



**ATOL Reform -  
CAA Further Information & Consultation Paper  
Responses**

## **THE ASSOCIATION OF ATOL COMPANIES (AAC)**

### **Response to the Civil Aviation Authority Consultation on ATOL Reform March 2012**

#### **1. Background**

The AAC represents existing ATOL holding companies in the United Kingdom with combined sales in excess of £2.5 billion per annum. Although originally the AAC represented only those selling scheduled seats from the United Kingdom, we now embrace charter seat sale operators and many members have, in recent years in particular, become heavily involved in the sale of package holidays. We believe therefore that we are representative of the entire travel industry. All members are required to hold current ATOL licences, the smallest member holds an SBA, and our largest provides travel arrangements for almost 600,000 passengers per year.

The AAC was formed in 1994 as a response to a changing market place for the sale of air seats in the United Kingdom. We began a fruitful relationship with the CAA to ensure that future financial protection schemes did not adversely affect the operation of our members businesses and in general, have taken the view that offering financial protection is a genuine selling point to offer to consumers and sub agents in the sale of travel arrangements. When the original Consultation was issued regarding the extension of financial protection to the area of 'Flight Plus' our members wholeheartedly supported the idea and it is therefore regrettable that at this time, we cannot support some of the ideas put forward in the Consultation dated February 2012.

**We believe at this stage that there has been insufficient time to fully identify the problems which the current plans will create, the law of unexpected consequences is very relevant and our belief is that there should be a further delay to October 2012 as the date for implementation for the whole scheme, rather than just the introduction of ATOL Certificates.**

In preparing this short response, we issued advice to members on two separate occasions and have had a number of detailed discussions with members, We have responded only to those areas of concern, as expressed by our members.

#### **ATOL Certificates**

We recognise this dispensation given to the industry to delay the introduction of ATOL Certificates to October 1<sup>st</sup>, although a number of members have expressed the wish to begin their issue sooner. We are concerned the CAA consider it necessary to seek dispensation to do so as early introduction might go some way to improving knowledge amongst the travel agency community which we believe

is still far from aware of the changes about to take place. We are also concerned at the frequency of the need to re issue Certificates if anything changes, we think this is overkill and should only apply if the passengers' names change or there are major variations to the product sold. Other than this point we are content to allow the Certificates to proceed as drafted.

### **Agency Terms**

We have made the point on a number of occasions but for the sake of clarity do so again in this Response, that the agency term dealing with pipeline monies runs the risk of damaging the relationship between banks and merchant acquirers and ATOL holders. Our discussions with Barclays Bank for example elicited a response that if there were no funds available for administrators to claim after an ATOL holders failure, a full review of the risk profile of ATOL holders would have to be made. This could have a serious and irreparable effect on the whole industry, those existing 'non ATOL holding agents' appear to be under the illusion that obtaining an ATOL licence in order to comply with the new rules will improve their financial profile when in fact the exact opposite may be the case.

We also support the calls from other trade bodies for a delay in the implementation of agency agreements, we do not believe that four weeks is sufficient time for the industry to take professional advice and prepare agreements upon which the CAA may rely on in the future following a failure to apportion responsibilities.

### **Accredited Bodies**

We are sorry to see a dearth of Accredited Bodies and have particular concern that many, if not most agents, have failed to take any, or any effective action, to progress action in relation to Flight Plus. Many of our members provide seat only sales to travel agents who then combine those seats with accommodation and create what will become a Flight Plus sales under the new Regulations. We are extremely worried that many will not be able to effectively trade after April 30 bearing in mind the admitted number of new ATOL applications is miniscule.

Our members may be materially affected and unless agents are to operate illegally, we suspect many agents will also be unable to trade legally. Anecdotally we believe many will book the elements more than 2 days apart, thus undermining the whole scheme. This reinforces our belief that the timescale is virtually impossible to adhere to, even the largest travel trade association seems unable to reach agreement with the CAA on the way forward.

## **Accountable Person**

We welcome the decision of the CAA to permit those other than Board members act in the role of the Accountable Person but with the proviso that a Board member remains liable for all information provided to the CAA

## **Airline Ticket Agent**

The AAC is grateful for the opportunity to offer input into drafting this exemption for those that hold IATA accreditation and ticket immediately. We are concerned however that many ATOL holders now issue tickets purchased through websites of airlines, both low cost and otherwise, and as drafted all these tickets would have to be issued under the ATOL licence.

In some cases the lowest fares are not those held by our members but offered on airline websites for direct sale by the airlines. It is obvious that in all cases, tickets are issued immediately and there is no risk to the consumer of a loss of funds, but the additional cost of ATOL protection may well cause consumers to simply book direct and cause damage to our members business. For that reason we request the CAA review the wording of the exemption to enable 'safe' business to continue as at present.

## **Financial Criteria**

One of the most serious concerns expressed by our members are the unexpected consequences of these changes on the nature of business being transacted. A number of members currently offer for sale through travel agents a variety of flight options and suitable hotels which can be booked at the same time or separately. Currently these are not sold as packages to travel agents but under the new regime, the proposed changes will require all similar sales to be packages, whether the ATOL holder wants them to be or not.

This clearly impacts on the cost of public liability insurance which can be reduced by Flight Plus operators (who may be competitors) selling direct to the public who do not take on similar responsibilities as package organisers, but more importantly, the change to package organisers makes major difference to the capital requirements to maintain an ATOL licence. Despite the fact that this change is not one the ATOL holder wants to make, his 'ATOL risk turnover' may now be his total turnover whilst prior to these changes, much if not all his business was calculated for ATOL purposes, at 10% of actual turnover.

This means in some cases, a huge capital injection may be required in order to meet the net free asset test and if an immediate request is enforced at the next

renewal., we fear many will not be able to comply and the CAA may be faced with the exact problem it did not want to exacerbate, namely a catastrophic serious of failures due to an inability to meet the net assets required. It is imperative the CAA look at this issue as a matter of urgency and consider ways to ameliorate the effect, perhaps by agreeing a lower level of capital for a period of years as in the current financial environment, few ATOL holders who do not carry out package sales at present would be in a position to meet the current expectations.

### **APC Payment Period**

We have no reason to object to this change, and believe it will be for the benefit of the travel industry as a whole to change the threshold for ATOL holders to pay monthly.

This concludes our response to the Consultation, we would be happy to answer any questions that CAA may have.

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**March 22 20112**  
**AGB/PB/**

# **Proposal to amend the CAA's Official Record Series 3, including ATOL Standard Terms, and Consultation on a proposed change to an APC payment period**

## **ABTA Response**

March 2012

### **INTRODUCTORY REMARKS**

ABTA – The Travel Association welcomes this opportunity to continue in constructive dialogue with the Civil Aviation Authority (CAA) over the practical implementation of the Department for Transport's (DfT) reforms to the Air Travel Organisers' Licensing (ATOL) scheme. ABTA has welcomed the CAA's and DfT's positive and cooperative engagement with the industry on a range of pressing implementation challenges. This submission seeks to identify these challenges, and offer solutions where possible.

Founded in 1950, ABTA is the UK's largest travel trade association, with over 1,200 Members in over 5,000 retail outlets and offices. Our Members range from small, specialist tour operators and independent travel agencies through to publicly listed companies and household names, from call centres to internet booking services to high street shops.

ABTA member sales account for 90% of the package holidays sold in the UK annually, accounting for roughly £41.2 million of the Air Travel Trust Fund's (ATTF) £46.2 million annual income. ABTA estimates suggest that our Members are licensed to sell in excess of 18 million ATOL protected holidays each year (in 2010-11 this represented 16.5 million in actual sales); ABTA Members are also responsible for the sale of millions of independent travel arrangements to UK travellers.

The DfT's reforms of the ATOL scheme entail significant systems and process changes for ABTA Members; as such, it is clear that the various business models of ABTA Members will be both directly and indirectly impacted by the reforms. For this reason, it is prudent that ABTA and the CAA should remain in dialogue to find the solutions that will ensure the smooth implementation of the reforms; this will be to the benefit of the consumer, the industry, and Government.

ABTA remain broadly supportive of the DfT's and CAA's objectives in developing the scope of the ATOL scheme to protect all consumer holidays, in due course to include those put together by airlines, thus achieving consistent regulation for those competing in the same market place, consistent protection for consumers purchasing a holiday and a more level playing field for our Members. A number of our concerns relate to the method or timing of the reform, rather than the ultimate objective.

## **EXECUTIVE SUMMARY**

A detailed ABTA response to the consultation on Standard Terms begins on page 4 of this document; however, the key concerns that have emerged are summarised below.

First and foremost, while we understand that airline holiday sales and arrangements made on an agent for the consumer basis remain outside of the scope of the CAA Standard Terms consultation, we would feel it remiss not to reiterate that ABTA believes all holidays – however they are booked – should be financially protected.

This has been the starting point for our call for an extension of consumer protection. We believe the scheme cannot be made fairer or successful if at a minimum, airline holiday sales are not brought within scope. The airline-led unprotected flight holiday market is substantial and any solution that excludes airline holidays beyond the short term can neither be effective in terms of consumer protection, nor can it be fair competitively.

ABTA welcomes that the scope of the Civil Aviation Bill includes Section 94 which will enable the Secretary of State to include holidays sold by airlines and arrangements made on an agent for the consumer basis within ATOL protection. ABTA believes this to be a major step in the right direction for consumer protection. We continue to urge the Government to stick to its commitment to consult on including holidays sold by airlines within ATOL during 2013, and subsequently, to bring airline holiday sales within the scope of ATOL at the earliest possible opportunity.

