

ATIPAC



Air Travel Insolvency Protection Advisory
Committee

Annual Report 2018 - 2019

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Introduction from the Chair



Dear Secretary of State,

I am pleased to enclose the nineteenth annual report of the Air Travel Insolvency Protection Advisory Committee, covering the year ending 31 March 2019.

The travel industry is one that frequently experiences changes, and the last year has seen a number of important developments in consumer protection for air travellers.

The key issues focused on in this report are: the work of the Airline Insolvency Review; implementation of the Package Travel Directive (PTD); and enforcement of the PTD. The Committee has also noted some of the challenges and opportunities presented by the UK's potential exit from the European Union.

The Committee and I look forward to working with external organisations, including your Department and the Civil Aviation Authority, to support the continuing development of the consumer protection landscape.

Sandra Webber

ATIPAC Chair

The Role of ATIPAC

The Committee was created by the Secretary of State for Transport in 2000 to provide informed advice to Government on financial protection of air travellers and customers booking with air travel organisers.

The Committee is devoted to furthering the interests and financial protection of air travellers. The Committee has an independent Chair, and its membership is uniquely balanced between trade, regulator, passenger representatives and independent members, with a breadth and depth of knowledge and experience from all areas of the travel industry. Given the diversity of its membership, it is not possible for the report to cover all points of view, however, the report reflects the viewpoint of the majority of members.

Summary of Committee's priorities

The focus of the Committee's work over the past twelve months has been dominated by:

- the Airline Insolvency Review
- the implementation of The Package Travel Directive (PTD) into UK law,
- enforcement of the PTD, and
- the UK's withdrawal from the European Union

Since the Committee came into existence the travel sector has gone through significant evolution, from the emergence of low-cost carriers to the use of the internet as the means of booking holidays. Even so, for an industry already familiar with change, the current trading environment poses an enormous challenge.

The Committee welcomes and encourages the Government to consider the recommendations of the Airline Insolvency Review (AIR)¹. The introduction of protection for passengers in the event of airline failure is something that many members of the Committee have long advocated, and the 2017 failure of Monarch highlighted the need for measures to be in place. The Committee strongly encourages the Government to act upon AIR's work.

In the last year there has only been a failure of one UK airline, Flybmi². Although not a large carrier, the collapse of any airline has the potential to cause inconvenience to passengers. There have also been failures of a number of European airlines, including Primera, Cobalt, Germania and WOW Air, all of which have had some impact upon UK-passengers³.

The most significant legislative change in the last year was the introduction of the 2015 EU Package Travel Directive into UK law⁴. The Committee shared its collective expertise with the Department for Transport (DfT) and Department for Business, Energy and Industrial Strategy

¹ The Airline Insolvency Review final report was published during the drafting of this report, on 9th May 2019 <https://www.gov.uk/government/publications/airline-insolvency-review-final-report>

² [https://www.caa.co.uk/News/Advice-to-UK-consumers-on-British-Midland-Regional-Limited-\(FlyBmi\)-suspending-operations/](https://www.caa.co.uk/News/Advice-to-UK-consumers-on-British-Midland-Regional-Limited-(FlyBmi)-suspending-operations/)

³ <https://www.caa.co.uk/News/Advice-to-UK-consumers-on-Cobalt-Air-ceasing-operations/>, <https://www.caa.co.uk/News/Further-advice-to-UK-consumers-impacted-by-Primera-Air-ceasing-operations/>, <https://www.bbc.co.uk/news/business-47127921> and <https://www.caa.co.uk/News/Advice-to-UK-consumers-on-WOW-AIR-suspending-operations/>

⁴ The Package Travel and Linked Travel Arrangement Regulations 2018 replaced the 1990 Package Travel Directive and The Package Travel, The Package Holidays and Package Tours Regulations 1992; there were also consequent revisions to The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012

(BEIS) prior to the Directive's implementation and will continue to monitor the impact of the regulations on industry and passengers.

With the introduction of The Package Travel and Linked Travel Arrangement Regulations 2018, there comes a need to ensure compliance. For the legislation to be effective, it needs to be understood by both the industry and consumers, and those charged with enforcement need to have the necessary tools and resources available to them. The Committee is concerned that aspects of the regulations are unclear, and this uncertainty, combined with competing priorities for enforcement bodies, creates a risk for consumers that the full benefits of the new regulations will not be realised.

In common with most other business sectors, the travel industry has been affected by the uncertainty associated with the UK's withdrawal from the European Union. Although passenger confidence has remained in many travel markets, the Committee remains concerned about the impact on passengers and the travel industry. The Committee acknowledges the work undertaken by DfT, the CAA and their international partners to ensure that travel can continue uninterrupted. Nevertheless, the Committee looks upon Brexit as an opportunity to review and amend some aspects of transposed European legislation.



The Airline Insolvency Review

The majority of the Committee have been proponents of financial protection for UK-originating passengers and support the work of the AIR in proposing a consistent and robust mechanism for responding to airline failures, including the repatriation of passengers. While the focus of AIR is rightly on the impact of insolvency on consumers who have interacted directly with airlines, it should also be noted that travel businesses too are customers of airlines and can be adversely affected by an airline failure, therefore it is important that the proposals work for the industry as well. The Committee was grateful for the opportunity to engage with AIR, through the call for evidence and a presentation given at a Committee meeting. The Committee's response to the call for evidence is in appendix A, and our response to the interim report is in appendix B.

