

# ATIPAC

Air Travel Insolvency Protection Advisory  
Committee  
Annual Report 2021 – 2022

June 2022

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## Introduction from the Chair



Following the end of COVID restrictions, people are keen to go on a holiday without the anxiety of catching the disease, the cost of testing and the worry of getting the right documentation.

This annual report covers the year to 31 March 2022. Since then the Government has published Flightpath to the Future, and we welcome the commitment in that document to take forward the Airline Insolvency Review. Also since then, we have seen cancelled flights due to staff shortages causing disruption to people's holiday plans. Our Committee's remit only covers consumer protection in relation to travel company insolvency. Nevertheless our membership encompasses travel companies who have sold these flights to customers as part of package holidays in good faith. We shall be looking at whether the current disruption affects the financial health of travel companies, with a potential impact on consumers.

A holiday is always a large household expenditure item. But the current cost of living pressures make it a stretch or even a luxury for many. It is therefore important for consumers to be protected against the travel company failing after they have paid but before they have travelled; or worse still while they are abroad.

The main components of financial protection for air travellers are:

- a thriving and competitive travel industry with low risk of company failure
- an appropriate regulatory regime for consumer protection
- affordable and effective travel insurance for eventualities not covered by regulations.

These are not fully in place at the moment. It is against this background that we submit the annual report of the Air Travel Insolvency Protection Advisory Committee (ATIPAC).

## 1. The Role of ATIPAC

- 1.1 It has long been recognised that holidays are a large household purchase and that there is a period of time between a customer's payment and the customer's return from holiday, and the seller could fail at any point during that period. The Air Travel Insolvency Protection Advisory Committee (ATIPAC) was created by the Secretary of State for Transport in 2000 to provide informed advice to Government on financial protection of air travellers and customers booking with air travel organisers. This protection is mainly provided through the ATOL scheme which, broadly, licenses businesses to sell air package holidays and regulates contributions to the Air Travel Trust Fund to provide customers of failed tour operators with refunds or repatriation to the UK as necessary.
- 1.2 The Committee is devoted to furthering the interests and financial protection of air travellers. Its Constitution and Terms of Reference are provided at Appendix A. The Committee, which meets on a quarterly basis, has an independent Chair, and its membership is uniquely balanced between trade, passenger representatives and independent members, with a breadth and depth of knowledge and experience from all areas of the travel industry.
- 1.3 Given the diversity of its membership, it is not possible for the report to cover all points of view, however, it reflects the viewpoint of the majority of members. It should also be noted that although the Committee's Secretariat function is provided by the Civil Aviation Authority (CAA), the report does not necessarily reflect the CAA's own position.

## 2. Challenges in the past year

### **Disruption to travel caused by Covid**

- 2.1 It is well known that the travel restrictions at the start of the pandemic and the resulting scale of refunds requested created unprecedented pressure on all parts of the travel supply chain. Many travel firms had insufficient capital to provide consumers with refunds, and in some cases airlines delayed in refunding them promptly for flights they had booked; hence they were either unable to pass refunds on to consumers within the two-week timeframe required in the Package Travel and Linked Travel Arrangements Regulations (2018), or experienced financial difficulty by doing so. In contrast, some airlines have reported that they did not know when flights were being purchased for a package and that, in some cases, they had indeed provided refunds which were not passed onto the consumers. Neither scenario was good for consumers.

### **Constantly changing rules**

- 2.2 ATIPAC does, of course, understand that there was a public health emergency and precautions were necessary. Consumer confidence in the travel industry, as in many other sectors, will take time and stability to rebuild. Difficulties in receiving refunds and frequent changes in destination, testing and quarantine rules may have made some consumers more wary of travelling than previously.

### **Staffing issues**

- 2.3 Some airlines and other travel firms reduced their staffing levels when travel was restricted and, like other sectors, have found it difficult to fill vacancies as restrictions eased.

### **Regulatory framework failures**

- 2.4 It is noted that several pockets of reform are being undertaken by government departments affecting the travel sector, but it is not clear who is responsible for ensuring they cohere. The Committee continues in its hopes to see an overarching piece of work to draw the strands together and ensure that the key players in the travel industry are licensed and regulated in an appropriate and consistent manner.

