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Article

IS AVIATION AN ENABLER OR BARRIER FOR DISABLED PASSENGERS? A REVIEW OF DISABILITY RIGHTS AND POLICY FOR AIRLINE PASSENGERS IN THE EU AND UK

Steve Wood

Principal Lecturer, Leeds Beckett University,
United Kingdom

Orchid Id: <https://orcid.org/0000-0003-1532-5521>

E-mail: S.M.Wood@leedsbeckett.ac.uk

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Abstract.

Since the EU introduced Regulation (EC) No 1107/2006 to support access and reduce barriers for People with Disabilities (PwD). Member States of the EU, and their respective Departments of Transport, have had the responsibility to ensure the Regulation is adopted, complied with, and evidenced at airports. This paper assesses to what extent the aviation sector in the EU, particularly the UK, is carrying out its legal obligations and whether a new ethos towards disabled travellers has been created because of regulations both at EU and national level since 2006. The conclusion drawn from legislation, the courts, and changes to airport infrastructure, show that whilst improvements have been made to enable access and reduce barriers for PwD, it will take a number of years and a greater desire from the sector to ensure equality for disabled passengers.

Keywords: Disability, Air Passengers, Discrimination, Tourism and Aviation.

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1. Introduction

Historically, accessibility issues have restricted PwD to partake in many leisure activities, including tourism [1]. However, 'people with disabilities have the same needs and desires for tourism as others' and the opportunity to engage in the leisure activity of one's choosing is paramount to disabled people's health and well-being [2, 3]. A disabled person who gains accessibility to travel frees them from being an 'object of care' and builds their 'self-confidence' and social inclusion [4, 5]. Crawford, Jackson and Godbey (1991) [6] state there are three barriers that influence a PwD when they consider travelling, they include structural, interpersonal and intrapersonal [6]. The structural barriers are physical and material, the interpersonal barriers are predominately from service providers, and the intrapersonal refers to the psychological barriers that are defined by the individuals impairment [7].

With an ageing population within the EU and more elderly people having a greater proportion of wealth, the demand from PwD to travel is likely to increase and provide an important new income stream to the sector [8]. The European Commission Progress report, in 2017, on the implementation of the European Disability Strategy (2010-2020) estimate that approximately 120 million people will have a disability in the EU by 2020. Pagán suggests that 10 million PwD in the EU will require assistance each year by airlines [9]. Graham and Metz (2017) [10] state that infrequent flyers make up a heterogeneous consumer group whose non-flying is influenced by personal circumstances rather than specific aviation factors [10]. Accessibility of aviation can play a crucial role in persuading PwD to holiday locally if they are not confident that both the airport and airline can accommodate their travel needs. In 2012 Darcy's research with disabled travellers found that very often air travel practices would almost certainly have contravened disability legislation [11].

2. Method

This paper will assess a number of policy and legal indicators that have arisen within aviation in the EU, including UK domestic legislation and case law to consider whether policy, legislative changes and the courts have reduced barriers and improved accessibility for PwD who choose to fly. It will also review recent discrimination cases that have appeared before the European Court of Human Rights and how the court has applied the European Convention on Human Rights in disability cases which refer to access, though not directly related to aviation. In the EU, the turning point for PwD was Regulation (EC) No 1107/2006 requiring changes in the aviation sector to support access and reduce barriers for PwD. This paper will assess the impact of Regulation (EC) No 1107/2006 in airports and on aircraft for PwD as well as broader regulations such as the Montreal Convention 1999 which establishes airline liability in the case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo. It unifies all the different international treaty regimes covering airline liability that had developed haphazardly since 1929. The Convention is designed to be a single, universal treaty to govern airline liability around the world but can contribute to a barrier for PwD who require special equipment to travel because of the limitation of compensation for lost or damaged luggage.