Key concerns raised within the body of this response include:

### **Business Travel Exemption and a Permissive Regime**

- ABTA is calling on the CAA to produce guidance that offers good legal and practical clarity in relation to the definition of 'Corporate Bodies' in reference to the business travel exemption proposed.
- While we welcome the exemption, we are proposing that ATOL holders be given the authority to voluntarily 'opt in' sales to corporate bodies under a permissive regime.

### **Overseas Exemptions**

- There is a long-standing problem with the Commission for Aviation Regulation (CAR) in the Republic of Ireland seeking to licence and bond UK companies selling to UK consumers.
- We believe this interference with UK business to be wrong; the Government should take every necessary step to stop it.

### **Agency Agreements – Implementation Timetable**

- We believe that very serious consideration should be given to delaying the requirement for the implementation of Agency Agreements due to the considerable amount of work

required by agents and operators to introduce and/or update these agreements. The regulatory impact assessment focussed on the impact on principals, which ignores the greater impact on and issues for agents.

- While we remain supportive of compulsory agency agreements, and indeed we intend, as ABTA, to implement a complementary change to the ABTA Code of Conduct to reflect this, we believe that the implementation impact on principals and agents has been fundamentally underestimated.
- We call for a reasonable and proportionate period implementation period until 1 October 2012, in line with ATOL Certificates. Many industry participants do not have formal agency agreements in place and there is therefore no 'base' document on to which to append an interim addendum, even as an interim arrangement. In any event, the CAA consultation on this issue does not close until 22 March and, as a result, the industry is likely to have no more than four weeks for implementation. This is not reasonable and a short period of informal non enforcement does not, with respect, address that issue properly or adequately.

### **Pipeline Monies**

- ABTA is concerned that any change to the legal status of pipeline monies as outlined in the proposed Standard Terms will affect the current security structure of ABTA Members' banking and merchant services facilities.
- The impact on SMEs and microbusinesses could be particularly adverse, potentially increasing the risk of secondary failures within this segment of the market.

### **Flight Only Sales**

- We welcome the CAA's efforts to address the problem of flight only sales with the Airline Ticket Agent (IATA) exemption announced on 12 March; however, we do not believe that this exemption is a full solution to the problem identified.
- The Airline Ticket Agent exemption excludes sales by agents with payment made in full and directly to the airline at the time of booking which fall completely outside IATA's Billing & Settlement Plan, i.e. no frills airlines where no agency agreement exists as no credit is being given.
- As there is no risk, we would encourage that these sales are also included within the proposed exemptions.

## DETAILED POINTS ON INFORMATION PAPER CONTENT

The points below serve to supplement the concerns initially raised in ABTA's December 2011 submission to the CAA's *ATOL Reform: Information Paper* consultation. This document is available on our website [www.abta.com](http://www.abta.com). Numbers in this section relate to the paragraph numbers of the Further Information document.

### 2.2 Business Travel exemption range

- (a) *Definition of a Corporate Body* – ABTA believes that there needs to be good legal and practical clarity in relation to the definition of 'Corporate Bodies', with a definite list set out in guidance. We would welcome further guidance from the CAA.
- (b) *Source of payments* – A number of ABTA Members have questioned the significance of the contracting party as opposed to the paying party. This is because bookings for Corporate Bodies may be paid for by employees utilising personal credit cards and then claiming on expenses, for example.

ABTA's view is that the defining issue is the contracting party. If it is a corporate body, the sale is exempt and, in any event, the employee will be able to claim reimbursement as normal from their employer. The risk remains with the corporate body.

- (c) *Ability to 'opt in' to ATOL Flight Plus sales to Corporate Bodies* – A number of ABTA Members have asked if they could voluntarily 'opt in' sales to corporate bodies under a permissive regime, presumably to assist SMEs and Microbusinesses when tendering to obtain corporate accounts.

This has also specifically been raised in connection with school trips where the contracting party might be the Local Authority. This matter has previously been discussed and it was agreed that there was no intention to exclude such sales from the scope of protection.

ABTA would welcome further clarification with regard to school trips.

### 2.5. Overseas Exemption

There is a long-standing problem with the Commission for Aviation Regulation (CAR) in the Republic of Ireland seeking to licence and bond UK companies selling to UK consumers. CAR appears to believe (wrongly in our opinion) that they are entitled to licence UK companies even where those companies are not selling to consumers in the Republic of Ireland. This results in UK package organisers selling to UK consumers while having to comply with the Package Travel Regulations in the UK and, while also having to licence and bond in the Republic of Ireland where those packages include flights that depart from the Republic of Ireland.

We believe this interference with UK business to be wrong; the Government should take all necessary steps to stop it. We appreciate the efforts of the Department for Business, Innovation, and

Skills (BIS) in this regard but feel that the matter is now becoming more urgent with the implementation of ATOL reform.

We understand that the CAA is considering requiring travel companies to hold an ATOL in respect of such sales but not to require any security to be provided under that ATOL where the sale is licenced and bonded by CAR. Whilst this might be seen as a concession to avoid double protection, it still requires travel companies to be licensed twice and to obtain bonding which will be in addition to the bonding and other security required under the ATOL scheme.

If the Government believes that it is powerless to prevent this unwarranted interference by CAR in the legitimate business of UK companies, the CAA should follow another approach which we understand is favoured by BIS whereby, as a last resort, companies may be licenced by CAR but CAR should recognise the security already being provided under the ATOL scheme.

#### **4.2 Written Agency Agreements – Implementation Timetable**

We believe that very serious consideration should be given to delaying the requirement for the implementation of Agency Agreements.

We are very supportive of compulsory adherence to written agency agreements and indeed we intend, as ABTA, to implement a complementary change to the ABTA Code of Conduct.

However, we believe that the implementation impact on principals and agents has been fundamentally underestimated. The regulatory impact assessment focusses just on the preparation time within the principal.

Our understanding is that Agency Agreements (as opposed to exchanges of communications dealing with commercial terms) are currently far from the norm.

Principals are unlikely to finalise new Agency Agreements until the CAA Standard Terms consultation is completed. ABTA would be hesitant about producing 'model' terms for Members before then. That will then only leave a matter of a few weeks for implementation in advance of 30 April 2012.

Retail agents (particularly SMEs and Microbusinesses) will then be receiving large numbers of Agency Agreements in a short period of time and will be seeking to review them, take advice and negotiate them before 30 April 2012.

There is a real danger (and an unintended consequence of the process) that Agency Agreements including revised commercial terms, are rushed or pressured through utilising the compliance deadline as leverage.

In our view, additional time will allow this process to be completed properly and fairly. While we support a swift implementation of agency agreements, it is most important to ensure that agency agreements are implemented properly and fully, rather than simply speedily.

In order to ensure robust implementation, a simple absolute deadline of 1 October 2012 could be adopted, in line with ATOL Certificates. In our consultation response, we argued for a delay for ATOL Certificates and Written Agency Agreements due to the logistical challenge of meeting the earlier deadline.

#### **4.5. Pipeline Monies**

We remain concerned that as a matter of common sense and law, pipeline funds held by retail travel agents cannot be held on trust for the ATT and, at the same time, as any form of security for either normal banking facilities or in respect of card merchant services facilities, either as cash security or in the form of delayed payments/retentions.

It must follow from any change to the legal status of those funds that the current security structure of Members' banking and merchant services facilities will be affected. The same funds cannot, at the same time, be providing security to two different parties with conflicting interests (in the event of the failures of the ATOL holder). The impacts may be difficult to assess, but a proper regulatory impact assessment is essential.

ABTA has already made a proposal to the CAA that any trust applies only to the value that would have been payable, in the normal course of the agency agreement's terms, to the ATOL holder. This would reduce any unintended consequences and impact on the retailer in respect of their commission earned and due.

The impact on a retailer, working on a commission basis, who will generally receive none of the income earned until the balance is collected, could be very serious and lead to consequential failures, particularly where a large ATOL principal is involved. SMEs and Microbusinesses will be particularly exposed to secondary failure.

#### **5. Accredited Bodies, Home Workers, and Managed Branches**

The approach being adopted by the CAA in relation to Accredited Bodies appears to be drawing a number of previously unregulated persons and entities in to the ATOL system.

We do not believe that this either reflects a correct legal analysis or is necessary.

For the avoidance of doubt, we have no issue with the concept of Accredited Bodies. The system will allow businesses and indeed a proportion of our Members to access a compliance solution for ATOL.

We understand that the draft regulations are proposed to exempt:

- (a) officers of a company (both directors and company secretary) which holds an ATOL;
- (b) partners in a partnership which holds an ATOL;
- (c) members of a limited liability partnership which holds an ATOL;

- (d) employees of the ATOL holder (individuals working under a contract of service or apprenticeship, whether express or implied, and [if it is express] whether oral or in writing); and
- (e) agency workers as defined in regulation 3(1) of the Agency Workers Regulations 2010 (for example, a student signing up with a temp agency during the summer holidays and being sent by the agency to provide cover at a Thomas Cook shop)

In our view, as a matter of law and common sense, what each of these categories of person has in common is that they serve another defined legal entity which, as the ATOL holder, is in the legal relationship with the consumer. All of the consumer's transactions are effectively with the ATOL holder. The consumer and the ATOL system have no exposure in respect of the exempt person.

However, we do not believe that this list of proposed exemptions takes account of other contractual constructs which are commonplace and which do not expose the consumer or the ATOL system to any additional risk.

If, for example, an organisation were to outsource the management of certain functions to a third party, we do not believe that in any way changes the nature of the legal relationship between the organisation and its customers. Indeed, both the CAA and ABTA do so in a number of areas of our own operations.

This is a common business practice through commerce and there is a direct parallel in the travel industry with a particular type of commercial business model where the consumer still deals exclusively with the ATOL holder, but the ATOL holders 'office' is staffed by another organisation. Such organisations may take the form of self-employed homeworkers, managed branch companies or call centre operators.

