

ATIPAC

Annual Report 2011-12



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Designed by CAA on behalf of ATIPAC.

Introduction

Dear Mrs Greening

This is the twelfth annual report of the Air Travel Insolvency Protection Advisory Committee (ATIPAC). It reviews a year of continuing difficulty for the travel industry, but also reports on badly needed progress towards reform of the ATOL scheme.

The travel industry has faced many challenges in the past 12 months. Economic conditions have left the travelling public with less disposable income for holidays. The Euro crisis has badly affected consumers' confidence. In addition, the industry has had to contend both with rapidly escalating fuel prices and with political unrest and uncertainty in some of its core overseas holiday destinations. All these factors have led to yet another year of difficult trading. There appears to be little prospect of an upturn in the immediate future.

During the year 23 ATOL holders have failed. This was an improvement on the two previous years and shows the resilience of the industry. The previous year had featured two substantial high profile failures; this year the majority of failures took place in a controlled manner. The efficient way in which the CAA handled the failures shows that lessons have been learned from earlier experience.

Last year we welcomed the news that ATOL reform was on the way. This year the Committee has been active in advising both the DfT and the CAA on the reform proposals, and the timetable for implementation. By the time this report is published, the process of introducing substantive reform will be well under way. The next phase of reform is the introduction of the ATOL Certificate. The Committee believes that this will give an enormous boost to awareness of the scheme, which is long overdue.

However, we would like to reiterate that, whilst we welcome the current reforms, there is still some way to go to extend the protection provided by the ATOL scheme to the wider travelling public. It remains our view that the Government does need to implement primary legislation to extend protection to all sales made by airlines.

ATOL reform will result in more consumers enjoying financial protection. The direction of travel is right. Nevertheless, many air travellers will still fall outside the safety of the ATOL umbrella. We will watch closely as ATOL reform settles in and continue to encourage you and your Government colleagues to look at the wider financial protection that the consumer should receive.

John Cox OBE
Chairman

1. Travel Industry in 2011-12

The Committee gave a pessimistic outlook in their last report and expressed concerns about the challenges that the industry faced. The downturn in bookings continued into 2012, due to a palpable lack of consumers' confidence. The financial uncertainty and the continued unstable political situation in North Africa and the Middle East contributed to these poor booking trends. The increases in APD charges also impeded any upturn. The pressure of these factors had a particular impact on smaller operators. The booking trend to look for value for money affected the market and continued to instil a feeling of uncertainty.

In spring 2011 a high number of businesses were reporting on the effects of overseas political unrest on bookings and noted that consumers were nervous and unwilling to book to destinations that might result in a cancelled holiday.

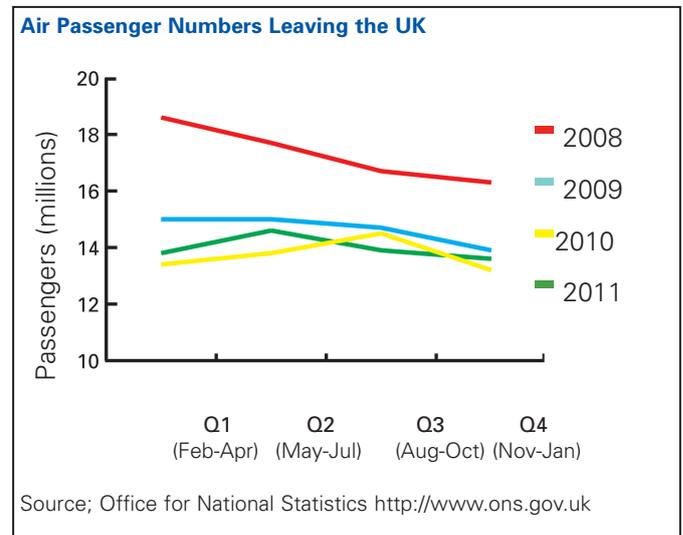
Fuel price and APD increases have meant that firms struggled with their costs. Some have even chosen to close, while others have been looking long and hard at their business plans. However the consumers continued to wait for 'special offers' and held off on booking until close to the date of departure. At the close of the 12 months covered by this Report, it seemed that the industry had taken several steps backwards. The peak season was yet to pick up and a high level of discounting to encourage bookings has swept across the industry.

The recession was also hitting the industry; consumers did not seem to have money to spend or were opting to stay at home. Another factor was the increase in insurance prices for both the industry and the consumers, due to the continued political unrest throughout the early season. Consumers were concerned about the costs they might incur in the event of cancelling their bookings and the increased costs prior to bookings being made, for insurance

policies. The high level of insurance claims from cancelled bookings resulted in higher premiums and added more pressure to depress demand.

Businesses struggled throughout the summer months with the volume of bookings remaining low and trading poor. Whilst booking trends did not increase the industry has worked hard to reassure consumers and at the end of summer 2011 the booking volumes for the winter had finally reached the same levels as the previous year. Two trends were notable: heavy discounting from the start of the winter programme and late booking as consumers unwilling to commit due to economic uncertainty searched for the lowest price until they were sure of securing the best 'deal' possible.

