ATIPAC Annual Report 2012/13

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Introduction

Dear Mr McLoughlin

I am pleased to present the Committee's thirteenth annual report. This year has seen the long awaited and fundamental changes to the ATOL scheme. These have been welcomed by the Committee, by consumers and by the industry. They mark a significant step to provide total and clear consumer financial protection for air holidays.

The challenges faced by the industry over the last few years have continued to impact on recovery but the industry as a whole is stronger and more stable. It has proved its resilience. Moreover, booking trends have remained consistent with the previous year.

The industry, although cautious at first, has embraced ATOL reform and actively supported the implementation of the ATOL Certificate. The resulting effect has been a real increase in consumer protection and potentially a game changer in relation to consumer awareness.

The changes that have occurred under ATOL reform have been a major step forward and are whole heartedly endorsed by this Committee. However we feel there is much more that can be achieved and call on the Government to ensure that financial protection keeps up with the changing market of the travel industry and particularly the rise in internet sales.

The Committee is concerned that ATOL reform, the expected revision of the Package Travel Directive and changes in the recent Civil Aviation Bill are robust and consistent with each other in providing total, clear, integrated financial protection for the consumer. We look to the next phase to drive forward the evolution of consumer protection achieved to date.

John Cox OBE Chairman

1. Travel Industry in 2012-13

At the end of last year's report the Committee expressed its concerns about an unstable market. The UK travel industry faced a combination of fluctuating exchange rates, increases in the Air Passenger Duty (APD), increasing fuel costs, financial uncertainty in the Eurozone and the impact on bookings caused by the London 2012 Olympics and Paralympics. The outlook at the end of that report was that recovery in the industry would not be apparent for the foreseeable future.

During Spring 2012 these concerns appeared wellfounded, with a low level of bookings, businesses being forced to reduce operating costs and reduce their work forces to survive and, in some cases simply closing down. At the same time bookings were being affected by threats of industrial action in Europe, and by some European airlines reducing their capacity. This was particularly acute in popular European destinations. Consumers appeared to be unwilling to book.

The UK luxury and cruise markets also reported lower booking numbers. This was attributed to the global geopolitical issues and negative cruise publicity, resulting in nervous consumers. The effects of APD on long haul flying were also believed to be a cause of a low level of cruise bookings, because of the high cost of long haul flying. Consumers switched to shorter cruises departing from UK ports.





The ever increasing level of APD has been a continuing challenge to the industry, especially in relation to long haul destinations. The industry has to justify the apparently high prices of such holidays, although this particular cost is wholly outside its control. The result has been that many consumers may have opted to choose short haul flights and European destinations or held off booking until they could secure the best possible price.

As in previous years the uncertainty surrounding economic and political issues in key market areas continued to affect consumer confidence, with consumers once again unwilling to book to certain areas for fear of cancellation. Stories in the financial press about a possible triple dip recession also had a negative effect, with bookings slowing each time the stories appeared. In the summer the industry was concerned that the campaign by the Government and the sponsors of the Olympics, which encouraged consumers to take their holidays at home, would have an impact on booking numbers. Initially booking levels were low, but as the media reported that there could be very high visitor numbers, consumer bookings increased. It has to be recorded that this may have been due as much to the dismal summer weather as to media coverage.

The slow strengthening of Sterling against the Euro probably helped booking levels, as consumers were getting 10% more for their pound compared with the previous year. With the end of the Olympics there was a sudden surge in bookings with a 65% increase in online searches for holidays. The most popular destinations remain the Mediterranean favourites. Airlines had cut capacity at the beginning of the year due to slow booking trends; this resulted in high flight prices due to the reduced availability, although accommodation was still at reasonable prices. Operators who were locked into contracts and needed to satisfy their obligations looked at ways to secure bookings through discounted pricing and 'price match' offers. As in previous years operators also reduced margins and absorbed costs to secure bookings.

Consumers also took advantage of the increasing on-line market and shopped around for the individual elements of their trips; it was reported to the Committee that online bookings were up by 37% and it was thought that this could be a result of consumers booking the various elements of their trips on different sites.

As the year progressed and turned into the wettest summer in 100 years, bookings were reported to be at the same level as the previous year.