### **Financial health of sector**

- 2.5 Members have reported that from the start of 2022 bookings have increased. But many have been paid for using Refund Credit Notes issued during the pandemic, meaning that there is limited 'new' money coming into the industry alongside rising costs across the economy. The ATOL-protection on Refund Credit Notes is due to come to an end in September 2022, and at the time of writing, there is around £72million yet to be either redeemed or exchanged for a cash refund.<sup>1</sup> There are concerns that this may lead to an increased risk of failure in the coming months.

### **Insurance**

- 2.6 Some members of the Committee have reported that the insurance market has been devastated for failure insurance, which is now hard to acquire. The danger therefore is that a large failure could not be dealt with if one were to happen in the near future.

### **Airline insolvency**

- 2.7 Unfortunately this area of government policy was delayed by the Thomas Cook failure and subsequently the pandemic. The Committee hopes that the DfT can now make progress on the Airline Insolvency Review's recommendations of May 2019.

## **3. Positives in the past year**

### **Furlough scheme**

- 3.1 The Committee notes that the level of travel firm failures throughout the year (as detailed in Appendix D) was greatly minimised by Government financial support, such as the furlough scheme, even though it was not entirely apposite to the travel sector since workers were needed during the pandemic to process customer refunds and re-bookings and answer queries from customers. The Committee hopes that measures such as those employed during this time of crisis will be available in any future similar situation.
- 3.2 In addition, the Committee hopes that the experience of setting up the Refund Credit Note system will be of value as an example of cooperative working across the industry and also that the lessons learned throughout the pandemic will be beneficial in shaping future responses to any public health emergencies.

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<sup>1</sup>Reported in Travel Weekly, 28 April 2022, [Abta urges RCN-holders to book before Atol protection expires | Travel Weekly](#). Updated figure as of May 2022.

### **Refund Credit Notes & Government backing**

- 3.3 Because of the difficulties in refunding customers that was experienced by travel firms in the early stages of the pandemic (as described in para 2.1), Refund Credit Notes were introduced as a way to minimise cashflow problems while assuring consumers that their money was safe. Customers retained their statutory right to a refund but accepted a Refund Credit Note voluntarily. The Government enabled the Air Travel Trust to back these Notes until the end of September 2022 to protect consumers against their travel firm failing while holding their money. As previously stated, this has proved beneficial in keeping many businesses operational during this time.

### **Government department engagement**

- 3.4 Since the Committee's last report, ATIPAC meetings have been attended by DfT and BEIS officials, and the Committee would like to express its thanks for their time and valuable input.
- 3.5 During the year, the Committee has discussed the key issues affecting the industry and has submitted responses to the CAA's *ATOL Reform: Assessment of funding arrangements and the Protection of Customer Money* consultation (Appendix B).

## **4. Recommendations**

### **Airline insolvency**

- 4.1 An airline insolvency would be very difficult to manage in the current environment of trying to rebuild post-pandemic. The issues have certainly not gone away since the report in 2019, and the Committee is keen to engage with Government and the CAA in taking this work forward at the earliest opportunity.

### **Refunds from airlines**

- 4.2 The Committee is pleased that the Government included this topic in its recent consultation i.e. the option for package organisers to be given a statutory right to a refund from airlines in the event of a flight cancellation, so that they can refund consumers within 14 days where the flights are part of a cancelled package holiday. The Committee broadly favours this but identified some complexities to consider. This was reflected in the Committee's response to the DfT's *Reforming Aviation Consumer Policy: Protecting Air Passenger Rights* consultation (Appendix C).

### **Formalisation of RCNs**

- 4.3 As previously stated the establishment of the Refund Credit Note system was beneficial in keeping many businesses operational during the pandemic. This had no basis in law but was negotiated between all parties including the Government. The Committee recommends the establishment of a more formalised structure so that the system can be called on again in any similar situation.

### **Appointment of someone to oversee coherence**

- 4.4 The Committee has expressed concern about the split of responsibility across Government departments for travel and package legislation. Although harmonisation of responsibilities is not anticipated in the near future, it would be helpful for consumers and industry if one department had responsibility for ensuring a coherent reform, even if the elements remain in different departments.

### **Post-Brexit opportunities**

- 4.5 Exiting the European Union has provided the opportunity for legislation benefitting travel consumers to be passed with more ease than previously. The Committee welcomes this as a positive step for the industry.

