

**Consumer Protection Group**



# **The Air Travel Organisers' Licensing (ATOL) Scheme**

## **Consultation on the Civil Aviation Authority's Claims Handling Procedures**

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## Consultation letter from Walter Merricks

Dear Stakeholder

ATOL is an important scheme of consumer protection for UK air holidaymakers travelling abroad. It underpins confidence in the outbound travel market for the benefit of the industry and consumers alike.

The benefit of the scheme was demonstrated by the CAA's response to the immediate repatriation needs of XL customers who were abroad when the group failed in September 2008; working with the travel industry, thousands of people were brought home with minimal fuss and inconvenience in an efficient operation. When the scheme works less well, as was the case in the handling of XL claims, when many claimants had to wait up to a year to be refunded money they had paid for advance bookings – it is right that those responsible should review not only what went wrong, but more importantly what changes might be advisable to ensure that this would not happen again.

During my career I have taken a close interest in consumer protection issues. Having experience as a regulator, a consumer advocate, and latterly as chief ombudsman at the Financial Ombudsman Service, I was delighted to be asked to become involved in this review.

My role will be to bring an independent oversight of the way the review is being conducted, to engage with the principal interested groups, and at the end of the process to make my own recommendations. I am conscious that the money used to make refunds under the ATOL Scheme comes from a compulsory contribution made by Licence holders, and there needs to be a fair balance between meeting consumer expectations and the interests of industry.

Senior staff from the CAA will assist me, and I will report to the Board of the CAA. But my report will be public, and it will be based on my own assessment of what ought reasonably to be put in place to provide an appropriate and modern service to consumers – that will in turn reflect well on the industry.



Walter Merricks

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## Section 1 Consultation Introduction

- 1 The ATOL Scheme has worked well over the years; in recent years the size and scope of failures the CAA has had to manage have been straightforward and well within its capabilities.
- 2 XL Leisure Group plc was the largest claims handling exercise undertaken by the Civil Aviation Authority (CAA); nearly 69,000 claims were processed, close to the total number of claims the CAA has handled for all failures in the previous ten years.
- 3 Contingency planning ensured the CAA had access to external resources to handle this large number of claims. However, the particular circumstances of this failure required the CAA to address a number of highly complex issues, which took time to resolve, before the correct treatment of claims received could be determined. The delay that resulted gave rise to considerable upset for some claimants, who found it difficult to understand why such delays had occurred, and why additional information was sometimes needed when they believed they had already provided all the necessary supporting evidence. As a consequence, the CAA Chair and Board received letters from claimants and Members of Parliament whose constituents had been affected by the delay.
- 4 Following the XL failure, the Board of the CAA decided to undertake a lessons learned exercise to understand why the claims administration of XL took longer than anticipated and to determine where the CAA should develop and improve its claims handling procedures for future large failures.
- 5 The CAA has completed an internal review and has identified a number of changes it should make to improve the claims process and the provision of information. Some of these changes have already been implemented, while others need further development before they can be put in place.
- 6 This consultation forms an important part of the CAA's review and improvement process. It seeks the views of the travel industry and consumer groups about the experiences they may have had with XL claims, and looking to the future, it will help develop the CAA's thinking on the issues it has identified. The consultation will also provide stakeholders with the opportunity to identify any new claims handling procedural issues the CAA should consider in its review.
- 7 In order to ensure the CAA gets the best out of the consultation, it has appointed Walter Merricks, an independent consultant and former Chief Ombudsman at the Financial Ombudsman Service to bring his expertise in the field of financial consumer services, to oversee the consultation process. He will also meet with a number of key stakeholders.
- 8 This is a public consultation that will last for twelve weeks. The CAA intends to make the outcomes known once it has completed its work later in the year.
- 9 This consultation paper does not deal with the Air Travel Trust (ATT) payment policies that are applied to claims, since this is a matter for the Trustees. The ATT will however consider whether any change to its policies are necessary following its own assessment of the CAA's internal review.

- 10 On 10 December 2009, the Department for Transport (DfT) opened its consultation on Regulating Air Transport, and Chapter 13 deals with travel company failures. The DfT believes that action is needed to ensure consumers and travel firms have a clear understanding of whether or not their holiday arrangements should be ATOL protected. The DfT consulted on five areas for reform of ATOL to help clarify (within the constraints of current European legislation) the position for consumers about the financial protection for flight inclusive holidays and flights.
- 11 The consultation closed on 11 March 2010, and depending on the final options chosen, the CAA will in due course need to consider what changes will be necessary to claims handling procedures.