When customers call to make payments to an ATOL holder and the call is taken by an organisation such as Capita, Xansa or Accenture, who process the payment for the ATOL holder, we do not believe that it is being suggested that those companies should hold an ATOL in order to accept payment. Yet, if we understand the proposal correctly, this would be the case unless the ATOL holder became an Accredited Body.

We can see no legal or practical difference to the position with those businesses, home workers, managed branches, outsourced call centres and those persons proposed to be exempted. The reason is that such persons do not make available product or accept payments on behalf of the ATOL holder, they do so in the name and legal person of the ATOL holder.

We believe that the current approach represents a completely unnecessary regulatory burden on many Members. The business model and legal construction of such businesses takes full responsibility for the networks of managed branches and homeworkers and call centres as if they were their own employees/subsidiaries so far as the consumer is concerned.

Consumers are in a legal relationship, as agent or principal, with and only with the ATOL holder.

We believe that such businesses should be exempt under the Regulations and should not therefore be required to either hold an ATOL or be a member of an accredited body.

## **6.20 Flight Only Sales**

Agents retailing scheduled airline flight only sales will be required to do so under an ATOL for the first time, unless covered by the limited Airline Ticket Agent exemption. While we welcome the CAA's efforts to address this problem with the IATA exemption announced on 12 March, we don't believe that this exemption is a full solution to the problem identified.

We do not believe that this fundamental change to the Ticket Provider exemption has been the subject of any meaningful consultation. The DfT consultation proposed a 'Right to Fly' mechanism which has not been taken forward for good reason. This latest proposal did not form part of that consultation and has only been made known to the industry very late in the day.

The Airline Ticket Agent exemption does not include sales by agents with payment made in full and directly to the airline at the time of booking. These fall completely outside IATA's Billing & Settlement Plan (BSP) i.e. no frills airlines where no credit is being given and where formal agency agreements do not exist.

The effect of this exemption as drafted is to place an additional cost and compliance burden on agents selling flight only arrangements outside BSP. The agent's only option to recover such ATOL compliance costs is through service charges/fees/mark ups, making them uncompetitive in a fairly pure commodity sale. Alternatively, the agent will adopt an 'agent for the consumer' trading model.

The effect of this will be to drive business, on price, direct to airlines where the consumer is, in any event, unprotected for the same product purchased directly from the airline.

This will have a substantial and detrimental effect, which has not been subject to any regulatory impact assessment. We do not believe that any evidence has been produced that shows the rationale for this change, or proves that it is necessary, or is a proportionate response to any perceived, current regulatory failing.

There is great concern within the agent community and we have been contacted by Members and Consortia alike on this matter.

In order to preserve at least some of the benefits of the current Ticket Provider exemption we would propose the following:

- (a) A credit exemption as proposed previously by the CAA in connection with business travel sales. We see no reason why such an exemption could not be extended to all sales where there is no pre-payment by a consumer.

- (b) A full-payment to the airline exemption where payment is made in full to the airline in exchange for a right to travel.

In either case, there is no additional risk to the consumer than when dealing with an airline. In the first case, there is no risk at all and in the second case, no additional risk to that of booking directly with an airline. We recognise that the CAA would require some confirmation from airlines that they would not seek to avoid carrying passengers where full payment had been received and would expect the CAA to make such enquiries as part of their discussions with airlines in respect of Airline Ticket Agent provisions.

It is important, in our view, that intermediaries do not become a back door method for the financial protection of airline seat only. Such an approach has not been consulted on.

### **Other relevant matters**

#### *1. Definition of Agent for the Consumer sales*

We believe that greater clarity is required on this in order to avoid confusion or evasion.

It is common ground that the use of a consumer's card for payment direct to a supplier or principal does not, in itself, define the behaviour of an 'Agent for the Consumer'. The use of card payments is common place with Packages, Flight Plus arrangements and Flight Only.

It has been suggested that it is not appropriate for the DfT or CAA to describe what is not licensable. While as a general principle we accept the point that this is a sound approach, we do not think that the general principle is the right approach on this occasion.

This is because 'agent for the consumer' sales have been recognised by the DfT and CAA as a serious issue and one in relation to which legislation is required. The CAA have indicated that the starting point on enforcement will be that such sales would be inconsistent with a travel company holding themselves out as able to make available flight accommodation.

These sales are therefore a very specific issue and we believe that they must be properly defined in order to achieve regulatory certainty and in order to ensure that they are properly addressed through the Civil Aviation Bill.

#### *2. Details of how ATOL is a 'Permissive regime' allowing opt-ins to Flight Plus protection outside the defined 'request' to book period and other criteria*

We would support a proposal to allow travel companies to opt-in to the ATOL regime where their Flight Plus sales do not fall within the 48 hour period but clarity is needed as to how this will work:

- (a) For general consumers

- (b) For corporate arrangements (allowing SMEs and others to protect business travel customers)

### 3. *Financial criteria and bonding levels*

We are concerned that the existing minimum bonding criteria utilised by the CAA for principals is proposed to be applied to retailers being brought in to the scope of the ATOL system for the first time.

We do not believe that this approach reflects a risk based approach or is justified.

ABTA argued strongly, on principle, in support of the DfT that there should be no moratorium for Microbusinesses, in order that consumers were protected consistently and those businesses were not excluded from the scheme of protection supporting consumer confidence.

However, we would expect the CAA to approach the question of security in a way that does not adversely affect (or exclude) SMEs and Microbusinesses and that is proportionate and justified.

### 4. *ATOL Certificate pro-forma documents to send to our members for their systems*

We would like the ability, for Members generally, to source ATOL Certificates 'online' either from the CAA or, for those involved in the ABTA-ATOL Joint Administration Scheme, through ABTA.

We see a number of advantages flowing from this, including:

- a member service for those without the technical facilities to issue in-house, which should be of particular assistance to SMEs and Microbusinesses
- Reconciliation of ATOL Certificates issued with protected passengers and APC
- Supports monitoring and protection against overtrading
- Foundation for ATOL Certificate Registry

### 5. *Responsibilities of Flight Plus Arrangers*

We remain concerned that there is a lack of clarity around the obligations on a Flight Plus Arranger when there is a change to one of the services to be supplied under the Flight Plus.

We have responded previously that this issue already causes difficulties under the Package Travel Regulations and we can foresee future problems arising under Flight Plus.

We will be providing guidance to our Members based on our experience of similar difficulties raised under the Package Travel Regulations but would urge the CAA and DfT to recognise that a proportionate response to these responsibilities is required to avoid imposing unsustainable obligations on Flight Plus Arrangers which may ultimately result in more travel company failures.

## 6. Channel Islands and the Isle of Man

In the DfT's response to ABTA's original questions, it was stated that:

*"We have taken advice on the position of such sales and, as we understand it, the regulatory position is straightforward. To use the example of Jersey, we could envisage a sale where a company resident in Jersey sells a holiday to a resident in the UK. In this case, the sale would have been made available in the UK and, consequently, ATOL would apply. However, where the same Jersey-based company made a sale of a holiday to a Jersey resident, this would not be made available in the UK and therefore ATOL would not apply. From a legal standpoint it would not be possible for companies based in Jersey to opt in to ATOL for sales to residents in the Channel Islands and this would apply across the various other British crown dependencies."*

This appears to be at odds with the position being articulated by the CAA as recently as last week when the following advice was given in writing to an ABTA Member:

*"Where the customer – this is the person who pays, not necessarily the one who will travel – is outside the UK when the booking is made, the policy of the CAA is that customers should be protected by the ATOL bond and by the Air Travel Trust only if both of two tests are met: the first leg of the licensable journey must depart from the UK, and the flight or holiday must be advertised primarily in the UK."*

*"Bookings made by a person outside the UK (by post, telephone, or through a travel agent in the UK or elsewhere) are therefore licensable, provided that they relate to flights or holidays from the tour operator's main UK brochures and the flights or holidays are UK-originating. Many bookings made by customers in the Republic of Ireland and the Channel Islands fall into this category."*

*"However, if the customer books another sector from a non-UK point in order to connect with a UK-originating holiday, for example, a Jersey-Gatwick flight or a ferry ticket to connect with a Gatwick-originating holiday, the Gatwick-originating holiday will be protected by the ATOL bond only if the connecting sector is documented separately. If the connecting sector and the Gatwick-originating holiday are documented together, they will be exempt and not protected by the bond."*

There appears to be a fundamental contradiction between the DfT's position and the CAA statement that it is the policy of the CAA that customers should be protected by the ATOL bond and the Air Travel Trust in such circumstances.

The ABTA position is that a position based on the CAA's statement as outlined above – which we believe reflects the longstanding treatment by the CAA of the British Crown Dependencies – is preferable.

## CONCLUSION

The concerns detailed within this consultation response are significant, yet solutions are achievable. We hope to continue in constructive dialogue with the CAA and the Government over the practical implementation of the DfT's ATOL reforms in order that solutions are found, and that the reformed scheme is workable.

We remain concerned that fundamental aspects of the scheme (as detailed within this document) remain unclear; with the implementation date fast approaching, we urgently call on the CAA to provide badly needed clarity while ensuring that implementation does not happen so swiftly that the quality of the implementation of the reforms is compromised.



21 March 2012



Proposal to amend the CAA's Official Record Series 3, including ATOL Standard Terms, and Consultation on the proposed change to the APC payment period

**AITO Response to Consultation**

The Association of Independent Tour Operators (AITO) would like to thank the CAA for being given the opportunity to participate in the Industry Working Group over the past few months to examine in detail the proposals for ATOL Reform.

We believe that substantial progress has been made in making the proposals workable for the industry. There remain, however, some key concerns.