## **5. Conclusion**

- 5.1 To conclude, the Committee appreciates that there is a limited amount of time available for Government to allocate to the concerns raised by the travel industry. Therefore, members would like to draw attention to the recommendations which are considered most needed by the industry:

- Airline insolvency
- Refunds from airlines
- Formalisation of Refund Credit Notes
- Appointment of someone to oversee coherence
- Post-Brexit opportunities

The Committee believes that introducing the above measures would reduce the risk of further travel firm failures and help to rebuild consumer confidence in the sector. Members would appreciate a response to these requests in due course.

## Appendix A – 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 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.

Issued by:

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

## Appendix B – ATIPAC Response to *ATOL Reform: Assessment of funding arrangements and the Protection of Customer Money* consultation

### Introduction

The Air Travel Insolvency Protection Advisory Committee (ATIPAC) was created by the Secretary of State for Transport in 2000 to provide advice to Government on financial protection of air travellers and customers booking with air travel organisers.

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

The CAA is a member of ATIPAC and provides the secretariat function for the Committee. However, the CAA has not contributed to the content of this response.

### Observations of the Committee

Before addressing the specific consultation questions, we are setting out ATIPAC's views on a number of matters related to the consultation.

#### *Timing of the Consultation*

This is one of the most important ATOL-related consultations since the ATOL Protection Contribution (APC) was introduced in 2008. In the context of the Covid-19 pandemic and its impact on trading, discussion of new financial obligations for companies takes on even greater significance. The increased number of ATOL holder failures and the difficulties faced by consumers in obtaining refunds for cancelled holidays at the start of the pandemic have highlighted that steps should be taken to improve the protection of consumer money.

However, ATIPAC is concerned at the timing of this work. We are grateful for the 2-week extension to this particular consultation, but we consider it difficult to develop long-term policy in a time of such uncertainty. The Committee would therefore argue that the subsequent phases of the consultation and its implementation be delayed.

#### *Broader Travel Sector Reform*

ATIPAC also has concerns that changes to the ATOL system and protected-travel sector are being made in isolation of other aspects of the travel industry. The Committee is particularly concerned that the use of customer money by airlines is not subject to the same level of scrutiny as it is for ATOL holders. As stated in our annual report just issued, ATIPAC believes that a confluence of events (Brexit, the pandemic, the failure of Thomas Cook) mean that the Government should be undertaking a holistic review of consumer financial protection in the sector. This should cover a review of the Package Travel Regulations; implementation of the Airline Insolvency Review; working with the insurance industry on adequate products for both consumers and travel businesses; as well as a review of ATOL and associated consumer rights legislation.

It is possible that if the protected-travel sector has additional cost burdens placed upon it, particularly at a time when many businesses are struggling, then we may see more ATOL holders fail and see more consumers move to the unprotected sector. This would be bad for

consumer choice and could leave consumers exposed in the event their holiday suppliers go out of business.

The Committee does not underestimate the work that would be involved in taking forward such a review, given the number of government departments involved. But addressing problems in the round, as opposed to piecemeal, would ensure that reform of the different elements of the travel sector was aligned, bringing with it greater consistency, logic and clarity for both businesses and consumers.

### ATIPAC's Response

Our response will not seek to answer each individual question in the consultation document, instead the answers below seek to address some of the key themes raised.

#### *Mandatory Segregation of Funds*

The Committee does not believe that mandating the use of trust or escrow accounts is an approach that the CAA should adopt. Instead, ATIPAC members are supportive of flexible arrangements for the protection of money being put in place including the option to use trust or escrow accounts. Members acknowledge that trust accounts can be an effective tool for protecting consumer money and recognise that from the consumer perspective they could probably be popular. However, many businesses - and their suppliers - would face serious cashflow problems if they are required to hold the full value (and in some cases even part of the value) of bookings in trust, so much so that their viability could be threatened. These difficulties are more likely to be felt at the smaller end of the market as these businesses will not necessarily be able to negotiate payment terms with suppliers that reflect their need to hold money in trust. As the CAA is no doubt aware very few businesses operate with a full trust account model, and those that do, have access to additional capital that could be used to pay suppliers and other business costs. The Committee believes that the focus must be on the outcome of the insolvency protection for the consumer, whatever the mechanism. The travel organiser should be able to choose the method that is most appropriate and cost effective for their business, whether that is bonding, insurance, trust or a hybrid solution.

