ATOL Reform: Summary of responses and next steps

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About this document

1. On 29 April 2021 the CAA issued a consultation seeking the views of stakeholders on its proposals to introduce changes to the ATOL framework. The consultation closed on 16 August 2021. This document provides a summary of the responses received to the consultation, structured according to the options presented by the CAA in its consultation.

2. In providing this summary, the CAA has sought to summarise the range of views expressed on the key issues and to identify any new points or points which had previously not been considered in the consultation. The CAA has not sought to reflect in this summary of responses every individual view held by every respondent on every issue. In relation to issues where there could be considered to be a 'majority view' (i.e. where there was a degree of consistency amongst the responses) the CAA has sought to identify this, whilst still reflecting the views of others. Although not every view expressed by respondents is reflected in this summary, every response received by the CAA to its consultation has been reviewed in detail and will be considered as part of the ongoing development of its thinking in this area. In informing its thinking, the CAA will have regard to the quality of the proposals including their impact, and the level of support for various proposals is not necessarily determinative of the steps the CAA proposes to take.

3. In addition to providing a summary of responses to the consultation, this document also sets out the next steps that the CAA intends to take in respect of the proposals put forward in the consultation in line with its statutory duties under the ATOL regime.

Introduction and summary of next steps

4. On 29 April 2021 the CAA issued a consultation seeking the views of stakeholders on its proposals to introduce changes to the ATOL framework, with the objective being to reduce the risk individual ATOL holders pose to consumer interests. The consultation proposed changes related to how ATOL holders fund their operations, how the use of their customers' monies should be considered within the regulatory regime, and how the rate of the ATOL Protection Contribution (APC) should be calculated. The consultation also made specific proposals in respect of i) a changed treatment of mandatory terms to be included in written agreements between ATOL holders and their agents, and ii) changes to the way in which Small Business ATOL (SBA) and certain franchisee ATOL holders report and pay their APC returns. The consultation closed on 16 August 2021.

5. The CAA received in total 305 unique responses to the consultation via both the Citizen's Space portal and directly by email. The CAA received responses from a range of stakeholders, including ATOL holders, travel agents, trade bodies and member organisations representing travel companies, financial stakeholders such as UK Finance, and consumer bodies. The CAA would like to thank stakeholders for the level of their engagement in the consultation.

6. The summary of responses to the changes to the ATOL framework put forward by the CAA is set out in Chapter 1. Chapter 2 provides a summary of responses on the issue of how pipeline monies should be treated under each of the proposed options for change. As can be seen from the summary of responses, for a number of the options respondents expressed a wide range of views, both for and against each option, and no consensus emerged. The exception to this was Option E (restricting when customers can pay their balance) which, as indicated by the CAA in the consultation, it was not minded to pursue and which received almost no support from respondents.

7. In terms of next steps, given the nature of the proposed options for changes to the ATOL framework, the CAA is undertaking an assessment of the different options (except option E). Option D (the financial markets option) is still being considered, however the CAA notes the concerns of many respondents about the availability and coverage of financial products such as insurance for the travel industry, the likelihood that such products will pay out in the event of insolvency[1], and the cost (and volatility) of premiums. The CAA is conducting

[1] In relation to the insolvency of Thomas Cook, the CAA notes the conclusion of the European Commission in

further research on these points, but considers at this time that the financial markets option is most likely to be viable from a practical perspective as one of the options under a tailored approach (Option B) rather than there being a broader financial market model approach for ATOL (Option D).

8. Once a full impact assessment on the options has been completed, and the CAA has given further consideration to how pipeline monies should be treated, there will be a further consultation on proposals, including consulting on the impact assessment. Depending on the preferred option, the second stage consultation may be a joint consultation with the Department for Transport (DfT), recognising that ATOL is a statutory protection scheme, and some of the potential options would require legislation. We expect the second stage consultation will be published later this year.

9. The consultation also put forward a number of specific proposals on how agency agreements are updated with newly published terms; the reporting and payment of APC for SBAs and Franchise member ATOL holders; and online ATOL certificates. The summary of responses in respect of these proposals is provided in Chapters 3, 4 and 5 respectively, alongside the CAA's response to the views expressed and its next steps.

10. Having considered the views of stakeholders in response to the consultation, the CAA has decided to proceed with the proposed changes to Agency Term 11 and the changes required to bring all quarterly reporting ATOL holders up to the same reporting standard for APC returns. In relation to the changes to Agency Term 11, given the potential for the ATOL Reform project to lead to more significant changes to agency agreements in due course, the CAA has decided to time the implementation of this change to coincide with any other changes required to implement ATOL Reform. In respect of the changes to APC reporting, in order to allow affected ATOL holders the opportunity to put in place systems and processes to comply with the new reporting requirements, the CAA intends to allow a minimum period of six months following the relevant changes to the CAA's Official Record Series (ORS) 3 (expected in May 2022) before the new reporting requirements come into effect.

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its review of the PTRs that the insolvency protection in place in Germany at the time was insufficient to fully cover the refunds of travellers not yet at their destination (estimated at 287.4 million euros) because of a cap in the liability of insurance companies covering this risk. As observed by the Commission, the federal government in Germany stepped in to cover the shortfall in the amount of refunds received from the insurance company covering the insolvency.

