

# ATIPAC

**Air Travel Insolvency Protection Advisory Committee**



**Annual Report 2016 - 2017**



**ATIPAC**

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## Introduction: Letter from the Chair

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Dear Mr. Grayling,

I have great pleasure in submitting the Committee's seventeenth Annual Report, covering the year that ended on 31 March 2017.

The Committee has spent much of the year in detailed analysis of the European Package Travel Directive ('the Directive') adopted in 2015, and in advising the CAA and the Department for Transport ('DfT') on its implications for the UK and for the ATOL system. It has participated in the DfT's briefings, hosted DfT officials at its November 2016 meeting, responded in full to the DfT consultation in October 2016, and provided additional advice on the potential difficulties that might emerge from implementation.

The Committee welcomes the wider definition of what constitutes a package, and the provisions mandating clear and comprehensive customer information both before and after purchase. It has been a guiding principle in our discussions that the insolvency protection already provided to UK consumers under ATOL and the Package Travel Regulations should not be eroded. We consider that basing implementation on the existing ATOL structure, with changes limited to those required by the Directive itself, is sensible and practical, without compromising any future reform to the ATOL structure that may become necessary.

Nevertheless, there are issues that are of concern. The use of Place of Establishment to identify the EU Member State that provides protection for the consumer creates a potential source of confusion. The failure of Lowcostholidays ('Lowcost') in 2016 highlighted the jeopardy consumers may find themselves in if the failed company is based in a Member State where the implementation of the Directive turns out to be deficient. Such a deficiency generally becomes apparent only after a failure has taken place.

The other issue of major concern is how the concept of Linked Travel Arrangements ('LTA's) will operate in practice, with the limited financial protection they afford. Given that immediate payment is usually required for air travel, if the LTA facilitator is a travel agent, protection is provided only as long as the money is held by the LTA facilitator - i.e. the financial protection is transient. We recognise that LTAs were conceived as a way of capturing online click-through sales. But they are likely to confuse consumers, and they also have the potential to dilute the ATOL brand. Moreover, they open up opportunities for companies to evade the provisions of the Directive. LTAs may also be operated by accommodation sites such as booking.com and Airbnb, if they add flights and other holiday services to accommodation. Such sites are primarily technology-driven and may not see themselves as travel companies in the traditional sense. Consequently, the definition of an LTA must be rigorous, and facilitators must operate under a licence in order to be consistent with the ATOL scheme and with consumer expectations.

Brexit complicates matters. The Committee welcomes the Government's decision to proceed with implementation of the Directive in the UK. This provides stability to the tour operating industry and reassurance to their customers that financial protection will be continued. However, the position post-Brexit is unclear. Airlines and tour operators will continue to trade across EU boundaries, and will be affected by Brexit. The Committee is very concerned at the ignorance of the implications within the travel industry, even extending to a belief that Brexit means that nothing will change and the Directive will be irrelevant. The challenge for the DfT and Department for Business, Energy and Industrial Strategy ('BEIS') is to ensure that the industry is fully aware that the Directive is being implemented in the UK. This will bring in substantive changes in the regulatory regime. This challenge has still to be met.

The Committee brings together the travel industry, its regulators and consumers, and is devoted to the consumer interest in air-based holiday travel. We have welcomed the opportunity to assist and advise your officials on the regulations required to implement the Directive, and the issues that concern us.

**John Cox OBE**  
Chairman



## Overview of the Directive's developments

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The Directive (2015/2302/EU) was adopted by Member States on 25 November 2015 and came into force on 1 January 2016. Each Member State, including the UK regardless of Brexit, must incorporate this into their national law by 1 January 2018, so that it can be applied from 1 July 2018. This means that the UK will be required to make corresponding changes to the ATOL Regulations so that they are also operative on 1 July 2018. However, the Government's strategy post-Brexit, particularly in relation to the enabling legislation that is required, is still unclear.

There is currently widespread confusion over the implementation of the Directive in the UK, within the travel trade as well as among consumers. Some believe that Brexit means that it will not happen even though the Government has indicated that implementation will go ahead. The European Court of Justice may well retain powers over the international aspects of the Directive, which will continue to affect both airlines and tour operators. More needs to be done to ensure that travel companies are fully aware of the changes that will be made to the UK consumer protection regime.

The Directive broadens the definition of a 'package' to more than the traditional ready-made holiday purchased from a tour operator's brochure. The term 'package' has been updated to encompass more modern ways of buying and selling holidays. It is now defined as a travel arrangement consisting of two or more elements: transport, accommodation, car rental or other tourist services for the purpose of the same trip or holiday. This means that, in addition to traditional package holidays, the selection of holiday components made by the traveller and purchased from a single business on the telephone, in a shop or online will also be defined as a package. Consequently holidays that are currently only protected in the UK as 'Flight-Plus' arrangements will soon be protected throughout Europe. The Directive also contains a lot of improvements on the 1990 Directive, including new disclosure information to be provided to consumers.

In addition to expanding the scope of packages the Directive introduces a new type of holiday transaction called an LTA. The Committee has repeatedly expressed concerns that the limited protection in place for these sales will be poorly understood and throw up new opportunities for the unscrupulous to sell holidays while evading the provisions that give consumers the reassurance that their money is safe. Furthermore, incorporating LTA protection into the ATOL regime could confuse consumers and lead them to make unwarranted assumptions about protection. This could result in consumer detriment and a dilution of the ATOL brand, negating the increased consumer awareness achieved through the ATOL Pack Peace of Mind campaign. The Committee believes that this brand awareness is especially important and should be maintained.

On 28 October 2016 the DfT published its consultation, *ATOL reform: modernising consumer protection*. This outlined the Government's intention to implement the Directive with a minimum of change to the existing ATOL system. In its response, ATIPAC welcomed this

approach, but identified a number of areas of concern and reiterated its long-standing position that any financial protection scheme needs to be sufficiently clear to ensure that consumers can make informed choices. Although reforms to the ATOL Scheme in 2012 and the Pack Peace of Mind Campaign, have both led to better informed consumers, the failure of Spanish-based Lowcost in July 2016 showed that there is more to be done to educate consumers. In this case, many affected UK consumers expected to be protected by the UK's ATOL scheme even though they were not, because Lowcost was based in the Balearics and subject to less comprehensive Spanish, rather than UK, financial protection arrangements. Although the Directive should provide more comprehensive and clearer protection, the Committee remains particularly concerned about LTAs and the Directive's adoption of 'Place of Establishment' for determining the Member State responsible for providing financial protection. Both have the potential to confuse even the most informed consumers.