The Committee suggests that if trust accounts are to be used, either mandated or - as we would prefer - there needs to be measures in place to ensure that they are used correctly by ATOL holders. This could be achieved through the commercial terms attached to trust accounts and associated insurance policies which would prevent businesses releasing money too early. Alternatively, the CAA should be given additional enforcement powers to ensure that rules are adhered to. At present, Trading Standards has difficulties in penalising the early removal of consumer monies because it has to be able to demonstrate fraudulent behaviour. The Committee is aware that the CAA is increasing its requirement for the use of trust and escrow accounts when issuing ATOLs. Clearly the use of these accounts protects consumer money. There is some concern though, that the CAA is requiring the segregation of monies prematurely during a consultation period.

#### *Mandatory Bonds*

As part of a flexible approach to protection, ATIPAC supports the use of bonds and would like to see the bond market developed and expanded. Some members have argued though, that a stigma exists around the requirement for some businesses that have held an ATOL for more than four years to provide bonding. Before the APC was introduced, the bond market was more extensive and competitive. Steps should be taken by the CAA and the bond market to encourage their use more widely and not just a requirement for those holding ATOLs for four years or less and those that are considered to have riskier business models.

### *Tailored Approach*

ATIPAC supports a tailored approach whereby ATOL holders are able to pick from a variety of protection products combined with a variable APC. The diversity of the travel industry means that a one-size fits all approach is unlikely to work.

The discussion of partial segregation in the consultation document does not mention whether the percentage allowed to be used by the ATOL holder would have to be financially protected another way e.g. through bonding. If that were the case, it would mean added complexity and burdens for some businesses which ATIPAC would not like to see imposed; it is another reason to give ATOL holders choice.

Some ATIPAC members have suggested that there could be merit in treating large and smaller ATOL holders differently. Much of the risk and exposure to the Air Travel Trust (ATT) arises from a very small number of ATOL holders. This can be seen in the significant calls upon the ATT in recent years, with the failures of large, integrated ATOL holders.

The vast majority of ATOL holders present a low financial risk to the ATT, and in the event of failure, most consumers would still be able to travel home as planned because they have tickets with a scheduled airline. However, the measures proposed in the consultation are likely to disproportionately affect these smaller businesses. Therefore, ATIPAC members suggest that some consideration could be given to focusing attention on the small number of high-risk ATOL holders, as opposed to the large number of low cost-risk businesses.

### *APC*

The Committee agrees that the current £2.50 rate of APC is likely, on average, to be too low overall, and that a flat rate is inappropriate. Many trade members emphasised that paying a higher APC rate would be preferable to putting money in trust, as funds would still be available for payment of suppliers and business operations.

The appropriate rate and structure of APC will be different going forward as market mechanisms (bonds, insurance, trusts) are introduced on a wider basis as a first line of defence before the ATT comes in to play.

Members have a range of views on how the rate of APC should be set. Some would favour the rate to be based on the value of a booking, but probably the majority would prefer the rate to be set according to the risk posed by a particular ATOL holder or a hybrid of risk and value. If the decision was taken to adopt an APC rate based on booking value, banding could be introduced whereby bookings up to a specific value attract a particular APC charge, e.g. Sub-£500 = £2.50. £501-1,000 = £3. £1001-5,000 = £5, £5,001 and up = £10. Alternatively, a percentage rate with a 'cap and collar' (maximum and minimum) would be an option.

The Committee recognises that there could be complexities in administering different rates of APC, both for businesses and the CAA. We believe the CAA should issue an impact assessment and consultation on the structure / methodology.

### *Financial Markets Option*

As noted above, ATIPAC believes that the CAA should permit and encourage the use of financial markets to provide protection. This would create a dynamic marketplace and help remove some of the financial risks from the ATT and could allow the CAA to focus on its oversight of the largest, or most vulnerable ATOL holders.

The failures of Monarch and Thomas Cook have demonstrated that the CAA has the skills and resources to undertake large-scale repatriation and refund operations. Therefore, the Committee prefers that the CAA should continue to fulfil these activities even if greater use is made of the market to provide financial protection.