Examples of UK airlines becoming insolvent are rare; in the last year, the only failure has been that of Flybmi. Within the European context there have been failures of a number of small and medium-sized carriers. When insolvencies do occur they have the potential to cause disruption and inconvenience, particularly for those overseas. The existing protection landscape is inadequate because the majority of UK-originating air passengers are not travelling on an ATOL-protected package holiday.

From a financial perspective the consumer, like industry, requires clarity on what would happen to their money and their flights in the event of a failure. If, as outlined in the AIR Interim Report⁵, there is to be a new contribution scheme to protect against airline failure, then there are a number of practical considerations that Government, the CAA and the industry need to work together on. The nature of a new charge needs to be established; including the level it is set at, and whether this would be consistent across all airlines. It will also be necessary to work out how any new charge would fit into the protection landscape alongside ATOL, travel insurance and the Consumer Credit Act 1975. The Committee is eager to avoid duplications of protection, particularly between ATOL and a new charging regime. It is also important that the consumer is fully appraised of the scope of the protection being offered prior to making their booking.

The responses to major airline failures over the past few years have varied, depending on the country in which the airline was based. The 2017 failures of Monarch and Air Berlin are well documented, as are the contrasting responses of the British and German governments⁶. Less well documented is the response of the Cypriot government to Cobalt's failure. Passengers affected by the airline's failure were offered refunds by the Cypriot government if they were due to fly on the day of, or day after the cessation of operations, and were able to secure a one-way economy-fare flight home. For those scheduled to travel in the week following the failure, assistance in securing flights was offered by one of two travel companies appointed by the Cypriot government to help support the repatriation of stranded passengers⁷.

In cases where smaller airlines have failed there has been minimal government intervention to repatriate people. Due to the relatively small volume of passengers carried by these airlines at the point of failure, the market was able to respond and assist some stranded passengers by offering rescue fares at discounted prices. The difficulty of relying on rescue fares as a

⁵Airline Insolvency Interim Report, <https://www.gov.uk/government/publications/air-insolvency-review-interim-report>

⁶ Airline Insolvency Review Interim Report https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724883/airline-insolvency-review-interim.pdf p7 & 39

⁷ <http://www.mcw.gov.cy/mcw/mcw.nsf/All/3D801691234F0D8FC225832A0038DF3A?OpenDocument>

means of returning people home is that they are dependent on other carriers having spare capacity on similar routes. In the event of a large failure, or even a smaller one in peak season, this spare capacity may not exist. Consequently, UK-originating passengers could be stranded abroad if a non-UK airline fails.

Therefore, the Committee would argue that a set of tools should be available to the CAA, so that any failure can be responded to appropriately, and consumers have some certainty that they will not be stranded.

The existing gap in protection for flight-only passengers means that in the event of a large failure, as demonstrated by the failure of Monarch in 2017 where only 20% of passengers were protected by Monarch's ATOLs, the taxpayer may be called upon to shoulder the financial burden of repatriating passengers⁸. The Committee acknowledges that passengers have benefited from taxpayer-funded protection in the past, and may do so again in the future, but regards the uncertainty of this regime as unsatisfactory.

The Committee recommends that the UK Government seriously consider the AIR proposals so that passengers and industry have certainty. The Committee also wants to make clear its willingness to engage with external organisations in support of improving the insolvency protection landscape for consumers.



⁸ Airline Insolvency Review Interim Report, p17

The Package Travel and Linked Travel Arrangement Regulations

The introduction of The Package Travel and Linked Travel Arrangement Regulations in July 2018 represented the UK's implementation of the 2015 Package Travel Directive (PTD). One of the key changes arising from the PTD is the introduction of cross-border protection. Consumers based in the UK who purchase package holidays from UK-based travel companies will continue to be protected by the CAA-run ATOL scheme. However, UK-based consumers purchasing package holidays (probably online) from travel organisers established in European Economic Area (EEA) states will be protected by the financial protection scheme of that particular country.⁹

The Committee has ongoing reservations that some Member States have a protection regime that is less effective and comprehensive than the ATOL scheme. There is also a concern that passengers, particularly those booking holidays online, may not understand the scheme they are covered by, or the steps necessary to make claims in the event of a company going out of business. This concern exists even though there is a greater obligation stemming from the PTD 2015 on tour operators to provide clear information to passengers.

Another development from the PTD was the introduction of Linked Travel Arrangements (LTA). An LTA exists when two different travel services are purchased as part of the same trip, but do not constitute a package¹⁰.

In the last report the Committee highlighted its view that LTAs were ineffective because they did not cover holidays in their entirety. The notion of a package holiday is widely understood by the public, as is the fact that packages with flights are protected by the well-recognised ATOL scheme, and this is further supported by an effective CAA-led awareness campaign.

