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Transport Committee

Air Travel Organisers' Licensing (ATOL) reform

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Summary

The Air Travel Operators' Licensing (ATOL) scheme was introduced in the early 1970s to protect holidaymakers against the risk of their package tour operator becoming insolvent. The scheme is now in a mess. Whereas it once covered the vast majority of holiday bookings it now covers less than 50% and this proportion is falling rapidly. Holiday sales by airlines and certain types of agent are outside the scheme. The situation is confusing and unsatisfactory for consumers. It is unfair for those sections of the travel and holiday industry that are obliged to hold an ATOL licence and to pay the ATOL protection contribution—£2.50 per passenger. It has proved difficult for the Civil Aviation Authority to administer. Meanwhile, the taxpayer bears the ultimate liability for the Air Travel Trust Fund which is some £42 million in deficit. Substantial reform is needed and overdue.

The Government is proposing reform in two stages. In the short-term, it is broadening the scope of bookings covered by ATOL: "Flight Plus" bookings will require tour operators to apply ATOL protection when accommodation and / or car hire is booked within a day of booking a flight. In addition, a bespoke ATOL certificate will be issued to each customer to clarify the protection provided. In the longer term, the Government is proposing to bring agents for the consumer¹ and possibly the airlines within the ATOL scheme. Provisions to this effect were included in the Civil Aviation Bill. The Government also intends to look at options to put the scheme onto a self-sustaining basis.

We welcome the greater coverage and clarity that these changes are expected to bring. We are concerned, however, that the Government has not based these reforms on an analysis of consumer behaviour and views. In addition, flight-only sales by airlines will remain outside the ATOL scheme, with no clarity on if or how this should be addressed. We recommend a thorough review that distinguishes between the issues of consumer protection and the repatriation of holidaymakers stranded abroad as a result of the financial collapse of their tour operator or airline. We also recommend that the travel industry and CAA jointly develop standardised information for those booking overseas flights that are not ATOL protected. Finally, we recommend that the per-passenger contribution be related to the value of the booking instead of the current flat fee.

The Government's reforms are controversial. Some businesses feel ATOL is an outdated scheme and that they are being brought within its scope to bail it out when they are not responsible for ATOL's financial problems. If the costs of ATOL cover can be reduced sufficiently, this objection may subside.

1 Traditionally, travel agents act as an 'agent for the supplier', where they 'sell' holidays to customers on behalf of travel trade suppliers. However, travel agents can also act as an 'agent for the consumer where they technically 'buy' the holiday on behalf of a customer'. The courts have held that, as agents for the consumer' are not providing flight accommodation, they do not fall within the ATOL requirements.

1 Introduction

Holidaymakers at risk

1. Every year, over 30 million people in the UK book holidays abroad. The vast majority will complete their holiday and return without difficulty. An unlucky few, however, will face disappointment or worse because one of the companies involved in providing the holiday becomes insolvent.² If this occurs before departure, the consumers risk losing their money; if it occurs during the holiday, the holidaymakers may be stranded abroad. The Air Travel Organisers' Licensing (ATOL) scheme was introduced in the 1970s to protect consumers against the financial consequences of such occurrences.³ According to the Civil Aviation Authority (CAA) which administers the ATOL scheme, in the past three years over 100,000 people have been repatriated by the CAA following business failures and over 250,000 have received refunds as a result of the scheme.⁴

Changes in holiday bookings

2. The way in which holidays are booked has changed greatly in recent years due to the advent of the internet, budget airlines and developments in the travel industry. The legal framework for ATOL has not kept up. While traditional package holidays sold by travel agents and tour operators are ATOL protected, holidays sold by airlines are exempt. In addition, "agents for the consumer" are also exempt. (These are companies which the courts have held to be acting on behalf of the consumer rather than on behalf of the airline. As such, unlike airlines or tour operators, they do not provide or sell flights.⁵) As a result, only around one half, some 18 million, of holiday bookings are now covered by the ATOL scheme.⁶ In addition, the Air Travel Trust Fund (ATTF), from which payments should be drawn, has a deficit of some £42 million, underwritten ultimately by the Government.⁷

3. ATOL is a subject of considerable concern amongst parts of the travel industry, not least because of its partial coverage and the perceived commercial disadvantage to those companies obliged to include the ATOL Protection Contribution (currently £2.50 per passenger) in their charges to consumers. Members of ABTA (formerly the Association of British Travel Agents) and the Association of Independent Tour Operators (AITO) in particular have called for swift and substantial reform.⁸ However, different sectors of the industry hold strong and diverging views about how the scheme should be changed.

2 According to accountants Wilkins Kennedy, Anthony Cork, 41 UK travel agents were forced into bankruptcy in 2011. The economic downturn, natural disasters and the Arab spring all played a part in their downfall. See *The Guardian*, 30 Dec 2011, p26.

3 For further details of the development of ATOL, see Ev 29. For commentary see Ev 50.

4 Ev 29, para 1.4

5 See Ev 29 paras 5.1-5.4 and Ev 35 para 32. An example is Sun4U which collapsed in 2009.

6 Ev 29, paras 1.4 and 2.6

7 Ev 55, para 5. The Government provides a £30m guarantee. The CAA is also financially liable.

8 Ev 35 and Ev 44

Government reform of ATOL

4. The Government has announced both short-term and long-term changes to ATOL. Using secondary legislation, it will bring a wider range of “Flight Plus” bookings made through travel agents within the ATOL scheme.⁹ In addition, agents selling ATOL protected packages will be required to issue the customer with an ATOL certificate. In the longer term, the Government intends—subject to consultation¹⁰—to extend the ATOL scheme to holidays and packages sold by airlines and agents for the consumer, by means of provisions in the Civil Aviation Bill,¹¹ which is currently awaiting Report Stage in the Commons.¹² It does not intend to extend ATOL protection to flight-only sales by airlines and cannot do so under existing EU insolvency protection law.¹³ The result of the Government’s current and proposed reforms of the ATOL scheme are summarised in Table 1 below. Despite dissatisfaction with the existing arrangements and a desire for change on the part of many in the travel industry, the reforms are proving controversial.¹⁴

Figure 1: Overview of ATOL protection by type of company and holiday

Product: Company type	Traditional package holidays	Dynamic packages* included in Flight Plus	Dynamic packages* outside Flight Plus	Flight only
Travel agents and tour operators	ATOL protected	ATOL protected from 30 April 2012	Not ATOL protected	ATOL protected since 2012 **
Airlines and Agents for the consumer	Not ATOL protected (unless sold through a subsidiary holiday company). May be protected as a result of the Civil Aviation Bill.	Not ATOL protected (unless sold through a subsidiary holiday company). May be protected as a result of the Civil Aviation Bill.	Not ATOL protected (and no change proposed).	Not ATOL protected (and no change proposed).

Notes:

* “Dynamic packages” refers to combinations of flights, accommodation or other services, independently assembled by consumers using the internet.

** Unless they qualify as an Airline Ticket Agent

EU Package Travel Directive

5. The ATOL scheme allows the UK to comply with the EU Package Travel Directive¹⁵ which requires member states to have a scheme which provides financial protection for

9 Statutory Instruments 2012, No 1017, The Civil Aviation (Air Travel Organiser’s Licensing) Regulations 2012, laid before Parliament on 4 April 2012, coming into force on 30 April 2012.

10 The DfT expects to consult in 2013 – see Q 153.

11 Clause 94 Regulation of provision of flight accommodation.

12 Timetabled for 25 April 2012.

13 Ev 55, para 21

14 See, for example, Ev 50 and Ev 39

15 Council Directive 90/314/EEC on package travel, package holidays and package tours, 13th June 1990

consumers buying package holidays. The CAA has provided us with a brief analysis of how other states comply.¹⁶ It would seem that the ATOL scheme is more extensive than most EU comparators, the majority of which rely on bonds or insurance rather than a dedicated fund. The UK scheme was established before the directive came into effect. Witnesses from the travel industry told us that ATOL was probably the best scheme in the EU¹⁷ although the CAA said the costs of such schemes across Europe were broadly similar.¹⁸ As an island nation with well-established package holiday and budget airlines industries, the UK has a higher percentage of overseas holiday flights than most other EU states.

6. The Package Travel Directive is due to be revised within the next few years.¹⁹ Some witnesses argued that ATOL reform should await the revised directive to avoid disjointed or abortive changes.²⁰ The Aviation Minister Theresa Villiers MP told us, however, that reform of ATOL was needed sooner. She was confident that the Government's proposals would be consistent with likely changes to the directive.²¹

Private insurance

7. The Government has considered whether private travel insurance could replace the mandatory ATOL protection. A number of problems were identified, including the need to comply with the EU Package Travel Directive and greater complexity for the consumer.²² Moreover, the Government cannot avoid its liability to help repatriate UK citizens. We note the lack of suitable insurance policies at present and the prospect that cover may be incomplete or withdrawn when it is most needed.²³ However, the potential role of private insurance should remain a consideration in any future review.

Our inquiry

8. ATOL has been the subject of concern for our Committee and our predecessors.²⁴ We have had regular correspondence from organisations representing travel agents and tour operators, highlighting problems and urging change. Because of the reforms that the Government is now implementing, we have conducted a short inquiry. The travel trade is currently working hard to meet the deadlines set by the Government for Flight Plus and ATOL certificates. We welcome these measures for the additional protection offered to consumers. Although we comment on the measures, we do not suggest short-term changes, which would be disruptive for the industry. We have therefore concentrated on wider reforms, which we consider are needed. This report is a supplement to our earlier

16 Ev 32 and Qq 123-125

17 Qq 28, 35, 36

18 Q124

19 The Impact Assessment (para 28) states that it would be 2014 at the earliest before a revised Package Travel Directive could be in place.

20 Ev 62; Ev 73; and Q26 [Paul Evans]

21 Q135

22 Qq 143 and 151

23 Ev 77

24 Transport Committee, *Passengers' Experiences of Air Travel*, Eight Report of Session 2006-07, HC 435, 26 July 2007, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/435/435i.pdf>

report on the draft Civil Aviation Bill which did not contain provisions relating to ATOL.²⁵ We are grateful to those organisations and individuals who contributed to our inquiry. We have been assisted in this inquiry by our aviation specialist adviser, Louise Congdon.²⁶

25 Transport Committee, *Draft Civil Aviation Bill: Pre-Legislative Scrutiny*, Thirteen Report of Session 2010-12, HC 1694, 19 January 2012

26 Louise Congdon made a formal declaration of interests which can be found in the formal minutes of the Transport Committee, Session 2010-12, Appendix B.

2 Short-term reform

Objectives

9. The Government has two key objectives for its short-term reform of ATOL:

[...] to:

- Provide greater consumer clarity about which holidays are protected by the ATOL scheme and which are not.
- Restore the scheme's finances to a self-sustaining position so that the Government guarantee can be removed.²⁷

10. The Government's first objective (consumer clarity) was widely supported by witnesses to this inquiry.²⁸ The Government says that there can be considerable confusion for consumers, the travel trade and the CAA about whether a holiday is ATOL protected or not.²⁹ ABTA and others confirmed to us that ATOL was complex and confusing for the industry; and the CAA has had to resort to the courts to establish who was or was not protected.³⁰ The consumer body HolidayTravelWatch provided anecdotal evidence of consumer confusion in cases where holiday companies or airlines had become insolvent.³¹ However, we received no other evidence from consumer groups regarding the Government's objectives or proposed reforms.

11. Regarding the second objective (restoring the scheme's finances and, by implication, the elimination of the deficit in the ATTF), witnesses recognised that this was necessary but disagreed as to how the financial burden should be shared.³²

The consumer's view

12. The Government undertook public consultation on its proposed reform to ATOL in June 2011;³³ in February 2012 it published a summary of the responses and its decisions.³⁴ Most of the consultation responses are from the travel industry and other stakeholders. Only four responses were from consumer groups and these barely feature in the report. The views of the consumer—as holidaymaker or airline passenger—and the precise nature

27 Ev 55, para 8

28 For example, Ev 35, para 5; and Ev 73.

29 Ev 55, para 3

30 Ev 29

31 For example, Ev 64

32 The Committee heard strongly-argued and opposing views on which sectors of the travel industry were responsible for the deficit and who should be required to contribute towards its reduction. Travel agents currently contributing to the ATTF argued that the certain airlines and others outside the ATOL scheme were responsible (Qq18-22); the airlines denied this (Qq 71 and 72); and the CAA declined to give a view (Q 104).

33 Department for Transport, 'ATOL Reform Consultation Document', June 2011, <http://assets.dft.gov.uk/consultations/dft-2011-17/dft-2011-17-document.pdf>

34 DfT, ATOL reform: summary of consultation responses and Government decisions, February 2012

of their awareness or difficulties are not made clear. There seems to be a lack of robust research by the Government or CAA in this area.³⁵

13. Some witnesses to our inquiry said that many consumers did not expect dynamic packages, now part of Flight Plus, to be covered by the ATOL scheme.³⁶ The only consumer organisation (HolidayTravelWatch) that submitted evidence to our inquiry did not support the reforms.³⁷ The Government has not presented evidence on the extent to which consumers want the ATOL scheme to be extended. Some consumers no doubt like the protection afforded by ATOL but equally there are those who are very price sensitive and may object to paying for protection which they may not want or need.³⁸

14. The Government has not clearly based its reforms to the ATOL scheme on evidence from consumers. We recommend that the Government undertakes research into consumer awareness of the consequences to holidaymakers of a failure by their airline or tour operator, the consumer protection options available to them, and their views on whether and in what ways the ATOL scheme should be extended. The results should be used to inform the consultation on further ATOL reform that is intended to follow the passage of the Civil Aviation Bill.

Principal measures

15. The two principal measures that the Government is introducing to further these objectives are the introduction of “Flight Plus” and ATOL certificates for consumers.³⁹ Theresa Villiers announced on 9 February 2012 that the Government would go ahead with its proposed changes under secondary legislation: the new regulations were planned to be laid in Parliament in March, before coming into effect on 30 April 2012. However, the full implementation date was again put back: Flight Plus will take effect from 30 April but the certificates will not be mandatory until 1 October 2012.

Flight Plus

16. The Government has decided to define certain combinations of bookings made with ATOL holders as Flight Plus packages and to require that they are protected under the ATOL scheme. Where the request for a flight is made on the same day or within a day either side of a request for accommodation and/or car hire, this will constitute a Flight Plus booking.⁴⁰ Department of Transport witness Kate Jennings, Head of Aviation Policy Implementation Division, described Flight Plus as a “permissive regime”: combinations of bookings made outside the two-day window could be ATOL protected if the ATOL holder chose to offer this to the consumer.⁴¹ The holiday must have its outbound leg departing

35 Some limited research is cited by the CAA: Ev 32 (Q94)

36 Ev 73

37 Ev 62

38 Q 62

39 Reference secondary legislation and regs

40 Defined in The Civil Aviation (Air Travel Organiser’s Licensing) Regulations 2012, 24 (1) (c) as “such living accommodation or self-drive car hire is requested to be booked by or on behalf of the consumer on the same day as the consumer requests to book the flight accommodation, the previous day or the next day”.

41 Q139 (Kate Jennings)

from the UK and the trip must be over 24 hours in duration, or include an overnight stay. Domestic flights are not part of Flight Plus and sales to businesses are likely to be exempt.⁴² These changes do not apply to sales by airlines or agents for the consumer, which are currently outside the ATOL scheme.

17. The creation of Flight Plus was broadly welcomed by the bodies representing traditional travel agent and tour operators. ABTA and AITO have campaigned hard for dynamic packages and the companies selling them to be brought within the ATOL scheme. They saw Flight Plus as a step in the right direction, albeit with some reservations about the details. AITO felt that the booking window was too short and should be increased to 7 days to reflect consumers' needs. Mr Farrow of the Society of Our Lady of Lourdes, who made bookings on behalf of a group of travellers with disabilities, said that a two-day period was insufficient to complete their more complex arrangements.⁴³ Theresa Villiers defended it on the grounds that a longer period would prove more onerous for the industry to administer but said that she had an open mind about further reform.

18. Other sections of the industry were opposed to Flight Plus. The online travel agents told us that it would impose significant costs but few benefits. Lastminute.com doubted that Flight Plus took account of the behaviour or expectations of many online customers. It estimated that it would cost the company over £1 million over 9–12 months to introduce the systems required to track potential Flight Plus bookings.⁴⁴ Expedia said it believed it would increase customer confusion and add disproportionate costs.⁴⁵ The European Technology and Travel Services Association (ET TSA), reflecting similar views on behalf of online travel agencies, said that the UK would be alone in the EU in having such a requirement.⁴⁶

19. Many airlines were also opposed to Flight Plus. Although, as airlines, they will not be required to comply at this stage, they were evidently concerned about the possibility of being brought into the ATOL scheme at a future date. In addition, a number of airlines have holiday companies that are within the ATOL scheme and would have to comply with Flight Plus. BAR UK said that the Flight Plus proposals “impose onerous liabilities and discourage their applicability”.⁴⁷ Flybe was concerned that it would have to invest in systems and take responsibility for the relatively small number of car hire bookings that its customers made with Avis through its website. The airlines' views may also reflect their concerns that the Government, as part of EU reform of the Package Travel Directive, may seek to include ticket-only sales by airlines within the ATOL scheme (or its equivalent) at some future point.

42 CAA *Improving holiday protection: Your guide to how ATOL is changing*, February 2012 <http://www.caa.co.uk/docs/2094/Guide%20To%20How%20ATOL%20is%20Changing.pdf>

43 Ev 72

44 Ev 73

45 Ev 59

46 Ev 74, paras 4-6

47 Ev 39, para 2.2

Additional coverage and contributions

20. According to the Government, as a result of Flight Plus, an additional six million holidays will be ATOL protected, increasing the number of consumers benefiting to some 22 million a year.⁴⁸ This would represent approximately 60% of the 36 million people travelling abroad for a holiday.⁴⁹ The Minister acknowledged that the figures involved a “degree of speculation” and the exact impact was not easy to calculate. However, she was confident that significantly more holidays would be covered as a result and that, without these measures, an increasing number of bookings would fall outside the ATOL scheme.⁵⁰ Insofar as more holidays are covered by ATOL, there will be greater protection for consumers. Whether the increased coverage will result in greater clarity for consumers is another matter. Some of our witnesses thought there would not be.⁵¹

21. The other major impact of these measures, according to the Government, will be additional net APC payments to the Air Travel Trust Fund. The six million Flight Plus bookings will yield additional APC of £83 million over 10 years.⁵² The Government has assumed that the APC will stay at £2.50 for four years and thereafter reduce to £1.50.⁵³ Lowcosttravelgroup, however, challenged the Government’s six million figure, saying that it had been contradicted by the CAA and that the travel industry would continue to find ways around the regulations. The number of packages covered and, therefore, the payments to the ATTF could be lower than forecast.⁵⁴

22. The Government takes the view that the difficulties with the ATOL scheme, particularly the deficit in the ATTF, need to be urgently addressed. The Government’s principal short-term solution is the introduction of Flight Plus. The Minister said that the main purpose was to extend ATOL protection to more holidaymakers rather than to reduce the ATTF deficit.⁵⁵ It is not evident, however, that the consumer wants this additional mandatory protection or that it will improve clarity for the consumer when booking: depending on how and when the “package” is assembled, it may or may not be protected by ATOL. Flight Plus will impose significant financial and practical burdens on sections of the travel industry, which ultimately will increase costs for consumers. **We welcome the ATOL protection that Flight Plus will provide for a significant additional number of holidaymakers. However, the failure of the Government to demonstrate that it has based these reforms on evidence of consumer views, leaves it open to the accusation that it is primarily concerned about reducing the deficit in the Air Travel Trust Fund. The Government needs to address this issue.**

48 The DfT’s Impact Assessment (paras 53-73) assumes that, with no change, the number of holidays with ATOL protection will reduce by 2 million (to 16 million) over the next four years. It estimates that Flight Plus will reverse this reduction and add a net 4m holidays, benefitting up to 22 million consumers per year (para 116).

49 Ev 32, Q120

50 Q133

51 Ev 39

52 The impact of the increased number of APCs is partly offset by the reduced APC on all bookings after Year 4 so the net effect is an additional £8.5m over the 10 year period. DfT, Impact Assessment, paras 91-93.

53 DfT, Impact Assessment, p 22.

54 Ev 50. The DfT has not made a formal assessment of how many holidays are likely to fall outside Flight Plus as a result of firms seeking to avoid the new regulations (Q 139).

55 Q145

23. We recognise that Flight Plus arrangements are now underway and the industry may not welcome further change at this stage. We are not convinced, however, that the Government has arrived at the best definition of Flight Plus. On the one hand, it appears to extend the scope of ATOL too far: it is not clear why a flight and car hire should constitute a package that warrants ATOL protection. On other hand, the two-day Flight Plus booking window is likely to be too short for the booking needs of some consumers. **We recommend that the Government monitors the first year of operation of Flight Plus, particularly in terms of the number of Flight Plus bookings made, the extent to which companies seek to circumvent it, its impact on consumer costs and the views of consumers towards it. This information should be provided as part of the consultation on further ATOL reform that is intended to follow the passage of the Civil Aviation Bill.**

ATOL certificates

24. The other main short-term measure is the requirement for customers to be issued with an ATOL certificate. The CAA has designed these requirements and has provided guidance.⁵⁶ The ATOL certificate is a new document, which must be supplied when accepting payment for every ATOL protected holiday and replaces current documentation requirements. The ATOL certificate will be a standardised document issued by all ATOL holders or their agents. Each ATOL certificate must have a unique reference number.

25. The comments we received regarding ATOL certificates were largely about the practicalities—the time needed to install the systems, the costs of issuing bespoke certificates and the requirements to reissue the certificates if customers added to or changed their bookings.⁵⁷ ETTSA said that online travel agents needed 12 months to implement these measures.⁵⁸ The Government decided to put back the requirement to issue an ATOL certificate from 30 April to 1 October 2012.⁵⁹

Information for all consumers

26. The ATOL certificates should increase clarity for consumers and for the CAA in the event of a tour operator or airline failure.⁶⁰ We welcome this greater clarity. However, there remains a risk that those consumers who are not covered by ATOL, including those constructing their own travel packages or booking flights only, will be none the wiser. Theresa Villiers said it was not possible to insist on the issuance of a “reverse ATOL certificate” for bookings which do not come within the scope of the ATOL scheme.⁶¹ In our view, however, more could be done to inform passengers not covered by the ATOL scheme

56 CAA Guide Ibid

57 Ev 74, paras 7-9

58 Ev 74, para 14

59 Q148

60 The CAA has had to go to court to establish who is covered by the scheme (Ev 29).

61 Q147

of their situation and options. This should be part of the consumer awareness campaign that the CAA is planning for later this year.⁶²

27. We recommend that the Government and CAA work with the airlines, the travel industry and consumers to develop a code of practice on information for consumers making overseas holiday or travel bookings. All consumers booking an overseas flight that is not ATOL protected should be provided with information outlining the potential consequences to the consumer of airline insolvency, the extent of any cover provided and the options available to consumers to protect themselves against such risks. This should include a link to more detailed information, to be provided on the CAA website.

3 Long-term reform

Objectives

28. The Government has two key objectives for its long-term reform of ATOL:

[...] to:

- Further improve the clarity of the scheme and develop a more consistent and coherent regulatory framework for businesses.
- Look at options for how ATOL is managed and financed once it is financially self-sustaining.⁶³

29. We heard from a number of witnesses that the Government's objectives for ATOL reform were not sufficiently clear. For example, Jill Brady of Virgin Atlantic questioned whether the purpose of the Government's aim was to provide consumer protection or repatriation cover.⁶⁴

30. The Government's long-term reform objectives seem to involve modifications and extension of the existing ATOL scheme rather than a comprehensive review of the issues and options. In our view, there are two purposes of the ATOL scheme which have not been sufficiently disentangled. ATOL provides protection for the consumer's holiday and an assurance that the holidaymaker will not be stranded abroad. Consumer protection is essentially a private matter, though subject to the EU Package Travel Directive; repatriation of UK citizens involves the passenger and the state. In devising future schemes, we recommend that the Government should distinguish more clearly between these two issues.

Holiday sales by airlines and agents for the consumer

31. Under current legislation, holidays sold by airlines are outside both the EU Package Travel Directive and the primary legislation on which the ATOL scheme is based. In addition, some companies which may appear to be operating as travel agents are, in law, acting as agents for the consumer and are not required to provide ATOL protection. The Government proposes to change this by taking powers in the Civil Aviation Bill:

The Civil Aviation Bill was introduced into Parliament on 19 January, and includes a provision to widen the Secretary of State's existing power to regulate the provision of flight accommodation. The new power gives the Secretary of State the option to create new regulations to require airlines to hold an ATOL for the sale of their flight-inclusive holidays. It would also allow the Secretary of State to require businesses procuring flight-inclusive holidays for clients as 'agents for the consumer' to hold an ATOL.⁶⁵

63 Ev 55, para 8

64 Q50

65 Ev 55, para 15

32. While there is little disagreement on the inclusion of agents for the consumer within the ATOL scheme, the travel industry is divided on the matter of including the airlines. ABTA and others want not only holidays but all overseas flights sold by airlines brought within the ATOL scheme.⁶⁶ The lowcosttravelgroup recommended a two-tier payment system, including flight-only sales by airlines. Flights would attract a lower contribution (say 50p) to cover repatriation costs only while those consumers booking holidays would pay a higher contribution (say £1.00) for full ATOL protection.⁶⁷ The airlines, however, are generally opposed to these measures.

33. We welcome the inclusion of provisions in the Civil Aviation Bill to bring holiday sales by airlines and agents for the consumer within the ATOL scheme. It is an anomaly that one type of company should be required to provide ATOL protection while another type of company, selling the same product, is not. This will help to create consistency for consumers and a more level playing field for the industry. However, extending the ATOL protection to holiday sales by airlines does not mean that flight-only sales by airlines should be brought within the ATOL scheme.

Flight-only sales by airlines

34. The airlines are particularly concerned that flight-only bookings might be included in the ATOL scheme at some future stage. Indeed, in 2005 the CAA attempted to impose a £1.00 levy on all outbound flights to provide a fund for ATOL. This move was rejected by the then Government.⁶⁸ The Government says that it cannot now include flight-only sales by airlines in the ATOL scheme:

The power in the Civil Aviation Bill would not permit all flights sold by airlines to be protected under the ATOL scheme. It would not be possible to do so unless insolvency protection for airline passengers was required at EU level. The European Commission is currently considering options on this issue, the Government will respond to any proposals as and when they are made.⁶⁹

35. The airlines argued that the incidence of scheduled airline failure was uncommon and that, in the few instances that it had occurred, the industry had collaborated to assist passengers to return to the UK at reasonable cost.⁷⁰ Many passengers also had private insurance cover or were able to claim refunds from their credit card company.⁷¹

36. Despite their opposition to being included in ATOL, the airlines would appear to welcome moves towards a clearer and more consistent approach from the Government and EU to consumer protection for airline passengers. John Hanlon of the European Low Fares Airlines Association advocated closer regulatory oversight of airline companies, an industry-run “rescue fares” scheme and mandatory opt in/out for Scheduled Airline

66 Ev 35, para 18

67 Ev 50

68 Ev 32. The CAA now has no position on whether a levy should be imposed flight-only sales by airlines (Qq 108-215).

69 Ev 55 para 21

70 Ev 27 and Q 55

71 Ev 57

Failure Insurance (SAFI).⁷² He told us that its members offered travel insurance policies which included scheduled airline failure cover.⁷³

37. The Government has said that it does not intend to bring flight-only sales by airlines within the ATOL scheme, and cannot do so under EU law. The risks—admittedly small—to individuals and to the Government of passengers being stranded abroad if an airline fails will therefore remain. We recommend that the Government, in collaboration with the CAA and the airline industry, work towards simpler but more comprehensive arrangements that minimise the Government’s liability and provide clear choices for the individual. These arrangements should be based on the following principles:

- **explicit choices for consumers to opt in or out of repatriation cover;**
- **based on evidence of consumer preferences and needs;**
- **clear information for consumers, and**
- **industry-designed and funded.**

If EU legislation is a barrier, the Government should use its involvement in reform of the EU Package Travel Directive to press for necessary changes.

Air Travel Trust Fund

38. The debate about ATOL reform is as much about costs as principles, at the heart of which is the level of the ATOL Protection Contribution (APC)—the per-passenger levy that ATOL holders are obliged to pay to the CAA. This was introduced in 2008 at £1.00 per passenger, to reduce the deficit that had built up in the Air Travel Trust Fund (ATTF). Previously the scheme had operated on the basis of bonds and guarantees.⁷⁴ Less than two years later, in October 2009, the APC was raised to £2.50 as a consequence of the collapse of XL Leisure. Since the introduction of the APC, the number of ATOL bookings has fallen sharply.⁷⁵ A number of witnesses told us that, in a price-sensitive market, the APC represented a significant disadvantage for those companies obliged to pay it who were increasingly competing with airlines and others who were not, even though the product was largely the same.⁷⁶ The airlines, concerned that the APC may be applied to flight-only sales in the future, said that £2.50 in relation to a no-frills flight costing perhaps only £50 was a significant and unreasonable additional cost. **It is unfair that those consumers booking a short, low-cost package pay the same ATOL Protection Contribution (currently £2.50 per passenger) as those booking an extensive luxury holiday. We recommend that the level of ATOL Protection Contribution be made broadly proportionate to the value of the booking.**

72 Qq Q47, 54, 56

73 Ev 27

74 Ev 29, para 2.7 and Ev 50

75 DfT, Impact Assessment, p4

76 Q 9

39. The CAA recommends the level of the APC and it is set by Government. This seems to be a relatively slow and inflexible mechanism, out of step with the reforms to the CAA's powers in the Civil Aviation Bill. The CAA has said it hopes to reduce the APC once the ATTF deficit is eliminated.

40. The Government's Impact Assessment of the ATOL reforms makes the assumption that the APC will stay at £2.50 for four years and thereafter reduce to £1.50. The Government has projected that, on current trends and without ATOL reform, it expects the ATTF deficit to be eliminated within three years. With the short-term Flight Plus changes, the deficit is expected to be reduced more quickly.

41. We recommend that the Government proceeds as soon as possible to develop an industry-financed ATOL scheme. This should take account of the twin requirements of protection for consumers and for the taxpayer. It should be overseen by the CAA with the travel industry playing a substantial role in the design and operation of the scheme. The scheme must ensure that costs are allocated fairly across the industry, according to risk and benefits, without undue cross subsidy.

4 Conclusions

42. Overseas travel and holiday bookings have some unique features for the consumer: significant cost, deferred take-up and the risk of losing one's money or being stranded abroad. From the Government's perspective there is also the potential liability that it may have to repatriate UK citizens at public expense.

43. For consumers booking a conventional package holiday through an ATOL travel agent or tour operator, the current scheme works reasonably well, providing protection at modest cost. However, the current scheme is not sufficiently clear for the industry or the regulator; and it is anomalous and unfair to certain sections of the travel industry. It is also in a parlous financial state, surviving only with the help of a £30 million Government guarantee.

44. Despite demands by the industry for reform, the short-term changes being introduced by the Government are not widely supported. The ATOL certificates may improve clarity but the extent to which Flight Plus will bring in sufficient funds to eliminate the ATTF deficit cannot be predicted with certainty. Further insolvencies and claims on the fund cannot be ruled out. Other aspects are also of concern to parts of the industry. Some smaller companies were very concerned about the requirements to provide a bond.⁷⁷ Others were concerned at what they perceived as VAT anomalies.⁷⁸

45. The Government intends to widen the ATOL scheme to include holiday sales by airlines but it does not appear to have a policy on flight-only sales by airlines. As such, passengers may be unclear about their liability in the case of airline insolvency and the Government will remain liable for the cost of repatriating UK citizens stranded abroad.

46. Ultimately the acceptability of ATOL comes down to money: who pays and how much. A number of the firms currently outside the ATOL scheme believe that they are being brought in to bail out a scheme that has got into trouble through no fault of theirs. If the costs of ATOL cover can be reduced to the 2008 level of £1.00 per passenger, many of the objections from the travel industry to its wider application will probably subside. However, if it remains at the present level of £2.50 the arguments will continue. The efficient and equitable operation of the scheme by the Government and the CAA is therefore critical.

77 Ev 50

78 AITO was concerned that some companies were able to avoid paying VAT on the Tour Operator's Margin Scheme, Ev 44, para 1.3

Conclusions and recommendations

Short-term reform

1. The Government has not clearly based its reforms to the ATOL scheme on evidence from consumers. We recommend that the Government undertakes research into consumer awareness of the consequences to holidaymakers of a failure by their airline or tour operator, the consumer protection options available to them, and their views on whether and in what ways the ATOL scheme should be extended. The results should be used to inform the consultation on further ATOL reform that is intended to follow the passage of the Civil Aviation Bill. (Paragraph 14)
2. We welcome the ATOL protection that Flight Plus will provide for a significant additional number of holidaymakers. However, the failure of the Government to demonstrate that it has based these reforms on evidence of consumer views, leaves it open to the accusation that it is primarily concerned about reducing the deficit in the Air Travel Trust Fund. The Government needs to address this issue. (Paragraph 22)
3. We recommend that the Government monitors the first year of operation of Flight Plus, particularly in terms of the number of Flight Plus bookings made, the extent to which companies seek to circumvent it, its impact on consumer costs and the views of consumers towards it. This information should be provided as part of the consultation on further ATOL reform that is intended to follow the passage of the Civil Aviation Bill. (Paragraph 23)
4. We recommend that the Government and CAA work with the airlines, the travel industry and consumers to develop a code of practice on information for consumers making overseas holiday or travel bookings. All consumers booking an overseas flight that is not ATOL protected should be provided with information outlining the potential consequences to the consumer of airline insolvency, the extent of any cover provided and the options available to consumers to protect themselves against such risks. This should include a link to more detailed information, to be provided on the CAA website. (Paragraph 27)

Long-term reform

5. The Government's long-term reform objectives seem to involve modifications and extension of the existing ATOL scheme rather than a comprehensive review of the issues and options. In our view, there are two purposes of the ATOL scheme which have not been sufficiently disentangled. ATOL provides protection for the consumer's holiday and an assurance that the holidaymaker will not be stranded abroad. Consumer protection is essentially a private matter, though subject to the EU Package Travel Directive; repatriation of UK citizens involves the passenger and the state. In devising future schemes, we recommend that the Government should distinguish more clearly between these two issues. (Paragraph 30)
6. We welcome the inclusion of provisions in the Civil Aviation Bill to bring holiday sales by airlines and agents for the consumer within the ATOL scheme. It is an

anomaly that one type of company should be required to provide ATOL protection while another type of company, selling the same product, is not. This will help to create consistency for consumers and a more level playing field for the industry. However, extending the ATOL protection to holiday sales by airlines does not mean that flight-only sales by airlines should be brought within the ATOL scheme. (Paragraph 33)

7. The Government has said that it does not intend to bring flight-only sales by airlines within the ATOL scheme, and cannot do so under EU law. The risks—admittedly small—to individuals and to the Government of passengers being stranded abroad if an airline fails will therefore remain. We recommend that the Government, in collaboration with the CAA and the airline industry, work towards simpler but more comprehensive arrangements that minimise the Government’s liability and provide clear choices for the individual. These arrangements should be based on the following principles:
 - explicit choices for consumers to opt in or out of repatriation cover;
 - based on evidence of consumer preferences and needs;
 - clear information for consumers, and
 - industry-designed and funded.