Legal Developments

The EU has long established Community legislation protecting citizens of its member states on package travel, tours and holidays with Council Directive 90/314EEC of June 1990. In 2004, Regulation (EC) No 261/2004 established common rules on protecting air passengers by compensating them for denied boarding, cancellation, or long delay on flights. PwD travelling by air were given protection much later when it increasingly became apparent that airlines, particularly budget airlines, were refusing or severely restricting their access in aviation. Regulation (EC) No 1107/2006 (Regulation 1107) was inevitable in re-balancing this discrimination in an attempt to design services that best respect rights and address needs of PwD when travelling by air. Article 2(a) of Regulation 1107 describes a “Disabled person” or “person with reduced mobility” as any person whose mobility when using transport is reduced due to any physical disability, or age, and whose situation needs appropriate attention and the adaption to his or her particular needs of the service made available to all passengers. All EU Member States are required to provide an enforcement body for a PwD seeking help should they feel that they have not been sufficiently supported [12]. These bodies are embedded within members transport departments, they are not courts, but can provide financial deterrents to airports who fail to comply.

Member States of the EU, in addition to Regulation 1107, have their own domestic legislation protecting PwD which in many cases will have been created long before Regulation 1107, but were not designed for a specific sector like Regulation 1107. For example, in the UK several Acts existed in the 1970s to protect, sex, race and disability, which were merged into the Equality Act 2010 (the 2010 Act) which now promotes equality for a number of protected characteristics, one of which is for individuals with disabilities. Section 6 of the 2010 Act describes disability as a person who has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on that person’s ability to carry out normal day-to-day activities. The application of the Section 6 is applied when there is direct discrimination under Section 13 of the 2010 Act which outlines a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. Indirect discrimination is set out in Section 19 of the 2010 Act, which states A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's. It is possible for both Section 13 and 19, direct and indirect discrimination, to apply to UK airports and airlines that operate from the UK. The airline or airport discriminating against a disabled employee or providing a service to disabled passengers without making reasonable adjustments, making the service more difficult to access [13].

The application of the 2010 Act by the UK courts and access to transport for disabled passengers can be reviewed in: *First Group Plc (Respondent) v Paulley (Appellant)* [2017] UKSC 4. The case provides an insight of UK courts to provide protection (limited in this case) to a PwD on buses. The case concerned reasonable adjustments under the 2010 Act and whether a bus company’s policy, or “provision criterion or practice” met this in relation to wheelchair users. It was concerned with whether a bus driver should compel other passengers, disabled or non-disabled, to vacate a wheelchair space if it were required by a wheelchair user. FirstGroup is a “public service provider”. Accordingly, it falls within section 29 of the 2010 Act, which provides: “(1) A person (a ‘service-provider’) concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service. (2) A service-provider (A) must not, in providing the service, discriminate against a person (B) by subjecting B to any detriment.” In addition, under section 29 (7) of the 2010 Act,

as a public service provider, FirstGroup had a duty to make “reasonable adjustments” by virtue of section 20 [14]. The Supreme Court unanimously allowed Mr Paulley’s appeal i.e. First Group lost the case. The scope of First Group’s policy requiring a driver to simply request a non-wheelchair user to vacate a wheelchair space without taking any further steps was unjustified. Where a driver who has made such a request concludes that a refusal is unreasonable, he or she should consider some further step to coerce the non-wheelchair user to vacate the space, depending on the circumstances. Although the judgment is encouraging for PwD on public transport, its application in the aviation sector would be very limited because passengers are able to preview seating plans of the aircraft and pre-book their seats. In addition, the 2010 Act can have limited use if Regulation 1107 can be used, which was argued in the next case.