The Committee does not believe that the concept of a LTA will be easily understood by those purchasing holidays. For industry this poses a particular challenge as the PTD requires that passengers are provided with clear and succinct information on what elements of their holidays are protected. Some tour operators have found that explaining an LTA on a website can be difficult and have gone as far as to stop selling them. The Committee welcomed the Government's decision to keep LTAs out of ATOL, since this avoids diluting passengers' understanding of ATOL as being a scheme that provides comprehensive protection.

Enforcement and Consumer Protection

The coming into force of the PTD brought about new protections for consumers, and new obligations on travel businesses. The vast majority of individuals and organisations involved in providing services to the travelling public do so with integrity and within the law. However, as in any industry, there will inevitably be those who seek to actively exploit consumers for their own financial benefit. It should also be emphasised that the travel market is a complex one, with many challenges for enforcement bodies.

Members of the Committee are grateful for the work undertaken by Trading Standards and others. However, there is concern that instances of bad or illegal practice may go unchallenged because of conflicting priorities and a lack of resources. Given these pressures

⁹ European Economic Area countries include the 28 Member States of the European Union, Iceland, Liechtenstein and Norway

¹⁰ The Package Travel and Linked Travel Arrangements Regulations 2018: guidance for business https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749498/package-travel-regulations-2018.pdf p25

the Committee suggests that, where possible, resources and expertise are pooled together to support enforcement activities and if required an organisation could be appointed as a lead authority. The Committee notes that the Office for Product Safety and Standards (OPSS) is a good model for a lead authority role. A centralised resource would also assist in tackling the problems posed by fraudulent websites, particularly those based overseas.

Travel websites have made booking holidays easy, by giving consumers access to a wealth of information on destinations, and travel and accommodation options. However, the internet has also given rise to the challenges posed by fraudulent websites. The resources required to protect consumers from exploitation, particularly from sites based outside the UK which are in breach of standards set by the Advertising Standards Authority is a major challenge.

The Committee notes the successful prosecutions of travel agents operating in the Hajj and Umrah sectors who had been operating in breach of The Package Travel and Linked Travel Arrangement Regulations and The Consumer Protection from Unfair Trading Regulations. These prosecutions were led by Trading Standards officers in Birmingham and supported by the CAA. To help ensure the effective use of resources, the CAA's ATOL Compliance Team has developed a set of prioritisation principles and guidelines to investigate businesses that appear to be putting consumers at immediate or substantial risk by acting in breach of the ATOL Regulations or ATOL Standard Terms.

As noted elsewhere in this report, the Committee recognises that aspects of The Package Travel and Linked Travel Arrangement Regulations, particularly LTAs can be difficult for travel companies to explain to consumers, and for consumers themselves to understand. Therefore, it is possible that some travel companies are giving poor or incorrect advice to consumers over aspects of holiday protection. Thought, therefore, could be given to providing clearer resources and support to the industry so that greater levels of compliance can be achieved.

The combination of a lack of resources for enforcement bodies and complex legislation can place a greater burden on consumers to check that they are dealing with reputable travel businesses and have been afforded the financial protection that they believe they have obtained.



The UK's Exit from the European Union

Perhaps the most significant challenge for the travel market has been presented by the UK's planned withdrawal from the European Union. The prolonged period of uncertainty over the terms of the UK's potential departure has had an impact on both passengers and industry. The Committee is appreciative of the work undertaken by the DfT, CAA and others, to help minimise disruption in both a negotiated and a no-deal scenario.

The Committee believes that there is still a broad appetite for people to book holidays, but the prevailing uncertainty of the date on which the UK might leave has resulted in delayed bookings, and this in turn has had an impact on travel businesses' margins. The end result of this could be the insolvency of more vulnerable travel businesses.

The Committee is, however, mindful that within the European context, Brexit is not the only factor causing concern among consumers about whether to travel.

Although the build-up to the UK's planned withdrawal may have had an impact on consumers and businesses, the Committee looks upon Brexit as an opportunity to review and amend some aspects of transposed European legislation. e.g. the PTD's introduction of LTAs, which as noted above, have added a new level of complexity and created confusion over which aspects of holidays are protected.

The Committee therefore encourages the Government to use the opportunity afforded by the UK's exit to review aspects of the PTD, although it is acknowledged that a review and further legislative changes might not be immediate.

Market Review and Outlook

The economic environment in the UK remains affected by prolonged uncertainty, driven by the UK's planned departure from the EU and a weaker global economic situation. Consumer spending has been slow, with growth at its lowest rate in six years, and consumer confidence remains low.

Consumers' budgets have remained under pressure placing strain on their disposable income. Holidays, however, have continued to remain a priority for consumers above many other leisure activities, and this is reflected in a slight increase in ATOL protected departures over the last twelve months. The growth in departures has held steady over the first five months of 2019, however average price growth over the same period has reduced.

The outlook for the remainder of 2019 is cautious. Total summer 2019 ATOL protected bookings are up compared to 2018 but only by a narrow margin, and based on recent trends, consumers appear to be waiting until the last minute before booking. The slowing in holiday price growth for summer departures reflects the overcapacity in the market, and the rise in the level of discounting. This increases the likelihood of weaker profitability in travel businesses' full year results.