## Linked Travel Arrangements

An LTA is formed when a consumer books one travel service, and then books another service, for example, through a targeted link, within 24 hours of the first service. This situation sees two separate contracts concluded within the 24 hour period.

In its response to the DfT's Consultation the Committee outlined its concerns about LTAs but accepted that, because they are mandated by Europe, they will form part of the financial protection landscape in the UK for the time being. This being the case the Committee's view was that businesses should be required to license their flight-led LTAs and the simplest solution would be to incorporate these into the ATOL scheme. In considering these issues the Committee suggested that ATOL holders be given the option of adding LTAs to their ATOL licences and source protection for their flight-based LTAs through the ATT. This would help improve protection for consumers and ensure that the lines between ATOL and LTA protection are not blurred. The Committee also highlighted that there appears to be a degree of ambiguity surrounding LTAs facilitated by airlines and whether these can be brought under the ATOL umbrella like flight-led LTAs. This would be the more logical approach especially as the protection in place for consumers would include repatriation.

There remains uncertainty, and a degree of alarm, over LTAs offered by accommodation sites if they decide to add additional products such as flights to their core business of supplying accommodation. LTAs that commence with a service other than a flight and offer no flight-based protection such as hotel or B&B accommodation would be out of scope and need to be protected by other means.

However, regardless of the source of LTA protection, the Committee is strongly of the view that clarity for consumers is key, and the bodies overseeing LTAs should ensure that as much as possible is done to comply with the information requirements mandated by the Directive. The Committee's suggestion was that some sort of universally recognised document—perhaps branded as an 'LTA Certificate'— could be issued so that consumers are aware of the different level of protection attached to this type of sale. This would mitigate the Committee's concerns about consumer confusion and the risk that LTAs could substantially weaken the ATOL brand

and erode the gains in awareness which have been achieved through the Pack Peace of Mind campaign.

### ***Linked Travel Arrangements – limited protection***

An LTA can take several forms. For the purpose of the Committee's report focus is limited to an LTA that starts with a flight - referred to in this report as a 'flight-led LTA'. An LTA can, however, be created the other way round and start with a hotel booking.

A flight-led LTA is formed when a consumer buys a flight either online, face to face or over the telephone from a business – defined as an 'LTA facilitator' - and then goes on to buy another tourist service such as a hotel. The LTA facilitator is the business that is the consumer's first 'port of call'; it could be an airline, a travel agent or some other provider of travel services. The facilitator provides the link to the other tourist service. The sales of the two components cannot be simultaneous as that would be a package holiday, but the second component can be bought moments after the first component has been booked and paid for. The second component can also be purchased up to twenty-four hours after the first booking. The second booking would typically be sold by a different trader - perhaps by the consumer being presented with a 'click through' link from the LTA facilitator's website to another trader's website, or the consumer may receive a targeted email from a hotel supplier after they have booked their flight.

Although an LTA consists of two components the financial protection covers the consumer only against the insolvency of the LTA facilitator. In the case of a flight-led LTA this protection is usually limited to money the consumer paid for the flight (assuming that the flight has not been provided because the LTA facilitator becomes insolvent). This means that consumers get no financial protection if the airline providing their flight becomes insolvent (unless the airline also happens to be the LTA facilitator) or if the hotel or hotel supplier becomes insolvent. Even if the consumer gets his/her flight money back they may still lose their hotel payments, have to pay cancellation fees or book and fund the cost of a replacement flight. The consumer will also only be repatriated from overseas if their insolvent LTA facilitator was also the flight supplier.

If the travel components are booked the other way round so that the consumer books the hotel from the facilitator and then books the flights with another trader the protection is limited to the money the consumer paid for the hotel (assuming this is not provided because the LTA facilitator becomes insolvent). In this case the consumer has no protection if the hotel becomes insolvent or for their flight.

In its latest consultation response, which was published in January 2017, the DfT determined to keep LTAs that start with a flight booking within the ATOL regime. On balance, the Committee believes this is the right decision and will continue to work with and advise the DfT about the implementation of the Directive in order to ensure that consumer interests are put first and that any confusing elements of LTAs can be minimised.

## Place of Establishment

The Directive will see 'Place of Establishment', rather than 'Place of Sale' as the means for determining the EU Member State responsible for providing appropriate protection to consumers.

The Committee has always been opposed to the adoption of 'Place of Establishment' as the determining factor. According to the Services Directive (Directive 2006/123/EC) this is the place where a travel organiser's economic activity is carried out 'for an indefinite period and through a stable infrastructure'. What this means in practice remains to be seen and this has not been tested in this context in the courts.

The current lack of clarity around the term 'establishment' could have an adverse impact on both the UK ATOL system and the financial protection arrangements of UK consumers. If longstanding ATOL holders decide to relocate to other Member States UK consumers may still assume that they are protected by the UK ATOL scheme as was the case in July 2016 when Lowcost failed. Travel businesses from other Member States may also decide to relocate to the UK. This could increase the administrative burden on the ATT and its financial exposure risks.

Although the Directive clearly requires each Member State to have an adequate protection system, how they administer their protection may differ from the UK. It is also feasible that consumers may not be provided with organised repatriation as they would in the UK. This could add both financial and emotional burdens to the detriment of consumers. UK based consumers may also encounter language difficulties and incur other expense or significant inconvenience when making claims.

Subject to Brexit and the UK's future relationship with other European countries, the Committee supports a return to the notion of 'Place of Sale' so that consumers in the UK are clear about where to source their protection from. In the meantime, the Committee emphasises the importance of consumers being given clear information about their booking and what forms of protection they might have recourse to, especially if the travel business is established in another Member State.



The Committee remains minded of the recent collapse of Lowcost which had left the ATOL regime and re-established itself in Spain under the appropriate Spanish protection system. The primary issue here was that the Spanish system – which relied on a small financial guarantee – was insufficient to compensate passengers and reports suggest that it will take years to pay out. The Committee remains concerned that some Member States’ protection arrangements may not be robust even after the Directive has been fully implemented. Failure of the EU Commission in ensuring proper implementation of the Directive in respect to Member State protection arrangements would create significant risk for UK consumers.

Lowcost also highlighted practical difficulties. While consumers were able to recover their losses from their card issuers, this had the effect that it was the card industry, rather than the state or the travel industry, who paid the cost of the failure. This may well impact on the view which the card industry takes of other travel related risks in the future. It could mean that travel businesses will be required to pay more to accept cards which will ultimately lead to consumers having to pay more for their holidays.