In *Campbell v Thomas Cook Tour Operations Ltd* [2014] EWCA Civ 1668 the Court of Appeal upheld a County Court’s decision that the 2010 Act applied to a UK tour operator providing airport services to a disabled UK passenger outside the EU. This case is of particular interest for PwD and sets an important precedent and warning to UK tour operators who provide services abroad, particularly outside the EU. The central question for the court was whether the provisions of paragraph 33 (2) Schedule 3 (paragraph 33 (2)) of the 2010 Act were sufficient to exclude the duties contained in section 29 of the 2010 Act to the provisions of airport services at an airport outside the EU. Paragraph 33 (2) provides that section 29 does not apply to anything governed by Regulation 1107. The County Court had stated that the discrimination in this case related to services at a non-EU airport was outside the provisions of Regulation 1107 and therefore not governed by it. Accordingly, section 29 of the 2010 Act applied and Thomas Cook was liable. Thomas Cook had argued that Regulation 1107 did apply, and the judge was wrong to conclude that just because the circumstances of the case related to a non-EU airport. If this was the case then the efficiency of EU law would be lost [15]. This case exemplifies the willingness of the UK courts to apply the 2010 Act where possible to enforce disability rights to passengers, particularly when the facts of the case show that the claimant was treated very badly. The case also suggests that national disability legislation in other member states can be applied where EU law falls short of supporting access for disabled passengers.

The UK Department of Transport has set out a number of support mechanisms and legal instruments for disabled air passengers over recent years. The Aviation Act 2012 via section 83, with support of the Civil Aviation Authority (CAA), sets out guidance for UK airports and airlines to support PwD. The Civil Aviation (Access to Air Travel for Disabled Persons and Persons with Reduced Mobility) Regulations 2014 further empowers the CAA to ensure that the Regulation 1107 is complied with [16]. The purpose and scope of Regulation 1107 is set out in Article 1, which states that disabled passengers travelling by air are to be protected against discrimination and are to receive assistance. The assistance should be available for passengers at airports for departures, transit or arrival at airports which are situated in the territory of a Member State to which the treaty applies. Passengers departing from an airport situated in a third country to the territory of a Member State to which the Treaty applies are covered by Article 3, 4 and 10 of Regulation 1107. This can mean a Member State having the responsibility to guide both national and international airports as well as airlines. Airports such as London Heathrow who are partnered to 204 airports and 81 airlines would be responsible to ensure they all comply with Regulation 1107.

United Nations Convention on the Rights of Persons with Disabilities

On the 3rd May 2008, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) came into force establishing an international right that PwD are entitled to the full spectrum of human rights and fundamental freedoms without discrimination. These rights, with the Optional protocol, had been adopted in 2006 by the United Nations (UN), signalling a move during this period along with the EU to ensure a paradigm shift towards protecting human diversity and human dignity. According to Degener (2016) [17], the UNCRPD has transformed disability rights from the medical model to the human rights model giving a greater equality to disabled people [17]. The UNCRPD follows decades of work by the UN to change attitudes to PwD. Rather than viewing PwD as “objects” of charity, medical treatment and social protection towards viewing PwD as “subjects” with rights, who are capable of claiming those rights as well as being active members of society. The European Court of Human Rights have already made reference to UNCRPD in cases such as *R. P and Others v. the United Kingdom* 2012 App no 38245/08.

The EU adopted the UNCRPD in its own disability strategy, namely ‘The European Disability Strategy 2010-2020’ (EDS), to ensure that measurable progress is made over a ten year period in eight main areas: accessibility, participation, equality, employment, education and training, social protection, health and external action [18]. Accessibility covers a wide range of areas, such as the built environment, information, communication and transport sectors which are directly applicable to the aviation sector [19]. The main progress of EDS since 2010 has been to adopt legislative provisions at EU level to be later endorsed by national legislation following domestic consultations [20]. For example, the European Accessibility Act which requires a proposed Directive to be adopted by Member States by 2018 giving better accessibility websites and mobile apps for PwD. The EDS primary focus appears to focus on what might be described as core areas, such as access to employment and education. Accessibility to transport has seen revision and additional EU legislation to rail, maritime and road with ongoing negotiations to address the liability for damages concerning mobility equipment in air transport [21]. However, Regulation 1107 remains the most formidable support for PwD travelling by air within the EU. Nevertheless, the UNCRPD suggests that PwD have enforceable rights, the most obvious are rights created under the European Convention of Human Rights.