The shift in capacity back to Eastern Mediterranean destinations, away from countries such as Spain, has continued in 2019. There are now, however, other trends appearing, such as: consumers "seeking experiences" with new cultures, languages and skills; exploratory travel; and travel with a strong focus on sustainability (environmental issues and over-tourism for example). This creates both challenges and opportunities for existing and new travel companies.

Appendix A – ATIPAC Response to the Airline Insolvency Review Call for Evidence

May 2018

1. ATIPAC

The Air Travel Insolvency Protection Advisory Committee (ATIPAC) was established by the Secretary of State for Transport in 2000 to give advice to the Secretary of State, the Civil Aviation Authority and the Trustees of the Air Travel Trust on the arrangements for the financial protection of air travellers and customers of air travel organisers.

The Committee is formed of a diverse and representative group of the travel industry, balanced between the industry and those focused on consumer interests. It includes the major trade bodies including the Association of British Travel Agents (ABTA), Association of Independent Tour Operators (AITO), The Association of ATOL Companies (AAC), Association of Scheduled Airlines Operating within the UK (BAR UK), Travel Trust Association (TTA), passenger representatives and independent experts, including the Chairman, and representatives from the Civil Aviation Authority and Air Travel Trust (ATT). As such it is the only body in the UK that brings together the travel trade, regulator and consumer representatives and independent members devoted to the interests of air travellers.

The diversity of representation on ATIPAC means that there is a diversity of views, particularly with respect to the proposal put forward for an all-flight levy, whether inside ATOL or not. The Committee recognises this divergence of views, and is committed to seek the best outcome for consumers.

The Committee welcomes the opportunity to respond to this call for evidence. This paper outlines ATIPAC's current views. As the Review progresses, ATIPAC looks forward to playing a full and constructive role in its deliberations.

2. Background to ATIPAC's position

ATIPAC has supported the provision of financial protection for all UK-originating air passengers for many years. When the CAA published its Consultation on Financial Protection in 2003, which was the last occasion when the issue on scheduled air passengers was officially raised, ATIPAC's response (letter to CAA dated 25 October 2003) comprised three broad principles:

- I.* Coverage. Financial protection for air travellers should cover all UK-originating air travel paid for in advance, including scheduled airlines.
- II.* A central licensing body. A licensing regime with financial fitness requirements is necessary as a complement to a properly funded financial protection regime. The benefit of a single central body provides clarity for consumers, and public recognition.

- III. The funding mechanism. At the time, it suggested a levy scheme to establish funds for such a regime.

These suggestions were made when bonding was still the standard first line of defence, when ATOL-protected holidays were the predominant form of overseas holiday bookings, and when the role of low-cost airlines in the ecology of holiday bookings was not fully formed. At the time, most scheduled airlines did not agree that airline seats should be included within ATOL or an 'ATOL-like' scheme.

3. The current situation

During the intervening 15 years, the market has evolved:

- I. Major airline failures. After the failure of XL Leisure Group, including its airline subsidiary XL Airways in September 2008, all passengers overseas, whether on ATOL holidays or scheduled bookings, were repatriated; the cost of non-ATOL repatriations was borne by the DfT. The failure of Monarch in October 2017 involved the successful repatriation of 110,000 passengers, of which a minority were ATOL-protected. The Secretary of State required the CAA to bring non-ATOL passengers home, at the DfT's cost. Clearly no Government is going to leave stranded passengers to their own devices if another substantial airline fails. However, it is important to differentiate between the impact of major failures such as XL and Monarch, and that of some failures that have not required Government intervention because of the small numbers and/or destinations served by other carriers (e.g. Cyprus Airways in 2015). The management of the repatriation process will vary from case to case.
- II. The EU Package Travel Directive 2015. Consumer protection of holiday travel has been enhanced by the PTD, which is to be implemented in July 2018:
 - a. It broadens the definition of a 'package' and sweeps up a range of holiday arrangements into a protected environment; in the UK, this will be provided by ATOL.
 - b. It introduces Linked Travel Arrangements (LTAs), where consumer protection is limited to the failure of the facilitator. The facilitator may be an airline, a hotel or a travel agent. In the UK, the consumer will be protected under the Package Travel Regulations (PTR). But if the facilitator is, say, a travel agent or a hotel, and the airline that has been booked fails, the consumer will remain unprotected; the exception to this is where the flight is an ATOL-protected flight only sold under the agent's ATOL.
- III. Scope of protection. While the failures of XL and Monarch both concerned UK airlines, and were dealt with wholly within the UK, that may not always be the case. There are carriers with major UK-based operations that are not UK airlines, although recently both Norwegian and Wizz Air have been granted UK Operating Licences. Moreover, the failure of foreign carriers operating into the UK affects UK travellers. The focus of financial protection should focus on the origin of the passenger, not the nationality of the airline that fails.

This is not a simple or coherent framework easily understood by consumers.

4. Consumer clarity and consistency with other protection regimes

The Package Travel Directive 2015, to be implemented in all EU member states on 1 July 2018, broadens the definition of 'package', and introduces consumer information requirements that are designed to improve consumers' awareness of their rights, especially in relation to insolvency protection. It is important to recognise that, whether protection is provided under ATOL or PTR, the consumer protection attaches to the travel arrangement booked, not to the company or trader. Notably, The PTD also excludes protection for business to business travel where there is a travel service agreement between the travel company and the business buyer.