We do not intend to repeat all the points AITO has already made to the initial consultation document and at meetings. We would, however, like to highlight four particular areas where we feel strongly that change is still necessary.

**1. Agency Agreements - implementation date should be 1<sup>st</sup> October, 2012**

We fully support the introduction of agency agreements. We do not, however, believe it is practical to introduce these by 30<sup>th</sup> April, 2012.

The CAA is unlikely to make the industry aware of its final decision to the Consultation ending 22<sup>nd</sup> March 2012 before the end of March at the earliest. Only when we are notified of the decision on what must be included in the agreements can lawyers produce agency agreements for tour operators to present to their agents. This will inevitably take some time and, in practice, it is unlikely that tour operators will even finalise the wording of agreements with their lawyers until the end of May. The operators then have to pass their proposed agreements to their agents who, in turn, have to be given a reasonable amount of time to assess the terms. One needs to bear in mind that travel agents probably each deal with well over 100 suppliers and will be faced with a flood of agreements from principals to digest while, at the same time, running their businesses during what is a very busy time of the year. Consequently, we believe that a more practical date for the enforcement of agency agreements would be 1<sup>st</sup> October, which coincides neatly with the introduction of the certificates, too.

**2. Package ATOL Certificates - guidance notes on timing of their issue**

When consumers book holidays by phone direct with a tour operator, it is not always practical for the operator to post the Package Certificate on the same day that the booking is made. The guidance notes need to be changed so that mailing is allowed up to 48 hours later.

To explain, many small tour operators have daily invoice runs and they will be adapting their systems for these to incorporate the production of the certificate. These production runs usually take place at the end of the working day after their office mail has been collected, meaning that they will be unable to comply with the same day rule.

Other operators take bookings after the time of their daily post collection and will not run invoices until the end of the following day, i.e. 24 hours later again after the post

for that day has been collected, making the eventual invoice posting time 48 hours after the booking was taken.

Without an amendment to allow for mailing of certificates up to 48 hours after the time of booking, which is needed for purely practical reasons, there will be mass non-compliance.

3. Package ATOL Certificates – issue of certificates by travel agents

Travel agents, especially those which do not hold an ATOL, need to be able to download the ATOL certificate template directly from the CAA website. It will create great confusion for agents if they have to be supplied with blank certificates by all their many suppliers, and will lead to incorrect certificates being issued to consumers.

4. Introduction of financial protection for licensable and non-licensable turnover by one body

AITO is extremely disappointed that proposals from the CAA and DfT have not, to date, included the possibility for those ATOL holders with small amounts on non-licensable turnover to be able to obtain protection for their total turnover via one body, ie the CAA.

This idea was originally proposed in the Better Regulation Initiative in 2006 and subsequently consulted on in 2010 by the DfT. The proposal received a positive response. It has now also been recommended in the report by the Tourism Regulation Task Force to John Penrose, Minister for Tourism, in January 2012. The Prime Minister only last week spoke of fulfilling the recommendations made in this latest report.

We note with interest that the CAA is close to finalising an arrangement with ABTA for travel agents with new Flight Plus ATOL licences to have just one body handling the administration work involved. We regard it as very unjust that tour operators acting as principals which comply fully with the Package Travel Directive are currently denied the opportunity to reduce their considerable administrative burdens in this way.

AITO and its bonding arm AITO Trust would thus welcome discussions with the CAA to enable the introduction of a one-body financial protection scheme for its members.

*To conclude, AITO hopes very much that these four issues will be looked at seriously and taken on board in the final document produced by the CAA.*

Noel Josephides  
AITO Director

21<sup>st</sup> March, 2012

**Response of the Board of Airline Representatives in the United Kingdom (BAR UK)**

**in respect of**

**ATOL Reform –  
Further information on a proposal to amend the CAA’s Official record Series 3,  
including ATOL Standard Terms**

**INTRODUCTION**

The Board of Airline Representatives in the United Kingdom (BAR UK) is an airline industry association, and represents over 80 airlines that transact business in the UK.

We are very pleased to be able to respond to this consultation.

Our response is limited to the item that directly involves airlines in their dealings with ATOL-exempt agents, to be known as Airline Ticket Agents.

**RESPONSE**

**Paragraph 6.20 - Airline Ticket Agent**

This response is based on high-level terms as the details emerged very late into the consultation process.

**1) Failure of Airline Ticket Agent (ATA) – limitation of liabilities**

In the event that (a) an Airline Ticket Agent fails to remit funds of ticket sales to our member airlines, and (b) the client has paid in full for air travel in accordance with the terms and conditions of the airline, then that airline may, without any legal requirement so to do, carry that client without further monies being required.

However, such performance does not apply in the instance where the ticket was issued by the ATA on behalf of another travel agency, or where the ATA itself has sold a ticket that is not in accordance with the terms and conditions of the airline.

Airlines will not be used as insurer of last resort for any agent who claims ATOL exemption.

**2) Written agency agreements between airlines and their appointed ATAs.**

The original proposal that ATAs would be required to show written agreements for every airline for whom it issues tickets was impractical, and possibly of little value.

It is pleasing to note that for BAR UK airlines, handling ATA sales through the IATA BSP accreditation and appointment system, separate written agreements are not required.

Such a pragmatic outcome reflects the cooperative approach to the issue by CAA/DfT on one hand, and IATA, individual airline members and BAR UK on the other.

n.b. It needs to be noted that a large proportion of IATA-accredited agents do not enjoy appointment by every IATA airline. Consequently, should such an agent be asked to issue a ticket by an airline for whom they are not appointed, the ATA exemption status would not apply.

BAR UK will be pleased to clarify its responses, or provide any additional information should it be required.

END

DRAFT

**From:** [Davis Kevin \(CCP\)](#)  
**To:** [ATOL Consultation](#)  
**Subject:** BIS response in respect of exemption from Atol of those holding a Republic of Ireland license  
**Date:** 19 March 2012 18:06:56

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## BIS Response to CAA Consultation

Proposal to amend the Civil Aviation Authority's Official Record Series 3, including ATOL Standard Terms, and Consultation on a proposed change to an ATOL Protection Contribution payment period - 9 February 2012

### Republic of Ireland Exemption

BIS is currently involved in ongoing discussions with the Republic of Ireland (RoI) authorities on the application of the RoI licensing system as implemented by the Irish Commission for Aviation Regulation, designed to meet the requirements of the Package Travel Directive (90/314/EEC) in respect of financial protection of consumer prepayments and for repatriation in the event of the package organiser's bankruptcy.

We are concerned that the RoI seeks to impose its national requirements on package organisers whose products include a flight or other transport departure from the Republic but who do not sell or offer to sell their products in the Republic and who are in any case required to put in place the required protection under their own national laws.

In the case of package organisers based in the UK and selling or offering for sale packages in the UK, the UK Package Travel Regulations (SI 1992/3288) apply irrespective of where any transport element of the package is provided. Such package organisers must have in place adequate arrangements in order that they can meet the requirement in Regulation 16 that they are "at all times able to provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency." Regulation 16 applies notwithstanding that, for whatever reason, organisers are exempt from holding an Atol in respect of making available flight accommodation in the UK which departs from the Republic as part of a package.

We believe the imposition of the RoI licensing and bonding requirements in respect of package arrangements sold or offered for sale in the UK is not compatible with single market objectives and raises questions of compatibility with the Services Directive as it relates to the application of authorisation schemes to service providers from other member States. It will be appreciated that the existence of the exemption from Atol for those licensed by the Republic in respect of packages departing the Republic could be read as the UK accepting the position adopted in Republic legislation.

We understand that the exemption was introduced in order that UK business would not be subject to both the Republic regime and the Atol regime in respect of products which apparently fall within both regimes; however, we understand that no reciprocal arrangement exists in the Republic. Furthermore, we wonder whether the exemption was formulated on the assumption that exemption from

Atol amounts to exemption from the requirements of the Package Travel Regulations. As mentioned above, the exemption from Atol does not exempt the relevant businesses from the requirement in the Package Travel Regulations for packages sold or offered for sale in the UK. These businesses must, irrespective of whether they are licensed by the Republic, have in place arrangements which meet the requirements of our domestic regime. Where they are exempt from Atol they must put in place other arrangements as set out in the Regulations. I would mention that we do not dispute the RoI right to require a licence in respect of packages sold or offered for sale in the Republic and we recognise that the RoI system is adequate to protect UK consumers who may buy packages sold or offered for sale in the Republic (just as we recognise protection measures in place in all other member States when the organiser is established in another member State and the measures required by that member State cover the package being sold – see Regulation 16(2)(a)).

Given the situation described above we would argue that the Republic of Ireland Exemption from Atol should not apply to packages. Removal would seem to fit with the rationale expressed in paragraph 2.5 of the Consultation Document for removing packages from the Overseas Exemption. Making the relevant arrangements not subject to Atol simply means that business is required to put in place alternative means of protection in respect of packages.

We understand that the businesses affected by the exemption for the most part already hold Atols in respect of their other (non-departing from the RoI) business and that covering this business under their Atol would be less onerous than arranging alternative means of protection.

We do not know what the outcome of our and the industry's discussions with the RoI Government will be, but we hope, pending revision of the Package Travel Directive, that, even if businesses must acquiesce to being licensed under the Republic's system, the issue of "double bonding" UK sales can be overcome (i.e. that the Republic would recognise Atol and other UK protection as adequate to meet the relevant conditions of their licence). If we fail to make progress, we remain of the view that the least onerous option for British business would be to cover the relevant air-package sales under an Atol, rather than make alternative arrangements to meet the requirements of the Package Travel Regulations.

We would be happy to discuss this further, and have informed the relevant CAA Policy Team of our views separately. We would also mention that we have discussed our position briefly with ABTA.