The European Convention on Human Rights (ECHR)

To assess the impact on PwD human rights living within the EU, particularly in the area of accessibility, the European Court of Human Rights (ECtHR) is the forum for applicants to take their cases, when their national courts have failed them. PwD will be required to show the court that their human rights contained in the ECHR have been infringed. ECHR Article 1 (obligation to respect human rights)... “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in...this Convention”. The ECtHR has presided on a number of cases involving disability issues in number of areas of the ECHR [22]. For example, the Center of Legal Resources on behalf of *Valentin Câmpeanu v. Romania* 2014 App no 47848/08 (Right to Life Art 2), *Topekhin v. Russia* 2016 App no 78774/13 (Prohibition of inhuman or degrading treatment Art 3) or *Stanev v. Bulgaria* 2012 App no 37956/11 (Right to Liberty and security) [23]. Cases protecting accessibility for PwD under the ECHR tend to focus on the qualified rights outlined in Article 8. The right to respect to private and family life. A qualified right is limited because it allows a Member State to create national legislation to restricting the right, provided it is necessary in a democratic society, in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms

of others. In *Botta v. Italy* 1998 21439/93, it was found that Article 8 was not applicable to a physically disabled person trying to access a beach which was at a distance from his normal place of residence on holiday. Other cases have tended to focus on access to public buildings as in *Zehnalova and Zehnal v. the Czech Republic* 2012 App no 38621/97 where the applicants who were physically disabled claimed a large number of buildings in their home town were not accessible to a disabled person and the national authorities had failed to remedy the situation. The ECtHR said in *Zehnalova* there was now a trend at a European level towards granting legally incapacitated persons direct access to the courts to seek restoration of their capacity.

Accessibility can cover a broad area of issues for PwD, for example, contact rights between father and son as in *Kacper Nowakowski v. Poland* App no 32407/13 or access to legal representation in the courts as stated in *A.K. and L. v Croatia*. App no 37956/11. In *R. P and Others v. the United Kingdom* 2012 App no 38245/08 the first applicant, RP, was a mother in care proceedings which concerned her child KP. KP was born prematurely and suffered from serious medical conditions. Due to concerns about RP's care of her child the local authority issued care proceedings. A psychological assessment of RP was undertaken following concerns raised by her counsel that RP lack capacity to conduct the proceedings. As a result of this assessment the Official Solicitor was appointed to act within the proceedings for RP. RP alleged that her Article 6, 8 and 13 of the Convention were violated by the court proceedings. Applications were also brought by RP's mother, father, and brother. The UK Equality and Human Rights Commission intervened in the proceedings. The court made reference to the UNCRPD stating that the State parties must provide appropriate accommodation to facilitate disabled people effective role in legal proceedings and measures to ensure that her best interests were represented were not only appropriate but also necessary. However, in this case the court found that the applicant's right to access the court had not been impaired and therefore there was no violation of Articles 6, 8 and 13.

Disability cases that have occupied the ECtHR with some degree of success relate to a number of different rights, prohibition of inhuman or degrading treatment (Article 3), right to liberty (Article 5), right to a fair trial (Article 6) and Article 8 right to privacy and family life. The ECtHR has not yet dealt with PwD access to either airports or aircraft and no cases are currently pending. However, the ECtHR has acknowledged the UNCRPD, consequently it would be in the courts competency to hear cases in the aviation sector that had infringed passengers' rights under the ECHR.

Invisible Disabilities in Aviation

Aviation is one of the most difficult modes of transport for PwD to access. Crawford et al (1991) suggest there are three barriers that influence a PwD when they consider travelling, which include, structural, interpersonal, and intrapersonal. Invisible disabilities show how perceived interpersonal and intrapersonal barriers need not be barriers at airports with an understanding of the needs of PwD, Kong and Loi (2017). Structural barriers such as airport buildings can readily be adapted to allow access to different levels of the airport or to bathroom facilities, but all passengers entering the airport are intending to travel on an aircraft. Unlike other modes of transport, such as buses and trains, which are generally designed with standard seating and sizes, aircraft can range dramatically in size with variable leg room between economy and business class. Passengers travelling on aircraft continuously for more than six hours, commonly known as 'long haul,' are likely to be on much larger aircraft, with more facilities, than those traveling within the EU. Aircraft design can depend on the airline, for example long haul, airlines have according to the Guardian