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## Section 2 The ATOL Scheme

### 1 Overview and background information

- 1.1 The Civil Aviation Authority (CAA) is the United Kingdom's specialist aviation regulator. Its responsibilities include certain consumer protection measures and the management of the UK's principal travel protection scheme for holidaymakers, the Air Travel Organisers' Licensing (ATOL) Scheme ("the ATOL Scheme").
- 1.2 The ATOL Scheme is the UK's statutory<sup>1</sup> financial protection scheme for customers of air travel organisers ("Licence holders") in the event of insolvency.
- 1.3 All travel organisers selling air holiday packages and flights in the UK are required by law to hold an Air Travel Organiser's Licence ("ATOL"), which is only granted after a licence applicant has met the CAA's financial and fitness requirements. In meeting the CAA's criteria, the risk of financial failure is reduced.
- 1.4 The Air Travel Trust (ATT) is the principal source of money used for repatriation arrangements and claims against failed Licence holders, which is funded by Licence holders' ATOL Protection Contributions (APCs)<sup>2</sup>. In some cases, Licence holders are also required to lodge a bond, a third party financial guarantee with the ATT. The level of the bond is set by the CAA and must be lodged with the ATT as a condition of granting a licence. The ATT pays claims under the terms of the published Payment Policies to ensure these funds are properly used, while providing consumers with fair and reasonable access.
- 1.5 Should a Licence holder fail, the CAA, acting as agent of the ATT, will make arrangements for eligible customers who are abroad at the time to complete their holiday and fly home, while those with bookings for future travel may be entitled to a refund.
- 1.6 The CAA's procedures for handling claims are set out in Annex 1.
- 1.7 The ATT has agreements with a number of merchant acquirers that provide credit card handling facilities to Licence holders. These agreements share responsibility for refunds between the ATT and the failed Licence holder's merchant acquirer. Refunds are made in accordance with the terms of this agreement. Where the failed Licence holder secured merchant facilities with a firm that did not enter into an agreement with the ATT, customers who book and pay a Licence holder direct are instructed to claim for their personal loss through their credit card issuer under Section 75 of the Consumer Credit Act 1974. Most merchant acquirers have agreements with the ATT.
- 1.8 The CAA does not deal with claims in respect of non-licensable business undertaken by a failed Licence holder, such as holidays based on rail transport, since these fall outside the scope of the ATOL Scheme.

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1. [Civil Aviation \(Air Travel Organisers' Licensing\) Regulations 1995](#)

2. [Civil Aviation \(Contributions to the Air Travel Trust\) Regulations 2007](#)

## **2 Civil Aviation (Air Travel Organisers' Licensing) Regulations 1995 ("The ATOL Regulations"): Booking documents requirements**

- 2.1 The ATOL Regulations require Licence holders and their authorised agents to issue certain documents at the time payment is accepted from a customer for a licensable booking. These documents may be issued in paper form or electronically. They are important in allowing customers to quickly establish whether the ATOL Scheme covers them. If issued correctly, these documents will ensure the smooth handling of claims should a Licence holder fail.
- 2.2 Licence holders issue an ATOL Confirmation Invoice to customers when accepting a licensable booking and payment. Amongst other things, the document must include the Licence holder's name and ATOL number, the details of the air travel or air package that is being purchased, and the amount paid and due. The document is either sent direct to the customer or through the agent authorised to act on the Licence holder's behalf.
- 2.3 Where a booking is made through an agent authorised by a Licence holder, the ATOL Regulations require the agent to issue a receipt on the Licence holder's behalf. This is called an ATOL Receipt, and it must include similar information to that on the ATOL Confirmation Invoice, as well as the Licence holder's booking reference and a disclosure of the travel agent's (agency) capacity.
- 2.4 Authorised agents are required to pass over the customer's copy of the Licence holder's ATOL Confirmation Invoice as soon as it is received. This is important, since it confirms the parties to the contract, the services to be provided and is evidence of an entitlement to have a claim considered for those identified services should the Licence holder fail.
- 2.5 The CAA recognises that it will not always be possible for customers to receive their ATOL Confirmation Invoice where bookings are made close to departure. In which case there is a reliance on the agent's ATOL Receipt to be correctly issued in order to assist the CAA with the validation of claims.
- 2.6 The information to be included in ATOL Confirmation Invoices and ATOL Receipts is set out in the CAA's Schedule of Standard Terms, [www.caa.co.uk/ORS3](http://www.caa.co.uk/ORS3).

## Section 3 Issues for stakeholders to consider

### 1 Issues arising from the XL claims handling operation

1.1 Stakeholders are asked to give their views on the issues the CAA has identified during its internal review of claims handling procedures following the XL failure. To help stakeholders formulate their views, the following section summarises the main themes arising from the CAA's findings.

### 2 Scale of the claims handling operation

2.1 In the ten years preceding the failure of XL, the CAA handled just under 75,000 claims<sup>1</sup>.

2.2 The XL Leisure Group comprised four different Licence holders that collectively held 77,602 bookings for future holiday and travel arrangements. Of these, the CAA received a total of 68,947<sup>2</sup> claims. The breakdown of claims is as follows:

Freedom Flights	35,505
The Really Great Holiday Company	19,649
Kosmar Holidays	10,886
Aspire Holidays	94
Out of pocket claims	2,813
<b>Total</b>	<b>68,947</b>

2.3 Contingency planning ensured that the CAA had access to external resources to handle this large number of claims. However, the build up of the necessary claims handling infrastructure and resources did not commence until after the repatriation operation was complete in October, and could not be fully deployed until a number of complex issues had been resolved.

### 3 Complexity

3.1 The CAA and ATT had to address two complex issues that had not previously arisen and needed to be resolved before the correct treatment of claims received could be determined. These issues concerned the correct definition of:

- A package under the Package Travel Regulations<sup>3</sup>:

Freedom Flights sold charter flights principally through agents it authorised to act on its behalf. Many of these agents combined the flights with accommodation and car hire from other sources for their customers, in arrangements the CAA and the ATT believed to be packages; and

1. Sources: Air Travel Trust Annual Report and Accounts 1999-2008

2. This figure is lower than the total number of forward bookings, since those customers who booked direct with an XL tour operator and paid by credit card claimed from their card issuer.

