

LOWCOSTHOLIDAYS

On Wednesday 18th December 2013, the CAA announced that it had launched a legal investigation into the Lowcostholidays group.

The CAA has produced the following Q&A to answer questions that are likely to arise.

The answers given reflect the position as the CAA understands it at this time.

Summary

- 1. All consumers who booked with Lowcostholidays UK before 1 November 2013 and received an ATOL Certificate are protected by ATOL and will remain so.
- 2. Consumers who booked on lowcostholidays.com with Lowcostholidays Spain after 1 November 2013 have no ATOL protection.
- 3. Contrary to information given by Lowcostholidays Spain to its consumers the CAA does not believe that the holidays offered on their website in the UK are financially protected by the licence issued by the Balearic Island Government. This means that consumers would receive no refunds in the event of a Lowcostholidays Spain's failure, subject to 4 below.
- 4. Even if the Balearic Islands Government were to decide that it could apply the security that Lowcostholidays Spain has provided to it for the benefit of these holiday arrangements, the guarantee would not go far against the annual holiday sales of Lowcostholidays Spain if it trades at a similar level to the authorised ATOL limits on Lowcostholidays UK's former ATOL.
- 5. In the event of the failure of Lowcostholidays Spain all UK consumers would have to make their own arrangements to complete their holidays and return to the UK. The Balearic Islands protection scheme provides no assistance in this regard and the CAA would be unable to assist because no ATOL licence was in place.

Who are Lowcostholidays?

Lowcostholidays Ltd ("Lowcostholidays UK") held an Air Travel Organiser's Licence (ATOL) issued by the CAA to cover sales of holidays by air and flight only sales in the UK. It was licensed by the CAA to carry 263,685 passengers; this meant that as at 1 October 2013 it was one of the 20 largest ATOL groups. The ATOL was revoked on 12 November 2013.

Lowcostholidays UK remains a subsidiary of the UK based holding company Lowcosttravelgroup Ltd. The group has other subsidiary businesses involved in travel, including a bed bank business which is based in Switzerland.



What has happened?

On 30 October Lowcostholidays UK advised the CAA that it was transferring all its UK holiday business to a Spanish company, Lowcostholidays Spain S.L. (Lowcostholidays Spain) with effect from 1 November 2013 and therefore would no longer need an ATOL for the holiday sales part of its business.

The CAA was told that the transfer to Lowcostholidays Spain included moving all existing holiday bookings which had been taken whilst Lowcostholidays UK held an ATOL and where consumers had received ATOL Certificates (i.e. up to 1 November 2013).

The CAA was also told that all future sales in the UK would be made by Lowcostholidays Spain, who had been granted a licence to sell package holidays in the Balearic Islands (BI) by the BI Government on 13 August 2013.

The CAA was surprised to be given such short notice of the transfer arrangement by Lowcostholidays UK and was concerned that consumers, who were informed of these changes by Lowcostholidays Spain on 1 November 2013, were likewise given only a very short period of 7 days (from 1-7 November 2013) in order to accept the transfer of their bookings; and, in the CAA's view wholly inadequate information on the effect of the transfer to allow them to reach an informed decision.

Consequently the CAA issued a <u>press notice</u> on 1 November 2013 and said that "we simply cannot say at this point what the changes might mean in practice for consumers, and for that reason we think that anyone with a Lowcostholidays booking should very carefully consider their options".

In its letter to its consumers on 1 November 2013 Lowcostholidays described the transfer of the business and it stated "please note that this does mean that the ATOL certificate previously sent to you is no longer valid".

The CAA has never accepted that Lowcostholidays UK validly transferred its obligations to consumers to Lowcostholidays Spain. In the CAA's view the consumers' holidays remain ATOL protected as they were taken by a company that was an ATOL holder at the time of the booking.

Subsequently the CAA started to get questions from the public and travel trade sources asking questions about the validity of the ATOL Certificates issued by Lowcostholidays UK up to the end of October 2013. The CAA consulted the Air Travel Trust (ATT) which provides the funding for the ATOL protection scheme and the Trustees of the ATT agreed that it was important to confirm the position of the ATOL certificates for consumers.