If EU legislation is a barrier, the Government should use its involvement in reform of the EU Package Travel Directive to press for necessary changes. (Paragraph 37)

8. It is unfair that those consumers booking a short, low-cost package pay the same ATOL Protection Contribution (currently £2.50 per passenger) as those booking an extensive luxury holiday. We recommend that the level of ATOL Protection Contribution be made broadly proportionate to the value of the booking. (Paragraph 38)
9. We recommend that the Government proceeds as soon as possible to develop an industry-financed ATOL scheme. This should take account of the twin requirements of protection for consumers and for the taxpayer. It should be overseen by the CAA with the travel industry playing a substantial role in the design and operation of the scheme. The scheme must ensure that costs are allocated fairly across the industry, according to risk and benefits, without undue cross subsidy. (Paragraph 41)

An efficient and equitable scheme

10. Ultimately the acceptability of ATOL comes down to money: who pays and how much. A number of the firms currently outside the ATOL scheme believe that they are being brought in to bail out a scheme that has got into trouble through no fault of theirs. If the costs of ATOL cover can be reduced to the 2008 level of £1.00 per passenger, many of the objections from the travel industry to its wider application will probably subside. However, if it remains at the present level of £2.50 the arguments will continue. The efficient and equitable operation of the scheme by the Government and the CAA is therefore critical. (Paragraph 46)

Formal Minutes

Tuesday 24 April 2012

Members present:

Mrs Louise Ellman, in the Chair

Steve Baker
Mr Tom Harris
Julie Hilling
Kwasi Kwarteng

Mr John Leech
Paul Maynard
Iain Stewart
Julian Sturdy

Draft Report (*Air Travel Organisers' Licensing (ATOL) reform*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 46 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Seventeenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence, reported and ordered to be published on 31 January and 7, 22 and 28 February, was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 16 May at 2.30 pm]

Witnesses

Tuesday 31 January 2012

Page

Mark Tanzer, Chief Executive, ABTA, **Noel Josephides**, Director, Association of Independent Tour Operators, and **Mike Bowers**, General Counsel UK & Ireland, TUI Travel PLC Ev 1

Michael Carrivick, Chief Executive, Board of Airline Representatives in the UK, **John Hanlon**, Secretary General, European Low Fares Airline Association, and **Jill Brady**, Director of HR and External Affairs, Virgin Atlantic Ev 9

Dame Deirdre Hutton, Chair, and **Richard Jackson**, Group Director, Consumer Protection Group, Civil Aviation Authority Ev 16

Wednesday 22 February 2012

Rt Hon Theresa Villiers MP, Minister of State, and **Kate Jennings**, Head of Aviation Policy Implementation Division, Department for Transport Ev 22

List of printed written evidence

1	European Low Fares Airline Association	Ev 27
2	Virgin Atlantic Airways	Ev 28
3	Civil Aviation Authority	Ev 29, Ev 32
4	ABTA, the Travel Association	Ev 35
5	Board of Airline Representatives in the UK (BAR UK)	Ev 39
6	Association of Independent Tour Operators	Ev 44
7	TUI Travel PLC	Ev 48
8	lowcosttravelgroup1 (LCTG) ltd	Ev 50
9	Department for Transport	Ev 55
10	Flybe	Ev 57
11	Expedia	Ev 59
12	HolidayTravelWatch	Ev 62, Ev 64
13	Society of Our Lady of Lourdes	Ev 72
14	lastminute.com	Ev 73
15	European Technology and Travel Services Association (ETTSA)	Ev 74
16	ebookers.com	Ev 76
17	Association of British Insurers	Ev 77

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

Seventeenth Report	Air Travel Organisers' Licensing (ATOL) reform	HC 1798
Sixteenth Report	Sulphur emissions by ships	HC 1561
Fifteenth Report	Counting the cost: financial scrutiny of the Department for Transport 2011–12	HC 1560
Fourteenth Report	Cable theft on the Railway	HC 1609 (HC 1933)
Thirteenth Report	Draft Civil Aviation Bill: Pre-Legislative Scrutiny	HC 1694
Twelfth Report	Cost of motor insurance: follow up	HC 1451 (HC 1934)
Eleventh Report	Thameslink rolling stock procurement	HC 1453 (HC 1935)
Tenth Report	High Speed Rail	HC 1185-I (HC 1754)
Ninth Report	Out of the jam: reducing congestion on our roads	HC 872 (HC 1661)
Eighth Report	Bus Services after the Spending Review	HC 750 (HC 1550)
Seventh Report	Taxis and private hire vehicles: the road to reform	HC 720 (HC 1507)
Sixth Report	The Coastguard, Emergency Towing Vessels and the Maritime Incident Response Group	HC 948, incorporating HC 752-i (HC 1482)
Fifth Report	Keeping the UK moving: The impact on transport of the winter weather in December 2010	HC 794 (HC 1467)
Fourth Report	The cost of motor insurance	HC 591 (HC 1466)
Third Report	Transport and the economy	HC 473 (HC 962)
Second Report	Financial Scrutiny of the Department for Transport	HC 683
First Report	Drink and drug driving law	HC 460 (Cm 8050)
Tenth Special Report	The proposal for a National Policy Statement on Ports: Government Response to the Committee Fifth Report of Session 2009–10	HC 1598
Third Special Report	The performance of the Department for Transport: Government response to the Committee's Fourth Report of Session 2009–10	HC 549
Second Special Report	Update on the London Underground and the public-private (PPP) partnership agreements: Government response to the Committee's Seventh Report of Session 2009–10	HC 467
First Special Report	The major road network: Government response to the Committee's Eighth Report of Session 2009–10	HC 421

Oral evidence

Taken before the Transport Committee on Tuesday 31 January 2012

Members present:

Mrs Louise Ellman (Chair)

Jim Dobbin
Julie Hilling
Kwasi Kwarteng
Mr John Leech

Paul Maynard
Iain Stewart
Graham Stringer
Julian Sturdy

Examination of Witnesses

Witnesses: **Mark Tanzer**, Chief Executive, ABTA, **Noel Josephides**, Director, Association of Independent Tour Operators, **Paul Evans**, CEO, lowcosttravelgroup, and **Mike Bowers**, General Counsel UK & Ireland, TUI Travel, gave evidence.

Q1 Chair: Good morning, gentlemen. Welcome to the Transport Select Committee. Could each of you give your name and the organisation you are representing? This is for our records.

Mike Bowers: My name is Mike Bowers. I represent TUI Travel PLC.

Paul Evans: Good morning, Madam Chair. My name is Paul Evans and I represent the lowcosttravelgroup.

Noel Josephides: I am Noel Josephides. I represent the Association of Independent Tour Operators.

Mark Tanzer: I am Mark Tanzer. I represent ABTA, the Travel Association.

Q2 Chair: Can ATOL be reformed or do you think it is better just to start again? Who would like to give me a view on that?

Mike Bowers: We think that ATOL can be reformed. There is a good basis within the ATOL regulations to move forward. From our perspective the changes that have been proposed by DfT, working with the CAA and the industry, are a good and helpful set of additions. What they do, and what they do very helpfully, is start to bring into the scope of regulation what people in their own terms consider to be holidays. What this industry needs, when people buy holidays and what they think of in their own terms as holidays, is for holidays to be regulated in the same way. This is a very good first step towards that, but it is not sufficient on its own because the step that is currently proposed through the reformed ATOL regulations simply brings in everyone except airlines selling holidays. What we need to do next, of course, is to bring those airlines selling holidays into scope so that everyone buying a holiday knows that they have a common set of protections and the industry knows that they have a common playing field upon which to compete.

Q3 Chair: What is the biggest problem about holiday insurance from the point of view of the consumer—the holiday maker?

Mark Tanzer: On pure holiday insurance our research suggests that people, even though they should buy it, do not. There is that problem. In a very price-sensitive market it is an extra that they do not purchase; so they

can, and do, end up travelling without any kind of protection at all. Even where insurance policies exist, as ever, the detail is in the small print as to exactly what that will do in the event that your holiday company goes bust. Of course, the problem is that when it does go wrong you are very often overseas. Whether or not you have insurance, it is ultimately going to be a responsibility of the Government to make sure that people are able to get home. Insurance on its own is a pretty flawed mechanism for everything that a holiday needs in terms of protection.

Q4 Chair: Mr Josephides, do you have a view on this? Where is the biggest problem from the point of view of the traveller?

Noel Josephides: I do have a view. Because of the small print on a lot of policies, very often, when there is a failure, there are many exclusion clauses which would enable the insurer to avoid responsibility. If we are to use insurance in order to go forward to cover holidays and Flight Plus, then we have to make sure that Government look very closely at the wording of these policies. The other problem that we have is with what we call SAFI policies, which are the airline failure policies. Very often an insurer will decide to withdraw cover and that, in itself, causes the failure of the airline.

Q5 Chair: Do we need an ATOL scheme at all? Why can't people just sort this out for themselves as they do with anything else? They can get insurance if they want it and, if they do not, take a chance with it. Mr Evans, do you have a view on that?

Paul Evans: I think that is a very good question. It is a broad-ranging issue. In some senses you are covered with your credit card. In another sense you might have some travel insurance, but, as Mark has quite rightly highlighted, repatriation is a key issue. The Civil Aviation Authority and Department for Transport have a very difficult job trying to put in the correct regulation. It is not an easy or straightforward issue. Just take this weekend. Spanair went out of business. Later on, no doubt, you will hear that airlines don't go bust. Airlines do go bust. If you were looking at an airline going bust on a Greek island, as XL did, or

as Globespan did recently, or previously to that International Leisure Group, you need to get home. Insurance will get you your money back. The credit card might get you your money back, but there is a time-scale difference between getting home and getting your money back. That is the key thing on which we will probably all agree. The ATOL scheme gets you home, but it also gets you your money back. I am not sure we will necessarily agree on everything else, but we will agree at least on that particular item.

Q6 Chair: You said in the written evidence, Mr Evans, that you think the whole scheme is about trying to protect the biggest companies like Thomas Cook. Do you really mean that?

Paul Evans: There are three areas where I believe we do not have a level playing field. The legislation as it is proposed is being introduced with undue haste. I welcome the opportunity to talk to the Committee and ask you to consider that and hopefully make some recommendations. If you go back to 2008, there was a scheme that had been in operation for 25 years, and it worked extremely successfully even though it had a deficit. It did not have the deficit that it now has, which is something over £40 million. That scheme in 2008 released TUI and Thomas Cook from their bond obligations. It allowed them effectively to go on a buying frenzy because they no longer had to tie up £500 million in bonds. They only had to pay a fee that was originally introduced at £1, which has since gone up to £2.50 per passenger. They have had one Christmas present where they were released from £500 million. They are now about to get another one. I am a travel agent; Noel is a tour operator; Mr Bowers represents a large tour operator, and ABTA is a regulator. As a travel agent it is hard. We are about to be penalised and asked to pay £2.50 and, in many cases, we will also be asked to have a bond. We do not believe it is fair that you should be asked to have a bond and to pay £2.50.

The second issue, as Mr Bowers has quite rightly said, is that an airline does not have to pay that fee. If you look at the market, why are we in the position that only 48% of passengers are now covered? The reason is because no-frills carriers have come in and customers have chosen to book on price and flexibility. The market has set those rules. As a result of that people are now booking holidays in different ways. Yet those very same airlines, one of which I help with their tour operation, are not necessarily paying that fee. You have one rule for one and a different rule for others. They will argue, "We are not going to go bust so we don't have to pay it." If you were in my operations department this weekend clearing up the mess of the fourth airline that has gone bust, you would take a very different view.

Q7 Julian Sturdy: I would like to apologise to the panel because I am going to have to leave halfway through to go to a delegated Committee. There seems to be broad support for extending the ATOL scheme in its broad principles but some criticism over proposals for it being slightly short-term, rushed and maybe costly as well, and also not delivering potentially the level playing field that it set out to do.

With that in mind, do you think that travel companies and airlines will continue to find ways round the new proposals in their current form, as they have done in the past?

Mike Bowers: There will be some of that. It is incumbent therefore upon Government to find ways to make sure that those loopholes are plugged. The most obvious example is dynamic operators and dynamic travel agents saying that they are going to start acting as agent for the consumer. If you are in the steps of the customer, they do not know what that means and they really don't care. They want to be able to buy a holiday with confidence and to know that, if something goes wrong, then they will have a level of protection that they are entitled to think they are going to get. That is what the ATOL scheme covers. That is why we say, when people buy holidays, they need something they can trust. The ATOL scheme is a well-established brand. It is well established in the customer mind. Let us not throw all of that out. Let us extend it and make it so that everybody buying what they consider to be a holiday has that protection. I echo what Paul said. Yes, we do need airlines to come into that scheme as well, but just because we cannot do everything at once does not mean we should not do what we can do now, because it is a step in the right direction.

Q8 Julian Sturdy: Do any of the other panel have views?

Mark Tanzer: Obviously the biggest avoidance mechanism is the big hole that has been left open, which are holiday sales by airlines. They do not have to do anything; they just have to carry on. Not only is it a gap, but, perversely, it will drive people to the one sector that is unprotected. It is a very price-sensitive market. Online holidays are listed in terms of the cheapest first. Those top listings will be the ones that are not paying the additional protection costs, so you will find consumers automatically being moved towards the one bit of the market where there is no protection if that is not closed as soon as possible.

Q9 Julian Sturdy: How many more holidays do you think will be covered under the new proposals? How many more will that deliver?

Paul Evans: Publicly, the Civil Aviation Authority is claiming that between four million and six million additional holidays will be covered, but that will still leave a huge number—I do not know whether it is 46% or 56% but somewhere in that area. It will still leave 40% of people travelling on airlines effectively uncovered. That is part of our argument. We would like to see the net thrown wider at the same time, because, if you do not do that, you are going to have an uncompetitive position of some people paying and some people not.

I will give you an example, if I may. If you book on lowcostholidays, you will pay £2.50 under this scheme. If you book on easyJet Holidays, which is on the same system run by me, for exactly the same hotel on exactly the same flight, you will not pay that £2.50. That cannot be right or fair. If you are a small travel agent trying to package that holiday, you may be asked to take a bond and pay the £2.50, and yet, if

31 January 2012 Mark Tanzer, Noel Josephides, Paul Evans and Mike Bowers

you are TUI, you will not be asked to take the bond. You will just be asked to pay the £2.50.

Q10 Chair: Do you not think the traveller would understand that they got a benefit from paying a premium? Would they see it like that?

Paul Evans: No; it is the company that will pay the bond, not the individual. The passenger will pay the £2.50. They will pay £2.50 on both, but one business will be asked to take a bond by the Civil Aviation Authority in addition to paying the £2.50, while another company, i.e. a big tour operator, will not be asked to take that bond. We believe that that puts pressure on small business.

Noel Josephides: I would like to correct what Paul has said. Initially, there would need to be a bond because they are coming into the scheme, but, once you have proved your financial fitness, then everybody just pays £2.50. The majority of tour operators just pay £2.50, whether they are small or large.

Q11 Chair: You are not agreeing with Mr Tanzer.

Paul Evans: It is for four years.

Q12 Iain Stewart: I would like to press you a little further on the overlap, or lack thereof, between ATOL and travel insurance. A number of you have said that the small print of travel insurance policies would not cover you for repatriation and other elements. Is that lack of cover in travel insurance because ATOL exists, and, if ATOL did not exist, then the market would cover that gap so that personal travel insurance would be a catch-all? Then it would be up to the consumer to decide whether they want to protect themselves or not, in the same way as they decide whether to insure their house contents.

Mark Tanzer: In the medium term, a system of financial protection that is basically handed to the industry and the financial markets would be a better solution. To get to that, there is a deficit that has to be paid off, and you have to have markets that are comfortable with the level of risk that they would be taking on. For that, they have to have experience and they have to get comfortable with the nature and quantum of the risk. You could not simply turn off ATOL today and say to the markets, "Just go and insure it." The strategy in the medium term is that that is what you would want to do. Effectively, the Government would be a licensing body and would put the obligation on the travel companies, which they already have under the Package Travel Regulations, to provide protection. That is provided by a mixture of insurance and bonds. That is probably where we should be going. As I say, you cannot do it in one immediate jump.

Q13 Iain Stewart: I would like to ask another question in this field. Just as an experiment at the weekend, I went through a number of airline websites to book, notionally, a flight and a holiday. Every single one said, "Do you want to add travel insurance?" How valuable is it to airlines to have that product? Is there too much of an overlap there that we need to be looking at addressing?

Paul Evans: You probably need to separate travel insurance from repatriation insurance. Travel insurance will tend to cover you for baggage, illness and loss of something on the holiday.

Q14 Iain Stewart: Does the consumer appreciate that?

Paul Evans: No, I do not think they do. That is a very good point. In our view, in the industry, insurance is viewed to cover that. The repatriation element of it is something completely different. The way that they have tried to do it is to say, if you have two weeks' worth of passengers overseas, how much is it going to cost you effectively to bring all those people back who are in resort? To be fair to the Civil Aviation Authority, in the last three or four major collapses they have been absolutely fantastic in sending aircraft out to rescue people, with the help, to be fair, of airlines such as TUI, Thomsons, Thomas Cook and various others. They have flown empty aircraft out to some of these remote places and flown them back at the cost of the scheme. That is one of the reasons why the scheme is in negative deficit.

The problem that we have with the scheme is that you are now trying to tax one particular part, i.e. travel agents, to try and bring them into the net while ignoring the actual cause of the reason that fewer people are now covered, which is the no-frills carriers. What I am saying is that we are not casting the net wide enough. If you want to fill up the Air Travel Trust Fund, as Mark correctly said, which is £40 million in the red, surely the best way is to have a slightly lower charge but throw the net wider so you fill it up more quickly, rather than just try and target an incremental four million or six million people. That is the problem.

Q15 Chair: You think that wider coverage is the solution.

Paul Evans: I do, because, if you have 70 million people going on holiday, you are currently only covering 46% and this is going to bring in another three or four million, we do not believe that this sticking plaster approach is going to solve the problem of an Air Travel Trust Fund that is £50 million or £44 million in the red. If you were to charge a wider net a lower amount, you would top up the fund more quickly and customers would see it as being fair. One of the big problems here is that, if they do not see it as being fair, you are going to get avoidance.

Q16 Mr Leech: I have a number of unrelated questions to each other. First of all, on the issue of insurance, how much extra would the average holiday-goer have to pay in insurance if it was purely done in terms of an add-on to make sure that they were covered for repatriation?

Noel Josephides: It is not only that; it is whether in fact the insurance route would be long term. What you find with insurance companies is that as soon as there is a big claim they tend to walk away from future bookings. It is very difficult to say how much they would charge, but I would say it would be more than £2.50, which is what we pay for our licences.

Mike Bowers: I am concerned that there is potentially a false choice being understood here between personal travel insurance on the one hand and the ATOL scheme or an extension of it on the other hand. The ATOL scheme, in part, responds to a requirement of European law under the Package Travel Directive, which requires anyone selling a package holiday to have in place a system of financial protection. That cannot be done on a voluntary basis through the offering of personal travel insurance.

Q17 Mr Leech: What I am trying to establish is whether or not the ATOL scheme, as it is, is good value for money. My guess is that it would be significantly more than £2.50 on personal insurance to cover people if we were going to have a completely different regime.

Mike Bowers: Absolutely. Of course, £2.50 is not the real economic cost of providing this protection. £2.50 makes a contribution to refilling the deficit. £2.50 is not what it really costs. It is what it costs to provide the protection plus what it costs to fill the deficit. You are absolutely right that there is a cheaper way. Once the deficit is filled it will be cheaper and there is no doubt that there is a role for insurance within that. There is a role for insurance now.

Paul Evans: You can buy an insurance policy that covers your holiday. Forget the selling price, though. The actual cost from one of the two major providers is between 50p and 70p. Airlines currently pay that, and that is why they will argue, "We already have insurance. We are not going to go bust and, therefore, of course we can fly you home." If that airline went bust, with regard to that 50p charge, when we get to the "all levy" fee, we are saying that that fee is almost the same as what you are paying anyway on insurance. You, the airline, are not necessarily going to be penalised because it is not much different from the fee that you are currently paying on insurance.

Q18 Mr Leech: My next question is in relation to why we have a deficit in the ATOL scheme. Mr Evans made a fair point that all the new people that come into the scheme are going to be expected to pay towards the bond. Would it be fair to say—and please correct me if I am wrong—that all the organisations that are going to be brought into the scheme, plus the organisations that are not going to be brought into the scheme, are part of the reason why we have a deficit in the first place because they were not in the scheme? Practically every holiday was covered by the ATOL scheme 20 or 25 years ago. Is that right or wrong?

Mike Bowers: Yes; that is right.

Q19 Mr Leech: In some ways would it not be fair to say that the people that would be brought into the scheme would be contributing to what they should have been contributing over the last 20-odd years?

Mike Bowers: I think that is fair.

Q20 Mr Leech: I would expect TUI to agree.

Mike Bowers: I understand that. The other point to make is that, if you ask who is responsible, you can be sure, for one, it certainly is not TUI, for example, because we have not gone bust. If people are saying,

"It is not us because we were not in the scheme", I think your point is right. You were not in the scheme; you were not contributing. But those customers who are now taking those types of holidays and those types of arrangements that happen to fall somewhat arbitrarily now outside the confines of the scheme are, indeed, part of the reason why the scheme is in deficit. We say it is up to the whole of the industry to be refilling that deficit. There is no reason why it should be landed with just those who are historically members of the scheme.

Mark Tanzer: Can I just put a view for the travel agent community? ABTA has both agents and tour operators. A large number of our members will be coming into this scheme of protection that have been in the position you have just described of being outside it. There is no doubt that there is a sense of disgruntlement that they are being invited late to a party to pay the bill for the people who have left already and that they should not be penalised for that. If it was £1 instead of £2.50, they would find it easier to swallow. That said, our consultation with our members said that they do see the benefit of being within a scheme of protection, having consumer clarity and wanting to come in at the right price, given that the airlines will be competing on a similar basis. I do not think you can really say that they are responsible for the deficit that has accrued in the Air Travel Trust Fund. That is a combination of unfortunate claims experience of companies that have failed without sufficient bonding or the air passenger contribution having been there to pay those. It is an industry problem. The ATOL scheme, as Mr Bowers has said, is one of the cornerstones of financial protection that we have to offer under the Package Travel Regulations and it is not currently viable. If you left it as it was, then the pressure would be on existing ATOL holders to unpackage their packages and to come out. You would have a smaller number of people contributing to an increasing deficit.

Q21 Mr Leech: Would it not be fairer for it to be all-encompassing? I am surprised, because TUI, in many respects, is very keen on the extension but does not want to see airlines involved. Thomson is one of the biggest airlines in Britain, so I can kind of understand why you might be against it for that reason, but, surely from a fairness perspective, it would just be a lot simpler if everyone was included, including all airlines.

Noel Josephides: Four or five years ago that is exactly what the CAA recommended: that there would be a £1 levy on all outgoing flights. As an industry we supported that and worked very hard in order to get that passed. That would have been a very good solution, but the airlines torpedoed that. What we have at the moment is a step approach. We are bringing part of the industry in. Hopefully, we will be able to bring the airlines in for when they sell holidays but unfortunately not flights only. We have been told that that is not going to be possible, although that would solve a lot of problems. At least if we can bring the holiday part in, that would be a further step. We understand that this is likely to happen in a few years.

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If it does not it, will be an immense disappointment in the travel industry.

Q22 Chair: Does anyone else want to give a view on that?

Paul Evans: The reason the fund is in negative is because three massive airlines have gone bust in the last 10 years. XL Airlines cost the fund somewhere in the region of £40 million. Intasun, ILG, which had Air Europe, cost it a huge amount of money. Globespan just two years ago cost it a large amount of money. The reason that the fund is in negative is because of airlines.

The second thing is that, publicly, my colleagues over here have stated that they have considered turning themselves into airlines so that they do not need to pay this fee. Remember that in Europe—and we all operate across Europe—there is not this £2.50 fee. It does not exist. Effectively, it is an insurance scheme, depending upon which country that is. You have the potential of airlines not being included and travel agents being penalised. I believe this is more about raising the barriers to entry for small businesses and travel agents and putting an uncompetitive spin on it than necessarily just about consumer protection. It is about big business protecting itself and raising those barriers to stop people like ourselves growing.

Q23 Chair: Mr Bowers, do you agree with that?

Mike Bowers: No, I do not. I would correct one misapprehension. We are in favour of airlines being brought into the scheme. What we are saying is the fact that they cannot be brought in now, for what we understand to be reasons of parliamentary time and what can be done within—

Graham Stringer: I do not believe that. There is more time available than there has ever been.

Q24 Chair: You think it should be done.

Mike Bowers: We do think it should be done. If it could all be done now, we would be delighted. We certainly believe that airlines selling holidays and airlines selling flights only—if it were capable of being done—should absolutely be brought within the scheme of protection. What we have also said is that, even if it cannot be done now, then the proposals as they stand today are still a good first step.

Just to answer Paul's point, this is absolutely about two things. It is about consumer protection and customers being able to book holidays with confidence. When they book what is, in their own terms, a holiday, then they should have a standard form of protection that they recognise and that everyone in the industry understands. When you look at it also from a competitive perspective, when players are playing in the same field, then they should have the same regulation applied to them. That is fair, that is what the industry needs and that is what we are asking for. That is why we say, yes, this is a step in the right direction, it is a necessary step, but it is not a sufficient step because we also need the airlines in.

Q25 Paul Maynard: I am sure we would all agree that this is the most appallingly complex issue imaginable. I was awake at 3.00 am this morning still

trying to get my head round it. The grave danger is that we can all buy into reform and think that certain things are a good idea, such as bringing Flight Plus into the parameters of ATOL, but one of the common themes that I have read in everybody's evidence has been a concern that the Government are defining Flight Plus too narrowly, excluding bookings of less than 24 hours, and also, if we believe what the Society of Our Lady of Lourdes said in their evidence, hampering those who take more than 24 hours to put a booking together. Does the panel have any views on whether the Government have their definition of Flight Plus right rather than it just being a good idea in principle?

Noel Josephides: We would certainly like to see the time period extended where the accommodation is added to the flight. The problem that the industry has at the moment is that computer systems cannot trace that fact. When someone books a flight today and then in four or five days decides to book accommodation, on these computer systems it looks like two separate bookings. For smaller tour operators that is no problem at all, but for the larger companies there is a technical problem. We believe that it should be extended because it seems ridiculous that somebody who decides to book accommodation a few days after having booked a flight is denied similar protection given by ATOL.

Q26 Paul Maynard: What could be the unintended consequences of having that 24-hour cut-off? Does that not give unscrupulous individuals in the travel industry an opt-out to get around it, as it were? You are all very creative individuals in getting round these rules, I am sure.

Chair: You mean that in the best possible way.

Paul Maynard: I am not sure I do.

Mark Tanzer: As part of the consultation, it is where you draw that line. Is it seven days or is it a day? You have to draw it somewhere, and there will always be someone who can just move the other side of the line to avoid it if they want to. What I would say is that we should not assume that everybody is out to avoid giving this protection. In fact, we have had people saying, "If it is longer than two days, can I buy in anyway because I want to be able to offer the customers the ATOL certificate and I want to be able to say that the holiday is protected?" Far from them seeing this as a way of not having to pay the £2.50, they are saying, "If I am out, can I pay it anyway in order to give that assurance?" A strong consumer awareness campaign built around looking for the ATOL certificate will make the customers say, "I want a protected holiday", and put the onus on the organiser to provide it.

Paul Evans: Mr Maynard, I think this comes into the issue of undue haste. It is a very complicated area, as you have quite rightly indicated. This is the third proposal in three years. We believe it is a sticking-plaster approach and that people are going to circumvent it, whether as agent to the consumer or as an airline. As a result of that, we believe that the fund will not be topped up as quickly as it could have been and that customers will think they are covered as a result when they are not covered. The 24-hour rule

that you have highlighted is just one aspect of it. Being an agent of the consumer is another aspect. If you book a flight only, on TUI you are not covered either, and that is another aspect of it. There are numerous aspects across this piece where you are potentially not covered. The consumer will be confused, the fund will not be topped up, and we do not think that is the right approach.

We are asking for a more measured approach. Slow down. It is almost like a video game controlling the legislation, where we are running around trying to fill this hole, when we had a scheme previously that worked for 25 years. Now we are having the third change in three years. I do not believe the changes as proposed are going to fix it either.

Q27 Paul Maynard: Given the technical issues that Mr Josephides referred to, is the April 2012 deadline for implementation at all realistic?

Noel Josephides: We have to start somewhere. Of course Paul would say that, because he has had 10 years in order to build up his business without any of the regulation that the rest of us have had. We would like to see more people brought into the system and ultimately that airlines are brought into the system as well.

Paul Evans: Madam Chair, can I just correct something?

Chair: What everyone says is being taken down.

Q28 Paul Maynard: We will leave that to one side and I will ask another question. Clearly we are looking into this matter not for the benefit of the travel industry so much as the benefit of the travelling public. They want to know that, when they go on holiday, they are covered. I am not a very sophisticated traveller. I assume that if I pay by credit card I am probably covered, provided I have my travel insurance as well. I struggle as a deregulating wannabe libertarian to wonder why the state has to get involved in this to begin with. Why is it that the travel industry cannot somehow come up with a product? It is only £2.50 per person. Why does the state need to pass legislation to ensure that you all do what you should be doing?

Mark Tanzer: The ATOL protection relates to package holidays with a flight. There is a whole category of package holidays that have protection and are nothing to do with the state scheme. ABTA provides it, AITO provides it, and there are a number of bodies that do exactly as you say. Either through bonds or trust accounts or so forth, they can provide consumer protection without having a state mechanism behind it.

If you look across Europe, it is a very mixed picture as to how people have implemented the Package Travel requirements. As far as I know, there is not a similar state-run scheme to ATOL. There is a trade-run scheme in Holland. Others use a mixture of bonds and insurance. The Italians don't do anything at all. You are quite right to say that a state-run scheme is not an essential element of consumer protection, but, as I have said, it is what we have at the moment. It has worked historically. I disagree with Paul when he says we can take a slow approach to this. The numbers of

people travelling without protection are now sufficiently large that it is urgent.

Q29 Paul Maynard: Do they not have protection with their credit cards? What proportion is protected with credit cards but not ATOL?

Mark Tanzer: The credit card will give you a certain protection in terms of getting your money back, but, if you buy a low-cost fare for £50 and the company goes bust, getting back from where you are will not cost you £25. It could cost you a great deal more than you would get.

Q30 Paul Maynard: But, if we believe the airlines, they are all saints and will give us these really cheap rescue fares that will float down from the sky like manna from heaven.

Chair: Mr Josephides, is that correct?

Noel Josephides: No. You might get a cheap rescue fare, but with the CAA you do not pay to come back. That is the difference. The other very important point is that, if we all come to rely on credit cards in order to bolster up the security of the industry, the credit card companies do not consider themselves to be risk-takers. They simply come to us and ask us to provide the guarantees in case we fail. It is exactly the same.

Q31 Chair: With the credit card system, there is still a cost to the company and then to the passengers. Is that what you are saying?

Noel Josephides: Very much so. A lot of tour operators have to put up bonds to credit card companies because they consider the travel industry a great risk. Whether you put up a bond to the Civil Aviation Authority or to the credit card company, you are still stuck; you still have to do it.

Q32 Chair: Are you saying that the company is still paying, and presumably that is passed to the passenger—the traveller?

Noel Josephides: Yes.

Q33 Jim Dobbin: I am totally confused on the issue of regulation. I got the impression that the feeling was that travel insurance needs regulating but not the industry. Is that what is coming out of this conversation?

Chair: Who can advise us on that?

Noel Josephides: We are saying that the insurance industry could play a hand, but we must make sure that the small print on the policies works and does exactly what it is meant to do. There are policies out there that are not worth the paper they are written on.

Q34 Jim Dobbin: I just thought that needed clarifying. The other point I was going to raise is that Mr Evans suggested that this was being introduced too hastily. When do you think it would be appropriate to introduce some legislation on this? There is a directive expected in 2014 or around that time. Is that too soon?

Paul Evans: We agree that change is required. We support change, as I said, but we want it to be right and we want it to come in once. We do not want to have a third and then maybe next year have a fourth

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because it is still not right. At the moment the time scales vary. It was going to be October. Then it was going to be April this year, and who knows whether it then gets stretched out further. There are a lot of technical issues to do with introducing a new ATOL certificate, which we support, because that would give clarity to the customer that they are actually covered. It will take companies some time to do the technical changes. There are a lot of companies—I believe 600 or so travel agents—that would then have to apply for an ATOL or a mini ATOL, which will take time. There needs to be absolute clarity in marketing to the consumer, which we have talked about, so that they understand whether they are booking something that is covered or not.

We also understand that there is primary legislation under review whether to ban agent for consumer sales. There is a view as to whether Parliament is going to consider bringing airlines into that. There are a number of issues which we believe would need to be looked at, not sequentially but at the same time. If you introduce the part-step, which is being argued here, what you are going to have is one side paying and the other side not paying. That cannot be right. The part that is now paying is the small agent. There is a part that does not have to pay a bond in addition to the £2.50. This is the bit that I want to keep stressing. We are being asked to have a bond and pay the £2.50. They are only being asked to pay the £2.50. Nobody will argue against the £2.50 and all the benefits that repatriation gives you, but not also to pay the bond. That is an unlevel playing field in favour of big business. Also, airlines are not being asked to pay either, which is also unfair.

That is why we think that it is in undue haste and why we would urge the Committee to influence the DfT to take a measured approach and introduce it once. Do the legislation, bring in a wider net, top up the fund more quickly and give us all consumer clarity. The industry has been talking about this for 10 years, and it has been going round and round and round and round. Successive changes have failed to tackle what is required. We would urge you to take a measured approach to arrive at the right solution.

Mark Tanzer: I have a couple of points to follow on from what Mr Evans has said. This idea that it is small agents against large tour operators is not quite right. There are some very large online travel agents out there who are coming in—in fact they have taken the lion's share—and there are some very small tour operators who are currently carrying the cost of protection. Unfortunately, it does not just break down on large versus small companies coming in.

The implementation timetable is very challenging. It has slipped, and we would argue for a back-end of April implementation at the earliest in terms of collecting the air passenger contribution, and maybe October for some of the elements such as the certificate and agency agreements. The industry does need time to get in shape. That is different from holding back the whole regulatory change, which is what is needed now, and I would encourage us to move ahead with that.

Mike Bowers: We would agree with that. This is hard and complicated. It is a really complex area. I am not

at all surprised that Mr Maynard was up at 3.00 am looking through the detail of the regulations. Just because it is hard, difficult and a challenge does not mean that we do not need to push ahead and do it. We do, and there will be teething problems. There will be issues. There will be difficulties for all businesses, large and small, in complying with these new regulations. There will be areas of confusion and doubt and areas where we need to consult with the CAA. We will need flexibility with Government and the CAA. We need open communication between the industry, the CAA and the Government to make sure this all works. Whenever it gets introduced, there will be those who benefit from current inactivity and who say, "Let's push it off; let's not do it yet", because it is in their interests to say that. The fact is that, the sooner we start, the sooner we will get through those difficulties and the sooner we will get to a position that is satisfactory for the consumer, because that is really what this is about.

Q35 Graham Stringer: Mr Tanzer, you were talking about how other European countries implement the Travel Package Directive. Can you give us more detail on that?

Mark Tanzer: As I said, it is a real patchwork in terms of how they have set about this. In Germany, I believe they use a mixture of insurance and then financial guarantees that the companies have to have in place in order to sell package holidays. There have been issues there about whether or not the consumer gets all their money back. At the moment, if the insurance tops out, they just go to the consumer and say, "I'm sorry, you will only get pro rata what you paid." That has been challenged in the European courts because it is not in accordance with the Package Travel Regulations. It is partial implementation there.

As I said, in Holland they have an industry-run trust fund, where the consumer is encouraged not to deal with any member who has not been able to demonstrate that they are complying with this. It is not a statutory scheme but an industry-run scheme. I believe that works satisfactorily. It is a different picture there. We are unique in having so many flights. When people go on holiday, by and large they have to fly, whereas a lot of package holidays in Europe are holidays where people will drive to the destination. It is a different sort of a challenge that they are wrestling with, but the actual implementation has been very inconsistent and enforcement is very inconsistent across Europe.

Q36 Graham Stringer: This might be difficult to answer, but which do you think is the best scheme?