December 29th 2013 made different strategic commitments between those opting to purchase the Boeing 787 Dreamliner for its fuel efficiency and those that have opted for the Airbus A380 for its size and larger capacity. In what has been described as the “battle for the future of the skies: Boeing 787 Dreamliner v Airbus A380.” That battle appears already to have been won with the A380 production due to finish after 12 years in 2021. Short haul aircraft often have less legroom. Consequently, there is a need to ensure that PwD are aware of the facilities, or lack of, on-board an aircraft [24]. It can be therefore suggested that structural barriers are more easily remedied in the airport rather than the aircraft.

Profiling passengers at airports, particularly for security purposes, is a common feature throughout the EU and particularly in the UK under Schedule 7 of the Terrorism Act 2000. Disability profiling at airports can have dire consequences for PwD who are not in wheelchairs or show no visible signs of reduced mobility. In 2013, Victoria Kong an 83-year-old with dementia walked past the assistant agent and her daughter who were waiting for her at Washington DC after a flight from Barbados. Her body was found a few days later in woods 200 meters from the airport perimeter, the likely cause of death was exposure [25]. This case highlights the risk to individuals diagnosed with dementia or Alzheimer who attempt to travel alone. The Alzheimer’s Society suggest a dialogue with the travel company, in advance of travel, is necessary to set out the needs of the passenger and limitations of the service airline and airport can provide [26].

McKercher, Packer, Yau and Lam (2003) [27] analysed the role of travel agents both as travel facilitators and travel inhibitors, (barriers) from the perception of PwD [27]. Much importance has been placed on the responsibility of the travel agents in their role in advising PwD [28]. A travel agent may be cautious in giving advice to a PwD in fear of future complaints, their focus tends to be on package tours and the resort rather than the airport or aircraft. Travel agents signpost holiday brochures with advice for customers who may have mobility issues. However, interpersonal skills are key to reassuring a PwD that flying need not be a barrier. If the travel agent can reassure PwD the level of service, they are likely to get at the airport and onto and off the aircraft then the PwD can assess whether they can travel.

PwD, who do not need a wheelchair permanently, can also experience poor customer service at airports. Nathalie Allport-Grantham had pre-book wheelchair assistance for a Ryanair flight at Stanstead Airport UK in December 2017 found that her wheelchair assistance was limited. The promise to help her with hand-luggage was subject to a £50 charge and that the overall assessment from staff was she did not look disabled and was wasting their time. Allport-Grantham was diagnosed with Ehlers-Danlos syndrome, a connective tissue disorder which causes chronic pain and joint dislocation as well as Marfan syndrome and postural orthostatic, a condition which affects the heart, and can cause dizziness and fainting when the patient is standing [29]. Other non-visible disabilities can include hearing loss which requires visible information at airports to be up-to-date. Airports in the EU no longer make announcements for flights or update passenger information by tannoy. Airports are aware of the barriers for invisibility disabilities and are expanding their services to invisible disabilities through technology. Passengers who are diagnosed with mental health issues are likely to increase in the future, according to UK NHS Digital who stated that at any one time, a sixth of the population in the UK aged 16 to 64 have a mental health problem [30]. Consequently, staff training at airports is crucial in the identification and supporting passengers with invisible disabilities at airports and on aircrafts in order to reduce barriers for them to travel. The Association of British Travel Agents (ABTA) have produced a free online training

course, 'Accessible Travel Made Easy', for travel agents, tour operators and other front-line travel industry staff operating in the UK. The course gives an overview of the importance of accessible travel and why it makes good business sense to meet the diverse needs of customers [31].

