

Air Travel Insolvency Protection Advisory Committee

Annual Report March 2003



Air Travel Insolvency Protection Advisory Committee
CAA House
45-59 Kingsway
LONDON
WC2B 6TE

18 July 2003

Secretary of State for Transport
Great Minster House
76 Marsham Street
London SW1P 4DR

Sir

I submit herewith the third Report of the Air Travel Insolvency Protection Advisory Committee for the year ended 31 March 2003.

A handwritten signature in black ink, appearing to read 'John Cox', with a horizontal line above it.

John Cox OBE
Chairman

MEMBERSHIP AND ROLE OF THE COMMITTEE

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

The Committee includes representatives from the trade associations of firms in the travel

industry that are affected by ATOL, and the consumers who are protected by the system. The membership of the Committee remained constant during the year and a list of members is at Appendix 2. Mr Paul Chandler joined the Committee as an ABTA nominee, replacing Mr John de Vial, from August 2002.

The Committee held four regular meetings during the year and a further single purpose meeting to discuss the adequacy of the UK system of consumer protection in the light of industry developments.

MEMBERS OF ATIPAC

John Cox has been Chairman of the Committee since its formation in April 2000. He was also a past Chairman of the Air Transport Users Council.



Helen Simpson is Director of the CAA's Consumer Protection Group and a CAA Board Member. She is also a Trustee of the Air Travel Trust and represents the CAA.

Bruce Treloar is principal Trading Standards Officer with the Trading Standards Institute and is a specialist in travel protection. He represents consumer interests.



Tim Robinson is a partner in Nicholson Graham & Jones, a firm of solicitors specialising in travel law. He is an independent representative.

Ian Hamer is nominated by the Air Transport Users Council, of which he is Chairman. He is also Chairman of a group of companies with worldwide interests in the plastics industry.



**MEMBERS OF ATIPAC –
CON'T**

Roger Bray is an independent freelance travel journalist with a consumer focus, and is an independent representative.



Noel Josephides is Managing Director of Sunvil Holidays. He represents the Association of Independent Tour Operators, of which he is Vice Chairman.

Martin Brackenbury is nominated by the Federation of Tour Operators, of which he is Chairman. He also attends Air Travel Trust meetings as a representative of ATIPAC.



Roger Harvey is the Chairman and appointed representative of the Incentive Travel and Meetings Association, the association for event management, corporate communication and incentive travel.

Paul Chandler is a director of The Travel Club of Upminster. He represents ABTA.



Tony Russell is Managing Director of Trailfinders. He represents the Association of ATOL Companies.

Colin Senior is a non-executive Board Member of the CAA, whom he represents on ATIPAC, and is also Chairman and a Trustee of the Air Travel Trust.



Mike Monk is currently Head of Financial Services for the Association of British Travel Agents. He represents ABTA.

Marie-Helene Kutek is a consumer representative, with a background in local authority consumer advice and consumer law. She is Vice Chair of the Institute of Consumer Affairs (no photograph is available).

Review of the Year

THE TRAVEL INDUSTRY

Summer 2002 saw a reduction of over 6% in the number of passengers taking holidays with firms that were protected by ATOL. This reflected the sharpest decline in a single year since the early 1990s, when the market was affected by the first Gulf War, and reflected retrenchment by the industry in the face of weaker demand. Consolidated industry profitability data is not produced but a sample of companies other than the major tour operators has shown that a majority of companies were profitable and margins were, on average, very slightly higher than in the previous year. For the larger firms, the position was less favourable in that most experienced reduced margins and some made losses.

Survey evidence suggests that during the same period the total number of air based holidays taken actually rose by 0.5%, which demonstrates that the non-ATOL protected segment

(basically representing bookings made directly with air carriers) grew faster than the ATOL protected segment. This has been a feature of the market for the last few years, and the proportion of the leisure travel industry protected by ATOL has declined from 87% in 1999 to 75% in 2002, although until very recently the ATOL protected sector has still grown.

The most important factor in this is the recent rapid growth of the no-frills scheduled carriers, that are not covered by ATOL, in markets that have traditionally been served by charter carriers selling through tour operators who do hold ATOLs. This issue is discussed further later in the report.

Despite the fall in the proportion of leisure travellers protected, in the year to September 2002 nearly 28 million passengers were protected by ATOL, with average prices of £469 leading to ATOL turnover of about £13 billion.