Mark Tanzer: Ours probably. In providing consumer confidence and effective repatriation, the ATOL scheme has worked well. Because of the failures that were mentioned earlier, we have the financial deficit that it has incurred and that has to be put right. If it is extended in the way that is proposed and the airlines are brought in, the ATOL scheme will be a solid scheme. As I have said, in the medium term the financial markets, once they understand this, will be able to take over the role of the mechanism for financial protection. The ATOL scheme has not been

a failed scheme. It has done what it was supposed to do under the Package Travel Regulations.

Q37 Graham Stringer: Should we wait until the next EU directive and not bother changing our own scheme?

Mark Tanzer: You might wait a long time. That is the difficulty at the moment. There is an urgency about this, both from the customers' point of view and the industry being able to compete properly. I would also say that we spend a lot of time in Brussels talking to the Commission about reform, and they are looking at us and how Flight Plus would work as an example that they might take forward. They are very much seeing this as a model that could work for extending it. They recognise the problem that a large number of holidays are now not packages as formerly described. They are looking to see what happens here as to how they take their ideas forward.

Q38 Graham Stringer: My final question, and I do not mind who answers it, is, if you are given a choice between creating a level playing field or getting better consumer protection for nearly 100% of the market, which would you choose? I have been puzzled all the way through the evidence about whether you are more excited about the competition issues or the consumer protection issues.

Mike Bowers: There is a danger there of another false choice. We do not have to have one or the other. The two things point in the same direction.

Q39 Graham Stringer: I understand that you do not have to have one or the other, but I am trying to prioritise them.

Mike Bowers: I do not think you need to. The reason that the two things go together is because, when goods or services are sold and those are similar goods and services, then the two things correlate. The fact is that, on the one hand, the consumer protection objective of having consistent consumer protection for all of those people and, on the other hand, having a consistent regulatory regime correlate. The two things go hand in hand. I do not think there is a need or it is helpful to make a choice between those two things.

Mark Tanzer: Can I make a case for why you would need consumer protection here? A holiday is unusual in a number of respects versus other consumer purchases. First, it is an infrequent and quite sizeable purchase. That puts it immediately in a category where people are not practised. Secondly, when you come out having bought it, you do not come out with something tangible. You come out with a promise of a holiday some time in the future. A lot can go wrong with a promise. The third thing, which goes to Mr Maynard's point, is that with a holiday you buy components. If there is a flight and accommodation, if one bit fails, the holiday has gone. You may not get the refund for the totality. A flight without a hotel is not much of a holiday and a hotel without a flight is even less of a holiday. Getting a refund on your flight does not really help you because you still have the hotel there.

The fourth point, which comes back to the first point I made, is that when it does go wrong you are overseas. That is a very different problem for the Government and it is a problem for you in terms of getting back. As an industry we want a robust system of consumer protection. We have built an industry where consumers feel they can travel to a number of places in the world and it is straightforward, but underlying that is a system of protection that will get them back. It is very important for the confidence of the consumer and the growth and robustness of the industry that we have that.

Paul Evans: I would like to add to that. Consumer protection is important and, contrary to what my colleague has said, we have had consumer protection since the very first day we founded ATOL, ABTA and IATA bonds. That is part of the issue, unfortunately. The problem we have is that this issue has been wrapped in consumer protection when there is an aspect of it that is attempting to raise the barriers to entry. The level playing field approach goes hand in hand, as Mr Bowers has said. These guys are the establishment, effectively.

I would argue to you that, having set up a business in my bedroom seven years ago and now employing 350 staff, it is tough. Regulation is tough. Business needs help. Nobody can argue that a scheme that flies people home from a Greek island is not something that should be supported. We would all support that, but let us do it within a framework that allows business in this country to thrive and succeed and that we do not get artificial barriers to entry. They had a Christmas present in 2008. They do not need another Christmas present whereby there is one rule for one, a different rule for these guys and yet another rule for an airline. That is not fair. All we are asking for is fairness and a level playing field with consumer protection.

Q40 Chair: Mr Josephides, do you want to comment on that?

Noel Josephides: Yes. Those of us that have been around for a long time have grown our businesses within the regulatory framework of ATOL and we have all managed to grow our businesses. It is not true to say that it is restrictive.

The other thing to bear in mind is that, if you abide fully by the Package Travel Regulations and have an ATOL scheme, not only do you provide financial security for your client but you also take full responsibility for the hotel and anything that your suppliers do. That is still far superior to Flight Plus, which only deals with financial security. It does not deal with the fact that, should anything happen abroad at the hotel, the organisation that is selling you the package could be acting as an agent for the hotel rather than a principal. The financial protection provided by a great many tour operators in the UK and taking responsibility for what they do is second to none.

Chair: Thank you very much for coming and answering our questions.

Examination of Witnesses

Witnesses: **Michael Carrivick**, Chief Executive, Board of Airline Representatives in the UK, **John Hanlon**, Secretary General, European Low Fares Airline Association, and **Jill Brady**, Director of HR and External Affairs, Virgin Atlantic, gave evidence.

Q41 Chair: Good morning and welcome to the Transport Select Committee. Could I ask you to give you name and the organisation you represent? This is for our records.

Jill Brady: I am Jill Brady. I represent Virgin Atlantic Airways.

Michael Carrivick: I am Mike Carrivick. I am on the Board of Airline Representatives in the UK representing 86 scheduled airlines.

John Hanlon: I am John Hanlon, the Secretary General of the European Low Fares Airline Association, ELFAA.

Q42 Chair: Would you accept that the present ATOL scheme that applies mainly to travel agents but not to airlines is unfair and confusing for the customer?

Michael Carrivick: We think the current ATOL regime is in fact very complex. It is inconsistent and it is also very difficult for some of the people selling travel to know whether they are acting as agents or whether they are the principal. There have been legal battles over the years as to what constitutes a “package” as well. We are in broad agreement that the ATOL regime needs reforming. We do not agree that the reforms that are proposed are suitable.

Q43 Chair: Are there any other views on that? Does it need changing?

Jill Brady: It is very difficult probably for the operators to know how they are acting, but it is more difficult for consumers to know how they are buying. Under the current regime they can buy in a number of different ways. The current regime was established when there were far fewer options for customers as to how they buy. In the previous evidence the gentleman talked about how operators have built different systems in order to avoid this protection. What we also find is that customers are very creative about how they buy their travel solutions. You can have a customer who wants to buy a tour-operated holiday, where they can have a resort rep that can assist them overseas. You have customers who want to buy for convenience on one website or customers who want to shop around and are very happy to go and buy direct from hotels and airlines in different countries, with many different sorts of regimes in terms of protection. It is a very confusing system to try and regulate it all in one go. Trying to grow an ATOL system that was established many years ago for quite a straightforward set of requirements is quite complex to do now given the very varied requirements of the travelling public.

Q44 Chair: What do you conclude from that? Do you think the ATOL scheme should be reformed in the way that has been suggested? Should it perhaps be scrapped and something else be done, or perhaps nothing should happen?

Jill Brady: We need to step back and look at what we are trying to protect. I have heard many different things in the course of the conversation this morning

about whether we are trying to protect the money that somebody gives to an operator for a holiday—whether it is for the travel part, the accommodation part and other things they might buy, and we are protecting the whole of that and to refund that should an operator not exist. Are we trying to protect just for repatriation or are we trying to protect for other things? There are many different options for consumers in how they buy. Therefore, you have to take a step back to look at what we are trying to protect and what the Government are trying to protect in order to get the right solution for consumers that does not just layer additional costs on additional costs so that they can get things effectively, that they have a choice and can do things in a way that suits them, can buy in a way that suits them and are protected in a way that suits them. Also, we must make sure we are not just simply layering complexity on complexity and cost on cost.

Q45 Chair: Mr Hanlon, do you want to make any comments at this stage?

John Hanlon: Yes. I would just point out that the ATOL scheme was brought in at a time when the market was totally different. The market is very dynamic. Consumers’ needs have developed considerably. The way they buy and what they buy has moved on. It would be wrong to approach a scheme that was laid down 30 years or more ago and try and fiddle at the edges of that to make it adapt to that market. We need to see what those changes have been and therefore the best way to react to provide the protection.

Q46 Chair: How are you looking at the current proposals? Do you think that ATOL should be scrapped and looked at again completely or perhaps that a scheme of that nature is not appropriate today?

John Hanlon: I am very attracted to the questions from one or two of your members who have questioned the need for the state to intervene to protect, when there is a market for insurance and it is a very prominently offered service on the websites of airlines. It is also quite interesting because, from a European regulatory point of view, a lot of our members were criticised by the Commission for making insurance too automatic in their website sales. It was an opt-out option on their website. The Commission took the view that consumers are much more savvy, they have to have a conscious choice and they should not be required to pay for something or risk paying for something that maybe they do not value enough consciously to purchase.

Q47 Chair: Is that a position with which you agree?

John Hanlon: Yes, I do. In fact, since we have removed the opt-out for insurance, people have been made aware that if they need to be insured they have to opt for it. It has a cost and many of them have decided that they would rather self-insure. There is much more availability of alternatives to get you home now. 30 years ago it was £300.

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Q48 Chair: You are talking about self-insure rather than reporting to a system.

John Hanlon: Self-insure coupled with closer regulatory oversight.

Q49 Kwasi Kwarteng: I would like to widen your point to the other members of the panel. It seems to me, looking at this, given the complexity of the scheme and the fact that the scheme does not even cover 50% of people, that we might as well just throw the whole thing out of the window. As you say, there are very sophisticated markets of insurance and consumers are very savvy about this. I want to know what other members of the panel think about Mr Hanlon's remarks. Is it time perhaps to look at getting rid of ATOL altogether?

Michael Carrivick: We have been quite clear on this. One of the previous witnesses said that for the first 25 years it worked very well. Since then, the way in which travel can be purchased has fragmented technology-wise and all the rest of it. The legal relationships within travel purchasing have become quite complex. We believe that we should go back to basics. There are still a lot of traditional packaged holidays sold. Under the Package Travel Directive those would be obliged to be protected anyway. There is nothing wrong with that whatsoever.

On the other hand—and this is the real point of clarity—where a consumer product or travel product is purchased and is not protected, then the consumer must be told so. That is the critical part in all of this. The ATOL branding is so strong at the moment. It is on various bits of paper, stationery and advertising. People assume that they are protected and that is not the case. Let us tell them they are not and give them the choice.

It goes back to why the state should be mandating protection. I live next door to somebody in a similar house. I am going back to the consultation that said that somebody who bought a similar holiday is not insured. With respect, so what? As long as they know they are not insured what is the problem?

Jill Brady: It can become very emotive when we start to talk about consumers. My airline cares hugely about our customers. We work in a very competitive market and we have to look after our passengers. We are covered by lots of regulations such as EC 261. We make sure that our passengers get home when they are stuck in places because of ash clouds and snow. That is of great importance to us. There is a risk that there are so many different ways consumers can buy that it will be very difficult to apply the current regime in a way that is suitable to cover all of those things.

We compete with international airlines from all over the world. A customer can go on to our website and purchase an airline ticket. At the moment we would offer an add-on of a hotel. You would have to go in, pay for that and put your details on separately because it is sold through our sister company Virgin Holidays, which is a tour operator. They could equally go on to the website of Continental Airlines in the US. They could book a ticket, hotel, car hire and other things on that website. It would be very difficult for a regime that is put in place in the UK to cover all of those bookings. Therefore, we need to be careful that this is

more about customer information and customer choice than it is about mandating particular regulatory outcomes.

Q50 Paul Maynard: I point to my entry in the Register of Members' Financial Interests regarding Virgin Atlantic. That said, I am struck by the way in which the airlines seem so hostile even to the extension of the idea of insurance to Flight Plus arrangements. If I read your evidence correctly, none of the three of you endorse that even, let alone moving it to flight only arrangements. Can you explain why it is you think that what seems to me a modest step towards extending consumer protection is so unacceptable?

Jill Brady: From our perspective we are not entirely against how the legislation is currently being looked at. What we are concerned about is that it does not fulfil the objectives of the Government. If you are looking to protect for repatriation purposes, are we looking to protect for company failures pre-travel? None of this is particularly clear, and, because the absolute objective that we are trying to achieve is not clear, it is not clear to me whether we are coming up with the right solution.

Passengers book in a number of different ways. It is not clear to me that what is being suggested in itself will always cover the ways in which those customers seek to buy. My example of an overseas airline and buying what would essentially be covered by Flight Plus but through an airline in a different country will not be covered. I am concerned that consumers will therefore not know when they are covered and when they are not.

Q51 Paul Maynard: Even though they will have an ATOL certificate issued.

Jill Brady: The Government will still have a problem in how consumers are repatriated. It would be much more effective to educate passengers about insuring themselves and taking responsibility for their own choices rather than trying to mandate a solution that they may not want.

Michael Carrivick: We did not actually resist Flight Plus at all. We made some fairly vague comments in there about how the liabilities could go on to travel agents at this stage that would be selling Flight Plus. Flight Plus may at a later stage be pushed on to the airlines, but until that consultation is aired we are keeping our thoughts very much to ourselves.

Flight Plus as it stands is yet another bit of confusion for the consumer. If you buy a flight and other arrangements within a day either side, you are protected; but, if you do not, then you are not protected. Again, that is just one of the added confusions that arise out of the proposed reforms.

Q52 Kwasi Kwarteng: I would refer people to my Register of Members' Financial Interests in respect of Virgin Atlantic. To what extent do you think this extension of ATOL to airlines would be a burden in terms of costs on your industry? Clearly you are operating against a headwind where there are lots and lots of costs. You have air passenger duty and all sorts

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of things in the new regulatory framework. How do you think this would add to your costs?

Jill Brady: There are concerns on costs. For Virgin Atlantic, our concerns are about us being able to compete with other airlines in our marketplace that potentially would not be covered by this. We have long-haul competitors, many of whom are overseas, and it would be hard to see how they could be regulated in this way. Therefore, we believe there are better ways for consumers to be protected, and that is through knowledge and having the access to purchase the products they need in a different way.

Q53 Chair: You see consumer knowledge as the alternative way of approaching things.

Jill Brady: Yes, I do. It is consumer knowledge and options for them to make their own choices about how they protect themselves.

Q54 Iain Stewart: I also draw attention to my entry in the Register of Members' Financial Interests. Our previous panel of witnesses expressed some concern that the travel insurance products would not cover a passenger for repatriation in the event of an airline going bust. On your website at the moment, when you buy your flight and hotel and then add on travel insurance, if the airline went bust—not just having to deal with an ash cloud or something—would the passenger be covered for the cost of repatriation?

Jill Brady: I do not know the answer to that. In relation to the products that we offer, largely we do not see ourselves at risk of going bust. Our products are there for other reasons such as bringing people back from skiing holidays when they have broken their ankles and those sorts of things. I do not know the answer to that. A customer would have to be aware of what they were buying their insurance for and what it covered. I am not aware of what the products cover today.

John Hanlon: At the time of the last CAA proposal to include a £1 levy on all passengers departing the UK, when that was dropped, we were asked to ensure that any insurance we offered to mitigate that decision to drop it would include scheduled airline failure insurance—SAFI. Our airlines have done that. We would be prepared to be mandated to ask customers whether they want insurance and to make them aware of what elements are not covered by insurance. That would have the merit of providing an audit trail that this customer declined to be insured. That is part of the argument we hear. They turn up at overseas consulates and claim that they thought they were insured. By making it voluntary and by requiring the airline to ask that question, you have a record of whether that customer felt the need to be insured, whether it was an insurable decision for him or whether it was a product that he considered gave him so many alternatives to get home.

Don't forget but there are ways to get out of the failure of an airline. This very week one has failed in Spain. Four of our airlines have provided fares. They did not drop from heaven, but they provided repatriation to people at €49 to any destination that they served. Between the four of them they covered most of the

network of that airline. That self-regulatory approach is so much better.

I would also like to see greater preventive regulatory oversight. If an airline fails, how did it get to the stage of being allowed to fail and not paying its dues to the Treasury for air passenger duty, not paying its fees to the airport and increasing the number of sales that are out there and the number of people who are exposed to that risk? I would like to see airlines that emit signs of financial distress being called to account on a much tighter rein by the regulatory oversight body. They should present their accounts and satisfy them that they have enough working capital. If that includes any of our members, so be it. That is protection. Most of the measures we are discussing in ATOL are mitigation after the event.

Q55 Iain Stewart: I would just press more on the point you make about people being aware of whether they are covered or not. Most of the time, if you click on yes to insurance, you will get a whole screed of terms and conditions. If most people are like me, they probably do not bother to read it, and, if you do, you probably don't fully understand it because it is written in insurance jargon. Is there a need therefore to have a much clearer requirement that, if you are taking out insurance, you are explicitly accepting or rejecting the cover of repatriation in the event of the airline going bust?

John Hanlon: We would be open to that. A much more positive and proactive way to deal with it is to require us—mandate us—to offer that alternative and to provide a record to the regulator that we had drawn it to the attention of the consumer and required him to make that decision actively, but he must be free to make it. At a European level, the European Commission, as you probably know, considered a global rescue fund. They found that the proportion of passengers that were at risk was so infinitesimally small that it was grossly disproportionate. It was 0.07 of all air passengers over the last 10 years, of which 0.008 were away from home. It is a very small problem. They asked the insurance industry to attend a workshop in Brussels, where the findings of the consultants' report were discussed. They said they would not undertake anything on a global scale if the industry did not have the capacity. On a voluntary basis, where the passenger opts for it, we can provide that cover. The state is attempting to do something here that the insurance industry would not take on.

Q56 Chair: If the answer is in the hands of the industry itself, why doesn't the industry provide a comprehensive scheme so that we would not need to have this discussion?

John Hanlon: We consider that we offer a number of self-regulatory measures. I have made the case for closer regulatory oversight by the regulator. We also sell principally by credit card, which brings its own protection. It covers all transactions with a value over £100. If you are buying two tickets or for more than one person, it would be covered. That also has a cost to the consumer. They pay to use a credit card, they pay to have it and we pay a financial deposit with the processing company. Those are costs that are

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ultimately passed through to the consumer. He is paying to have his credit card and he is paying the cost to us of that working capital being tied up. Now we are proposing to charge him a levy on top of it.

In the event that all those measures fail, we will step in and help. We want our colleague airlines to practise rescue fares as actively as we do. To provide a global solution, the legislators have to be able to point to the general availability of rescue fares. We would suggest that that would be a reasonable thing to require the industry to do on a general scale, covering the costs of carriage and getting people home.

Q57 Chair: Mr Carrivick, can you tell us what proportion of the aviation industry provides a comprehensive scheme of the sort that Mr Hanlon is advocating?

Michael Carrivick: To be honest, Madam Chair, I have no idea whatsoever.

Q58 Chair: I ask the question because all of you are putting forward solutions of this nature. I am just inquiring whether the aviation industry itself has any comments and, if not, why not.

Michael Carrivick: We have tried in the past as an industry. When I was in another career with IATA—the International Air Transport Association—we tried to bring in a global protection scheme. Oddly enough, it met a lot of resistance among the travel trade around the world. They did not want to know about it at all. Secondly, the clients themselves said, “We are protected by credit cards.” There was a lot of consumer kick-back on this. This boils down to the fundamentals of what we are here for today. Should we be mandating protection, or should we, in a marketplace environment, be making it clear to consumers whether or not they are protected automatically and, if they are not, to give them the option?

The actual consultation document itself in the DfT highlighted the fact that some consumers do not want it, so why should they be made to pay for it? Others are paying by credit card. From an airline point of view, in many cases in this country the airlines selling holidays are selling them subject to the ATOL regime. British Airways Holidays, Virgin Holidays and Emirates, which have their own holidays, are selling as separate entities and buying into ATOL. It is very important to get the impression across that airlines are not totally exempt.

Q59 Mr Leech: Mrs Brady, you suggested that there would be issues of competitiveness if airlines were within the scheme. What is the average cost of a flight from Britain to America?

Jill Brady: There are varying flights and there are a large number. On a bad day we can make about £100 on a flight and then there will be the APD costs on top of that.

Q60 Mr Leech: I am talking about the actual cost to the consumer.

Jill Brady: That is what I am talking about. It is £100 to £150 ticket cost, and then on top of that would be

the APD costs and the other duties that a passenger has to pay.

Q61 Mr Leech: When you add in all the costs, what is the average cost that someone pays?

Jill Brady: I would not know that number off the top of my head, but it would be £250 to £300.

Q62 Mr Leech: Do you think an extra £2.50 on top of that for the consumer would potentially make Virgin Atlantic uncompetitive with other airlines?

Jill Brady: We do see customers move for £1. If you look on all of the websites where people can go and compare prices, and they do, they will choose the lowest cost.

Q63 Kwasi Kwarteng: As a retailer, if you added 1% on your cost, that is quite considerable—£2.50 on £250. I was a member of the Committee and, as someone with experience of business, I appreciate that an additional 1% cost for any business is quite significant.

Jill Brady: My point was not just about the cost and competitiveness for Virgin Atlantic, though. It is also about the consumers knowing whether they are going to be covered or not and what their expectations are. What we see is that customers make choices to avoid cost. I know in my own life, were I to book car hire, I probably would not take all of the additional insurances that were offered to me. I would probably decide that I was going to self-insure for those things because I think I am a pretty good driver and the chances of me having a crash are low. There has been some proof recently that women are better drivers. I would make those choices based on my own situation. You will see that customers will do that as well in terms of how they use credit cards and how they use travel insurance.

The same would be true of this scheme. There will be operators out there trying to find a way round it, but there will also be customers out there trying to find a way round it. The Government will be left with the same situation in terms of repatriation.

Q64 Mr Leech: Mr Carrivick, you said that the new regime would be potentially confusing to consumers. Do you think consumers at the moment are not confused about whether or not they are covered?

Michael Carrivick: Yes; I said that at the very beginning. They are confused now. Reforms are necessary but the reforms as proposed add to the confusion. In our response to the DfT we set out a table of events as to why. Apart from airlines’ direct sales, which some parts of the community would love to see included, you have agents for the consumer, you have people who are buying what would be called Flight Plus but because of the time scale they are not included, and you have people paying an APC on a flight only but if the airline goes bust before they travel they get no protection. It really is totally inconsistent.

My challenge to the CAA in the past—and I repeat it now—is to put what they are proposing on an easy-to-follow flowchart in relation to two things. One is whether the consumer is protected. The second is,

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within the travel industry, what is your liability? Are you a principal, an agent or a middle man?

Q65 Mr Leech: Would you accept then that the least confusing option would be for the ATOL scheme to be all-encompassing, to include all flights and all holidays?

Michael Carrivick: No, I would not, for the very reason that we have stated in our response. The relationships of what you buy, where you buy and how you buy it are very complex. We have proposed that you go back to basics. There are still a lot of pre-packaged holidays around, which is how the ATOL scheme started. Make those compulsory. Anything else is not and you tell the client.

Q66 Mr Leech: Now you are confusing me. I would have thought the simplest system for the consumer would be to know that, regardless of how they have booked a holiday, a flight or a combination of the two, they are always going to be covered. Surely that is the least confusing.

Michael Carrivick: You might think so at a high level, but once you get into the detail of the forms, which we have had to, first of all consumers can end up paying two lots of APC. They pay £5 instead of £2.50. Some of them are still not covered. I sent as evidence to this Committee some of the questions and answers that arose out of the consultation. I do not think you could follow them, with respect. We found it difficult within the industry. If you cannot follow them and it is not that simple, then I do not think you have a manageable product.

Q67 Mr Leech: If a consumer knows that, whenever they book a holiday, a flight or a combination of a holiday and flight with accommodation, or whatever it is, they may pay twice—which obviously they do not want to do—but they know that they will be covered, would you accept that they cannot be confused about whether or not they are covered?

Michael Carrivick: They might not be, but how it would work in practice is subject—

Q68 Mr Leech: I am asking about the consumer.

Michael Carrivick: I know, which is what this is all about.

Q69 Chair: The point we are really putting to you is that, if that were the case, it would be clear to the consumer—to the traveller—that they were covered. It might have other effects that you do not agree with.

Michael Carrivick: If we are talking holidays, but the CAA has tried to expand the net into every type of travel purchase, including what we call flight only, i.e. a ticket to and from with nothing else attached. That has ramifications attached to it to which we simply do not subscribe. That is why I am trying to put across to you, Mr Leech, what the difficulties would be.

Q70 Mr Leech: With respect, I think you are giving a politician's answer.

Michael Carrivick: I am representing my members.

Q71 Mr Leech: I have one last question for Mr Carrivick and Mr Hanlon. Our previous panel was talking about airline failures. They mentioned a number of airlines that have recently failed in the last few years. Have any of your members failed as airlines and gone out of business in recent years?

Michael Carrivick: Yes. If you take “recent years” as meaning the last 10 years, Swissair is probably one of the main ones. There is Sabena, I think. In all cases the industry came together through a mixture of either special fares or moneys protected in the IATA system through the BSP and/or credit card.

John Hanlon: Yes; I freely admit that SkyEurope failed. Other airlines in the ELFAA moved in, became stronger as a result of that failure and helped out the passengers who were stranded in the short term as a result of it.

Q72 Mr Leech: But would you both accept that as a result of those failures there has been financial pressure on the ATOL scheme, and therefore it would not be unreasonable to have all the airlines within the ATOL scheme so that they are paying their way?

John Hanlon: SkyEurope was a Bratislava-based airline and I do not think it imposed any burden on ATOL. I do not think the question is justified there. I agree with the summation of the ATOL arguments. They were more like, “We have a grievance. Let's have a level playing field, and, by the way, the consumer will benefit.” I summarise it, but that was crudely what I was hearing. In a way, that is extremely unfair to the large majority of consumers. We said we would take a flat rate. That is what the scheme needs. It is £40 million in deficit, so let's say £2.50. If you are paying €20 for a fare to Europe, you are massively subsidising somebody whose total trip has a value of £5,000 or £10,000 but you are paying the same rate. It is very convenient and in our case it brings another 172 million passengers into the kitty, bails out the reserve and enables a manageable supplement for those who have higher value products. It is very crude. It can be done in the name of the consumer, but it actually traduces the interest of the majority of consumers. If you asked what the burden is of an extra £2.50, on an average fare of €30 or €39, it is considerably greater than on a fare for the transatlantic.

As parliamentarians you have a responsibility to protect consumers. We do not operate; so I am not an interested party in this. The biggest risk facing an air traveller to the United States is the risk of falling ill and having to sell his house to pay for it. Nobody is worrying about regulating that and requiring or mandating insurance to cover that eventuality, which is much more catastrophic for the people who face that. We are worrying here about how to get people back from Europe where there are a plethora of low-cost alternatives and people voluntarily offering sympathetic fares to help out. I wonder whether we are not really using a sledgehammer here to crack open a nut and over-focusing on one particular aspect of the travel experience because it has always been regulated. The biggest development in European air travel was deregulation. We are now creeping ever closer to re-regulation, which has an impact on fares.

Q73 Julian Sturdy: I want to probe a bit more on the level playing field argument made by both sides. Mr Carrivick, you mentioned that package holidays should be kept in the ATOL scheme. I think the word “compulsory” was mentioned. It has also been expressed how the industry has changed over the last decade and probably longer. We all accept that it is going to continue to change. Do you think that the ATOL scheme in its current and proposed form does deliver a level playing field? The way it is looking at the moment, it does favour airlines over the package industry. I would like to ask all three of you if you think that there is a level playing field out there, or is it, in your eyes, favouring more one side than the other?

Michael Carrivick: If there is a tilt, then it is down to the parliamentary time scale because the DfT and CAA have made it plain that they want to bring airlines in, and that is subject to primary legislation being passed. We can debate the rights and wrongs of that. In our approach to the response to the consultation, and we have said this in our evidence to you all, we said this should be looked at from the point of view of the consumer. Rather than competitiveness—some people have talked about the £2.50 element here and others have mentioned bonding, which we have not gone into—what is right and sensible for the consumer? Bear in mind that the CAA has had to fight legal battles at great cost over what a “package” is from a legal point of view. That is a major part in all of this. Therefore, it is bringing into play this time round what legal representation an intermediary has. Are they an agent? Are they an agent for the consumer? Are they the principal? It is riddled with confusion and cost, and I do not think it serves a system that has served itself very well but needs reform. These reforms are not the ones that are called for and certainly not in the haste that they are being brought in.

Jill Brady: In our response we have not commented too strongly on whether we think the original target of ATOL should be left in ATOL because the Package Travel Regulations are still in force and, therefore, it is not an option to take those out. Our view is that that has to stay as it is until those regulations are reformed. We are trying to comment on how the industry has changed since then, the complexity that there is in how consumers buy, and therefore the appropriateness of trying to stretch those regulations to cover all of these new circumstances.

John Hanlon: I do not see any unfairness. Some of our airlines do act as integrated package operators and they accept to be covered by ATOL for that part of their business. The majority of their customers prefer to construct their own packages and choose their own hotels independently. Then they buy an airline ticket off that provider. The consumer should be free to do that. We cannot restrict choice to protect incumbents that are operating to a business model of 20 or 30 years ago. It is the consumer who is driving that change.

Q74 Julian Sturdy: Given that point, more and more people are constructing their own holidays. As you say, the industry has changed dramatically over the

last few years. Is it not the case that we are talking about a scheme that is really only a halfway house? We are in danger of more and more companies in the industry potentially opting out. Is it not the case that we should be looking at no ATOL scheme at all and just the basic insurance but making that absolutely clear to the public, or, on the other hand, as Mr Leech mentioned, there should be an ATOL scheme that is all-encompassing? Those are potentially the two sides we should be looking at. At the moment we are just in the middle and not going to achieve what the scheme is setting out and also be financially viable in the long term as well.

Jill Brady: There is little choice at the moment because of the Package Travel Regulations in force. What we are not talking about today is where that should be in the future, what should be protected and what consumers should expect to understand, have information about and do for themselves. Yes, if we had a blank piece of paper, I am sure that is what we would be looking at. We would be looking at the choice between something that was much more simple and easy for customers to understand and opt in and out of at their own choice, but at their own peril potentially as well, and how that applied to the different relationships that the different business models have among themselves and with the consumer. We are not in that place at the moment because there is something that has been put in place for those traditional packages. Some airlines, like mine, have companies that sell those packages and we are covered by the regulations for those. There are lots of different ways that consumers are trying to buy their travel today. The question is whether this is a suitable regime to try and stretch it to cover all of those circumstances.

Q75 Graham Stringer: Mr Hanlon, you obviously have experience all over Europe. Where is the Package Travel Directive implemented most effectively, or what is the best scheme?

John Hanlon: I would not attempt to answer that off-the-cuff. I can perhaps supply you with a written answer after the event, if that is acceptable to you.

Chair: Yes; that is absolutely fine.

Q76 Graham Stringer: That would be helpful. I want to follow up Mr Sturdy’s questions. Is it right that the conclusion you are coming to is that the ATOL scheme within the Package Travel Directive should be abolished?

John Hanlon: No; we are not objecting to it in terms of its *raison d’être*, which was to protect all-inclusive packages. We have members who are into that business of providing integrated packages. If the market moves away from that, and progressively it is, then I think the market should be dictating.

Q77 Chair: You are leaning that way in your comments, are you not? An ATOL tax scheme is as relevant now as it was in the past.

John Hanlon: The package holiday is an option that people opt for because it includes all elements of a package. If one element fails, they tend to lose the rest of the value of the package; so let that continue to be

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protected. If they have decided to construct their own holiday, exercising the choice that I think they should be free to have, it is less dependent on that. If an airline fails, they can find an alternative way of getting there and picking up the rest of their holiday arrangements.

Kwasi Kwarteng: I understand that the ATOL scheme was introduced in the 1970s. There are changes on the consumer side in regard to how the insurance market has developed and the way in which tickets are purchased. It is a completely different world, is it not?

John Hanlon: Yes.

Q78 Kwasi Kwarteng: Do you think we are doing the right thing in trying to tinker around with something that was established before there were even exchange controls? If I went to France in 1971, there was a limited amount of money that I could even take with me. Obviously, if I was stranded, that would be a completely different situation from the situation now. Do you think the right approach is to try and adapt this to modern-day conditions?

John Hanlon: I think you are putting your finger on it. Consumers in those days were exploring overseas holidays. Court Line was a big element in accelerating that. They were previously involved in domestic tourism. They began putting their foot in the Spanish market.

Q79 Chair: Looking at the present time, do you think there is a need for a different approach? Is that what you are saying?

John Hanlon: People are more experienced travellers now. Therefore, they are able to make decisions on their own about whether they feel this is a risk that requires protection and to take a more informed decision about that. I do not feel the same need, but I am not making an all-out case to abolish ATOL for integrated packages.

Chair: I think that what you are saying is clear.

Q80 Julie Hilling: I want to pick up a few different areas. Mr Hanlon, you said that there should be stricter regulation or observation—whatever the right word is—of airlines. What happens if people have already purchased tickets? If the DfT say, “This airline is not economically stable at the moment”, what happens to people that have already purchased those tickets?

John Hanlon: This is something on which I have given our input to the CAA. I know they will be speaking later. I am not saying anything they have not heard out of my mouth before. The CAA does an excellent job before awarding a licence to an airline of satisfying itself of its access to capital, its backers and the extent of working capital. They grant or not the air transport licence on the strength of what they find.

The monitoring from that point on is less effective. Airlines get into difficulty, and then the emphasis in my perception is on rescuing them after they have failed. Travel agents have a nose for picking up when airlines are in difficulty, not paying their bills and they book away from them. It should be open to the

regulator to know that Treasury has not been paid APD, which was the case with XL, but it still continued to sell. This is my own personal view. If it has concerns but does not want to close them down, limit the forward selling. The problem with airlines’ exposure is that you can book a ticket now and pay for it for travel in a year. If you have worries of that sort, limit them to forward bookings over a range and gradually extend that.

Q81 Julie Hilling: How would those people who had paid—

John Hanlon: They would already be out there but they would not grow in number. The concern I have about the scheme is that the big temptation for airlines or a tour operator in difficulty is to trade their way out of it, to get cash; so they slash their prices.

Julie Hilling: I hear all of that but I am just asking about the protection.

Q82 Chair: Are you saying that the airlines themselves should do that or that there should be tighter regulation on them that would enforce that?

John Hanlon: Tighter regulation. They should be called in and they should be submitting their accounts more regularly. They should be satisfying the regulator of their going concern.

Chair: Could I ask you to give answers as short as you can, just because of the time element? We have more witnesses waiting.

Q83 Julie Hilling: There would still be no protection for that person who has already purchased the tickets. That is a yes or no.

Michael Carrivick: It covers both our types of carriers and we do represent quite different parts of the airline community. Many carriers, not least on John’s airlines, would have paid by credit card. They are protected under that. We are talking pre-departure. In respect of IATA airlines, which are 99% of my membership, they are protected in two ways. It is either through credit card payment or through what is known as the Billing and Settlement Plan, where money is then put into escrow and sorted out behind the scenes.

Q84 Julie Hilling: You raise the next point I wanted to ask, which is on credit cards. What percentage of people pay by credit card? For a period you could only pay by credit card, but now of course you can pay by debit card.

Michael Carrivick: You can indeed, yes.

Q85 Julie Hilling: What is the percentage of people paying by credit card?

Michael Carrivick: That I do not know. It is just not in my purview.

Q86 Julie Hilling: There is an assumption being made that people are covered by credit cards when actually they may not be.

Michael Carrivick: If they have paid by debit card, they are certainly not; I agree with that.

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Q87 Julie Hilling: And we do not know what the percentage of people is that are then not covered,

Michael Carrivick: No.

Q88 Julie Hilling: I think it was you, Mr Carrivick, but I am not sure, talked about the time limit on Flight Plus; you have to buy your package within 24 hours.

Michael Carrivick: Yes.

Q89 Julie Hilling: Are you saying it should be a longer period of time for Flight Plus to be covered?

Michael Carrivick: No. The point I was making was about the inconsistency for the consumer. The ATOL reforms as proposed are inconsistent. There are various gaps in them. If you are a consumer, you want consistency. The point I was making is that, if you request a flight and a hotel within 24 hours of either side, you are protected. You might do it a week later—and the point was made by one of the previous panellists—and that falls completely outside the ATOL regulations.

Q90 Julie Hilling: That could be covered by increasing that time limit and then making it clear to the customer.