As in previous years the industry maintained that prices were being driven down by consumers constantly waiting until the last minute to book. This was demonstrated during the ski season, when it is believed that consumers wait to check ski conditions prior to booking. However, data gathered by the Risk Management Department of the CAA and presented to the Committee showed a different story. Its analysis of the data showed that consumers booking lead times had increased, rather than decreased in a period covering from 2010 to 2012 as shown in graphs 1 & 2:







Graph 2 Source; Risk Management Department, Civil Aviation Authority

This report on lead time trends was based on the analysis of forward booking data collected over four years by the CAA from the largest operators within each industry segment. While it showed that prices were increasing year on year, the data indicates that consumers have been booking all inclusive holidays, which allow them to know what their total expenditure would be before they travelled. See graph 3.





The figures from the Office of National Statistics support the figures from the CAA and show that on visits abroad the consumers' expenditure has decreased:

Although it has been another year of difficult trading for tour operators, it is clear that consumers have not chosen to sacrifice their annual holiday, albeit the number of trips abroad is still lower than the numbers seen prior to the recession.



Number of visits and expenditure on visits abroad by UK residents

Graph 4 Source; Office of National Statistics

During the year, the ATOL system was significantly reformed in two stages. Regulatory changes were introduced on 30 April. The second phase saw the launch of the ATOL Certificate on the 1 October. On both counts feedback from the industry was that implementation had gone as smoothly and on the whole the industry was supportive and positive about the reform.

Given the economic climate and the continued recession the Committee has been surprised at the lowest level of failures since 2003. This has been attributed to better and more innovative management. Businesses have been shrunk to a workable size, with careful management of their contracting allocations and of their cash flows. Business models have changed, and continue to change, in order to adapt to the market, in particular by facilitating bespoke products.

While ATOL reform has brought 'dynamic packages' within the scope of ATOL as 'Flight-Plus' bookings, the Committee remains very concerned about companies adopting the position that they act as 'agents for the consumer' and that therefore their transactions fall outside of the ATOL 'net'. Consumers are entitled to holiday protection under the Package Travel Directive and should not be disadvantaged because agents claim to be buying holidays on their behalf, rather than selling holidays to them. Consumers of such companies are at financial risk in the case of their failure, but simply do not appreciate the risk they undertake by booking on this basis. Further legislative action is required to protect them and eliminate what is no more than a gambit to evade ATOL. Although travel businesses are leaner and better managed, and the risk of financial institutions removing financial backing with little or no warning has receded, the Government and its legislative programme must keep pace with the ever changing market which is the travel industry.



2. ATOL Reform

Over the past ten years ATIPAC has consistently called for ATOL reform and strongly supported comprehensive robust financial protection for consumers. After a long period of government inaction, the first part of the ATOL reform took effect on 30 April 2012 with changes to the ATOL regulations. This was followed in October 2012 with the introduction of the ATOL Certificate.

The clarity about financial protection for air-based holidays has improved, both with the extension of ATOL protection to encompass 'Flight-Plus' business, and with the ATOL Certificate. The Certificate is particularly important in this respect, as it is a standard document that travel firms must issue to consumers when they book and pay, which confirms what is protected by ATOL.

The ATOL Regulations defined Flight-Plus as a sale type. Travel firms selling flights together with either overseas accommodation or car hire (or all three together) must hold an ATOL. If the consumer requests these elements together or within a day either side of each other, these transactions are treated as Flight-Plus. Consumers are now financially protected when they have purchased in this way.



There is still a serious loophole. Some travel firms claim to be acting as 'agent for the consumer', alleging that they are merely booking different elements of a trip on the instruction of the consumer, and therefore do not need to have an ATOL. Transactions may in some cases fall outside ATOL protection. The Committee is clear and insistent that these sales require protection. This "loop-hole" must be closed if the consumer is to have total and clear protection for the trips they book. We expect the Government to take action to eliminate the uncertainty over 'agent for the consumer' sales in the very near future.

A Flight-Plus sale can look to a consumer like a package holiday. 'What is a package' is still an open question. The status of current definition of a 'package' in the Package Travel Directive ("PTD") is uncertain. The Committee is very concerned about the time it is taking for the review of the Package Travel Directive in Europe. It is crucial for there to be clarity in the new Directive on the precise definition of a "package".

What Flight-Plus has managed to achieve is a more robust form of protection for consumers where they had previously not been protected. The confusion and frustration that had occurred in the past when a company ceased to trade, has to a large extent been alleviated. Nevertheless, much remains to be done.

Other changes resulting from ATOL reform included the introduction of Accredited Bodies by the CAA which has allowed a firm to undertake licensable business without the need to obtain its own ATOL. The introduction of Accredited Bodies has had a material and beneficial impact on financially protecting consumers. There are over 1,200 members of Accredited Bodies. Smaller travel firms that formerly were not able to offer their consumers protection, are now able to provide financial protection to their consumers under the ATOL Scheme, without the cost and time involved in obtaining their own ATOL. As a Committee we welcome this step forward to provide consumers wider access to financial protection where there previously was none.