3. [Package Travel, Package Tours and Package Holidays Regulations 1992](#).

- Section 75 of the Consumer Credit Act 1974:

Determining the treatment of claims where customers made direct payments to XL by credit card and by other payment methods, such as debit card, and personal loss where bookings included different parties.

- 3.2 These issues are discussed in more detail in paragraphs 4 and 5 in this section.
- 3.3 Although XL had provided information on the general level of customer bookings prior to its failure, comprehensive and accurate data from XL's booking systems was required in order to validate claimants' bookings. Access to this information was made more important because of XL's complicated accounting arrangements and the need to verify payments made to the group's companies.
- 3.4 There was a delay in obtaining this data from the group's IT systems provider while negotiations regarding unpaid bills took place.

#### **4 Freedom Flights bookings made through travel agents**

- 4.1 A large proportion of travel agents acting on behalf of Freedom Flights did not issue ATOL Receipts in the manner prescribed by the ATOL Regulations when accepting payments from customers.
- 4.2 Consequently, the validation process under ATT payment policy rules was delayed while missing information was sought. Considerable time was spent in trying to obtain the correct documentation from claimants. However, it became apparent in many instances that these documents were either never issued correctly or lost, while some travel agents re-issued receipts from their booking systems after the date of XL's failure, rather than send in original documents or copies of these. Since these documents showed they were issued post failure, they were not sufficient to validate claims.
- 4.3 Where travel agents combined the sale of flights as agents for Freedom Flights with the sale of other holiday arrangements, such as accommodation, from another source, the ATT had to consider whether these arrangements were packages organised by those travel agents, as set out in the Package Travel Regulations, and whether consequently those travel agents were responsible for providing customers with alternative flights or a refund.
- 4.4 The ATT trustees were however concerned that claimants would suffer significant inconvenience and potential costs in claiming a refund from their travel agent. The ATT therefore took the decision to make payments to claimants in return for an assignment so that where appropriate, it would be able to take proceedings to recover monies from travel agents liable as package organisers.
- 4.5 The decision to settle claims on this basis meant the CAA had to adapt the claims handling process so that it could deal with the more complex assessment of claims; each claim had to be individually considered to establish whether a package had been organised before claimants could be written to with their assignment and sent the amount due for refund.
- 4.6 In these cases, only the flights portion had been sold by the failed Licence holder, thus only the flights portion was eligible for a refund under the ATOL Scheme. However, where agents sold more than one component at the same time (whether or not those components were combined to form a package), some travel agents issued a single booking document showing the arrangements and a total price, rather than issuing an ATOL Receipt and separate receipts for other components. This, along with the discount arrangements of some agents, in which the price of flights

and accommodation were combined and discounted for commercial advantage, made identifying the amount paid by customers for the flights portion, and therefore the amount for refund, difficult to establish.

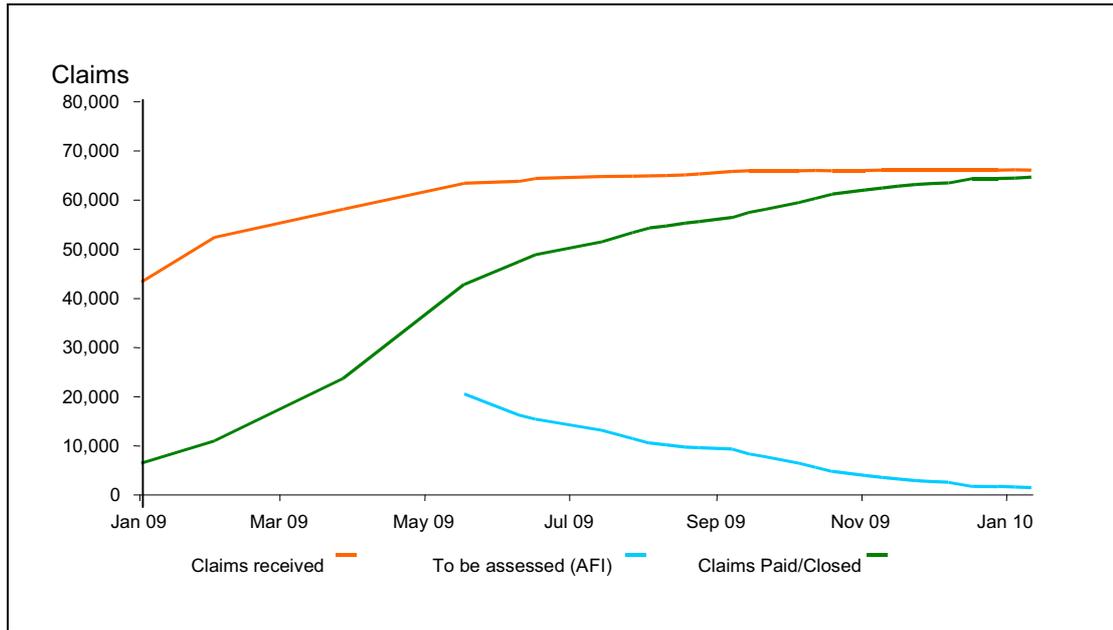
- 4.7 Further complexity was created as a result of the practice of some travel agents taking full payment at the time bookings for flights were made with Freedom Flights. Where bookings were made more than ten weeks before departure, Freedom Flights required a deposit of £50 per person, with the balance due later. Some travel agents took full payment and issued receipts indicating that the full amount had been taken on behalf of Freedom Flights. However, not all balance payments were paid across to Freedom Flights prior to their failure, and since money was not due, the Administrators did not seek to recover this money.
- 4.8 When processing these claims, the CAA had to spend extra time checking the evidence of travel agents' payments to Freedom Flights to establish whether claims for balance payments should be properly met by the ATT or by the agent.
- 4.9 The CAA now has arrangements in place to deal more quickly with claims where travel agents have combined the sale of flights as agents of a Licence holder, with the sale of other holiday arrangements from another source, for their customers.
- 4.10 The CAA plans to meet with travel industry bodies to discuss travel agents' understanding of the ATOL Regulations in respect of issuing ATOL Receipts, and how the trading practices of some agents can impact on the claims handling process.