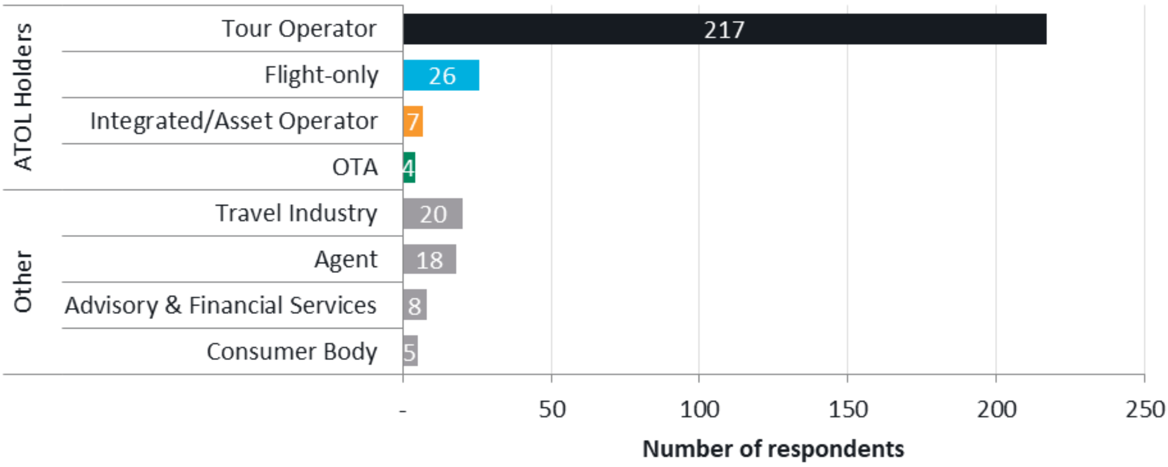
Chapter 1

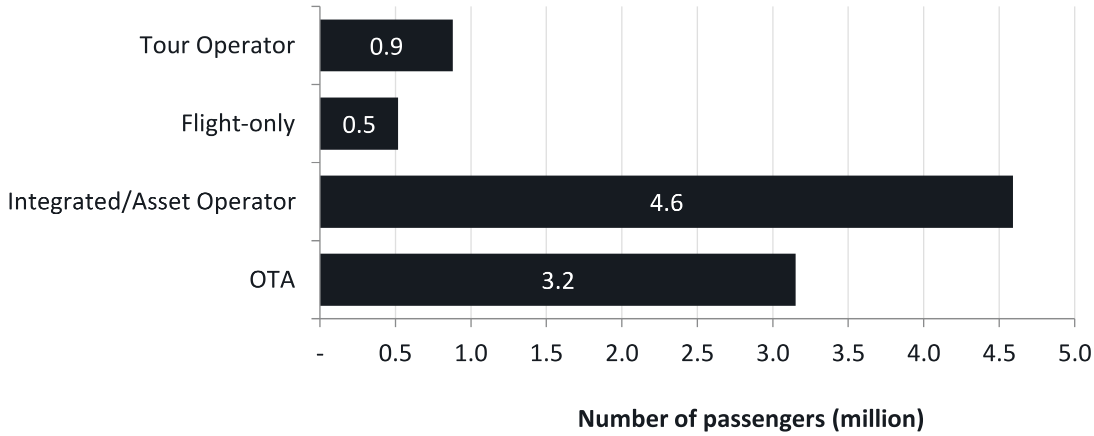
Summary of responses – how ATOL holders fund their operations and the use of customers' monies

Breakdown of respondents

1.1 The CAA received in total 305 unique responses to the consultation via both the Citizen’s space portal and directly by email. The full list of respondents can be found in Appendix A.

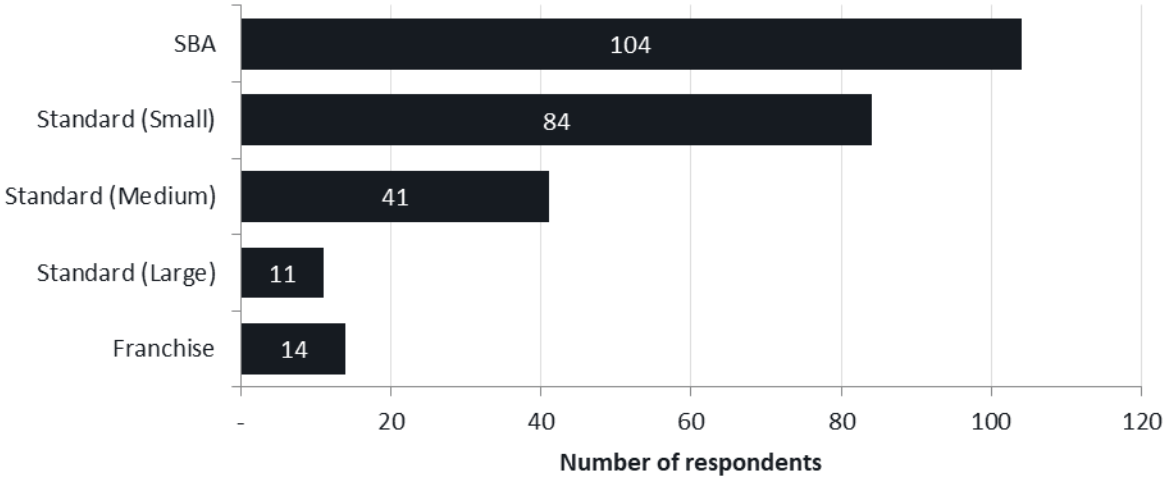
1.2 The charts below show a breakdown of the proportion of responses we received from different stakeholder groups and the number of passengers[2] per year that are covered by different ATOL holder respondent groups.

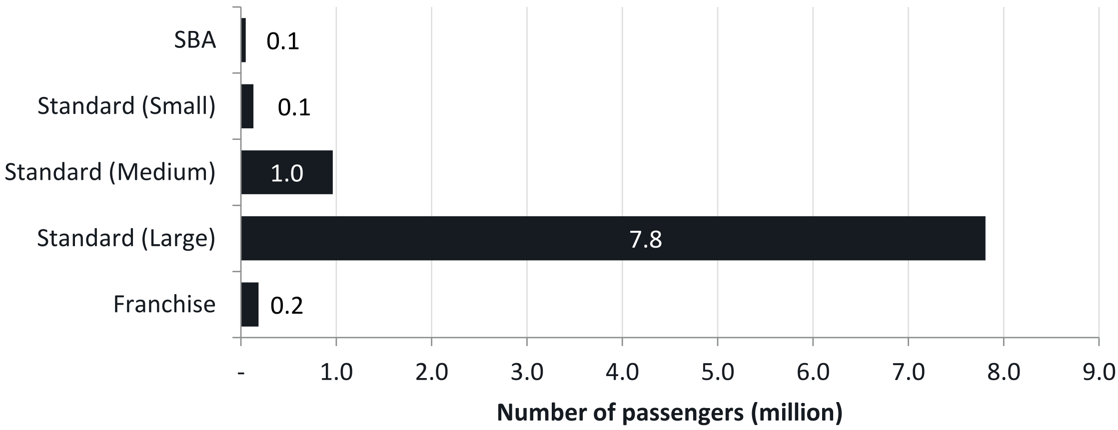




[2] Passenger numbers reflect the ATOL authorisations at the date of ATOL holder response.