The new regulations require ATOL holders to have written Agency Agreements that set out their specific terms of trade, in order to clarify the relationship between agents and suppliers. Although establishing written terms of trade are no more than good business practice, in recent years such agreements often appear to have been neglected; this has led to uncertainty in some failures and delays in paying consumer claims by the CAA. It is now a requirement to have a written agreement, without which a business may not call itself an agent for an ATOL holder and will therefore need its own ATOL. Although consumers may not be aware of this requirement, the industry certainly is and there was a flurry of activity to prepare and implement agreements. The Committee will be looking closely at the next significant failure to establish if this part of reform has achieved the desired effect.

A revised definition of an Airline Ticket Agent has been introduced, to replace that of a Ticket Provider. If agents are not authorised by the airline then they must hold an ATOL to sell Flight-Only sales. The scope of Flight-Only sales has not changed, in that, flights previously requiring ATOL protection continue to do so. We will be interested to see if the number of ATOL holders' increases as a consequence of this change and how airlines react should one of these firms fail.

One of the major changes within reform was the introduction in October of the ATOL Certificate, the document which must be issued with the sale of every ATOL protected trip. This has been welcomed by the Committee and by the industry.

The ATOL Certificate replaces previous documentation requirements under the ATOL Regulations. Most firms are still providing invoices and supporting documentation. Providing a recognisable document in the form of an ATOL Certificate helps consumers better to understand the protection ATOL confers in the case of the failure of their holiday company. The Committee has been a strong supporter of its introduction and a means of providing clear information to consumers about which elements of their holiday are protected. Moreover, the information on the ATOL Certificate will assist the CAA when processing claims in the event of an ATOL holder failure and speed up the time taken to refund consumers, which was highlighted in The Consultation on the Civil Aviation Authority's Claims Handling Procedures report of 2010.

The CAA and DfT recognised that ATOL reform and the introduction of a new form Certificate needed to be supported by a consumer publicity campaign. Their research, presented to the Committee, provided evidence of consumers' perceptions about protection and the steps taken to ensure their financial protection in the event of the company they have booked with going out of business.

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The pattern of booking, and the means by which consumers seek to protect their holidays, suggests significant 'protection overlap'. It would seem that in some cases consumers are protecting themselves unnecessarily by taking out additional insurance policies and paying for ATOL protected journeys by credit card not realising they are already protected by ATOL.

This has highlighted the need for continued industry efforts in educating consumers about the protection actually afforded by the ATOL scheme and by 'other' methods of protection from insurance companies and credit cards.

It was also clear from the research that consumers' expectations extended to protection for all flights regardless of how they are booked.

Type of finacial protection for Last overseas holiday



Source; Market Research Report Sept 2012 CAA

When asked about the circumstances under which holiday-makers should be provided with protection, around nine in ten of the general public feel that the failure of an airline should be covered and four in five say the same regarding the failure of a tour operator.

This research also shows the consumers' desired outcome in the event of an ATOL holder failure and gives an indication to the type of financial protection that the Government should be working towards within the ATOL scheme.

Abroad at time of failure

Able to continue holiday
Refunded for replacement flight
Immediately transported home
Compensation for inconvenience



Source; Market Research Report Sept 2012 CAA

The market research carried out by the CAA has proved to be a useful tool in understanding consumers' understanding of ATOL. This led to the 'Pack Peace of Mind' campaign. The initial results were presented to the Committee and we were impressed by the collaboration within the industry and the impact that it had achieved. This type of campaign is vital to ensure the message of financial protection reaches the consumer and is something that the Committee is fully supportive of.

The Committee will continue to follow the coverage and encourage the industry to promote the message so that consumers are better informed of their protection entitlement.

Provider ceased trading prior to travel



Source; Market Research Report Sept 2012 CAA



3. Revision of the EU Package Travel Directive

Over the course of the last year, the European Commission has continued the process of developing a revised Package Travel Directive (PTD). It was our understanding that the Commission had intended to publish a new proposal by March 2013. In the event, it has not materialised. With European Parliamentary elections in 2014, the Commission may be concentrating its attention to addressing issues that are sufficiently advanced to stand a good chance of being finalised before its current term of office expires. At the time of publishing this report the Committee is disappointed that a new Directive may not make much progress before a new Commission and Parliament is in place. Uncertainties about the timing and content of any new Directive have a direct impact on the continued implementation of ATOL reform. The Department for Transport has taken the view that it cannot reasonably consult on regulations to bring airline holidays and agent for the consumer transactions within ATOL until the future of the Package Travel Directive is known. It will be important to ensure that this does not result in further ATOL reforms being derailed or delayed unnecessarily.