Despite the CAA's extensive PR campaign on ATOL, which has increased awareness of the ATOL scheme, there is still considerable confusion about insolvency protection. It inhibits consumer understanding. Inevitably, the last thing on a consumer's mind when booking a package holiday or individual flights is the consequences of travel organiser or airline failure.

However desirable, consumers' ability to make informed choices is limited. It is, in the opinion of the Committee, unreasonable to expect consumers to take steps to protect themselves against airline failure, even if they believe it to be important. Self-protection depends on each consumer's ability and/or willingness to navigate different insurers' Scheduled Airline Failure Insurance (SAFI) terms (especially in relation to excess and exclusions).

In order to enable consumers to make informed choices, simplicity and consistency is essential; any airline insolvency protection system should be consistent with or parallel to PTD provisions in relation to information requirement and rights to repatriation and/or refunds.

It is an open question whether business travel should be included or excluded from such a protection regime. Excluding business travel may simplify the process of organising repatriation after a failure, in that it would tend to exclude multi-destination/multi-airline trips, and generally restrict the process to holiday destinations, which are typically point-to-point.

5. Repatriation of UK-originating passengers

The Monarch failure resulted in the largest repatriation of UK passengers in recent history. It was managed with great skill and effectiveness by the Civil Aviation Authority. It was costly, but the CAA proved that it could undertake such a project successfully. There is no need to look further than the CAA to manage an effective airline failure repatriation programme.

However, the failure of a scheduled airline, especially one that is not a UK carrier, is likely to be much more complex, and involve a variety of repatriation devices, from keeping the failed carrier's fleet flying (e.g. Air Berlin), the creation of a temporary 'instant airline' (e.g. the Monarch repatriation), the utilisation and funding of IATA's 'rescue' fares, and the use of surface travel on short-haul routes (e.g. UK-EU), or a mixture of all of these. They all present difficulties:

- I. An orderly wind-down by keeping the failed carrier flying is superficially very attractive. In the Air Berlin case, this involved a Government 'loan' which, at best, is likely to be only partially repaid. On the face of it, this violates the UK Government's requirement that the cost of repatriation and financial protection should be borne by the beneficiaries (i.e. passengers) and not by the taxpayer. If continuing operations are to

be funded, it has to be by other means. Moreover, in the event of failure, the administrator's primary duty under UK insolvency law is to the creditors, of which passengers comprise only one category of unsecured creditors. To be effective in all cases, this would require a change in UK law to something more like the US Chapter 11, where management continues to run the company, but under the supervision of the court. The minimum requirement would be the maintenance of aircraft leases and the prevention of aircraft repossessions, together with access to the airlines booking data and operating systems, while the failed carrier operates in administration. And this would not help in the case of the failure of a non-UK airline.

- II. The 'instant airline' solution was highly effective in the case of Monarch. However, this failure took place outside the peak travel season, and was facilitated by the availability of aircraft otherwise unused because of the political situation in the Gulf. There is no guarantee that sufficient aircraft would be available in the case of another such failure.
- III. IATA 'rescue' fares may in limited circumstances provides some help. Indeed, voluntary industry action is an established policy tool in many areas. However, there is some scepticism within the travel trade about airlines' willingness to offer capacity when needed, as the failure of a carrier immediately constrains capacity on the route(s) and mops up any spare seats when they are required. It is considered by some that IATA's rescue fares scheme could also serve as a device to avoid regulation. The difficulty, as demonstrated by the Monarch failure, is that where there is no spare capacity following a failure and demand is highest, the market will keep prices high, whereas where there is excess capacity after such an event, price reductions can easily be presented as 'rescue' fares. Rescue fares of themselves do not deliver capacity.
- IV. In some cases, on short haul routes surface travel (by train, ferry or coach) may be the most practicable solution, e.g. where the route length is, say, 500 km or less.

None of these solutions are mutually exclusive, and some or all may be required in some cases. The important point is that the centralised management of the repatriation process is essential, and that centralised management body must have a variety of tools to deploy, depending on the circumstances of the failure.

6. The funding mechanism

Repatriation and refunds require funding. A number of mechanisms can be envisaged, some of which are not mutually exclusive:

- I. s75 of the Consumer Credit Act 1974 imposes liability on credit card providers so that the merchant acquirer shares liability with the airline and refunds the credit card holder in the case of failure. In the case of the failure of Low Cost Holidays, it proved very effective in refunding Low Cost customers; although it did not arrange for the repatriation of customers already on holiday, this did not present a general problem as they were already in possession of valid return airline tickets. In the case of ATOL, the costs of repatriation and refund of failed ATOL companies is shared between the Air Travel Trust and the merchant acquirers in accordance with the specific agreements between them. In the case of airline failure, there remains the need for the orderly repatriation of stranded passengers, but s75 provides a statutory basis for part of the funding. However, the application of s75 in respect of non-family members of a group, or the use of cards belonging to a person who is not travelling, is unclear.