The charts below show a breakdown of the number of ATOL holder respondents by licence type and and the number of passengers per year that are covered by ATOL holders with these types of licence:





Themes

1.3 There were two significant themes across all of the different groups of stakeholders who responded to the consultation:

- Although there was a wide range of views on the best option for how the ATOL framework should be reformed, there was a general consensus amongst respondents that change, in some form, was necessary.
- There was a general consensus that a variable APC would likely yield a fairer system – i.e. that less risky businesses would not be subsidising riskier ones.

1.4 Although there was a general consensus on these two points, in the detail of their responses ATOL holders often expressed support for those options for reform that aligned with their current business practices. For example, ATOL holders that already operate a trust account tended to favour this option; conversely, ATOL holders that combine customer money with operational cash tended to take the view that this was not as serious an issue as highlighted by the CAA in its consultation. Further, in the context of determining how a variable rate APC should be defined, ATOL holders' views were similarly varied when it came to identifying the characteristics of risky and less risky businesses.

1.5 On this latter point, although not forming part of the CAA's consultation, a number of respondents expressed the view that the riskiest businesses were those that posed the greatest financial risk to the Air Travel Trust (ATT) in terms of the impact of their failure. On a related point, a number of respondents considered that the existence of the ATT fund means that, as consumers would be protected in terms of refunds and repatriation, ATOL holders should be free to use the customer monies they hold as they see fit (and not just to purchase the specific elements of the booked holiday).

1.6 When formulating the consultation proposals, the CAA's objectives were to further strengthen the financial framework to better ensure that ATOL holders meet their obligations towards consumers and, in doing so, mitigate the risk they pose to the customer monies they hold through implementing measures to enhance their financial resilience.

Option A – Potential mechanisms to be mandatory across ATOL holders

1.7 Option A proposed moving toward a financial framework which would require all ATOL holders to provide a minimum level of security using the same method. In the consultation we put forward the view that moving to uniform requirements across all ATOL holders could help us to achieve a fair, simple, and consistent framework.

Segregation of monies

1.8 The CAA defined segregation of customer monies as keeping customer monies separate from operational cash. We proposed that the CAA could define what customer monies should be considered to be and, on that basis, require ATOL holders to segregate those funds. We further stated that this could be achieved by different means on either a total (i.e. 100% of customer monies) or a partial basis (i.e. 99% or below of customer monies). We also stated that segregation could be achieved through several different methods including trust, escrow, and client accounts.

1.9 Question 5 asked whether the CAA should adopt segregation as a mainstay of the system. There were 271 responses to this question. Many respondents appear to have interpreted this question to mean the CAA adopting *total* segregation[3] in trust accounts as a mainstay of the system and appear to have answered on that basis. For reference, as described in the previous paragraph, in its consultation the CAA put forward options for segregation that included partial segregation as well as total segregation.

1.10 The majority of ATOL holders and the travel industry do not believe that the CAA should put in place mandatory segregation of customer monies. Many respondents considered the system to be overly complex, interventionist and unworkable. One of the main concerns was around the significant cost of pre-departure payments (especially for more expensive trips), that should not be borne by the tour operator for the duration of the booking. There were also concerns around pre-payments, especially those to major airlines who, respondents stated, are generally not responsive in the cases where refunds are required.

1.11 There was also concern that segregation would have a negative impact on smaller ATOL holders with respect to financial viability. One of the main concerns surrounding segregation through third-party administered trust accounts specifically was around the additional cost and administrative burden. Many respondents felt that these types of arrangements would be difficult to comply with and would be unworkable in practice. Further comments indicated that some of these ATOL holders disagreed with segregation in any form, set at any level (i.e. total or partial) and considered that there were other, more appropriate methods of protecting customer monies.

1.12 Many of the ATOL holders who were in support of segregation, do already segregate customer monies through a variety of different mechanisms. Many of the same group of respondents considered that segregation using a trust account was the only way to ensure that customer monies are adequately protected prior to delivery of the holiday. Some ATOL holders who segregate, but not via a trust account, felt that it is the practice of not combining customer monies and operating cash, rather than the mechanism, which is important. However, some acknowledged that the framework may not be suitable for all the business models of different ATOL holders.

1.13 Non-ATOL holder respondents, including consumer bodies, were more supportive of the proposal but noted that the trade-off between reduced risk and better protection of customer monies came with an increased cost of administration for operators.

1.14 Question 6 asked ATOL holders to indicate the impact that segregating funds would have on their business. Similar to Question 5, the vast majority of

[3] Total segregation should be interpreted as 100% of customer monies being held separately from operational cash AND only being released once the customer has returned from their holiday

respondents indicated that it would have a significant impact on their business. Many respondents highlighted that the cost of flights represents a significant proportion of the total cost of a holiday and is typically due at the time the holiday is booked. Segregating these funds would therefore require ATOL holders to obtain significant levels of additional capital to pay airlines to secure the booking for the consumer. They further considered that segregation was disproportionate given that a high proportion of flights sold are ticketed soon after booking and are therefore a "safe"[4] part of the consumer's booking.

1.15 Smaller operators stated that they typically pay their suppliers a number of weeks or months in advance of the customer travelling and that they would be disproportionately affected by a change to total segregation. Further, companies offering bookings with multiple and complex supplier arrangements, such as safaris, also felt they would be disproportionately affected by the implementation of this model.

1.16 When answering the question about the mandatory minimum percentage of customer monies that could be segregated under a partial model, respondents typically felt that less than 50% of customer monies should be segregated. Many respondents stated that if the CAA did go ahead with this model, the mandatory minimum should be set as low as possible, with many proposing 10% or less. Some respondents stated that the mandatory minimum percentage should be set at a level sufficient for customer-related monies to be available in order to pay customer-related costs. Others stated it should be set a level sufficient for pre-payments and payments to suppliers. A small number of respondents proposed linking the mandatory minimum percentage to gross profit margins. Some respondents also stated that a higher mandatory minimum would imply the need for larger deposits from customers.

1.17 Many of the respondents that considered segregation should be the mainstay of the system (based on question 5) were in favour of a mandatory minimum of between 70% and 100%, with a number stating that segregation should be 'all or nothing' and that partial segregation would be too complex to implement, which would outweigh the benefits of additional protection. A number of respondents also noted that a tailored approach, as opposed to a uniform mandatory minimum, may be more appropriate across ATOL holders.