We are hopeful that the new Directive will at last clarify the fragmentary issue of what makes a package and what does not, and that it will clarify that consumers must be fully protected against insolvency risk.



4. Role of ATIPAC

The Committee's Constitution sets out the role and membership of the Committee. It is important that the Committee is fully representative of the industry and its consumers in an environment that is changing. During the next year both the constitution and the membership will be reviewed in order that the Committee is up-to-date and brings together a fully representative range of views, interests and expertise. Our responsibility for advising on the financial protection arrangements for air travellers remains paramount. Our aim is to not only incorporate trade, regulator and consumer representatives, but to expand the breadth of knowledge from all areas of the travel industry to enable us to provide informed council to the Civil Aviation Authority and the Secretary of State for Transport on financial protection for air travellers.



5. Failures



Table 1: No of Failed ATOL Holders 2000 – 2013

The performance of the travel industry has been remarkably stable in the context of the overall economic backdrop and problems in key Eurozone destinations. Nevertheless, the overall trading environment has been difficult, and profitability has remained low. ATOL holders took steps to match the number of holidays against the demand for holidays and coupled with the poor weather in the UK this created a relatively good summer for bookings.

Despite significant financial pressures only eleven ATOL holders failed in the year. This is the lowest level of failures since 2003. It should be compared with twenty three in 2011/12. The impact on consumers and on the Air Travel Trust has been minimal. The introduction of Flight-Plus within the protection of the ATOL scheme resulted in additional contributions during the year to the Air Travel Trust.

Coupled with the low level of failures in both number and value, the total value of expected claims on the Trust is £843,744 compared to over £14 million the previous year. Only two of those ATOL holders failed with consumers overseas; a total of 37 passengers required repatriation, while a further 1,354 consumers, who were booked to travel at a later date were due refunds for amounts paid in respect of their bookings.

Full details of all failures are at Appendix 1.



6. Conclusion

The reform of ATOL has been an excellent first step in providing consumers with greater clarity over financial protection. The next stage for the Government is to develop a coherent approach to further reform by eliminating 'agent for the consumer' as a device to evade the ATOL system and by incorporating the proposals for change in the expected Package Travel Directive. Any ambiguities introduced by changes in the PTD must be dealt with immediately. As this report shows, the consumer already has a number of complex financial protection issues to navigate when booking a trip. It is vital that the continued advancement to total comprehensive and effective protection is not damaged by unintended consequences of a revised PTD. The Committee is impressed with the recent efforts of the Government and the reception that the industry has given to the reforms. We do not want to see the progress of further reform being derailed.

The continued economic and political challenges the industry faces, which are outside its control, continue to slow its recovery. In the last year the industry has shown a remarkable resilience and an ability to react to rapidly changing circumstances. However many markets are still fragile and the industry needs to remain vigilant.

The clarification that has been afforded by the introduction of the ATOL Certificate should be seen as a significant step in establishing clear and consistent documentation. The industry has collaborated with the CAA and implemented the certificate efficiently, and we welcome the industry's efforts in implementing ATOL reform and operating the new procedures. Nevertheless, there is more to do. We are pleased by the CAA's commitment to engage with the industry to ensure compliance and create transparency for the consumer of financial protection.

At this time financial protection is still evolving. The PTD review creates uncertainties. Trading conditions in the travel industry are still difficult. Consumer confidence, based inevitably on personal financial circumstances and on media reports, is still fragile. The next year provides the opportunity to assess the effectiveness of recent changes, and to effect further reforms to create an efficient and effective protection scheme for the consumer.