Kevin Davis  
Policy Manager  
Consumer and Competition Policy  
The Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET

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**From:** [Clive & Tracy](#)  
**To:** [ATOL Consultation](#)  
**Cc:** \_\_\_\_\_  
**Subject:** ATOL Reform  
**Date:** 22 March 2012 11:17:42

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Some comments from Greatdays Holidays

1. I am assuming the new ATOL Standard Terms (AST's) will come into effect on 30 April 2012  
Yet many of them refer to the ATOL Certificate (AC), which currently isn't scheduled to come into effect until 1 October 2012.  
Will there be "interim AST's" between 30 April and 1 October, or will the AST's be reworded to reflect the 1 Oct implementation date for AC's?
2. Similarly, Regulation 30 for Agency Agreements comes into effect on 30 April, yet refers to AC's in ways that cannot be complied with until 1 October
3. AST1.11 defines the AC for a Package and includes "Total Price of Package"  
the current draft AC for a Package does NOT include the price of the package
4. AST 3 Note (a) defines when a passenger has departed but does not clearly cover the case of departing the UK by "non-air" transport and returning to the UK by air transport

Rgds  
Clive Darlaston



## **Proposal to amend the CAA's Official Record Series 3, including ATOL Standard Terms, and Consultation on a proposed change to an APC payment period**

**SPAA Response March 2012**

### **INTRODUCTORY REMARKS**

Established in 1921, the Scottish Passenger Agents' Association (SPAA) is the world's oldest travel trade association. Today the SPAA is Scotland's largest travel trade association and represents the interests of Scotland's major Corporate and Leisure travel agents, working alongside our Associate Members, which include many of the world's leading airlines, tour operators and cruise lines.

The SPAA has been involved in a number of previous Consultations in conjunction with Government on the subject of ATOL reform and we continue to be committed to the principle of being able to achieve a fair, comprehensive, clear and transparent system of consumer financial protection for all travellers and to work with both the CAA and Government to achieve this

The SPAA has long campaigned for a more comprehensive system of protection, which would incorporate all holidays and also include airlines, and we once again welcome the opportunity to be able to provide our input to the latest amended Consultation. We would like to continue to give our assistance in trying to achieve the best possible solution for ATOL reform.

The SPAA is pleased to have the opportunity to continue dialogue with the Civil Aviation Authority (CAA) over the practical implementation of the Department for Transport's (DfT) reforms to the Air Travel Organisers' Licensing (ATOL) scheme.

The SPAA welcomes the CAA's and DfT's positive and co-operative engagement with the industry on a range of pressing implementation challenges. This submission seeks to identify these challenges, and offer solutions where possible.

The DfT's reforms of the ATOL scheme will mean a very significant systems and process changes for many of our members and we are keen to continue to have a dialogue to help find solutions that will incur the least amount of problems to the running of our members' businesses via a smooth and adequate transition period which will result in benefits for the consumer, the industry, and Government.

The SPAA is broadly supportive of the DfT's and CAA's objectives in developing the scope of the ATOL scheme to protect all consumer holidays, in due course to include those put together by airlines, thus achieving a level playing field for those competing in the same market place.

The SPAA would also like to endorse many of the comments made by ABTA in its submission

It is still the opinion of the SPAA and its' members that the reform still does not go far enough and we would not only urge for the inclusion of airlines at the earliest possible time but we would also be remiss if we did not continue to press the CAA and Government to ultimately achieve adequate and clear protection for all passengers travelling by air.

The main aims of the Government when looking at amending the current ATOL arrangements, were to provide complete clarity for the consumer and also total protection combined with removing the deficit of the ATT fund. The SPAA still feels that it is time to re-assert its longstanding vision for a system of financial protection via the introduction of a simple £1 levy on every air-based arrangement, to be collected by all travel providers including all airlines and we implore the Dft and the CAA to revisit this option as soon as the implementation of the current round of changes have been completed and as a matter of urgency

## **EXECUTIVE SUMMARY**

While the details of SPAA's comments are contained in the body of this document, there are key concerns that have emerged, and are worth noting initially and are details as follows.

Our first major point of concern relates to airline holiday sales and arrangements made on an agent for the consumer basis which will currently remain outside of the scope of the CAA Standard Terms consultation and we would reiterate that we absolutely feel that all air based holidays should be included regardless of how they are booked.

This has been the starting point for our call for an extension of consumer protection. We believe the scheme cannot be made fairer or successful if at a minimum, airline holiday sales are not brought within scope. The airline-led unprotected flight holiday market is substantial and growing and any solution that excludes airline holidays beyond the short term can neither be effective in terms of consumer protection, nor can it be fair competitively. There must be a level playing field

SPAA welcomes that the scope of the Civil Aviation Bill includes Section 94 which will enable the Secretary of State to include holidays sold by airlines and arrangements made on an agent for the Consumer basis within ATOL protection. The SPAA believes this to be a major step in the right direction for consumer protection. We continue to urge the Government to stick to its commitment to consult and to implement this addition at the earliest possible time to include holidays sold by airlines within ATOL during 2013, and subsequently, to bring airline holiday sales within the scope of ATOL .

Key concerns raised within the body of this response include:

### **Business Travel Exemption and a Permissive Regime**

ABTA is calling on the CAA to produce guidance that offers good legal and practical clarity in relation to the definition of 'Corporate Bodies' in reference to the business travel exemption proposed.

While we welcome the exemption, we are proposing that ATOL holders be given the authority to voluntarily 'opt in' sales to corporate bodies under a permissive regime.

### **Agency Agreements & the Proposed Implementation Timetable**

We believe that very serious consideration should be given to delaying the requirement for the implementation of Agency Agreements due to the considerable amount of work required by agents and operators to introduce and/or update these agreements. The regulatory impact assessment focussed on the impact on principals, which ignores the

greater impact on and issues for agents.

While we remain supportive of compulsory agency agreements, and we recognise ABTA's intention, to implement a complementary change to the ABTA Code of Conduct to reflect this, we believe that the implementation impact on principals and agents has been fundamentally underestimated.

We feel that a reasonable and reasonable and practical proportionate period implementation period should be delayed until the 1 October 2012, in line with ATOL Certificates.

Many industry participants do not have up to date formal agency agreements in place and many suppliers have no 'base' document on to which to create an interim arrangement. The possibility of achieving the proposed deadline is further hampered by the fact that this issue does not close until 22 March and, as a result, the industry is likely to have no more than four weeks for implementation. This is not reasonable and a short period of informal non enforcement does not, with respect, address that issue properly or adequately.

### **Pipeline Monies**

The SPAA is also concerned that any change to the legal status of pipeline monies as outlined in the proposed Standard Terms will affect the current security structure of its Members' banking and merchant services facilities.

The impact on SMEs and microbusinesses could be particularly adverse, potentially increasing the risk of secondary failures within this segment of the market.

### **Flight Only Sales**

We welcome the CAA's efforts to address the problem of flight only sales with the Airline Ticket Agent (IATA) exemption announced on 12 March; however, we do not believe that this exemption is a full solution to the problem identified.

The Airline Ticket Agent exemption excludes sales by agents with payment made in full and directly to the airline at the time of booking which fall completely outside IATA's Billing & Settlement Plan, i.e. no frills airlines where no agency agreement exists (and in some cases would be extremely difficult to achieve but would questions the need for these transactions to be brought into this area as no credit is being and there is no risk to the customer

We would therefore ask that the CAA adds for these sales to be included within the proposed exemptions.

## **DETAILED POINTS ON INFORMATION PAPER CONTENT**

The points below serve to supplement the concerns initially raised in our December 2011 submission to the CAA's ATOL Reform: Information Paper consultation.

### **2.2 Business Travel exemption range**

(a) Definition of a Corporate Body – ABTA believes that there needs to be good legal and practical clarity in relation to the definition of 'Corporate Bodies', with a definite list set out in guidance. We would welcome further guidance from the CAA.

(b) Source of payments – A number of ABTA & SPAA Members have questioned the significance of the contracting party as opposed to the paying party. This is because bookings for Corporate

Bodies may be paid for by employees utilising personal credit cards and then claiming on expenses, for example.

We agree with ABTA's view is that the defining issue is the contracting party. If it is a corporate body, the sale is exempt and, in any event, the employee will be able to claim reimbursement as normal from their employer. The risk remains with the corporate body.

(c) Ability to 'opt in' to ATOL Flight Plus sales to Corporate Bodies – A number of ABTA Members have asked if they could voluntarily 'opt in' sales to corporate bodies under a permissive regime, presumably to assist SMEs and Microbusinesses when tendering to obtain corporate accounts.

This has also specifically been raised in connection with school trips where the contracting party might be the Local Authority. This matter has previously been discussed and it was agreed that there was no intention to exclude such sales from the scope of protection.

#### **4.2 Written Agency Agreements – Implementation Timetable**

We believe that very serious consideration should be given to delaying the requirement for the implementation of Agency Agreements to the 1<sup>st</sup> October 2012 in line with the introduction of the ATOL Certificates.

We are very supportive of compulsory adherence to written agency agreements and indeed we fully support ABTA's proposed implementation to change to the ABTA Code of Conduct.

However, we believe that the implementation impact on principals and agents has been fundamentally underestimated and the very short timescale allowed will be very difficult to adhere to. The regulatory impact assessment focuses just on the preparation time within the principal but does not take into account whether the implementation is achievable.

Our understanding is that Agency Agreements (as opposed to exchanges of communications dealing with commercial terms) are currently far from the norm.

Principals are unlikely to finalise new Agency Agreements until the CAA Standard Terms consultation is completed. ABTA has said that it would be hesitant about producing 'model' terms for Members before then. This will then only leave a matter of a few weeks for implementation in advance of 30 April 2012.