1.18 When considering what funds should be allowed out of the segregated account, the majority of respondents felt that supplier payments should be considered as permitted payments and therefore allowed to be released from the segregated account. The vast majority of these respondents felt that supplier payments were limited to those which related to the specific elements of the booking i.e. flights,

[4] I.e. that in the event of the ATOL holder's failure, where a seat on a scheduled flight has been booked, the flight element of the package would remain in place.

accommodation, transfer, etc. The justification given for this view by a number of respondents was that suppliers often request payments up-front, or whilst the consumer is on holiday, and would likely not provide credit to small and medium-sized operators. In addition, the cost of securing additional funds to cover supplier costs would lead to higher costs and could lead to more organisations leaving the ATOL scheme.

1.19 Respondents that did not agree that some supplier payments be considered as permitted payments stated that permitting certain types of supplier payments, but not others, would increase complexity, would not account for businesses that sell different types of products (and make different types of supplier payments) and would be open to manipulation by operators.

Bonds

1.20 The CAA also proposed that bonds could become the mainstay of the financial framework, as had previously been the case prior to the introduction of the APC in 2008.

1.21 The majority of ATOL holder respondents considered that the CAA should not mandate the use of bonds. More ATOL holders were opposed to mandatory bonding than mandatory segregation. A number of respondents argued that it would not be appropriate due to the lack of competition within the bonding market, which means ATOL holders would likely be financially disadvantaged by higher prices. A potential solution to this, raised by several respondents, was a proposed reduction or removal of the APC for participating ATOL holders, which would make the use of bonds more financially viable. A common response amongst smaller ATOL holders was that, where an operator has a robust balance sheet and business model, mandated bonding should not be required, rather it should be mandated for new entrants and ATOL holders who are deemed at greater financial risk by the CAA. The necessity of additional capital to support the need to bond was also seen by a number of respondents as restrictive and damaging considering the financial impact of the pandemic.

1.22 Some respondents considered that their APC payment and the ATT fund are the equivalent of a bond or insurance policy and therefore, if the APC were to remain, then they should not be required to pay for both.

1.23 Respondents that agreed with mandated bonding noted that this approach was effective prior to the implementation of the APC in 2008; if there were sufficient capacity within the bonding market then this could be an effective option and could be an alternative to segregation of customer monies for some ATOL holders. Views of non-ATOL holder respondents generally reflected those of ATOL holders, with a number also noting that while bonds can be useful and appropriate for some operators, they should not be mandated across all ATOL holders.

Option B - Tailored approach

1.24 Option B proposed moving to a framework that could offer a choice between protecting customer monies through segregation of funds, bonds, or a combination of both. Under this option, the CAA would set a mandatory minimum level of funds that would be required to be protected and the ATOL holder would choose the most appropriate form of security for their business.

1.25 The majority of ATOL holder respondents considered that the CAA should allow ATOL holders to choose the form of financial security they use. A number of respondents stated that they favoured a choice of a mixture of measures because this would be the best way of allowing companies to protect customer monies in the most cost-effective way and in a manner most appropriate to each individual business. However, a significant number of respondents that were in favour of a mix of measures added that they did not particularly agree with either measure but, given the choice, agreed with the principle of allowing ATOL holders to choose the most appropriate mix. Other respondents proposed including a fixed APC or insurance as part of the mix of measures that ATOL holders could choose from. A common point raised was that there is no ‘one size fits all’ approach that would suit every business, and so a choice from a variety of measures was viewed as the most appropriate option by many respondents.

1.26 Respondents that do not support allowing a choice of measures, considered that it would create excessive complexity for both businesses and the CAA, preferring a uniform approach that would provide a level playing field for operators. In addition, some respondents doubted the viability of the bonding market, particularly for larger operators, as the number of bond issuers willing to underwrite bonds may be too small to offer a competitive market, potentially putting larger operators at a disadvantage compared to smaller operators. On the other hand, some smaller operators considered that they should be exempt from these measures, as the compliance costs would be higher (as a proportion of total costs) for them than larger operators. Transparency was also raised as a concern, as some businesses might not understand the options available to them or might attempt to abuse the system's complexities.

1.27 The views of non-ATOL holders generally reflected those of ATOL holders, though some noted it would be important for the CAA to issue clear guidelines and rules concerning the process and to state what the appropriate boundaries would be.

1.28 When asked if ATOL holders should be treated differently based on size, the vast majority of ATOL holder respondents considered that it would be appropriate to adopt different approaches depending on the size of the ATOL holder. There were varying views when considering the answers provided by different groups of ATOL holders, however. For example, the integrated airline groups did not consider that the size of organisation should be taken into account (over and above how it is in the current scheme).

1.29 The most cited reason by smaller operators in support of the proposal was that they represent a lower risk to the ATT compared to larger operators, and therefore should not be treated the same. These respondents expressed the view that large operator failures have had a significant impact on ATT resources in the past and any further large failures would have a similar impact. Some respondents also believed that different approaches would somewhat level the playing field by not giving larger firms an advantage due to the additional resources they had available to comply with the changes. Others noted that imposing a uniform regime on all ATOL holders would disproportionately impact the smaller operators due to the fixed costs associated with setting up and operating bonds and trust accounts, and that this might cause some smaller ATOL holders to decide that compliance costs outweigh the benefits of an ATOL licence. Some respondents supported focusing on the largest operators for any regulatory changes as, in their view, such operators pose the biggest risk to the ATT, as opposed to a uniform change to regulation.

1.30 Those opposed to the adoption of different approaches cited two main justifications; firstly, size does not necessarily correspond to risk, which can depend upon, amongst other things, the business model and financial strength. In addition, some respondents argued that a more important factor than size is whether ATOL holders operate an airline, noting that the failures of Thomas Cook and Monarch had a significant impact on the reserves of the ATT fund due to the nature of their businesses (and the need for large scale repatriations). Some respondents also stated that they are opposed to different approaches as they would prefer the transparent nature of a uniform approach (i.e. all ATOL holders being treated the same).

1.31 Non-ATOL holder respondents generally reflected the views of ATOL holders, though added that smaller firms should be encouraged to make greater use of collective trust accounts better aligned to their needs, and that a light touch approach may be inappropriate for smaller firms due to their higher failure rate. Furthermore, some of these respondents expressed doubts as to whether the CAA could manage the administrative burden associated with a tailored approach across all ATOL holders.

Comments on Options A & B

1.32 The CAA asked whether ATOL holders considered that mandatory bonding or segregation of customer monies would help with their negotiations with other financial stakeholders such as merchant acquirers.

