

söp_Conciliation recommendation

Regarding the conciliation procedure F .../... concerning the complaint of

Ms / Mr ...

(complainants)

versus

...

(respondent)

the conciliation body suggests the following:

The respondent pays the complainants 50.00 GBP in total.

Reasoning:

Judging by the information available to us, following **facts** can be assumed:

- The complainants booked tickets for a flight from T. to L. in May The following flight segments were planned:
 - (flight number) from T. to F. and
 - (flight number) from F. to L.
- According to the complainants, their connecting flight from F. was cancelled. They had to wait for the next flight. Their checked baggage (three pieces) was not transported to L. . They were delivered on ... (2 days later). The bags were ripped and two apple watches, a gold necklace and medication were missing.
- The complainants claimed compensation from the respondent.
- The respondent rejected the claim.
- The complainants are not satisfied with this and are requesting a conciliation process. They are claiming a total amount of 1,100.00 EUR, namely:
 - 280.00 GBP for three damaged luggages,
 - 379.00 GBP and 429.00 GBP for the apple watches.

The complainants present photos of their baggage. One of the bags has a torn seam and the handle of another travel bag is bent. According to the complainants, the bags were purchased in ... (two years ago). They explain that the bags are not repairable.

- The respondent has not commented on the complaint during the conciliation process.

An amicable settlement of the dispute seems appropriate. The aim of the conciliation is a fair balance of the parties' interests.

In favour of the complainants we have taken the following findings into account:

- The complainants experienced inconveniences. They were affected by a flight disruption and baggage problems.
- According to Regulation (EC) No 261/2004, in conjunction with the jurisdiction of the CJEU, in case of cancellation, long delay and denied boarding, passengers shall receive compensation as well as care services.

The UK has implemented the EU Regulation into national law („The Air Passenger Rights and Air Travel Organisers’ Licensing (Amendment) (EU Exit) Regulations 2019“, source: <https://www.legislation.gov.uk/uksi/2019/278/contents/made>, „Regulation“). Section 6 of the Withdrawal Act 2018 also incorporates all CJEU case law made until 31 December 2020 into domestic law. The UK Regulation applies since 1 January 2021.

- The carrier is generally liable for damage sustained in case of damage to checked baggage, Art. 17 (2) 1 Montreal Convention (“MC”). The complainants claim that their bags were damaged on the flight to L. . The photos presented by the complainants show two damaged bags. The bags appear to be significantly damaged and no longer suitable for safe transportation.
- Further, the carrier is liable for damage sustained in case of loss of checked baggage, Art. 17 (2) 1 MC. This also applies if not the whole baggage, but single items are missing.

In favour of the respondent we have taken the following findings into account:

- According to flight data researched by the conciliation body, flight (flight number) was operated on time and the complainants’ feeder flight arrived in F. on time. It is unclear why the complainants were not carried on flight (flight number). There are no indications for a flight disruption. The complainants have explained that they were rebooked free of charge. They have not requested compensation with regard to the flights.
- A full refund of the purchase price of the damaged baggage cannot be considered as the (annual) loss of value has to be taken into account. When calculating the compensation, usually only the fair value (reduction in proportion to the age) and not the original price is relevant. The complainants indicate that the baggage was purchased in ... (two years ago). They do not present supporting evidence for the age and purchase price. It is unclear whether the requested financial compensation for the baggage corresponds to the purchase price or the estimated value of the bags. Within the summary conciliation process, the exact details cannot be clarified. Thus, a generalised reduction of the claimed compensation seems appropriate.
- Passengers generally have to factor in the possibility of baggage loss in mass transportation. Considering the low weight and size of apple watches, placement in personal keeping or controllable hand luggage seems reasonable. If passengers nevertheless carry these – as in this case – in the checked baggage, this also falls into their area of risk. Contributory negligence by the complainants therefore cannot be ruled out, Art. 20 (1) MC.

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Recommendation:

The respondent participates in the söp conciliation process. The legal dispute can thus be resolved quickly and the effort of a closer investigation of the circumstances can be avoided. Hereby the parties involved also avoid the financial and procedural risks associated with a possible lawsuit. Moreover, such a resolution of the dispute is suited to contribute to the restoral of customer satisfaction. The proposed solution may differ from a court decision. Possible ancillary claims (in particular legal fees and communication cost) are not subject of the summary examination in the course of the conciliation process.

Taking into account all circumstances (especially baggage damage on the one hand, unclear facts and contributory negligence on the other hand) it seems appropriate for the amicable dispute resolution: The respondent pays the complainants 50.00 GBP in total. This corresponds to financial compensation for the baggage damages. This recommendation shall take account of the overall assessment.

baggage damage	
number of passengers	3
recommendation amount	payment 50.00 GBP

Acceptance:

The parties involved are given the opportunity to accept this recommendation by the conciliation body

until latest ...

The recommendation is not binding for the parties involved, that means neither the complainants nor the respondent are obliged to accept it.

If the recommendation is accepted by both sides, it becomes legally binding between the two parties involved.

If the recommendation is rejected or not accepted within the mentioned deadline, the conciliation process will have ended unsuccessfully. In this case the possibility to initiate judicial proceedings will remain unscathed.

The notice about the parties' acceptance can be communicated informally, for example by email to flugkontakt@soep-online.de.

Berlin, ...

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(name)

Lawyer / Conciliator