The booking experience of holiday firms is reflected in the decline in the number of air passengers departing the UK over the last 4 years as shown below.



However, it has been encouraging to see a smaller number of ATOL failures than in previous years and the continued stability of the number of firms renewing their licences during the September and March ATOL renewal periods. Only 23 ATOL holders failed during this reporting period. This was a reduction on the two previous years and further demonstrated the changes the industry has adopted to keep trading during a gruelling period.

The Committee was relieved by the low level of failures, of which the most prominent was Holidays 4 UK Ltd, which failed on 3 August. The repatriation of Holidays 4 UK customers exceeded the normal time period, due to the length of holidays that were sold by the company. The CAA had previously been criticised over the length of time that claims handling can take in a large failure, so the Committee was pleased to note that in November, just 4 months after the failure of Holidays 4 UK, 62% of the refund claims had already been settled. We had previously reported and commented on the Independent Review of the CAA Claims Handling Procedures which highlighted the experiences of the claimant in a complex failure. Although the failure of Holidays 4 UK did not present the challenges encountered in previous years, it was still a significant failure with a number of complex sales models. The experiences of affected consumers during this failure were greatly improved and the measures and processes put in place by the CAA have ensured that consumers are receiving refunds more quickly.

The majority of businesses that failed during the reporting period had all struggled with the recession, but fell into two distinct categories: either long established firms that were changing their business models, or younger firms whose cash flow inhibited them from competing in the erratic market. However the number of failures was low compared to the two previous years and shows the continued resilience of much of the established industry.

It should be noted that, during the reporting period, nine airlines either failed or had problems that severely impacted on their passengers. Some problems could not be avoided, such as the closure of airspace over Libya, but the failures themselves have shown how frail the airline industry is at this moment.

In these airline failures passengers were affected in various ways. Those that paid the airlines direct by credit or Visa debit cards could claim the original fare

from their card issuers, but their cover, rightly or wrongly, did not extend to the cost of an alternative flight or a new flight home. Others that paid via a travel agent were not protected by their card issuers and had to rely on their agent putting a claim in with the airline on their behalf. Furthermore, although many of the agents concerned held ATOLs, and thus could have been liable to protect their customers, sales were almost exclusively made through their IATA agencies, where they acted as agent of the airline.

Some customers held Scheduled Airline Failure Insurance (SAFI) which only pays out when an airline actually fails, and which in any case does not provide assistance in arranging repatriation. Others held travel insurance which in many cases did not cover acts of war, industrial action etc. It is hoped that with the stabilisation of oil prices, the airline industry will acquire breathing space for recovery and this will result in airlines taking up the void that has been created both by failures and reduced capacity. This will allow the industry and therefore the consumers more choice.

2. Market Outlook for 2012/13

Last year the Committee noted that trading in the travel industry would remain difficult during 2011/12. Indeed, this proved to be the case and the industry has been struggling with yet another challenging year, especially with increases in fuel and insurance costs. Consumers' confidence has not returned within the last 12 months. It remains our view that no recovery will become apparent for the foreseeable future.

The outlook for 2012/13 remains one of instability created by a number of factors, including the volatility of sterling exchange rates, the continuing problems within the Euro zone, and the effect of the London 2012 Olympics and Paralympics Games. Reports of airlines reducing capacity during this crucial summer period could have a detrimental effect on the industry. Increases in APD and the cost of fuel have a damaging effect on airlines. These costs are inevitably passed on to tour operators and thence to their customers. None of this bodes well for the recovery of the travel industry.

The introduction of ATOL reform may go some way to reassure holiday travellers, but much of the air holiday market continues to be price driven. While the number of firms applying to renew their ATOL has remained consistent year on year, the level of licensable bookings has dropped in the last year. This may be due to consumers going to different firms to book separate elements of their holidays, and to some extent the recession, resulting in consumers choosing not to take an overseas holiday.

3. ATOL Reform

In February 2011, the Government announced its intention to consult on reforming the ATOL scheme so that it better protects consumers in the 21st Century holiday market in a manner that is clear, consistent and effective. The consultation followed in June 2011 and set out details of the reforms that could be implemented by new secondary legislation and details of potential medium to longer term reforms where new primary legislation would be needed.

The main reforms proposed in the consultation were:

- Extending ATOL protection to Flight-Plus holidays, where a flight and living accommodation or car hire are requested by consumers either immediately or over a period of 2 consecutive days.
- The introduction of the ATOL Certificate so all those booking a product protected by the ATOL scheme would receive a clearly recognisable document confirming their right to repatriation, a refund or a replacement as appropriate.
- For the medium to longer term stakeholders were asked whether holidays procured on an agent for the consumer' basis and holidays sold by airlines should be included in the ATOL scheme.

In the Committee's response to the consultation we welcomed the Government's proposals to reform ATOL. We have long held the view that the current ATOL protection system had not kept pace with changes in the way holiday travel services are provided and consumers purchase them, and its fitness for purpose has consequently decreased.