In a <u>press notice</u> on 6 November 2013 the CAA announced that consumers with an ATOL Certificate provided by Lowcostholidays UK would continue to be protected by the ATOL scheme. The announcement reassured consumers that ATOL would stand behind them in the case of a failure of Lowcostholidays Spain, for bookings which had been made before 1 November 2013.



The press notice also confirmed that for all Lowcostholidays Spain bookings in the UK from 1 November 2013 there was no ATOL protection.

How have Lowcostholidays moved their UK holiday bookings to Spain?

The ATOL Regulations were amended in 2012 (The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012, as amended). They included an exemption in order to comply with the EU Services Directive¹. The exemption means that a "person" who is established in another EEA State is not required to hold an ATOL where they sell packages, or arrange Flight-Plus in the UK. They are, however, required to comply with the requirements of the EEA state in which they are established.

As the Package Travel Directive² is directly applicable in all EEA States, this means that the financial protection arrangements provided under this Directive will be applied across borders to all sales made throughout the EEA. In Spain the implementation of the Package Travel Directive requirements are delegated to regional governments.

The BI Government announced on 5 November 2013 that Lowcostholidays Spain "is now fully licensed under Spanish and Balearic Law, which implements the EU Council Package Travel Directive (90/314/EEC), and complies entirely with all relevant financial protection arrangements, obligations and liability insurance requirements".

As a matter of urgency the CAA is continuing to investigate the detail of the business now carried on by Lowcostholidays Spain when it sells to UK consumers via the lowcostholidays.com website with the intention of clarifying whether or not Lowcostholidays Spain is required to hold an ATOL to make these sales.

The CAA is also making urgent enquires to establish whether the statements about financial protection under the Spanish scheme on lowcostholidays.com are accurate or could be misleading.

The CAA is very disappointed that Lowcostholidays UK did not provide more than overnight notice of its intention to conclude all transactions with UK consumers on the lowcostholidays.com website with Lowcostholidays Spain to enable the CAA to reach a conclusion on the place of establishment of its business (and whether these holidays should be ATOL protected), and the accuracy of representations to UK consumers on the website, in advance of the transfer date.

Has Lowcostholidays changed its product?

When Lowcostholidays UK held an ATOL it arranged the vast majority of its UK holidays on a Flight-Plus basis. This meant that these holidays were financially protected under its

¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

² Directive 90/314/EEC of the Council of 13 June 1990 on package travel, package holidays and package tours.



ATOL, but that all the other requirements of the EU Package Travel Directive did not apply because the holidays were not considered packages.

The current terms and conditions on the lowcostholidays.com website now state the following:

"If you book a flight with accommodation and/or other travel products, we voluntarily accept that this is a "Package" falling within the Package Travel, Package Holidays and Package Tours Regulations 1992 ("the Package Travel Regulations"). We voluntarily accept this because strictly speaking they are not packages. In other words for every such combination which you book with us we will voluntarily extend our obligations to you to those which exist under the Package Travel Regulations to increase your protection and security. When we use the term 'Package' throughout these conditions, this refers to a booking which you have made through us of a flight with accommodation and/or other travel products.

"These booking conditions apply to Packages. Separate booking conditions apply to accommodation only bookings or bookings which do not include a flight. All these types of bookings are 'Agency Bookings'".

From this description Lowcostholidays Spain are continuing to sell holidays in the UK which appear to be Flight-Plus as defined under the ATOL Regulations and where the holiday components are separately contracted by the consumer with the principal suppliers. However Lowcostholidays Spain state that they are voluntarily accepting that they will treat these sales as packages organised by them under the Package Travel Regulations. It is not clear what this voluntary statement means in practice and how this might be applied in the event of the insolvency of Lowcostholidays Spain for the benefit of consumers.

What does Lowcostholidays say about its new financial protection?

The terms and conditions in the current lowcostholidays.com website state:

"Your Financial Protection – We have fully complied with the financial protection requirements of the Package Travel Regulations through the registration and licensing arrangements which have been made with the Spanish authorities. We are licensed under registration number AVBAL636 and as required we have provided Surety Insurance. These arrangements ensure that payments made by you for your Package will be refunded and/or you will be repatriated in the unlikely event of our insolvency".

