

# ATIPAC

**Air Travel Insolvency Protection Advisory Committee**



**Annual Report 2015 - 2016**

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### **EU Referendum and the future of consumer protection**

This Report describes the Committee's work during the year up to 31 March 2016. The EU Referendum on 23 June 2016, resulting in a vote to leave the European Union, will clearly affect how this work is taken forward.

There is now uncertainty about the prospects for package holiday travel, including the future of Open Skies, and the status of the Package Travel Directive that came into effect on 1 January 2016. It is not clear whether the Directive will be implemented in the UK in whole or in part by the deadline of 1 January 2018. The Committee awaits guidance from the Government and urges a speedy clarification of the position in the interests of consumers and of the travel trade that serves them.

## Introduction

Dear Mr McLoughlin,

I have great pleasure in submitting the Committee's sixteenth Annual Report, covering the year that ended on 31 March 2016.

After a considerable time in gestation, the European Package Travel Directive was adopted in November 2015, and came into force on 1 January 2016. It is an important update of the 1990 Directive which it replaces and should extend financial protection to more consumers by widening the definition of what constitutes a package. Nevertheless, its use of Place of Establishment as the means of dictating the country responsible for providing the Directive's provisions on consumer protection is likely to confuse the consumers it is designed to protect. Moreover, it throws a cross-border administrative burden on regulators that would not be there if Place of Sale had been the governing factor instead, as we suggested in last year's report.

There is now less than two years in which the Directive's provisions are to be brought into law in the UK. Despite the short timescale, the Government must not compromise the insolvency protection provided by the ATOL scheme, which has been effective for forty years and is now seen by consumers as an integral part of the product they buy. In preparation for this, the Committee has been active in providing advice to your officials on the issues of most concern to consumers. In particular, we have highlighted the issues that need to be addressed in the forthcoming consultations on how to implement the provisions in the UK.

This year has also seen significant disruption caused by terrorist incidents in many parts of the world, most notably in the Eastern Mediterranean and North Africa - key destinations for the holidaymaker. Travel plans have also been affected by the Ebola virus, and by the emergence of the Zika virus, and its spread to destinations in Central and South America and the Caribbean. The industry, as a whole, has shown itself remarkably resilient at dealing with the disruption that follows such unexpected events. Nevertheless, the stability and financial sustainability of some tour operators, particularly specialists, is inevitably threatened.

Terrorist and health-related events affect consumer confidence. They cause substantial swings in booking patterns, financial stress and increase the risk of tour operator failures. This comes at a time when the implementation of the Package Travel Directive represents a critical moment for insolvency protection for consumers. It is again important to emphasise that, while protection in the UK is governed by statutory regulation, the costs of funding and maintaining protection falls entirely on the industry and its customers. It makes no call on the public purse.

The Committee is the only body in the UK that brings together the travel trade, industry regulators and consumer, and is the only body that is wholly devoted to the consumer interest in air-based holiday travel. The Committee remains ready and more than willing to advise and assist the Government on the legal framework required to implement the Directive. Its continuing concern is that insolvency protection for UK travellers should be prompt, effective, understandable and easy to access.

John Cox OBE Chairman

## The Role of ATIPAC

The Committee's role is to provide informed advice to the Government and the regulatory authorities on financial protection for consumers in the event of a holiday company's insolvency. Its Constitution sets out the role and membership of the Committee, and can be reviewed in Appendix 4.

The Committee's responsibility for advising on the financial protection arrangements for air holidays remains paramount. This is reflected in its membership, which is balanced between trade, regulator and consumer representatives and independent members, with a breadth and depth of knowledge and experience from all areas of the travel industry. Its aim is to provide informed counsel to the Civil Aviation Authority, the Air Travel Trust and the Secretary of State for Transport on financial protection for air travellers.

ATIPAC has already provided input at a European level on the final form of the Package Travel Directive, which came into force on 1 January 2016. The Committee then turned its attention to its implementation into UK law. As is recorded elsewhere in this Report, the Committee has been actively engaged in representations to the Department for Transport (DfT) and the Department for Business Innovation & Skills (BIS) on the issues that concern both the trade and, more importantly, consumers. As the principal source of advice on insolvency protection as it affects the consumer, the Committee will continue to engage with the Secretary of State on the implementation of the Directive and on the detailed arrangements required to provide consumers with easy and effective access to the insolvency protection they require.

The Committee's principal aim is still to ensure that the UK insolvency protection regime remains simple and accessible for consumers caught up in a tour operator's insolvency.



