

# KNOW YOUR RIGHTS

The violent removal of a passenger from a full United aircraft has prompted heated debate over flyers' rights. **Jenny Southan** explains why airlines overbook and how it might affect you

**M**ost frequent flyers will have experienced being bumped at some point during their travels, but few will have grabbed the headlines in the way that Dr David Dao did on a recent United flight from Chicago. Video footage of the passenger being violently removed from an aircraft by police for refusing to give up his seat went viral, and the airline was publicly shamed into settling a legal case filed by the plaintiff out of court.

While the story made headlines across global news sites, it did bring to the fore important questions about air passenger rights. In the case of Dao, he had been granted boarding but after he was picked to be removed to allow space for a United employee – and he refused to get off – he was “involuntarily deplaned”. In this instance, it resulted in a broken nose and two lost teeth.

A more common issue for air travellers is being denied boarding as a consequence of overbooking, whereby the airline has sold more tickets than it has seats on the plane. Most airlines do this as a matter of course, and the consequence is that staff will either ask for volunteers to take a later flight (“voluntary bumping”) or pick on someone of their choosing (“involuntary bumping”). In both instances, where you are in the world and which airline you are travelling with will determine what compensation you are entitled to – if any.

ISTOCK



According to the Civil Aviation Authority (CAA), 50,000 people were bumped from UK flights in 2015 (the equivalent of 0.02 per cent), either because of aircraft being swapped for smaller planes at the last minute, or overbooking.

The CAA says: "Airlines overbook because they sell a certain number of flexible tickets which means that those passengers do not have to travel on specific flights. They therefore anticipate a certain number of 'no-shows'." If a passenger is denied boarding, they are entitled to a "minimum level of compensation, and must be offered an alternative flight, or 're-route', at the earliest opportunity or at a date that suits, or offered a full refund, if they no longer want to fly".

Travel editor Simon Calder told the Press Association that, in general, overbooking was a "benign practice". He said: "The airlines make more money so they say they can keep fares down, the environment is better off because planes are flying fuller, passengers that desperately need to travel can book a seat on a flight even though it's technically sold out, and people like me, who are happy to be flexible and to be paid money not to get on a flight, are happy because we make more money on the deal than we paid on the flight in the first place."

Bill McKimm, UK business development director at technology consultancy ThoughtWorks, has a different viewpoint: "Overbooking tends to be a fairly blunt instrument – the airline will have a set algorithm across routes irrespective of thick routes like London-Paris where load factors are 99 per cent to 100 per cent, or smaller routes where the load factors are 50 per cent. We should be more intuitive, especially on the routes that have a higher propensity for no-shows."

#### OUTDATED PRACTICE

George Hobica, founder and chief executive of airline deals and advice site AirFareWatchdog, points out that overbooking, which is "a revenue play designed



to increase profits" (but, in theory, brings down ticket prices), is an outmoded approach. He says: "Airlines started overbooking in the 1960s when, before the internet, you could call an airline and make a reservation without putting any money down. Back then, planes were 50 per cent empty – you would just pay when you arrived at check-in. But some people wouldn't show up."

He adds: "It was simple. Airfares were published on monthly timetables, there were no advance purchase discounts and no non-refundable fares. With no non-refundable fares, the airlines could safely overbook flights and it wasn't a problem because there would be plenty of seats. But now we have non-refundable fares, which means that airlines in Europe, for example, keep your fare if you don't show up – and sell your seat to someone else. They double-dip."

Not all airlines overbook – JetBlue in the US and Ryanair in Europe are two that don't. "It's our long-standing policy," a Ryanair spokesperson says. Its website states: "You don't need to notify us if you are unable to travel [but] if you do not travel on your booked flight, the airfare, fees and charges are non-refundable." This means they are getting paid even if the traveller doesn't show up.

After the United scandal, Southwest Airlines announced in April that it would stop overbooking. "The last thing that we want to do is deny a customer their flight," said chief executive Gary Kelly. Although United didn't agree to do the same, it consented to offering compensation of up to US\$10,000 to passengers who volunteered to be bumped, an amount that Delta Air Lines said it would also be willing to pay. "After this, I don't think we are going to see too much involuntary bumping," Hobica says.

McKimm suggests improvements to back-end technology could also spell an end to overbooking because no-shows can be predicted. "I think machine learning and artificial intelligence should be able to help anticipate when people aren't going to make their flight," he says. "It will also be able to prompt people on the morning of their flight to check they are still available and inform of any queues at security."