The Committee supported the intention to introduce the secondary legislation needed to bring sales of flights sold with other elements such as accommodation within the ATOL scheme.

We also agreed with the general direction towards comprehensive financial protection, which we have advocated since our establishment in 2000. We recognised that the proposals were a compromise but did agree that the proposals should tackle key protection distortions that exist, and that they are a significant step towards improvements to consumers' protection.

In our submission we emphasised that, in order to simplify the protection message further for consumers and to provide the widest possible protection, airlines should be brought into the scheme through primary legislation at the earliest opportunity. The objective should be to extend the protection scheme to sales not only of airline packages/Flight-Plus but of all flights sales.

The Committee represents a broad range of travel industry and consumers interests, but nevertheless, a consensus was reached on most issues, albeit with some concerns over the practical implementation of some of the provisions.

The full details of the ATIPAC response are at Appendix 3

The extension of the ATOL scheme to Flight-Plus holidays was a key proposal in achieving the objective of giving consumers greater clarity. The key elements that constitute a Flight-Plus are triggered by a customer's request to book accommodation, car hire, or other arrangements in addition to a flight. Members held differing views on the proposal reflecting the time period, in which elements of a Flight-Plus must be requested by a consumers, but they concurred with the proposed timeframe set out in the consultation as the best possible solution. We also felt that the liabilities of a Flight-Plus arranger as proposed raised concerns on the detrimental impact that this could have on both businesses and potentially the Air Travel Trust. We felt that in many cases the Flight-Plus arranger would simply give refunds, but agreed that the proposed liabilities for a Flight-Plus arranger to meet the requirement of their customers in the event of

supplier failure were a substantial step forward in protecting consumers.

The overwhelming response by the Committee to the ATOL Certificate was that consumers must have a defining document, which clearly sets out their entitlement to protection when an ATOL holder fails. The concept of an ATOL Certificate would provide a focal point for consumers to establish this. However we were concerned that the initial timescale for implementation on 1 January 2012 was ambitious, due to the technicalities involved for the industry to change their business systems.

So far as the issue of 'agent for the consumer' is concerned, the Committee were of the strong opinion that legislation should be brought in at the earliest opportunity, to bring these transactions within the scope of the ATOL scheme. It is clear that it has been used as a device to evade the ATOL scheme. The same was felt in relation to all flights sold with another element; irrespective of the business model of the seller, and therefore airlines should also be included in ATOL under primary legislation. We have always considered that consumers' protection is paramount, particularly in the context of purported 'agent for the consumer' transactions, where the potential for confusion and misunderstanding about the lack of protection for these types of sales is critical. Until further reforms are implemented, it is therefore important that in the case of 'agent for the consumer' sales, that the consumers do not receive an ATOL Certificate.

Furthermore we strongly support the progress of the Civil Aviation Bill which was introduced into Parliament in January, as it includes the provision to widen the Secretary of State's existing power, and to give the option to create new regulations requiring airlines to hold an ATOL for the sale of their flight inclusive holidays. We hope that the outcome of this provision will be the long awaited closure of this loophole

resulting in complete protection for consumers.

Following the consultation, the DfT published a clarification Question and Answer guide for the industry, which expanded on the issues that had arisen during the consultation. This was followed in November by the CAA publishing an information paper outlining the proposed alterations to the CAA's Official Record Series 3, which included the amendments to Agency Agreements, the criteria for Accredited Bodies and alterations to ATOL Standard Terms. The paper invited comments on the draft changes.

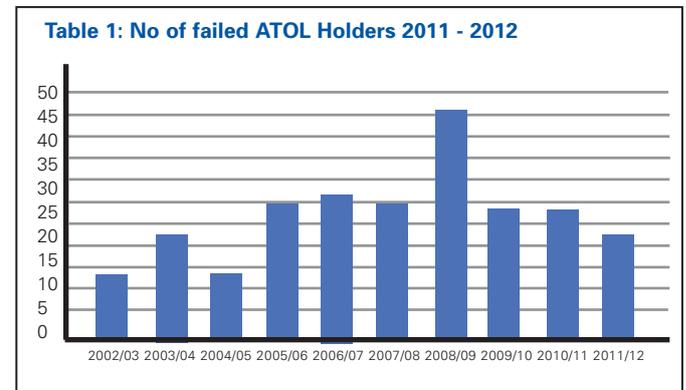
Our views along with others from the industry were considered by the CAA and the ATT. Not all our views were upheld but the resulting final document addressed the majority of our concerns and gave a good general starting point for reform.

4. Role of ATIPAC

The Committee's Constitution sets out the membership of the Committee which, continues to have a membership representing a board spectrum of travel interests, from tour operator and retailers to regulators and consumers.

In the last year the level of debate and the advice given on the financial protection issues facing the travel industry has been a challenge in the changing world of ATOL reform. Within the coming year the Committee will continue to look to recruit new members to expand our unique forum that brings together trade, regulator and consumer representatives, with our continued duty to advise the DfT and the Secretary of State for Transport on financial protection for air travellers.