BONDS CALLED IN THE YEAR TO MARCH 2003

The year ending March 2003 saw the failure of only nine licensed firms, which is the lowest number since 1989, although calls on the Trust were slightly higher than in any of the previous three years.

During the year ATOL enabled 516 customers to complete their holidays, and 3,849 received refunds. Total expenditure was £1.3 million, of which £0.5 million was provided by the Trust. These figures indicate that 66% of the cost of managing failures was met by bonds in the year in question; even though only three of the nine failures resulted in calls on the Trust, those calls were large relative to the scale of the companies. The three calls arose from –

- Journeys East Limited, which required total expenditure of £233,000 against a bond of only £32,000. The circumstances of the failure are under investigation.
- Vacation USA Limited, which required expenditure substantially in excess of its licensed turnover and bond following a rapid expansion for which bonding proved to be unavailable.
- Tyche Tours Limited, which resulted in a call of £72,000 only because it occurred in the peak season.

Full details of the failures that occurred during the year can be found at Appendix 3.

MARKET OUTLOOK

There are presently a number of factors threatening the trading prospects of the travel industry which may influence the public's exposure to the insolvency of travel companies.

A declining economy may affect demand, as expenditure on leisure travel is discretionary. The linked factors of falling stock markets and potentially falling house prices will also tend to depress demand both through perceived reductions in wealth and because of reduced pensions for the newly retired. The military action in the Gulf affected bookings early in 2003 although indications are that the cessation of large scale military action in April 2003 has led to a recovery. Major terrorist actions aimed at tourism targets have the potential to cause further major demand reductions, which may occur suddenly and at any time of the year.

In February 2003 travel to and from the Far East and, to a lesser

extent, Canada was seriously impacted by the public fear of Severe Acute Respiratory Syndrome (SARS). This has devastated the inbound tourism industry in many countries and seriously damaged the trading of ATOL holders specialising in the Far East.

The protected sector of the industry has responded to these actual or potential difficulties by reining back capacity plans, although the no-frills carriers that comprise a large part of the non-protected sector are committed through aircraft orders to achieving significant growth.

The Committee notes that a succession of years in which trading has been difficult has weakened the resources of some ATOL holders and the factors cited above make it possible that the rate of failures, which has been low for several years, will increase. This again highlights the urgent need for replenishment of the Air Travel Trust Fund.

STATE OF THE AIR TRAVEL TRUST FUND

For the seventh successive year the Air Travel Trust Fund (the Trust) began the year in deficit, its remaining assets having been exhausted in the summer of 1996. By the end of the year the deficit had increased from £8.3 million to £9.1 million. During the year there was expenditure of £416,000 on new failures and £372,000 on interest payable. There were no liquidation dividends or settlement receipts.

The Committee, which comprises representatives of

both consumers and industry, remains unanimously of the view that the operation of the Trust with a continuing deficit is not appropriate for a major consumer protection system and that a levy should be introduced as soon as possible. Further delay in establishing a levy to refinance the Trust will result in an increase in the deficit, which will in due course lead to a higher levy which may represent a significant cost to both the travel industry and holidaymakers.

ADEQUACY OF UK SYSTEM OF INSOLVENCY PROTECTION FOR AIR TRAVELLERS

The primary legislation underlying the UK's arrangements for financial protection for air travellers is now more than 30 years old and during that period, especially the last few years, there have been material changes in the way that holidays are sold and organised. The Committee has considered in the light of these changes whether the system is still fully effective in achieving its purpose.

Increasingly widespread access to the Internet has made information and booking capability more easily available to consumers and sellers. The public are now better able to contact and buy directly from suppliers such as air carriers and hotels, and also to compare prices more easily. Travel intermediaries such as high street travel agencies can also more easily construct packages themselves from components that they have found on Internet-based systems.

As noted above, recent years have also seen the entry of no-frills carriers to the short haul holiday market that has in the past been served, almost exclusively on some routes, by the ATOL protected charter carriers. Before the rise of the no-frills carriers relatively little holiday traffic to the major UK holiday destinations would have been carried on scheduled carriers because the high cost structures of full service air carriers made them unattractive to most holidaymakers. The no-frills carriers offer flights that are easy for the public to book directly and significantly cheaper than traditional scheduled flights, and have established substantial new areas of the leisure market.