## **5 Credit card bookings made direct with XL tour operators**

- 5.1 Credit card issuers are liable to their cardholders for a refund when the supplier fails to fulfil the contract paid for by the credit card. The ATT has agreements with most of the merchant acquirer companies that provide credit card facilities to Licence holders. These agreements establish and, where appropriate, divide liability for consumer protection under the ATOL Scheme between the ATT and the credit card companies.
- 5.2 Merchant acquirers are not obliged to enter into these agreements, and E-Clear, the company that provided credit card facilities to XL, did not have an agreement with the ATT.
- 5.3 This was the first time a failed Licence holder had facilities with a non-signatory to the credit card agreement since the introduction of the ATOL Protection Contribution (APC) scheme in April 2008, and the subsequent introduction of new agreements with merchant acquirers.
- 5.4 The CAA's understanding of Section 75 of the Consumer Credit Act 1974 was that credit card issuers would make refunds in all cases, including payments a cardholder made by other methods. It was important that the ATT established the right treatment of claims and therefore it sought legal advice on the relevant aspects of Section 75.
- 5.5 Credit card companies also took advice and there were areas that the ATT disagreed with, which resulted in delays to the settling of some claims.
- 5.6 This is a complex area of law. It took time to resolve and for the ATT to reach a final position on the settling of claims. The CAA had not anticipated these issues, and on reflection, some of these could have been identified before the failure.
- 5.7 The CAA now has arrangements in place to inform claimants and other interested parties quickly about refund arrangements where direct bookings involve a payment by credit card and another payment method. This has been put into practice and has worked well. Nevertheless, the CAA wishes to hear from claimants and credit card companies about their experiences.

## 6 Communications with claimants

- 6.1 Information about claims handling arrangements was placed on the CAA's website on the day XL failed. This comprised information on each of the four tour operators, a downloadable claim form, information about where to send claims, as well as other information, including repatriation arrangements and out of pocket expenses for overseas customers, information for the tour operator's suppliers; advice for XL Airways' customers and a link to the group's administrators' website.
- 6.2 The CAA's priority in the first weeks of the failure was to ensure that the 43,500 ATOL protected customers abroad at the time were not stranded or placed in difficulty. Consequently, the preliminary work necessary to process claims did not start fully until early October, after the main repatriation operation was completed. Potential claimants were advised at the time on the CAA's website and via press announcements, that since a large number of claims was expected, the refund process would take longer than usual.
- 6.3 A large proportion of claims were sent in incomplete, with many either having sections of the claim form not completed or missing documentary evidence. This principally affected Freedom Flights claims, where ATOL Receipts and Freedom Flights' Confirmation Invoices and evidence of payments to Freedom Flights were not provided when claims were first submitted to the CAA. In some other cases, claimants did not appear to have understood what information was needed or its relevance.
- 6.4 As the complexities of credit card and travel agent bookings emerged through the autumn of 2008 and delayed the claims process into spring 2009, the number of enquiries from claimants increased substantially. As a consequence, the CAA's ability to handle enquiries was affected and claimants experienced delays in receiving replies, with some unable to make contact.
- 6.5 The CAA took the decision to apply as many of the resources that it had available on resolving claims as quickly as possible, with information about the circumstances in which claims were being handled provided on the website with regular updates. While this improved the situation, some claimants continued to be frustrated with the lack of progress and information specific to their claim. Claimants' expectations were not managed effectively, which led to a high demand for information that could not be fully satisfied.
- 6.6 Where claimants that had booked (Freedom Flights) flights and other holiday arrangements with a travel agent, the CAA expected to receive ATOL Receipts to support claims, since the ATOL Regulations require these documents to be issued by agents when taking payment. In many cases, ATOL Receipts in a form prescribed by the ATOL Regulations were missing and the CAA wrote to claimants requesting that they send these in.
- 6.7 It became apparent in many instances that ATOL Receipts in the prescribed form were either never issued correctly or had been lost.
- 6.8 For those affected, claimants found this process frustrating, particularly since some received several requests from the CAA for ATOL Receipts, despite having previously sent in what they believed to be the right documentation.
- 6.9 The CAA recognises the importance of providing simple and clear information, and to provide new information when circumstances change. It has already made some changes to the information it provides and its arrangements when handling claims. Subject to stakeholders' responses, further changes will be considered.