## The European Package Travel Directive

The new Package Travel Directive (2015/2302/EU), which was adopted on 25 November 2015, came into force on 1 January 2016. Each Member State, including the UK, has until 1 January 2018 to incorporate it into national law, and bring it into effect from 1 July 2018. The Directive broadens the definition of a 'package' beyond the traditional model of a ready-made holiday purchased from a tour operator. 'Package' is now defined as a travel arrangement consisting of two or more elements: transport, accommodation, car rental or other tourist services for the purpose of the same trip or holiday. This covers not only pre-arranged holidays but also a selection of holiday components made by the traveller and purchased from a single business on the telephone, in a shop or online. This will include most 'Flight-Plus' arrangements covered by the existing ATOL scheme. In principle, this represents a considerable improvement on the 1990 Directive that it replaces. Moreover, it explicitly provides that the costs of both refunds and repatriation in the case of tour operator failure are covered.

The Directive also introduces a more limited form of protection for 'Linked Travel Arrangements' (LTAs), where a traveller books one travel service, and then books another service, for example through a targeted link, provided that the second service is booked within 24 hours of the first service.

It introduces important information requirements so that travellers have understandable information about the package or the LTA, and the protection in place, both before they purchase and as part of the booking confirmation process. It also confers stronger and more explicit consumer rights on supplier liability, and cancellation rights.

The Committee's primary task during the year has been to work with the UK Government to highlight the issues and concerns that will arise as the provisions of the Directive are written into law in the UK. The revised UK insolvency protection regime must be clear, easy to access and navigate by individual consumers, and appropriately funded.

Our main areas of concern are as follows:

The Directive introduces 'Place of Establishment', rather than 'Place of Sale' as the determinant for deciding which EU Member State is responsible for providing appropriate protection to consumers. 'Place of Establishment' is defined as being where the supplier's 'economic activity' is based. This is open to interpretation, as it has not been tested in the courts for travel businesses in this context. This is a potential source of concern and confusion for consumers.

Linked Travel Arrangements are new (see Appendix 1, section 6). They provide some financial protection, albeit transitory. The Committee remains unclear as to which body will be responsible for protecting LTAs. Whilst Better Regulation principles could point towards the CAA assuming responsibility for some or all of these sales, the Committee opposes any move to link these to the ATOL brand. This would only confuse consumers and could substantially weaken the brand and undo the ATOL Awareness gains the CAA has achieved through its Pack Peace of Mind campaign.

The Directive requires tour organisers to be 'visible', without defining the term. In the UK, holiday companies are visible as they have to be licensed under the ATOLs scheme. If consumers purchase packages from companies established in another Member State, 'visibility' may not be so obvious.

- As tour organisers established in another Member State may sell packages to UK consumers, the enforcement of compliance with the Directive by the responsible Member State is a major concern for consumers. The Committee is concerned to ensure that UK consumers have the protection they expect if their tour organiser is established outside the UK.

Implementation of the Directive's provisions in the UK will be the subject of consultation by the DfT and BIS. The timing of their consultation has been dependent on the adoption of the Directive. It had been expected by March 2016, but has been delayed.

In order to provide advice and expertise to both Government departments concerned in formulating the consultation, a sub-committee was set up to articulate the Committee's concerns. This resulted in a one-day workshop in October 2015 held with officials to work through a range of potential scenarios illustrating the issues of concern. This was followed by the submission of further advice in February 2016 (see Appendix 1).

It is the Committee's view that the implementation of the Directive has displaced the DfT's work on a review and potential wider reform of the ATOL Scheme and the other financial protection schemes for packages, on which it had previously sought evidence from the travel trade and consumers. It is clear that the timetable within which the Directive has to be implemented means that the wider review is likely to be undertaken as a separate and subsequent process.



## Work of the Sub-committee

The Committee established a sub-committee in 2014, initially to make representations to the European Parliament's Committee on Internal Market and Consumer Protection in March 2014. During summer 2015 the Committee proposed to the DfT and BIS that a workshop be held to examine the concerns it had discussed and identified. The sub-committee has now undertaken this work and it has been greatly helped by the open and frank discussions held with officials in both departments.

The workshop was held on 9 October 2015. The sub-committee had prepared papers describing a set of 'scenarios' or case studies in which reasonably foreseeable events could be examined through the prism of the Directive's provisions in order to guide work on effecting the Directive's provisions in UK law. The sub-committee was concerned to ensure that the very practical problems of consumer understanding and access to protection should be addressed by the UK when it implements the Directive. The Committee is grateful to the officials who attended both for their time and for their willingness to accept the committee's input.