5. Failures



As noted previously only 23 ATOL holders failed in the year to 31 March. Of these, the most significant was Holidays 4 UK Ltd which failed on 3 August 2011 having held a licence for over 15 years. The company sold charter flights and package holidays to Turkey from various UK departure points. Approximately 75% of the firm's sales were Flight-Only bookings and the remaining sales were flight inclusive packages. Over 13,000 customers were abroad at the time of failure but they were repatriated with minimal disruption. This failure was somewhat unusual in that many customers travelled to Turkey for periods in excess of the usual one and two week durations and as a result, the repatriation exercise continued for over three weeks. A further 50,000 passengers held forward bookings and were also affected. The CAA managed to complete 62% of refund claims within 3 months of the failure occurring. The failure resulted in the largest call on the ATT during the reporting period.

Overall ATOL and the ATT enabled 14,330 customers to complete their holiday and return home at no extra cost. A further 67,475 customers who were booked to travel at a later date received refunds.

Full details of all failures are at Appendix 1.

6. Conclusion

This Committee has been urging substantial reform of the ATOL consumer protection arrangements for many years. We are aware that consumer protection for holiday makers remains under review within Europe, but we are obviously pleased that action has now finally been taken by the UK Government and that future UK holidaymakers can expect to have a clearer idea of whether they are protected or not. As this report makes clear, the current reform of ATOL is an excellent first step, but it is no more than that. The Government must continue to reform the ATOL scheme further in order to provide clear and comprehensive financial cover. The enactment of the Civil Aviation Bill and the rapid introduction of Regulations to deal with the remaining sources of confusion are of vital importance to consumers. Once these reforms are in place, consumers will be much better placed to understand whether they are protected by ATOL, or need to make their own arrangements.

In the current challenging climate, consumers need to be able to count on an efficient and effective protection scheme. Only by having a stable and well understood scheme in place, can consumers have confidence in an industry which is so subject to economic and political events wholly outside its control in many of its core markets.

A key piece of the reform plan is the ATOL Certificate. In its interface with its customers, the industry has provided a plethora of unclear and often inconsistent documentation. The Certificate promises to do away with most of these issues. The Committee has been most impressed both with the Government's commitment to pursuing this major initiative and with the close and effective collaboration between the CAA and a working group of trade and consumers representatives which have reached agreement on a standard design. This will be required use for all ATOL sales after 1 October 2012.

This is a critical moment for the protection system; on one hand we have a Government committed to reform which will bring improvements for consumers and on the other hand we have an industry seeking to deal with extreme turbulence in many of its main markets. We hope that in the next year the industry will continue to demonstrate the resilience and skill that has allowed many operators to adapt to the new market reality and that in turn, the Government will continue to work to finish off a new regulatory regime which is fitted to the air travel market of the second decade of the 21st Century.



APPENDIX 1 - DETAIL OF ATOL HOLDER FAILURES APRIL '11 TO MARCH '12

The administration of cases may not have been completed. Administration costs incurred in paying passengers' refunds are included in the cost of refunds. The figures for total expenditure and any call on the Air Travel Trust include amounts already spent plus estimated further expenditure and available securities provided. Expenditure may not always agree with the repatriation and refund totals. Where a call on the Air Travel Trust is indicated, this is the difference between expected total expenditure. This is because some credit card merchant acquirers have agreements with the ATT that the Trust will reimburse them for referred credit card claims up to an agreed limit. The totals may not agree to the sum of the figures shown in the table due to rounding differences.