## The future of insolvency protection

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In its October 2016 Consultation the DfT sought views on streamlining the regulatory framework with potentially a single regulator or a single financial protection scheme covering both air and non-air packages. The Committee supported this as a future strategy and a means of achieving consumer clarity and making financial protection easier to understand. There are currently a number of UK protection schemes for non-air holidays, run by various bodies, with their own unique working methods and processes. The adoption of one set of rules administered by a single regulator would also result in administrative cost savings to the industry and, in turn, their customers. One suggestion is that the CAA fulfil this role, although this would not be without its challenges if the CAA were to be required to licence non-air travel. An alternative may be to create a single body which brings together the expertise and experience of the CAA and other bodies such as ABTA, CPT (Confederation of Passenger Transport UK), BCH (Bonded Coach Holidays) and ABTOT (Association of Bonded Travel

Organisers Trust). The most important outcome is for the existing protection schemes to function efficiently and at minimal cost which will benefit both consumers and the industry.

Going forward the biggest single change to ATOL and financial protection of UK consumers will be the impact of Brexit. The Committee believes there may be the opportunity to revisit elements of the Directive that are transposed into UK law in 2018. Any review should ensure that the future ATOL system is sustainable and stable so that both industry and consumers are certain of their respective rights and obligations. This must be put in the broader context of a political and economic environment that may be subject to stress as the UK exits the EU. It is important for consumers and for the travel trade itself that the international dimensions of holiday travel continue to be recognised, and that the holiday travel industry is able to operate under a stable regime.

It may be that particular areas within the Directive can be reassessed, removed or redrafted if the concerns the Committee has highlighted in this report prove to be well-founded. For



example, the Committee would expect companies that sell in the UK to be licensed on the basis of place of sale, rather than their place of establishment, and require an ATOL. This would go some way in reassuring consumers that the protection for sales made in the UK to UK-based consumers is robust and fit for purpose. Similarly, the Committee's concerns around LTAs could be addressed in a post-Brexit world.

However, the Committee regards much of the Directive as being sensible and consumer-focused and believes that these aspects of the Directive should be retained. It would defy common sense to replace or unpick the Directive uncritically and in its entirety.

Looking further ahead, the Committee believes that retaining the Directive in some form or other does not prevent the UK from extending financial protection so that it applies to all UK departing flights. The Committee looks forward to future engagement with both the DfT and CAA in identifying those areas that require improvement. But equally there are new protections being introduced to consumers through the Directive which ought to stay in place and the Committee would expect that these would be retained in any future review of the ATOL system.

### ***Place of Establishment – lessons from the failure of Lowcostholidays***

On 15 July 2016 Lowcost entered into administration, affecting around 27,000 UK holidaymakers already abroad, and 110,000 due to travel. In this particular case the detriment to UK consumers was much reduced because the majority of holidaymakers abroad held valid tickets and could fly home as planned, and those due to travel were able to claim refunds from their card companies. However, many hotels which were, as is typical, paid in arrears refused bookings, resulting in consumers having to re-book, often at higher rates.

The failure of Lowcost points to a wider problem in terms of the efficacy of foreign protection systems. The owner of Lowcost, which had held an ATOL, relocated the business to Majorca in November 2013 where it came under the protection arrangements of the Spanish Balearic Islands' authorities. At the time of its collapse Lowcost had posted a bond of €1.3 million, although it had sold holidays worth over £477 million in 2014. The arrangements of the Spanish Balearic authorities were inadequate both in terms of magnitude and also in terms of timing; it is thought that it could take many years before the Spanish system will pay out claims.

If protection systems in other EU member states are inadequate, UK consumers will be exposed to risks that they are not aware of. This underlies the Committee's concern that the Directive introduces the concept of 'Place of Establishment', rather than 'Place of Sale' as the determinant for deciding which EU Member State is responsible for providing protection to consumers. While the Directive states that Member States are responsible for putting in place protection systems that fully implement its provisions, that are robust and that can fund a peak period insolvency, there are practical problems that arise when a UK travel organiser decides to move its establishment to another Member State.

One significant concern is that the system in another Member State, established to meet local needs, may not be equipped to regulate large and complex businesses or to deal with the volume of consumers who could be affected by large business failures.

## Market outlook

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Market conditions in the last twelve months have remained uncertain due to geopolitical risks and the threat of terrorism. Attacks last year in Turkey and Belgium, and the Westminster attack in March, show that these risks remain. Sadly, a number of important destinations in North Africa and the Eastern Mediterranean were affected again this year by terrorism and previously stable destinations such as Turkey continue to experience a tougher business environment as consumers have chosen to book holidays in destinations perceived as safer such as Spain, Italy and Portugal.

Other less traditional destinations such as Croatia and Bulgaria have benefited from this diversion, but they lack the more developed infrastructure of traditional mass holiday resorts including accommodation, resulting in a shortage of beds in those areas. The Committee also noted that consumers were opting for shorter lead times for booking their flights, possibly due to nervousness about booking flights too far in advance of travel.

While there is considered to be a heightened threat of terrorist attacks worldwide stemming from conflicts in the Middle East, long-haul destinations like the Caribbean and, to some extent, the USA, have emerged as attractive destinations for both winter sun and perceived as safe destinations.

The Foreign and Commonwealth Office, ('FCO'), still advises against all travel or all but essential travel to parts of the Middle East, Turkey, and Egypt, especially the Sinai Peninsula, and to Tunisia. UK carriers are still barred from flying into Sharm El Sheikh and additional security measures have been put in place at other airports such as Hurghada. The cancellation of these routes has resulted in operators transferring their aircraft to other European destinations which are consequently experiencing higher demand.

The Committee has noted that bookings for 2016-17 to the Eastern Mediterranean and Egypt have followed the previous year's downward trend. The decline in growth of the number of ATOL passengers since March 2016 slowed during the year and stabilised at around 6% growth toward the end of 2016, with data showing reasonably strong forward bookings. Some of these favourable trends may be attributed to the strength of sterling and also to fairly strong consumer expectations about future spending on holidays.

The current market outlook for 2017 is therefore mixed. This is putting pressure on tour operators and airlines alike. Despite Brexit, the travel trade will continue to operate throughout the EU and beyond. As the UK introduces the Directive, it is important to recognise the value of travel and tourism to the UK economy, not only in terms of jobs, but also as a source of substantial tax revenues.