What is the CAA's interest in Lowcostholidays new protection arrangements?

Lowcostholidays UK was a major ATOL holder prior to 1 November 2013. Since that date the CAA has been asked by various parties to clarify the consequences of the company's move to Spain and also confirm whether the protection arrangements in Spain are the same as those in the UK under ATOL.



The CAA has a responsibility to UK air passengers to make sure they understand their rights and what protections they can expect to receive when they buy a flight or air holiday so that they can make an informed decision before they purchase.

In this case, Lowcostholidays has a significant presence in the UK holiday market through its website, lowcostholidays.com, and when Lowcostholidays UK held an ATOL, consumers knew that there was the same financial protection available to Lowcostholidays UK consumers as that which applied to all other ATOL holders. The transfer of the holiday business to Lowcostholidays Spain raises a question over the new protection arrangements which the CAA is required to answer in order to ensure that consumers are not misled and to ensure that holidays sold in the UK comply with the ATOL regulations.

What protection does ATOL provide?

The Air Travel Organisers' Licence (ATOL) scheme provides comprehensive protection for air travellers in the UK who are issued with an ATOL Certificate.

In the event of an ATOL holder failure, the CAA will arrange for consumers on holiday to be looked after in resort and repatriated to the UK at the end of their holiday. Consumers will not be charged for this service.

For those consumers who have a booking with the failed ATOL holder, but have not travelled, they will be able to claim a full refund against the cost of their lost holiday. The CAA will generally try to ensure that refunds are paid out quickly so that consumers can rebook their holiday arrangements.

The ATOL arrangements ensure that all consumers of failed ATOL holders will be repatriated, or refunded. The ATT currently has funds in excess of £30million and has additional insurance arrangements in place to provide funding for larger failures.

What protection does the current licence held by Lowcostholidays Spain provide?

The CAA has been in contact with the authorities in the Balearic Islands Government to find out about their holiday protection system. The CAA has been told that financial protection only applies to package holidays and the relevant local arrangements are as follows:

- 1) Financial guarantees solely cover the obligations arising from package holidays in accordance with Spanish Law 1/2007 of Consumers and Users.
- 2) Travel businesses are obliged to maintain security of between €60,000 and €2 million.
- 3) In the event of insolvency³ of a travel business, should the security at 2 above be insufficient to meet valid claims from consumers there are no additional funds available to the Department of Tourism and Sport in the Balearic Islands to meet these claims. There is no back-up fund to support the protection scheme.

³ Where the article refers to the insolvency of a travel business, it also refers to "suspension of payments, winding up or analogous situation".



- 4) In the event of the insolvency of a travel business where there is insufficient security in place to cover all valid claims relating to package holidays, precedent shows that consumers receive refunds on a pro rata basis.
- 5) In the event of the insolvency of a travel business, neither the local nor the national government offer repatriation services to the affected consumers and therefore these consumers will be required to pay their own costs and claim these costs against the travel business at a later date.
- 6) There is no automatic or direct right to a full refund at 5 above under the guarantees referred to at 1 above.

What protection will consumers booking with Lowcostholidays Spain now receive?

The CAA has been told by the BI Government that Lowcostholidays Spain has provided them with security of €63,000 and the CAA is seeking confirmation that this is still the case.

This is a very low level of cover given that Lowcostholidays UK had an ATOL for 263,685 passengers and, on the basis that there are no reserve fund arrangements in place, it appears likely that consumers would only receive a small part of their holiday purchase price as a refund, if any at all, in the event of insolvency.

It is also clear that the BI scheme does not provide any repatriation arrangements for holidaymakers who are on holiday at the time a holiday company fails. This means that, if a consumer's flight home was unavailable due to a failure, consumers would have to make their own rescue arrangements at their own expense and then make a claim for those costs from the same reserve fund for refunds.

However, the CAA is uncertain whether in practice the guarantee provided to the BI Government could in the event of a Lowcostholidays Spain failure be used to make refunds to any UK consumers. The reason for this fundamental doubt is that Lowcostholidays Spain states that these sales are not packages and the BI system is only to protect packages.

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