| ATOL Holder | Date of Failure | Licensed Passengers | Security Provided (£,000) | Number of Passengers Repatriated | Cost of Repatriation (£,000) | Estimated number of Passengers to be Refunded (£,000) | Estimated Refund Cost | Estimated Total Expenditure | Estimated Call on Air Travel Trust |
|---|-----------------|---------------------|---------------------------|----------------------------------|------------------------------|---|-----------------------|-----------------------------|------------------------------------|
| Silverbird Travel Ltd | 20 Apr 2011 | 2,513 | 0 | 57 | 9 | 121 | 47 | 56 | 56 |
| Selsdon Travel Ltd | 23 May 2011 | 17,308 | 203 | 443 | 113 | 4,527 | 2,063 | 2,176 | 1,973 |
| Crown Service UK Ltd | 09 Jun 2011 | 500 | 40 | 0 | 0 | 500 | 208 | 208 | 168 |
| E & ME Gill Ltd | 15 Jul 2011 | 500 | 30 | 0 | 0 | 10 | 2 | 2 | 0 |
| Dream Holidays Ltd | 19 Jul 2011 | 7,750 | 265 | 525 | 126 | 1,790 | 641 | 767 | 502 |
| Highlife Holidays & Travel (1989) Ltd | 22 Jul 2011 | 500 | 0 | 0 | 0 | 21 | 16 | 16 | 16 |
| Holidays 4 UK Ltd | 03 Aug 2011 | 100,500 | 4,500 | 12,800 | 2,509 | 49,670 | 9,196 | 11,705 | 7,205 |
| Pinnacle Travel Ltd | 15 Sep 2011 | 3,262 | 0 | 0 | 0 | 3,213 | 813 | 813 | 813 |
| FT Tours Ltd | 15 Sep 2011 | 500 | 20 | 0 | 0 | 50 | 21 | 21 | 1 |
| Pumpkin Tours Ltd | 16 Sep 2011 | 500 | 20 | 0 | 0 | 11 | 41 | 41 | 21 |
| Fairway Golf Holidays Ltd | 28 Sep 2011 | 500 | 20 | 0 | 1 | 85 | 64 | 65 | 45 |
| Real Traveller Ltd | 05 Oct 2011 | 500 | 20 | 5 | 0 | 18 | 11 | 11 | 0 |
| Geo Dive Ltd | 13 Oct 2011 | 500 | 0 | 0 | 2 | 40 | 33 | 35 | 35 |
| Airborn Ltd | 24 Oct 2011 | 8,100 | 0 | 0 | 0 | 1,297 | 471 | 471 | 471 |
| Woolley F (t/a Romano Travel) | 26 Oct 2011 | 501 | 0 | 0 | 0 | 31 | 29 | 29 | 29 |
| Sky Masters Travel Ltd | 02 Nov 2011 | 425 | 0 | 0 | 0 | 1400 | 479 | 479 | 479 |
| Astonbury Ltd | 17 Nov 2011 | 2,800 | 294 | 500 | 642 | 500 | 690 | 1,332 | 1,038 |
| The Little Black Book Ltd | 18 Nov 2011 | 500 | 40 | 0 | 0 | 11 | 44 | 44 | 4 |
| Shenoy & Co (UK) Ltd | 29 Nov 2011 | 500 | 10 | 0 | 3 | 2,165 | 780 | 783 | 773 |
| Merebeech Ltd | 23 Jan 2012 | 1,728 | 262 | 0 | 0 | 613 | 295 | 295 | 33 |
| Higham E & Onezime M (t/a European Connections) | 01 Feb 2012 | 1,040 | 0 | 0 | 0 | 622 | 271 | 271 | 271 |
| Mina Travel & Freight Ltd | 03 Feb 2012 | 500 | 0 | 0 | 0 | 49 | 0 | 0 | 0 |
| New Look Travel Ltd | 20 Mar 2012 | 1,800 | 0 | 0 | 0 | 731 | 230 | 230 | 230 |
| Total | | | | 14,330 | 3,405 | 67,475 | 16,445 | 19,850 | 14,163 |

APPENDIX 2 - CONSTITUTION AND TERMS OF REFERENCE

Establishment and Role of the Committee

1. The Air Travel Insolvency Protection Advisory Committee ("the Committee") is established by the Secretary of State for Transport to advise on the financial protection arrangements for air travellers and customers of air travel organisers.

Composition of the Committee

2. Members of the Committee shall be drawn from:

| | |
|---|--|
| Association of British Travel Agents | Two Members |
| Federation of Tour Operators | One Member |
| Association of Independent Tour Operators | One Member |
| Association of Airline Consolidators | One Member |
| Eventia | One Member |
| Travel Trust Association | One Member |
| Trading Standards | One Member |
| Internet Community | One Member |
| European Low Fares Airlines Association | One Member |
| | |
| Independent representatives not associated with any organisation represented on the Committee | Three or four Members, one of whom is Chairman |
| Other representatives of consumer interests | One or two members |
| Civil Aviation Authority (CAA) | Two Members |

Appointments to the Committee

3. Members shall be appointed by the Chairman of the CAA, for periods specified at the time of appointment. Membership periods should normally be periods of 4 years. Members may resign at any time. The CAA Chairman will consult the Chairman of the Committee before appointing Members other than from trade associations and the CAA.

4. Each represented body should nominate to the CAA two alternates, who may attend any meeting in the absence of that body's appointed Member(s).

5. If the Chairman of the CAA is satisfied that a member has been absent from meetings of the Committee for more than three consecutive meetings or is satisfied that a member is otherwise unable or unfit to discharge the functions of a member of the Committee he may declare the membership vacant.

Meetings of the Committee

6. The Committee shall determine its own procedures for and frequency of meetings, including any requirement for a quorum.

Duties of Committee

7. The Committee shall keep under review and from time to time advise the CAA, the Trustees of the Air Travel Trust and the Secretary of State for Transport on the arrangements for the financial protection of air travellers and customers of air travel organisers.

8. In particular it shall:

- advise the CAA and the Secretary of State as appropriate on any changes to the structure of protection that it concludes are necessary or desirable;
- advise the CAA and the Trustees on the use of their discretion when making payments from bonds and from the Trust;
- advise on bonding arrangements and bond levels;
- advise on agreements between the Trustees, the CAA and third parties such as credit card companies;
- advise the Secretary of State on the need for a re-imposition of a levy on the holders of Air Travel Organisers' Licences in order to replenish the Trust Fund, and advise the CAA and the Secretary of State (as appropriate) on the implementation of such a levy.

9. The Committee shall submit to the Secretary of State an Annual Report on its activities in each year ended 31 March within four months of the end of that year. The Committee shall draw to the Secretary of State's attention at any time matters of concern on which, in its view, action is necessary.