1.33 Most respondents were sceptical as to whether any of the proposed measures would benefit ATOL holders in negotiating better terms with merchant acquirers and other financial stakeholders. Many expressed doubts that any changes made to the ATOL scheme would lead to a change in merchant acquirer terms. Reasons given for this view included: merchant acquirers do not consider the ATOL scheme when negotiating commercial arrangements; they negotiate on an individual basis and not as a group; and the travel industry is seen as high risk due to the CAA directing customers to claim via their credit card instead of claiming through ATOL. Some respondents added that merchant acquirers are risk averse when negotiating terms and are unlikely to offer better terms without comprehensive guarantees that such measures would reduce their risk. A number of respondents also expressed concern that by restricting working capital and/or imposing stricter measures, merchant acquirers might perceive the proposed measures as increasing their risk, which could lead to less favourable terms.

1.34 A small number of respondents were optimistic about the prospect of better terms, noting that segregation might signal better protection of customer monies for merchant acquirers (and consequently lower risk), having benefitted from this in the past when segregating monies. In contrast, other respondents stated that they have still been requested by merchant acquirers to provide a security despite segregating monies. Some respondents stated that the CAA should consider the costs of complying with any new measures against the benefits of better terms with merchant acquirers and should consult with merchant acquirers directly to avoid a situation where there is double coverage for customer monies through chargebacks and ATOL regulation.

1.35 Non-ATOL holders added that whether regulations will lead to better terms will depend upon the guarantees the CAA can give to merchant acquirers that it will not recommend customers use chargebacks as the primary form of refunding monies.

Option C – APC

1.36 The CAA proposed moving from a flat APC rate to a variable rate. The CAA proposed that the variable rate could be calculated on the basis of the ATOL holder’s risk, the value of the holiday, or a hybrid model which would take both into account.

1.37 The majority of respondents considered that APC should move from a flat rate to a variable rate. Some respondents considered that this would lead to a fairer system in which financially sound ATOL holders are not in effect subsidising riskier financial practices by others. These respondents considered that a variable rate APC should be used to reflect the residual risk not covered by other financial protection measures.

1.38 The hybrid APC model (a mix of value and risk criteria) received the most support from ATOL holder respondents, though no model was favoured by an overall majority of respondents. Across all different sizes and types of ATOL holders each approach received some support. The hybrid model was consistently the top or one of the most favoured options, except for the integrated groups who expressed a preference for a risk-based model. Notably, the majority of SBA Licence holders were also in favour of the hybrid model, though Standard Licence holders' views were more mixed.

1.39 Respondents in favour of the hybrid model stated it would ensure that ATOL holders pay an amount in APC more reflective of their risk. In addition, noting it would provide a more appropriate contribution to the ATT fund. However, concerns were raised by some around the complexity of such a model, and whether the CAA could create a sufficiently clear, transparent, and fair hybrid model. Respondents in favour of a risk priced APC argued that larger and riskier companies, which represent a greater risk to the ATT, should pay for that risk, and that this model would be fairer for more secure businesses which would no longer subsidise riskier businesses. In the view of these respondents, a risk priced model would also incentivise operators to reduce the risk of their operations in order to pay a lower APC.

1.40 Respondents in favour of a value priced APC argued that risk is linked to trip value (through the size of refunds) and trip value would be a simpler and more transparent means of pricing risk. However, other respondents strongly rejected the value priced APC, as it could unfairly penalise secure, high-value and high-margin operators (which in the view of these respondents are less risky) in favour of low-cost, low-margin operators.

1.41 Respondents favouring a flat rate APC emphasised the importance of its simplicity and reduced administrative burden. Some respondents added that they would be happy for an increased flat rate APC to maintain simplicity whilst offering greater protection to the ATT. However, the consensus from respondents was that a flat rate is inappropriate as it does not deal with risk in an acceptable way. Some respondents noted that there is an apparent trade-off between the effectiveness of treating risk properly and the complexity of systems to achieve this.

1.42 More generally there was some disagreement between respondents as to the purpose of the funds in the ATT and what they should be used for. For example, some respondents considered that, if the funds were to be used for repatriations only, then a flat rate APC would be more appropriate as repatriation costs should not be related to business risk or holiday value. In contrast, other respondents considered that if the funds are intended to be used for consumer refunds, a hybrid or risk-based model would be more appropriate for treating each operator's risk to the ATT fund individually.

1.43 Travel industry non-ATOL holder respondents favoured a risk priced model, while the views of respondents in other segments were more mixed. Consumer bodies for example were split in which model they preferred, however none favoured continuing with a flat rate. Concern was expressed around the publication and transparency of a model with a variable rate and how consumers would interpret what the varying rates meant to the risk of failure of the ATOL holder.

Option D – Financial Markets model

1.44 Option D proposed that ATOL holders would be required to obtain full, ATOL-equivalent consumer financial protection from third party insurance providers as a condition of taking bookings. The CAA would then review the insurance policy as part of the licensing framework.

1.45 A substantial number of respondents favoured this option, although the free text answers indicated that there was potentially a very different understanding of what this model would mean in practice. Those in favour expressed a preference for the simplicity offered by this model and considered that the financial market would offer a fairer approach to pricing risk. However, this was counterbalanced by comments on the volatility of insurance in the travel market and that it is likely the cost of premiums would be prohibitively expensive.

1.46 The majority of respondents did not favour this option, with most expressing concern over the likelihood of insurers paying out, with the inclusion of some anecdotal first-hand (negative) experiences of respondents. One of the risks identified was that insurance policies have previously been withdrawn during more difficult economic periods or in relation to specific insured risks and that this should be taken into account when considering the framework. The free text responses also contained concerns that this approach would dilute the ATOL brand and would ultimately not be in the best interest of consumers and that the Government is best placed to govern consumer protection.

1.47 One financial services stakeholder noted that, historically, there has been limited availability of insurance products for travel companies and there is currently no reason to believe that this will change as the travel industry recovers.

1.48 In response to the question about whether the CAA should retain claims and repatriation services, the majority of respondents across all groups agreed that the CAA should retain these services. The majority of the free text comments reflected the view that the CAA was experienced in operating a mass repatriation and were best placed to continue offering those services.

Option E – Other options that the CAA is not minded to pursue

1.49 As set out in the consultation, the CAA does not intend to pursue Option E (restricting when customers can pay their balance) any further. There was strong support from respondents for not pursuing this option further. The majority of

ATOL holders felt that they should retain the ability to set their payment terms and that any changes would be detrimental to consumer choice.