**Figure 1** Claims Assessment History

- 6.10 The main points to note about Figure 1 – Claims Assessment History, are as follows:
- a) 2009 started with an extremely high number of unprocessed claims, mainly as a result of the need to establish the correct treatment of claims.
  - b) By early 2009 these issues were mostly resolved and the assessment of claims could begin properly.
  - c) The speed of claims processing increased through the spring, although the scale of the backlog (combined with more claims arriving) was such that this endured until the autumn.

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## Section 4 Questions for Stakeholders

- 1 The CAA would welcome comments on all aspects of this consultation. In particular:
  - a) The overall management of the XL claims handling process;
  - b) The provision and quality of information to claimants at the start of the failure, and subsequently during the course of the claims administration;
  - c) How clear was the information provided on claim forms and in subsequent requests for information missing from a submitted claim?;
  - d) The non-provision of ATOL Receipts by some travel agents, and how this might best be resolved;
  - e) The information provided to claimants while the correct treatment of claims was established.
- 2 And looking to the future, the CAA would welcome comments on:
  - a) Preparations for a large failure: what reasonable planning should the CAA consider to prepare for handling claims following the failure of a large tour operator?;
  - b) Booking documents: what is reasonable for consumers to be expected to keep for the purposes of making a claim? In particular, ATOL Receipts and other original booking documents; how might the CAA improve travel agents' understanding of the ATOL Regulations and the importance of issuing ATOL Receipts;
  - c) Simplification: what steps might the CAA take to improve its claims handling for i) consumers, and ii) travel agents; how might the claim form and correspondence with consumers and travel agents be improved?;
  - d) Access to booking data: what Licence holders might be required to maintain and to make accessible to the CAA in the event of a failure;
  - e) The depth of information and enquiries it is appropriate to make in order to maintain adherence to ATT payment policies and to minimise the risk of duplication and fraudulent claims;
  - f) The time in which it is reasonable for consumers to expect valid claims to be assessed and paid; and
  - g) Whether any of the processes could be improved by the use of online technology.
- 3 Other matters for stakeholders
  - 3.1 It will help develop the CAA's thinking if stakeholders can identify any other claims handling issues the CAA should consider in its review.

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## Section 5    Timeline

1        The proposed timeline for this consultation is set out below:

<b>Action</b>	<b>Timeline</b>
Consultation period	May 2010 - August 2010
Review responses	Mid September 2010
Publication of summary of responses	Early October 2010
Publication of outcomes	Early December 2010

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## Section 6 Consultation code of practice

1 The CAA welcomes the views of the travel industry and consumers. Comments are invited on this Consultation Paper, which should reach us by 9 August 2010. Comments may be sent by electronic submission using the e-mail facility on the CAA's website: [www.atol.org.uk](http://www.atol.org.uk)

2 Alternatively, please send comments in writing to:

Nikki Circou  
Consultation Secretary  
Civil Aviation Authority  
Consumer Protection Group  
CAA House,  
45-59 Kingsway  
London,  
WC2B 6TE

Telephone: 020 7453 6345

Fax: 020 7453 6494

E-mail: [atolclaimsconsultation@caa.co.uk](mailto:atolclaimsconsultation@caa.co.uk)

### 3 Freedom of information

3.1 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

3.2 If you would like the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

3.3 In view of this, it would be helpful if you could explain why you regard the information you have provided as being confidential. If a request for disclosure of the information is received, your explanation will be taken into account, but the CAA cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the CAA.

3.4 The CAA will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

## 4 **Government Code of Practice**

4.1 Although this consultation does not include regulatory proposals, it has been drafted in accordance with version 3 of the Government Code of Practice on Consultation<sup>1</sup> (the "Code"), which was published in July 2008 and became effective on 1 November 2008. The Code contains seven criteria. These criteria are listed and, where applicable, detail is provided on how they have been taken into account, below:

- a) Formal consultation should take place at a stage when there is scope to influence the outcome.
- b) Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- c) Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of proposals.
- d) Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- e) Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- f) Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment, if appropriate.
- g) Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- h) Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

4.2 If you have any queries or comments on the consultation process itself, as opposed to responses to the consultation, please contact David Bourne of the CAA at the address given below.

5 The CAA will review all the responses received and a summary will be published on the ATOL website: [www.atol.org.uk](http://www.atol.org.uk) within eight weeks of the consultation closing date.

6 If you have a comment or complaint about this consultation, please contact:

David Bourne  
Consultation Coordinator  
Consumer Protection Group  
K3, CAA House  
45-59 Kingsway  
London WC2B 6TE

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1. <http://www.berr.gov.uk/files/file47158.pdf>

## **Section 7      Consultation Stakeholders**

### **1            Consultation Stakeholders**

1.1        The CAA welcomes views of individual stakeholders. However, in order to deal effectively with all the issues concerned, it will focus its resources on the following stakeholders:

All ATOL holders

Air Transport Users Council (AUC)

Air Travel Insolvency Protection Advisory Committee (ATIPAC)

Air Travel Trust

Association of British Insurers (ABI)

Association of British Travel Agents (ABTA)

Association of Independent Tour Operators (AiTO)

CEGA (CAA Claims)

Consumer Focus

Department for Business, Innovation and Skills

Department for Transport

Financial Services Compensation Scheme

Huntswood (CAA Claims)

Passenger Focus

Solicitors Regulation Authority

Travel Trust Association

UK Cards Association

Which?