Michael Carrivick: Possibly. The point I was making was on inconsistency. On that, I am surprised that opting in to the ATOL scheme has never been presented to the public. Just to answer that point there, it says in the consultation that, if somebody books a flight and then wanted to book a supplementary such as a hotel or something after the time limit has expired, if they want the Flight Plus they have to cancel the air ticket and rebook the whole thing all over again. First, that is a hindrance, but, secondly,

the chances are that you have an air ticket that has conditions attached to it and you would have cancellation clauses. Again, it is not meeting consumer needs.

Q91 Julie Hilling: You have not convinced me as to why you should be excluded from the scheme. It seems to me there is unfairness. If it looks like a package, people think they have bought a package and therefore think they are protected.

Michael Carrivick: We are talking holidays here. That is the phrase that has been used, whatever “holidays” may mean in DfT parlance. I do not know what the consultation is going to say. Many of our members have said they already sell holidays from separate legal entities. Virgin Holidays, British Airways Holidays, Emirates and other airlines do the same. It is not all of them, I grant you. They already sell holidays under ATOL as part of that separate legal entity, so in many cases holidays through airlines are protected.

Jill Brady: It is a question of whether the customer feels that they need to have that protection. It would be very possible for customers today to go to those places where they did see the ATOL badge and to buy a holiday there, but often they choose not to do that. That is possibly because they are not that concerned about whether they are covered or not.

Q92 Julie Hilling: Do you accept that a lot of people would think they are covered because they have bought a package and are not?

Jill Brady: I am not sure about that, no. I am not sure that they are.

Chair: We must end there. Thank you very much indeed for answering our questions.

Examination of Witnesses

Witnesses: **Dame Deirdre Hutton**, Chair, Civil Aviation Authority, and **Richard Jackson**, Group Director, Consumer Protection Group, Civil Aviation Authority, gave evidence.

Q93 Chair: Good morning and welcome to the Transport Select Committee. I apologise for keeping you waiting. As I am sure you have heard, we were listening to a lot of very interesting and relevant evidence. First, please could I have your name and organisation for our records?

Dame Deirdre Hutton: I am Deirdre Hutton, Civil Aviation Authority.

Richard Jackson: Richard Jackson, Civil Aviation Authority and specifically Group Director, Consumer Protection.

Q94 Chair: First of all, could you tell us what evidence there is that the consumer—the traveller—wants or needs the changes that you are proposing?

Dame Deirdre Hutton: We are in a position, as you have heard, where the whole business of ATOL protection has become extraordinarily complex. We have, as has also been pointed out, repatriated many people. There have been something like 100,000 repatriations over the last three years. We find that people often have no idea that they are not covered.

If you take, for example, XL, there were people who had identical holidays where one was covered and the other was not.

The public place a lot of faith in ATOL. It has really quite an enviable brand recognition. In that sense it is a very considerable advantage to the travel industry. The position of complexity that we have got to is very unsatisfactory for the customer.

Q95 Chair: We have been told that the use of credit cards and consumers having a personal choice on taking out insurance would deal with the problem. What is wrong with that as a solution?

Dame Deirdre Hutton: Several things. There is one slightly flippant answer to that. Given how much is usually charged for credit cards now, if you pay by credit card, as an add-on extra, probably the £2.50 contribution to the Air Travel Trust Fund looks like quite good value. In point of fact, we are obliged by EU regulations to have a scheme in place for package holidays. The Government have chosen to implement that through ATOL, which, as you have heard, has

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worked pretty well up until the last decade. We believe that you can sort out some of the problems of confusion and the gaps in the coverage through the secondary and the DfT's proposals for primary legislative changes.

Q96 Chair: Isn't ATOL just outdated if you look at the changing market for holidays, the wider scope of consumer choice and more information available?

Dame Deirdre Hutton: You are completely right that packages, as defined in the directive, are rather outdated in terms of the way people are now buying holidays. People buy one bit and it is dynamic packaging. They buy through the internet. You are completely right. As other witnesses have said, this has not kept up with the way people now buy holidays. I do not necessarily believe that that rules out the concept of ATOL. What it does mean is that it needs to be brought up to date. We believe, as I have said, that the proposals that are going to do that will solve many of the related problems not just for customer understanding but also for the costs that fall subsequently on the Air Travel Trust Fund to bring people home.

Richard Jackson: With ATOL, you have to distinguish the scope of who is covered and then the funding. Quite a lot of people get those two confused. There has undoubtedly, as my Chair has said, been a big evolution in how people buy holidays. Everyone is agreed that ATOL works well even in today's world for packages. The question is what you do about the dynamic packages. This is where there are intermediaries, who, in this country under the law as we have been given it by the Court of Appeal, can do that as agents so that there is no protection. Then there are people buying holidays themselves and putting them together on the web. We are not talking about those at all. We are looking at where there are intermediaries.

If you look around Europe, and broadly northern Europe because they are the people who go on holidays, Sweden and Holland interpret the Package Travel Regulations with the consent of their industry to say it covers packages and dynamic packages where there is an intermediary. The effect of Flight Plus is to bring us into line with that because we do not have that consensus at the moment. The law does not say dynamic packages are packages.

Q97 Chair: Can better regulation of the industry solve the problem? If a company is not viable, should they be prevented from trading? Is that not a better way of looking at the problem?

Dame Deirdre Hutton: There is always a conflict between letting a wide range of varied people into the industry to provide a wide range of varying holidays at varying costs and keeping out absolutely everybody that you think might go bust. Part of the job we have is to find a balance between those two. We take a lot of care when people are starting. We require to see their accounts. We require them to have bonds in the initial stages to make sure they are viable. We continue to monitor people. Richard will give you the detail of that. It is one of the truths of being a regulator that, if you are looking at the accounts of an

airline or travel company because you are not quite sure whether they are doing very well at the time, you certainly do not make that public because you would then create precisely the uncertainty for that company that you are trying to avoid. We do have a strong process of regulation and monitoring of companies. In a free market, we are never going to get to the position where companies do not go bust because it means you would be so cautious about letting companies into the business that it would be very restrictive.

Q98 Chair: Why would new companies have to pay a bond as well as paying a levy? It has been put to us that the new proposals would be a bar on new entrants to the market.

Richard Jackson: The bond they have to provide is £40,000, reducing by £10,000 a year. The reason for that is very much because the existing industry that has paid into the fund thinks it is very unfair that a new entrant can come in, effectively using customer money as their capital, and not put anything in themselves which puts them on the hook. It is seen as a means of giving a stake in the success of that new business to the owner/managers.

Q99 Iain Stewart: In both their written and oral evidence Virgin Atlantic made the point that, with dynamic packages, Flight Plus, you would not be covered if you booked with a non-UK airline. Is that a fair point?

Richard Jackson: I do not think that is necessarily the case. You have to draw a distinction between the EU, where there are European regulations, and then the rest of the world. I do not think we can produce UK rules that conflict with European rules or where European law governs. Outside that an example was given, for instance, of Emirates. Foreign airlines can be caught.

Q100 Iain Stewart: Is there a reciprocal arrangement? Say I have booked a flight and hotel with Lufthansa. Would I be covered by whatever system they have in Germany and ditto with Emirates with whatever system they have there?

Richard Jackson: If you booked in the UK, the people who are offering you—let's call it—a "package" for simplicity, because everyone agrees that the rules cover that now, you should have an ATOL or you should be an airline protecting your package either, as a number of them do, through an ATOL subsidiary or through your own arrangements.

Q101 Iain Stewart: I am more confused now than I was.

Richard Jackson: That is the answer. I am not saying it is not confusing.

Q102 Mr Leech: I am seeking some clarification on the issue of the bond. Am I right in thinking that all new entrants would be expected to pay the same amount regardless of the size of company and regardless of the relative risk of failure?

Richard Jackson: Yes; that is true of new entrants now. If Flight Plus comes in, then we would obviously look at the trading record of the company and so on.

That would be a different issue. In their cases we would look at some of the other techniques we have for ensuring that consumer money is protected. For instance, we would use things like trust accounts and so on. That would be taken into account as to whether we would require a bond or not. If you are a typical new entrant, it is £40,000 to start with, yes.

Q103 Mr Leech: Then it goes down by £10,000 a year.

Richard Jackson: Each year, yes.

Q104 Mr Leech: It was suggested by our first set of witnesses that the ATOL scheme had effectively paid for certain airline failure. I put this to the second set of witnesses but I did not really get the answer that I was looking for. Is it fair that airlines can be kept out of this system but then potentially be a massive drain on resources when they fail?

Dame Deirdre Hutton: I will just kick off on that and then I will let Richard answer. It is also important to say that a number of airlines, and Virgin is one of them, have subsidiary companies for their package holidays or whatever we are calling holidays in order to operate through an ATOL. A number of the airlines in their holiday business are already covered by ATOL.

Richard Jackson: The problem for us in terms of managing the fund is that we have ATOL holders that can book flights with anyone and they can sell those flights on to people who package. If that airline fails, it should not affect us. The ATOL holder is responsible for rebooking the flights. But if the nature of the contract, which has recently been the case, has been that the cash seems to be swept out of the ATOL holder before the airline fails, so the ATOL holder fails, then your analysis is right and that airline is causing the ATOL fund to be depleted. Two examples of that were Goldtrail and Flight Options.

Q105 Mr Leech: On that basis I ask my question again. Is it fair that they are not in the system?

Richard Jackson: "Fair" is more your area of judgment than mine. Is there a case that says airlines should be contributing? Yes, if you take that view. What we are trying to do as our part of ATOL reform is to find some way of restricting those claims arising, not by depriving the consumer of protection but ensuring that ATOL-holding intermediaries dealing with airlines, which quite often we do not see at all and are not even EU airlines where we would have some oversight, have limited exposure to that sort of event.

Q106 Mr Leech: It strikes me that the people who are objecting to airlines being included are the airlines that then potentially might be the airlines that cause the ATOL system to be in deficit.

Richard Jackson: There is an argument that way.

Q107 Chair: Would you say Mr Leech's description is a correct assessment of the current situation?

Dame Deirdre Hutton: You heard the witnesses. There is a view that probably the travel industry is largely in favour of the reform of ATOL and sees

ATOL as a benefit to them, particularly in terms of the branding of ATOL. The airlines would rather not. I think it was clear from your witnesses.

Q108 Mr Leech: It was suggested—I cannot remember who mentioned it now—that the reason why we were not doing it all in one go and dealing with airlines was because there was not parliamentary time. If there was parliamentary time, would the CAA like to see airlines brought into the scheme and have an all-encompassing scheme so that we can get away from all the worry about whether or not someone is covered or not covered, because everybody would be covered?

Dame Deirdre Hutton: We are very much in favour of airline holidays being brought into the scheme, yes.

Q109 Mr Leech: That is not what I said. That is not the question I asked.

Dame Deirdre Hutton: When I first joined the CAA two years ago, one of the things I asked for was a plain English version of who was covered and who was not. It was not possible to provide it.

Q110 Mr Leech: No one has actually defined exactly what a holiday is. If I book a flight and I take a tent with me, I would like to think that I have booked a holiday. I do not require any accommodation because I have a tent with me. What I am suggesting is an all-encompassing scheme that includes flight only, flight with accommodation, flight with car hire, flight with campervan hire or whatever it might be. Would it be the view of the CAA that it would be sensible, if there is parliamentary time, to have an all-encompassing scheme that involves everything? That means in all circumstances, whether it is a flight or a flight and accommodation, they are covered?

Dame Deirdre Hutton: I find it very difficult to give you an off-the-cuff answer because we would have to look at the economics of it and precisely what it would mean. I am very clear that there is a separation between the businessman buying his flight to New York and back and the person who is buying a holiday from Virgin Atlantic, where they are using Virgin Atlantic to go on a holiday in America. We would very much like to see airline holidays brought in. I think seat only on airlines is a different question. I personally do not at the moment have a view on that.

Q111 Mr Leech: I am slightly alarmed that we are proposing secondary legislation on something that the CAA does not have a view on.

Dame Deirdre Hutton: We do have a view on the things that secondary legislation is proposed for.

Q112 Mr Leech: But a decision has been made, whether it is to do with parliamentary time or not really wanting airlines to be involved, that secondary legislation will be introduced that does not include flight only options. I am concerned that there has not been a discussion with the CAA about the appropriateness of bringing in the secondary legislation as opposed to primary legislation that might be all-encompassing, including flight only options.

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Dame Deirdre Hutton: I am going to pass it over to Richard because I was not at the CAA at the time that it was discussed. There was a proposal a few years ago, as I understand it, to have flight only.

Q113 Chair: Mr Jackson, can you tell us about the proposal for flight only?

Richard Jackson: Yes. It was back in 2005. We put a proposal to the DfT and the then Government that all flights should be covered and there should be a blanket £1 for any passenger leaving the UK. That was turned down. In a sense that left us having to think again about how to deal with the evolution in the market, which is why we are where we are.

One of the problems we have is that, under the current European regulations covering aviation, we would not be able to have a UK scheme covering seat-only of airlines. In the sense that we do not have a view, that is because it is not in our purview at the moment. What we are concentrating on and where we support the DfT is that step one is to bring in the travel business that is dynamic packaging. As I say, that is pretty consistent with northern Europe. The next stage, which does require primary legislation, is to bring in airline holidays. The fact is that quite a few airlines already do. They have a licence for about a million passengers: Jet2, BA and Virgin. To the extent the rest of the industry dynamically packages as well, bring that in. We think that means the basic holidaymaker—the person who goes along to buy a holiday, which is defined as a flight plus accommodation or car hire, but not a tent, I am afraid, because that is what we think the basic holiday is—becomes effectively Flight Plus and therefore is covered by the ATOL regulations.

Q114 Mr Leech: In 2005 the view of the CAA was that airlines should be included. The option that is being taken forward is different. What circumstances are different from 2005 to 2012 that mean we have a different proposal than we did in 2005?

Richard Jackson: The Air Services Regulation. It is a European regulation on aviation that would now deal with an all-flights proposal under European law, not a national law.

Q115 Mr Leech: That is the single difference between then and now.

Richard Jackson: There is certainly further evidence of failures. John Hanlon loves quoting 0.08% and so on. There is further evidence on the economic case that we would want to consider if we were putting a proposal together now.

Q116 Chair: How many more holidays would be covered under the current proposals than there are now?

Richard Jackson: We were quoted 4 million to 6 million. We are reasonably comfortable with those figures because, in a sense, no one knows because no one wants to declare what they are doing at the moment because they might or might not be challenged on that. The sorts of discussions we are having with current ATOL holders that do some ATOL package business and then a lot of dynamic

packaging give us a reasonable degree of comfort that that is the right sort of ballpark.

Dame Deirdre Hutton: The other way of looking at it is that about 50% of those who are now travelling are covered. Is that correct, Richard?

Richard Jackson: Yes.

Q117 Chair: Could you repeat that? What percentage?

Dame Deirdre Hutton: Only 50% of those who are travelling on holidays who would normally probably think they are covered are covered.

Q118 Chair: How many would be under these changes?

Dame Deirdre Hutton: If the proposals for the secondary legislation and then the DfT's proposals for primary legislation go through, then I think the majority would be covered.

Richard Jackson: Yes, except for those who choose to do it themselves, who would not be covered. If someone wants to book their easyJet flight and their hotel—

Q119 Chair: So most people would be covered.

Dame Deirdre Hutton: Yes.

Q120 Chair: What is the percentage under the secondary legislation?

Richard Jackson: About 4 million to 6 million. These are estimates because no one knows.

Q121 Chair: These are extra holidays that would be covered.

Richard Jackson: Yes.

Q122 Chair: It is planned to implement these changes in April. Do you think the industry is ready to do that?

Richard Jackson: I think it will be very difficult for the industry to do it because they cannot move finally until the final regulations are published. DfT is promising those fairly soon. There was reference to a staged implementation and so on. From the point of view of the regulator, the DfT and the industry, there will be a sensible implementation phase. I would be very surprised if everything came in at the beginning of April. The industry would be ready to move fairly soon after that. Mark Tanzer talked about the end of April. Things which require changes to systems—and there was quite a lot of emphasis on the difficulty of changing your IT systems—could wait until 1 October.

Q123 Graham Stringer: You have obviously tried to look at how to make the current scheme better and better understood. Have you looked at how other European countries approach the implementation of the European Package Travel Directive? Is there anything to be learned from those other countries? Are there any countries doing it better than us?

Dame Deirdre Hutton: As you have heard already, there is a vast variety across Europe. Richard has some details for you.

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Richard Jackson: It is fair to say that package travel is something that interests northern Europe because they go on holidays. Southern Europe stays where they are for holidays. We have more in common probably with Sweden than anyone else because Swedes tend to fly a lot. The Dutch do a lot of driving. Those are the sort of analogous ones. Ireland is pretty similar to us. They effectively adopted our system.

Q124 Graham Stringer: Ireland has an ATOL system, does it?

Richard Jackson: Yes; they have a very similar system to ATOL. If we look at scope and funding, they are two distinct issues and you need to keep them clear. Everyone does a Package Travel Directive in northern Europe. They define it as tour operators typically, which again is using the language of package travel. In Germany, the scope is that, if you think you are selling something that might or might not be a package, you are required to get legal advice. That clearly distinguishes those who are selling packages and the more common dynamic packages now. As I said, the Dutch and the Swedes treat dynamic packages as packages and there is a general consensus that that is the case.

On the funding side, typically it is bonds. Sometimes it is a fund to cover where bonds are insufficient. Sometimes there is even insurance on top of that. The Swedes and the Germans at the moment use insurance. In Germany your insurance certificate hangs on your wall. The liability of that insurer is capped to about £75 million because they have trouble getting reinsurance. In Sweden there are similar sort of arrangements. There is quite a strong lobby in Sweden at the moment saying, "We want to get rid of these insurance bonds and we would like to have a consumer levy and a fund." That is largely because, of course, the price of insurance has got considerably higher over the last few years and capacity can be hard.

We do talk to our opposite numbers a lot. All of us collectively say that everyone seems to be happy. Within Europe you could move your business somewhere else. If someone was offering a really cheap way of meeting the Package Travel Directive, business would migrate there. It has not; so we tend to think that we must be all broadly the same order of cost, otherwise regulatory arbitrage would take place.

Q125 Graham Stringer: We were told in one of the previous evidence sessions that the Italians do not bother implementing this directive at all. What would be the minimum that this country could do if it wanted to minimise the details of the implementation of that package? What lies behind that question, with the evidence coming from previous witnesses, is that having a regulated scheme that repatriates people is very 1970s and not the 21st century. If we wanted to remain within European law, what is the minimum we could do?

Richard Jackson: Just looking at financial protection issues and not at all the other elements of the Package Travel Directive such as health and safety and so on, you are required to have evidence of your ability to refund people who do not travel because you go bust

and to repatriate them. The minimum solution is therefore evidence of ability to refund and to repatriate, which I think could probably be interpreted on a minimalist basis as having a pot of money set aside to pay for that—that is you would not necessarily have to physically arrange it for them. That is probably the minimalist approach.

To the extent that you do not get all the money back to people—for example, in the German system it is pro rata if there is not enough money to go round—that is being challenged in the European courts at the moment. Subject to whatever challenge there might be in a European court, that would be the minimalist Package Travel Directive solution. Whether that would be the case in x years' time when that Package Travel Directive is reviewed—and it has been promised to be reviewed for the last five years but they might get around to it at the end of this year—certainly the intention there is to do something about dynamic packaging across Europe. As I say, the Swedes and the Dutch treat it as a package at the moment. Certainly this industry tends to support that view. My answer is also qualified by the fact that the Package Travel Directive might change in three or four years' time.

Q126 Graham Stringer: This brings me to a point I have asked other witnesses. If the European law is going to change, would it not be sensible to wait for that to change rather than using secondary legislation to modify the scheme now, and, for that matter, to take powers in the CAA Bill that is going into Committee in a couple of weeks' time.

Dame Deirdre Hutton: I do not think so. The position we have at the moment is profoundly unsatisfactory, both from the perspective of consumers who do not appreciate whether they are covered or not but also from the perspective of public funds, the Air Travel Trust Fund, which, as you have already heard, is in deficit and which relates absolutely back to the fact that a smaller number of consumers are covered than was previously the case.

Q127 Graham Stringer: Is the deficit in the fund the real driver of this? If there was not that deficit, would we wait for the European legislation?

Dame Deirdre Hutton: No, I do not think so. I think there are genuinely two drivers. Whatever way you look at the regulation, it seems to me profoundly unsatisfactory. First of all, it is extraordinarily difficult for us to describe who is covered and who is not covered. Secondly, it is even more difficult for consumers to know whether they are or not. There is nothing that brings regulation into disrepute so quickly as that rather chaotic position. "Chaotic" is a rather strong word. If you have those two drivers on the one hand and on the other hand you have a European package where, as Richard says, they have been talking about amending this package for five years, even if they were to start at the end of this year, it is still going to be another several years before it actually happens. I do not think the position we have is sustainable for another five years.

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Q128 Chair: The airlines are very critical of these proposals. Is it going to be possible to get consensus in the travel industry?

Dame Deirdre Hutton: On the basis of this morning's evidence I would doubt it. I think that the travel industry is very much behind these proposals and pretty keen for us and the Government to get on with it. The airlines are different. They have not been part of this before and there is a natural reluctance to want to be brought into it. The low-cost airline model is probably very focused on keeping its costs down. I suspect that consensus between all parts of the aviation industry is probably unlikely to be achieved.

Q129 Chair: Will it be possible for the airlines to opt in to ATOL so that they could decide? Is that a possibility?

Richard Jackson: Yes. We do have airlines that have subsidiary holiday companies that have ATOLs. If you want to be an airline selling holidays, you can set yourself up to do that. If it is voluntary, it is quite difficult for us as a regulator because, if they have a voluntary ATOL, misbehave under it and we come along and take their ATOL away, they can still keep

doing the business because of their operating licence. We prefer them to set up their subsidiary at the moment.

Dame Deirdre Hutton: If I can just come back to the contribution, if this was a fully privatised insurance scheme, an insurance company would put up the contribution in order to match the liabilities. For us, the contribution of £2.50 is established by Parliament and has to cover all the costs regardless of how many people are paying it. We do not have the flexibility to boost the Air Travel Trust Fund by increasing the contributions that are made. I am sure that, were it a fully privatised system, that would have happened by now.

Q130 Chair: Can you quantify the drain or the cost on the fund from operators who are not in the ATOL scheme?

Dame Deirdre Hutton: I am not sure.

Q131 Chair: Could you send us some information on that?

Richard Jackson: Yes, we could certainly do that.

Chair: It would be helpful if you could send us that. Thank you very much for coming.

Wednesday 22 February 2012

Members present:

Mrs Louise Ellman (Chair)

Jim Dobbin
Julie Hilling
Mr John Leech
Paul Maynard

Iain Stewart
Graham Stringer
Julian Sturdy

Examination of Witnesses

Witnesses: **Rt Hon Theresa Villiers MP**, Minister of State, Department for Transport, and **Kate Jennings**, Head of Aviation Policy Implementation Division, Department for Transport gave evidence.

Q132 Chair: Minister, we have questions for you on ATOL. We are sorry for the reason that you were unable to be with us when we intended to discuss this, but it is good to see you back again.

Mrs Villiers: It is good to be back. I would be happy to do a very brief scene setter on ATOL if the Committee would allow me. Again, I am very grateful for the opportunity to come here somewhat later than anticipated.

It is very welcome that the Transport Committee is looking at ATOL. We have a long-standing problem where the money that families may spend on their holidays may form a substantial part of their annual income, and yet, as a matter of course, it tends to be paid out to the travel industry weeks or even months before people get the benefit. There is this inherent risk in the way the industry is structured of families being on risk in relation to the insolvency of companies in the travel industry.

ATOL has provided some very effective protection over the 40 years it has been in operation. Around 18.5 million people who benefited were covered by ATOL last year, but the realities of the modern holiday market mean that it does need to be updated. We have a successful and dynamic travel industry that has developed all sorts of products, and, although they may look and feel rather like a package holiday, they do not fall within the current definition. People expect and want to be protected in the event of insolvency. We believe that, by extending ATOL to Flight Plus and potentially in the future looking at airlines, we will be providing greater clarity and greater protection for consumers.

Q133 Paul Maynard: Once your proposals have been implemented, what proportion of holidaymakers do you think will be covered by ATOL-bonded protection?

Mrs Villiers: There is a range of different types of holidays. We have come up with the estimate that an additional six million or so holidays would be covered by bringing Flight Plus into the system as compared to what would happen if we were to stick with the current rules. I know there is a degree of controversy around that figure and it does involve a degree of speculation. It is not difficult to predict with great accuracy the extent of the exit from the ATOL scheme that could happen over the coming years if we do not act to bring Flight Plus in. It is difficult to make a very clear estimate of exactly how many holidays will

be covered by ATOL at the end of the process, but it will be significantly more than is currently the case.

Q134 Paul Maynard: Would you agree that there will still be a significant number of holidaymakers who will not be protected because of quirks in the system? For example, we were cited the example of lowcostholidays.com, which operates its own website-based provision, which would be covered by ATOL, but it also operates on behalf of easyJet's holiday bookings. Those would not be covered. Does that give you any pause for thought in terms of whether, more generally, this is an area in which it is appropriate for the state to be regulating, given that so many people now purchase travel insurance separately—for example, scheduled airline failure insurance? Does the state still need to be as involved as it was in the 1970s when this first came to fruition?

Mrs Villiers: The example you give about easyJet and airlines gives me pause for thought. That is why the Civil Aviation Bill has a provision in it, which, if it is adopted by Parliament, would enable the Government in the future to bring airlines into the system so that the holidays they sell are treated in the same way as those sold by their competitors in the travel industry. I do take that point very seriously. If we were to go ahead and bring airlines in, you are absolutely right that there would still be a range of holidays that are not covered. There is a debate at a European level on the Package Travel Directive, which again could see further holidays brought in. In taking all these decisions, it is, of course, important for us to make sure that we do our very best to minimise the regulatory burden on the travel industry and balance that against the real value that consumers place on the protection of the ATOL scheme.

Q135 Paul Maynard: Given the changes to the Package Travel Directive that you are hinting at, why are you legislating now rather than waiting to see what changes are likely to be brought in that might require further legislative change? Why act now?

Mrs Villiers: We are pretty confident that what we are doing now will not be inconsistent with any changes to the Package Travel Directive. If there is a change to the Package Travel Directive, it is likely to require an extension of coverage. We would anticipate that that would be achievable via secondary legislation. We do not think that we are pre-empting a European reform, but the reality is that there have been well

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publicised insolvencies in the travel trade. Also, when people's incomes are under pressure as a result of the difficult economic circumstances we find ourselves in, it is more important than ever to make sure that their hard-earned money is protected when they book their holiday. If at all possible we should try to extend the level of protection at a time when people can ill afford to lose several hundred pounds if the tour company they have booked their holiday with goes bust.

Q136 Paul Maynard: If we accept the notion that the state should be regulating this, the issue of Flight Plus arrangements is going to be covered in the legislation, but there is a concern among many providers that the 24-hour window is too short. We have had evidence not just from larger tour operators but also smaller groups, who point out that it should be extended to seven days. Where travellers have complex needs—and we had evidence from someone who organises pilgrimages to Lourdes—it is very difficult to put together the more detailed package that the traveller needs within the 24-hour time frame. Would you be prepared to look at extending it beyond 24 hours to seven days, for example?

Mrs Villiers: We looked with some care at this issue and obviously took into account the representations we received in the consultation. The place we have ended up is that, where additional components to a holiday are booked the same day as a flight or the day before or the day after, that is the appropriate time limit for a Flight Plus holiday. We have to weigh in the balance the burden this places on the travel industry. The longer the period over which a Flight Plus booking can be made, the more complexity and cost for the travel industry. I think we broadly have the right compromise where consumers would tend to associate elements booked in fairly close proximity with a package. The more widely spaced those bookings are, the less there is the perception that this is a single holiday that people are booking as a package.

Q137 Paul Maynard: That is a no then; thank you.

Mrs Villiers: Yes, not at the moment. At the moment we are happy with the arrangements we have made on timing; so we do not have any proposals to move to a seven-day alternative.

Q138 Chair: But it is not entirely ruled out.

Mrs Villiers: Our plan is to go ahead with the secondary legislation as we proposed. In the future, we are prepared to keep an open mind on future reform.

Q139 Mr Leech: I would like to follow on from Mr Maynard's questions. Have you made an assessment of how people will avoid the new regulations? It is clear from previous witnesses that there will be a way round the new proposal for Flight Plus. Have you done any assessment on how many holidays will avoid being covered by the new scheme?

Mrs Villiers: If we do not act to bring Flight Plus into the system, we could see as many as two million or so holidays exiting the ATOL scheme. In terms of the estimate of how many would seek to restructure the

way they sell holidays in order to avoid the new rules on Flight Plus, I am not certain if officials have done any specific assessment on that as an issue.

Kate Jennings: There is no formal assessment of that as such, but things like the two-day period were designed with that in mind. We felt that two days was long enough to prevent people avoiding saying to people, "Come back in a few days and then it won't be a Flight Plus." In the Bill, also, we are looking at taking powers to cover "agent for consumer", which would be one of the main ways to avoid the scheme, effectively.

On the earlier point of the two days or the seven days, it is worth saying that it is a permissive regime. For example, if after seven days the customer asks to add car hire and they wanted a certificate—they want a protection—there would be nothing to prevent the tour operator from then covering the holiday in that way.

Q140 Mr Leech: It would be fair to say that some people within the travel industry have raised some concern that there will be the opportunity to get round the new system.

Mrs Villiers: It is realistic to say that no system is going to be bulletproof. There are always going to be ways in which elements of the travel industry try to find a way to take themselves out of the scheme, but we are acting to bring considerably more holidays into the scheme with the secondary legislation. As I have said, we see this as an ongoing process whereby the Civil Aviation Bill is potentially a further step forward in this. There is potential as well, as I have said, for further reform at a European level in relation to the Package Travel Directive.

Q141 Mr Leech: I want to come on to the fact that, to me, there does not seem to be any logic in not going the whole step now and to include airlines at this stage. We heard evidence from previous witnesses that some airlines that are completely outside of the ATOL scheme are responsible for part of this deficit in the ATOL scheme because their airline failure has resulted in other travel companies effectively paying to bring their passengers home. Surely the fairest system would be to do it all in one go and include airlines now.

Mrs Villiers: That has been the major criticism of the Government's proposals. In practical terms, if we were to bring airlines into the ATOL scheme, we need primary legislation. We are pressing ahead as quickly as possible with giving the Government the option of bringing airlines into the scheme. Before we take a final decision on that, though, it is essential that we listen with care to the industry and the people affected by this and make a careful assessment of the cost impact and the most effective way we can deal with this problem. We are at too preliminary a stage to say that there will be a definite decision to bring airlines in. We believe there is potentially a case to do that, which is why we are setting aside legislative time to make that possible.

Q142 Mr Leech: Would it be fair to say that certain airlines are putting a significant amount of pressure on not being included in any future scheme?

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Mrs Villiers: Yes. It is common knowledge that the airlines are largely opposed to this. My feeling is that the whole of the travel industry benefits if people have confidence when they book their holidays. Although there are costs attached to the ATOL scheme, overall there is a greater benefit for the industry because people have more confidence.

Another stage of future reform on which the CAA is working at the moment in a very dedicated way is to see whether we cannot explore different ways to manage the ATOL scheme that are cheaper for both the current people in it and potentially airlines in the future, to try and give some reassurance to airlines that we are doing our absolute best to make sure that, while we continue to protect the consumer, we do it in a way that is as cost-effective as possible and minimise the burdens on their business.

Q143 Iain Stewart: In the impact assessment on reforming ATOL you look at the radical alternative of not having ATOL and leaving it all to personal travel insurance, but you cite the potential difficulty that insurance policies tend not to cover repatriation costs and related issues. Have you had any discussions with insurance companies that they might be able to adjust their policies to cover these sorts of issues?

Mrs Villiers: I have not discussed this directly with insurance companies myself. This option was one that I wanted to have looked at very seriously, not least because of the pressing need to minimise any additional regulatory burdens on industry. As you have said, one of the reasons why an insurance-based scheme is not as effective as extending ATOL is because so many insurance policies do not cover this kind of problem. Even those that cover, say, the insolvency of a travel operator do not necessarily cover the repatriation costs, or you may be covered for one part of your holiday, but that leaves you liable to pay the hotel bill and you no longer have the means to get there because the flights have been sold to you via a company that has gone out of business.

Leaving all that aside, because, as you say, there might be ways in which the insurance industry could give a better product than is currently available to mitigate some of those problems, the reality is that the Package Travel Directive legally requires protection to be given for certain types of holidays. If we were trying to move to an insurance-based system, we would still be stuck with the problem that consumers want protection for package holidays, there is a broad expectation that they are protected, but only certain holidays sold by certain people are protected. It is the clarity point that cannot be solved by an insurance-based scheme. One of the key problems we are trying to address is consumers not being aware of whether or not they are protected. Having looked at this carefully, I concluded that the better way to deal with that, rather than trying to push for a more insurance-based scheme, was to extend the ATOL scheme.

Q144 Julian Sturdy: Minister, how much is the deficit in the Travel Trust Fund driving the changes?

Mrs Villiers: It has been part of the decision-making process. I want to assure you that there is no question of people being in danger of not getting what they are

entitled to out of the ATOL Trust Fund. Although there is a deficit, it is supported by a Government guarantee. We think the change is a fair one. One of the consequences of the changes we are proposing is that the fund becomes self-sustaining so that it is funded by the travel industry and holidaymakers rather than being supported by the taxpayer. We think that is fair, but the primary rationale behind what we want to do is to give more effective protection to consumers. Putting the ATOL fund on a self-sustaining basis is also a useful consequence, but for me it is not the primary driving factor in going ahead with this.

Q145 Julian Sturdy: In the evidence we have taken so far there have been arguments put forward that the proposals are being rushed through to resolve the short-term problems with the deficit, and, while that might resolve things in the short term, the long-term issues and problems with it will come back at a later date.

Mrs Villiers: To be honest, the desire to keep up the pace and get on with this is more about what might happen if there was a major insolvency. That can be covered by the fund, but the trouble is we want to make sure that we press ahead to ensure that as many consumers as possible are protected. There are many consumers out there who are not currently protected by ATOL and who we think should be protected by ATOL. In an era where we are in difficult economic circumstances, we cannot exclude the possibility of major insolvencies. If they are of companies that are selling Flight Plus and not traditional package holidays, that leaves a whole range of consumers who are not protected. The reason for trying to press ahead promptly is to make sure that we do as much as we can to protect consumers from the consequences of insolvency.

Q146 Julian Sturdy: I have one last point. Do you envisage having to revisit this situation at some point in the future? You talked about this in answer to Mr Leech's question about looking at expanding this to airlines. You are envisaging coming back and revisiting this in the future, are you?

Mrs Villiers: Yes. We would envisage consulting in the future on whether airlines should be brought in. We are also very interested in ideas to improve and modernise the way the ATOL fund is managed, potentially moving to an industry-led, more private sector approach to how that fund is managed.

Q147 Julie Hilling: It seems to me that the ATOL scheme has been very effective in terms of the public mind. People believe that if they have booked a holiday they are covered. Sadly, of course, in many cases they are not. You have talked about people being given a certificate if they are ATOL-covered. What about an indication for those people if they are not covered? Most people would expect that insurance is going to get them home or that they are covered in some way.

Mrs Villiers: There is not a legal way to require companies not covered by ATOL to make that clear. There is not a reverse ATOL certificate. It is an

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important role for the CAA to try and raise awareness of the ATOL certificate and the importance of looking for it. One of the issues we are particularly concerned about is where a company may be selling some ATOL-protected holidays and some that are not. Therefore, they could have an ATOL logo on their website but be selling someone a holiday that was not ATOL-protected.

The expansion of the scheme will cover part of that problem, but we also think there needs to be clarity in consumers' minds. We need to impress upon consumers the benefit of asking for the certificate. Raising awareness is another key part of the reform, but it is not something we can deliver via legislation. It does require efforts in terms of informing consumers what their rights are.