Retail agents (particularly SMEs and Microbusinesses) will then be receiving large numbers of Agency Agreements in a short period of time and will be seeking to review them, take advice and negotiate them before 30 April 2012.

There is a real danger that the Agency Agreements including revised commercial terms, are rushed or pressured through utilising the compliance deadline as leverage.

In our view, additional time will allow this process to be completed properly and fairly. While we support a swift implementation of agency agreements, it is most important to ensure that agency agreements are implemented properly and fully and fairly, rather than simply speedily.

In order to ensure a comprehensive and successful implementation, a simple extension of the deadline to the 1st October 2012 could be adopted, in line with ATOL Certificates. In our consultation response, we argued for a delay for ATOL Certificates and we feel that the same

applies to the written Agency Agreements due to the logistical challenge of meeting the earlier deadline.

## **5. Pipeline Monies**

We remain concerned that as a matter of common sense and law, pipeline funds held by retail travel agents cannot be held on trust for the ATT and, at the same time, as any form of security for either normal banking facilities or in respect of card merchant services facilities, either as cash security or in the form of delayed payments/retentions.

It must follow from any change to the legal status of those funds that the current security structure of Members' banking and merchant services facilities will be affected. The same funds cannot, at the same time, be providing security to two different parties with conflicting interests (in the event of the failures of the ATOL holder). The impacts may be difficult to assess, but a proper regulatory impact assessment is essential.

ABTA has already made a proposal to the CAA that any trust applies only to the value that would have been payable, in the normal course of the agency agreement's terms, to the ATOL holder. The SPAA agrees that this would reduce any unintended consequences and impact on the retailer in respect of their commission earned and due.

The impact on a retailer, working on a commission basis, who will generally receive none of the income earned until the balance is collected, could be very serious and lead to consequential failures, particularly where a large ATOL principal is involved. SMEs and Microbusinesses will be particularly exposed to secondary failure.

## **5. Accredited Bodies, Home Workers, and Managed Branches**

The approach being adopted by the CAA in relation to Accredited Bodies appears to be drawing a number of previously unregulated persons and entities in to the ATOL system.

We do not believe that this either reflects a correct legal analysis or is necessary. In agreement with ABTA and for the avoidance of doubt, we have no issue with the concept of Accredited Bodies. The system will allow businesses and indeed a proportion of our Members to access a compliance solution for ATOL.

We understand that the draft regulations are proposed to exempt:

- (a) officers of a company (both directors and company secretary) which holds an ATOL;
- (b) partners in a partnership which holds an ATOL;
- (c) members of a limited liability partnership which holds an ATOL;
- (d) employees of the ATOL holder (individuals working under a contract of service or apprenticeship, whether express or implied, and [if it is express] whether oral or in writing);
- (e) agency workers as defined in regulation 3(1) of the Agency Workers Regulations 2010 (for example, a student signing up with a temp agency during the summer holidays and being sent by the agency to provide cover at a Thomas Cook shop)

In our view, as a matter of law and common sense, what each of these categories of person has in common is that they serve another defined legal entity which, as the ATOL holder, is in the legal relationship with the consumer. All of the consumer's transactions are effectively with the ATOL holder. The consumer and the ATOL system have no exposure in respect of the exempt person.

However, we do not believe that this list of proposed exemptions takes account of other contractual constructs which are commonplace and which do not expose the consumer or the ATOL system to any additional risk.

If, for example, an organisation were to outsource the management of certain functions to a third party, we do not believe that in any way changes the nature of the legal relationship between the organisation and its customers. Indeed, both the CAA and ABTA do so in a number of areas of their own operations.

This is a common business practice through commerce and there is a direct parallel in the travel industry with a particular type of commercial business model where the consumer still deals exclusively with the ATOL holder, but the ATOL holders 'office' is staffed by another organisation. Such organisations may take the form of self-employed home workers, managed branch companies or call centre operators.

When customers call to make payments to an ATOL holder and the call is taken by an organisation such as Capita, Xansa or Accenture, who process the payment for the ATOL holder, we do not believe that it is being suggested that those companies should hold an ATOL in order to accept payment. Yet, if we understand the proposal correctly, this would be the case unless the ATOL holder became an Accredited Body.

We can see no legal or practical difference to the position with those businesses, home workers, managed branches, outsourced call centres and those persons proposed to be exempted. The reason is that such persons do not make available product or accept payments on behalf of the ATOL holder, they do so in the name and legal person of the ATOL holder.

We believe that the current approach represents a completely unnecessary regulatory burden on many Members. The business model and legal construction of such businesses takes full responsibility for the networks of managed branches and home workers and call centres as if they were their own employees/subsidiaries so far as the consumer is concerned.

Consumers are in a legal relationship, as agent or principal, with and only with the ATOL holder. We believe that such businesses should be exempt under the Regulations and should not therefore be required to either hold an ATOL or be a member of an accredited body.

## **6.20 Flight Only Sales**

Agents retailing scheduled airline flight only sales will be required to do so under an ATOL for the first time, unless covered by the limited Airline Ticket Agent exemption. While we welcome the CAA's efforts to address this problem with the IATA exemption announced on 12 March, we don't believe that this exemption is a full solution to the problem identified.

We do not believe that this fundamental change to the Ticket Provider exemption has been the subject of any meaningful consultation. The DfT consultation proposed a 'Right to Fly' mechanism which has not been taken forward for good reason. This latest proposal did not form part of that consultation and has only been made known to the industry very late in the day.

The Airline Ticket Agent exemption does not include sales by agents with payment made in full and directly to the airline at the time of booking. These fall completely outside IATA's Billing & Settlement Plan (BSP) i.e. no frills airlines where no credit is being given and where formal agency agreements do not exist. With payment being made at the time of booking there is no exposure to the client at all.

The effect of this exemption as drafted is to place an additional cost and compliance burden on

agents selling flight only arrangements outside BSP and in some cases could mean that many agents will be unable to offer their customers the full range of products and it would be extremely difficult to obtain agency agreements from many of the wide range of low cost carriers and or web sales that are in the market today.

The agent's only option to recover such ATOL compliance costs is through service charges/fees/mark ups, making them uncompetitive in a fairly pure commodity sale. Alternatively, the agent will adopt an 'agent for the consumer' trading model.

The effect of this will be to drive business direct to airlines where the consumer is, in any event, unprotected for the same product purchased directly from the airline based on the lower price as the agent and this give the airline an unfair advantage and no consumer protection.

This will have a substantial and detrimental effect, which has not been subject to any regulatory impact assessment. We do not believe that any evidence has been produced that shows the rationale for this change, or proves that it is necessary, or is a proportionate response to any perceived, current regulatory failing.

There is great concern within our membership and the trade in general on this matter.

In order to preserve at least some of the benefits of the current Ticket Provider exemption we would propose the following:

- (a) A credit exemption as proposed previously by the CAA in connection with business travel sales. We see no reason why such an exemption could not be extended to all sales where there is no pre-payment by a consumer.
- (b) A full-payment to the airline exemption where payment is made in full to the airline in exchange for a right to travel.

In either case, there is no additional risk to the consumer than when dealing with an airline. In the first case, there is no risk at all and in the second case, no additional risk to that of booking directly with an airline. We recognise that the CAA would require some confirmation from airlines that they would not seek to avoid carrying passengers where full payment had been received and would expect the CAA to make such enquiries as part of their discussions with airlines in respect of Airline Ticket Agent provisions.

It is important, in our view, that intermediaries do not become a back door method for the financial protection of airline seat only. Such an approach has not been consulted on.

We would also draw your attention to the following : -

### **1. Definition of Agent for the Consumer sales**

We believe that greater clarity is needed on this subject in order to avoid confusion or evasion. It is common ground that the use of a consumer's card for payment direct to a supplier or principal does not, in itself, define the behaviour of an 'Agent for the Consumer'. The use of card payments is common place with Packages, Flight Plus arrangements and Flight Only.

It has been suggested that it is not appropriate for the DfT or CAA to describe what is not licensable. While as a general principle we accept the point that this is a sound approach, we do not think that the general principle is the right approach on this occasion.

This is because 'agent for the consumer' sales have been recognised by the DfT and CAA as a serious issue and one in relation to which legislation is required. The CAA have indicated that the

starting point on enforcement will be that such sales would be inconsistent with a travel company holding themselves out as able to make available flight accommodation.

These sales are therefore a very specific issue and we believe that they must be properly defined in order to achieve regulatory certainty and in order to ensure that they are properly addressed through the Civil Aviation Bill.

2. Details of how ATOL is a 'Permissive regime' allowing opt-ins to Flight Plus protection outside the defined 'request' to book period and other criteria

We would support a proposal to allow travel companies to opt-in to the ATOL regime where their Flight Plus sales do not fall within the 48 hour period but clarity is needed as to how this will work:

- (a) For general consumers
- (b) For corporate arrangements (allowing SMEs and others to protect business travel customers)

## **2. Financial criteria and bonding levels**

We are concerned that the existing minimum bonding criteria utilised by the CAA for principals is proposed to be applied to retailers being brought in to the scope of the ATOL system for the first time.

We do not believe that this approach reflects a risk based approach or is justified. SPAA members also strongly support, on principle, DfT in their view that there should be no moratorium for Microbusinesses, in order that consumers were protected consistently and those businesses were not excluded from the scheme of protection supporting consumer confidence.

However, we would expect the CAA to approach the question of security in a way that does not adversely affect (or exclude) SMEs and Microbusinesses and that is proportionate and justified.