Zolfo Cooper (Administrators to the XL Leisure Group)

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## **Annex 1      Procedures for handling consumer claims**

### **1      Role of the Air Travel Trust (ATT)**

- 1.1      The ATT sets out the information that a claimant and where relevant, their travel agent, must provide before the CAA can assess and validate a claim. The information required is set out in the ATT's Payment Policy published on the CAA's website, [www.caa.co.uk/ATTF](http://www.caa.co.uk/ATTF), and in the claim form the CAA publishes with each failure.

### **2      Role of the Civil Aviation Authority (CAA)**

- 2.1      The Air Travel Trust has appointed the CAA to act as its agent in administering claims received following the failure of a Licence holder. The CAA receives a processing fee for each claim it handles.
- 2.2      The CAA may in turn appoint an external claims handling agent to process claims on its behalf. The current agents are CEGA Air Ambulance and Huntswood. Agents receive a processing fee for each claim that is handled.

### **3      The ATT and Merchant Acquirers**

- 3.1      Where a Merchant Acquirer has entered into an agreement with the ATT, and the ATT estimates the total costs of a failure will be within the ATT Primary Exposure, or where a bond has been provided, the bond is estimated to be sufficient, all claims are met by the ATT and/or the bond, irrespective of the method of payment.
- 3.2      Where the ATT has estimated that a failure will exceed the funds available, the ATT will cover all non-credit card payments and payments by credit card to travel agents; these are handled by the CAA. Customers that paid direct to a failed Licence holder are referred to their credit card issuer to claim the payments they made by credit card. Customers who paid using both credit card and debit card must split their claims between their credit card issuer and the CAA.
- 3.3      Where a Merchant Acquirer has not entered into an agreement with the ATT, Section 75 of the Consumer Credit Act 1974 applies to all direct bookings in respect of personal loss of payments by credit card, as well as payments by the cardholder by other methods. Losses of a non-personal nature incurred by other parties included in a booking, such as those who make payment to the cardholder, will be considered by the CAA if not accepted by the card issuer.

### **4      General**

- 4.1      Claims fall into two categories:
- Forward Bookings: the majority of claims, where the claimant was due to travel after the date of failure and, subject to their departure date, would have paid a deposit or the full amount; and
  - Out of Pocket Claims: far fewer claims, where the claimant was abroad at the time of failure and due to travel back to the UK. Costs are principally incurred from maintaining accommodation and airport transfers.
- 4.2      Evidence to support both categories of claims is the same, except in Out of Pocket claims where evidence of the additional cost incurred must also be provided. Where

an agent is involved in a forward booking claim, the CAA must be satisfied that the agent passed the money it collected from the customer on behalf of the Licence holder before it failed.

## **5 Provision of information to potential claimants and claim form**

- 5.1 The CAA's claim form sets out the information that is required for a claim to be considered. It is important that all information is provided, since the claims process will be delayed until missing information is provided.
- 5.2 The CAA's claim form and examples of the instructions given to claimants are published on the CAA's website.  
[www.caa.co.uk/default.aspx?catid=1052&pagetype=87](http://www.caa.co.uk/default.aspx?catid=1052&pagetype=87)
- 5.3 When a failure occurs, the CAA publishes information on its website, along with a downloadable PDF of the claim form and a covering letter. Contact information is also provided, should prospective claimants need to contact the CAA. This service is usually provided by telephone and e-mail. It can be affected if demand is high. For some failures, the CAA may appoint a call handling agent to assist with the management of telephone enquiries.
- 5.4 Depending on the significance of a failure, the CAA may also publicise a failure in order to alert customers. The CAA will also inform the main travel trade associations, the Association of British Travel Agents (ABTA) and the UK Cards Association, whose members and customers may be affected.

## **6 Bookings and claims made through travel agents**

- 6.1 When a booking is made through a travel agent, the claimant must pass the claim form to the travel agent so that it can complete the relevant sections of the form. The original documents issued to claimants at the time of booking and payment; an ATOL Receipt, followed by the Licence holder's own Confirmation Invoice, must be provided as evidence to support and validate a claim. Evidence of all payments to and from the travel agent must also be provided.
- 6.2 In some circumstances a travel agent may not have passed on a payment, such as a balance, due to the Licence holder prior to its failure. In these cases, a refund cannot be considered until such time as the administrators or liquidators have received payment, or reached an agreement with the travel agent on offsetting the payment. In either case, evidence will need to be provided to the CAA. If payment is not collected from the travel agent or an agreement is not reached and clearly evidenced, the CAA will not be able to substantiate a claimant's loss and therefore their claim will remain pending until such time as this information is provided.
- 6.3 Where a travel agent takes payment of a balance before it is due, such as at the time of booking along with the deposit amount, administrators or liquidators may not wish to collect these amounts. If such sums are not passed over to the administrators or liquidators, the CAA will be unable to meet such payments and will instruct the claimant to seek this amount from the agent.

## **7 Claims assigned to travel agents**

- 7.1 A claimant may decide to assign their claim to their travel agent in lieu of receiving substitute travel arrangements without any extra charge up to the value of the original amount paid to a Licence holder prior to its failure.