## Market distortions

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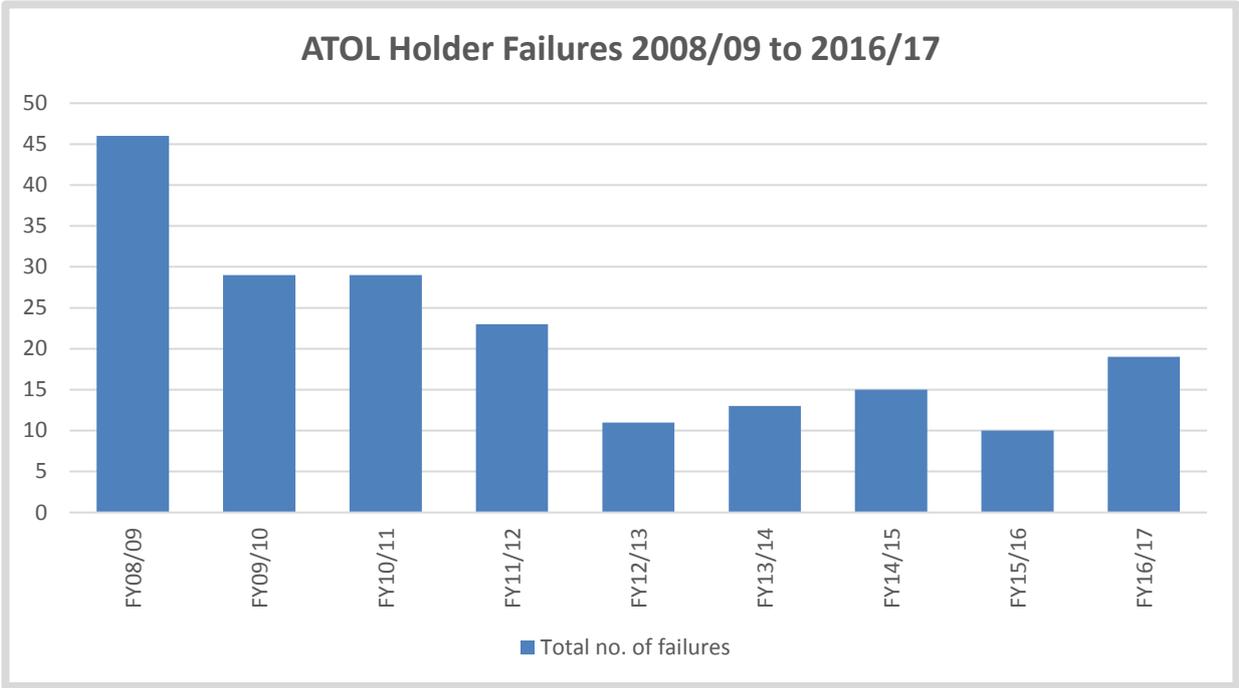
From June 2016 the Committee discussed factors that potentially distort the travel market between sellers offering consumer protection and those that do not. There are a number of changing elements in the travel market including the growth in recent years of new services such as Airbnb, which offer an attractively marketed product which enjoys a price advantage. However, these new offerings sometimes operate in a way which is less regulated and provides less protection to consumers, and consumers may not be aware of this when they buy. That is in addition to the spread of longer-standing practices by some businesses, such as the sale of holidays by an agent in a bundle of separate contracts in a way that leads to a reduced VAT bill. Businesses can also gain an unfair advantage through misleading pricing – for example pricing accommodation costs using unrealistic exchange rates – or by not paying VAT on privately-owned accommodation sales.

Sellers employing such tactics may gain a price advantage by avoiding the costs of protection or because the tax treatment is more favourable. Consequently, some consumers will be drawn away from the protected sector. Although the Committee's main focus is insolvency protection, it is generally supportive of consumer protection in travel and is concerned that these changes are not widely understood by consumers, and it may lead to them make wrong choices and in some cases losing financial protection.



# Failures

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For 2016/17 there were 19 failures compared to 10 failures of the previous year.

A table detailing this year’s failures is appended in Appendix 1.

## Conclusion

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The key issue the Committee focused on this year was implementation of the Directive, which will have a wide ranging effect on regulation and how consumer protection will operate for years to come.

The Committee recognises the need to ensure an appropriate balance between consumer protection and the need to have in place workable regulations that encourage investment and growth, and that do not unreasonably inhibit new entrants to the travel market. It supports the UK's implementation of the Directive, but has serious practical concerns about a number of features of the Directive, most notably Place of Establishment and LTAs. Both have the potential to cause consumer confusion which could result in a reduction in the confidence of the travelling public.

Place of Establishment could complicate the ability of the UK to undertake managed repatriation which has been an important part of consumer protection. There also remain issues about the effectiveness of the implementation of the Directive by Member States, and its subsequent enforcement. The Directive requires compliance from every EU Member State but the Committee, with the collapse of Lowcost in mind, is concerned that partial implementation, or the lack of effective compliance, could compromise the interests of UK consumers. It is not clear how efficient enforcement will be achieved given that infraction proceedings which are undertaken by the European Commission are unlikely to be timely and may not be effective if undertaken only after insolvency has occurred.

The Committee has been vocal in highlighting that the Directive must not degrade or overly complicate consumer protection. The ATOL system has proven to be highly effective and any changes need to be examined in light of the costs borne by the travel industry and, ultimately, the consumer. Where the Directive strengthens and extends consumer protection in the areas of information disclosure, it is welcome and will helpfully add to the protections that are currently in place.

The last twelve months have involved a number of challenges, some of which are likely to remain for the foreseeable future. The threat of terrorism and geopolitical risk in key travel destinations in the Eastern Mediterranean and North Africa has had a large impact on the market. This has significantly impacted consumer confidence which, in turn, has challenged the operating models of some travel specialists.

For the next twelve months the Committee will remain engaged in advising the Government on the implementation of the Package Travel Directive. One important practical aspect of the Directive which will require our input will be how to implement LTAs in the UK in such a way that consumers fully understand the limitations of their protection. The Committee will also continue to look at the unregulated travel sector and provide advice on emerging consumer issues in this area.