*Options that the CAA has considered but does not intend to pursue further*

Nil response.

*Transition Period*

The Committee has no comments on the incentives that might be offered for early compliance. With there still being uncertainty over international travel, the Committee would suggest that a standstill period be introduced once the majority of restrictions had been removed. This period, of up to 2 years would allow the industry to recover before more significant changes are made. It would also give industry and the CAA time to consider the order in which major changes such as new APC rates, financial criteria and methods of financial protection are to be introduced. Some members believe that it could take established ATOL holders around 5 years and significant levels of additional capital to make the move to a trust-based regime, and maybe even taking as long as 10 years to be fully compliant.

*Pipeline Monies*

The Committee does not have a shared view on this proposal.

Some members do not believe that there are significant issues around pipeline monies that need to be addressed by the CAA. Although some ATOL holders lost money following Thomas Cook's failure, the problem was limited in scale. If additional restrictions on the use of pipeline monies and the timing for them to be handed over were put in place, then some agents could face cashflow problems which would threaten their ability to trade.

Conversely, some other members believe that it was difficult for ATOL holders to monitor the activities of agents, and putting in place additional rules would ensure that all agents comply with their agency agreements and obligations with regards to the timing of taking consumer payments and passing them to tour operators.

*Agency Agreements*

The Committee is supportive of steps to make the issuing and amendment of agency terms less burdensome.

*Changes to APC Returns*

Nil response.

*Online ATOL Certificates*

The Committee believes that the CAA needs to enter into greater dialogue with industry over the use of online ATOL certificates. Although some members believe these could provide greater clarity to consumers over what aspects of their booking are protected, others have cited the costs to businesses in having to change their systems in order to meet CAA requirements.

Conclusion

The Committee welcomes the chance to respond and looks forward to engaging further with the CAA.

## Appendix C – ATIPAC Response to *Reforming Aviation Consumer Policy: Protecting Air Passenger Rights* consultation

### **The Committee**

The Air Travel Insolvency Protection Advisory Committee (ATIPAC) was created by the Secretary of State for Transport in 2000 to provide informed advice to Government on financial protection of air travellers and customers booking with air travel organisers.

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

The CAA provides the secretariat function for the Committee, but the views expressed in this response are not those of the CAA. The CAA has submitted its own response to the consultation.

The main components of financial protection for air travellers are:

- an appropriate regulatory regime for consumer protection
- affordable and effective travel insurance for eventualities not covered by regulations
- a thriving and competitive travel industry with low risk of company failure.

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

### **Observations of the Committee**

At a recent meeting of the Committee there was a discussion focussed on Q22 of the consultation, relating to the option for package organisers to be given a statutory right to a refund from airlines in the event of a flight cancellation, and to a lesser extent questions 1, 2 and 3 which are related. The comments below therefore represent ATIPAC's views on these questions as they are most pertinent to the remit of the Committee.

### **ATIPAC's Response**

#### **1. Introduction**

*Q22. What would be the advantages and disadvantages of enabling package organisers to seek a refund for cancelled flights that are part of a package holiday through legislation?*

- 1.1 Some ATOL-holders (i.e. package holiday organisers licensed under the ATOL regulations) have, according to some of our members, faced financial difficulty because some airlines did not refund them promptly for cancelled flights during the Covid-19 pandemic. These ATOL-holders were obliged under the Package Travel Regulations to refund consumers within 14 days where the flights were part of a cancelled package holiday, even if they had not themselves received any refunded money from the airline. This cash-flow imbalance was detrimental to the finances of

these ATOL-holders and, according to some of our members, potentially contributed to some going out of business. Many ATOL-holders stayed solvent only because of the furlough scheme and because their customers voluntarily accepted Refund Credit Notes. Conversely some airlines argue that they provided refunds to organisers which were not passed promptly to customers. They have reported that in some cases airlines do not know that flights are being purchased for a package, a situation which could create an inherent difficulty in fulfilling any new statutory rights. In either scenario the customer experienced detriment which the current regulatory regime does not prevent.