Administrative Arrangements

10. Reasonable out of pocket expenses directly incurred by Members of the Committee in attending meetings shall be reimbursed by the CAA.

11. The CAA shall provide administrative support to the Committee.

The Department of the Environment, Transport and the Regions
April 2000

Amended by the Department for Transport
July 2006

Role & Membership of the Committee

1. The Air Travel Insolvency Protection Advisory Committee was established by the Secretary of State for Transport in 2000 to provide advice to the Civil Aviation Authority (CAA), the Trustees of the Air Travel Trust and the Secretary of State for Transport on the financial protection arrangements for air travellers and customers of air travel organisers. Its terms of reference are at Appendix 2 of this Report.

2. The Committee includes representatives from key trade associations, consumer representatives, independent members and members appointed by the CAA.

3. The Committee held four meetings during the year, all of which were held at the offices of the Civil Aviation Authority in London.

Members 1 April 2011 - 31 March 2012

John Cox OBE

John Cox has been Chairman of ATIPAC since its formation in April 2000. He is also the industry representative to the Air Travel Trust and a past Chairman of the Air Transport Users Council.

Roger Mountford

Non-executive member of the CAA and also Chairman and a Trustee of the Air Travel Trust.

Richard Jackson

Representative of the CAA, Group Director of the Consumer Protection Group and CAA Board Member. He is also a Trustee of the Air Travel Trust.

Noel Josephides

Managing Director of Sunvil Holidays Ltd. He represents the Association of Independent Tour Operators (AITO), of which he is board member responsible for industry issues. He is also a board member of ABTA.

Andy Cooper

Director of Government and External Affairs at the Thomas Cook Group. He represents the Federation of Tour Operators (FTO).

John de Vial

Head of Financial Protection for ABTA - The Travel Association and a former Director of ILG Travel; Thomson Holidays; TUI UK; the MyTravel Group; the Thomas Cook Group; ABTA; the FTO and FTO Trust Fund. John is a Trustee of The Travel Foundation and ABTA LifeLine and Chairs the Advisory Committee of the International Centre for Responsible Tourism

Roger Allard

Chairman of All Leisure Group PLC and the ABTA trade representative on the committee.

Lindsay Ingram

General Manager of Newmont Travel Limited. He represents the Association of ATOL Companies (AAC).

Gary Lewis

Managing Director of the Travel Trust Association (TTA) and The Travel Network Group

Iain Lindsay

Senior Vice President and Deputy General Counsel of Sabre Holdings and lastminute.com. He represents the on-line travel industry.

Prof. David Grant

Visiting Professor of Travel Law at Leeds Metropolitan University and Editor of the Travel Law Quarterly. He is an independent member.

Bruce Treloar

Trading Standards Institute Lead Officer for the Holiday & Travel Industry. He represents consumer interests.

Roger Bray

Independent freelance journalist with a consumer focus. He is an independent member.

Uday Dholakia OBE

Senior Partner at Global Consulting UK Ltd. He is an independent member with an interest in better regulation and enterprise promotion.

Rochelle Turner

Head of Research for Which? Travel. She represents consumer interests.

APPENDIX 3 - ATIPAC RESPONSE TO ATOL REFORM CONSULTATION

1: Do you agree with the proposed definition of a Flight-Plus as outlined above and set out in regulation 22? If not, what alternatives do you propose and why?

The Committee agrees in principle with the proposed definition of a Flight-Plus. However it was felt that further consideration should be given to the Government's overall intention; as currently drafted the Flight-Plus arranger definition would also incorporate travel agents selling ATOL protected packages on behalf of tour operators, while at the same time adding an additional element, such as car hire, from a separate supplier. This is a common industry practice. However, it seems that this would involve the agent obtaining a licence as a Flight-Plus arranger and levying another APC for the additional element. This cannot be the Government's intention.

This situation could cause difficulties for travel agents who will potentially become liable for the tour operator's package should the latter fail and this would create an unreasonable financial burden on such business. ATIPAC intends to raise this issue with the Air Travel Trust (ATT), since a potential solution appears to rest with the ATT payment policies and the treatment of such bookings.

We are also concerned about the potential confusion this will create for some consumers.

2: The Department's view is that a short time period between requesting elements of a Flight-Plus is most appropriate. Given this, do you agree with the proposed time period in which elements of a Flight-Plus must be requested by a consumer? If not, what alternative do you propose and why?

The Committee members have differing views on this proposal reflecting the different operating methods of package operators and on-line travel businesses, and what is in the mind of the consumer when engaging with a travel company.

Package businesses have no difficulty with the proposal; they have the opportunity to offer and discuss additional elements with consumers and "up-sell" on a single purchase at the same time. They also have the ability easily to link separate bookings into holidays either within the proposed period, or indeed to voluntarily do so outside it and issue revised booking documents.

Call centre and on-line travel businesses do not have the same relationship with their consumers and do not necessarily have the opportunity to up-sell if the consumers' intention is to purchase a single component. In addition, the IT systems of some retail and other on-line travel businesses would be unable to link an initial purchase with a subsequent purchase within the defined period, and consequently the consumer would be without protection.