Visible Disabilities in Aviation

Wheelchairs are the are most visible source of support to PwD at airports and yet in the UK wheelchair users only represent approximately 6% of all PwD [32]. Large international airports in the UK can have up to four passenger terminals, therefore it is crucial that PwD find out which terminal they are flying from before they travel. Airports can also require passengers to travel long distances from 'check-in' to the departure gate, for example passengers travelling to Dubai on Emirates airline from Manchester airport UK terminal 1 are required to walk hundreds of meters from check in to gate 12. Chang & Chen (2011) [33] state that disabled passengers have different service needs at the terminal and on the aircraft, which can be categorised as minor, moderate or severe. 59% of their disabled respondents required various types of wheelchairs [33]. Their conclusions showed that there is a significant difference between the importance and satisfaction levels for PwD. On the aircraft respondents were most dissatisfied with seat arrangement and restroom facilities [34]. In airports the two items that needed immediate attention was barrier-free ramps and slip resistant floors [26]. Davies and Christie (2017) in their exploratory study of air passenger wheelchair users, established from their interviews that manual handling, the equipment used, seating communication and accessing the toilet on the aircraft led to physical pain and discomfort [35].

Wheelchair users are faced with additional challenges, particularly those passengers that have custom made motorised wheelchairs to assist them. Standard non-motorised wheelchairs can be purchased for less than £100 with most costing between £100-300. However, non-motorised carbon fibre wheelchairs can cost up to £5,000 and motorised wheelchairs can be range from £3,000 to £25,000 which raises issues of compensation if they are damaged in the aircraft hold. Currently, airlines under Convention 1999 are only liable to replace lost luggage up to the value of around £1,300. This nominal sum can deter PwD with expensive equipment, such as motorised wheelchairs, who cannot afford additional insurance premiums. It is not just the financial loss that can deter PwD to travel, the time it may take to replace specialised equipment is an important factor. Passengers who lose a suitcase can replace clothing relatively quickly, but a broken motorised wheelchair or missing wheelchair may be a different matter. Chris Holmes, Disability Commissioner of the Equality and Human Rights Commission (UK) spoke out after the electric wheelchair of Athena Stevens, a playwright and actor with cerebral palsy, was irreparably damaged on a flight from London to Glasgow in 2015. Although the wheelchair was worth more than £25,000, no appropriate offer of compensation was made and, before Stevens began legal action, she had received only £500 from London City Airport to cover taxi costs [36].

The EU European Commission "encourages airlines to voluntarily waive their limited liability to bring the amount of compensation closer to the actual value of the mobility equipment [37]." This approach has already been implemented and by the largest airlines in Germany and Canada, namely Lufthansa and Air Canada respectively. Both airlines have notified passengers via their respective web-sites that they have waived the provisions of the Montreal Convention 99 in the event of damage to a wheelchair or mobility aid. In the United States, the Air Carrier Access Act (ACAA) states that for domestic flights, "the criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair

or other assistive device shall be the original purchase price of the device.” It is surprising that the EU has not taken a more robust approach to support PwD compensation for mobility aids. In the Montreal Convention 99 preamble it states that the Convention, is committed to promoting the ‘smooth flow of passengers’ and applying rules ‘equitably’ given how far equality rights have developed since 1999 there appears to be an urgent need of a review the currency of the Montreal Convention. Airports and flying can be daunting for any passenger who does not travel frequently which is aggravated for PwD who can be challenged both in the airport and embarking and disembarking to and from the for PwD. In 2014, the Supreme Court decided that compensation for injury to feelings cannot be awarded where disability discrimination has occurred during embarkation, disembarkation or on board the aircraft because of the limitation of where the Montreal Convention 99 applies [38]. aircraft. The Montreal Convention 99 limits damages to be paid to passenger in the event of death or damage to luggage but makes no provisions

UK Airports Disability Performance Indicators

Since the introduction Regulation 1107, all EU Members have been charged with improving their airports and ensuring airlines are also compliant, so PwD have a greater opportunity to travel. In the UK, the government has had a broad inclusive transport strategy to achieve equal access for PwD. The CAA, the regulator, is responsible for ensuring the aviation sector have implemented Regulation 1107 and PwD are given the same opportunities for air travel as other passengers. The primary purpose of Regulation 1107 is to ensure assistance is given where necessary, whether that is in and around the airport or when PwD embark or disembark from the aircraft. Airports in the UK are monitored and reviewed on an annual basis to assess whether they are meeting expected quality standards for disabled passengers.