Q148 Julie Hilling: Do you have a programme in mind to do that? One of the things other witnesses have said is that people will make a decision on booking this holiday or that holiday because that one is £5 cheaper than the other one. It may be that that has the protection. What sort of programme do you have in mind for that?

Mrs Villiers: I know that the CAA has a programme in mind. I do not know whether Kate has any details of it.

Kate Jennings: As you may have seen in the announcements, the full certificate will not be comprehensive until 1 October because some companies will not be ready to issue the full certificate. Initially, there will be some holidays that are sold with the information that will be included in a certificate but not in that certificate format. That is just so that we minimise the transitional costs on business. The CAA is already working towards doing a big launch campaign for the certificate on 1 October. We very much hope that industry will work alongside the Civil Aviation Authority on that because we think it is in everyone's interest to promote this together. The early indications are that the major companies are very interested in working together on that.

Mrs Villiers: That is another of the reasons why I am delighted that your Committee is looking at this issue because your reports regularly generate a lot of media interest. The more attention we can draw to the concept of ATOL and the importance of an ATOL certificate, the better. If this Committee felt able to play any kind of role in that, I would be hugely grateful.

Chair: Our concerns for a very long time have been about increasing the clarity to the passenger about who is and who is not covered, and also having a fairer system. We have been pursuing this for many years now and I hope we are going to make some progress.

Q149 Graham Stringer: One of the concerns that we heard from small travel agents at the last evidence session—I do not know if you have read the transcript of that—was that there was not a level playing-field under the current scheme and the proposals between small and large travel agents.

Mrs Villiers: I am conscious that in the normal course of things a uniform regulatory burden across industry

can impact more heavily on smaller operators than bigger operators. The CAA has a programme that seeks to relieve and reduce the burdens on smaller businesses. The work it is doing with accredited bodies is very positive, whereby a smaller business joins an accredited body, which acts as the intermediary. By acting as a group, it does reduce, overall, the costs of being a member of the ATOL scheme. The CAA is very much aware of this. It is something I have pressed them on. This is something my BIS colleagues have pressed on me in terms of the interdepartmental discussions.

Q150 Graham Stringer: There was a real sense of injustice. It was quite an exciting evidence session really because the witnesses argued with each other quite a lot. Is there anything more you can do? Essentially, they have to provide more security as a percentage than the larger firms. Is there anything you can do to level that playing-field?

Mrs Villiers: The estimates about the costs for a small business if they choose to comply with ATOL requirements through an accredited body could be as low as £100 or £200 extra on their membership fee. My understanding is that there are some genuine lower-cost options for smaller businesses. As we take forward these reforms and see how they are implemented in practice, of course it will be a priority for me, as Minister, to keep up the pressure on the CAA to ensure that it is doing everything it can to minimise the costs for all businesses but particularly for smaller ones.

Q151 Graham Stringer: You partially answered this question before when you said that there are European regulations for package holidays that you have to have some kind of scheme. I find it philosophically interesting that a Conservative Government are trying to extend their involvement in the industry rather than looking for free market solutions and reducing the Government's involvement. Can you justify that?

Mrs Villiers: It was something that troubled me, to be honest. As I said to Iain Stewart, I was very keen to fully explore a move to essentially a system where, as long as consumers got complete transparency about whether they were covered or not, we left it much more to the consumer to decide. As I said before, that is not really an option in that already there is a certain type of holiday that is going to be covered because of the Package Travel Directive. You cannot resolve the clarity problem in that way. I also remain to be convinced that the insurance options are as good as ATOL protection.

We also have the problem that it will be very difficult to mandate genuinely effective transparency requirements across the whole of the industry that made it absolutely clear to passengers whether they are covered or not. Yes, we have come to a position that is somewhat counter-intuitive for a Conservative Government, but I think it is the right one. In the longer term, as I have said, we are prepared to look at a more private sector-oriented solution via reforms and modernisation of the way the scheme itself is managed.

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Q152 Graham Stringer: From the answers you have given previously and the fact that we are in Committee on the Civil Aviation Bill at the moment, it is likely that there is going to be an early review of whether or not to bring airlines in. Why then in the RIA have you put that it is going to be in five years' time?

Mrs Villiers: I am not aware of the statement that it would necessarily take five years to do this.

Q153 Graham Stringer: In a sense it is a tricky question. I wondered why, at the bottom of the regulatory impact assessment, you have put that it will be reviewed in five years when you are clearly going to review it in the next—

Mrs Villiers: In terms of a review, no, I think we would expect to make some progress on a decision as to whether to bring airlines in much more quickly than within five years. I am not sure if we have published an estimated date for when a decision might be made.

Kate Jennings: We would expect the Bill to complete its progress in Parliament by April 2013. We would look to do a consultation probably some time next year.

Q154 Chair: For what?

Kate Jennings: For any consultation on bringing airlines in or using the Bill powers. The reason we are thinking at the end and not any sooner, because in principle there is nothing to stop us consulting earlier before the powers are in place, is because we would like to wait and see what is proposed at the European

level. We also want CAA to start its work on thinking about future models for funding. We understand from the industry that there is an element of consultation fatigue. It is just seen as realistic that we spend this year ensuring that the secondary legislation is implemented.

Q155 Chair: Have you made any assessment of the cost of these changes to the travel industry?

Mrs Villiers: The impact assessment puts them at £6.5 million, but that does include the cost of the £2.50 APCs, which ultimately will be passed on to consumers. It is not all administrative costs.

Q156 Chair: Minister, you referred earlier to looking again at how the ATOL scheme was managed. When will we be able to hear more about what you are proposing?

Mrs Villiers: Again, we have not taken a final decision on how quickly that will happen in terms of a full public consultation, but the CAA is working on that at the moment. To reiterate on airlines, I would be uncomfortable if we were going out there doing an impact assessment and consulting on whether to bring airlines in when the legislation has not completed its passage through Parliament. That is one of the reasons why we need to wait and start that formal part of the process after the Bill has gone through, we hope, but it is not the case that we are going to be sitting around waiting for five years before we do anything about this.

Chair: Thank you very much for coming and answering our questions.

Written evidence

Written evidence from the European Low Fares Airline Association (ELFAA) (ATOL 01)

ELFAA CREDENTIALS AS STAKEHOLDER

The European Low Fares Airline Association (ELFAA) represents the principal low fares airlines in Europe. ELFAA member airlines carried over 183 million passengers over the past 12 months July 2010 to June 2011. The low fares share of intra-Europe scheduled point to point traffic is currently 43% and is forecast to grow to 60% by 2020.¹

FINANCIAL PROTECTION AGAINST AIRLINE FAILURE

A report by consultants Steer Davies Gleave on behalf of the European Commission² found that, of the over 750 million air passengers per annum in Europe, only 0.07% were affected by airline failure in the 10 years 2000–10. Of these, only 12% (0.00084% of total) were away from home at the time of the failure. ELFAA therefore considers that any inclusion of airline “seat only” sales in the ATOL scheme, would be massively disproportionate. Besides distorting competition with other modes, it would distort competition between airlines in that customers of financially strong airlines would cross-subsidise those of the minority of customers, who favour weaker competitors. Perversely, it could even exacerbate the number of consumers affected, in that cash-strapped airlines would likely seek to trade their way out of difficulty by price-cutting, setting aside the concerns of hesitant customers by pointing to the fact that they were fully protected in the event of the airline’s failure.

Preferred measures to protect air passengers against airline failure include:

More effective regulatory oversight

ELFAA believes that there the most effective way to protect passengers is by closer monitoring by the regulatory authorities of the financial strength of airlines, emitting signs of financial weakness—protection before rather than mitigation after the event. Before the collapse of Excel Airways in the UK, the airline had not paid APD over to the Government for several months and had also not been settling airport charges.

Rescue fares

ELFAA airlines have, for some time, been voluntarily offering rescue fares to passengers, stranded as the result of the failure of another airline. As a minimum, these offer repatriation back to base for a nominal fare, for two weeks following the collapse of the original airline, subject to documentary evidence of a reservation with the airline concerned. In individual cases, ELFAA airlines have exceeded these minima. ELFAA would support the mandating of rescue fares to all airlines.

Credit card protection

Low fares airlines sell predominantly via the web. The most-preferred means of payment—credit card—offers certain protection.

Sale of insurance including SAFI cover on a voluntary basis

In addition, airlines offer to sell customers their own insurance cover, most of which policies include Scheduled Airline Failure Insurance—SAFI, as part of the insured risks. The Third Package requires airlines to offer this only as a conscious opt-in choice by the customer, many of which elect not to avail of it. It would be perverse to, on the one hand, insist that customers be able to exercise conscious choice over the purchase of such cover, while, on the other, considering imposing an across-the-board compulsory levy on passengers, when the percentage, which might be exposed to the risk of airline failure, is decimal dust. ELFAA would be supportive of a mandate requiring airlines to offer the sale of insurance, including SAFI cover, to passengers on a voluntary basis. This would have the merit of providing a record of those passengers who had declined it.

Sales by airlines of “flight plus”

ELFAA is concerned at the proposal to include sales by airline of so-called “flight plus”, as distinct from integrated package holidays. Given the range of insurance options, available to customers, ELFAA sees no case for their inclusion in ATOL.

January 2012

¹ York Aviation Report on Market Share of Low Fares Airlines in Europe, February 2011.

² Steer Davies Gleave Impact Assessment of passenger protection in the event of airline insolvency, February 2011.

Written evidence from Virgin Atlantic Airways (ATOL 02)

1. Virgin Atlantic is grateful for the opportunity to provide evidence to the Transport Committee in its assessment of the proposed reforms of the ATOL scheme.

2. Virgin Atlantic has previously responded to the DfT's consultation on ATOL reform. Our key points, which remain the same, were:

- UK airlines operate in international global market and compete with international carriers and should not be competitively disadvantaged.
- Consumers should continue to be allowed choice and freedom without additional cost.
- Regulation should be fair and proportionate to the problem.
- Consumers should be clear about when they are covered. The many tiers proposed do not serve this purpose.

3. "FLIGHT PLUS"

3.1 Virgin Atlantic was pleased to be able to assist the DfT in its preparations for the Bill, by responding to supplementary queries regarding Virgin Atlantic ancillary sales.

3.2 Virgin Atlantic has a number of ways in which customers can buy flight tickets; directly via our Contact Centres, through our website and we also sell tickets through travel agents including Virgin Holidays. These agents are covered by IATA, ABTA and ATOL regulations.

3.3 Our Contact Centre can offer the option to "add on" car hire to a flight and this is invoiced separately to the customer. Our website offers accommodation and car hire through Virgin Holidays. This is invoiced separately from the flight booking.

4. We remain concerned that, rather than providing clarity, these reforms actually make it difficult to understand the potential impact on our customers and our business. We have a number of questions which should be answered before this Bill is enacted, regarding the logistical implementation and scope of the proposals.

4.1 Notwithstanding the significant technical challenges associated with recording when a "flight plus" booking was created, we assume that we would need a process whereby we advised the passenger what that actually meant for them. For those passengers to whom we had offered car hire at the time of the call, would we need to advise them if they add the car hire on but outside the "day" timescale that they would then not be covered by ATOL? Could passengers perceive this as sales pressure rather than advice?

4.2 Could the £2.50 APC (ATOL Protection Contribution) drive booking behaviour by encouraging consumers to book ancillary products outside of the "day" timescale window, thus avoiding the aims of the reform proposal?

5. The DfT consultation document (4.6) states that the Government will introduce "flight plus" into the scheme through secondary legislation but that airlines sales would require primary legislation. What would the potential timescales be on this?

5.1 As enabling powers have been added to the Civil Aviation Bill, how far in remit and enforcement authority would this go?

5.2 If all airlines' "flight plus" are to be included in the scheme, how will this extend to non UK airlines? It is perhaps less common for a UK consumer to make a package holiday booking through a non UK travel agent but they are highly likely to book over the internet a flight with a non UK airline which also offers hotels and car hire. To omit these carriers would not only place UK carriers and tour operators at a distinct competitive disadvantage but would also be very confusing and unfair for the consumer, undermining the aim of the reform.

6. "RIGHT TO FLY"

6.1 Virgin Atlantic has worked with the CAA on the proposed reforms of "right to fly/specified operator" to help understand the detail in order to identify practicable solutions. Despite working through the various distribution channels with the CAA and other stakeholders, this element of reform has prompted many further questions and potential issues. These would need to be fully explored with all stakeholders before any decisions are taken.

6.2 It would be useful to understand the rationale and impact assessments that have justified this element of reform. As a regulated airline Virgin Atlantic issues tickets directly to consumers and allows IATA agents to issue tickets. We are not familiar with any occasions when passengers are denied travel once they hold a booking and ticket to fly. The scenario where a customer has paid in full to an "agent" but does not have a booking or ticket inside agreed and regulated timescales would appear to enter a grey "fraudulent" marketplace. Airlines are not the appropriate authority to police this.

6.3 We advised the CAA that we also found the language of “right to fly” potentially misleading, as carriers must protect the “right” to deny a passenger carriage for reasons of Visa or Passport issues or security reasons, for example a passenger who may be intoxicated or abusive.

7. We welcome the DfT recognised the need to take time to gather all available data on the decision making process. We hope that this measured approach will take into account all of the details in order to achieve the objective of making matters clearer for the consumer. Given the damaging impact of the rise in APD and the fragile recovery of the industry, it is important to strike the right balance between protecting consumers and the businesses that they ultimately use in order to travel.

8. The ATOL scheme was created in order to provide customers with the assurance that they are able to book and secure their holiday in advance; often paying in instalments to their travel agent; safe in the knowledge that they would get their money back should the agent fail. It also gave them the assurance that they would not be stranded when on holiday should the same thing happen.

9. The DfT has recognised that the way in which customers now travel has changed and protection is delivered through a number of channels such as the direct purchase of an airline ticket, travel or home insurance, or credit card cover. All of these could be viewed as delivering the Governments “Red Tape Challenge” to help free-up businesses, encourage greater personal responsibility.

10. We question whether the draft proposals are compatible with the Coalition Government’s regulation strategy of:

- removing or simplifying existing regulations that unnecessarily impede growth;
- reducing the overall volume of new regulation by introducing regulation only as a last resort;
- improving the quality of any remaining new regulation; and
- moving to less onerous and less bureaucratic enforcement regimes where inspections are targeted and risk-based.

The proposals increase the scope of existing regulation rather than reducing it, they add complexity rather than offer simplification, and it is not clear whether any non-regulatory solutions have been considered.

11. It is important that consumers are better informed and a creative modern solution needs to be proposed rather than further regulation and paperwork in an attempt to bridge gaps in existing provisions.

January 2012

Written evidence from the Civil Aviation Authority (ATOL 03)

EXECUTIVE SUMMARY

1.1 The Air Travel Organisers’ Licence Scheme (ATOL) is a financial protection scheme managed by the UK Civil Aviation Authority (CAA). All travel companies selling air holiday packages and flights in the UK are required by law to hold an ATOL Licence, granted after the company has met the CAA’s licensing requirements.

1.2 In the event of an ATOL holder’s failure, the CAA ensures customers who paid and contracted with the ATOL holder for an air holiday package or a flight, do not lose the money paid over or are not stranded abroad. The scheme is financed through a per passenger payment, known as the ATOL Protection Contribution (APC), which ATOL holders are required to pay into the Air Travel Trust (ATT). The APC is currently £2.50, and can only be changed with approval of the Secretary of State.

1.3 The scheme does not currently cover bookings and payments made to airlines, or to airline agents where airline tickets or a similar airline booking confirmation has been issued.

1.4 Every year, over 18 million people enjoy holidays which are ATOL protected. Although the majority of them will have no need to call on the protection offered by the scheme, in the past three years over 100,000 have been repatriated by the CAA following failures and over a quarter of a million people have received refunds to allow them to book replacement holidays.

1.5 The CAA supports the Government’s reforms of the ATOL scheme which will give consumers a greater chance of benefiting from statutory protection. This will be achieved in the short term with the implementation of revised ATOL Regulations which will extend the scope of ATOL to cover what is being called “Flight-Plus” holidays, and which introduces the ATOL Certificate, a standardised document which will explain to holidaymakers what is protected and what assistance is available in the event of an insolvency.

1.6 The DfT have also included provisions in the Civil Aviation Bill which may be used to further extend ATOL to cover air holidays sold by airlines and sales where a travel firm is acting as agent for the consumer. The CAA supports these measures as they are vital to ensuring all holidays which look the same are subject to the same consumer protection requirements. The reforms are essential for consumer clarity and to ensure a level playing field across the travel market.

BACKGROUND TO ATOL

2.1 ATOL was established nearly 40 years ago by the Government to protect holidaymakers whose tour operator ceased trading and to ensure they are looked after in the resort until the end of their holiday and brought home to the UK. In addition, if holidaymakers are yet to travel, they receive a refund of their money so they can book another holiday.

2.2 Subsequently, European legislation came into force which required, amongst other things, financial protection for all package holidays (Council Directive 90/314/EEC on package travel, package holidays and package tours, known at the “Package Travel Directive” or PTD). ATOL provides the means by which the UK meets this obligation for air inclusive package holidays, except those sold by airlines, which are currently excluded from the scheme in primary legislation.

2.3 The travel industry has changed significantly since ATOL was established in the 1970s. Then, most scheduled carriers were nationalised and the structure of agents selling tour operators’ package holidays was standard practice, with most holidaymakers travelling on charter flights. Today, most former national carriers are privately owned and an increasing number of travellers and holidaymakers book over the internet and do not use the traditional High Street travel agent.

2.4 The rise in sales on the internet and over the telephone has meant that more people are putting their own holidays together, either by booking directly with suppliers or using intermediaries who replicate the flexibility and freedom of direct booking. Where intermediaries are used, it can be difficult to establish whether the holidaymaker has bought a package, which should be protected by ATOL and benefit from the broader protection provided by the Package Travel Regulations (“PTR”, the UK implementing legislation for PTD). In some cases, the holidaymaker may have financial protection for the flight but find that, in the event of an ATOL holder failure, they have no means of recovering the cost of accommodation which they cannot reach as the flight supplier has failed.

2.5 In order to clarify whether such bookings should be licensed under the ATOL scheme and benefit from full financial protection, the CAA published a guidance note which set out how it interpreted the definition of a package as set down in law. This was subject to a Judicial Review brought against the CAA by ABTA which quashed the guidance note and resulted in a judgment on what constitutes a package. The CAA appealed this decision unsuccessfully, and the final judgment handed down by the Court of Appeal contained an interpretation of the definition of a package which concluded that whether components of a holiday were sold separately or as a combination in a package was a matter of fact to be decided on a case-by-case basis.

2.6 As a result of increased direct bookings and the difficulty in establishing whether a package has been created, the number of people taking holidays which are ATOL protected has fallen and today only around 50% of holidaymakers travel with full financial protection from ATOL. However, because financial protection was traditionally prevalent, the majority of consumers do not realise that the arrangements they buy today may not be ATOL protected and that they run the risk of either losing their money or, worse, having to make their own arrangements to get home if their holiday firm fails.

2.7 Around four years ago a decision was taken to change the way in which ATOL failure costs were met. For the previous 30 or so years, the primary protection device had been the provision of a bond from either a bank or an insurance company, with the money available to look after ATOL protected passengers in the event of the ATOL holder’s failure. In circumstances where bond monies were insufficient, the ATT would meet the cost of claims. By the early 1990s, however, the Fund was in deficit and the ATT had no means of replenishment.

2.8 A mechanism for replenishment came into effect in 2008 when the requirement for ATOL holders to make a per passenger ATOL Protection Contribution (APC) was introduced. This is now the primary way in which ATOL failures are financed.

WHY IS REFORM NECESSARY?

3.1 The confusion over whether a holiday sale is a package means that there are now many holidays available which may look like packages to consumers but do not fall under the legal definition and so are not protected under the ATOL scheme. This makes it difficult to explain to the consumer when their holiday company is licensed and they should be protected, and, conversely, when they are at risk and need to make their own protection arrangements.

3.2 This scenario was illustrated in September 2008, when the large integrated holiday group, XL Leisure, failed. As the CAA began its repatriation and refund processes, it became clear that it was possible for two holidaymakers to have booked identical holidays and for one to be fully financially protected, whilst the other has only partial protection or no protection at all. Since XL, consumers have had similar experiences with the failure of Goldtrail and Kiss Flights in summer 2009 providing further evidence of the confusion which exists.

3.3 The XL failure also demonstrated that it was increasingly difficult to run an efficient refund system that would swiftly allow people to book new holidays because of the ever increasing complexity of agents’ paperwork and the difficulty for even the CAA to judge whether claims were valid or not. An independent report (www.caa.co.uk/docs/33/Report201104.pdf) considering the payment of claims after the XL failure found

that some agents consistently failed to comply with the CAA's paperwork standards, which delayed the claims process.

3.4 The reason for ATOL reform is therefore primarily to ensure that consumers can understand the ATOL scheme, and that the valuable protection that it provides applies consistently to like-for-like holiday arrangements so that the CAA can provide the appropriate protection efficiently and effectively. As the confusion results from the definition of what is in the scope of the ATOL scheme, clarity can only be achieved through changes to the legislation which underpin the scheme.

WHAT IS PROPOSED IN THE REFORM PACKAGE?

Secondary Legislation

4.1 Last year, the DfT proposed revisions to the ATOL Regulations to come into force in April 2012 to reform a number of key areas. These proposals include the requirement for persons arranging "Flight-Plus" to be licensed. The CAA supports the concept and definition of "Flight-Plus" holidays put forward by the DfT. This should ensure that holidaymakers benefit from ATOL protection when booking holidays which do not meet the strict definition of a package but where the arrangements are sufficiently similar that a consumer might expect ATOL protection and where the logic of related protection for connected holiday services clearly applies.

4.2 The CAA also strongly supports proposals for new requirements in the ATOL Regulations for travel firms to provide holidaymakers with a standardised "ATOL Certificate" at the point of purchase, which will make it clear to them what their rights are and what is protected. The Certificate will also simplify and speed up the process of assessing claims for refunds following failures, ensuring that holidaymakers are able to rebook more swiftly.

4.3 The CAA is also introducing the concept of Accredited Bodies, membership organisations (likely in many cases to be travel consortia), approved by the CAA to hold ATOLs covering the business conducted by its members. This will remove the need for the individual members to be licensed, and the Body will also be responsible for overseeing its member's in accordance with mechanisms and criteria approved by the CAA, reducing the compliance burden.

4.4 These proposals will significantly improve clarity for consumers, and should also help achieve the DfT's other stated aim of the reforms, which is to ensure that the ATT is returned to a sustainable financial footing as soon as possible. At present the financial arrangements in place to support the ATT are backed up by a guarantee from the Government which could ultimately expose taxpayers to the cost of holiday protection. The DfT expect the protection system to be financed solely by industry, and the CAA endorses this approach. The CAA does not believe, however, that this can be achieved through secondary legislation alone.

4.5 Consequently, amendments are required to the primary legislation under which the ATOL Regulations are made, to remove the ability of travel firms to avoid the need to obtain an ATOL, to protect consumer where the travel firm acts as agent for the consumer, and to bring holidays sold by airlines into ATOL. Industry have made clear that their support for the proposed reforms is conditional upon bringing airline holidays into ATOL, a view which the CAA supports as it will help to improve consumer clarity by ensuring that similar products sold in similar markets are covered by the same regulations.

Primary Legislation—"Agent for the Consumer"

5.1 Currently, it is possible for consumers to book holidays that they think are ATOL-protected air packages holidays, but subsequently find that the company they have booked with is acting as their agent ("agent for the consumer") and is therefore able to avoid ATOL regulations. This practice is most common amongst firms who operate outside of ATOL, but the CAA has experience of ATOL holder failures where this trading model has been adopted alongside traditional, protected, sales methods.

5.2 The Civil Aviation Bill (under which ATOL Regulations are made) states that regulations may be made to ensure that no one makes available flight accommodation other than the operator of the relevant aircraft and those who hold the relevant licence (ie ATOL). Court judgements have ruled that a business is not "making available" flight accommodation if they act as "agent for the consumer", and have no right to dispose of or sell the flight.

5.3 The increasing prevalence of this type of business was brought to the CAA and the Government's attention following the failure of Sun4U in summer 2009. Sun4U had organised its entire business to operate as "agent for consumer", avoiding the ATOL regulations and leaving thousands of holidaymakers out of pocket when they failed.

5.4 The CAA is concerned that the consumers in these transactions do not know that holidays have been sold on this basis and do not understand the consequences for their financial protection provisions. Travel firms who choose to arrange holidays and would otherwise need to comply with the proposed ATOL Regulations due to the extension in scope to cover Flight-Plus arrangements may decide to act as "agent for the consumer" to avoid the proposed measures.

Primary Legislation—Airline Holidays

6.1 The confusion which exists around holidays booked through travel firms also exists when holidaymakers buy air-inclusive holidays arranged by the airline operating the flight. Again, the protection provided at present will depend on whether the holiday is a package as defined or not. Where a package has been created, the protection may or may not be provided by the ATOL scheme, depending on how the airline has decided to approach these requirements.

6.2 This has come about because the Package Travel Regulations (PTR) applies to whoever organises the package, whilst ATOL Regulations do not apply to the airline operating the flight. Some airlines choose to comply with the financial protection obligations in PTR by establishing a separate trading entity for the arrangement and sale of packages, which is subject to ATOL Regulations and able to apply for an ATOL.

6.3 There are currently an estimated 1.6 million such holiday sales protected by the ATOL Scheme (with a further 9.1 million sales by integrated holiday groups which could restructure to sell as an airline rather than as a tour operator). All of these sales may be removed from the protection scheme at any time.

6.4 In addition to the risk that these sales are removed, there are also a number of large airlines who arrange package holidays, sell direct and provide alternative financial protection (not including repatriation arrangements) to meet their obligations under the PTR. This adds further complexity to the already confusing financial protection landscape.

6.5 The CAA therefore fully supports the inclusion of ATOL reform measures in the Civil Aviation Bill so that airlines have to comply with the ATOL Regulations for package and Flight-Plus arrangements. As stated above, this will not only bring further improvements to consumer clarity, but ensure the success of short term measures which the DfT wish to achieve through the revised ATOL Regulations.

THE FUTURE

7.1 At the time of its last Report and Accounts, for the financial year 2010–11, the ATT's deficit stood at £42 million. Currently, projections indicate that the deficit will be removed by spring 2014, exempting the possibility of a significant, expensive failure in the interim period.

7.2 The DfT have made clear that part of the reason for reforming ATOL, in addition to improving consumer clarity and ensuring that when people book travel arrangements that appear to be a holiday they are protected, is to reduce the ATT deficit more rapidly by increasing the numbers of annual APC payments into the fund.

January 2012

Supplementary evidence from the Civil Aviation Authority (ATOL 03a)

Q94 Evidence that consumers want the changes that are proposed, including details of research conducted into the extent to which consumers understand the scope of ATOL

In many cases, holidaymakers only become interested in their financial protection when something goes wrong. Following major tour operator failures over the past three summers (including XL, Globespan, Goldtrail, Kiss Flights and Holidays4U) significant numbers of consumers have made it clear to the CAA that they were not aware of their financial protection situation should their travel provider cease trading. We have received numerous letters directly from the travelling public, via their Members of Parliament and via complaints to the media about the situation, where people have expressed the view that they have been caught out by a complex system that leads them to believe they have bought a protected package holiday when in fact they have booked travel arrangements with no protection.

TNS carried out research for Travel Weekly among 688 people who had taken a holiday in the last year. It found that when they asked "How important is it to know your main holiday outside the UK is financially protected against the failure of one or more of the travel companies involved?" 57% said very important and 23% said quite important. When they asked the same group "A traditional package holiday is financially protected under a government-backed scheme, but flights and accommodation overseas that are booked separately are not covered. Thinking about this, which of the following statements best describes your view?" 44% of respondees said all holidays should be protected and 13% said all flights should be protected.

Q99 Would bookings by UK customers with non-UK airlines be brought into ATOL?

The scope of any new UK legislation is bound by the EU Services Directive (implemented in the UK by the Provision of Services Regulations 2009).³ This aims to promote and support the single market in services, which includes the sale and offer of holidays. To do so, it limits a Member State's ability to require a business established in another EU Member State to comply with a specific requirements, such as a licensing scheme, in order for the business to offer services in its territory.

³ SI 2009 No 2999.

We understand that the DfT have therefore concluded that it would not be possible to require airlines (or other businesses) established in other EU Member States but not in the UK to obtain an ATOL licence for their sales of holidays.

As the EU Services Directive applies only to businesses established in EU member states, new legislation governing the sales of Flight-Plus by airlines would apply to non-EU airlines. A number of American and Middle Eastern carriers in fact have subsidiary companies which hold an ATOL to comply with current PTD and ATOL Regulation requirements.

Q113 Why did the Government reject the CAA's 2005 proposal for a levy in all outbound flights?

The CAA's understands that the Government decided against the CAA's "All-Flights" proposal on the grounds that the Government believed:

- The proposals were unfair as the main costs borne by a protection fund built up with airline contributions would be spent on refunds and not repatriation and would disproportionately benefit those who have made expensive holiday arrangements.
- The proposals would not provide protection for independent travellers who would only have protection for the flight element of a holiday and be exposed to the cost of unusable accommodation or other services.
- The measures were not proportionate as UK airlines have committed to helping passengers affected by airline failures, which, combined with other transport options, means that consumers have alternative means of returning home. They may also be protected by Scheduled Airline Failure Insurance or the Consumer Credit Act.

Q120 What percentage of holidays would be covered under the new proposals?

The DfT's Impact Assessment states that the changes to the ATOL Regulations, which will come into effect on 30 April 2012, could bring ATOL protection to an additional 4–6 million. This would increase the number of consumers benefiting from ATOL protection annually to approximately 22–24 million.

According to the Office of National Statistics, there were 56.1 million visits abroad by UK residents by air in the year to December 2011. Of these 36.4 million stated the purpose of their trip as "holiday". 22–24 million ATOL protected passengers therefore represents 60–66% of those travelling abroad for a holiday.

Q123 How is the EU Package Travel Directive implemented in other EU countries?

The CAA conducted a review of financial protection arrangements in different countries to establish whether there was a more effective way of managing and financing the ATOL Scheme. The European schemes reviewed by the CAA were chosen because they have a similar overseas holiday market to the UK. The CAA's findings are summarised below. The review was initially undertaken in 2004. In compiling this information for the Transport Select Committee, the CAA undertook some desk-based research and has concluded that the information provided below remains accurate.

Ireland

The legislation under which Ireland implements the PTD predates the directive and states that companies other than carriers that sell or offer for sale overseas travel by land, sea, or air, with or without other facilities, require a Travel Trade Licence from the Commission for Aviation Regulations (CAR). This includes travel agencies. A licence will be issued subject to an assessment of the financial standing of the applicant and the fitness and suitability of the applicant to act as either a travel agent or a tour operator.

Any consumer buying travel products, whether individual services or inclusive holidays, from a licensed tour operator or travel agent is able to claim a refund or repatriation assistance in the event that their licensed travel agent or tour operator is unable to fulfil its contractual obligations. This is funded through bonds provided by the licensed companies. If the bond is insufficient, CAR may call on the Travellers' Protection Fund. The Fund was founded by a levy in the mid 1980s, which was stopped in 1987. Since then the fund has continued to maintain a small surplus without the need for any further levy.

Germany

German Civil Law requires tour operators to guarantee that in the event of their insolvency, consumers would be able to obtain a refund of their holiday costs and any repatriation expenditure. The use of the term "tour operator" refers to providers of at least two travel components being combined into a total price offer. If a tour operator is unsure of their status, they are required to consult a travel lawyer or their trade body for advice.

Protection is provided to consumers by the use of either insurance or bank guarantees, obtained individually by tour operators to be called upon in the event of their failure. The guarantees are not for a set amount but offer full coverage in the event of a failure. However, the obligor is permitted by the law to limit their liability to €110 million (£75 million) in a year. If that is insufficient then the law requires that payments will be

reduced proportionately, as there is no back-up fund. This should be enough to cover the majority of all failures, but it is acknowledged that it would not be sufficient in the event of a failure of a major tour operator. The limit exists as bond obligors have historically had difficulty in obtaining reinsurance for this business. If a tour operator does not have the appropriate guarantee in place, any customers booked with them will not be protected.

There is no organisation responsible for the administration of the Package Travel Directive. In the event of a failure, customers are advised to contact the insurer or bank that provided the guarantee. Consumers in resort when insolvency occurs are expected to pay for their own way back and claim for the costs upon their return. The majority of insurance obligors however choose to organise repatriation, as it is cheaper than letting the travellers do it themselves.

Netherlands

Protection is provided through the Stichting Garantiefonds Reisgelden (SGR) scheme which translated means the Travel Compensation Fund. Tour operators are required to participate by law, and travel agents may join the scheme on a voluntary basis. The scheme protects consumer against the loss of a package sold by a tour operator and travel services such as accommodation and transport tickets booked through a tour operator or participating travel agent.

A package is defined by law as a pre-arranged trip of 24 hours or more comprising travel and one other significant element such as accommodation. This also covers dynamic packaging (where the customer dictates the exact components of their package).

Participants have to meet financial requirements, and must provide a bond. If the bond is insufficient, SGR has access to a guarantee fund which has an annual cap on expenditure and an insurance policy to cover costs incurred above that cap.

In the event that all three levels of protection prove insufficient, participants may only obtain partial refunds according to the money available; however such a situation would be nearly impossible due to the fact that the consumer levy can be restored at any moment. There is no financial back up from the government.

Sweden

Swedish legislation requires anyone who arranges or sells travel arrangements regulated in the Travel Guarantees Act to lodge security with the Swedish Legal, Financial and Administrative Services Agency (SLFASA). These travel arrangements include, package tours, transport sold for use in conjunction with package tours and travel arrangements consisting of separate transport and accommodation services that together bear a substantial resemblance to a package tour.

The purchase of a single service is not covered by the Travel Guarantees Act. Therefore airlines, hotels or others who only sell one service do not have to lodge security under the Act.

Security is provided in the form of a bond from an approved EU bank or insurance company. There is no back up fund for the bonds. If the bond is insufficient, insurers will issue partial refunds to customers once the three-month claim deadline has expired and they are able to calculate the amount of funds to be distributed.

Q130 What drain on the ATTF has arisen from airline failures?

It is not possible to quantify the drain on the ATTF that has arisen as a direct result of airline failures. The CAA has managed a number of ATOL holder failures in recent years where the ATOL holder was part of a group which included an airline, such as Silverjet, XL Leisure Group and Globespan, and where the ATOL holder had close associations with a specific airline, such as Seguro who relied heavily on Spanish operator Futura.

The expenditure figures below, taken from the annual Air Travel Trust Report and Accounts, illustrate the cost arising from these failures. The difference in total expenditure and call of the ATTF was met through additional security provided by the ATOL holder to the CAA for use in the event of its insolvency.

<i>Company</i>	<i>Year</i>	<i>Total Expenditure</i>	<i>Call on ATTF</i>
Silverjet	2008	£2.1 million	£0 million
Seguro	2008	£4.8 million	£2.3 million
XL Leisure Group	2008	£70.3 million	£29 million
Globespan	2009	£3.7 million	£0 million

The cases of Goldtrail and Flight Options cited by Richard Jackson in the oral evidence session of the Transport Select Committee 31 January 2012 are examples of where contractual requirements set by airlines can have an impact on ATOL holders. In these cases, the airline did not fail at the same time as the ATOL holder, but where the commercial arrangements which existed placed extreme pressure on the ATOL holder which, it may be argued, led to the ATOL holder's failure. Goldtrail cost a total of £22 million, all of which

was met by the ATTF, and Flight Options, whose failure was a consequence of the Goldtrail failure, cost a total of £20.4 million, £19.4 million of which was met by the ATTF.