## Appendix 1

## Details of ATOL holder failures April 2016 – March 2017

ATOL Holder Name	Date of Failure	Licensed Passengers	Passengers Repatriated	Cost of Repatriation & Overseas Costs	Expected Number of Consumers to Refund	Estimated Cost of Refunds	Total Estimated Expenditure	Estimated Call on Air Travel Trust
Jewel In The Crown Holidays Ltd	01/04/16	19,265	-	-	2,818	£247,557	£282,191	£282,191
Advance360 Group Ltd	27/06/16	500	-	-	16	£30,470	£31,325	£31,325
World Sky Travel Ltd	01/07/16	5,623	145	£70,119	998	£628,803	£728,268	£728,268
Mikrobil Ltd	14/07/16	500	-	-	-	-	-	-
Elegant Travels Ltd	21/07/16	500	4	£901	127	£50,933	£55,125	£55,125
AUM plc	06/09/16	1,350	40	£20,612	159	£404,488	£433,259	£433,259
Chameleon Worldwide Travel Ltd	31/10/16	2,694	38	£50,735	781	£735,514	£793,460	£793,460
Skies The Limit Ltd	22/11/16	500	0	£8,583	319	£304,555	£323,069	£323,069
Bull Precision Expeditions Ltd	24/11/16	500	-	-	124	£151,755	£156,100	£156,100
Voyage Intl (UK) Ltd	07/12/16	500	-	-	-	-	-	-
Markhor Traders Ltd	19/12/16	500	-	-	500	£292,500	£307,075	£267,075
Page & Moy Travel Group Air Holidays Ltd	30/12/16	33,086	-	-	-	-	-	-
All Leisure Holidays Ltd	04/01/17	16,152	14	£50,500	8,898	£10,115,725	£10,366,941	£10,366,941
Asian Horizons Ltd	17/02/17	500	-	-	9	£22,916	£24,210	£24,210
Cheap Flight House Ltd	24/02/17	500	-	-	5	£3,020	£4,131	£0
On The Ball Sports Marketing Ltd	13/03/17	500	41	£58,733	145	£64,520	£126,002	£126,002
Diamond Shortbreak Holidays Ltd	16/03/17	962	-	-	1,347	£541,261	£580,161	£580,161
The Couture Travel Company Ltd	31/03/17	500	-	-	141	£173,507	£176,045	£176,045
Matchpoint Europe Ltd	31/03/17	500	-	-	221	£442,000	£443,092	£403,092
			282	£260,183	16,608	£14,209,524	£14,830,454	£14,746,323

## ATIPAC's response to the DfT's consultation

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The Air Travel Insolvency Protection Advisory Committee (ATIPAC) was established by the Secretary of State for Transport in 2000 to provide advice to the Secretary of State, the Civil Aviation Authority (CAA) and the Trustees of the Air Travel Trust on the arrangements for the financial protection of air travellers and customers of air travel organisers.

The Committee is formed of a diverse and representative group of the travel industry, balanced between the industry and those focused on consumer interests. It includes the major trade bodies (ABTA, AITO, AAC, BAR UK, TTA), larger and independent tour operators, passenger representatives and independent experts, including the Chairman, and representatives from the Civil Aviation Authority and Air Travel Trust (ATT). As such it is the only body in the UK that brings together the travel trade, regulator and consumer representatives and independent members devoted to the interests of air travellers.

The Committee has advocated revision of the 1990 Package Travel Directive for a number of years to ensure that financial protection keeps pace with the way in which consumers book air travel and air based holidays, and it therefore welcomes the opportunity to respond to the DfT's Consultation. At the same time the Committee recognises that, because Directive is a piece of European legislation, the Directive or some of its provisions may not apply after the UK ceases to be a member of the European Union.

The Committee's consultation response not only answers the questions posed that fall within its remit, it also looks further ahead. If the framework on financial protection in the UK is to be revised the Committee firmly believes that many of the provisions of the Directive such as the extended definition of a package and information provisions should be maintained. Any provisions which prove ineffective should, however, be removed. ATIPAC has already identified two provisions which could lead to consumer detriment and will monitor their impact on consumers. It also seems opportune to reopen previous debates on extending financial protection to all UK departing flights. The Committee strongly supported this proposal in 2003 and remains of the view that this best serves the interests of UK air travellers.

In any financial protection scheme consumer clarity is paramount so that consumers can make informed choices. Although reforms to the ATOL Scheme in 2012 and the Pack Peace of Mind Campaign have led to better informed consumers the failure of Lowcostholidays Ltd in July 2016 showed that some consumers are still confused about financial protection and the risks they run if this proves to be inadequate. Although the new Directive should provide more comprehensive and clearer protection the Committee remains concerned that the definitions of 'Place of Establishment' and 'Linked Travel Arrangements' have the potential to confuse.

## Consultation questions and summary ATIPAC responses

### *Question 1*

**What are your views on the proposal to align the scope of the ATOL scheme so that it is consistent with the new definition of 'package' in PTD 2015? This will mean that any UK-established business that offers or sells a 'package' (as defined by PTD 2015), which includes a flight, will need to meet their insolvency protection obligations by holding an ATOL and complying with the scheme. Please explain your reasoning.**

The PTD updates the protection available to consumers, in particular by broadening the scope of financially protected 'packages' and by introducing information provisions for consumers. The Committee welcomes both. They have a number of important synergies with the ATOL Reform changes that were introduced and delivered by the UK travel industry in 2012. In particular, Flight-Plus arrangements will now be subsumed into the expanded 'package'. The Committee therefore agrees that Approach 2- Strengthening ATOL to be consistent with PTD 2015- is the best way to implement the PTD and to ensure the industry delivers this on time.

The Committee also strongly supports the additional role the ATOL scheme plays in reducing the risk of businesses failing by incorporating a licensing regime with statutory underpinning. This does act as a barrier to entry, but in so doing has a record of success in eradicating the incompetent, the poorly financed and those with criminal intent.

### *Question 2*

**What would be the impacts on your business if Flight-Plus and agent for the consumer business models need to comply with the same terms as an ATOL flight-inclusive package?**

This is not within ATIPAC's remit.

### *Question 3*

**Do you currently offer or facilitate travel arrangements that are likely to fall into the Linked Travel Arrangements category? If so, what percentage of your bookings would likely fall into the Linked Travel Arrangements category?**

This is not within ATIPAC's remit.

### *Question 4*

**Do you think businesses should be required to licence their LTA flight bookings and source their protection from the ATOL scheme (option a), or should protection be implemented through a market solution (option b), or through another mechanism entirely? Please explain the reasons for your preference.**

The Committee remains concerned that consumers may not understand the limited, and often transient, protection offered for LTAs. It is concerned that incorporating LTA protection within the ATOL regime may confuse consumers. Consumers booking LTAs may incorrectly assume they are better protected than in reality. Moreover, providing limited protection through the ATOL system may well damage the ATOL brand and consumers may expect better protection than LTAs actually offer. This may weaken the ATOL brand and negate the gains achieved through the ATOL Pack Peace of Mind campaign. As stated in our 2015/2016 Annual Report there has been a steady increase in the proportion of people who believe they are either “very” or “reasonably well” informed about protection. That brand awareness is especially important and should be maintained.