This factor, taken together with the opportunities offered by the Internet, has made it more attractive for the public or unlicensed travel intermediaries to construct their own packages, without the insolvency protection offered by ATOL. This underlies the increase in unprotected leisure travel noted above, and has raised the question of whether the UK's current arrangements for insolvency protection are adequate.

The issues raised by these changes are complex and the Committee is not yet in a position to recommend whether any changes to the legal framework would be beneficial. The absence of protection for some sales may not matter, if it reflects rational decisions taken by the public to accept the risks of booking their holiday without protection. However, there is considerable doubt as to whether the circumstances of protection are widely understood: if they are not then the public are taking risks of which they are unaware, and there may be a strong case for either increasing awareness or making coverage more comprehensive. Preliminary CAA research has suggested that about 51% of the public believe that sales made by no-frills carriers are covered by ATOL.

The CAA is conducting more detailed research in this area, and the Committee will be considering the issues in more depth over the coming year.

INSOLVENCY PROTECTION PROVIDED BY CREDIT CARD COMPANIES

As noted in the last report, in recent years ATOL holders have been affected by decisions by banks acting as merchant acquirers – that is, making available facilities by which companies can accept credit card payments – to require higher levels of security, at a cost to the ATOL holders involved, because of concerns about the level of failures in the travel industry.

When an ATOL holder fails and a customer acquires the right to a refund under Section 75, responsibility lies with the credit card issuer although the CAA may use bond or ATT money at its discretion. The circumstances under which the CAA does so are set out primarily in the Credit Card Charter, which can be changed or replaced with the signatories' agreement: there is no agreement in respect of an increasingly large number of new card issuers. The CAA's position is that it is willing in principle to enter into a new Charter, but that the credit card companies must accept as part of the terms a

reduction in the levels of security that they obtain from ATOL holders. The Committee has endorsed the CAA's view. The credit card companies have refused to accept this proposal and no agreement has been reached.

In September 2002 the European Commission issued a proposal for a Directive on the harmonisation of laws and regulations concerning consumer credit. The proposal included provisions on joint liability between sellers and firms making credit available that gave consumers fewer rights than in the UK. Although the UK Government has expressed its support for the rights given to UK consumers under Section 75, if the Directive comes into force as presently drafted card issuers would no longer be obliged to provide such protection. Consumers would not be affected because all of the cost of ATOL failures would then be met by bonds and the ATT, but the change would increase calls on the ATT Fund.

ATOL ENFORCEMENT AND SPLIT CONTRACT SALES

During the year, significant progress has been made towards ensuring that split contract sales cannot cause loss to the public. The issue arises where a travel organiser sells a package comprising an ATOL protected seat and other facilities such as accommodation that are either protected by different means or possibly not protected at all. One risk in such arrangements is that if the ATOL holder fails it may become impossible or prohibitively expensive to reach the accommodation during the periods it was booked.

Following a consultation with the industry, the CAA presented a case to Government that the ATOL Regulations should be changed so as to require all

companies selling package holidays including a flight in the UK to hold an ATOL. Because this would be likely to require many small firms to obtain ATOLs, the CAA is also proposing the introduction of streamlined arrangements for smaller firms, including the use of alternative protection mechanisms such as are offered by some existing trade bodies. The Committee welcomes these developments.

The response from the Government has been positive and the CAA and DfT are now preparing the proposal in the form in which it can be laid before Parliament. If approved it is likely to come into force during 2003/04.

CONCLUSION

The proposal to require all sellers of air based packages to hold ATOLs will, if it becomes law, usefully remove a loophole that results in the public's exposure to travel organiser insolvency.

However, as a result of increased use of the Internet and the new leisure markets developed by the no-frills carriers, the proportion of UK air based holidays covered by the UK's statutory financial protection system has been decreasing for the past few years. This has left the public more exposed to the insolvency of companies selling holiday flights or accommodation outside the scope of ATOL.

This raises the issue of whether the UK's system is now adequate

to cope with the contemporary market for air holidays and, if it is not, what should be done. The CAA has started to research this question and expects the results of the research to be available next year. The CAA and the Committee will then decide whether to recommend to Government that changes need to be made to the system.

The continuing deficit in the Air Travel Trust remains a matter of great concern. The Committee, which includes representatives of both consumers and the industry, agrees unanimously that the Trust should have access to sufficient assets for its immediate needs and a suitable source of income for any necessary future replenishment.