Q? Additional clarification on private travel insurance policies—what they normally cover/exclude and to what extent they might provide an alternative to ATOL, including the costs to the ATTF of repatriating a typical holiday maker and how much they pay if they have meet the cost themselves

The CAA believes that private travel insurance is a valuable product that compliments statutory protection provided by ATOL and other Package Travel Regulation's protection mechanisms. It is possible for consumers who choose to book their holiday components separately to obtain supplier failure insurance to protect themselves against the risk of insolvency.

The detail of the individual insurance policies can vary significantly. Whilst there are some available that will cover the financial failure or bankruptcy of airline, accommodation provider, and activity or excursion providers, a study conducted in 2008 showed that only one out of eight insurance providers offered this cover, and in that instance it was offered as an additional product. The CAA believes that it is likely that the number of firms offering this cover has increased since 2008 as the failure of the XL Leisure Group in September 2008 raised the profile of Scheduled Airline Failure Insurance (SAFI) in particular.

The CAA understands that in most instances, this cover will ensure that the consumer is refunded for the cost of the lost element. This means that the cost of returning home if abroad when a failure occurs will have to be met by the consumer and that the cost of any element that cannot be used but where provider of that element is still trading (ie the amount paid for accommodation that cannot be reached as the airline has failed) cannot be recovered. These insurance policies will also exclude airlines that it believes to be high risk. It is common practice for example for SAFI policies to exclude US airlines who are in Chapter 11 bankruptcy.

The cost of repatriation met by the ATTF is, on average, £280 per person. This increases to £355 when factoring in the cost to the ATTF of assisting with ground arrangements. Such arrangements typically include making payment to accommodation providers who have not been paid by the ATOL holder to avoid the consumer being removed from the accommodation.

Airlines have offered special repatriation fares to consumers affected by airline insolvency. Consumers affected by recent airline failures, specifically Malev and Spanair, could have replaced their return tickets with easyJet for between 50 and 60 Euros, and when Silverjet ceased in 2008 British Airways offered repatriation fares of between £617 and £900 plus taxes. The CAA does not have any information to indicate how many consumers were able to access these fares.

Repatriation fares were made available by airlines following the failure of the XL Leisure Group. That particular case however demonstrated limitations of such arrangements as many affected holidaymakers were in resorts which these airlines did not serve including Greek Islands where alternative transport options were very limited.

The reform of ATOL aims to ensure that all air holidays are ATOL protected. As well as increasing the number of holidaymakers who benefit from comprehensive protection, it will also enable those who choose to arrange their holidays independently to take advantage of insurance on offer as it will be possible to explain clearly what cover they should look for in their policies.

February 2012

Written evidence from ATBA, the Travel Association (ATOL 04)

INTRODUCTION

1. This response is submitted on behalf of ABTA—The Travel Association. ABTA was founded in 1950—and is the largest travel trade association in the UK, with over 1,200 members and over 5,000 retail outlets and offices. Our Members range from small, specialist tour operators and independent travel agencies through to publicly listed companies and household names, from call centres to internet booking services to high street shops.

2. ABTA Member sales account for 90% of the package holidays sold in the UK annually, accounting for roughly £41.2 million of the Air Travel Trust Fund's (ATTF) £46.2 million annual income. ABTA estimates suggest that our Members are licensed to sell in excess of 18 million ATOL protected holidays each year (in 2010–11 this represented 16.5 million in sales); ABTA Members are also responsible for the sale of millions of independent travel arrangements to UK travellers.

3. Currently, 631 ABTA Members are ATOL holders. It is estimated a further 629 ABTA Members could be required to enter the ATOL scheme under the proposed reforms currently being considered by the Department for Transport (DfT). The proposed reforms of the ATOL scheme are likely to entail significant systems and process changes for ABTA Members.

4. ABTA welcomed and contributed to the Transport Select Committee's evidence sessions on the Draft Civil Aviation Bill and we warmly welcome the Committee's further inquiry into ATOL reform. ABTA notes

that the Transport Select Committee has been a strong advocate of consumer clarity. We are grateful for the opportunity to submit our views on this policy area of critical interest to ABTA Members, and we wish to offer our continuing assistance to the Committee in the form of our participation in oral evidence sessions, if it is deemed helpful.

KEY EVIDENCE

5. ABTA remains firmly supportive of the Government's key aims in the reform of ATOL: clarity, transparency and coherence for consumers; ensuring a greater proportion of travel arrangements are protected; and eliminating the ATTF deficit, and its on-going replenishment.

6. ABTA believes all holidays—however they are booked—should be financially protected. This is the starting point for our call for an extension of consumer protection. ABTA notes however, that the proposals will mean that just over 50% of all holidays taken by UK nationals will be protected by the ATOL scheme. The current proposals are a first step towards creating a more comprehensive, clear and transparent system of consumer protection. However, we believe the scheme cannot be made fairer or successful if at a minimum, airline holiday sales are not brought within the scope of the reform.

7. ABTA welcomes the introduction of the Civil Aviation Bill (19 January 2012). We welcome the proposal to extend the Secretary of State's powers to include holidays sold by airlines within ATOL. This is a major step forward. We now urge the Government to outline its concrete commitment to bringing these sales into the ATOL scheme.

8. ABTA notes that the Department for Transport's summer consultation on ATOL reform directly addressed the question of holidays sold by airlines. At that time, all stakeholders (including airlines) had the opportunity to respond to the proposals. Furthermore, the case for inclusion of holidays sold by airlines was emphatically made by ABTA and other respondents during that consultation period. For this reason, and in order to avoid delay in creating a comprehensive and fair scheme of consumer protection, ABTA believes a further consultation on the case for bringing holidays sold by airlines into ATOL is unnecessary.

9. ABTA notes that the European Commission is currently in the process of considering the issue of airline insolvency, and may at some point bring forward proposals for all airline sales, including where airlines are acting as flight-only providers, to be included within a scheme of consumer protection. ABTA would urge the Committee to ensure that the drafting of the Civil Aviation Bill allows the flexibility whereby future Parliamentary time need not be taken up to make amendments to allow the extension of consumer protection.

10. We will continue our work with the Department for Transport and the Civil Aviation Authority to ensure that the Civil Aviation Bill is not a missed opportunity for consumer clarity, and establishing a level playing field for travel businesses. We urge the Transport Select Committee to utilise this opportunity to impress upon Government the importance of the inclusion of airlines selling holidays within ATOL if the Government is to achieve the objectives of clarity, transparency, and comprehensiveness.

11. ABTA supports swift action on implementation; however, we caution that these reforms must not be implemented so swiftly that they create more problems than they resolve and render these proposals ineffective. We need a workable solution, not just a quick solution. While we strongly supported the Government announcement (October 2011) that the implementation of these proposals would be pushed to April 2012, we question whether, with less than three months until this date, and the Government yet to report on the consultation, full compliance with the reforms is achievable by the deadline set out. While the industry will make every effort to comply in time, the initial period of implementation may make complete compliance at the time the regulations come into force impossible. The Government should be very clear in relation to this, and its expectations of travel businesses considering the increasingly limited implementation window.

12. While ABTA initially expressed concerns that the consultation process had left open some fundamental issues, the Department for Transport and the CAA have both been constructively and effectively engaged in consultation with ABTA, and the wider industry throughout the reform process. The consultation has resulted in significant improvements in the proposals, and ABTA strongly supports the cooperative approach taken by the CAA and the Department for Transport.

13. For clarity, transparency, and a level playing field, ABTA believes that all business travel should be exempt from the ATOL scheme. We welcome the Government's intention to exclude business travel in the draft regulations; we note that the proposed credit exemption will not exclude all business travel arrangements; however, we are working with the CAA to ensure that the right balance is struck with these proposals.

14. ABTA Members feel strongly that microbusinesses should not be exempt from the scope of these regulations. Whilst we accept that to include microbusinesses would contradict current Government policy, the alternative of an exemption would perpetuate consumer confusion and uncertainty. When ABTA Members were asked if they agreed that microbusinesses should be exempt from the ATOL reform regulations if it increases the regulatory burden on these businesses, 58 respondents said yes (28%), 117 respondents said no (56%), and 33 respondents said they were unsure (16%). Furthermore, a large majority of all Members, 67%, thought that excluding microbusinesses would have a negative impact on the clarity of consumer protection in travel—12% thought it would have a positive impact. Of the 223 responses we received, 119 of these responses came from microbusinesses (53%).

15. ABTA support for the inclusion of microbusinesses within the ATOL scheme is two-fold. Firstly, we want a comprehensive and clear system of protection. Exempting small businesses would not provide the clarity we have called for. Secondly, our microbusiness Members have stated that they would want to be in a position to offer the same comprehensive protection as their larger competitors. Microbusinesses sitting outside the scope of ATOL would create a disincentive for customers to book with small businesses and this would be extremely unhelpful for the overall health of the sector.

16. ABTA in principle supports the proposed ATOL Certificate. However, we remain very concerned that some of the practical issues involved in the introduction of the Certificate may give rise to uncertainty about protection amongst the trade and especially consumers. The key concern regarding the ATOL Certificate is, again, the timeframe for implementation.

THE CASE FOR INCLUDING AIRLINE HOLIDAY SALES WITHIN ATOL

17. In developing the ABTA response to the June 2011 DfT Consultation on the reform of ATOL scheme, ABTA carried out a robust consultation of Members, including the distribution of a comprehensive questionnaire. The results of this questionnaire were overwhelming; with 95% of ABTA Members believing that airlines should be included within the ATOL scheme if the reforms were to achieve the Government's stated objectives.

18. 87% of our Members believe that all airline sales, including seat-only, should be brought within the scope of the scheme. 93% of Members agree that airline website sales resulting in click-through arrangements should be included as Flight-Plus. This supports ABTA's long-advocated position whereby all holidays should be protected regardless of how they are booked.

19. The airline-led unprotected flight holiday market is substantial and a solution that excludes airline holidays beyond the short term can neither be effective in terms of consumer protection, nor can it be fair competitively. We believe it is essential that all customers buying similar products should be entitled to clear, comprehensive and similar protection—therefore, airlines selling holidays must be included within the protection regime.

20. Airlines can, and do, fail financially. Comprehensive evidence of recent failures of airlines is included within this submission. ABTA firmly believes that not only will the Government's aims remain unachievable if airlines are not included within the scheme, but furthermore, in their current form, the reform proposals would create a system with market distortions. Such distortions are not only unfair in a competitive marketplace, but we believe they also perpetuate consumer confusion about whether their holiday arrangements are protected or not.

21. Consumer confusion coupled with the distorted competitive landscape in favour of airlines could well lead to fewer and not more consumers choosing financially protected travel arrangements. ABTA estimates that it will cost a Flight Plus arranger roughly £5–£10 per person to financially protect a holiday arrangement; this expense is passed on to the consumer via a higher price. These costs represent a considerable financial disincentive to purchasing protected arrangements. ABTA believes excluding holidays sold by airlines will also incentivise traders to seek to avoid the scheme, as far as legally possible, in order to remain competitive against those companies trading without the costs of protection.

22. For example an identical flight and an identical hotel sold by a travel agent as a Flight Plus arrangement could have £40 added to the overall price of the holiday than the same hotel and flight being sold by an airline as they are excluded from the costs of compliance. The travel agent would be required to financially protect the customer's monies, provide an ATOL Certificate and replace any failed elements. The airline, selling the same product, would have none of these obligations. If left unaddressed, we believe that this would perpetuate consumer confusion and not achieve the Department's objectives in making a clearer, simpler and more balanced system.

23. The majority of ATOL failures that have involved significant withdrawals from the Air Travel Trust Fund (ATTF), leading to the current deficit in the fund, have been largely a result of airline failures, usually driven by external crises, which impact on the businesses of airlines and travel companies. Throughout the lifetime of the ATOL scheme systematic collapse, where the failure of an airline has subsequently led other travel businesses to cease trading, has been a common occurrence.

- (i) The first example of this was the failure of Courtline in 1974. The failure of Courtline was driven by the oil crisis of the early 1970s and the failure of the parent shipping line. As a result, the impact on Clarkson Holidays was significant, and a failure resulted—leading to the creation of the ATOL scheme.
- (ii) In 1982, Laker Airways collapsed, taking along with it subsidiary operators Aerosmith Holidays and Laker Holidays. The Air Travel Trustees was able to deal with the resulting costs. By 31 March 1990, the ATTF stood at +£25 million, rising to +£28.3 million in 1991.
- (iii) However, on 8 March 1991, in the midst of the uncertainties of the Gulf War, Air Europe failed, taking down the International Leisure Group (Intasun/Global/Lancaster/Club 18–30 etc—the UK's second largest operator only to Thomson at the time) with it. By March 1992, the ATTF

was +£19.3 million and by March 1993 had fallen to +£7.6 million—the link between the collapse of ILG and the depletion of ATTF is clear.

- (iv) Best Travel Group (including Ambassador Airlines) ceased trading in 1994, further depleting the ATTF until by 1997, it was -£5.2 million in deficit and it has not been able to climb back into the black from this point.

24. The major jump in the ATTF deficit can be attributed to the economic climate of recent years, when airlines have failed: XL Travel and Leisure; Kiss Flight; Freedom Flights to name but a few.

25. According to the Air Travel Insolvency Protection Advisory Committee (ATIPAC) reports (2000–11), substantial amount of monies have been paid out from the ATTF on failed ATOL holders, whose failures can be directly attributed to airline insolvencies over the last 11 years. This comes to £50,140,000 of a total £108,101,000 in calls, representing 46.38% since the inception of the ATIPAC online reports in 2000. This clearly demonstrates the importance of including airlines within the ATOL Scheme if the Government wishes to achieve its stated objection of eliminating the ATTF deficit.

26. In the last three years, 51.2% of all claims on the ATTF can be attributed to monies paid out following failures of ATOL holders as a direct result of airline insolvencies; we would highlight the failures of Silverjet, XL Leisure, and in particular, their Freedom Flights business, as well as Goldtrail and Flight Options Ltd, who appear collectively to have cost the ATTF somewhere between £80 million and £90 million between 2008 and 2011.

27. The failure of an airline tends to have a very significant impact on the ATTF when they occur. We would like to draw your attention to the failure of flyGlobespan, which as a non-ATOL holder did not result in a call on the ATTF. However, some 3,500 passengers had booked directly with flyGlobespan and they were adversely affected, along with some 90,000 passengers yet to travel. This caused considerable consumer detriment that we believe could have been mitigated if holidays sold by airlines had been included within the ATOL protection scheme. It also added to consumer confusion about what holiday arrangements are protected.

28. ATIPAC reports from 2009–11 also highlight the particular significance of the airline failure in terms of impact on the consumer. 70% of repatriations that were necessitated during the period were due to an airline associated failure (67,424–96,940) and of the licensed passengers affected, the airline associated impact was 63% (1,101,851–1,747,605).

29. The CAA was sufficiently concerned about the impact of the EUjet failure in July 2005 to undertake its own report and analysis. When EUjet ceased flying, there were some 12,000 passengers still abroad and 27,000 yet to travel. The failure of Zoom in August 2008 with some 40,000 passengers affected also illustrates the necessity for airlines to be included.

30. In light of this clear evidence, ABTA believes that the Government should make an unequivocal commitment in its response to the consultation to introducing such legislation as is necessary, within the Civil Aviation Bill, to bring airlines into the ATOL scheme. While the announcement on 23 November 2011 is the clearest indication yet that the Government is seriously considering the inclusion of airlines in ATOL, clear and concerted pressure on the DfT will help to ensure that appropriate measures will be taken by Government to bring holidays sold by airlines into the scheme of ATOL financial protection.

31. ABTA is aware of the work of the European Commission to introduce airline insolvency measures. The Commission undertook an impact assessment this year which showed that although the number of passengers affected by airline failures was relatively small, in comparison to the total number of flights across the EU, the impact on those passengers affected was significant⁴. We do not believe that activity in Brussels should preclude activity in the UK and, moreover, believe that without UK action the ATOL scheme is not workable in the medium-term. However, the practical difficulty of applying any national solution to airlines based outside the UK must be recognised. We would recommend the Department for Transport liaises with colleagues in the European Commission on this matter. ABTA believes that efforts to address airline insolvency in the UK should be cognisant of but not tied to efforts in Brussels. We favour a regulatory route to address airline insolvency in Westminster and in Brussels to achieve a level playing field between providers and clear consumer protection.

INCLUDING “AGENT FOR THE CONSUMER” SALES WITHIN ATOL

32. An “agent for the consumer” scenario is a reversal of the traditional travel agent-tour operator relationship, whereby the principal will be the consumer, the travel agent will be the agent of the consumer and the third party will be a travel services provider. The travel agent, as the consumer’s agent, will source travel services from third parties and place the consumer into contract with those third parties. Under the current Government proposals on ATOL, “agent for the consumer” sales would sit outside of ATOL financial protection as the agent for the consumer is not, itself, making available flight accommodation but is sourcing such accommodation on behalf of the consumer. Such arrangements cause great confusion for consumers and, as they are outside of ATOL, place at risk monies taken by the travel agent from the consumer.

⁴ European Commission, Impact Assessment of Passenger Protection in the Event of Airline Failure, conducted by Steer Davies Gleave, March 2011.

33. In order to include “agent for the consumer” sales within the reform of ATOL, primary legislation would be required. ABTA supports clear signals from the DfT that it intends to introduce primary legislation to bring “agent for the consumer” sales into the ATOL scheme at some point. However, in order to dispel consumer confusion in the ATOL scheme, and to create a level playing field for industry, the DfT’s priority must be the provision for the inclusion of holidays sold by airlines within ATOL in the Draft Civil Aviation Bill.

34. ABTA believes that the current agent for the consumer loophole should be closed as soon as reasonably practicable. If there are failures before the loophole is closed, the current regime of financial protection for air travellers will be brought into further disrepute.

35. 25% of ABTA’s Members agree that the agent for the consumer exemption should exist, 52% think it should not, and 23% are unsure. 59% of ABTA Members are not currently acting as agent for the consumer, as defined in the proposals, while 25% are. The majority (52%), are not considering changing their business model in light of these proposals, however 48% have not ruled it out (13% are considering it, 26% are unsure, and 9% are not considering a change yet).

January 2012

**Written evidence from the Board of Airline Representatives in the UK (BAR UK)
(ATOL 08)**

1. INTRODUCTION

1.1 The Board of Airline Representatives in the UK (BAR UK) Ltd represents the interests of 86 scheduled airlines in this country. Full details are provided at www.bar-uk.org.

1.2 On their behalf, BAR UK is pleased to have the opportunity to provide evidence to the Transport Committee in its assessment of the proposed reforms to the ATOL regime.

2. RESPONSE TO THE ATOL REFORMS CONSULTATION

2.1 BAR UK has responded to the DfT’s consultation on ATOL Reform, a copy of which can be found at <http://www.bar-uk.org/consultations/consultations.htm>. That response was not shaped by a self-serving interest on behalf of the scheduled airline community, but one that considered whether or not the proposed reforms solved existing problems and confusion for consumers.

2.2 BAR UK summarised that:

- the proposed reforms fail to meet their objectives;
- consumers will encounter more confusion, not less;
- ATOL Protection charges can be paid, sometimes twice, without offering consumers protection;
- the Flight Plus proposals impose onerous liabilities and could discourage their applicability;
- the Right to Fly/Specified Operator proposals would add more even more confusion to all parties, not just consumers, and are highly likely to prove unworkable;
- for utter clarity to consumers, only traditional packaged travel purchases should be provided with ATOL protection, and all other purchases should explicitly exclude ATOL protection;
- BAR UK formally objects to any proposals to impose the ATOL-regime on direct airline sales; and
- BAR UK is concerned that the proposed Flight Plus reforms may, inadvertently, include direct airline sales, despite the lack of any new primary legislation, and call on the DfT to rewrite the Regulation so that they are excluded.

3. BACKGROUND SENTIMENTS ABOUT THE ATOL REGIME

3.1 The ATOL system was originally simple to understand, and explain. Consumer protection was provided to the purchasers of package holidays, eg those holidays whose arrangements tended to include hotels, flights, and transfers at one quoted price. Other elements, such as sightseeing, might also have been included. ATOL was specific to the UK.

3.2 At this time, travel distribution and booking systems were largely reliant on personal visits by consumers to “bricks and mortar” travel agents/tour operators, or bookings made by phone or mail.

3.3 In the course of time, the Package Travel Directive was introduced to fulfil a similar role on an EU-wide basis. In that respect, the ATOL regime was the UK’s fulfilment of its obligations under the Package Travel Directive and its Regulations.

3.4 Over the years

- the ATOL regime was expanded to include a range of non-pre-packaged travel arrangements, including so-called “packages” assembled as separate items by consumers, travel agents and/or other trading entities;

- distribution/booking methods mentioned in paragraph 2.2 have been enhanced, or replaced, by electronic systems, not least the internet; and
- changes to distribution have also introduced new “intermediaries”, whose legal relationship with the consumers can be unclear.

3.5 The ATOL scheme has been well-publicised and its logo is well-recognised, possibly to the detriment of itself.

3.6 The situation today. Great confusion exists:

- among consumers as to whether or not they enjoy the protection of the ATOL scheme;
- among the industry as to what their legal relationship with consumers may be in respect of ATOL obligations and liabilities; and
- between the CAA and agents/intermediaries, disputing legal relationships and liabilities which have given rise to a number of court cases and appeals.

The Transport Committee is asked to consider Appendix 1. This contains some Questions/Answers provided by DfT to interested parties. These Q/As amply demonstrated some of the confusion, or lack of clarity, created by the proposed reforms, by being difficult to grasp and comprehend.

3.7 Separately, the expansion of the ATOL regime to travel purchases, over and above pre-packaged holidays, has increased the liabilities that ensue when failures occur. The extent is now so great that the Air Travel Trust Fund’s deficit is £42 million (as at March 2011).

3.8 It’s widely agreed that effective reforms are required, but those proposed are not in that category.

4. BAR UK/CAA COOPERATION

4.1 The CAA was proactive in establishing bilateral dialogues with various industry organisations, of which BAR UK was one. Consequently, the opportunity arose to invite CAA representatives to discuss, directly with our airline members, the specific aspects of the Right to Fly/Specified Operator proposals. It soon became evident that unintended consequences to airlines, namely unlimited liabilities in respect of agents, and their various sub-agents.

4.2 A BAR UK/CAA working group was suggested, established, and met shortly later. During that first meeting, and a second one that followed, the CAA seemed minded to recommend some changes to DfT that would limit liabilities to the airlines’ appointed agents only. At the time of writing to the Committee, it is not clear how far these recommendations may have gone.

5. CONCLUDING REMARKS

5.1 The current ATOL scheme is complex and confusing.

5.2 Reforms are needed that are utterly clear and simple. The ones that have been proposed are not, and still have gaps in the consumer protection levels that are supposedly provided.

5.3 For utter clarity to consumers, only traditional packaged travel purchases should be provided with ATOL protection, and all other purchases should explicitly exclude ATOL protection.

Customers should be free to choose, and may consider that they are already adequately protected through travel insurance policies or credit card entitlements.

5.4 The travel industry collectively provides over £2 billion pounds per annum in air travel taxation (APD). Allocating a mere 2%–2.5% of just one year’s APD revenues would instantly clear the deficit of the Air Travel Trust Fund. The same customers should not endure yet more costs through increased APC levels.

BAR UK has looked at the proposed reforms pragmatically, rather than as an opportunity to place more and more layers of confusing regulation on consumers and the travel industry. That is why we have reached the conclusions we have.

We remain ready and willing to appear before the Committee should they so wish.

APPENDIX 1

ATOL REFORM CONSULTATION: CLARIFICATION Q&A (AS PROVIDED BY THE DEPARTMENT FOR TRANSPORT)

INTRODUCTION

The questions and answers provided below arose in the course of the Department’s recent consultation on ATOL reform. They are intended to provide further clarity to stakeholders about the various issues, but do not represent the Department’s formal response to the consultation. This is expected to be made later in 2011.

 DEFINITION OF FLIGHT PLUS
(a) *Definition of “flight” in Flight Plus*

Question

Does a flight in Regulation 22 (1)(a)(i) & (ii) include a flight which constitutes a component of a package? For example, where an agent sells a package (which attracts £2.50 APC), and adds separate car hire, does this create a Flight Plus arrangement and attract a further £2.50 APC because of the car hire?

Answer

The Department believes that this scenario should fall within the definition of Flight Plus and believe that the current drafting achieves this. The aim of Flight Plus is to ensure that holidays are protected as a whole, and this includes sales where an agent sells a package holiday and adds an additional service such as car hire. Car hire is a significant part of a holiday booking and can represent a significant proportion of the overall cost of the holiday. The Department thinks it is therefore desirable that there is linked, statutory financial protection for the package and car hire.

These sales will attract two APC payments, as will sales for Flight Plus which include an ATOL protected flight and accommodation and/or car hire.

In Annex F to the consultation, the CAA explain that the Trustees of the Air Travel Trust are considering making a contribution to the Flight Plus arranger in the event of the failure of the ATOL holder providing the flight where the flight was obtained on a retail basis. This policy could extend to the scenario in the question. The Department has had initial discussions with the CAA who may consider recommending to the Trustees that where a Flight Plus contains a package, a greater contribution (possibly the full amount of the original package contract) could be paid to the Flight Plus arranger in the event of the ATOL package organiser's failure. Any decision on this is at the discretion of the Trustees.

(b) *Definition of “request” in Flight Plus*

Question

Regulation 22 (5) states that the basis for determining a Flight Plus is the *request* made by the consumer. Is it intended that such request should be a request for specific, named living accommodation, self-drive car hire or other tourist services or a non-specific request that accommodation, car hire or tourist services should be booked at a later date outside of the specific time frame? If so, how could this be regulated?

Answer

The request may be specific, but would not need to be. If the request is made for a flight and another element within the specified timeframe, the fact that the booking is completed outside the specified timeframe does not prevent the sale from being a Flight-Plus.

The Department expects a large element of the regulation of this to be driven by the consumer who will be seeking an ATOL certificate, and who will be encouraged to contact the CAA if a certificate is not issued. The Department also expects the CAA to be proactive in using its full regulatory toolkit which could involve targeted compliance monitoring such as test bookings.

(c) *Definition of “contract” in Flight Plus*

Question

Where a Flight Plus arranger is acting as an agent for the provider of the flight accommodation, is the intention of this regulation that the other tourist services are only part of the Flight Plus where they are provided by the principal provider of the flight accommodation?

Answer

This is not the intention. The intention is for “in connection with the contract” to be interpreted in its usual meaning in the English language ie they are supplied to be used on the same holiday as the flight contract is for.

FLIGHT PLUS ARRANGER AS AGENT OR PRINCIPAL

Question

Is the use of the words “as a principal” in regulation 15(1)(a) intentional or in error? If it's intentional then does this mean that a Flight Plus Arranger acting as the agent of an ATOL holder or a carrier is not required to supply an ATOL Certificate?

Answer

The Department hopes that it is clear from the consultation document that the policy intention is that the ATOL certificate must be issued by the entity which interacts with the consumer. For Flight Plus, this will always be the Flight Plus arranger. The Department will review the wording of regulation 15 to ensure that it fully reflects this approach.

There is no intention to require flights sales between ATOL holders to be conducted either on an ATOL to ATOL basis or on a retail basis. It is a commercial issue for the individual ATOL holders to decide how they wish to obtain the flight element of a Flight Plus.

CAA have indicated that they would expect the required written agency agreements to clarify the basis on which the sale was made, and may provide for specific requirements in the ATOL Standard Terms to ensure that appropriate mechanisms are in place to avoid confusion on failure. The CAA will consult on these in the autumn.

There is also no intention to require Flight Plus arrangers to obtain Scheduled Airline Failure Insurance (SAFI), although some may choose to do so.

LIABILITY OF A FLIGHT PLUS ARRANGER

Question

What is intended by “*significantly*” in regulation 24 and what is intended by “*impossible*” in regulations 25 and 26?

Answer

As stated in the consultation document (paragraph 4.25) these obligations are similar to those imposed on package organisers by the Package Travel Regulations. The Department would expect Flight-Plus arrangers to interpret the ATOL Regulation requirements in the same way that package organisers interpret Regulation 14 of the Package Travel Regulations. There are risks to the Flight Plus arranger from taking on this responsibility. We would expect agents to consider this when making a commercial decision about the principals for whom they act as agent when creating Flight-Plus arrangement.

CONTRIBUTION BY THE AIR TRAVEL TRUST

Question

In paragraphs 30 to 39 of Annex F what is intended by “*contribution*” from the Air Travel Trust?

Answer

The CAA have advised the Department that the Trustees are considering how best to calculate the contribution. They are aware of the need for this to be consistent and easy for ATOL holders to calculate, so that they are able to assess their exposure. The CAA will be publishing details on this on behalf of the Trustees in the autumn. As stated above, the CAA is considering advising the Trustees that the contribution for Flight Plus arrangements which include a package should be for the full amount of the package.

CREDIT SALES

Question

It is proposed in paragraph 20 of Annex F that credit sales should be exempt from the ATOL scheme. What is intended by *credit*?

Answer

The Department understands that the CAA intends this to mean sales where payment is made after fulfilment of the travel arrangements, as used by some companies providing travel services to businesses. The main purpose of the proposed reforms is to protect consumers who buy Flight Plus holidays rather than businesses, and the Department will consider options for how this might be achieved.

INSOLVENCY OF FLIGHT PLUS ARRANGER

Question

In the event of the Flight-Plus arranger’s insolvency, is it intended that the consumer should be able to continue with the Flight Plus arrangement? What recourse will the consumer have against the Air Travel Trust in the event of the failure of one or all of the contract principals supplying the services under the original Flight Plus?

Answer

The policy intention is that, where possible, the consumer should be able to use the services booked when a Flight-Plus arranger becomes insolvent. To enable this, the CAA is developing the concept of a “fulfilment partner”, a third party organisation appointed to take on the role of the failed Flight Plus arranger for future bookings. This approach would ensure that principals honoured contractual obligations and that arrangements could be made to help consumers in the event of a supplier failure.

PROVISION OF FLIGHT ACCOMMODATION BY AIRCRAFT OPERATOR**Question**

In regulation 9 (a) does the operator of the relevant aircraft include a carrier selling seat accommodation on an aircraft operated by another carrier under a code-share or similar agreement?

Answer

No, however the CAA already has a class exemption in place for code-sharers so that (in the circumstances set out in the exemption) airlines selling seats on another carrier under a code-share arrangement are not required to hold an ATOL to sell that seat. This can be found in the CAA’s Official Record Series 3.

AGENCY AGREEMENTS**Question**

Under regulation 12 (c) does an agency agreement which is available solely online constitute a written agency agreement for the purposes of acting as an agent for an ATOL holder?

Answer

The Department sees no reason in principle why agency agreements should not be available solely in an electronic format. The CAA intends to provide more information on Agency Agreements in its consultation in the autumn.

RIGHT TO FLY**Question**

In regulation 20 (1) is it intended that a specified operator will confirm that it provides right to fly documents or information to specific, identified right to fly providers or to right to fly providers generally?

Answer

The current intention is for the confirmation from specified operators to be a general commitment to honour any ticket issued on a Right-to-Fly basis. As stated in the consultation document (paragraph 4.65), this aims to resolve the current limitation of the Ticket Provider provision whereby an airline can refuse to honour tickets issued by their agents if they have not been issued according to their terms and conditions.

AIRLINE HOLIDAY SALES**Question**

Is new primary legislation needed to bring airline holiday sales into ATOL, given the recent article by Peter Stewart in *Travel Law Quarterly* which argues that the draft ATOL regulations accompanying the consultation already require airlines to provide financial protection for Flight-Plus holidays.

Answer

The Government’s position is that airlines cannot be required to provide financial protection for the proposed Flight Plus holidays under the Secretary of State’s current powers to make ATOL regulations. The draft ATOL regulations will need to be amended to ensure they are consistent with this.

January 2012

Written evidence from the Association of Independent Tour Operators (ATOL 09)

I. INTRODUCTION

1.1 AITO was formed in 1976 and the reason for its formation was to facilitate smaller companies to obtain ATOL financial protection more easily. It now has 144 members with joint carryings in excess of 800,000 passengers and turnover of approximately £950M. So we represent the SMEs of the tour operating industry who provide the passion, innovation and specialisation that holidaymakers benefit from and enjoy.

Currently, 128 members hold ATOL licences. As a condition of membership, all members have to provide 100% financial protection for their licensable, non-licensable and accommodation-only business. All members act as principals, so taking full responsibility for all the actions of their suppliers as required by the Package Travel Regulations.

Successive Governments have failed to rectify the rise of a totally unregulated sector of the industry, led by the airlines and the so-called dynamic packagers, which have sought to avoid the provision of any financial protection for their clients, have refused to act as principals as required by the Package Travel Regulations and which also avoid payment of VAT on TOMS. This sector now represents more than 50% of all overseas holiday bookings. It has led to unacceptable confusion for consumers with a lack of clarity on financial protection and liability claims.

1.2 The Association therefore welcomes the ATOL Reform proposals which it accepts as the first step towards providing full financial protection for all outbound travellers by air. It accepts that the Government has expressed a wish to include all airline-arranged packages and all click-through sales by airlines within the scope of the legislation but that, currently, because primary legislation would be required to do this, there will be a delay in achieving this aim. We urge that this is introduced in the forthcoming Aviation Bill.

What is now proposed goes some way towards bringing retailers which have acted as quasi tour operators within the ATOL Regulations, so partially levelling the playing field and providing added consumer financial protection. However, the ultimate goal has to be the inclusion of the airlines within this remit.

1.3 AITO would like to stress that the real reason why a quasi tour operator sector has built up within the industry has less to do with the responsibility and significant burden of providing financial protection but is more to do with the avoidance of paying VAT under the Tour Operators' Margin Scheme. A tour operator or accommodation-only provider taking full responsibility for the actions of its suppliers by acting as a principal has to pay between £15 and £20 per person in VAT. AITO has campaigned, so far unsuccessfully, to persuade HMRC to publish comprehensible guidelines as to when VAT on TOMS is payable. The current confusion which exists within the industry is largely down to the rules, which can be interpreted in many ways, thus allowing the unregulated retailer/dynamic packaging sector to flourish at the expense of traditional tour operators which are intensely regulated via the Package Travel and ATOL rules.

We would request that high priority be placed on the issuing of clear guidelines so that travel organisers can decide on the business model they wish to adopt. We would ask the Transport Committee to press for coordination between and decisions from Government Departments so we are able to see that these guidelines are issued before the reforms are introduced in April 2012.

AITO warns that, unless there is clarity on whether VAT on TOMS is payable or not, whole swathes of traditional tour operators will become dynamic packagers with the resultant loss of not only financial protection for consumers but also, importantly, back-up if things go wrong, ie the consumer will be faced with undertaking legal action abroad to gain redress.

This will also result in considerable further revenue loss by the Government.

1.4 Our principal worry is that the proposals for ATOL reform as currently set out by the Department for Transport will not lead to clarity for the consumer which is the intention. They create a bureaucratic nightmare. The proposals as they stand will create different levels of ATOL protection, cause further confusion for the public, and add unnecessary additional regulatory burdens particularly on the SMEs of the tour operating industry.

2. AREAS WHERE AITO HAS MAJOR CONCERNS OVER THE DFT PROPOSALS FOR ATOL REFORM

2.1 *Definition of Flight-Plus*

We do not agree that arrangements which cover less than 24 hours should be excluded from the definition.

The *alternative that we propose* is that a Flight-Plus package covers all bookings including those of less than 24 hours' duration.

Why? Because, with the vast array of flights which are now available throughout Europe, it is quite possible to combine a flight with expensive transfers/car hire and costly tickets to football matches, operas, etc., which could be put together for a period of less than 24 hours. The collapse of the organiser of such events would cost many thousands of people considerable financial loss. That this has not happened to date to any large extent does not mean to say that the public does not deserve protection in these circumstances.

2.2 Proposed time period in which elements of a Flight-Plus must be requested by a consumer

We do not agree with the short time period suggested.

AITO feels that a Flight-Plus situation should also be created if the time period between the booking of the flight and the arrangement of the hotel or car hire is more than one calendar day. It is a growing trend amongst consumers initially to book a flight in order to get the best possible deal and, subsequently, to book accommodation a few days later.