Until then, bumping (which could still happen if an airline needed to accommodate crew or an air marshal, for example) could be handled with more sensitivity and creativity, using techniques such as "gamification". He says: "Given increasing numbers of people are using mobile boarding passes, the airline could send a message saying: 'For today only we are offering a luxury stay in a five-star hotel in exchange for flying tomorrow, and the first three customers to take it win.'"

#### IN THE KNOW

Until overbooking is a thing of the past, passengers need to be aware of their rights and what they are entitled to. Those travellers who are most vulnerable are those in economy class, who are not a member of the airline's loyalty scheme, who are on a cheap ticket and are travelling with hand baggage only (a suitcase in the hold will be more problematic to deal with).

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#### US PASSENGER RIGHTS [transportation.gov/airconsumer/fly-rights](http://transportation.gov/airconsumer/fly-rights)

##### VOLUNTARY BUMPING

At the check-in or boarding area, airline employees will look for volunteers when it appears that the flight has been oversold. If you're not in a rush, you can give your reservation back to the airline in exchange for compensation and a later flight.

Carriers can negotiate with their passengers for mutually acceptable compensation. Airlines generally offer a free trip or other transportation benefits to prospective volunteers. The airlines give employees guidelines for bargaining with passengers, and they may select those volunteers willing to sell back their reservations for the lowest price.

##### INVOLUNTARY BUMPING

Travellers who don't get to fly are frequently entitled to denied boarding compensation in the form of a cheque or cash. The amount depends on the ticket price and length of delay:

- If the airline arranges substitute transportation that is scheduled to get you to your final destination (including later connections) **within one hour** of your original scheduled arrival time, there is **no compensation**.
- If the carrier arranges substitute transportation that is due to arrive at your destination **between one and two hours** after your original arrival time (between one and four hours on international flights), it must pay you an amount equal to **200 per cent of your one-way fare** to your final destination that day, **with a US\$675 maximum**.



you to your destination **more than two hours later** (four hours internationally), or if the airline does not make any substitute travel arrangements for you, the compensation doubles (**400 per cent of your one-way fare, US\$1,350 maximum**).



If you are lucky, bumping could result in an upgrade to premium economy or business class, but, equally, you could be “reaccommodated” on a later flight, with any compensation you might be entitled to – such as a credit note or cash – dependent on a variety of factors (see panels, below and previous page). What’s more, as McKimm points out: “Some airlines will recognise customers who have in the past been prepared to be compensated.” This means if you have been voluntarily bumped before, you will be more likely to be bumped again.

Henrik Zillmer, founder and chief executive of AirHelp, a site that helps you to win compensation from airlines, says: “In the US, what normally happens is if you are in the airport, the ground staff will tell people the flight is overbooked and offer vouchers to surrender your reservation in exchange

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for a voucher and a later flight. Here we always recommend people not to take the voucher because airlines are offering you much less than what you are entitled to in cash. But people don’t know that. You should stick with your reservation and if they still refuse you access and boarding then you are entitled to up to US\$1,350 for all US domestic flights.”

As a savvy traveller, it’s important to familiarise yourself with your airline’s “conditions of carriage” as they do vary. For example, these days, most airlines won’t reaccommodate you on a partner airline if you are denied boarding, although, in the US, it was a government requirement for many decades. Hobica says: “Airlines slowly realised these rules were still in their contracts and removed them.” However, Alaska Air and Hawaiian Airlines, for example, still uphold these rights.

In the EU, the maximum compensation a bumped passenger will receive is €600, which is less than in the US, but you will also have a hotel and meals paid for if you have to wait overnight for another flight, which you don’t get in the US. Regulations are complicated and region-specific – in many parts of the world you may find you have little to no rights at all, so flying with reputable carriers can make all the difference. ■



## EU PASSENGER RIGHTS

[europa.eu](http://europa.eu)

- **€250** for flights of 1,500km or less
- **€400** for flights more than 1,500km within the EU and all other flights between 1,500km and 3,500km
- **€600** for flights more than 3,500km

You are only entitled to compensation for being denied boarding if your flight:

- is within the EU and operated either by an EU or non-EU airline
- arrives in the EU from outside the EU and is operated by an EU airline
- departs from the EU to a non-EU country operated by an EU or non-EU airline.