Appendix 1 Members of the Committee

Mr John Cox OBE		Chairman
Mr Michael Monk	}	Association of British Travel Agents Limited
Mr Paul Chandler	}	
Mr Martin Brackenbury		FTO Trust Fund Limited
Mr Noel Josephides		Association of Independent Tour Operators
Mr Tony Russell		Association of ATOL Companies
Mr Roger Harvey		Incentive Travel and Meetings Association
Mr Ian Hamer		Air Transport Users Council
Mr Roger Bray	}	Independent representatives
Mr Tim Robinson	}	
Mr Bruce Treloar	}	Consumer representatives
Ms Marie-Helene Kutek	}	
Mr Colin Senior	}	Civil Aviation Authority
Mrs Helen Simpson	}	

Secretariat

Mr David Bourne	Secretary
Miss Sandra Springett	Assistant Secretary

The Committee was formed in April 2000 and Members were appointed with effect from September 2000.

All Members have been appointed to serve on the Committee until September 2003.

On 26 March 2003, Mr Colin Senior retired as a CAA Board Member and therefore stood down as a member of the Committee. He was replaced as a CAA Board Member and as an ATIPAC Member by Mr Roger Mountford.

Appendix 2 The Air Travel Insolvency Protection Advisory Committee's 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 the Environment, Transport and the Regions to advise on the financial protection arrangements for air travellers and customers of air travel organisers.

COMPOSITION OF THE COMMITTEE

- 2 Members of the Committee shall be drawn from:

Association of British Travel Agents	Two Members
Federation of Tour Operators	One Member
Association of Independent Tour Operators	One Member
Association of ATOL Companies	One Member
Incentive Travel and Meetings Association	One Member
Air Transport Users Council	One Member
Other representatives of consumer interests	One or two Members
Independent representatives not associated with any organisation represented on the Committee	Three or four Members, one of whom is Chairman
Civil Aviation Authority	Two Members

APPOINTMENTS TO THE COMMITTEE

- 3 Members shall be appointed by the Chairman of the Civil Aviation Authority, for periods specified at the time of appointment; they may resign at any time. The CAA Chairman will consult the Chairman of the Committee before appointing Members other than from trade associations and the CAA.
- 4 Each represented body may nominate to the CAA up to two alternates, who may attend any meeting in the absence of that body's appointed Member(s).

MEETINGS OF THE COMMITTEE

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

DUTIES OF COMMITTEE

- 6 The Committee shall keep under review and from time to time advise the Civil Aviation Authority, the Trustees of the Air Travel Trust and the Secretary of State for the Environment, Transport and the Regions on the arrangements for the financial protection of air travellers and customers of air travel organisers.
- 7 In particular it shall:
 - advise on bonding arrangements and bond levels;
 - advise the CAA and the Trustees on the use of their discretion when making payments from bonds and from the Trust;
 - advise on agreements between the Trustees, the CAA and third parties such as credit card companies;
 - advise the Secretary of State on the need for a reimposition of a levy on the holders of Air Travel Organisers' Licences in order to replenish the Trust Fund, and advise the CAA and the Secretary of State (as appropriate) on the implementation of such a levy;
 - advise the CAA and the Secretary of State as appropriate on any changes to the structure of protection that it concludes are necessary or desirable.
- 8 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

- 9 Reasonable out of pocket expenses directly incurred by Members of the Committee in attending meetings shall be reimbursed by the Civil Aviation Authority.
- 10 The Civil Aviation Authority shall provide administrative support to the Committee.

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

Appendix 3 Details of Bond Calls and their effects, April 2002 to March 2003

<i>Licence Holder</i>	<i>Date Bond Called</i>	<i>Licensed Passengers</i>	<i>Licensed Revenue</i>	<i>Bond Amount</i>	<i>Number Repatriated</i>	<i>Cost of Repatriation</i>	<i>Number Refunded</i>	<i>Cost of Refunds</i>	<i>Total Expenditure</i>	<i>Call on Air Travel Trust</i>
			£'000	£'000		£'000		£'000	£'000	£'000
MacFarland G	24 Apr 02	3,444	1,141	148	0	0	220	105	105	0
KB Golf Ltd	20 May 02	1,565	597	97	0	0	112	18	18	0
Vacation USA Ltd	22 May 02	405	105	15	0	0	1,261	193	193	178
Origins Travel Ltd	08 Jul 02	124	330	49	0	0	11	11	11	0
Tyche Tours Ltd	14 Aug 02	500	440	55	0	0	431	127	127	72
Intadirect Ltd	15 Nov 02	5,545	3,600	900	505	52	1,161	591	643	0
Journeys East Ltd	13 Dec 02	1,040	239	32	11	2	590	230	233	200
Alecoss Travel Ltd	03 Jan 03	102	60	10	0	0	28	5	5	0
Apple Air Ltd	03 Feb 03	111	51	11	0	0	35	9	9	0
Total	9	12,836	6,562	1,318	516	54	3,849	1,289	1,343	451