Each airport is required to report to the CAA on how they are meeting their PwD expectations. In turn this data is published into the public domain ‘naming and shaming’ the best and worst airports, which for those shamed airports, can result in potential revenue loss. The rankings range from very good, good, needs improvement to poor. In the 2016/17 report, it stated that six airports were classified as very good, 20 as good and four as poor [39]. However, two of the four airports classified as poor were London Heathrow and Manchester which account for almost half of the total passenger flow for UK airports. In the CAA’s latest report, 1st April 2018 to 31 March 2019, a record 3.7 million passengers were assisted at 31 airports, representing an increase of 49% since 2014. The latest UK Aviation Consumer Survey found 47% of passengers requesting assistance were doing so for the first time and 23% of PwD thought they would fly more often in the next year [40]. There were 14 airports classified as ‘very good’ down from 16 airports in the 2017/18 report. 16 airports classified as ‘good’ and as one as ‘needs improvements’ No airport was classified as poor, suggesting that since 2016 when these reports were first published, there have been tangible improvements for PwD who wish to fly.

3. Conclusion

Since the introduction of Regulation 1107, which coincided with the UNCRPD, disabled air passengers have enjoyed additional rights within the EU. What has been described as a paradigm shift from medical rights to human rights, which allows PwD to enforce their rights in national courts through domestic legislation or international courts through the ECHR. The evidence available from court decisions both nationally and internationally suggests that changes in the aviation sector have resulted in what can be described as moderate but meaningful shift, particularly in

the case of *Campbell v Thomas Cook Tour Operations Ltd* [2014] EWCA Civ 1668. However, there has yet to be any decision in the sector from the ECtHR enforcing the ECHR. This may be because requiring an airline to redesign the internal layout of an aircraft to accommodate PwD is seen as an unreasonable adjustment, which is a defence against any legal claims, rather than a moral one. There is also evidence that PwD require better service and understanding of their needs rather than just infrastructure modifications. However, by far the most obvious and far reaching modifications, particularly at UK airports, are those that have been made to airport buildings. These changes are driven by a number of factors, first national legislation impacts on all public buildings, and the requirement to make reasonable adjustments to improve access for PwD. The second, is directed to the aviation sector by Regulation 1107 set out in Article 1, which states that disabled passengers travelling by air in the EU are to be protected against discrimination and are to receive assistance. Regulation 1107 complements national legislation by requiring additional services from the airport and the right to complain.

The annual monitoring in the UK, undertaken by the CAA of disabled access and performance satisfaction, has imposed pressure on the sector to improve their disability services. The driver for these changes in the UK is the legal obligation set out internationally in Regulation 1107 and nationally the 2010 Act. However, given the increase of PwD passenger numbers there is also the commercial driver to consider. Since the UNCRPD, it has been suggested there is a new paradigm of how PwD are to be viewed, moving away from medical to human rights perspective. Nevertheless, it is only through regulations and the legal system, that this paradigm can be realised. In April 2019 the UK CAA revised its guidance on quality standards under Regulation 1107 to include more demanding performance standards. Regardless of Brexit, the UK will adopt Regulation 1107 in full into national law in the event of leaving the EU. There has been little development evidenced by changes in aircraft design to support PwD. Some airlines, such as Emirates, prioritise aisle seats, but this can only be described at best window dressing. There is some evidence on new long-haul aircraft that special toilet facilities are being introduced. However, designated seating or facilities to lock cabin passenger wheelchairs on mainstream aircraft has yet to be realised.

Finally, the Montreal Convention 1999 is another barrier for PwD to travel. The Convention appears outdated given a wave of disability legislation and regulations since 2006 within the EU and nationally within Member States and a drive to create a level playing field for access to services through the UNCRPD. There is an opportunity for the sector to demonstrate a new ethos towards equality without any need for amending the Convention. The EU suggest that airlines should waive the limits of compensation for passengers for PwD specialist equipment, and some airlines have done so. It's perhaps time for the sector to show its commitment to access without a regulatory requirement.

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