- II.* Non-ATOL repatriations could be funded out of the Airline Passenger Duty (APD). HM Treasury has always resisted any taxation being hypothecated for a particular purpose. Nevertheless, the ATOL Protection Contribution (APC) is classified as a tax, but there has been no challenge to its exclusive use as a means of maintaining the Air Travel Trust Fund (ATTF). If part of the APD were to be dedicated to an airline insolvency protection fund, two issues would have to be addressed:
- c. The APD exemption for children under 16 in economy class would have to be reconsidered;
 - d. The APC paid by ATOL travellers would duplicate the airline insolvency protection element of the APD.

In both cases, an element of cross-subsidy of airline passengers by ATOL travellers would be involved, and should ideally be eliminated.

- III.* Compulsory passenger travel insurance to include Scheduled Airline Failure Insurance (SAFI) as a regulatory requirement. Costs incurred by a passenger that exceed the original cost of the booking would have to be covered. However, the only compulsory insurances in the UK are motor insurance and employer' liability. Extending compulsion has public policy implications and would set a precedent. Moreover, compulsory insurance would have to exclude the insurer's ability to withdraw cover for particular airlines when financial difficulties appear, which negates the insurer's ability to manage risk, and may precipitate that airline's failure. Customer-level insurance by itself presents formidable administrative problems in claims management in order to fund repatriation.
- IV.* A market-based airline scheme involving bonding or insurance arrangements was the usual mechanism for ATOL and other travel protection for many years. This was replaced, in the case of ATOL, by the APC in order to replenish the ATTF; the capacity of the insurance market to accommodate the travel industry had been increasingly called into doubt. As in 6. III. above, this would involve the restriction of insurers' rights to manage risk, and depends on the capacity of the market.
- V.* The Committee has an open mind as to whether the ATOL funding mechanism should be extended to incorporate airline failure; this depends on further dialogue with the Review. There are significant differences between the failure of a package travel provider and the failure of a scheduled airline, including scale, routes involved, available capacity etc. However, ATOL provides an example of the organisational and funding infrastructure that will be required to deal with airline failure, whether ATOL's scope is extended to encompass airline failure or a new fund is established specifically to cater for such failures.
- VI.* The ATOL funding mechanism is the Air Travel Trust (ATT). It is funded primarily by a levy, supplemented by a credit facility and insurance:
- e. A flat rate APC per passenger is paid by the ATOL Holder to the ATT.
 - f. The ATT pays for repatriation flights and refunds (subject to s75 refunds) when an ATOL holder fails.
 - g. The ATT Fund of £120m is extended by a £75m credit facility and by a £450m insurance policy provided by a consortium of five insurance companies.
 - h. In the case of an ATOL Holder failure, costs of repatriation and refunds are sourced in the following sequence:
 - Bonds and Trust Accounts (if applicable)
 - Credit Card merchant acquirers under s75, subject to the merchant acquirer-ATT agreement
 - The ATT Fund

- The Bank credit facility
- The insurance policy.

7. The need for a licensing and funding regime

So far as the travel trade is concerned, the Committee has concluded that the most effective protection regime requires licensing and funding arrangements operated by a regulator with statutory powers and responsibilities. Protection cannot be left simply to an unregulated market, if Government intervention is to be avoided at the time of any future airline failure. The statutory underpinning is required both to ensure compliance with a protection regime, based on all UK-originating passengers, and to provide the powers needed to organise and manage not only the repatriation of passengers stranded overseas by the failure but also the refunds due in respect of paid-for future bookings.

It should be noted that the insurance component of the ATT's funding is very important to the scheme. It is clear that insurance companies would be much more wary of providing cover against failure if there was no regulatory framework managed by a statutory body with effective licensing and monitoring powers that have the confidence both of Government and the travel industry itself.

The CAA is the regulator that is responsible for aerodrome licensing, air operator certification, airline licensing and ATOL consumer protection. It monitors licence holders and their financial performance. Responsibility for repatriation and refunds in the event of airline failure is a logical extension of its remit.

Appendix B – Response to the Airline Insolvency Review Interim Report

September 2018

Thank you for the copy of your Interim Report of July, in response to which we would like to make some points further to our letter dated 11 May 2018, sent in response to the Call for Evidence. We believe that those observations remain valid.

The Committee discussed the interim report with interest. All of the Committee agrees that the interests of the consumer should be at the heart of your recommendations.