7.2 When taking an assignment, the assignee is reliant on the claimant to provide all necessary evidence to support the claim. If this is not provided, the CAA is unlikely to be able to make a refund.

## **8 Claims handling procedure**

8.1 When a Licence holder fails, the CAA checks the identity of the Licence holder's Merchant Acquirer and whether it has entered into an agreement with the ATT. Where this is the case, an estimate is made of the total costs of repatriating and refunding customers using the failed Licence holder's booking data, where available. The CAA is then able to advise customers how to claim a refund.

## **9 Supporting evidence**

9.1 When a claim is submitted, supporting evidence must be provided to validate it. This evidence will include:

- Documentary evidence of booking:

ATOL Receipt or other receipt issued at the time of booking (bookings through travel agents)

Licence holder's (ATOL) Confirmation Invoice

Flight coupons

- Evidence of payments:

Cash receipts (for some cash payments an affidavit and information proving the source of funds may be required)

Original cheques paid to the Licence holder or travel agent

Credit and/or debit card statements, showing the account holder's details

Bank statement showing agents' payments to the Licence holder

Where travel gift vouchers are used as whole or part payment towards a booking, similar evidence of payment must be provided.

For out of pocket claims, an itemised receipt or invoice and evidence of payment is required.

9.2 Where bookings are made through a travel agent, it is likely that payment to Licence holders are made through a central payments agency. Where this is the case, the payments agency's statements and corresponding bank statements can substantiate evidence of payment by the travel agent to a Licence holder. The CAA will also seek records showing payments from the software provider of the payment scheme.

9.3 Once a claim has been received, it will be logged in to the relevant database, which produces a unique claim number. The claim is then acknowledged, with the claim number and claims handling contact details being sent to the claimant.

9.4 Once logged, claims are initially assessed to ascertain whether they contain the required information. Claims handlers will check that the claim form has been correctly completed, that the correct supporting documentation has been provided, together with proof of all payments. The claim will also be cross-checked against the failed Licence holder's booking records.

- 9.5 If the claim is complete, it is submitted for approval to a supervisor who will check the claim and either authorise it, or if more information or evidence from the claimant or third party is required, instruct the claims handler to obtain this information.

## **10 Timescale**

- 10.1 The CAA aims to acknowledge and carry out an initial assessment of a claim within 28 days of receipt. This may vary depending on the number of claims being received and other factors, such as the operating methods of the failed Licence holder, the treatment of claims and where customers are not eligible to claim. The CAA provides information on its website about the particular circumstances of a failure.
- 10.2 The total amount of time before the claim is fully processed and a refund made can vary, depending on the specific details of the booking. If a claim is incomplete or additional information is required to validate a claim, such as from a travel agent, airline or liquidator, it will take longer to process.

## **11 Refunds**

- 11.1 Payment of claims is usually made by BACS into the bank account designated in the claim form by the claimant or assignee; the person who paid for the holiday or flight must provide this instruction. Payment is usually made within ten working days of a claim being authorised. Written notification is provided to the claimant when the BACS payment is due to be made.
- 11.2 In some cases payment is made by cheque. This is the case when an out of pocket expenses claim is made. In these cases, the claimant will receive a letter and cheque.

## **12 Incomplete claims**

- 12.1 If, after the initial assessment it is established that a claim is incomplete and it is not possible to validate it, a letter is sent to the claimant, assignee or other third party, such as the administrators or liquidators, for the missing information.
- 12.2 If a response is not received within 28 days, up to three further letters will be sent. If there is no reply, a final letter notifying the claimant that their claim will be closed if the missing information is not provided will be sent.

## **13 Claimant not eligible**

- 13.1 A customer of a failed Licence holder may not be eligible to claim a refund under the ATOL Scheme. The initial process for assessing a claim establishes this. There are various reasons why a customer is not eligible to make a claim. In general, customers are not eligible to claim if:
- a) Their contract for flights or a holiday package is with another Licence holder, i.e. the failed Licence holder acted as an agent on behalf of another Licence holder.
  - b) The Licence holder acted as a ticket provider.
  - c) Customers' payments went direct to a scheduled airline.
  - d) The customer had booked non-licensable transport or a holiday package not covered by the ATOL Scheme.

- e) The claimant is unable to provide sufficient evidence that he/she entered into a licensable contract with the Licence holder.
  - f) The booking and payment is made outside the UK.
  - g) The claim does not meet the criteria outlined within the ATT Payment Policies.
  - h) The claimant has been unable to prove that he/she suffered a financial loss.
- 13.2 The claimant is notified in writing that they are not eligible for a refund along with an explanation. Depending on the circumstances, the claimant will be advised to contact the principal or, where appropriate, the Administrators or bonding organisation to make a claim.

## **14 Declined claims**

- 14.1 Declined claims will not be reconsidered unless the claimant can provide further information that provides new evidence to support their claim.

## **15 Credit card referrals**

- 15.1 On occasions, the CAA will receive claims from passengers who should claim their refund from another source. This typically occurs where the claimant should claim a refund from their credit card issuer. In such cases, the CAA will write to the claimant instructing him/her to claim a refund from the card issuer.