When the Directive was adopted in November 2015, the DfT and BIS announced their intention to launch separate but parallel consultations on UK implementation. The Committee was invited to submit its advice on how the consultation should be framed and on the principal issues that should concern the Government in framing legislation. This was done in February 2016.

The Committee now awaits the publication of the consultations, and will make further representations in due course.



## Pack Peace of Mind

During 2016, the CAA has continued its Pack Peace of Mind ATOL campaign, which aims to improve consumers' understanding of ATOL and remind them to check for their financial protection cover before booking their holidays. The Committee has supported the campaign since it started in 2012 and has been able to feed in its views to shape the campaign and, in particular, to emphasise the importance of the ATOL Certificate.

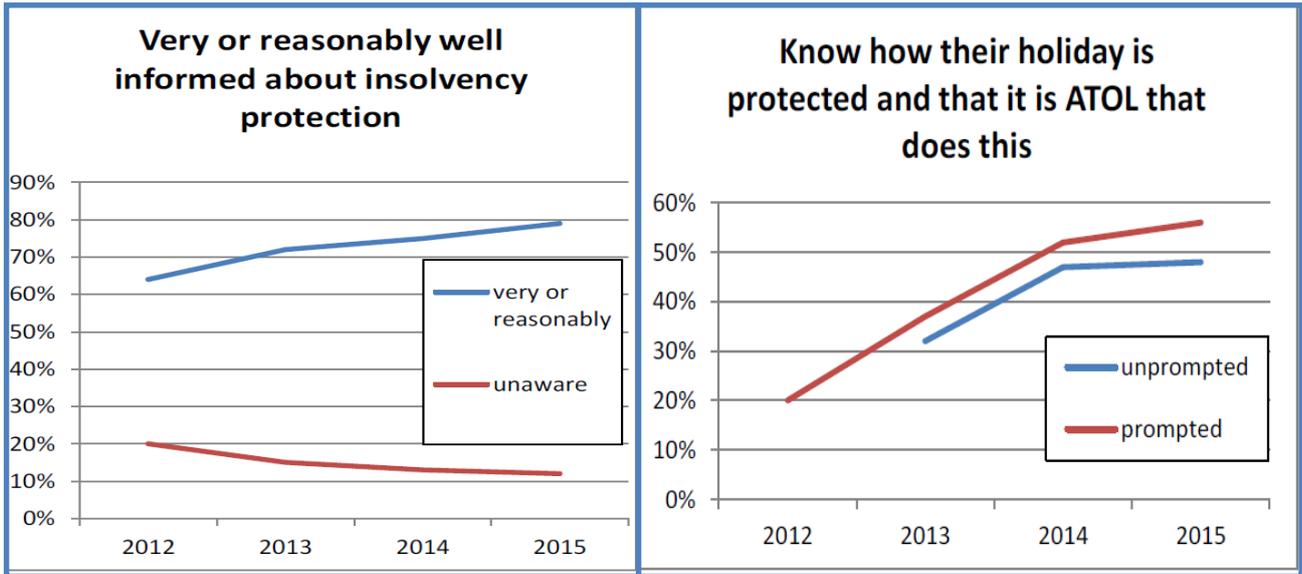
The current campaign is targeted at families and maintains the look and feel of the 2015 activity, including the use of Justine Case and her family of animated suitcases. The video featuring the family was used extensively in online advertising. For the first time the campaign has also included radio advertisements on major commercial stations. Other activity has included full page advertisements in weekly consumer magazines.

The CAA has also worked with a PR agency to drive higher profile media coverage of ATOL. This has led to significant media coverage in national newspapers. Much of this activity has focused on researching consumers' holiday habits – such as the changing face of the family holiday or favourite destinations – to generate consumer-friendly stories that have a clear ATOL message included.

There has also been a comprehensive social media plan to complement the PR work. This has seen significantly more activity on the campaign's social channels – Twitter and Facebook – which has resulted in a large increase in the numbers accessing the information and messages promoted through these channels. This activity has been supported by a number of ATOL holders on Twitter.

The PR has also been focused on addressing issues in the travel markets that affect specific communities – such as Hajj fraud. Working in conjunction with the City of London Police, Trading Standards and ABTA, the campaign has supported activity that provides clear advice to people on how they can avoid becoming victims of Hajj fraud. This is an area where the Committee has had particular concerns and it welcomes this initiative to spread the financial protection message beyond the usual holiday market focus.