Despite the concerns raised above we accept that the UK must implement LTAs and these will form part of the financial protection landscape in the UK for the foreseeable future. This being the case our view is that businesses should be required to licence their LTAs. From the consumer’s perspective, the simplest solution would be to incorporate these into the ATOL scheme. However, it would be somewhat unusual for ATOL to include ground led LTAs which offer consumers no protection for the flight element of their booking. The Committee, therefore, suggests that:

- ATOL holders can add LTAs to their licences and source their flight-based LTA protection through the ATT. This would help them communicate a clear message to their consumers and the CAA could have a role to play in overseeing compliance and ensuring the lines between ATOL and LTA protection are not blurred.
- There appears to be a degree of ambiguity surrounding LTAs facilitated by airlines and whether these can be brought under the ATOL umbrella along with other flight-led LTAs. This would be the more logical approach especially as the protection in place for consumers would include repatriation.
- Ground led LTAs (and potentially airline led LTAs if protected outside ATOL) should be overseen by another body that operates in a similar way to ATOL and fosters good practice and governance. We favour market based protection for these LTAs. This will help the industry and market to pilot a non-levy based protection scheme, perhaps through the adaptation of one of the existing schemes that protect non-licensable travel under the existing Package Travel Regulations. This would be practicable if the volume of LTAs offered by facilitators who are not ATOL Licence holders is a small proportion of such arrangements.

Regardless of the source of LTA protection, however, clarity remains key and the bodies overseeing LTAs should ensure that as much is done as possible to achieve this. Different branding or terminology could be used to denote the different protections and an LTA Certificate specific to the type of booking could help consumers understand whether they will be refunded or repatriated and the means by which this will be achieved.

## Question 5

**If LTA bookings are included in the ATOL scheme, do you think the less comprehensive protection they offer means that they should attract a different APC contribution rate, and should they be branded differently to ATOL? Please explain the reasons for your preference.**

Until such time as the APC is reviewed (see Question 10) the Committee sees no reason to differentiate between the potential costs to the ATT of a Flight-Only, an LTA or a package booking. In our view a flat rate system is the simplest system for regulatory purposes, it is transparent and is also simple for ATOL holders.

## Question 6

**What do you think of the proposal to change the scope of ATOL from "place of sale" to "place of establishment" as outlined above? Please, include any views on whether it will encourage your business or others to establish in or out of the UK.**

During the process leading to the publication of the PTD, the Committee was opposed to the adoption of 'Place of Establishment' as the determinant for deciding which EU Member State is responsible for providing appropriate protection to consumers. Our opposition partly stems from the fact that the term 'establishment' is defined by the Services Directive (Directive 2006/123/EC) as being where the travel organiser's economic activity (i.e. the provision of services) is carried out "for an indefinite period and through a stable infrastructure". This has not been tested in the courts, and may pose a significant source of confusion for consumers who may assume they are protected by the UK ATOL scheme when in fact the travel business is established in another Member State.

The Committee is concerned that uncertainty regarding 'establishment' will remain unless specific criteria are incorporated into UK legislation to ensure that the geographical address provided to the consumer reflects the actual place of establishment, and that any purported move by travel organisers from the UK to another Member State constitutes a substantive relocation and not just a shadow.

Although other Member States are required to put in place adequate protection, the way in which they administer their protection may differ from that of the UK. UK based consumers may incur language difficulties and additional expense in making claims. In addition they may not benefit from an organised repatriation as they would in the UK and may have to fend for themselves and then make a subsequent claim. This can add a substantial financial and emotional burden to the detriment of consumers.

Subject, of course, to the UK's future role in Europe, the Committee strongly supports a return to the notion of Place of Sale so that consumers in the UK are clear about where to source their protection from should their travel business become insolvent. In the meantime, the Committee would emphasise the importance of consumers being given clear information

before they book on the Member State responsible for providing their financial protection so they make informed choices.

### **Question 7**

**What do you think of the proposal that an updated ATOL certificate should continue as a recognised way for ATOL holders to meet some of the after sale obligations? Please explain your reasoning.**

The introduction of the ATOL Certificate in the UK was a key component of the 2012 ATOL Reform. It has proved to be a very valuable consumer information tool, and continues to make a real difference to consumers' understanding of their rights if their ATOL holder or one of its suppliers becomes insolvent. It has reinforced consumers' awareness and knowledge of the ATOL brand. Moreover, given the Committee's concerns about consumer confusion on the extent of LTA protection we strongly support the introduction of standardised document for LTA bookings. This would enable consumers to tell at a glance the extent to which they are protected.

However, much of the success of the certificate is attributable to its succinctness and for this reason we believe its message should be confined to the financial protection aspect of the booking. Information on other rights conferred on consumers should be contained in a different document.

### **Question 8**

**What are your views on the proposal to exempt business to business sales from the ATOL scheme? Could you also please indicate whether your business currently sells business travel through a general agreement, and if yes whether your business also sells other transport services to consumers that will be in scope of PTD 2015?**

This is not within ATIPAC's remit although ATIPAC accepts that exempting business-to-business sales is reasonable.

### **Question 9**

**If you are a business affected by these proposals, what do you anticipate the familiarisation costs (as outlined above) will be for the proposed regulations? Do you anticipate any difficulties with implementing any of the proposed changes? Please explain your reasoning.**

This is not within ATIPAC's remit.

## **Question 10**

**What are your views or preferences on the options for improving financial sustainability of the fund or fairness in the scheme as outline above? Please explain your reasoning, and also whether you anticipate any issues or impacts with these options. Are there any other options that could achieve similar policy outcomes, but with lower impacts?**

The Air Travel Trust has now built up a significant fund and has financial stability. The Fund is backed up by appropriate financial instruments that enables it to fund most foreseeable failures. Coupled with the ATOL licensing regime, which has a good record of ensuring that operators are financially fit and operate sustainable businesses, the existing system serves its purpose, and will continue to do so in a PTD-compliant environment.