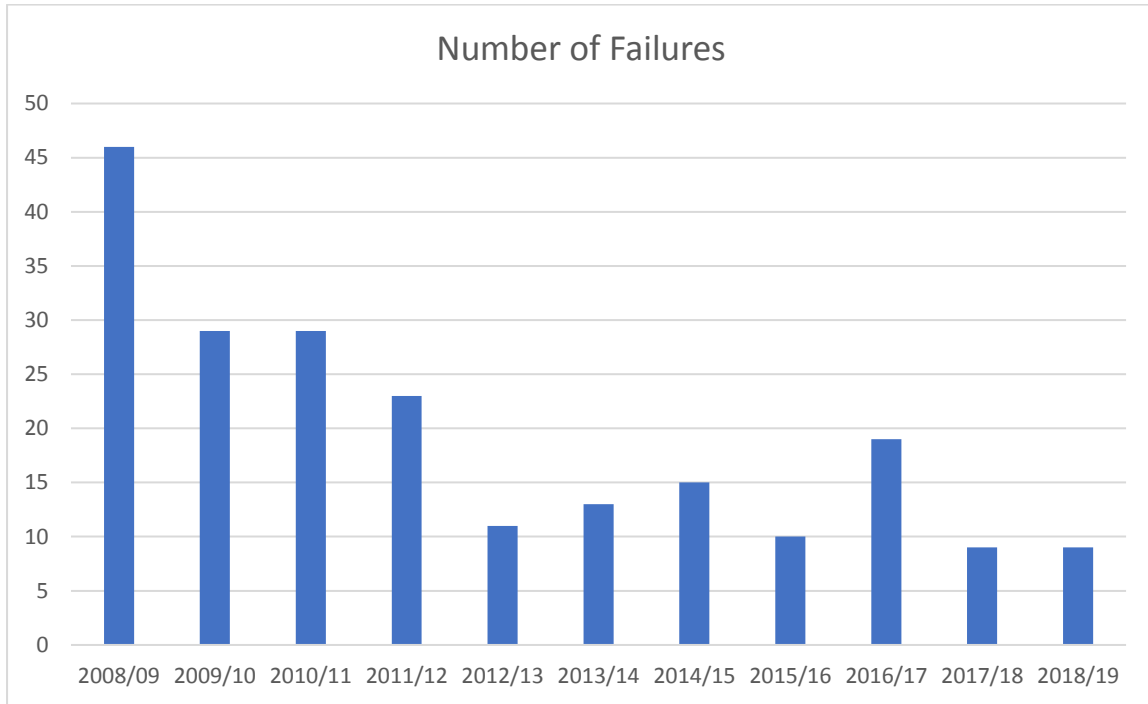
The majority committee view is that in the market for airline seats the existing insolvency protections (credit cards, insurance, voluntary measures) are patchy in both availability to consumers and coverage of their needs, and hard to understand. As the consequences of insolvency can be severe, it is therefore not reasonable to rely on consumers to understand the risk and manage it themselves. The status quo therefore represents a risk both to consumers, and also to taxpayers if in future cases the Government again decides it is necessary to step in.

Large insolvencies are an infrequent but persistent feature of this dynamic market: even today's healthy carriers can become weak as the market changes. The Committee therefore remains of the view that the recommendation should be for the introduction of a statutory protection system. It should be in addition to the package protection system, with care taken to avoid undermining its stability and duplicating costs for consumers.

We represent the whole spectrum of the industry as well as independent representatives hence we cannot always come to a unanimous position. The minority view, expressed by one trade sector, is that the risk of airline insolvency is low and many instances have low impact because of the numbers and locations affected and can be managed by the airline industry itself. A one-size-fits-all statutory protection system would be over the top.

Appendix C – ATOL Holder Failures

The table shows the number of ATOL holder failures from 2008 - 2009 to 2018 - 2019.



To end of March 2019, there were nine failures, which is the same as in the previous financial year.

The table below shows the ATOL holders that failed during the past year and the date on which the failure occurred.

ATOL Holder	Date of failure
Mert Selim Ltd	11/05/2018
E R Marketing Ltd	21/05/2018
Friends Travel International Ltd	14/06/2018
Khidmah Travel Limited	28/02/2018
Charter Flight Centre Ltd	17/10/2018
Lee's Travel Ltd	25/10/2018
Milburn Travel Ltd	20/11/2018
Mountain Paradise Ltd	11/02/2019
Val-Ski Ltd	13/03/2019

Appendix D – Constitution and Terms of Reference

Establishment and Role of the Committee

1. The Air Travel Insolvency Protection Advisory Committee ("the Committee") is established by the Secretary of State for Transport to advise on the financial protection arrangements for air travellers and customers of air travel organisers.

Composition of the Committee

2. Members of the Committee shall be drawn from members and/or officers of organisations representing various market sectors of the travel trade and independent representatives. The Chair and Deputy should always be independent representatives.

Trade

There will be up to ten members representing travel agents, tour operators, third party protection arrangers and airlines. Appointments shall be made in consultation with relevant trade associations. Each of the following trade associations and/or their successor bodies shall always have the right to be represented by one member:

Association of British Travel Agents (ABTA)
 Association of Independent Tour Operators (AITO)
 Association of Airline Consolidators (AAC)
 Board of Airline Representatives in the UK (BAR UK)
 Travel Trust Association (TTA)

Independent members

There will be up to ten independent members of whom one will be Chair. These members will include at least three consumer representatives and three representing consumer-focused organisations.

Civil Aviation Authority

The Chair of the Air Travel Trust, and one other member of the Civil Aviation Authority.

Appointments to the Committee

3. Members shall be appointed by the Chair of the Civil Aviation Authority (CAA), for periods specified at the time of appointment. Membership periods should normally be periods of 4 years. Members may resign at any time. The CAA Chair will consult the Chair of the Committee before appointing Members other than from the CAA.

4. Where an organisation is invited to provide a representative, then alternates should be nominated, in order that the organisation's views and contribution to the Committee's deliberations may at all times be made. Where the appointment is in their personal capacity, then alternates are not appropriate.