- 1.2 The Committee would support introducing direct refund rights for customers against travel suppliers, such as airlines, where these suppliers provide services that make up part of a package holiday. Under the current legal framework of the Package Travel Directive and the 2018 Package Travel Regulations, organisers already have the right to bring claims against travel suppliers for refunds (Reg 29); this could be changed to impose an obligation on travel suppliers to refund the organiser. A proviso could be included that if the supplier refunds the organiser, then they should be released from the obligation to refund the customer. Further discussion on this is provided below.

## 2. Context

- 2.1 The travel industry operates as a chain, in which money changes hands between customers, travel agents, tour operators/package organisers and airlines and other suppliers. The regulation of the different parts of the industry is uneven, and where it exists derives from different European and UK laws and regulations, overseen by different Government departments and enforced by different regulators. Enforcement against different areas of the industry has also been uneven. The cash enters this chain from individual consumers who are not only making what, for most of them, is the largest payment their household will make all year, but with a significant lapse of time before they see any return. Consumer trust is therefore absolutely essential for the operation and sustainability of the market.
- 2.2 It is critical for the recovery of the entire travel industry that confidence is restored and customers can be reassured that monies will flow in a timely fashion. It is also important in the interests of the Air Travel Trust and of taxpayers, that monies flow back to package organisers from airlines, as a delay in receiving refunds from airlines can quickly lead to financial failure.

## 3. Commercial arrangements

Extract from the consultation:

### *Refund for cancellations by the airline*

*3.10 Currently when a consumer books a flight as part of a package holiday, and where that flight is cancelled, the package organiser who arranged the holiday is responsible for ensuring the consumer receives their refund. The package organiser would then claim the money back from the airline through their commercial arrangement.*

- 3.1 In the highlighted section above, the consultation wrongly assumes that there will always be a commercial arrangement between organisers and airlines, or indeed that that commercial arrangement will provide for rights of refund to the organiser in the event of cancellation.
- 3.2 A significant proportion of flights booked by travel agents (online or traditional) for consumers are booked by the travel agent as agent of the consumer, not as an agent of the airline. Where the travel agent is acting as agent of the customer to book the flight, there will be no commercial agreement in place with the airline.
- 3.3 Even where an airline provides an agent-facing booking system through which agents can book flights for their customers, the terms of that booking system are non-negotiable and will not always provide specific rights for the agents to claim refunds.
- 3.4 The International Air Transport Association (“**IATA**”) has a standard-form agency agreement, and its agents typically remit payment to the airlines (and receive refunds) through IATA’s Billing and Settlement Plan (“**BSP**”). However, that was not always effective in delivering refunds during the pandemic.
- 3.5 It is therefore not feasible to rely on commercial agreements to provide for refunds to flow between airlines and agents. Regulation 29 of the Package Travel Regulations provides that a package organiser has a right to redress from any third parties which contributed to the event triggering financial obligations, but it is not clear and concrete enough to ensure that this happens, or happens promptly; also it has been argued by the airline sector that Regulation 29 does not discharge its obligation to refund the customer directly.

#### **4. Answer to Q22, Q1-3 & Recommendations**

Q22 asks “*What would be the advantages and disadvantages of enabling package organisers to seek a refund for cancelled flights that are part of a package holiday through legislation?*”

##### Advantages

- 4.1 The first advantage is basic logic and fairness. Money flows from customer to intermediaries to airlines/suppliers. Where customers are due full refunds by law because of a flight cancellation, it is clearly logical and fair that the customer’s payment should flow back down the supply chain.
- 4.2 Second, it is not sustainable for package organisers to fund the refund of flights in circumstances where there are mass flight cancellations, such as with the pandemic or the volcanic ash of 2010, unless the cash to fund the refund is transferred swiftly from the airline to the package organiser. Notwithstanding the impact on the finances of package organisers in cases where refunds do not flow swiftly from suppliers, there is the additional exposure to the Air Travel Trust due to the potential increase in the risk of insolvency.
- 4.3 Third, a mechanism which clarifies how refunds should flow back down the supply chain will ensure consistency and prevent duplication between travel regulations and chargeback rights. Consumers who pay package organisers with a payment card have chargeback rights where packages are cancelled. Similarly, package organisers which

pay airlines with a corporate payment card (which is very common) have chargeback rights where flights are cancelled.