The CAA has also been conducting surveys to track consumers' awareness of insolvency protection, in order to understand the impact of the Pack Peace of Mind campaign. There has been a steady increase in the proportion of people who believe they are either “very” or “reasonably” well informed about protection. There has also been steady growth in the percentage of people who believe they know how their holiday is protected, and that it is protected by ATOL.



Source: CAA air traveller surveys

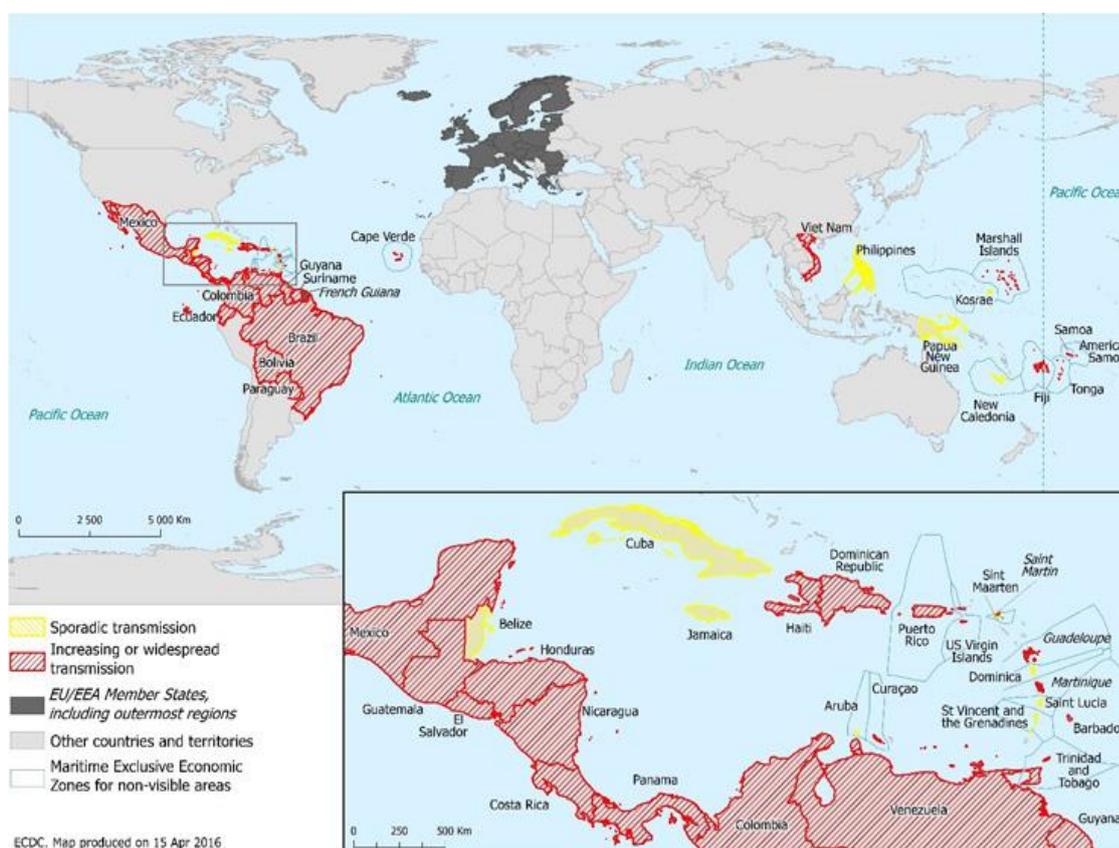
The Committee looks forward to learning more from the CAA on the impact of the current campaign and its proposals for future promotional activity. The Committee believes that this awareness activity will become even more important as the UK moves towards the implementation of the new European Package Travel Directive and consumers increasingly look for evidence of financial protection so they can have confidence before they book.

## Overview of Geopolitical Issues

The travel industry is widely impacted by regulations and restrictions related to international trade, tax policy, and competition. However, more unpredictable impacts resulting from geopolitical risks like war, terrorism, and the outbreak of diseases have the ability to disrupt local markets and reduce demand for affected destinations.

The main issues that have been highlighted during the year by the Committee have been the continued impact of the Ebola virus in West Africa, the Zika virus and worldwide terrorist incidents. All have impacted different regions and all continue to present concerns for the travelling public.

The outbreak of Zika virus is prevalent in Central and Southern America and the Caribbean in addition to some Pacific Islands and South East Asia. The Committee had concerns that the potential spread of the Zika virus to the Southern USA and, in particular, Florida would have an impact on its target audience of young families. At the time of writing the virus has not been confirmed in the USA.