1.50 Further, in the European Commission's review of the Package Travel Directive[5], the Commission stated that "Representatives of the transport and travel sectors consider that limitation of pre-payments could worsen their critical liquidity situation. They also point out that pre-payment is the global standard for travel services and unilateral EU requirements limiting this business model could have far-reaching implications and distort the level playing field vis-à-vis non-EU competitors" (page 12). The Commission's review recognises that, although this system is currently used in Germany, it is based in national case law (AZ: X ZR 85/12)

Transition period

1.51 When considering if the CAA should offer incentives for early compliance (should any changes be implemented), the majority of those who were in favour felt it would be appropriate to be given a reduced APC rate during the transition period.

1.52 Some respondents felt that incentives should not be needed for ATOL holders to comply with the scheme, and others felt that the CAA needs to ensure that the scheme is simple to ensure that compliance can be achieved (early or not). Further, some respondents felt that the incentives would only benefit the largest ATOL holders and that they would not be applicable to smaller ATOL holders.

1.53 When considering the length of time the CAA should give ATOL holders to move to full compliance with the new framework, respondents across each sector had diverse opinions. Those who have already adopted one of the above options put forward by the CAA in the consultation (i.e. they already segregate monies or have a bond in place) typically selected a shorter period, around 1-2 years. Other common answers included 3-5 years, and 10 years. For those respondents that favoured a longer transition period, most cited the impact of the Covid-19 pandemic on ATOL holder balance sheets as the reason for needing a longer transition period.

[5] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements.

Chapter 2

Summary of responses – pipeline monies

2.1 The CAA identified that customer monies are exposed to insolvency risk when they are held by an Agent on behalf of the principal ATOL holder (referred to as "pipeline monies"). The CAA asked for feedback as to whether this was something that should be taken in to account when considering the proposed options.

2.2 The majority of responses stated that pipeline monies should be treated the same way as money taken for direct sales i.e. if a trust account model is put in place, pipeline monies should also be held in a trust account. It was explained by these respondents that this would ensure that consumers are not disadvantaged when purchasing holidays through travel agents. The majority of ATOL holders who responded considered that the money should be passed on immediately to the principal ATOL holder once it is collected by the Agent as the ATOL holder is responsible for supplying the holiday and providing a refund (in the event one falls due). Some noted that "immediately" was subject to practical reconciliation considerations and that a contractually agreed period would be more workable in practice. A small number further explained that, as the principal ATOL holder is exposed to the failure of the Agent, this provided further reason as to why the pipeline monies should be passed on as soon as is reasonably practical. Some ATOL holders felt that Agents should not take monies from consumers, and that money should be paid directly to the principal.

2.3 Those who were not in favour of changing the way pipeline monies are treated explained that they considered the timing of the payments to be a commercial term of the contract that is subject to negotiation between the principal ATOL holder and agent. Others noted that, whilst the idea was to ensure that consumers received the same level of protection, it might not provide any benefits when consumers are due refunds as the refunds are hard to obtain from the principal ATOL holder and suppliers in the chain. Further, there were concerns over the practical implementation of changing the way pipeline monies are treated, such as the impact on when commission is paid, and the cost of other financial suppliers such as merchant acquirers. Concern was also expressed that the move would mark a fundamental change to the retail business model.

Chapter 3

Summary of responses on the specific proposals on agency agreements

Agency Term 11

3.1 The CAA proposed to amend Agency Term 11 so that, in the future, ATOL holders would not be required to immediately update and reissue the written agreements they have in place with their Agents to reflect any changes to the Agency Terms (as set out in the Official Record Series 3). Instead, any future changes to the Agency Terms would take effect on the date of publication by the CAA of the new Agency Terms and they would apply immediately from that date to the terms of all agency agreements between the principal ATOL holder and the Agent. Under the CAA's proposal, ATOL holders would be expected to inform Agents of any changes, and the updates would be expected to be included in the agreement when the ATOL holder made other changes to the agreement with its Agents.

3.2 For the proposed change to this term to come into effect, all ATOL holders would, in the first instance, be required to reissue all of their agency agreements. In the consultation the CAA noted also that, from time to time, it may be required to publish a fundamental change[6] to the Agency Terms, in which case the CAA would reserve the right to mandate that all ATOL holders reissue their written agency agreements.

3.3 The vast majority of respondents that chose to respond to the proposal agreed that the change would be beneficial in reducing administrative burden and would ultimately provide better protection for consumers. Although many respondents considered that the change should be brought in immediately, other respondents appeared to be of the view that the change should be brought in at the same time as other changes resulting from ATOL Reform. A small minority of respondents felt that having to reissue the agency agreements to implement the new Agency Term 11 was an administrative burden which would outweigh the benefits.

3.4 A small number of ATOL holders confirmed that they envisaged practical difficulties for their business if the proposed change was implemented, with

[6] This could be in circumstances where the CAA deems a change to be extensive or alters the meaning of the Schedule significantly, or where a change has a considerable impact on ATOL holders, agents of ATOL holders, consumers or the Air Travel Trust.

reasons for this including having staff out on furlough[7], additional administrative burden, and the number of agreements that would need amending. The majority of responses indicated that they considered that the changes would be possible within an appropriate time frame. Of those ATOL holders who responded to this question, around half indicated that they considered a 3-month implementation period to be adequate and the other half stated that 6 months or longer would be needed (indeed, a number of these respondents considered that the changes should be made at the same time as any other changes flowing from the ATOL Reform work).

Next steps

3.5 Having considered the views of respondents, and acknowledging that, in the short term, the proposed change will require action on the part of ATOL holders to update all their agency agreements, the CAA remains of the view that the proposed change will, in the longer term, reduce the administrative burden on ATOL holders and mitigate the risk of otherwise compliant agents holding non-compliant written agency agreements. The CAA therefore intends to implement this change.

3.6 In terms of the timing for introducing this change, noting that ATOL Reform might, in due course, lead to more significant changes needing to be made to the Agency Terms, the CAA intends to postpone the implementation of this proposal until the extent of such changes is clear. However, the CAA reserves the right to introduce this change sooner if it observes issues adversely impacting consumers because of agents holding non-compliant written agency agreements.

[7] The consultation period was between 29 April 2021- 16 August 2021 during which the UK Government's Covid-19 Furlough scheme was still operational.