Package business sales requiring accommodation and flights offered on a 'request' basis, may run into difficulties within the proposed time frame, since the request may not be confirmed within the specified period; moreover, one element may not be available, in which case the booking might revert to a single element and then fall outside the Flight-Plus definition, although the consumer may continue to believe that the booking is protected..

The consensus in the Committee was that while the majority of bookings would be made within a 24 hour period, there are significant variations to this. However, the Committee was unable to agree on an alternative time frame. It therefore concurs with the proposed time frame set out in the consultation.

3: Do you support the proposed definition of a Flight-Plus arranger in regulation 23? If not, what are your

reasons? What alternatives might be proposed?

The Committee agree with the proposed definition. However we believe clarity needs to be given to the different types of on-line operations, how bookings are handled and whether Regulation 23 should apply to both.

We are clear about its application to on-line businesses where the inventory is displayed on a single website and where a single payment is taken.

However, there are also 'click through' sales where one transaction is completed on one site and the offer of other travel arrangements is made to the consumer by moving to another site, possibly via an advertised link, and where a separate transaction is completed. It was felt that some businesses operating in this way will be able to avoid providing protection since the IT systems of the parties involved are not linked and are indefinable as a single booking.

We believe the DfT's proposal needs further thought and clarity of intention.

4: Do you agree with the proposed liabilities of Flight-Plus arrangers in regulation 24 to 29 to provide alternative or refunds in the event of the insolvency of a supplier? Do you agree with the proposed changes to the ATT payment policy outlined in paragraph 4.28 and annex F? If not, what are your reasons and what alternatives could you suggest?

The Committee agree in principle; consumers should not be placed in a worse financial position through the failure of a supplier, and it is agreed that if this is not implemented then consumers are in no better position than those affected by previous failures of charter flight operators.

However, there is a question of whether the obligation placed on Flight-Plus arrangers is reasonable and proportionate; while we agree the proposed ATT 'contribution' to such businesses provides some financial reassurance, the cost of replacing lost flights, which will invariably be more expensive, did raise concerns on the detrimental impact that this could have on both businesses and potentially the ATT. Insurance to protect against this additional cost is difficult and expensive to arrange.

Consequently the view of some members was that such liability should be limited to the value of the original flight cost. On the basis of the new requirement, the consequence would be that the Flight-Plus arranger would in many cases simply give refunds in the event of a supplier failure, although as an alternative the consumer could be offered new flights subject to an additional payment.

The proposed liabilities for a Flight-Plus arranger are a substantial step forward in protecting the consumer. However the obligation of businesses needs to be clearly defined.

5: Do you agree with the proposals to create an Approved Body as a new option for small businesses to meet the requirements of the ATOL scheme?

The Committee agrees to the proposal. Some members of the committee felt that commercial enterprises should not be "Approved" since it appeared to convey a heightened status without it being accountable for its members or providing additional benefits to consumers. It was also felt that Approved Bodies should be subject to the same licensing and reporting criteria as all license holders of a similar size.

6: Do you agree that there should be a written agency agreement between principal and agent ATOL businesses covering the points in regulation 30? If not why not, and what reasons do you have?

The Committee believe that this proposal reflects best practice for businesses and agreements should be in place. However, the time and cost of attaching statutory clauses to current commercial agreements, already in place, will be a challenge.

7: Do you agree with the offences and penalties created? If not what alternatives do you propose? Are prison sentences appropriate for any breach of the ATOL regulations? Do you agree with the due diligence defence?

The Committee considers that it is important that the Regulations and any penalties and offences must deter avoidance and potential breaches of consumer protection. This could be achieved by either criminal or civil sanctions but the Committee noted that the Courts are likely to be reluctant to jail offenders in straightforward criminal cases. Some aspects of the proposals are covered in the procedures set out in Section 8 of the Enterprise Act.

The Committee is in agreement with the due diligence defence.

Due to the timescale of Reform it is also felt that there will need to be a stay on implementation of enforcement for 12 months while systems are adjusted to the new scheme.

In summary the Committee believe that the level of enforcement activity is key to the level of implementation eventually achieved.

8: Do you believe that micro businesses and start ups should be exempt from the parts of the draft regulations dealing with Flight-Plus? What would the impact of the moratorium be on the micro businesses concerned?

The Committee were in agreement that Micro-businesses should not be exempt. Not only would such an exemption confuse the consumer and undermine the ATOL scheme, it might encourage some businesses to downsize or to reconstruct their activities in different business units so that each one would be exempt. From the consumer's viewpoint, clarity and consistency is important, regardless of the size of the Flight-Plus arranger.

9: Do you agree with the proposal to amend ATOL protection for Flight-Only sales in this way and the rationale behind it?

The proposal to change ATOL protection for flight-only sales by removing refunds was supported as it will align such sales with airline bookings and allow consumers to make informed decisions about making their own provisions for protection. However the decision to retain the repatriation element and continue to collect the APC will confuse consumers and elements of the travel industry and potentially create new risks.