Source: <http://travelhealthpro.org.uk/zika-virus-update-and-advice-for-travellers-including-pregnant-women/>

## The Threat of Terrorism.

Market conditions toward the end of 2015 and into 2016 proved difficult as a number of destinations in North Africa and the Eastern Mediterranean were affected by terrorist attacks.

Previously stable destinations such as Turkey are experiencing a tougher business environment as consumers have diverted bookings to destinations perceived as safer, such as the Iberian Peninsula and the Spanish Islands. Travel to destinations in Mediterranean regions like Tunisia, Greece and the Middle East have suffered due to concerns over terrorism and instability. Recent attacks in Turkey and Belgium show that these risks remain.

There is considered to be a heightened threat of terrorist attacks worldwide stemming from the conflicts in the Middle East. In the period April 2015 – April 2016, terrorist incidents occurred in Tunisia, Yemen, USA, Turkey, France, Kuwait, Egypt, Lebanon, Saudi Arabia, Libya, Indonesia, Belgium and in other areas of conflict.

The Foreign and Commonwealth Office, ('FCO'), advise <sup>1</sup> against all travel or all but essential travel to parts of the Middle East and some parts of Turkey. The areas which the FCO advise against all but essential travel in Egypt do not include the tourist areas along the Nile River (e.g. Luxor, Qina, Aswan, Abu Simbel and the Valley of the Kings) or the Red Sea resorts of Sharm el Sheikh and Hurghada. FCO has advised that the airports of Sharm el Sheikh and Hurghada have enhanced security measures in place but advise against all but essential travel by air to or from Sharm el Sheikh; currently UK airlines are not flying to Sharm el Sheikh or to Tunisia.

The Committee has noted that bookings for 2016 to the Eastern Mediterranean and Egypt are significantly down with bookings to Turkey are down by around two-thirds. The cancellation of some routes has resulted in operators transferring their aircraft to other European destinations particularly mainland Spain, the Canaries and Balearics which are seeing higher demand. Concerns have been expressed that this may result in a shortage of beds available in those areas. The Committee noted that consumers were opting for shorter lead times for booking their flights, presumably as they are nervous about booking their flights too far in advance of travel.

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<sup>1</sup> March 2016 <https://www.gov.uk/foreign-travel-advice>

# Failures

Table 1: Number of failed ATOL holders 2000 – 2016



The continued low level of failures is a tribute to the resilience of the travel industry, although its performance has varied by sector and region. Ten ATOL holders failed in the year. The number is slightly lower than the previous year. The impact on consumers and on the Air Travel Trust has been minimal and so the balance of the Air Travel Trust fund at the end of March 2016 was around £139 million.

A table showing this year’s failures is at Appendix 2

## Conclusion

The Committee has addressed a series of challenges during the year. The progress of the EU Package Travel Directive has been a dominant feature of its agenda throughout the year, and will continue to demand close attention for the next couple of years.

We remain very concerned that effective consumer protection should not be compromised by the implementation of Place of Establishment of a tour organiser as the governing factor for the country responsible for providing financial protection. There is great potential for consumer confusion. Implementation requires compliance in each and every Member State. It is by no means clear how speedy and effective enforcement will be obtained in all cases given the fact that infraction proceedings, which are often lengthy, provide the European Commission with its primary weapon.

The UK implementation of the Directive must not degrade the insolvency protection already provided under the ATOL Scheme, which has proved itself to be highly effective. It should be remembered that, although it is governed by statutory regulations, the costs of funding and administering the scheme are borne by the travel industry and its customers.

However, the challenges were not limited to the regulatory environment. The travel trade has encountered a series of shocks during the year, from terrorism to health threats. Such events have a significant impact on consumer confidence and drive booking patterns in unpredictable directions. They are also an underlying threat to the stability of the travel trade - particularly smaller specialist operators - with an increased risk of failures and subsequent demands on the funds of the Air Travel Trust.

During the coming year the Committee will continue to monitor and advise on the implementation of the Package Travel Directive in the UK. It will address the emergence of new business models in holiday travel, which are currently unregulated and fall outside the financial protection mechanisms currently in place. It will also address the impact on the competitive environment of the forthcoming decision by the Government on additional runway capacity in the South East, and its consequences for consumer protection.

## Appendix 1 The UK Implementation of the Package Travel Directive: Major Issues to address in the forthcoming consultation.

The implementation of the Package Travel Directive raises a number of issues for consumers and for the travel trade that have been described as matters for 'political decision' but are in many cases practical issues that should shape the regulations and/or legislation implementing the Directive in the UK. The Directive's implementation should not degrade the insolvency protection already provided to UK consumers under ATOL and the PTRs.