Chapter 4

Summary of responses on the specific proposals on the reporting and payment of APC

Changes to reporting requirements

4.1 To drive standardised reporting and visibility concerning future bookings, the CAA proposed that all SBAs and certain Franchise member ATOL holders should be required to submit the same APC return as that of standard ATOL holders who provide this information directly to the CAA for each calendar quarter. This would impact SBAs and certain Franchise member ATOL holders who currently are not required to file a 'Part C' (future bookings) as part of their return, and Franchise member ATOL holders that currently submit their report via their Franchisee and not directly to the CAA.

4.2 The majority of respondents[8] indicated that they felt the proposed changes were reasonable and that it was fair to have standardised reporting across all ATOL holders irrespective of size. A small minority of respondents were not in favour of the changes and felt that this would place additional unnecessary burden on smaller ATOL holders. Further, some of the Franchise bodies responded that they would prefer to submit returns on behalf of their members as they could ensure the reports were accurate based on the booking system they operated.

Next steps

4.3 Having considered the views of respondents, the CAA remains of the view that the proposed change will give the CAA greater visibility of the forward bookings of these ATOL holders, and will assist the CAA to better understand the impact on consumers and the ATT Fund in the event of a failure. The CAA therefore intends to implement this change.

4.4 In terms of the timing for introducing this change, to allow affected ATOL holders the opportunity to put in place systems and processes to comply with the new reporting requirements, the CAA intends to allow a minimum period of six months following the relevant changes being made to the CAA's Official Record Series (ORS) 3 (expected May 2022) before the new reporting requirements come into effect.

[8] Including a substantial majority of SBAs, one of the groups of licence holders affected by the proposal. Franchise member ATOL holders were more neutral in their response to the proposal.

Changes to APC payment dates

4.5 The CAA also proposed requiring all ATOL holders to pay the APC directly to the CAA and within six weeks of the reporting period. This would impact SBAs who currently pay their APC bill annually. It would also impact certain Franchise member ATOL holders who currently pay their Franchisee, who then pays the ATT on behalf of their members. The proposed changes would mean that these Franchise member ATOL holders would still pay their Franchisee, but they would need to do so within six weeks of submitting their report to the ATT, and the Franchisee would then be required to pay the combined APC to the ATT within eight weeks.

4.6 The majority of respondents[9] indicated that they felt the proposed changes were reasonable and that it was fair to have standardised payment across all ATOLs irrespective of size. A small minority of respondents not in favour stated that they would prefer to pay annually and that this change creates a greater burden for smaller ATOL holders.

Next steps

4.7 Having considered the views of respondents, the CAA remains minded to pursue the proposal. Given that this would require a change to the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007, the CAA will take this proposal forward in consultation with the Department for Transport. The CAA expects to provide an update on this in the next consultation.

[9] Again including a substantial majority of SBAs, one of the groups of licence holders affected by the proposal. As with the proposal on APC reporting, again Franchise member ATOL holders were more neutral in their response to this proposal.

Chapter 5

Update on Online ATOL Certificates

5.1 The CAA received a number of comments about Online ATOL certificates with regard to its cost and the practical implementation into existing systems. This feedback and previous responses to the original consultation (CAP 1631) will be considered when the project moves forward. The CAA will provide a further update on its proposals in this area in the next consultation document.

APPENDIX A

List of respondents

2by2 Holidays Limited
7 Continents Travel Limited
A&D Holidays Ltd t/a Holiday Architects
Aardvark McLeod Ltd
Aardvark Safaris
Ablecan Consultancy Ltd
Absolute Africa
ABTA
Acetrip
Advantage Travel Centres Limited
Advice Direct Scotland
Aerolinks Travel Limited
Africa and Beyond Ltd
African Travel & Tourism Association
Air Travel Insolvency Protection Advisory Committee
AITO
Aj Tours & Travels UK ltd
Al Badar Travel Ltd
Al Haram Tours and Travel LTD
Al Haramain Hajj & Umrah Tours Ltd
Al Hidaayah Travel Ltd
Al Huda Travel and Hajj Umrah Services Limited
Al Sharif Tours Ltd
AL-BILAL HAJ&UMRAH TRAVEL
Alix Partners
All Ways Tailormade Travel Ltd
Almakkawi Hajj & Umrah Travel LTD
Almis UK LTD
Alpine Garden Society
Amaana Tours Ltd
Americas
Amor Europe
ANDEAN TRAILS
Arabia Tourism UK Ltd
Arburton Ltd
Arkworld Travel Ltd
ArtsAbroad Limited
Asia Pacific Travel Ltd (trading name Oneworld Travel)
Association of ATOL Companies
Association of Bonded Travel Organisers Trust Ltd
Astro Trails Ltd
Audley Travel Group
Bamboo Travel
Beachcomber Tours Ltd
Berkeley Travel Ltd

Bravonext SA
Britannia Hajj & Umrah Travel LTD
British Airways plc
Bukhari Travel Limited
Camps International Group Ltd
Cape Tours Limited
Capital Flights Ltd
CARIA HOLIDAYS
Carnival plc
Cartology Travel Ltd
CHARTER TRAVEL LLP
Chartwell Travel Ltd
Cheap Cost Holidays
Class Tours Limited
Classic Hideaways
Classic Travel of Loughton Ltd
Cloud Travel
Clubfreespirit Ltd
Consumer Panel
Contemporary Travel Solutions Ltd
Coral Tree Travel Ltd
Courtesy Travel
Craibbee
Cresta World Travel Limited
Crillon Tours S.A.
Crown Travel UK Limited
Daisy Travel
Deurali (UK) Ltd
Discover South America Ltd
Distant Journeys Limited
DMC Corporate Consultants Limited
Dnata Travel UK
East Cape Tours
Easy Hajj LTD
easyJet plc
EDUCATIONAL HAJJ & UMRAH LIMITED
Egypt Tourism Bureau
Elite Retreats Ltd t/a Elegant Escapes
Elman Wall Travel Accountants
ET Hajj and Umrah Tours Ltd
Euroasia Travels Ltd
Exoticca Travel UK Ltd
Expedia
Expedition Provider's Association
Expert Africa
EY Parthenon
Fahmy Ltd
Falcons Travel Limited
Far Frontiers Travel Ltd
Fazlanie Travel Services Ltd
FEEL KARMA Ltd
Fello Travel Ltd
First Travel Services Limited
Fly Uni Ltd

