforts. But airlines should also turn their attention to what happens when something goes wrong and offer settlements that better reflect the loss to the passenger. Airlines are still too quick to load risk onto the passenger.

The following page has examples of complaints to the AUC where we have stepped in on behalf of passengers to try to secure improved settlements. We would prefer not to have to intervene - and for airlines to deal with complaints in such a way that passengers had no need to come and seek our help. But these examples give a good idea of the type of settlements that we think are fair.

A passenger checked in three bags for a flight. When arriving at the airport, he found that two of the three bags had not arrived. He claimed £792 for his lost baggage. The airline offered £460 and said that he should claim any outstanding difference via his insurers. The airline increased their offer to virtually the full amount claimed after we had intervened.

The AUC says...

Airlines should not refer passengers to insurers. It is the claimant's decision whether to claim via their insurers or the airline. Why did we have to tell the airline that?

A passenger whose bag was delayed for four days had no option but to call the airline a number of times from his mobile to find out the where his bag was. It was finally returned to him at the airport before he flew back. When he wrote to the airline to claim back the money he had spent in the meantime, the airline refunded the £143 spent on buying essential items but not the £60 telephone costs. Following our intervention, the airline refunded the £60 and also gave him a travel voucher.

The AUC says...

We think that airlines are liable for reasonable telephone costs under the Montreal Convention and that they should reimburse them. This airline did the right thing in the end but why did it not initially refund the calls?

A passenger found his guitar had been snapped at the base of the neck. He provided a receipt for £1800 when purchased three years earlier. The airline offered only £15 because it was over three years old. We wrote to the airline and said that their depreciation policy was at odds with the Montreal Convention. Following our intervention, the airline reviewed the passenger's claim and increased their offer to £754, their maximum liability of 1000 SDR at the time.

The AUC says...

The passenger would have been better off buying a good travel insurance policy because he was travelling with such a valuable item. Nonetheless, the airline was liable for any damage, whilst it was in its care it and it made a fair settlement in the end – but it should not have needed our intervention.