The underlying principle of the Directive is to inform and protect consumers: i.e. clarity of information, and clarity of insolvency protection in the case of travel organiser failure.

Consumers generally book and pay for holidays well in advance and this often constitutes a major annual household expenditure. The travel trade depends on the confidence conferred by ATOL and similar insolvency protection regimes in order to build stable and profitable businesses.

The purpose of this document is to highlight and articulate the issues ATIPAC believe could detrimentally affect UK consumers to BIS and DfT and so help guide them on their respective consultations.

### 1. Place of Establishment

'Establishment' is defined by the Services Directive (Directive 2006/123/EC) as being where the travel organiser's economic activity (i.e. the provision of services) is carried out "for an indefinite period and through a stable infrastructure". This is an evidential test: i.e. where the business activity is actually based. However, because the term 'Establishment' has not been tested in national or European courts, it is open to interpretation. Where an organiser operates (and has offices or shops in a number of Member States), the issue is identifying the place of establishment for the purposes of the Directive is not entirely clear:

Legal advice received by the Civil Aviation Authority in 2013 suggested that establishment is driven by the location of the organiser's centre of activities, which in the case of travel organisers will be the place where the selling takes place.

An additional complication occurs where a travel organiser is apparently established in two or more Member States, e.g. a Spanish company has a branch in the UK. In such a case, the principal place of establishment has to be identified, and verification will require investigation. The CAA's legal advice was that the place where the selling infrastructure of the organiser (i.e. its 'centre of activities') is based usually provides the answer. To take the example of a company registered in Spain, but with its 'branch' operating retail shops in the UK, the 'centre of activities' is in the UK, and the principal place of establishment for the purposes of the Directive is in the UK.

There are other views. One is that the place of establishment is the State in which the travel organiser chooses to base its centre of activities.

This poses a significant source of concern and confusion for consumers. This risk may be partly mitigated because organisers are required to state their geographical address in the pre-contractual information they must provide to consumers. However, the Committee was

concerned that the geographical address provided may not always reflect the actual place of establishment. Where this is the case, consumers may assume they are protected by the UK regime and, for example, will benefit from CAA organised repatriation (as opposed to reclaiming the cost of their own self-funded repatriation), when, in fact, they are not.

The committee agreed that uncertainty regarding 'establishment' would remain unless or until European Courts or the Commission issued specific guidance. The Commission could helpfully propose tests that can be incorporated into the UK implementation to ensure that any purported move by travel organisers from the UK to another Member State constitutes a substantive relocation and not just a shadow.

The law needs to be clear and definitive in order to inform and protect consumers. In the meantime, risks to UK consumers could be reduced by ensuring that enough information is made available to help them make informed decisions. Therefore, BIS and DfT should include in their consultations questions surrounding the information that can be made available to consumers about an organiser's 'place of establishment' and/or the Member State responsible for providing financial protection for the transaction.

## 2. Definition of most arrangements

'Package' will include most Flight-Plus arrangements that are sold today and that are protected under ATOL.

The new Linked Travel Arrangement (LTA) provides some, often very time-limited, financial protection, in relation to the insolvency of the travel organiser. In contrast to the current UK Flight-Plus arrangements, LTA protection does not generally extend to the components of travel booked (hotel, flights, etc.) unless the travel organiser is the party providing the component (for example, the airline providing the flight).

However, the Committee is concerned that firms may exploit potential loopholes to evade protecting their bookings.

Examples of the loopholes the Committee has identified include:

Enforcement action in respect of non EEA organisers selling into the UK that do not meet the requirements of the PTD to provide insolvency protection to consumers booking with such firms.

Travel firms may sell bookings that should be classed as Packages, but argue they are selling LTAs.

Firms may artificially delay the timing of bookings to evade the 24 hour timeframe required for a transaction to be defined as an LTA (although the protection envisaged for LTAs themselves raises practical and substantive issues (see 6 below).

Firms may establish artificial 'fronting arrangements', which place an intermediary LTA organiser in front of the operating parties of the component services, thus requiring only limited and short lived protection to apply if consumer prepayments are then immediately passed to the operating airline and hotel. This would relieve the true commercial mover (for example, an airline) from its obligations.

Consumers would be unlikely to understand the difference in protection between a 'package'

and an 'LTA' if protected through a common protection brand, such as ATOL. The limited protection of an LTA could risk undermining consumer confidence in the ATOL brand if consumers holding ATOL certificates found that there was no financial protection or repatriation protection in the event of the failure or non-delivery of the airline or other services. We suggest that no practical amount of information on an ATOL certificate is likely to remedy or mitigate this risk satisfactorily.