The *alternative proposed* is that the period during which a Flight-Plus arrangement is created should be extended to *at least* seven days. It is immaterial whether the organisation concerned is aware that the same customer who booked the flight subsequently books accommodation on their site a few days later.

Why? Because the public would never understand that, having booked a flight and accommodation from the same organiser, the organiser could avoid any sort of responsibility for the package created because the accommodation element was booked later than the flight. We accept that accommodation booked many weeks after the flight reservation should not, however, form a package. However, to restrict a Flight-Plus creation to one calendar day from the initial flight booking will just serve to confuse clients—exactly what these reforms seek to avoid.

2.3 Proposed liabilities of Flight-Plus arrangers

We don't agree with the proposed liabilities of Flight-Plus arrangers.

Why? AITO does not believe that agents which choose to play at being tour operators should be excused from acting as a principal and therefore allowed to avoid the Regulations laid down by the PTRs—and the associated costs. Basically, what the ATOL Reform is proposing is a dumbing down of the protection afforded to the public.

Flight-Plus arrangers will only be responsible for financial protection. Consumers will be unaware that, when they are booking a Flight-Plus arrangement, the organiser does not offer the same level of cover as a legacy tour operator. The Flight-Plus arranger will not be paying VAT, will not be taking responsibility for the actions of its suppliers and yet it will carry the ATOL symbol, creating huge confusion.

This is a very negative potential result of the revised legislation.

2.4 ATT Payment policy

We do not agree with the proposed changes to the ATT payment policy.

Why? Because the ATOL reforms seem to indicate two classes of ATOL holder. One, the full ATOL holder, will have onerous obligations to comply with ATOL and PTR requirements and will shoulder all the costs of the failure of one of its suppliers. The other, the Flight-Plus arranger, will be entitled to a hand-out (although as yet we do not know how much) from the ATT in the same circumstances. This is a dangerous step and will considerably distort the playing field in favour of the Flight-Plus provider who acts as an agent, does not take responsibility for the actions of his suppliers and who does not pay VAT. It is completely illogical. The Transport Committee should be aware that this creates an unequal treatment of ATOL holders.

2.5 Exemptions for micro-businesses and start-ups for regulations dealing with Flight-Plus

AITO does not believe that micro-businesses and start-ups should be exempt. The impact of any such moratorium would be to seriously confuse the public.

Why? The public simply wouldn't understand this differential. This situation would also create an uneven playing field between competing businesses. We understand that this proposal is likely to be withdrawn.

2.6 Proposal to amend ATOL protection for flight-only sales

AITO does not agree with the proposal or the rationale.

Why? Because this proposal would mean two very different organisations carrying one (identical) symbol—the ATOL logo—but offering very different levels of financial protection from one another. Only confusion can result.

To avoid confusion, either offer full protection across the board or no protection at all. Then tour operators selling flight-only would compete on a level playing field with airlines.

We understand that this proposal is likely to be withdrawn.

2.7 The ATOL Certificate

AITO supports the principle of the proposed ATOL Certificate, *if* it can provide clarity for the consumer- in particular, with regard to Flight-Plus arrangements. For bone fide tour operators, AITO has not felt that an

ATOL certificate should be necessary but, after numerous meetings between the CAA and the industry working group, the ATOL certificate for use with packages has been simplified and is quite acceptable.

However, problems still remain. Many operators put together complicated itineraries, the work on which cannot begin unless a deposit has been paid. There could well be a lapse of several weeks between the time a deposit has been received and an ATOL certificate issued and when the confirmation/account is finally sent. By that time, a new ATOL certificate could well be required because even the very basic details on such complex itineraries could well have changed. An ATOL Certificate cannot always be issued immediately the deposit is taken.

For smaller tour operators, the suggestion that an electronic template can be developed by the Civil Aviation Authority which can then be licensed for use by operators is a good one and one which is welcomed. However the issuing of the certificate to an agent to hand over to the customer before leaving the high street agency is sometimes impractical and certainly tour operators are unlikely to allow agents to issue such an important document. It is already proposed and agreed that ATOL certificates, for direct and telephone bookings, made by consumers with the operator can be posted along with the confirmation and account. The same requirements should apply for face to face transactions via agents.

2.8 Agent for the consumer sales

AITO is concerned that certain sectors of the tour operating/travel agency sector can legally squirm out of their obligations to the consumer by opting to act as an agent for the consumer. We understand that primary legislation is required to outlaw this practice and to bring these companies within the ATOL Regulations.

AITO believes that the only way in which the public will refrain from booking flight-onlys and packages from an organisation acting as an agent for the consumer is to make it quite clear that no protection is available in such circumstances. AITO therefore does not agree that, on the failure of an ATOL holder, from whom a seat has been purchased as agent for the consumer, the DfT propose the passenger would be entitled to repatriation but not for a refund for forward bookings.

In such instances, the consumer should not be repatriated as it muddies the water when clarity is sought. AITO understands that being an agent for the consumer will not necessarily negate VAT payments whether these are in the UK or in the country where the accommodation is located. It would be a great help if HMRC issued guidelines so that the VAT position became clear. Clarification is important. If such guidelines were unfavourable to the companies acting as an agent for the consumer it is likely that this model of operating would lose its attraction.

2.9 The provision of financial protection for non-licensable turnover within the ATOL system

Although not specifically part of this consultation, AITO would like to remind the Transport Committee that, under the Better Regulation initiative, Government promised, via the ATT trustees, to consider allowing tour operators with licensable turnover the facility to include non-licensable turnover within the ATOL scheme. This proposal was included in the CAA consultation ending March 2010 under measure number 5 and was supported by the majority of respondents.

This matter has become even more urgent as there are only three insurers currently offering per person failure insurance cover—one of which will no longer consider amounts less than £100,000 and the other two currently have policy wording which is not acceptable to ABTA or AITO. This makes it extremely difficult for ATOL holders with small amounts of non licensable turnover to obtain protection at commercially acceptable costs.

The CAA is now proposing to change its standard terms to monthly (from quarterly) reporting and payment of APC for tour operators with an annual turnover of over £5 million. This would impact adversely in terms of added and disproportionate administrative burdens on around 25% of our members. This is contrary to the Government's stated intention of reducing regulations and red tape on SMEs. It would therefore be an enormous help and offer great savings (of both financial and time resources) for those tour operators with predominantly licensable turnover to be able to cover both types of business via the APC as proposed in the earlier consultation.

AITO cannot stress enough how beneficial this would be to many SMEs (whether AITO members or not).

3. OTHER MATTERS WHICH NEED TO BE TAKEN INTO CONSIDERATION

3.1 Timing

We are asked whether it will be practical to implement any of the new ATOL Regulations by April 2012. It is understandable that the Government is keen to collect any additional £2.50 charges per travelling passenger from companies that are brought into the scheme as soon as possible. AITO members will not have to change their business model because they are already ATOL holders and comply with current regulations and also with the PTRs. *However, the provision of an ATOL certificate by April 2012, will give rise to difficulties as many will have to schedule considerable IT changes to their systems at what is a very busy time of the year.*

AITO sees no problem in phasing in the new regulations over a longer time period. The collection of the £2.50 charge for those booking after April, 2012, is not really affected by the fact that not all systems will be in place to provide the ATOL Certificate. AITO feels that it is unrealistic for Government to expect that those organisations that have to alter their trading models will be able to do so in while we are still awaiting the response to the DfT September consultation and the commencement of a formal consultation by the CAA on changes to Standard Terms and Official Record Series 3.

3.2 SAFI Insurance and Tour Operator/Supplier Failure Insurance

AITO believes that the current wording of the majority of insurance policies which provide so-called cover for consumers have too many exclusions. Recently, one of the largest insurers (triple-A rated), has simply cancelled the insurance pertaining to an ex-AITO member which had been unable to meet its obligations to a significant number of school children from 87 schools which had booked with the company. The insurer cancelled its policy as a result of material non-disclosure by the operator and has left the insured, who had booked holidays with the tour operator rightly believing they were insured, considerably out of pocket in flagrant contravention of the aim of the EU Package Directive, despite having taken premiums for a number of years.

There are a number of instances where insurers have refused to meet their obligations. Unless there is a complete rethink and thorough examination of the wording of policies currently in use, we believe that the insurance industry should not be allowed to take any part in providing consumer financial protection under the reformed ATOL Regulations.

Both ABTA and AITO are seeking urgent action and are in discussions with the ABI and DeptBIS.

SAFI (Scheduled Airline Failure Insurance) policies, when they are withdrawn by an insurer from a particular carrier for whatever reason, cause a crisis of confidence which often leads to the collapse of the airline in question. This cannot be right. Insurers should not be the sole decision makers about the financial stability of an airline.

We believe that the wording of Failure Protection policies should be subject to Department of Business approval.

3.3 The longer-term view

AITO understands from comments that have been made by people within Government and the Civil Aviation Authority that, ultimately, the aim is for the financial regulation of the industry to be put into the industry's own hands.

AITO is very opposed to this concept. We do not believe that the private sector—and especially the insurance sector—is capable of providing the structure required to handle such an important issue. Insurance companies will simply walk away from any risk which they feel will damage their future profits. Currently, the insurers operating within the travel industry seem to be very reluctant to pay out when obliged to do so. As soon as the risk is considered to be too great, insurers simply withdraw from the market. *Government cannot divorce itself from the provision of financial protection for the travelling public. Should it do so, it will put at a considerable disadvantage the many thousands of SMEs which operate within the travel industry vis-à-vis the large corporations that exert considerable control over the sector.* There is no doubt that SMEs would be required to pay proportionally higher premiums to insurers in order to put financial protection in place for their customers. Government involvement will ensure fair play in this scenario, as it does with the £2.50 levy which is equal across all sizes of company. History has shown that it is the failures of large operators that have created the major deficits in the Air Travel Reserve Fund.

Government has often been criticised for the way that refunds and repatriation are currently organised via the CAA. The Merrick Report has highlighted many of the shortcomings which are currently being addressed by the CAA. Increased co-operation between the CAA and bodies within the travel industry is the best way forward and the proposed ATOL Reform should remove many of the difficulties experienced by the CAA when dealing with collapses like those of XL and Kiss Flights.

3.4 Credit card providers

Merchant acquirers have increasingly carried the burden of providing financial protection to the consumer. The consumer press, insurers, Government and industry bodies alike have shifted the burden of financial protection to the credit card. Everyone is advised to book using a credit card to avoid financial loss. Understandably, the banks don't like this and have increasingly asked for financial guarantees to allow airlines, tour operators and retail agents to continue to use their credit card services.

The industry is thus faced with double protection. Not only is £2.50 currently payable as a levy on tour operators for every passenger carried by an ATOL holder but, more often than not, that ATOL holder has to carry the cost of the financial guarantees required by the credit card providers.

Once the deficit in the Air Travel Trust Fund is wiped out, it is imperative that credit card providers are indemnified from any loss as a result of the collapse of an ATOL holder. AITO believes that there is no reason why the cost of consumer financial protection should be borne by the credit card companies.

A substantial benefit of an enlarged and healthy ATT fund will be the reduction in the overhead costs of providing guarantees to credit card companies.

3.5 EU initiatives

Although the UK is part of the EU, AITO believes that the UK Government should not delay implementing measures to improve financial protection because of the delays in the European Commission of its review of the PTRs and passenger rights relating to the collapse of airlines. It is now unlikely that there will be any change in the PTRs until the end of 2014. In the meantime, there will be more collapses and more consumers will be left out of pocket. The UK Government should take the initiative and do what is right for UK consumers, even though it is much easier to delay matters using the excuse that being part of the EU overrides any UK imperative.

TO CONCLUDE

The proposals put forward in the Consultation document on ATOL reform go some way towards improving consumer financial protection and, if industry observations are taken into consideration, may clarify the very complicated current scenario to the benefit of all. These are definitely the first steps towards levelling the travel industry playing field.

AITO hopes that the Transport Committee will support those tour operators which act as principals and therefore deliver greater benefits to the public by recognising that they represent the Gold Standard of the industry. Flight-Plus arrangers may have been partially brought into the system, but what they offer is still inferior to that which the full ATOL holders abiding by the PTRs provide to the travelling public.

We would welcome the opportunity to discuss with the Committee any of the above matters in more detail.

We will also continue to play our part in achieving the overall objectives—the expansion and clarification of consumer financial protection.

January 2012

Written evidence from TUI Travel PLC (ATOL 10)

INTRODUCTION

TUI Travel PLC welcomes the steps taken by Department for Transport (DFT) and the Civil Aviation Authority (CAA) to modernise the Air Travel Organisers' Licensing (ATOL) scheme. It has become clear that the ATOL Regulations are no longer fit for purpose. The DFT and the CAA are to be applauded for recognising this fact and taking steps to address this important issue. TUI Travel also welcomes the fact that the potential reform of the ATOL scheme may be included in the scope of the Draft Civil Aviation Bill. This is the clearest indication to date that the Government is aware of the travel industry's key concerns surrounding ATOL reform, namely that the ATOL reform proposals will only be workable if airline holiday sales are also included within ATOL's scope.

TUI Travel PLC has consistently argued that customers booking holidays should have a consistent level of protection and that businesses selling services that compete directly with one another in the sale of holidays need to be regulated in the same way.

With regards to future reform of the ATOL scheme, we continue to believe that it is important for airlines selling "Flight Plus" arrangements to be regulated in the same way as any other seller of such arrangements. The risks to customers are of the same nature whatever the identity of the seller. We do not believe there is any evidence to support a contention that airlines are less likely to face financial difficulties and insolvency than other sellers of such arrangements. All airlines should therefore be included in the ATOL scheme. It is a matter of equality of treatment both in terms of customer protection and in terms of fair competition. The presumption, therefore, should be in favour of their inclusion. We see no good reason why airlines should continue to operate outside the ATOL scheme and believe that their exclusion could only be justified based upon strong, objectively justifiable and properly evidenced factors.

We therefore urge the Committee to call on the Government to consider ATOL in the Draft Civil Aviation Bill. This document outlines TUI Travel PLC's views on the current Government proposals for ATOL reform.

"FLIGHT-PLUS"—BOOKING TIMESCALES

The DFT have proposed a time period of 24 hours between requesting elements of a "Flight-Plus" holiday. We would propose extending this time limit to seven days. We note and understand the reasons behind the proposed definition of "Flight-Plus" and, in particular, the dependence upon the date that the elements are

requested. Nonetheless, we are concerned that there may be unscrupulous sellers that will seek to exploit the system by taking options over, say, accommodation, but then not booking it until a date that is two days later than the flight has been booked. Regardless of when the accommodation has been requested, they may then seek to present this as two transactions outside the ATOL regime. We believe that a time limit of seven days would make this type of behaviour much more difficult.

“FLIGHT-PLUS” ARRANGER—DEFINITION

TUI Travel PLC supports the DFT’s definition, in Regulation 23, of a “Flight-Plus” arranger being the business that interacts with the consumer in meeting a request to provide a flight, and also acts to include that flight as part of a “Flight-Plus”. In particular, we support the intention of the drafting that all transactions in which customers, in their own terms, would consider to be the purchaser of a “holiday” be included within the scope of the ATOL scheme. We also support the fact that the draft Regulation has not sought to be prescriptive by setting out details of arrangements which might be considered to be “Flight-Plus” which would risk impliedly excluding arrangements which were not so listed.

However, we do have some concerns with regards to the DFT’s proposed changes to the Air Travel Trust (ATT) payment policy. We are specifically concerned that the Trustees of the ATT are considering whether the terms of the deed establishing the ATT and their payment policies should be amended to allow the Air Travel Trust Fund (ATTF) to provide a contribution directly to the “Flight-Plus” arranger to help meet the cost of their obligations under the proposed Regulations for refunds for forward bookings. In relation to the proposals to provide contributions to ATOL holders, we are very concerned that providing this benefit to a selected group of ATOL holders, whilst it is not available to the generality of ATOL holders, is unfair. Existing ATOL holders buying seats on an ATOL to ATOL basis are unable to benefit from the proposed contribution in the event that the first ATOL holder fails. Those existing ATOL holders will effectively be funding, through their APC contributions, the financial advantage that is proposed to be provided to the ATOL holders buying seats on a retail basis.

MICRO BUSINESSES

We do not believe that micro businesses and start ups should be exempt from the parts of the draft Regulations dealing with “Flight-Plus”. Although we understand the general position with regards micro businesses and the desire to mitigate the regulatory burden on those businesses, we believe that the disadvantages are so compelling that the moratorium should be disapplied in this instance.

“FLIGHT-ONLY” SEATS

In addition to the reforms to include “Flight-Plus” holidays in ATOL, the draft Regulations also make some changes to the Regulations dealing with the sale of “Flight-Only” seats under the ATOL scheme. TUI Travel PLC recognises that it is clearly to the benefit of the ATT to limit its liabilities in respect of flight only sales. Our primary concern, however, would be the risk that the consistency of protection under the ATOL scheme will be diluted and that customers will therefore lose confidence in the scheme. The obvious answer would be to exclude “Flight-Only” sales from the ATOL scheme entirely. This would be the logical step that would create “bright lines” in terms of what is protected and what is not protected and we urge the Committee to call on the Government to reconsider this point at the earliest possible opportunity.

“AGENT FOR THE CONSUMER”

Holidays sold on an “agent for the consumer” basis should be brought within the scope of the ATOL scheme. Equivalent levels of protection should be provided to all customers buying what they would consider in their own terms to be a holiday. Just because an agent claims to act as agent for the consumer rather than as agent for the seller should not mean that those customers lose the benefit of protection. It is very straightforward equality of treatment argument.

SYSTEM REFORM

While there is no perfect scheme for administering refunds and repatriations, it is clear from experience that the current system requires improvement. The deficit in the ATTF and the factors that have led to the growth in that deficit are ample evidence that changes are required. For too long, ATOL holders have been paying above market rate for protection, while those outside or on the fringes of the scheme have had a free ride.

It would be unwise to be prescriptive at this early stage about how the Scheme might be reformed, but some guiding principles might be as follows:-

- The role of the CAA should be limited to areas where it can demonstrably add value. The terms of the insurance cover that it is able to access and that covers major failures may be one example since the insurance market will take into account the monitoring and management that the CAA undertakes in assessing that risk.

- Mechanisms should be established for properly assessing the level of risks represented by reference to a) the type of activity undertaken; and b) the financial covenant of the ATOL holder (or its guarantor.) Those risks should be priced accordingly in order to reflect a market approach and to disincentivise high risk behaviour.
- Where market solutions offer the most efficient way of providing the level of coverage required, then ways of facilitating those market solutions should be fostered.
- A comparative study of different European (and beyond) schemes should be carried out with the aim of identifying those that offer the best value for money.

CIVIL AVIATION BILL

TUI Travel PLC note the point made in the Written Statement delivered by the Secretary of State for Transport (23 November 2011) that it is possible the scope of the Draft Civil Aviation Bill may be extended before it is introduced, potentially to include the reform of ATOL. TUI Travel strongly urge the Committee to call on Government to follow through with this suggestion, as the Civil Aviation Bill provides a timely opportunity to address concerns with the current ATOL scheme.

PACKAGE TRAVEL DIRECTIVE

Finally, TUI Travel PLC has engaged closely with the European Commission in relation to its proposed reforms of the Package Travel Directive (PTD). We have informed the Commission that we believe that Option 7 from their proposals should be adopted. In our view, the reforms proposed for the ATOL scheme could provide a model for the type of reforms that are required in relation to the PTD. We would encourage the Committee to call on DFT and BIS to discuss this model with DG MOVE as the basis for the extension of scope of the PTD.

January 2012

Written evidence from Lowcosttravelgroup Limited (“LCTG”) (ATOL 12)

LCTG has held an Air Travel Organisers Licence (“ATOL”) for seven years, maintained the necessary level of funding in addition to maintaining significant bonding under our ABTA membership (mostly so we can trade with TUI and Thomas Cook!). We have complied with the regulations and have worked hard to maintain a close working relationship with the CAA and ABTA, to ensure at all times we operate within the regulatory framework.

This has created huge pressure on our business, and frankly stifled our growth; despite this we have created over 350 jobs in the UK which we wish to continue.

As a significant employer in the South East of England, and as a company that is investing millions in growth, creating hundreds of jobs, we would urge you to ensure that the proposals to change the ATOL regulatory system are reworked to create a level playing field.

Failure to do so will result in continued protection of the large airlines and tour operators, resulting in artificially high prices, and suppression of the significant growth opportunities which exist in the tourism industry.

LCTG wholeheartedly supports a fair and reasonable consumer protection scheme that most importantly, ahead of other similar schemes, provides full repatriation.

THE ATOL SCHEME (“THE SCHEME”)—HISTORY

The Scheme was implemented in 1973 with consumer protection being provided by means of individual ATOL bonds.

In 1975 the Air Travel Reserve Trust Fund (“ATTF”) Act 1975 introduced legislation to create a back up fund for individual bonds financed initially by a £15 million Government loan and afterwards by a 1% and then 2% levy on holidays.

The Scheme proved to be robust right through until the late 1990s when the ATTF became exhausted due to some material financial failures between 1991 (International Leisure Group “ILG”) and 1997.

At its zenith in 1998/9 the Scheme covered 99% of all departing UK consumer holidays.

The numbers of protected holidays began to deteriorate from then on principally due to the advent of the no frills carrier airlines and the move to “tailor-made” holidays.

By 2008 the deficit in the ATTF stood at circa £20million. The Scheme had provided a stable and robust consumer protection model with bonds backed by the ATTF for approaching 35 years. The ATTF deficit of £20 million showed only an increase of £5 million over the initial Government loan in 1975. The obvious question is “Why change it”? Why not have a modest “one off” levy to replenish the ATTF?

THE CURRENT ATOL SCHEME (“THE CURRENT SCHEME”)

The Current Scheme now covers only 48% of all departing UK consumer holidays of which in excess of 50% relate to two ATOL holders only—TUI and Thomas Cook. In ten years a halving of individuals covered by the Scheme, a Scheme very much centred around two companies both of whom, despite consolidation, have underperformed and one who has shown marked financial weakness.

The main reason for the deterioration in the number of individuals covered by the ATOL Scheme was the advent of no frills carriers. If the levels covered by the scheme in the 1990s had been maintained there would have been no rationale for this “flight-plus” reform.

The Current Scheme was “sold” to the travel industry as a full bond replacement scheme replacing any previous form of bonding with an across the board £1 ATOL Protection Charge (“APC”). The Current Scheme was purported to have been structured so as to withstand a £250 million failure (Only TUI and Thomas Cook could cause a failure of this size).

In 2009 XL Airways failed. This has been reported as an £80 million failure. It was in fact “only” a £40 million failure as the CAA still held the ATOL bonds provided by XL of circa £40 million.

On the back of this the CAA proposed an increase in the APC charge by 150% from £1 to £2.50, the current level of APC. The Current Scheme was built to withstand a £250 million failure and yet within a year the APC charge was being increased by 150% on the back of a mere £40 million failure.

The natural conclusion is that the Current Scheme was seriously flawed from inception. In addition to the APC increase the ATTF deficit has grown in just over three years from £20 million to £42 million.

Why continue to support The Current Scheme with further “sticking plaster reform” as is proposed and not look coldly and calculatedly at genuine reform based upon a sustainable structure?

The CAA will state that the Travel Industry, upon consultation, “approved” the Current Scheme. This was because they believed the CAA when it said it would withstand a £250 million failure, had been robustly put together and that bonding would be replaced. When the final Standard terms of ATOL were presented the CAA, through the back door, maintained the ability to request bonding *arbitrarily at their discretion* from existing ATOL holders as well as requiring it from all new ATOL holders in the first four years of their holding an ATOL.

ATOL REFORM (“FLIGHT-PLUS”)

The Current Scheme generates only £46.2 million annual income of which £10 million is spent on an underlying £250 million insurance indemnity that underpins the ATTF, a policy that is effectively in place to cover the failure of two ATOL holders only, either Tui or Thomas Cook.

This cannot fill the ATTF deficit quickly enough, neither can it provide longevity and sustainability for a flawed scheme.

The new proposal intends to extend the burden of underpinning an ailing scheme by introducing onerous and expensive legislation on travel agents whereby they would need to obtain a “flight-plus” ATOL where they sell a flight as an agent together with other separate travel components at the same time.

ABTA estimate that ABTA members that will need to hold an ATOL will broadly double from 631 ABTA members to 1,360 ABTA members. For these travel agents it is not simply a question of an additional £2.50 charge. They are being asked to take on the role of a quasi-principal including exposure to supplier failure and possible consumer liability claims. This is an iniquitous burden and is unfair. These companies will also need to meet CAA financial free asset testing plus provide bonds in addition to paying the £2.50 APC.

“Flight-plus” also proposes to limit the protection given to consumers in relation to “flight only” and indeed on the back of the proposed “reform”, TUI and Thomas Cook have withdrawn a large proportion of their “flight only” business from the regulated arena now selling these as airline seats outside of the ATOL Scheme.

A LEVEL PLAYING FIELD

Under the current ATOL system and the proposed flight plus changes, some companies have to pay and some don’t—often for the same holiday. It is grossly unfair.

As just one simple example—if a consumer were to book a holiday with LCTG, under the proposed rules, customers would pay £2.50 per passenger for ATOL protection, yet if *exactly the same holiday* were booked with easyjet holidays (which LCTG operate) there would be no ATOL charge. How can that be fair and reasonable?

There are numerous gaps in the proposed legislation: “click throughs” (where a consumer clicks through to different web sites to assemble their holiday, from a single umbrella web site, acting as an agent to the consumer), acting as agent for the consumer, certain flight only bookings, and of course all airlines.

Historically many travel companies have found ways around the rules, and the current proposal merely exacerbates the potential for this. The major players, both airlines and operators, can relatively easily “unbundle” and sell via “click throughs”. Currently the ATOL system has circa 18 million holidays potentially licensed of which only about 16.5 million will actually be carried. The “flight plus” proposal, according to the CAA will likely encompass only a further 2 to 4million holidays (Not the 6 million originally envisaged by the DfT).

Included in the 18 million holidays licensed with the CAA are a number of “double bonded” arrangements—packages that involve a charter flight seat upon which £2.50 APC has already been paid, sourced from an ATOL holder, packaged up and sold under the Current Scheme with a further £2.50 APC paid by the package ATOL holder.

Respectfully, the final ACTUAL figures will be much less, and will continue to reduce. Why? Simply the travel industry will find ways around it. The result? The CAA will be back in court again and regrettably could lose yet again. How can that be the way forward for a Consumer Protection Scheme?

We believe that the APC income for the last four quarters (Information not yet public) will reflect the diminishing returns.

AIRLINES

Airlines are exempt from the need to hold an ATOL and participate in the ATOL Scheme. This is unfair and does not provide a level playing field in a free market economy. Why should airlines be able to sell “flight-plus” product and provide no consumer protection at all whereas travel agents have to even though they are selling *identical* arrangements.

It has been said that the DfT are considering the airline “flight-plus” position but require primary legislation.

Under this proposal Airlines will have an anti-competitive advantage over travel agents. Airlines can sell “flight-plus” without APC giving them a £2.50 advantage on each sale, a sizeable amount in an industry surviving on very small margins.

In all historic failures the main draw down of funds from the ATTF have principally been by either the providers of air flight seats as ATOL principals (Goldtrail, Kiss Flights etc) or by integrated groups that contain an airline eg ILG, XL, Globespan etc.

ABTA AND THE TRAVEL INDUSTRY VIEW

ABTA—The Travel Association was founded in 1950—and is the largest travel trade association in the UK, with over 1,300 members and over 5,000 retail outlets and offices. ABTA member sales account for 90% of the package holidays sold in the UK annually, accounting for roughly £41.2 million of the ATTF’s £46.2 million annual income.

ABTA’s view on behalf of 90% of ATOL holders is that the only fair and reasonable Consumer Protection Scheme is based around an “all flights levy”. The APC charge would be modest for each flight seat and would encompass ALL UK leisure originating travellers.

A simple, fair and reasonable scheme—sustainable and with longevity.

BARRIERS TO ENTRY AND FAVOURITISM TO BIG BUSINESS

Currently a new ATOL holder must provide bonding for the first four years of holding an ATOL *in addition* to paying the £2.50 APC. This is anti-competitive and places an extreme burden on start ups and new entrants. How can the smallest and newest companies be expected to compete against the travel giants when they have to effectively double bond?

To make matters worse there is virtually no market for ATOL bonding available within what was a thriving bonding insurance market. Before the Current Scheme was implemented there were at least a dozen insurers willing to write travel bonds. After its implementation in 2008 this has decreased to a mere *three*. All of the insurers blue chip ATOL business was taken away with the CAA expecting them to base a book on start up bonds and bonds for ailing ATOL holders.

How can a regulator with responsibilities under Better Regulation implement a scheme that decimates the bond obligor market and then continues to request the provision of bonds from new and ailing companies?

Under the new “flight-plus” proposal the CAA wish to score the “flight-plus” turnover as full 100% risk turnover when it is currently scored as 10% risk as agency turnover. The sole reason for this re-classification is the CAA induced risk of supplier failure where none exists currently for travel agents.

The resultant additional funding created by this when aligned to the CAA’s published free asset criteria will mean many travel agents having to find additional funding in these difficult financial times. This will result in additional travel failures and the closure of some smaller businesses. It is difficult to relate this free asset test

to Thomas Cook, a company carrying £1.1 billion of core debt. Once again a reflection of a scheme clearly biased towards the biggest two ATOL holders.

TUI and Thomas Cook are of course adherents of the Current scheme as it restricts competition by raising barriers to entry through both the paucity of bond availability and the stringent free asset testing applied by the CAA to new ATOL holders. It is clear that the current proposals favour these large European tour operators, as well as the airlines, and the risk to the Government are that they are seen to be acting with bias, due to pressure from those companies.

TUI and Thomas Cook already have the commercial advantages of scale, it may be seen that they now have a regulatory system that has been manipulated by them, to their advantage, to the detriment of start up businesses and smaller expanding businesses.

It is self evident that the ATOL Protection Charge (APC) introduced by the previous Government was driven by the large tour operators. They were unable to put in place the necessary bonding and insurance required by the CAA due to their risk profiles and the economic environment; consequently a £1 APC charge was introduced by the CAA to help them. The CAA then later decided to increase this to £2.50 to make up for shortfalls in the ATTF. £10 million is taken from the ATTF each year just to cover their risk to the Current Scheme.

The Travel Industry is an innovative and fast moving industry that has been built on the endeavours of free market entrepreneurs. The regulatory regime is now making it a domain in which only large corporate have the opportunity to grow. LCTG is an established still growing innovative group that is being disadvantaged by this regulatory structure due to the advantages given to the largest ATOL holders.

TIMINGS

This matter is being rushed through with the sole reason to raise funds as quickly as possible given the damaging state of the ATTF deficit. It is acknowledged this must be extinguished but by a well thought out and sustainable scheme not a flawed scheme already repaired twice in under three years.

The above evidence clearly reflects that the Current scheme and proposed “flight-plus” is not a robust and sustainable platform. The “flight-plus” proposal is merely a further “sticking plaster” to a flawed scheme, conceptually incorrect and materially miscalculated.

It would be better for an independent body, not a regulator trying to justify an inconsistent and miscalculated scheme, to work through in a conscientious considered manner a scheme that will provide longevity, as indeed the original scheme did, and sustainability. A scheme that recognises the correct differentiation of principal and agent and one that provides clarity consistency and fairness in its impact.

COSTS

It is self evident to all that airlines who sell flight-plus must enter into a fair scheme. The CAA, themselves, recommended to Government some six years ago that the only effective and fair structure for consumer protection was the implementation of an “all flights” scheme covering not only airline “flight-plus” but all UK originating flights. This is ABTA and the Travel Industry’s view also.

This will be a clearly robust and sustainable scheme which will encompass only a modest levy of between 50p and £1 on all UK originating flights. If applied directly to each flight it is easy to collect and monitor. It will do away with all anomalies and inconsistencies. The industry has recommended to Government an “all flights” levy for a number of years. If all flights were brought in to the consumer protection mechanism for repatriation, then the cost per passenger for each exiting flight or holiday would be between 50p and £1 or lower.

A clear recommendation would be for flights to be protected at 50p and packages to be protected at £1, which would result in the ATTF being replenished more quickly, provide future sustainability of the Fund, and most importantly would be perceived as fair, and not something to be avoided by using legislation “loopholes”!

Airlines have been faced with a substantial hike in APD of in some cases £320 per passenger. A 50p levy to provide consumer protection is hardly material in comparison. Airlines in any event have to pay consumer protection insurance for flight related packages of a not dissimilar amount—an insurance of course which does not provide repatriation.

THE OVERALL NUMBERS

Under the current proposal it is evident that AT BEST only circa 20.5 million holidays would be within the Scheme as highlighted above, probably considerably less. The ATTF projected income would therefore be £51.25 millin at best (less of course the £10m insurance premium it has to pay to provide cover for a Tui or Thomas Cook!) It will be much less than that given the Travel Industry’s likely “avoidance methods”.

We believe this figure will rapidly diminish with a levy pitched at £2.50 that is considered unfair and unreasonable. The “Big Two” are airlines themselves and could also stop selling their packages as airlines

without ATOL cover as they have done elsewhere in Europe eg Germany. As airlines they have already withdrawn a sizeable amount of “flight only” product from the ATOL Scheme.

Currently circa 70 million UK resident consumers leave the UK for leisure travel by air (Source—CAA Passenger Survey Report 2009). The CAA estimates that 37 million of these are holidays (ATOL covered, “flight plus” or airline packages) with 33 million “flight only”. A £1 levy on holidays and a 50p levy on flights would generate £53.5 million in a fair and equitable scheme which could not diminish due to “avoidance methods”! Additionally there are circa 12million other non-leisure flights originating in the UK being sold to UK resident consumers which would generate a further £6 million if a 50p levy was applied on these.

It should be noted that airlines who sell packages already have to pay for payment protection insurance at close to 50p under the Package Travel Regulations International passenger protection Insurance). To contribute instead to the ATTF would not be a material difference.

The CAA has indicated a desire once the fund is replenished to reduce the levy from £2.50 to £1 possibly in 2014. By the same token the aforesaid proposal could similarly reduce the holiday and flight levies to 40p and 20p respectively!

THE WAY FORWARD

Firstly a considered review of the entire ATOL Scheme by an independent body who will review the feasibility and sustainability of any Scheme and will consider the following key facts:

- create a level playing field by requiring all airlines, “click through” agents and flight only operators to pay towards the ATOL protection charge in addition to tour operators and travel agents who sell “flight-plus”;
- ensure there is a free and fair competitive platform with an even handed protection model to avoid an ever increasing travel “Duopoly”;
- introduce a reduced two tier ATOL protection charge of 50p for flights and £1 for holidays; and
- support the proposed introduction of a new ATOL certificate.

The proposed new “flight plus” scheme as a tax on travel agents is inadequate, unfair, anti business and most importantly anti-competitive. It favours the established players, and penalises those companies that are innovating, creating jobs and encouraging investment and provides major barriers to entry for smaller businesses.

KEY QUESTIONS

Why was the ATOL Scheme reformed in 2008 away from a scheme that had adequately protected UK consumers effectively for 35 years?

Why is/has the Current ATOL Scheme needed to be changed 3 times since 2008?

Why should travel agents contribute to the ATOL Scheme and not airlines?

How does this scheme compare with other European countries? Has the rest of Europe been effectively considered in this process? Do other European countries require travel agents to consumer protect as if quasi-principals?

Has the full impact of agency law been considered in relation to the new proposal?

What is the criteria for the net free asset test and how has this been applied to Thomas Cook given the recent publicity regarding its’ finances?

Has the full impact of “anti-avoidance” been factored into the new calculations?

How can Government justify the anti-business and anti-competitive nature of some aspects of the Scheme specifically in relation to small businesses and start ups having to both bond and pay the APC levy where larger corporate do not?

Has a full financial review of the positive impact to the ATTF been considered in relation to the addition of airlines to the scheme (a) in relation to all flights (b) in relation to airline packages only?