5. If the Chair of the CAA is satisfied that a member has been absent from meetings of the Committee for more than three consecutive meetings or is satisfied that a member is otherwise unable or unfit to discharge the functions of a member of the Committee the membership may be declared vacant.

Meetings of the Committee

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

7. The Chair may set up working groups to consider and report on specific issues. Although such groups will normally be made up of Committee members the Chair may appoint others with particular expertise at his discretion.

Duties of Committee

8. The Committee shall keep under review and from time to time advise the CAA, the Trustees of the Air Travel Trust and the Secretary of State for Transport on the arrangements for the financial protection of air travellers and customers of air travel organisers.

9. In particular it shall:

- advise the Trustees, the CAA and the Secretary of State on policies they should pursue to protect consumers;
- advise the CAA and the Trustees on payment policy and the use of their discretion when making payments from the Trust (The Payment Policy);
- advise the CAA how they can promote awareness of ATOL protection to consumers and consumer expectations of protection;
- advise on agreements between the Trustees, the CAA and third parties such as credit card companies where there are no commercial sensitivity issues;
- advise on current market conditions, emerging market trends and, where appropriate, their potential impact on consumers and the financial protection arrangements; and
- advise the CAA and the Trustees on the financial viability of the ATT.

10. The Committee shall submit to the Secretary of State an Annual Report on its activities in each year ended 31 March within four months of the end of that year. The Committee shall draw to the Secretary of State's attention at any time matters of concern on which, in its view, action is necessary.

Administrative Arrangements

11. Reasonable out of pocket expenses directly incurred by Members of the Committee in attending meetings shall be reimbursed by the CAA.

12. The CAA shall provide administrative support to the Committee.

Issued by:

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

Amended by the Department for Transport July 2006

Amended by the Department for Transport September 2014

Appendix E - ATIPAC Members as of 31 March 2019

Sandra Webber

Independent Representative and Chair

Sandra has been ATIPAC Chair since July 2018. She is also the Chair of the Water Alternative Dispute Resolution Panel which provides oversight of the water industry consumer redress scheme. She previously served as Director of Consumer Support at the CAA and before this worked at the Department for Transport where her responsibilities included aviation and the ATOL protection scheme.



Alan Bowen

Industry representative

Alan qualified as a solicitor in 1982 and, after a number of years in private practice, joined ABTA as Head of Legal Services. For the last 20 years he has been the Managing Partner of AGB Associates which specialises in advising the travel industry. He represents the Association of ATOL Companies (AAC).



Roger Bray

Independent representative

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



Jan Carton

Consumer representative

Jan joined Citizens Advice as Senior Consumer Expert in March 2016. Previously she had spent 13 years as a self-employed Consumer Law Consultant, mainly providing training in a variety of consumer law subject areas to trading standards professionals, ADR providers, consumer advisers and government departments. This was preceded by careers in local government trading standards and as a senior lecturer in consumer law at Manchester Metropolitan University.



Stephen D'Alfonso

Industry representative

Stephen joined Thomas Cook as Group Head of Public Affairs and Sustainability in July 2016. Joining Thomas Cook from ABTA, where he was the travel association's Head of Public Affairs, Stephen was instrumental in developing the association as a leading campaigning force, leading on government affairs and political lobbying activities in Westminster and Brussels. Stephen joined ABTA following roles at GovNet Communications and the UK Parliament.



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



Dale Keller

Industry representative

Dale is the Chief Executive of the Board of Airline Representatives in the UK (BAR UK). He has 25 years' experience in the aviation, travel and tourism industries. He represents BAR UK on the Committee.



Gary Lewis

Industry representative

Gary became Chief Executive Officer of The Travel Network Group in early January 2016 following a successful management buyout of the Group. He was instrumental in delivering the first CAA Franchise arrangement in 2003 which still today provides the basis for Travel Trust Association Members to gain individual ATOL membership.



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 Medicott

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.



Keith Richards

Independent representative

Keith is a barrister, arbitrator and commercial mediator. He is Chair of the Disabled Persons Transport Advisory Committee at the DfT, a Panel Member at the Competition and Markets Authority, and a member of the Financial Services Consumer Panel at the FCA. He previously served as Head of Business and Professional Development and Consumer Affairs at ABTA, and as Chair of the CAA Consumer Panel.



Mandy Round

Industry representative

Mandy has held varied roles in the travel industry for over 30 years, including General Manager at easyJet Holidays, Client Services and Tourism Director at Sambala Resort, Cape Verde, General Manager at Jet2holidays and EMEA Director for the Hong Kong Tourist Board.



Paul Smith

CAA representative

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



John Snyder

Industry representative

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



Bruce Treloar

Consumer representative

Bruce is the Chartered Trading Standards Institute's Lead Officer for the Holiday & Travel Industry with 41 years of experience as a practising trading standards officer.



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 and 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.



Kirsteen Vickerstaff

Industry representative

Kirsteen is General Counsel and Company Secretary at On the Beach Group plc, where she has responsibility for legal, company secretarial, regulatory, risk management and insurance matters. On the Beach is one of the UK's leading online travel agents, specializing in beach holidays and is listed on the London Stock Exchange.