The committee strongly recommends that the consultations should seek stakeholders' views on potential protection avoidance risks and suggestions on how to mitigate these.

### 3. Recognition of travel organisers

The Directive does not require licensing (as in the UK under ATOL), but does require a system of visibility for traders. This term is unclear and the Committee questions how the UK should provide for such 'visibility'. ATOL grant licences to offer holidays after an assessment of the organiser's financial status and fitness to trade. This system is effective, and goes a long way to eradicate the incompetent and those with criminal intent. If other Member States do not implement similar measures to minimize the risk of failure, ATIPAC believes consumers should be made aware of this, to help them make informed booking choices. ATIPAC would be interested to know if other stakeholders share their view.

### 4. ATOL brand and public recognition

The consultation should address the retention of the ATOL brand to signify consumer protection, given the effort and expenditure devoted to promoting ATOL awareness in recent years in conjunction with the introduction of the ATOL Certificate.

The committee expressed concerns that, if the CAA is responsible for LTAs, damage may occur to the ATOL brand and cause confusion for consumers. Consumers may incorrectly assume that these arrangements carry the level of protection they have come to expect from ATOL.

Although risks could be partly addressed by different protection 'badges' - for example different coloured logos to denote different protection, the Committee is interested to hear views on how LTA protection would be administered.

### 5. Compliance

The enforcement of compliance with the Directive by other Member States (and indeed non-member States offering packages within Europe) is a major issue for consumers. The use of infraction proceedings after a failure provides no protection to consumers of a failed travel organiser if the Member State has failed to fully implement the PTD requirements. Unfortunately, the history of enforcement and infraction proceedings is very patchy EU-wide.

The committee recommends that the consultations seek views on measures that can be taken to ensure compliance and enforcement. In the committee's view fundamental to this will be the establishment of procedures for cooperation between Member States and guidance on how consumers can enforce their legal rights outside their own Member State.

## 6. Linked Travel Arrangements

LTA protection is new, but the protection it offers is very limited and applies only if the LTA facilitator, rather than service suppliers, fail. Given the fact that immediate payment is usually required for air travel, if the facilitator is a retail travel agent and an airline fails, the protection extends only as long as the customer's payment is held by the facilitator (i.e. the 'pipeline' money). In other words, the protection appears to be transient. If the facilitator is an airline, protection is likely to be more effective as it will include repatriation. However, these differentials themselves create complexity and uncertainty for consumers. LTAs may also provide a device for organisers to avoid packages (see 2 above).

The Directive's provisions on customer information in respect of LTAs are an improvement on what now exists and these should serve as a valuable consumer information tool. However, the committee is worried that many travel businesses, particularly car hire companies and bed banks that have not been required to provide any protection in the past, may not even be aware of the implications of the new Directive. Those that are aware may not have in place the necessary technology to know when their consumers are booking additional services linked to their initial bookings.

Although the Directive makes it clear that linked bookings will be classed as packages if the relevant travel business fails to disclose the booking as an LTA, the committee is unclear as to how a consumer could invoke this protection.

The committee remains of the view that the insolvency protection provisions are haphazard. The consultation should address LTAs' potential to confuse not only the consumers they were designed to protect but also the businesses required to put in place the protection measures, and how the UK implementation will make clear the difference of insolvency protection between Packages and LTAs.

## 7. Impact of UK travel organisers' establishment in another Member State

There are a number of potential practical problems that could arise from the decision of a UK-established travel organiser, licensed under ATOL, to move its establishment to another Member State, sometimes for reasons unconnected with the PTD, e.g. the tax regime. One significant concern is that the system in another Member State established to meet local needs may not be equipped to regulate large businesses and deal with the volume of consumers who could be affected by large business failures. A suggested solution may be the establishment of a UK contingency regime and planning process to deal with such system failures in other Member States.

Another concern is that moves by UK travel organisers to other EU jurisdictions denudes the UK protection system of adequate funding or transfers 'good' risk out of the UK, thus reducing the long term effectiveness and viability of UK coverage.

ATIPAC recommends that views should be sought on how to ensure that ATOL protection remains effective.

## 8. Impact of UK-established travel organisers trading in Europe

The operation of repatriation and refunds raises practical issues of conflict of interest and priority of treatment between UK and other EU consumers. Most other Member States do not currently organise these arrangements; consumers fend for themselves and then make a subsequent claim. This can add a substantial financial and emotional burden to the detriment of consumers. The consultation should address this issue and invite input from stakeholders on reducing or eliminating this concern.