## **3. ATOL Certificate pro-forma documents to send to our members for their systems**

We would like to suggest that there should be an option for Members to source ATOL Certificates 'online' either from the CAA or, for those involved in the ABTA-ATOL Joint Administration Scheme, through ABTA.

We see a number of advantages flowing from this, including:

- a) member service for those without the technical facilities to issue in-house, which should be of particular assistance to SMEs and Microbusinesses
- b) Reconciliation of ATOL Certificates issued with protected passengers and APC
- c) Supports monitoring and protection against overtrading
- d) Foundation for an ATOL Certificate Registry

## **4. Responsibilities of Flight Plus Arrangers**

We remain concerned that there is a lack of clarity around the obligations on a Flight Plus Arranger when there is a change to one of the services to be supplied under the Flight Plus.

We have responded previously that this issue already causes difficulties under the Package Travel Regulations and we can foresee future problems arising under Flight Plus.

We will be providing guidance to our Members based on our experience of similar difficulties raised under the Package Travel Regulations but would urge the CAA and DfT to recognise that a proportionate response to these responsibilities is required to avoid imposing unsustainable

obligations on Flight Plus Arrangers which may ultimately result in more travel company failures.

## **CONCLUSION**

The concerns detailed within this consultation response are significant, yet solutions are achievable providing we continue to work together and achievable deadlines are met.

We hope to continue in constructive dialogue with the CAA and the Government over the practical implementation of the DfT's ATOL reforms in order that solutions are found, and that the reformed scheme is workable and we hope that consideration will be made to our pleas for all airlines sales to be ultimately included to provide clear and total protection for all consumers

We remain concerned that fundamental aspects of the scheme (as detailed within this document) remain unclear; with the implementation date fast approaching, we urgently call on the CAA to provide badly needed clarity while ensuring that implementation does not happen so swiftly that the quality of the implementation of the reforms is compromised.

We would also again ask for consideration for the extension of the current scheme to include all airlines sales to create a fully protected market place for all consumers which would provide total clarity and protection.

**For further information on any of these points please contact:**

Kevin Thom , SPAA President, \_\_\_\_\_  
Janice Hogarth, SPAA Secretary, \_\_\_\_\_

22 March 2012



Mark Rayner  
Consumer Protection Group  
Civil Aviation Authority  
K3, CAA House  
45-59 Kingsway  
London WC2B 6TE

22<sup>nd</sup> March 2012

Dear Mark,

**Re: ATOL Reform Consultation**

I refer to the CAA Further Information Paper and Consultation on changes to the ATOL Scheme.

I now enclose response to the consultation on behalf of the Thomas Cook Group.

Please feel free to contact me if you require further information or assistance in relation to this matter.

In the meantime, I look forward to seeing the revised ORS3, as well as the final version of the revised ATOL Regulations.

Yours sincerely,

A handwritten signature in black ink, appearing to read "A. Cooper".

**ANDREW V COOPER**  
**DIRECTOR OF GOVERNMENT AND EXTERNAL AFFAIRS**

### **Introductory Comments**

This response is made by the Thomas Cook Group plc (TCG), the second largest leisure travel business in the UK, and collectively the second largest ATOL holder. TCG, including its joint venture business with the Co-Operative Group and Midlands Co-Op is licensed to carry more than 5.3 million ATOL protected customers. In addition, TCG sells accommodation only arrangements both direct to the public and through retailers through its Hotels4U business – around 1 million holidays per year are sold by this business, and many of these sales will form part of Flight Plus arrangements under the new regime. Furthermore, Flythomascook, TCG's in house airline sells approximately 1 million seats direct to the public. As these are direct sell, relatively few will fall within the scope of the Flight Plus regime.

TCG continues to support the proposed reforms to the ATOL scheme, and the broadening of the scope of protection to include those purchasing "Flight Plus" arrangements. It does however view the current proposals as an interim step on the route towards comprehensive protection for leisure travellers. We therefore welcome the proposed measures within the Civil Aviation Bill, provided that government does subsequently exercise the proposed powers granted under the Bill to extend protection to the passengers of airlines. To that end, we would wish to express our concern as to the observations in paragraph 116 of the Department for Transport *Summary of Consultation Responses and Government Decisions*. We note that DfT believes that it will not be possible to incorporate airlines not based in the UK into the ATOL scheme. We regard this as a very serious omission, which will potentially negate many of the proposed benefits of extending the financial protection regime.

In responding to the CAA consultation, we have chosen to follow the order set out in the consultation document.

### **Class Exemptions**

We continue to question whether the *Code Share exemption* should be limited to IATA airlines only. We note that the CAA indicates that it could consider widening this exemption, but only if airlines "have arrangements to give the consumer equivalent assurance" to the IATA arrangements. However, there is no indication as to what assurance that consumers receive from IATA arrangements, and it is currently therefore impossible to make a counter proposal on this topic. We would welcome urgent and specific advice from the CAA as to what assurance it is expecting to see from non IATA carriers to enable them to meet the Code share exemption.

### **ATOL Certificate**

TCG has been an active participant in the ATOL Certificate Working Group, and has therefore been directly involved in the discussions in relation to the format of the ATOL Certificate. We have also welcomed the delay in implementation of the requirement to provide an ATOL Certificate, as we recognise the difficulties in making system changes to meet the originally proposed timescales. We believe that the policy and approach in relation to the issue of ATOL Certificates is in general now clear. We appreciate that there remain some questions of detail around the reissue of Certificates when arrangements are changed, but suspect that many questions will not be finally resolved until the process has been seen in operation.

We note that paragraph 3.10 of the consultation document imposes restrictions on the ability of ATOL holders to issue ATOL Certificates prior to the 1<sup>st</sup> October revised implementation date. In order to meet the deadlines originally specified, TCG began the process of making IT changes to comply with the new rules before the announcement of the extension to the launch date of ATOL Certificates. As a result, the system developments being undertaken by TCG have been designed to be

launched simultaneously, i.e the Certificates will be ready to be launched at the same time as the process for identifying flight Plus arrangements and collecting the APC for those arrangements. It will not be possible to launch part of the system changes only, and as such, TCG would wish to start issuing ATOL Certificates with effect from 30<sup>th</sup> April, at least in its retail stores. We are concerned that the wording of paragraph 3.10 implies that the CAA may not allow this to occur – which would create significant additional challenges in relation to compliance.

### **Agency Terms**

We welcome the decision that there will be no requirement to obtain hard copy signed agency agreements between all businesses within the travel industry, and believe that this has recognised the practical challenges that were highlighted by the original proposal.

We would highlight a concern that it is impossible to finalise the revised terms of any agency agreement until the CAA publishes the final terms of ORS3, which is unlikely be until 2<sup>nd</sup> April, 4 weeks before the implementation date of the new rules. From that point, as Principal we have to draft, or finalise the drafting of revised agency agreements, then arrange to distribute those agreements to all agents with whom we trade, and then follow up to ensure that the agents have received and understood the revised terms. This will be taking place at the same time as every other ATOL holder should be attempting to undertake similar measures with all their agents. Working on the basis that most agencies will deal with in excess of 100 ATOL holders, this will mean that those agents will need to read and review more than 100 agency agreements in a maximum 4 week window, and more likely, considerably less than that. We question whether that is realistic, achievable or appropriate.

TCG has taken a decision that at this stage, it will simply issue an addendum to its existing terms of trading containing the CAA requirements, but we are concerned that this may lead to some inconsistencies within our terms of trading. We do not believe that it is necessary for there to be a long extension to the timeframe for issuing agency agreements, but do question whether it is realistic or appropriate to expect all parties in the industry to have issued either new, revised agency agreements, or addenda to existing agency agreements prior to the 30<sup>th</sup> April start date of the new Regulations.

In relation to the terms specified in the proposed Agency agreement, we note that these have changed significantly since the first draft was published in November 2011, and are concerned that there may be further significant changes in the versions which will be published in final version of ORS3. This makes meeting the deadline of 30<sup>th</sup> April particularly challenging.

We would highlight a particular concern in relation to pipeline monies. We have had the benefit of seeing the draft response from ABTA to this consultation, and would echo their concerns in relation to this provision. In particular, we are concerned that the proposed changes may impact on banking and merchant service providers. Without knowing for sure what those impacts are, we would be very concerned about supporting and agreeing to any such changes.

### **Accredited Bodies**

TCG have been in discussion with the CAA regarding the proposed arrangements for Accredited Bodies, and are concerned as to the wording of the proposals. Again, we have had the benefit of seeing ABTA's comments on this topic, and would strongly endorse and support their views on this topic. We believe that the current proposals significantly extend the regulatory burden on a small group of businesses who are

already complying with the existing scheme of protection, and simply add cost to the affected businesses in achieving protection without addressing any real consumer risk.

In our own case, we have 2 separate businesses, Freedom Travel Group Ltd, whereby travel agency businesses market under their own name, but only take bookings and payment on behalf of the Freedom Travel Group; and Future Travel Ltd, under which homeworkers (generally self employed) take bookings and payment on behalf of Future Travel. In relation to the latter, it is difficult to see any circumstances which make the bookings made by that class of business any different to the bookings taken by employees of other parts of the retail businesses of TCG. We can see more distinction in relation to the Freedom Travel Group, but even there, all contracts are made with the ATOL holder, who is responsible for aspects of delivery, and we see no necessity for the creation of separate Accredited Body status for that business. To that end, we would echo the comments of ABTA, namely that "Consumers are in a legal relationship ....with, and only with the ATOL holder".