Fred. Olsen Travel Ltd
Freedom Destinations Ltd
Frontiers Travel Ltd
G Adventures
Gap Africa Projects
Global Events Travel Ltd
Go Fishing Worldwide / America As You Like It / Windows on the Wild
Golden Dust UK Ltd
Gray Dawes Travel Ltd
Great Air Travel Ltd
Great Little Escapes
GREENBANGLA
Harji's India Ltd
Harmain Travels (UK) Ltd
Hasan Hajj Tours London Ltd
HF Holidays Ltd
Honeyguide Wildlife Holidays
Hotelplan UK Group
Howzat Travel Limited
IATA
ILAL BARAKAH HAJ LTD
Incredible Tours Ltd
Ineo Travel Ltd t/as Atlas Travel
Intrepid Expeditions
IONIAN ISLAND HOLIDAYS LTD
Ison Travel
ITC Travel Group
Jannatul Travel Ltd
Jet2holidays Limited
Jilania Travel Ltd
Journeys by Design
KE Adventure Travel Ltd
Kenwood Travel
khaddim ul hajjaj
KJ JJ Mark Earnshaw trading as R&T TOURS
Konagold Ltd T/A The Travellers Boutique
Last Frontiers Limited
Latin American Travel Association
Le Ski Ltd
Lee's Travel Emporium Limited
Leisure Industry Advisors Limited
Leisure Time Travel
Licenced Hajj Organisers
Lightfoot Travel Limited
LightlinePilgrimages Ltd
Living Crete Holidays Ltd
Llama Travel Ltd
Lloyds Bank
Longi Associates Ltd
Lotus Group Ltd (Lotus Travel Ltd Lotus International Ltd)
Lusso Travel Ltd
Luxtripper
Maestro Tour Management Ltd
Magic of Lapland Ltd

Mark Rampton Ltd
Martin Randall Travel Ltd
MDE Travel Ltd
Midas Tours Limited
Midcounties Cooperative
Millennium Travel Ltd
Minerva Private Travel
Moresand Limited
Move Mountains Limited
Mundy Cruising
Native Escapes Ltd
Native Trails GmbH & Co. KG
Naturally Travels
Nautilus Yachting
Neilson Active Holidays Limited
Newmarket Holidays
Next Generation Travel Ltd/WST Travel Ltd
Nimrod Festivals & Tours
NO NEWS NO SHOES LTD
Nomadic Travel
Northern Star Travel
Nottingham Travel Uk Ltd
OCEANBOOKING.COM S.L.U
On the Beach Group plc
One Traveller Ltd
Option to Travel Ltd
Organised Sport & Event Travel Limited
OutOfOfficeDotCom Ltd
PANAMA TRAVEL LTD
PARAGON PLUS LTD
Pax Travel Ltd
PEREGRINATION - A HIGH STREET TRAVEL AGENCY
Perfectstay Travel Limited
PH Travel Ltd
Premier Travel & Tours Limited
Prestige world tour op
Principal Promotions Ltd
Private
Protected Trust Services
PT Trustees Ltd
Qibla Hakk &Umra UK Ltd
Quba Travel Ltd
Rahmah Travels Ltd
Rajdhani Tours and Travels Ltd
Red Savannah Ltd
Reddot Tours Limited
Reef and Rainforest Tours Ltd.
Regent Travel Ltd
Rickshaw Travel
Riviera Travel
Roads Less Travelled T/A Silver Fern Holidays
Royale Hajj and Umrah Travel Ltd
RSD Travel Ltd
RT&T Tours

RW Travel and Events Ltd
Safari Consultants Ltd
Safarihub Europe
Satguru Travel and Tourism Ltd
Schools Into Europe
Scott Dunn
Secret Escapes Ltd
Secrets 1 Limited
Select Latin America
SESG TRAVEL LTD
Shariff Enterprises Ltd
Simplexity Travel Management Ltd
SKI AND SPORT
Ski Solutions
Skylord Travel Plc
Sloane Travel Ltd
South India Tours and Travel Ltd/Authentic India Tours
Southall Travel Limited
SPAA Scottish Passenger Agents Association
Special Pilgrimages Ltd
Spencer Scott Travel Services ltd
Spirito Italiano Ltd
SPORTING EVENTS GLOBAL LTD
Sportquest Holidays
Sportsworld Group Ltd
Star Travel-UK Ltd
Sublime Travel Ltd
Sultania & Haj & umra tours ltd
SUNSET TRAVEL LTD
Tally Ho! Holidays
Tangney Tours
The Air Travel Consultancy Ltd
The Artisan Travel Company Ltd
The Discerning Collection Ltd
The Holiday and Flight Centre Ltd
The Knavesmire Travel group Ltd
The Sunvil Group
The Travel Company Edinburgh
The Travel Experts Ltd
The Travel Network Group
The Travel Team Ltd
The UK Flights Ltd.
The Ultimate Travel Company
The Villa Collection Ltd
The Walt Disney Company Ltd T/A The Walt Disney Travel Company International
The Winter Sports Company
Theobald Barber Ltd
THG Holidays
Think Galapagos Ltd
Tomton Travels
Trailfinders
Transpact
Travel Agent

TRAVEL AGENT - MAINLY HAJJ & UMRAH
Travel Bespoke LTD
Travel Butlers Ltd
Travel Consol Ltd
Travel Counsellors
Travel Department
Travel Nation
Travel Places
Travel Trade Consultancy Ltd
Travel Trust Services Ltd t/a Serenity Travel Trusts
Travel World International (M/CR.) LTD
Travelco Ltd T/A The Swiss Holiday Company
Travelopia
Travexpert ltd
Tribes Travel Ltd
Tropic Breeze
Tropical Sky
TUI
U Can Fly Ltd
UBS
UHUD Ltd
UK Finance
Umrah and Hajj Specialist Ltd
UTravel360 Ltd
Uvet Travel & Events UK Limited
Venatour Ltd
Venture Beyond Ltd
Virgin Atlantic
Voyage Elegante Limited
Wandiscover Tours Ltd
We Love Holidays Limited
WEEKEND A LA CARTE
WeRoad Ltd
Which?
White Hart Associates (WHA)
Willis Towers Watson
Wonderluxe Travel Limited
Wonky Sheep Events
World Odyssey
WORLD TOUR STORE LTD
www.Cruise.co.uk Limited
Yellow Zebra Travel Ltd
Yonder Leisure Ltd
YOUSAF RELIGIOUS TOURS LTD
Youth club