NOTES

- 1 The administration of all cases above may not have been completed. Administration costs which were incurred in paying passengers' refunds have been included in the Cost of Refunds.
- 2 The figures for Total Expenditure and any call on the Air Travel Trust reflect amounts already spent and estimated further expenditure.
- 3 Where a call on the Air Travel Trust is indicated, this is the difference between expected total expenditure and available bond monies. The call on the Air Travel Trust may include the expenditure of accrued interest.
- 4 The above totals may not agree to the sum of the figures shown in the table due to rounding differences.

Appendix 4 Historical Movement of Reserve Fund Against Industry Turnover

Year ended 31 March	Turnover £'m	Passengers '000	Bonds Called During Year	Calls on Reserve Fund During Year £'m	Total Fund at Year End £'m	Calls as % of Turnover	Calls as % of Fund at Start of Year	Fund as % of Turnover
1979	574	4,173	2	0.08	14.78	0.01		2.57
1980	813	5,304	2	0.02	16.10	0.00	0.14	1.98
1981	1,200	6,165	2	0.00	18.05	0.00	0.00	1.50
1982	1,488	6,662	9	3.02	15.64	0.20	16.73	1.05
1983	1,595	7,067	11	3.10	16.61	0.19	19.82	1.04
1984	1,893	7,938	9	0.58	19.44	0.03	3.49	1.03
1985	2,004	8,623	20	1.91	19.52	0.10	9.83	0.97
1986	2,123	8,662	18	1.36	22.10	0.06	6.97	1.04
1987	2,406	9,849	8	2.20	22.75	0.09	9.95	0.95
1988	3,118	12,598	16	1.23	23.18	0.04	5.40	0.74
1989	3,629	14,490	9	0.28	23.44	0.01	1.21	0.65
1990	3,704	13,982	21	0.40	23.71	0.01	1.70	0.64
1991	3,807	13,083	22	11.61	26.70	0.30	48.95	0.70
1992	3,253	10,110	16	0.73	5.01	0.02	2.75	0.15
1993	4,436	13,575	24	6.66	9.84	0.15	132.83	0.22
1994	5,180	14,528	20	1.58	8.82	0.03	16.07	0.17
1995	5,966	16,678	23	3.51	5.65	0.06	39.77	0.09
1996	6,874	18,812	31	4.10	1.87	0.06	72.65	0.03
1997	8,318	22,176	26	7.60	(5.26)	0.09	405.69	(0.06)
1998	9,426	25,673	21	0.36	(5.30)	0.00	(6.76)	(0.06)
1999	11,211	26,284	20	2.00	(7.39)	0.02	(37.73)	(0.07)
2000	11,982	27,824	17	0.31	(8.03)	0.00	(4.20)	(0.07)
2001	13,155	29,675	12	0.25	(8.96)	0.00	(3.15)	(0.07)
2002	13,881	30,723	23	0.40	(8.30)	0.00	(4.44)	(0.06)
2003	14,766	32,157	9	0.45	(9.09)	0.00	(5.43)	(0.06)
2004	14,750	30,464						

NOTES

1. Turnover and Passenger figures represent the total value and number of holidays/flights authorised by all Air Travel Organisers' Licences at the start of the year. The figures exclude all trade sales between ATOL Holders.
2. Calls on Reserve Fund are retrospectively adjusted figures indicating the cost of failures occurring during each year. The figure for Total Fund at year end is taken from the Air Travel Trust accounts and thus incorporates provisions based on estimates at the time of audit; figures are not adjusted retrospectively to show actual expenditure.
3. Calls as % of turnover uses the base of turnover in the same year as the calls. Fund as % of turnover applies the Fund at each year end to the turnover licensed for the year following.