### Disadvantages

- 4.4 In changing the law there are some risks which would need to be addressed through clarity and detail. For example:
- A time frame such as 7 days could be specified which enables package organisers to **receive** the refund in time to meet their obligation to **give** the refund within 14 days
  - It must be clear that airlines do not have to refund the customer directly once they have made the refund to the package organiser
  - Where organisers package products using opaque or marked up pricing to the consumer, it would not necessarily be clear to the consumer the amount of the refund due for the cancelled flight. This could lead to disputes between the consumer and the organiser and/or the consumer and the airline
  - There must be a method by which the airline knows that the flight has been purchased and sold on as part of a package if any new right to a refund sits with the consumer
  - There must be documentation of refunds to prevent disputes
  - There must be adequate enforcement measures on both parties (supplier and organiser) though it is to be hoped that enforcement action would rarely be needed.
- 4.5 It will also be important to clearly distinguish any new refund right from the other consumer protections in the Package Travel Regulations. For example any new refund right should not extend to scenarios where an organiser has to refund a customer due to a "significant change to the package", which, under the Package Travel Regulations, can be very subjective. There may also be cases where an organiser's request for a refund may not align with the passenger's intentions, for example where they have contacted the airline directly to manage their booking.

### Questions 1 to 3

- 4.6 These questions concern whether the CAA should have increased enforcement powers. We are supportive of the CAA having additional powers to enforce civil sanctions for businesses who break the law, including those outlined at paragraph 1.6 of the consultation. It is important that enforcement is applied evenly as between airlines and package organisers.

## **5. Conclusion**

- 5.1 As stated above, the Committee is supportive of the implementation of legislation to enable ATOL-holders to seek a refund for cancelled flights that are part of a package holiday and for additional powers to enforce aviation consumer protection laws. However, it is acknowledged that implementation of such legislation would need to take account the complexities of the relations between airlines and travel organisers as well as the needs of consumers.

- 5.2 The Committee would like to thank the DfT for the opportunity to respond to this consultation and hopes that the specific examples and recommendations provided will be beneficial in informing future legislation.
- 5.3 The Committee would welcome any updates or further consultation in due course.

## Appendix D – ATOL Holder Failures

The chart shows the number of ATOL holder failures from 2012 - 2013 to 2021 - 2022.



To the end of March 2022 there were fifteen ATOL holder failures. This compared with thirty-four failures in the previous reporting period and eight in 2019-20.

### ATOL Holder Failures 1 April 2021 – 31 March 2022

| Date of Failure             | ATOL Holder              | ATOL Number | Consumers Affected (estimated)                        |
|-----------------------------|--------------------------|-------------|---|
| 15/07/21                    | Sam Smith Travel Ltd     | 6986        | 165 (77 bookings)                                     |
| 10/08/21                    | Bird Holidays Ltd        | 5546        | 215 (163 bookings)                                    |
| 12/08/21<br>Lapsed 31/03/21 | Travel the Unknown Ltd   | 9854 SBA    | 107 (73 bookings)                                     |
| 27/09/21<br>Lapsed 31/03/21 | Melody Music Company Ltd | 6217 SBA    | 175 (86 bookings)                                     |
| 30/09/21<br>Lapsed 31/03/21 | News Travel Ltd          | 9364        | Estimated 266 (133 bookings based on RCN returns)     |
| 30/09/21<br>Lapsed 31/03/21 | Tangent Expeditions Ltd  | 9074 SBA    | 2 (1 bkg) (CCJ)                                       |
| 11/10/21                    | Mercator Enterprises Ltd | 10528 SBA   | 59 (18 bookings)                                      |
| 26/10/21                    | Cheap Cost Holidays      | 10947       | Awaiting complete data                                |
| 29/10/21                    | Truly Travel Ltd         | T7300       | 6111 (793 outstanding refunds, 2574 forward bookings) |
| 09/11/21                    | Ethos Travel Ltd         | 9435        | 42 (13 bookings)                                      |
| 15/11/21                    | Blue 02 Ltd              | 6589        | 1745 (452 bookings)                                   |
| 15/12/21                    | Uni Travel Ltd           | 4660        | 241 (104 bookings)                                    |
| 22/12/21                    | Pax Travel Ltd           | 3011        | Unknown   |
| 07/02/2022                  | Get Me To The Alps Ltd   | T7465       | 850 (108 bookings)                                    |
| 16/03/2022                  | Tango Tours Ltd          | 10002       | 43 (11 bookings)                                      |

## Appendix E – ATIPAC Members

During 2021-22 Jan Carton, John de Vial, Keith Richards, Mandy Round and Rochelle Turner left the Committee after several years of valuable contributions. Julia Lo Bue-Said, Rachel Jordan and Lynette Williams have joined in their place. Detail of the backgrounds and areas of expertise, along with those of the rest of the Committee, are provided below:

### **Sandra Webber**

Independent Representative and Chair

Sandra has been ATIPAC Chair since July 2018. Until recently she was also 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.