APPENDIX 1

Detail of ATOL Holder Failures April '12 to March '13

ATOL Holder Name	Date of Failure	Licensed Passengers	Security Provided	Number of Passengers Repatriated	Cost of Repatriation	Expected Number of Passengers to Refund	Estimated Refund Cost	Estimated Total Expenditure	Estimated Call on Air Travel Trust
			£'000		£'000		£'000	£'000	£'000
Holidays Your Way Ltd	16-Apr-12	500	10	0	0	0	0	0	0
Rumsey Travel Ltd	16-May-12	638	335	0	0	7	44	44	0
My Fidelisst UK Ltd	20-Jun-12	643	232	0	0	469	168	168	0
Travel Serenity Ltd	25-Jun-12	500	30	0	0	151	170	170	140
Kenlin Ltd	19-Jul-12	500	0	0	0	0	0	0	0
Enjoy Holidays Ltd	15-Aug-12	500	ο	37	10	505	333	343	343
Tana Consultants Ltd	28-Sep-12	225	ο	0	0	7	13	13	13
Travellers Cities Ltd	15-Oct-12	500	ο	0	0	60	88	88	88
Bowen Travel Ltd	30-Oct-12	500	0	0	0	0	ю	ю	ю
Global Enduro Ltd	28-Jan-13	500	20	0	0	103	156	156	136
T.D. Europe Ltd	06-Feb-13	500	ο	0	0	19	06	06	06
Total				37	10	1,354	1,065	1,075	813
							*		

APPENDIX 2

Constitution and Terms of Reference

Establishment and Role of the Committee

 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:

ABTA The Travel Association Two Members

Federation of Tour Operators One Member

Association of Independent Tour Operators One Member

Association of Airline Consolidators One Member

Eventia One Member

Travel Trust Association One Member

Trading Standards One Member

Internet Community One Member

European Low Fares Airlines Association One Member

BARUK

One Member

Independent representatives not associated with any organisation represented on the Committee

Three or four Members, one of whom is Chairman

Other representatives of consumer interests One or two members

Civil Aviation Authority (CAA) Two Members

Appointments to the Committee

- 3. Members shall be appointed by the Chairman of the CAA, for periods specified at the time of appointment. Membership periods should normally be periods of 4 years. Members may resign at any time. The CAA Chairman will consult the Chairman of the Committee before appointing Members other than from trade associations and the CAA.
- 4. Each represented body should nominate to the CAA two alternates, who may attend any meeting in the absence of that body's appointed member(s).
- 5. If the Chairman of the CAA is satisfied that a member has been absent from meetings of the Committee for more than three consecutive meetings or is satisfied that a member is otherwise unable or unfit to discharge the functions of a member of the Committee he may declare the membership vacant.

Meetings of the Committee

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

Duties of Committee

- 7. The Committee shall keep under review and from time to time advise the CAA, the Trustees of the Air Travel Trust and the Secretary of State for Transport on the arrangements for the financial protection of air travellers and customers of air travel organisers.
- 8. In particular it shall:
 - advise the CAA and the Secretary of State as appropriate on any changes to the structure of protection that it concludes are necessary or desirable;
 - advise the CAA and the Trustees on the use of their discretion when making payments from bonds and from the Trust;
 - advise on bonding arrangements and bond levels;
 - advise on agreements between the Trustees, the CAA and third parties such as credit card companies;
 - advise the Secretary of State on the need for a re-imposition of a levy on the holders of Air Travel Organisers' Licences in order to replenish the Trust Fund, and advise the CAA and the Secretary of State (as appropriate) on the implementation of such a levy.
- 9. The Committee shall submit to the Secretary of State an Annual Report on its activities in each year ended 31 March within four months of the end of that year. The Committee shall draw to the Secretary of State's attention at any time matters of concern on which, in its view, action is necessary.

Administrative Arrangements

- Reasonable out of pocket expenses directly incurred by Members of the Committee in attending meetings shall be reimbursed by the CAA.
- 11. The CAA shall provide administrative support to the Committee.

The Department of the Environment, Transport and the Regions

April 2000

Amended by the Department for Transport

July 2006

Role & Membership of the Committee

- The Air Travel Insolvency Protection Advisory Committee was established by the Secretary of State for Transport in 2000 to provide advice to the Civil Aviation Authority (CAA), the Trustees of the Air Travel Trust and the Secretary of State for Transport on the financial protection arrangements for air travellers and customers of air travel organisers. Its terms of reference are at Appendix 2 of this Report.
- 2. The Committee includes representatives from key trade associations, consumer representatives, independent members and members appointed by the CAA.
- 3. The Committee held four meetings during the year, all of which were held at the offices of the Civil Aviation Authority in London.

Members 1 April 2012 - 31 March 2013

John Cox OBE

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



Noel Josephides

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



Roger Mountford

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



Andy Cooper

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



Richard Jackson

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



John de Vial

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



Roger Allard

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



Bruce Treloar

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



Lindsay Ingram

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



Roger Bray

Freelance journalist with a consumer focus. He is an independent member.



Gary Lewis

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



Uday Dholakia OBE

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



lain Lindsay

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



Rochelle Turner

Head of Research for the World Travel & Tourism Council. She represents consumer interests.



Prof. David Grant

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



Dale Keller

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 BARUK.

