

ATIPAC Response to *Package Travel Legislation: Updating the Framework*, published by the Department for Business and Trade on 20 September 2023

Deadline for submission: 13 December 2023

The Committee

It has long been recognised that holidays are a large household purchase and that there is a period of time between a customer's payment and the customer's return from holiday, during which the seller could become insolvent. The Air Travel Insolvency Protection Advisory Committee (ATIPAC) was created in 2000. Its role is to provide informed advice to the Secretary of State for Transport on financial protection of air travellers and customers booking with air travel organisers. This protection is mainly provided through the ATOL scheme which, broadly, licenses businesses to sell air package holidays and regulates contributions to the Air Travel Trust Fund to provide customers of failed tour operators with refunds or repatriation to the UK as necessary.

The Committee is devoted to furthering the interests and financial protection of air travellers. The Committee has an independent Chair, and its membership is uniquely balanced between trade, passenger representatives and independent members, with a breadth and depth of knowledge and experience from all areas of the travel industry.

The CAA provides the secretariat function for the Committee, but the views expressed in this response are not necessarily those of the CAA.

Given the diversity of its membership, it is not possible for this response to cover all points of view, it does however reflect the views of the majority of members who chose to take part. Some have decided to respond directly rather than as part of the Committee.

Observations of the Committee

At a recent meeting of the Committee discussion focussed on sections 1, 3, 7 and 8 of the DBT's *Package Travel Legislation: Updating the Framework* Call for Evidence document. These sections relate to domestic packages, linked travel arrangements (LTAs), business travellers, redress from third parties and extenuating circumstances in the Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs). The comments below therefore represent ATIPAC's views on the questions from these sections as they are most pertinent to the remit of the Committee.

ATIPAC's Response

Section 1: How rules should apply to UK-only package holidays

Q2. Do you think that a) All domestic-only arrangements should be exempt from the Regulations; b) Domestic-only arrangements that do not include travel should be exempt from the Regulations; or c) Domestic-only arrangements should continue to be in scope of the Regulations as they are now?

ATIPAC's remit concerns only packages which include a flight. Around 140,000 people each year travel on a package holiday or trip that involves a domestic flight, with around half of these involving flights to or from Northern Ireland. So consumers in Northern Ireland would be particularly affected by removal of financial protection. Committee members were in favour of option C as the inclusion of domestic packages in the PTRs provides consumer protection, which encourages consumer confidence. Removing them could cause confusion for consumers as they may justifiably expect the same protection for a UK-only air package as they would have for one overseas. For example, an ATOL-protected package which includes a flight to Scotland from another part of the UK and hotel accommodation is likely to be of similar value to a comparable package in Europe, and most consumers would expect to receive the same financial protection in an insolvency situation in both cases.

Removing the UK-only packages from the legislation could create an inequality for package holiday organisers, who currently benefit from a 'level playing field' between domestic and non-domestic air packages. It could also encourage an increase in less-reputable organisers of those holidays.

Nevertheless, if it is decided to remove domestic packages from the PTRs then that policy should include domestic air packages, so as to prevent inconsistency with other domestic packages such as rail.

Section 3: Regulations of LTAs

Q8. Do you think the regulatory position on linked travel arrangements should be: a) kept as it is; b) simplified; c) incorporated into the definition of a package or d) removed from the Regulations?

Linked travel arrangements (LTAs) have been raised by ATIPAC members in previous discussions and are generally considered to be confusing for sellers and consumers alike. In addition, members have said that LTAs are not necessary to achieve what they were intended to (i.e. to stop organisers from circumventing the PTRs) as the definition of a package is very broad and failure to abide by it could also be addressed via unfair trading regulations. Overall, members agree that option D is most appropriate, that the LTAs should be removed from the Regulations.

Section 7: To which travellers should package travel rules apply

The Committee considers it would be simpler and clearer if the PTRs continued to apply to all travellers. People can travel for more than one purpose, and there is not always a clear distinction between a business traveller and any other kind. Committee members felt that consumers are likely to expect the same level of financial protection on a business trip as they would receive on a family holiday, especially small businesses / self-employed people who are paying for their own travel.

Section 8: Further technical changes

Redress from Third Parties

Q22-25.

The Committee has heard reports of package travel organisers struggling to obtain refunds from airlines, having already refunded the consumer for cancelled flights; of airlines refunding package organisers who have not passed the money on to the consumer; and of airlines not knowing that flights are being purchased for a package. There has, of course, been recent litigation in the High Court about third party redress between On The Beach Holidays and Ryanair. The Committee considers that clarity is needed. It is important for consumers to receive their refund promptly. On the other hand, there needs to be a system to prevent duplication of refunds. If there is a duty on the package travel organiser to refund the customer proactively, then it follows logically that the organiser must be able to obtain redress otherwise it will face the risk of having to absorb the loss, increasing the risk of insolvency; and the airline must be relieved of its separate obligation to refund the consumer for that flight. Conversely if the airline has refunded its passenger, the package travel organiser should be relieved of its obligation for that refund. This complexity of communications could potentially be addressed by code of practice. During the COVID-19 pandemic, many holiday companies stayed solvent only because their customers voluntarily accepted Refund Credit Notes instead of taking up their right to a refund within 14 days.

Section 8: Further technical changes

Covid – Extenuating circumstances

Q 27. Do you think any changes should be made to the Regulations to account for extreme extenuating circumstances?

As indicated from the response to the previous question, refunds proved challenging for ATOL-holders¹ during the pandemic. The Committee considers it reasonable to expect consumers to wait longer than the standard 14 days for a refund during a very widespread crisis such as the Covid pandemic and suggested that an extended timeframe could either be a fixed amount, such as 28 days, or dependent on the situation. Also, to avoid disputes in a crisis, a system to determine extenuating circumstances and the timeframe could be established and this could be via secondary legislation or a power delegated to the CAA or Secretary of State.

We also repeat the recommendation in the ATIPAC Annual Report for the formalisation of Refund Credit Notes as a measure to be employed in any similar situation in the future. During the Covid pandemic, Refund Credit Notes were vital in maintaining the travel industry. Far more businesses would have failed if they had had no other option than providing refunds within 14 days.

Conclusion

The remit of the Committee is to advise on issues which impact on ATOL-holder insolvency, including the financial health of the sector and the underpinning legislation. To this end, and in summary, the Committee's response to the *Package Travel Legislation: Updating the Framework* Call for Evidence is as follows:

- to retain domestic-only arrangements and business travellers within the scope of the legislation;
- to remove LTAs from the Regulations;
- to enhance the rules to cover extenuating circumstances; and
- to improve redress from third parties or otherwise facilitate customers receiving swift refunds without risking the financial viability of the travel organiser.

The Committee would like to thank the DBT for the opportunity to respond to this Call for Evidence and hopes that the specific examples and recommendations provided will be beneficial in informing future legislation.

The Committee would welcome any updates or further consultation in due course.

¹ Package holiday organisers licensed under the ATOL Regulations.