### **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).



### **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.



### **Marykay Fuller**

CAA Representative

Marykay Fuller was appointed to the Board as a Non-Executive Director in January 2019. She is Chair of the Air Travel Trust Fund, and also serves as a member of the CAA Audit Committee, and CAA International Ltd Management Advisory Board. Marykay's executive career was in finance and consulting and she is a former senior advisory partner at KPMG LLP. Earlier in her career, she also worked for the US Government where she worked on numerous US airline restructurings and represented the Corporation on the National Airline Commission.



### **Prof. David Grant**

Independent Representative

David is Emeritus Professor of Law at Northumbria University. He is the co-author of Holiday Law (Sweet & Maxwell) with Stephen Mason and Simon Bunce. He has written and lectured extensively on travel law.



### **Rachel Jordan**

Industry Representative

Rachel is ABTA's Director of Membership and Financial Protection. Prior to this she worked within professional services at KPMG and EY. During this time she has advised some of the world's largest insurance companies on complex regulatory and risk matters, including global strategy, transformation and Brexit preparation. Prior to consulting, Rachel spent five years at the Financial Ombudsman Service - initially as a Senior Adjudicator, before being appointed as Ombudsman - where she acted as an independent point of liaison between consumers and financial businesses, to resolve disputes.



### **Noel Josephides**

Industry Representative

Noel is Chair of Sunvil Holidays Ltd. He represents the Association of Independent Tour Operators (AITO), of which he is a Director. He is also the Chair of the ABTA membership committee.



### **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.



### **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.



## **Julia Lo Bue-Said**

Industry Representative

Julia was appointed Advantage's Chief Executive Officer in 2018 and has a 25 year tenure with the business. Julia sits on both group and subsidiary Boards and under her leadership, profitability and shareholder value have grown. In September 2021, Julia was awarded The Travel Legend Award at The Travel Industry Awards in recognition of her part in leading the travel industry's recovery, driving change and representing the sector tirelessly through the Covid-19 pandemic.



## **Joel Reindorp**

Industry Representative

Joel is Senior Legal Advisor at easyJet where he is responsible for commercial and consumer-related legal matters. He previously served in the legal team at Monarch Airlines, gaining key insight into the industry regime. He advised both in private practice and in-house prior to his move into airlines.



## **Paul Smith**

CAA Representative

Paul was appointed to the board as Group Director of Consumers and Markets on 24 May 2018. Before joining the CAA, he was the Head of Policy at the Payment Services Regulator, part of the UK's Financial Conduct Authority, since January 2016. Paul has also previously held the position of Chief Executive of the Australian Energy Market Commission as well as a number of senior positions with Ofgem and Ofcom.



## **John Snyder**

Industry Representative

John qualified as a Solicitor in 2000 and after secondments to various businesses such as B&Q plc, Superdrug plc and Virgin, he joined Carnival plc in 2004 where he is now General Counsel. Carnival is the largest cruise operator in the world and John's role includes dealing with legal issues relating to the operations of P&O Cruises, Cunard, Princess Cruises, Holland America Line and Seabourn cruise brands.



### **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.



### **Kirsteen Vickerstaff**

Industry Representative

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.



### **Lynette Williams**

Consumer Representative

Lynette was called to the Bar in 2006 and shortly after began working in Staffordshire Trading Standards. Lynette started working for North Staffordshire and Stoke-on-Trent Consumer Service in 2017. She delivered consumer training to new and existing staff, as well as monitoring and assessing quality. Lynette moved to Citizens Advice in 2020. In her current role, Lynette is involved in making sure that all website content, learning materials and support resources are fully up to date and accurate. She is also responsible for monitoring future changes in the consumer landscape and preparing materials to reflect these changes.