We would also wish to highlight our concern as to the requirement contained in paragraph 1.7 for an Accredited Body to maintain an up to date list of AB members which should be published on its website. If the CAA is to require those organisations using homeworkers to become Accredited Bodies, this will mean that they will be compelled to publish externally a list of homeworkers. Whilst we agree with the principle that the CAA should be aware of homeworkers in this way, we would highlight the competitive nature of the homeworking sector. There are numerous examples of homeworkers being "poached" to join different organisations. A requirement to publish names of homeworkers will do little more than increase the likelihood poaching taking place, and a consumer gains no benefit at all from seeing a list on a website of homeworkers. We would therefore recommend that this requirement is removed in the event that the CAA concludes that it wishes to continue to include homeworkers within the scope of the Accredited Bodies rules.

### **ATOL Standard Terms**

We are concerned that some of the proposed changes in relation to advertising now create a level of uncertainty for ATOL holders as to what will need to appear on adverts. TCG is currently running a brand marketing campaign on TV and other media, which relies on a series of images, with a simply captioned reference to Thomas Cook. A requirement to add audible wording "ATOL Protected", or some form of qualification to this would significantly reduce the effectiveness of that advertising, and we would suggest that this is inappropriate in any event. We are sure that this principle would apply to a number of other broadcast advertisements. In any event, an agent selling products, some of which are ATOL protected and some not, would have difficulties in trying to find a format of communication which is useful and achievable, and we would therefore suggest that there is little benefit in attempting to do so.

We note the comment in paragraph 6.12 of the consultation in relation to the provision of copy reports to the CAA. We would take issue with the claim that if a report is significant enough that an ATOL holder is aware of it, this creates an obligation to provide a copy to the CAA. In our own case, a very large number of reports have been produced on the TCG in recent months, whether directly for or on behalf of the company, or by analysts, brokers or others acting entirely independently – with the reports frequently based on little more than speculation or educated guesswork. We can accept the principle that if a report has been commissioned by or produced for and on behalf of an ATOL holder, it is reasonable that a copy should be provided to the CAA, but believe that if a report has simply been produced by a third

party, it is not necessary or appropriate for the ATOL holder to be under an obligation to provide a copy to the CAA.

We note that certain of the new Standard Terms will require changes to ATOL holder's booking conditions. In practice, any such changes cannot be incorporated into brochures and other materials to meet the 30<sup>th</sup> April deadline, and we would assume that it would be acceptable and appropriate for the ATOL holder to incorporate such changes as soon as reasonably practicable after the implementation of the Regulations. We would however welcome clarification and confirmation on this point. We would add that paragraph 1.13 appears to be addressing the Pipeline monies issue, and depending on the CAA view on this topic, there may be a need to change this term in any event.

We note the requirement in paragraph 6.16, reflected in AST5.8 for ATOL holders to make systems available after failure. We would question whether this is achievable, and would recommend that this be reviewed and reconsidered. Similarly, we question whether many ATOL holders would be able to comply with the requirement stated in AST 5.1 to hold a back up copy of their complete reservations system.

**Financial Criteria for grant/variation of an ATOL**

We have no issues with the proposed financial criteria, other than to observe that a very significant number of failures which have had hit the Air Travel Trust for significant sums have involved relatively small ATOL holders. As such, we welcome close financial regulation of all new ATOL holders, and believe that the CAA should not be afraid to seek adequate security from those new ATOL holders, since otherwise a significant part of the cost of any failure is borne by the large existing ATOL holders.

**Proposed Change to the APC payment period**

We very much welcome and support the changes proposed in the consultation.

**Process**

We would wish to highlight a small practical concern arising in relation to the proposed implementation date of 30<sup>th</sup> April. Like all ATOL holders who report monthly, our reporting data is based on calendar months. As such, we anticipate that we will struggle to produce reports for April excluding the 30<sup>th</sup>, and a separate report for the 30<sup>th</sup> April only. From a practical perspective, we would anticipate that most ATOL holders will look to report on a revised basis from 1<sup>st</sup> May, and would welcome the CAA view as to whether this is acceptable.

The following response were received via emails from Sarah Lacy at Travlaw LLP

## Agency Agreements

I've drafted up a 'template' agency agreement incorporating the terms below for use by Travlaw staff. Obviously, most ATOL holding principals won't want to use the standard terms in isolation, but will want to supplement them with (consistent) commercial terms to govern the remainder of the agency relationship. The Travlaw precedent aims to do just that, but I must say I've had to 'squeeze' the standard terms a little, in order to get them to fit. In particular, I've had to:-

- Make slight changes to wording eg change 'Principal ATOL Holder', to just 'Principal' (as not all agency sales governed by these agreements will be ATOL related);
- I have amended the 'Extent of the obligations' clause to say: 'The obligations set out in clauses [detail ATOL standard terms] extend only to the parties' conduct in respect of Licensable Transactions. Again, this is because most agency agreements will cover non-licensable transactions as well as licensable ones so to feature the wording as currently drafted would negate a large part of what the agreement would be intended to cover.
- I have not featured the wording of AST1 in the precedent as it would make the document very long and cumbersome for agents to consider. Is it intended that AST1 be included or merely referenced? I think it would be simpler and easier for agents to understand, if AST1 could be featured as a schedule to the agreement, as a separate document that agents could refer to aside from the agency agreement itself.
- I have amended 'managed' in para 2 of standard term 1 to 'mandated'. It looks to be a misprint?
- I was surprised to see reference to 'Confirmations' in term 6. I would have expected reference to 'Schedule of Information' and 'ATOL Certificate'?
- the need to add a definition of 'failure'/'fails'; The terms crop up in a few of the draft terms and whilst it's obvious to you or I what they mean in the context of what the CAA are trying to achieve, the lay meaning of the word is much wider. Eg, fails to provide the arrangements, fails to provide arrangements of a reasonable standard...etc. No harm in clarifying that it means financial failure in the sense of the appointment of an administrator, receiver etc or failing to meet its valid debts as they fall due?

I appreciate that these terms are still under consultation and the above may be ironed out in the final draft. Maybe my points could be considered as part of the consultation, or if not, whether I could have some specific 'clearance' to amend the terms as above and use them in a Travlaw precedent?

Sarah  
**Sarah Lacy**

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[www.travlaw.co.uk](http://www.travlaw.co.uk)

**Travlaw LLP**

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16 March 2012

*Contact*  
Ian Shayler

ATOL Reform: Further information on a proposal to amend the Civil Aviation Authority's Official Record Series 3, including ATOL Standard Terms and Consultation on a proposed change to an ATOL Protection Contribution payment period

The UK Cards Association is the leading trade association for the cards industry in the UK. The Association is the industry body of financial institutions who act as card issuers and/or acquirers in the UK card payments market. It is responsible for formulating and implementing policy on non-competitive aspects of card payments. Members of The UK Cards Association account for the majority of debit and credit cards issued in the UK, issuing in excess of 56m credit cards and 85m debit cards, and covering the whole of the plastic transactions acquiring market.

The Association promotes co-operation between industry participants in order to progress non-competitive matters of mutual interest and seeks to inform and engage with stakeholders to advance the industry for the ultimate benefit of its members' consumer and retail customers. As an Association, we are committed to delivering a card industry that is focused on improved outcomes for the customer.

The following comments are in respect of the Further Information request and UK Cards has no comment to make on the Consultation on a proposed change to an ATOL Protection Contribution payment period

In its response to the DfT's ATOL Reform Information Paper (December 2011), there were issues raised by UK Cards that are reiterated below:

- We would welcome the opportunity to work with the CAA and other stakeholders to ensure that consumers receive consistent messages regarding ATOL and the financial protections they have;
- As the traditional market changes, there are more instances of Travel Agents and suppliers of holidays where their card acceptance facility is provided by an acquirer who is not UK based or a member of The UK Cards Association. UK Cards would be interested to hear the CAA's plans on how to encourage these entities to consider signing the existing Credit Card Agreement; and
- We would be keen to understand and work with the CAA to develop scenarios based on the new ATOL categories to better understand how the flow of funds between parties and liability for risk is envisaged.

Set out below are comments that UK Cards wishes to raise on the Further Information Paper and revised ORS3:

## **1 ATOL Certificate (Section 3)**

We fully support the transparency that a consumer will gain from the Certificate in knowing which elements of their 'holiday' are protected by ATOL. However, additional information could also be considered where the Certificate specifies any elements that are not covered by ATOL. This would allow the consumer to consider what additional protections they may require (the certificate could also provide some general advice on what these protections could be or how to obtain them). Alternatively, this information could be contained in the Confirmation.

## **2 Fulfilment Partner**

We would welcome hearing the CAA's proposals on the Fulfilment Partner's role and supporting governance.

### **3 Financial Management Information**

#### *ATOL Certificate numbers and ATOL Turnover*

The CAA has requested assistance (AST 4.11) from acquirers, as per the Credit Card Agreement, to notify it of any changes in the merchant's facilities. UK Cards' Members would wish to receive reciprocal information from the CAA in terms of the number of ATOL certificates that have been issued by a merchant and their ATOL turnover. UK Cards wishes to discuss this request further with CAA to understand its views on supplying this information and, where agreed, the practicalities of implementing this information flow.

#### *Investigation (section 6.11)*

In addition to the above information, a merchant's acquirer would also wish to be informed where an ATOL holder or ATOL holder's group is subject to an investigation by a regulatory authority or a report has been commissioned relating to either of these entities' financial position.

### **4 Credit Card Facilities Provider (AST 4.11)**

As mentioned in our 14 December 2011 response, please note that an ATOL holder's acquirer would not, normally, be charging an interest rate.

### **5 Agency terms (Sections 4.8 and 4.9)**

The UK Cards Association considers that any implications "*for agents' arrangements with banks and credit card companies*" (section 4.8) is best dealt with in discussions the CAA is conducting with card acquirers regarding re-drafting the Credit Card Agreement.

Please feel free to contact me if you wish to discuss this response.

Yours sincerely

Ian Shayler  
Executive, Card Payments