## 9. Funding

It is recognised that the UK implementation will have to be funded by the industry and its consumers. The funding mechanism underpinning the ATOL regime is the Air Travel Trust, which is now in credit, but spent many years in deficit guaranteed by the Government. In order to ensure the ATOL scheme remains adequately funded, the UK protection system must remain viable and cost effective for the travel trade.

The consultation should invite input on how to ensure ATOL protection costs continue to be cost effective to discourage travel organisers from establishing themselves elsewhere.

## 10. Long term sustainability

The UK implementation must take account of the impact of technology on consumer behavior, including online and mobile booking, payment systems such as PayPal, Apple Pay, Google Wallet, and the continuing trend away from traditional inclusive holidays to booking individual elements of the holiday. It must be scalable, and be adequately funded. It must provide reasonable stability and certainty of cost to the industry at a fair level if travel organisers are to be inhibited from seeking to re-establish outside the UK (i.e. 'forum shopping') is to be minimised.

The consultation should seek advice from all the stakeholders on measures to ensure the sustainability of the UK insolvency protection system.

8 February 2016

## Appendix 2 - Details of ATOL holder failures April 2015 – March 2016

ATOL Holder Name	Date of Failure	Licensed Passengers	Security Provided	Number of Passengers Repatriated	Cost of Repatriation & Overseas Costs	Expected Number of Passengers to Refund	Estimated Refund Cost	Estimated Total Expenditure	Estimated Call on Air Travel Trust
			£'000		£'000		£'000	£'000	£'000
Awimaway.com Ltd	01/04/2015	500	-	-	-	-	-	-	-
Travel Incentives Meetings Exhibitions	20/05/2015	509	-	-	-	-	-	-	-
Holiday Routes Ltd	22/05/2015	501	34	-	-	211	89	89	55
Fone N Fly Ltd	18/08/2015	500	40	-	-	450	210	210	170
Exclusive Escapes Ltd	02/09/2015	7,754	-	339	327	2,693	3,164	3,491	3,491
Flights & Fly Ltd	10/11/2015	500	55	-	-	138	70	70	15
A & M Travel Ltd	15/01/2106	740	-	-	-	165	78	78	78
Mirecki M	19/01/2016	500	-	-	-	9	16	16	16
Elixir Holidays Ltd	17/02/2016	1,495	-	-	-	227	338	338	338
Travel Definitions Ltd	04/03/2016	1,237	-	-	-	498	603	603	603
			<b>129</b>	<b>339</b>	<b>327</b>	<b>795</b>	<b>4568</b>	<b>4895</b>	<b>4766</b>

## Appendix 3 – ATIPAC Committee members April 2015 – March 2016

### **John Cox OBE – Independent representative**

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



### **Roger Allard – Industry representative**

Roger started in travel as a teenager on Saturday's whilst still at school. He went on to be a founding partner and director of First Choice plc. He is currently Executive Chairman of All Leisure Group plc. He is on the Board of ABTA (Association of British Travel Agents) and represents them on the Committee. He has investments and directorships in numerous other UK and non-UK based travel companies



### **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) on ATIPAC



### **Roger Bray - Independent representative**

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



### **Simon Cooper - Industry representative**

Founder and CEO of On the Beach, Simon Cooper, began his career in the travel industry while attending university. It was here that he founded the online ski company- On the Piste- which he sold to TUI Travel in 2008. On the Beach is headquartered in Cheadle, Manchester and currently employs more than 250 staff.



### **Uday Dholakia OBE – Independent representative**

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



### **Prof. David Grant – Independent representative**

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



### **Richard Jackson – CAA representative**

Richard represented the CAA as the Group Director of the Consumer Protection Group and a CAA Board Member. He was also a Trustee of the Air Travel Trust. Richard resigned from the CAA in January 2016 and was replaced by Richard Moriarty who now represents the CAA on the 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.



### **Helen Knapman – Consumer representative**

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



### **Gary Lewis – Industry representative**

Gary Lewis became Chief Executive Officer of The Travel Network Group in early January 2016 following a successful management buy-out 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.



### **Alisdair Luxmoore - Industry representative**

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



### **Michael Medlicott - CAA representative**

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



### **Richard Moriarty – CAA representative**

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



### **Keith Richards – Independent representative**

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



### **Mandy Round - Industry representative**

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



### **Sue Davies – Consumer representative**

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



### **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 practicing trading standards officer.



### **Rochelle Turner – Consumer representative**

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



### **John de Vial - Industry representative**

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



### **Sandra Webber – Independent representative**

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



## Appendix 4 - 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.

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