It is felt that the proposal in effect creates a third level of protection and that this would be detrimental for the ATOL scheme. The Committee's view is that the flight-only sales should either be completely included (status quo) or entirely excluded to give real clarity to consumers.

10: Do you support the 'right to fly provider' exemption as set out in the draft regulations, including the concept of a 'specified operator'? If not what changes would you propose?

The Committee supports the concept of improving consumer protection for ticket sales by ensuring tickets issued will be honoured by airlines. It is right that consumers should not be disadvantaged through no fault of

their own if an airline refuses to honour a ticket.

The Committee would welcome clarification within 'right to fly provider' of the meaning of 'specified operators', and whether the intention is to include low cost and charter carriers.

11: How can it best be ensured that the proposed certificate is effective and proportionate, with costs kept to a minimum? Are there any practical difficulties with the proposals?

The Committee strongly agreed that the consumer must have a defining document that clearly sets out their entitlement to protection when an ATOL holder fails. The Committee believe the concept of a certificate is right and provides a focal point for consumers to establish this.

The Committee believes it will be important to ensure certificates are properly and securely issued so as to reduce the risk of erroneous and possible fraudulent issue. When and who issues the certificate will be central to this. Members felt that certificates should not be issued until a booking has been completed and confirmed.

In addition, there are some practical difficulties to overcome in respect of implementing against a variety of booking methods and holiday offerings, as well as changing current travel industry IT systems to cope with its issue.

The Committee expects the industry working group established by the CAA to deal with these issues.

12: We also welcome comments on any other aspects of the draft regulations not mentioned above, including the proposed transitional arrangements.

The Committee believes the Government has set itself an ambitious timescale for implementation on 1 January 2012. This is commendable since the Committee shares its view that the current gaps in protection should be closed quickly. However, the Committee also believes correct and sustained implementation should not be compromised by continuing with a timescale which results in patchy and generally incomplete cover for consumers, with the consequent danger of the protection arrangements being brought into disrepute.

The DfT appears to place some reliance on insolvency insurance, which is referred to frequently in the consultation paper. Travel industry members of the Committee felt it was important to emphasis to Government that this type of insurance now had reduced availability and where it is available, it is at high cost and subject to changing conditions and restrictions.

13: Should holidays sold on an 'agent for the consumer' basis be brought within ATOL? If so, what are your reasons? If not, why not?

The Committee agrees that legislation should be brought in at the earliest opportunity to bring 'agent for the consumer' transactions within the scope of the ATOL scheme. Consumers are in the main unaware that they may be subject to such transactions and have no financial protection.

The Committee looks to the CAA to do everything it can while waiting for primary legislation is brought in, to encourage firms to place their sales and consumers under ATOL protection, and to alert consumers to the risks.

14: Should airlines be included in ATOL, so that consumers receive the same protection for all Flight-Plus and flight inclusive package holidays sold in the UK? If so, what are the reasons? If not, why not?

Yes, it is the Committee's view that all flights sold with another element irrespective of business model of the seller should be brought within the ATOL regulations to create a level playing field for the consumer and industry. Primary legislation should be brought in at the earliest opportunity.

15: What information do you have that would allow the Department to complete an Impact Assessment on the two options? For example how many holidays are currently purchased on an agent for the consumer basis? How many airlines might be affected, and what volume of package and Flight-Plus they sell?

The Committee does not have any quantifiable information for an Impact Assessment. However individuals within the Committee have seen survey data which suggests that 75% of the public who purchase holidays no matter how booked believe they are protected by the ATOL scheme.

16: What are your views on the arguments for or against reforming the way refunds and repatriations are currently organised? What advantages and what barriers do you envisage?

In 2010 the CAA commissioned an independent review of their claims handling procedures. The findings of the report outlined the improvements that the CAA should consider to the way it makes refunds, and the Committee is in general agreement with its recommendations.

The ATOL Certificate will also add to an improved claims experience, but it will be important that implementation is quickly undertaken, with good consumer and travel industry education to ensure the benefits are fully and widely understood.

17: Do you have any views on what options might be considered in more depth by the Department and CAA?

As previously outlined, the Committee believes the timescale for implementation is challenging for both government and industry, in respect of necessary changes to booking systems, as well as marketing and training. The Committee recognises the urgency for change, but is of the firm view that the most important issue is to get the implementation right from inception.

We are also of the belief that while the proposals go a long way to improving consumer protection, there is more to do to bring airlines into the ATOL scheme, allowing consumers to have complete clarity.

The Committee welcomes the CAA's intention to undertake its own consultation on the future funding, governance and structure of the ATT. The Committee believes the current trust arrangements may no longer provide the best funding solution and impose risks on the trustees.

18: We would welcome any preliminary views and evidence on PTD reform as it relates to packages involving air travel, and on EU thinking on airline insolvency.

Considerable changes have taken place in the travel industry since the PTD were first introduced. A review is overdue. Reform of the directive or other legislation that extends protection to airline insolvency is welcomed. The Committee look forward to reviewing and commenting on the Commission's proposals in due course.