There is, of course, a risk that UK-established travel organisers currently licensed under ATOL may move their establishment to another Member State- perhaps for reasons unconnected with the PTD, e.g. the tax regime. Equally businesses currently operating in other Member States may decide to re-establish themselves in the UK. These could affect the ATT's income, administration costs (particularly for claims and repatriations) and ultimately calls on the fund. We trust, however, that the CAA will seek additional security from new entrants and existing businesses, as it does at present, according to their perceived risk to mitigate these.

With ATIPAC being comprised of members of the trade as well as consumer-focused representatives it has not able to reach consensus on how contributions should be structured and assessed or whether businesses should be incentivised to reduce the exposure they pose to the ATTF. We did, however, agree that a flat rate system is the simplest and most transparent system for regulatory purposes and for ATOL holders. We will be interested to see how this develops and, in particular, how any proposed changes will impact upon consumers.

## **Question 11**

**What are your views on the options for encouraging market involvement and commercialisation? Please explain your reasoning, and also whether you anticipate any issues or impacts with these options. Are there any other options?**

In general terms the Committee favours freedom of choice and is not opposed to market solutions developed within a statutory framework. However, the capacity of the market to accommodate a refund and repatriation regime in the travel industry is uncertain. It appears to be insufficient. Indeed, the Committee recalls that before the APC was introduced, the capacity of the market to provide bonding was increasingly seen to be inadequate and costly.

However, if businesses choose to protect their sales through bonding or insurance these must be fit for purpose and approved by a regulator. Although the market would have a role to play in assessing risk the Committee believes this should be underpinned by a statutory licencing regime to reduce the risk of failure. Even if the market funds repatriation the Committee believes that only the CAA has the credibility and expertise to arrange repatriation of

consumers.

## **Question 12**

**What are your views on the financial impacts or benefits of streamlining the regulatory framework? Please explain your reasoning, including any particular views on a single set of regulations, a single regulator or moving to a single scheme covering both air packages and non-air packages.**

The committee strongly supports this. We refer to our detailed submissions to the DfT's Call for Evidence in 2013. We would reiterate our view that consumer clarity is paramount. Whilst consumers should be expected to take responsibility for their own decisions they can only do so if the protection regime is easy to understand. At present there are multiple protection schemes, run by various bodies and these provide neither consistency nor clarity to the consumer. The adoption of one set of rules administered by a single regulator would also result in cost savings to the industry which could be passed back to consumers.

Although non-licensable travel is not insignificant the vast majority of package sales involve air. For this reason we believe that financial protection of all packages should be overseen by the DfT and delivered by a single regulator. One suggestion is for the CAA to fulfil this role, although this would pose challenges for the CAA, particularly if it is required to licence non-air travel. An alternative may be a newly created body which brings together the expertise and experience of the CAA and other bodies such as ABTA, CPT (Confederation of Passenger Transport UK), BCH (Bonded Coach Holidays) and ABTOT (Association of Bond Travel Organisers Trust).

## **Question 13**

**Do you have any views on whether the ATOL scheme should:**

- a. continue to include certain Flight Only sales;**
- b. remove Flight Only sales, without any mitigations;**
- c. remove Flight Only, but only following the introduction of new mitigations; or be extended, potentially to offer repatriation protection on all seats (this might be optional)?**

ATIPAC opposes the removal of protection for Flight-Only sales, even though this results in the UK opting to provide more protection than required by the PTD. Such removal constitutes a significant consumer detriment. The Committee accepts that protecting only some flight sales can cause confusion. However, this is not a reason for removing valuable protection from consumers when Flight-Only bookings can cost as much, if not more, than protected packages. In the committee's view introducing mitigations would only add to consumer confusion and be very difficult to explain and enforce.

Instead we favour extending financial protection to all flights departing from the UK, as the CAA proposed to Government in 2003. Since 2003 numerous airlines have failed and caused

detriment to UK consumers. The Committee firmly believes that an effective financial protection scheme that best services UK air travellers should ensure that no one is left stranded or out of pocket.

### ***Question 14***

**We welcome responses from businesses on any of the above areas regarding the impact of the ATOL 2012 reform to inform our Post Implementation Review. Please explain your reasoning.**

This is not within ATIPAC's remit, although the Committee fully supports the 2012 ATOL Reforms and their achievements in extending financial protection and better informing consumers.

### **ATIPAC**

23 November 2016

## ATIPAC Committee members April 2016 – March 2017

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### **John Cox OBE**

Independent representative

John has been Chairman of ATIPAC since its formation in April 2000. He was previously chair of the UK's Air Transport Users Council. He is also the industry representative to the Air Travel Trust. He is retired from full time work after 42 years in book and periodical publishing.



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### **Roger Allard**

Industry representative

Roger started in travel as a teenager on Saturdays while still at school, and went on to be a founding partner and director of First Choice plc. He maintains investments and directorships in UK and non-UK based travel companies. He represented ABTA on the Committee until his resignation in January 2017.



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### **Alan Bowen**

Industry representative

Alan qualified as a solicitor in 1982 and, after a number of years in private practice, joined ABTA as Head of Legal Services. For the last 20 years he has been the Managing Partner of AGB Associates which specialises in advising the travel industry. He represents the Association of ATOL Companies (AAC).



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### **Roger Bray**

Independent representative

Roger is one of the UK's longest serving travel journalists and a former travel editor of London's Evening Standard. He was a passenger on Concorde's first commercial flight, covered the rise and fall of Laker Airways, various air disasters and the after effects of 9/11. He is the co-author of *Flight to the Sun* which explores the expansion of mass package tourism. He currently blogs on *The Mature Traveller*.



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**Simon Cooper**

Industry representative

Founder and CEO of On the Beach, Simon began his career in the travel industry while attending university. It was here that he founded the online ski company – On the Piste – which he sold to TUI Travel in 2008. On the Beach is headquartered in Cheadle, Manchester and currently employs more than 250 staff. He resigned from the Committee in January 2017 and has been replaced by Kirsteen Vickerstaff.



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**Uday Dholakia OBE**

Independent representative

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



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**Prof. David Grant**

Independent representative

David is currently Emeritus Professor of Law at Northumbria University. He is the co-author of *Holiday Law* (Sweet & Maxwell) with Stephen Mason and also co-author of *Hotel Law* (Northumbria Law Press) with Helen Douglas and Julia Sharpley. He has written and lectured extensively on travel law.



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**Dale Keller**

Industry representative

Dale is the Chief Executive of the Board of Airline Representatives in the UK (BAR UK). He has 25 years' experience in the aviation, travel and tourism industries. He represents BAR UK on the committee.