## **16 Dealing with enquiries**

- 16.1 When a claim is acknowledged and when a letter is sent requesting further information, it will include contact details so that claimants can, if they wish, obtain further information or discuss their circumstances.
- 16.2 In some cases, as with larger failures, general information about the circumstances in which claims are being managed, and any particular issues that emerge that alters the handling of claims, is provided on the CAA's website. Contact details are provided on acknowledgement and information request letters to claimants, and on the CAA's website.

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# Glossary

## 1 Terms

### 1.1 Air Travel Organisers' Licensing (ATOL)

The ATOL Scheme is a UK statutory system that provides financial protection to air travellers against the insolvency of their travel firm. The CAA grants and annually renews ATOLs to firms that meet its published financial criteria. It also refunds and repatriates customers affected by the insolvency of their travel firm.

### 1.2 Air Travel Trust

The objective of the ATT is to provide funds to repatriate stranded holidaymakers and meet claims for losses incurred by customers of failed Licence holders. The CAA performs certain administrative functions for the ATT and an agreement is in force between the two parties which governs that relationship. When a Licence holder fails, the CAA acts as agent of the ATT in exercising the ATT's powers to repatriate customers and to meet claims by customers for losses and liabilities incurred as a result of the failure. In this respect, the CAA acts in accordance with the terms of the bond (where applicable), the Trust Deed, the Air Travel Trust Payment Policy and its agreement with the ATT. The information required is set out in the ATT's Payment Policy published on the CAA's website, [www.caa.co.uk/ATTF](http://www.caa.co.uk/ATTF), and in the claim form the CAA publishes with each failure.

### 1.3 ATOL Confirmation Invoice

This is a hard copy or electronic document issued by a Licence holder either direct or via an agent confirming the details of the customer's booking. This includes the name(s) of person(s) travelling, booking reference, date, origin, destination of each flight booked, all other elements included in the price and the total amount payable.

### 1.4 ATOL Receipt

In this context, an ATOL Receipt is a hard copy or electronic document that a travel agent must issue when it accepts payment for a flight or flight inclusive booking. This must show the name of the Licence holder and confirm that this firm is acting purely as the Licence holder's agent.

### 1.5 ATT payment policy

A publicly available document setting out how the CAA, as agent of the ATT, can make payments from bonds and the ATTF for the repatriation of ATOL protected customers who are abroad and customers with forward bookings.

### 1.6 ATT Trustees

The Trustees are all Board Members and officials of the Civil Aviation Authority, appointed ex officio. Two of the Trustees, Roger Mountford and Richard Jackson, are also members of the Air Travel Insolvency Protection Advisory Committee ('ATIPAC'). This committee provides advice to the CAA, the Trustees of the Air Travel Trust and the Secretary of State for Transport on the financial protection arrangements for air travellers and customers of air travel organisers. It includes representatives from key travel trade and airline associations, consumer representatives, independent members and members appointed by the CAA. The Chairman of ATIPAC, Mr John Cox OBE, attends meetings of the ATT as an independent industry representative.

**1.7 Authorised agents**

Although many Licence holders sell their holidays and flights directly to the public, most will have agreements with high street and on-line travel agents for them to sell their holidays and flights for them. When acting in this way, agents collect money from customers on behalf of the Licence holder.

**1.8 BACS**

BACS is short for 'Banks Automated Clearing System'. This enables direct transfers to and from bank accounts.

**1.9 Bond**

A fixed sum arranged with a bank or an insurance company that the ATT can call upon if the Licence holder fails.

**1.10 CAA Schedule of Standard Terms**

Also known as the Standard Terms, this is a list of conditions Licence holders must comply with. These include the documentation that must be issued to customers and the timeframes in which this must be done.

**1.11 Central payments agency**

ABTA and some large travel consortiums offer their members the chance to pay into a central payment system that, in turn, passes the funds onto individual Licence holders.

**1.12 Eligible customers**

In this context a customer is a member of the public who paid (or on whose behalf someone else paid) for travel on an ATOL protected flight or flight inclusive holiday.

**1.13 Licensable booking**

Licensable booking means a licensable transaction to provide or arrange for the provision of one or more flights (with or without ground accommodation or other facilities) in circumstances where this constitutes an activity in respect of which the Licence holder is required to hold a licence.

**1.14 Licence holder**

Licence holder means a person who holds an ATOL issued by the CAA under the ATOL Regulations.

**1.15 Merchant acquirers**

Firms must enter into an agreement with a particular financial institution to accept credit and debit card payments. The financial institution, which is known as a merchant acquirer, processes all card payments and then transfers the funds to the firm.

**1.16 Merchant facilities**

These are the tools merchant acquirers provide to firms to enable them to accept credit or debit card payments. This will normally include a physical terminal for manual payments and the ability to accept payments remotely, usually online.

**1.17 Non-Licensable**

These are sales that fall outside the scope of the ATOL Scheme. Examples of these are package holidays that do not include flights, accommodation only bookings and sales where customers receive a valid ticket on a scheduled flight in exchange for payment.

1.18 **Personal loss**

In this context the credit cardholder can reclaim all the payments he or she made to the failed Licence holder, including payments he or she made by other means, including cheque and debit card payments.

1.19 **Principal**

This is the firm that takes on the risks and obligations to fulfil the sale. People commonly refer to the principal as a tour operator.

1.20 **Ticket provider**

This is a sale where a valid ticket is given in exchange for payment. In such cases the customer's contract is with the airline.

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