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**Helen Knapman**

Consumer representative

Helen is the Deputy Editor at Moneywise magazine and moneywise.co.uk and has written numerous articles on various consumer travel issues. She is the former Senior News Reporter at moneysavingexpert.com.



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**Gary Lewis**

Industry representative

Gary became Chief Executive Officer of The Travel Network Group in early January 2016 following a successful management buyout of the Group. He was instrumental in delivering the first CAA Franchise arrangement in 2003 which still today provides the basis for Travel Trust Association Members to gain individual ATOL membership.



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**Alisdair Luxmoore**

Industry representative

Alisdair is a Founder and Director of Fleewinter Ltd. He represents the Association of Independent Tour Operators (AITO). He is a member of the AITO Council and also sits on the AITO Industry Issues and the website development groups.



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**Michael Medlicott**

CAA representative

Michael is a non-executive CAA Board member and Chairman of the Air Travel Trust. He also serves as a member of the CAA Audit Committee, the CAA Remuneration Committee and the CAA International Ltd Management Advisory Board. He has many years' experience of the transport and tourism sectors; he was the International Vice-President at Delta Air Lines, Chief Executive of the British Tourist Authority and sat as a board member of the Manchester Airports Group. He is a companion of the Royal Aeronautical Society.



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**Richard Moriarty**

CAA representative

Richard joined the CAA in January 2016 as Group Director of Consumers and Markets and Deputy Chief Executive. He is responsible for the ATOL Scheme, the economic regulation of airports and air navigation providers and the CAA competition powers and consumer redress and enforcement activities. He sits on the CAA Board and is a Trustee of the Air Travel Trust.



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**Keith Richards**

Independent representative

Keith is the Chair of the CAA Consumer Panel, which provides advice to the CAA on how its regulatory activity affects consumers and he is also Chair of the Disabled Persons Transport Advisory Committee. Keith is a barrister, arbitrator and commercial mediator. He previously served as Head of Business and Professional Development and Consumer Affairs at ABTA.



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**Mandy Round**

Industry representative

Mandy is head of Partnership Marketing for EasyJet holidays and is responsible for relations with its trading partners, and for easyJet's ATOL. Mandy has held varied roles in the travel industry including Client Services and Tourism Director at Sambala Resort, Cape Verde, General Manager at Jet2holidays and Director at EMEA Hong Kong Tourist Board.



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**Sue Davies**

Consumer representative

Sue is the Consumer Strategy Manager at Citizen's Advice with national responsibility for consumer strategy. She has a particular interest in travel consumers as this business sector represents a major part of the cases that Citizen's Advice deal with. Sue has previously worked for the Office of Fair Trading (OFT).



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**Bruce Treloar**

Consumer representative

Bruce is the Chartered Trading Standards Institute's Lead Officer for the Holiday & Travel Industry with 41 years of experience as a practising trading standards officer.



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**Rochelle Turner**

Consumer representative

Rochelle is the Director of Research for the World Travel & Tourism Council. Her role includes research into travel facilitation, infrastructure, investment and human capital for travel and tourism as well as sustainability issues such as climate change.



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**John de Vial**

Industry representative

John is Director of Financial Protection and Financial Services for ABTA and also a Director of Travelife Limited – sustainability in tourism for hotels. He is a Trustee of The Travel Foundation and ABTA LifeLine and chairs the Advisory Committee of the International Centre for Responsible Tourism.



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**Kirsteen Vickerstaff**

Industry representative (appointed January 2017)

Kirsteen is General Counsel and Company Secretary at On the Beach Group plc, where she has responsibility for legal, company secretarial, regulatory, risk management and insurance matters. On the Beach is one of the UK's leading online travel agents, specializing in beach holidays and is listed on the London Stock Exchange.



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**Sandra Webber**

Independent representative

Sandra is the Chair of the Water Alternative Dispute Resolution Panel which provides oversight of the water industry consumer redress scheme. She previously served as Director of Consumer Support at the CAA and before this worked at the Department for Transport where her responsibilities included aviation and the ATOL protection scheme.



## Constitution and terms of reference

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### 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 members and/or officers of organisations representing various market sectors of the travel trade and independent representatives. The Chair and Deputy should always be independent representatives.

#### *Trade*

There will be up to ten members representing travel agents, tour operators, third party protection arrangers and airlines. Appointments shall be made in consultation with relevant trade associations. Each of the following trade associations and/or their successor bodies shall always have the right to be represented by one member:

- Association of British Travel Agents (ABTA)
- Association of Independent Tour Operators (AITO)
- Association of Airline Consolidators (AAC)
- Board of Airline Representatives in the UK (BAR UK)
- Travel Trust Association (TTA)

#### *Independent members*

There will be up to ten independent members of whom one will be Chair. These members will include at least three consumer representatives and three representing consumer-focused organisations.

#### *Civil Aviation Authority*

The Chair of the Air Travel Trust, and one other member of the Civil Aviation Authority.

### Appointments to the Committee

3. Members shall be appointed by the Chair of the Civil Aviation Authority (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 Chair will consult the

Chair of the Committee before appointing Members other than from the CAA.

4. Where an organisation is invited to provide a representative, then alternates should be nominated, in order that the organisation's views and contribution to the Committee's deliberations may at all times be made. Where the appointment is in their personal capacity, then alternates are not appropriate.
5. If the Chair 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 the membership may be declared vacant.

## Meetings of the Committee

6. The Committee shall determine its own procedures for and frequency of meetings, including any requirement for a quorum.
7. The Chair may set up working groups to consider and report on specific issues. Although such groups will normally be made up of Committee members the Chair may appoint others with particular expertise at his discretion.

## Duties of Committee

8. 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.
9. In particular it shall:
  - advise the Trustees, the CAA and the Secretary of State on policies they should pursue to protect consumers;
  - advise the CAA and the Trustees on payment policy and the use of their discretion when making payments from the Trust (The Payment Policy);
  - advise the CAA how they can promote awareness of ATOL protection to consumers and consumer expectations of protection;
  - advise on agreements between the Trustees, the CAA and third parties such as credit card companies where there are no commercial sensitivity issues;
  - advise on current market conditions, emerging market trends and, where appropriate, their potential impact on consumers and the financial protection arrangements; and
  - advise the CAA and the Trustees on the financial viability of the ATT.
10. 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**

11. Reasonable out of pocket expenses directly incurred by Members of the Committee in attending meetings shall be reimbursed by the CAA.
12. 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**

**Amended by the Department for Transport September 2014**