Why is the new proposal being brought with such haste the inception date already having been put back and the current implementation date of April 2012 still considered unworkable by ABTA and the Travel Industry?

Written evidence from the Department for Transport (ATOL 15)

Please find attached the Department's written evidence for your inquiry into ATOL reform.

As you know, the Civil Aviation Bill, introduced on 19 January, contains a clause on ATOL reform which is discussed in the written evidence. However, the Government has not yet finalised its decisions on the proposed reforms to be implemented through new secondary legislation that were consulted on over the summer. I hope to be able to make an announcement on this shortly.

BACKGROUND

1. The Air Travel Organisers' Licensing (ATOL) scheme has been in place since the 1970s. Currently it protects those buying flight inclusive package holidays and certain flights against insolvency of their tour operator. The ATOL scheme does not apply to airlines, which are specifically excluded from it under legislation.

2. Over the past five years around 100,000 passengers have been repatriated, and over 500,000 have received refunds under the ATOL scheme. Over 100 million holidays in total have been protected.

CASE FOR REFORM

3. In recent years there have been major changes in the way holidays are sold, principally driven by the use of the internet both as a means of selling airline tickets but also as a way of putting together and selling holidays, both by travel agents and also by consumers. There has been an increase in the number of "dynamic packages" being sold. These types of holidays do not fit within the definition of a package holiday, and so do not require ATOL protection. As a consequence there can be considerable confusion for consumers, the travel trade and the Civil Aviation Authority (CAA—who run the scheme) about whether a holiday is ATOL protected or not.

4. It can be that out of two very similar holidays, with the same flight or hotel, one is and one is not ATOL protected, depending on which businesses the holiday was bought from or how it was put together.

ATOL FINANCES

5. The payment of refunds and repatriation expenditure due under the ATOL scheme is met by the Air Travel Trust Fund (ATTF). For each ATOL-protected holiday or flight purchased, a £2.50 ATOL Protection Contribution (APC) is paid into the ATTF. For historic reasons the ATTF has operated with a deficit for many years, and reported a deficit of £42 million for the financial year 2010–11. It continues to meet its obligations through a commercial borrowing facility that is backed by a Government guarantee of currently £30 million.

6. Government believes that the cost of ATOL protection should be met by holidaymakers and the travel trade, with no ongoing risk for taxpayers.

AIMS OF ATOL REFORM

7. Between 23 June and 15 September 2011 the Government consulted on proposed reforms to the ATOL scheme to address the issues identified above.

8. The key reform objectives for the short term are to:

- Provide greater consumer clarity about which holidays are protected by the ATOL scheme and which are not.
- Restore the scheme's finances to a self-sustaining position so that the Government guarantee can be removed.

For the longer to medium term, the objectives are to:

- Further improve the clarity of the scheme and developing a more consistent and coherent regulatory framework for businesses.
- Look at options for how the ATOL scheme is managed and financed once it is financially self-sustaining.

9. The consultation asked questions about the specific reform proposals to be implemented in the short term through new regulations, and also requested views on whether new primary legislation should be used to allow for holidays sold by airlines and procured on an "agent for the consumer" basis to be included in the ATOL scheme. It also asked for preliminary views on how the management of the scheme's refunds and repatriations might be arranged in the future.

SECONDARY LEGISLATION

10. The key proposals for short term reform to be introduced through new secondary legislation are:

- Bringing "Flight Plus" holidays into the ATOL scheme.
- Introducing a new ATOL Certificate.

11. These proposals should help to ensure that consumers are clearer about when they are covered by the ATOL scheme and when they are not. They will provide clarity to the travel trade and the CAA about when financial protection is required, and they should ensure that the ATTF is returned to a financially self-sustaining position, allowing the Government guarantee to be removed.

Flight Plus

12. The consultation proposed that Flight Plus be defined as holidays consisting of a flight and accommodation or car hire, where the components are requested within a short period of time. Essentially they look like package holidays, yet do not fall within the legal definition of a package, and so are not currently protected by the ATOL scheme. Bringing Flight Plus holidays into the ATOL scheme is intended to meet the aim of improving clarity for consumers as many more holiday arrangements made through an intermediary will be fully ATOL protected regardless of whether the way they were constructed and sold fits within the legal definition of a package.

ATOL Certificate

13. The ATOL Certificate would be supplied to customers once any payment had been made for an ATOL protected holiday or flight. It would be in a standardised form and content, to be set by CAA after discussion with the travel trade. The certificate would be an important tool in creating greater clarity for consumers about when a holiday is ATOL protected and the extent to which that protection applies. If introduced, it would also facilitate the efficient provision of refunds or repatriation in the unfortunate event that a travel company does fail.

14. The Government is in the process of considering its decisions on the proposed reforms to be implemented through secondary legislation, and is yet to make final decisions on these measures. We hope to be in a position to announce the details soon.

PRIMARY LEGISLATION

15. The Civil Aviation Bill was introduced into Parliament on 19 January, and includes a provision to widen the Secretary of State's existing power to regulate the provision of flight accommodation. The new power gives the Secretary of State the option to create new regulations to require airlines to hold an ATOL for the sale of their flight-inclusive holidays. It would also allow the Secretary of State to require businesses procuring flight-inclusive holidays for clients as "agents for the consumer" to hold an ATOL.

16. The decision to include this provision in the Bill was taken after careful consideration of the consultation responses. The majority of responses from tour operators, travel agents, trade representative bodies and consumer organisations were in favour of taking steps to facilitate the inclusion of airline holiday sales in the ATOL scheme. They argued that it was unfair that airlines were not required to provide ATOL protection, despite selling similar sorts of holidays. Airlines and their representative organisations were against the proposal.

17. Some airlines suggested that their inclusion in the ATOL scheme was unnecessary as there is already sufficient protection against their insolvency through credit cards, scheduled airline failure insurance and voluntary repatriation fares. We consider that although these options provide some financial protection, it is not as comprehensive as that which is provided by the ATOL scheme, which guarantees in the case of insolvency a full refund if a passenger is yet to travel, or repatriation at no extra cost if already abroad.

18. We decided that steps should be taken to allow for new regulations to be created to bring airline holiday sales into ATOL. This would ensure an even greater level of clarity on financial protection for consumers, whilst providing a more consistent and coherent regulatory framework for businesses selling flight-inclusive holidays.

19. Respondents to the ATOL reform consultation were almost entirely in favour of taking steps to include holidays procured on an agent for the consumer basis in to the ATOL scheme. This was seen as important for consumer clarity and also as an avoidance loophole that needed to be closed.

20. Subject to the parliamentary process, there will be further consultation and an Impact Assessment before any decision is taken to make regulations under the power in the Civil Aviation Bill that would bring holidays sold by airlines and those procured on an agent for the consumer basis into the ATOL scheme.

21. The power in the Civil Aviation Bill would not permit all flights sold by airlines to be protected under the ATOL scheme. It would not be possible to do so unless insolvency protection for airline passengers was required at EU level. The European Commission is currently considering options on this issue, the Government will respond to any proposals as and when they are made.

LONGER TERM REFORMS

22. It is estimated that the measures proposed to be brought in under the new regulations would result in increased income which would allow the ATTF deficit to be repaid within three years, returning the scheme to financial self-sustainability. Once this position has been reached, the Government and the CAA will be looking at options for how the ATOL scheme is managed and funded, including the arrangements for refunds and

repatriations. Initial views on this were sought in the ATOL Reform consultation. We are working with the CAA to develop more detailed options, with a view to initial discussions with stakeholders later this year.

23. The European Commission is also carrying out a review of the Package Travel Directive, and is expected to bring forward proposals in the latter part of 2012. We requested early views on this matter in the consultation in order to shape our response to any proposals.

January 2012

Written evidence from Flybe (ATOL 05)

Flybe welcomes the opportunity to respond to the Transport Committee's call for evidence regarding Air Travel Organisers' Licensing (ATOL) reform.

1. ABOUT FLYBE

Headquartered in Exeter, Flybe is Europe's largest regional airline and the UK's number one domestic airline. Employing nearly 3,000 staff, we currently operate 69 aircraft on more than 200 routes from 36 UK and 60 European airports in 18 countries (accurate at 31 January 2012) and carried more than 7 million passengers in 2010.

Flybe has established a regional route network. Our spread of airports is intended to offer customers a convenient point-to-point network operating from regional airports which are a preferable alternative to having to travel to more distant major hub airports. In addition, the domestic route network does not attempt to compete with surface transport, where alternative road or rail options offer journey time of three hours or less. Not only is the average flight time of a Flybe flight less than one hour, our route network attracts passengers in locations which are more dependent on air transport, such as Northern Ireland and other locations, where surface transport may be a less attractive option, such as Inverness, Newquay and Aberdeen. As such, and because we offer three times more domestic routes than our nearest competitor, Flybe can legitimately claim to understand the needs of the UK's regions better than any other airline.

Under a franchise arrangement with the Scottish airline Loganair, 16 aircraft fly using the Flybe brand across 32 franchise routes, serving island communities such as the Shetland and Orkney Islands and other transport-isolated communities.

Last year, we also completed the acquisition of Finnish Commuter Airlines ("FCA"), Finland's largest domestic air carrier in terms of number of flights, flying around 900,000 passengers per annum in the Finnish domestic and Nordic and Baltic regional markets, in a newly formed joint venture with Finnair, Finland's flag carrier.

In this submission we set out our views on ATOL reform.

2. REFORM OF ATOL

2.1 Short term reforms—Flight Plus

While Flybe welcomes the Minister of State's decision (of 25 October 2011) to delay the implementation of new regulations for bringing Flight-Plus holidays into ATOL until April 2012, we continue to have serious concerns about the definition of a Flight-Plus holidays, particularly in regard to car hire.

A small percentage (which is commercially confidential but we would be happy to share with you separately) of our customer bookings take up the option to arrange car hire when booking a flight with us, and even then car hire is not supplied under the same contract. All car hire bookings are made directly with Avis (no money passes through Flybe) and the two services are clearly delineated. As can be seen from the screenshot (Appendix 1) of our booking engine, this fact is made clear to the customer.

In our experience the inclusion of car hire in the definition of Flight-Plus would be disproportionate to the size of the problem and place an unnecessary burden on ticket prices for the majority of our customers who would not require ATOL bonding.

By default of our network size and shape the average length of stay away from home is only 2.5–3.5 nights and destinations are either UK or near European locations. The risk therefore of stranded passengers is extremely low.

On the basis that Flybe and majority of low fare airlines do not take payment for car hire or hotels, and the customer therefore does not have a contract regarding the purchase of these products with the airline, it cannot be expected that the airline should bear any liability for the third party company.

For the above reasons Flybe would instead propose that airlines with less than 10% of their turnover orientated towards Flight Plus/package bookings should not be burdened by ATOL costs and that only retailers that take payment for more than one of flight/car hire/accommodation be included under Flight Plus reforms.

2.2. Medium to long term reform—Flight Only

Flybe deeply regrets the inconvenience and disruption suffered by passengers when airlines and tour operators collapse. However we believe any future extension of ATOL protection to include Flight-Only sales would be a wholly disproportionate and excessive response to the infrequent collapse of airlines carrying passengers from airports in the UK. There were more than 750 million air passengers within the EU in 2010. A study carried out for the European Commission by consultants Steer Davies Gleave found that over the past 10 years, the percentage of passengers affected by insolvency of an airline was only 0.07%. Of these, only 0.0084% were stranded away from home.

The airline industry's response to the collapses of EUjet and XL Airways clearly demonstrate the willingness of the airline industry, including Flybe, to already respond in an effective and timely fashion and come to the aid of any customers who are unable to return from an overseas destination. In 2008, the Isle-of-Man based airline Euromanx collapsed. Flybe successfully re-accommodate some 26,372 passengers, at no cost to the passenger, some 90% for travel within 24 hours of their original Euromanx booking. There are other examples of solvent, well-run airlines doing the same in similar circumstances.

Flybe, like other airlines, takes its duty to come to the aid of stranded passengers, where this is practically feasible, very seriously, and offers those affected by a collapse of any airline operating on the continent of Europe a nominal flat rate return fare to the UK. This pledge is shared by all members of the European Low Fares Airline Association.

We would be extremely disappointed if this example of good practice and self regulation in the industry was ignored, punishing successful operators for the infrequent failures of poorly run private companies.

Expanding ATOL to include Flight-Only sales would also have a serious impact on the bottom line of many UK airlines and could be extremely damaging for the industry and British aviation, putting jobs and investment at risk, at a time of economic recovery. Research conducted in 2011 by Oxford Economics found that aviation employed 352,000 jobs directly in the UK and a further 344,000 jobs indirectly through the aviation sector's supply chain.

Expanding ATOL may also have the unintended consequence of putting airlines off operating from British airports where there are alternative, cheaper options.

It is also important to remember that there are a number of alternative mechanisms already in place that provide customers with financial protection against airline failure and compensation in the unlikely event of passengers being stranded in a foreign destination with no alternative travel options available to return to the UK. These include:

- *Credit card protection for ticket purchases*
As the CAA acknowledge, credit card issuers possess a liability under the Consumer Credit Act 1974 to reimburse customers in the event of an operator's insolvency. As with many other airlines, Flybe posts a credit card bond with the credit card companies. Flybe should not be in a position where it is forced to pay twice for consumer protection for tickets exceeding £100.00.
- *CAA currently monitors the financial fitness of airlines*
The CAA undertakes rigorous financial monitoring of airlines on a regular basis, with at least one major audit per airline each year.
- *An increase in take-up of travel insurance*
Many Flybe passengers already take out travel insurance policies that would cover them in the event of an airline collapse or other problems with their travel arrangements. Flybe supports the Foreign and Commonwealth Office's recommendation to travellers to take out effective travel insurance, and we would welcome proposals from the CAA and the Government on how travel insurance could be promoted more widely.
Flybe offers schedule airline failure insurance as standard in all policies offered via the Flybe website.

2.3 Medium to long term reform—EU reforms

We strongly believe that ATOL in the round should be reviewed following the EU's review of the Package Travel Directive and Airline insolvency protection, to avoid any conflicts or unnecessary duplication of regulation.

APPENDIX 1

Terms & Conditions

I confirm that I have read and accepted the [general conditions of carriage](#) and [fare rules and seat assignment Terms & Conditions](#)

Please keep me updated with the latest Flybe flight information and other offers

Car Hire:
Please note that your car hire contract is made direct with Avis and by booking a car hire you are agreeing to their terms and conditions. Upon choosing your car hire, you are authorising Avis to take payment for the car hire portion of this booking. Your card details will be passed to Avis to take payment, and will appear on your bill as a separate transaction; if you have selected a pay later option, payment will be deducted when collecting your car hire. Any questions on your car hire booking should be directed to Avis at UK.Reservations@bcn.avis-europe.com

January 2012

Written evidence from Expedia (ATOL 06)

1. EXECUTIVE SUMMARY

1.1 We fully support the protection of Package holidays under the ATOL scheme and the effort of the DFT and CAA to provide better clarity to consumers regarding which holidays are protected under ATOL. However, we have serious concerns regarding the ATOL reforms contemplated by the DFT/CAA and the proposed implementation timeframe for the new ATOL Regulations.

1.2 We are concerned in particular about the definition of flight-plus holidays and the proposed two day booking window for completion of flight-plus arrangements as we believe they will result in greater customer confusion and disproportionate costs to the industry, especially the online travel agency sector.

1.3 We also believe there are problems with the implementation of the CAA's approach to ATOL certificates, particularly the requirement for bespoke certificates to be produced for each and every flight-plus package, stand alone flight booking and traditional package booking and that this will affect the whole package of ATOL reform. We have raised these concerns with the CAA and believe that there are steps the CAA could take to mitigate these concerns.

1.4 We are concerned that the industry still does not have clarity about the final form of the new ATOL regulations despite a commencement date of 1 April 2012. There is a great deal of technological development required to implement the flight-plus reforms that can only begin once we are aware of the final regulations. We estimate that this development would take a minimum of 12 months, at significant cost and resources, from the time the final regulations are published which means that full compliance is not achievable in time for the April deadline.

1.5 If the flight-plus reforms go ahead, then an implementation period (coupled with a non-enforcement period) that is achievable for businesses needs to be put in place.

1.6 We strongly believe that the scope of the ATOL scheme should be widened to include airlines and "agents for the consumer" to avoid both significant distortions in a competitive market and customer confusion. As this reform requires primary legislation we consider that all ATOL-related reforms, including those contained in the Aviation Bill, should come into force at the same time.

2. ABOUT EXPEDIA

2.1 Expedia is the world's leading online travel agency. Expedia Inc offers flights, hotels and other accommodation, car hire, cruises and other products on a global basis with Expedia-branded websites in 26 countries, including the Expedia.co.uk site in the UK. Every day our UK website processes thousands of travel bookings.

3. DEFINING “FLIGHT-PLUS” HOLIDAYS

3.1 In its 2011 consultation the DfT proposed that flight-plus holidays be brought within the scope of ATOL protection. The draft Regulations proposed by the DfT define flight-plus as a flight out of, or returning to, the UK and living accommodation or self-drive car hire. Where a flight-plus is formed, the travel agency must also include any “tourist services, not ancillary to the flight accommodation, that account for a significant proportion of the flight-plus”. Furthermore, the DfT proposed a time window of 1 day either side of the flight booking in which accommodation or car hire may be booked resulting in a flight-plus holiday being formed.

3.2 We have significant concerns about this proposed scope, particularly the time window identified as this has negative knock-on effects for other reforms to the ATOL scheme. These concerns are summarised below.

3.3 We do not agree with the proposed time period for the creation of flight-plus arrangements as we consider that it will increase consumer confusion as to which bookings are and are not protected, and will impose disproportionate costs on travel agents, particularly Online travel Agents (“OTAs”) due to the complexity in implementing a tracking system to capture and link independent bookings made over multiple days.

3.4 The proposed time window does not take into account the realities of consumer behaviour in purchasing services online, particularly the frequency that consumers compare, book, amend, cancel and rebook any element of the flight plus holiday. We know that consumers are very price driven and shop around for every element of their holiday, eg buying a flight from Expedia, hotel accommodation from another agent and car hire from a specialist provider. Accordingly, we do not believe that creating a flight plus holiday category under the ATOL scheme will provide significant benefit to consumers which outweighs the disruption, costs and consumer confusion that will result from its introduction.

3.5 Actively tracking transactions over the two day flight plus booking window poses immense practical problems and technical costs to OTAs, and the consumer behaviour identified above means that it is unlikely to be achieved without scope for error. Over 20% of all bookings on expedia.co.uk are done by guest users while many users have multiple accounts or switch between their account and guest status (eg if they are in a hurry or have forgotten their password) so tracking and linking independent bookings is not a simple task. Consumers also interchange between booking and amending elements of their travel bookings online via websites and over the phone via call centre agents creating an additional implementation complexity.

3.6 We do not believe that “other tourist services” should be included in flight-plus arrangements. Requiring travel agents to calculate the cost of ancillary services to determine whether such amounts are a significant proportion of the flight-plus would impose an unnecessary burden on the travel agents, resulting in higher costs with little benefit for consumers. In addition, one travel agent’s definition of “significant proportion” is likely to differ from another’s which creates additional uncertainty for consumers.

3.7 We feel that the best solution to meet the DfT and CAA’s policy objectives of providing consumer certainty and protection by bringing flight-plus within ATOL protection is to limit the definition of flight-plus services to those bought by the customer in the same transaction as the flight and to focus on educating consumers about which bookings do and do not receive ATOL protection, so that customers are at all times making informed decisions regarding their holiday purchases.

4. THE ATOL CERTIFICATE

4.1 The CAA recently consulted on detailed proposals for new ATOL certificates; a key element of the overall package of ATOL reforms. We believe that the ATOL certificate requirements proposed by the CAA will create both an unnecessary burden and a significant cost impact for OTAs which is disproportionate to the benefit to consumers of having such certificates.

4.2 The CAA proposes that travel agents provide a bespoke certificate for each and every flight-plus, stand alone flight and package booking. In order to comply, we would need to develop a detailed back-end tracking system to capture every transaction that *may* trigger a flight-plus arrangement. Such a system is not currently in place at Expedia as there is no similar requirement in any other country globally to do this type of tracking. The committee should not underestimate the technical complexity, and time and resources required, for implementation of such a system. Given the complexities associated with consumers booking online we believe that even the most sophisticated back-end tracking system could not guarantee certificates would be issued without error.

4.3 We question the extent to which customer booking behaviour has been considered in the preparation of the draft template certificates. A significant percentage of bookings made online are followed up by customer inquiries to travel agent call centres because customers wish to amend or cancel aspects of their travel arrangements. Any changes to travel arrangements would render the ATOL certificate form proposed by the CAA as inaccurate, effectively requiring the ATOL holder to produce new certificates each and every time a customer amends or cancels a booking. This would be both a costly and time consuming effort for OTAs, and provision of multiple certificates, or revocation of certificates is likely to cause confusion for customers. Customers also regularly make bookings online with their travel agent and then post booking contact the relevant hotel, airline or car hire company directly to make changes to their bookings. Expedia has no oversight of these alterations and so would have no way of knowing whether the ATOL certificate it had issued remained valid or accurate at all times.

4.4 We would also like confirmation that any reform will be implemented on a “brand only” basis and not require companies to track transactions offered by different websites/brands/affiliate companies on different technology, simply because the affiliates are owned by the same parent company. Expedia Inc. has many brands that operate autonomously (often competing against each other) and use different technical platforms; reconciling these various systems would be almost impossible.

There are several steps that the CAA could take to mitigate the above concerns which Expedia has raised directly with the CAA. These include allowing travel agents flexibility in the mode of delivery of ATOL certificates (eg using an online certificate linked to itineraries as opposed to PDFs that require distribution via email), and reducing the amount of bespoke information required in each ATOL certificate.

5. IMPLEMENTATION TIMEFRAME

5.1 As of January 2012 we still do not know what the final ATOL reforms will be, despite a planned implementation date of 1 April 2012. There is a great deal of detail that needs to be decided before Expedia can fully begin the process of introducing systems that will allow us to comply with the new regulations.

5.2 The flight-plus requirement currently proposed by the DfT would require OTAs like Expedia to develop the technical capability to link independent bookings made on Expedia.co.uk. This linking capability does not currently exist and would take extensive development effort. We estimate that the technology development required to fully implement the flight-plus reforms onto Expedia systems would take a minimum of 12 months from the time the final regulations are published, at significant cost and resources.

5.3 If the flight-plus reforms go ahead, then an implementation period (coupled with a non-enforcement period) that is achievable for businesses needs to be put in place. Given the technical development that would be required, coupled with the other requirements such as Agency Agreements, back end reporting system developments, changes to site messaging and marketing materials, and training of call centre agents to deal with ATOL queries, we strongly believe that April 2012 is not an achievable implementation date for the travel industry and a further 12 month implementation/non enforcement period would be essential. We also believe it would be essential for the DfT and the CAA to work with OTAs to agree methods of implementation that are cost effective, technically feasible, and practical, so as to not slow down the online booking experience for customers and risk driving them to book through other sources, such as airlines, which still do not have to comply with the ATOL Regulations.

6. INCLUSION OF AIRLINES AND “AGENTS FOR THE CONSUMER” WITHIN THE ATOL SCHEME

6.1 We welcome the DfT’s announcement that the scope of the Aviation Bill might be extended to include reforms to the ATOL scheme and we strongly urge the Government to take the opportunity afforded by this primary legislation to include airlines and “agents for the consumer” within the ATOL scheme.

6.2 This is essential if the Government wishes to remove consumers’ confusion around which holidays are ATOL protected. Consumers do not distinguish between the legal status of airlines, agents for the consumer and conventional agency arrangements. In some cases, an ATOL holder may offer services as an “agent for the consumer” with the result that consumers may believe that their holidays are ATOL protected when they are not.

6.3 The growth of the OTA sector has helped the development of an intensely competitive travel industry with price-sensitive consumers who make buying decisions based on price differences of as little as £1. The current exemption of airlines and agents for the consumer does not allow for a level playing field because travel agents are required to absorb or pass on the APC (ATOL Protection Contribution) fee which gives airlines and agents for the consumer a price advantage.

6.4 This situation would be made worse if the DfT’s proposed reforms to the ATOL scheme were to proceed without covering all suppliers. The DfT’s reforms will increase the number of holidays for which agents will have to remit the APC and will result in significant technical development expense. These costs will have to be passed onto consumers. Airlines and agents for the consumer, which will not be subject to these increased costs, will have the competitive edge in offering lower prices. If airlines and agents for the consumer are not brought within the scope of the ATOL scheme then these reforms may have the perverse consequence of encouraging more consumers not to book ATOL-protected holidays.

6.5 The ATOL reform process is already well under way but because widening the scope of the scheme to include airlines and agents for the consumer requires primary legislation we would like to see the current draft ATOL regulations rolled into the Aviation Bill and implementation of all ATOL-related reforms commence at the same time, once the Bill has passed through Parliament. It is vital that all reforms are undertaken in one package in order not to distort further the market in favour of airlines. This would also allow Expedia and other OTAs more time to develop technical solutions to the compliance challenges posed by the regulations.

7. RECOMMENDATIONS TO THE COMMITTEE

7.1 We make the following recommendations to the Transport Select Committee:

- The committee should focus on scrutinising the evidential basis for the DfT’s proposed reforms, particularly the two day proposed booking window for establishing a flight-plus arrangement and the proposed ATOL certificate, as we are not convinced that sufficient analysis of consumer behaviour in choosing, purchasing and amending holiday packages has been undertaken.
- The committee should question the Minister of State for Transport on her plans to widen the scope of the Aviation Bill to include further reforms to the ATOL scheme.
- The committee should ask the Minister of State for Transport whether she can confirm the timeframe for introducing the draft regulations and whether she will consider ensuring that all ATOL-related reforms, including those contained in the Aviation Bill, come into force at the same time.

January 2012

Written evidence from HolidayTravelWatch (ATOL 07)

INTRODUCTION TO HOLIDAYTRAVELWATCH

The UK Transport Select Committee has called for evidence on the issue of updating the Regulatory Framework for ATOL Financial Protection. This Inquiry follows on from the review by the CAA on the “Consumer Objective in 2010”, the EU Commission’s review of Air Passenger Rights and the Package Travel Directive in 2010 and the Department for Transport Consultation of the future of the ATOL scheme. HolidayTravelWatch (HTW) provides its opinions through this report, based upon the relevant consumer opinion and its principal experience of EU Directives.

HolidayTravelWatch is British based consumers organisation founded in 1995. Through 16 years of operation, it has provided information, advice and assistance to over 220,000 holidaymakers, through its dedicated helpline and website. This should however be put into context with the 65,000,000 individual trips taken by British Citizens in 2005.⁵ It suggests that HTW only receives a small proportion of all complaints, however, these holiday complaints tend to reflect the more serious element of contractual, illness and injury difficulties faced by the consumer. HolidayTravelWatch is entered onto the EU Transparency Register—ID Number—63992152960–12.⁶ The Organisation has developed its service to Consumers and currently provides information and advice, assisting some 90% of all travel consumers who contact HTW, to find a resolution to their travel complaint. Through its years of operation, the remaining complainants have been given the opportunity to progress toward litigation, through travel law specialists. It is estimated that in 16 years; more than 70,000 holidaymakers have received such legal assistance, and have achieved in excess of £20,000,000 in compensation for their holiday complaints, holiday illness and injuries. This report will update and cite the relevant experience of this Organisation and the Travel Consumer, in support of its conclusions.

COMMENT TO THE TRANSPORT SELECT COMMITTEE

We attach the report submitted by HTW, on the issue of ATOL reform, sent to the Department for Transport in September 2011.

The Committee will note that whilst HTW expresses serious concern on the “updating” of the ATOL scheme, it nonetheless remains supportive of a scheme that is workable, fair and supportive of both the Consumer and the Travel Industry.

In our view there is a serious miscalculation being made in the proposed restructuring of the scheme; the principal error being that before any changes are made, the Department for Transport should at least wait for the anticipated draft of the new Package Travel Directive.

That draft is expected to be published during the early part of 2012; early indications reveal that the EU Commission will deal with the expansion of current financial protection issues contained within the Directive.

The second principal reason why there should be no rush to update the current ATOL scheme rests in the fact that the new Package Travel Directive is expected to offer a new and broader definition of what constitutes a Package Holiday.

The Committee will note that the Civil Aviation Authority (CAA) have suffered several defeats before the UK courts on the question of what constitutes a Package by reference to membership of the ATOL scheme.

The subsequent effect of these “failures” have led to confusion within the market place, in particular for Consumers, who suffer serious consequences when pursuing contractual, injury or accident claims; *the Committee should not underestimate the importance of this aspect of the debate!*

⁵ Lord Treisman—FCO Reception March 2006.

⁶ <https://webgate.ec.europa.eu/transparency/regryn/consultation/displaylobbyist.do?id=63992152960-12>

Within our commentary to the Department for Transport, we highlighted several areas of concern:

1. The preamble to the Department for Transport's Consultation laid out a number of propositions which in our view present extending dangers to Consumers in this "battle" of what constitutes a "Package".
2. Within their "Short Term Reform" proposals, it was clear that there is an attempt to introduce a definition of "FlightPlus" that may closely resemble "package Holidays" but fall outside the legal definition.
3. The introduction of an "Agent for the Consumer" category which it was suggested may fall outside the ATOL scheme and perhaps the definition of what constitutes a "Package".
4. A heavy reliance on the Consumer Protection from Unfair Trading Regulations 2008; we have commented that following the introduction of this law, it is disappointing to note that little has apparently been done to enforce Travel Consumer rights using its provisions—we do not share the Department for Transport's optimism on this point.
5. We are concerned by the preamble to the Consultation which suggests that the reform's should deliver "lower" costs to the Travel Industry and appears not to recognise that it is the Consumer that pays for their ATOL cover. The Consultation failed to acknowledge the additional costs suffered by Consumers when a company fails, such as, extra telephone costs, travel costs, bank charges and the cost of time in dealing with a poor response to an application for a refund from the ATOL fund.
6. The Consultation failed to deal with the real issue at the heart of this debate that is whether a company or an individual are fit to trade. Given that there is much debate about corporate behaviour and responsibility, surely this is an area ripe for consideration?
7. Prior to the Consultation we commented on the issue of how to deal with restoring the Consumer's faith in the Travel Industry, we suggested that the following should be incorporated into law:
 - (a) That all person(s) operating a travel company are fit and proper persons.
 - (b) That all those operating travel companies undergo a criminal record and "viability" check before they operate.
 - (c) That those operating travel companies have relevant experience.
 - (d) That those operating travel companies have relevant professional qualifications.
 - (e) That those companies state clearly and openly their willingness to abide by and operate within regulatory environments.
 - (f) That there are clear statements about the handling of client monies and that the Consumer can see the "trail" of how their money is kept.
 - (g) That those operating travel companies are required to become members of travel trade bodies.
 - (h) That those travel trade bodies and their members are subject to independent scrutiny/ on the spot checks, through a regulatory environment.
 - (i) That the law imposes criminal sanctions on those failing to comply with its provisions, particularly on financial issues.
8. In our report to the Department for Transport, we asked the question of whether we were right to be concerned about these issues. We observed that:

"Yes! It is clear that the Travel Industry are welcoming the advent of the ATOL reforms because they see this as an opportunity for the Industry to by-pass the current Package Travel Regulations and "free" the products and perhaps market in which they are sold.

In the Travel Law Quarterly (July 2011—Volume 3—Issue 3), Peter Stewart offers the following comment on the proposed Flight-Plus reforms:

'The architects of Flight-Plus deserve considerable praise. They have set out to extend the ATOL scheme to multiple travel products, including flights, booked contemporaneously and to make obvious avoidance steps difficult to achieve. In the main they have succeeded. Praise is also due for finally lifting the blinkers off the CAA's eyes—the blinkers being the manic, and misguided, obsession that the contemporaneous sale of more than one travel product must be a package, as defined in the Package Travel Regulations. What Flight-Pus also does—perhaps inevitably—is to expose the fallacy that the ATOL footprint could not be extended without primary legislation. The dogged retention of this fallacy, and the CAA's blinkered approach to the package issue, have cost tax-payers many millions and created many years of delay in reform of the ATOL scheme'.

These comments encapsulate the myth that DIY holidays sit outside the current Regulations and therefore deserve separate consideration and treatment. We consider that the balance of this Consultation to reflect this camp and fails to deal with the reality of what Consumers actually experience. We believe that such opinions are a recipe for further disasters, to be yet visited upon the Consumer and by default, their role as tax-payers!”

9. In support of our views, we have drawn parallels in the Department for Transport’s proposals, with some of the provisions contained within the UK Package Travel Regulations (obligations, liabilities etc). We would suggest that the Committee read our responses to the Consultation’s questions which demonstrate these facts, particularly on the issues of:
 - (a) Definitions.
 - (b) The Package Holiday issue and the potential for it to create greater difficulty in the operation of Consumer Laws and Rights.
 - (c) Agent for the Consumer.
 - (d) Questions of repatriation and who pays what.
 - (e) The growing suggestion that the Consumer should insure against failures when the real issue is whether a company or individual is fit to trade.
 - (f) Flight only sales and the thorny issue of bringing airlines into a new scheme.
 - (g) The poor method and management of the application process for refunds.
10. To demonstrate the point of the difficulties faced by Consumers on the issue of what constitutes a “Package”, we would suggest that the Committee refer to the case of *Titshall v Query Travel* (Court of Appeal 2011). This case demonstrates the difficulties faced by Consumers. The Consumer was successful in their argument that what was sold to them was a Package and therefore they should be able to enjoy the protections of the Package Travel Regulations—<http://tinyurl.com/7dxwp7x>. *The Committee must recognise that any attempt to follow these proposals will have consequences in other areas. We ask again, will these proposals lead to a greater confusion and detriment to the Consumer; in their current format, we believe that they will?*

CONCLUSION

For the sake of consistency, we again repeat our own conclusions to the Department for Transport’s Consultation.

“We note with great disappointment the lack of real progress made on Consumer issues in early 2010.

This Consultation brings with it its own disappointment; the disappointment that we are looking at the creation of a new breed of Package Holiday being offered at an almost indecent haste! We are concerned that the proposals presented, without real reference and base to the current Package Travel Regulations, will bring about not only a reduced Financial Protection, but a failure of a wider Consumer Protection in the delivery of the holiday product.

Given all the financial failures suffered by Consumers, the real issue of whether a person or company are fit to trade have been completely ignored, in favour of a these proposals, which in our view, will only lead to further confusion.

We consider that it is not too late for this government to halt this present process and introduce better regulatory governance which will create a strong and confident Travel Industry”.

January 2012

Further written evidence from HolidayTravelWatch (ATOL 07a)

INTRODUCTION TO HOLIDAYTRAVELWATCH

The UK Transport Select Committee called for evidence on the issue of updating the Regulatory Framework for ATOL Financial Protection and captured oral evidence on 31 January 2012. The oral evidence was provided by members of the Travel Industry, the Aviation Industry and members of the Civil Aviation Authority. HolidayTravelWatch (HTW) presented its own written evidence which was accepted by the Committee; we attended the hearing on 31 January. The purpose of this report is to provide further comment for the benefit of the Committee and the debate at large. HTW continues to provide its opinions through this report, based upon the relevant consumer opinion and its principal experience of EU Directives.

HTW is British based consumers organisation founded in 1995. Through 16 years of operation, it has provided information, advice and assistance to over 220,000 holidaymakers, through its dedicated helpline and website. This should however be put into context with the 65,000,000 individual trips taken by British Citizens in 2005.⁷ It suggests that HTW only receives a small proportion of all complaints, however, these holiday complaints tend to reflect the more serious element of contractual, illness and injury difficulties faced by the consumer. HolidayTravelWatch is entered onto the EU Transparency Register—ID Number—63992152960–12.⁸ The Organisation has developed its service to Consumers and currently provides information and advice, assisting some 90% of all travel consumers who contact HTW, to find a resolution to their travel complaint. Through its years of operation, the remaining complainants have been given the opportunity to progress toward litigation, through travel law specialists. It is estimated that in 16 years; more than 70,000 holidaymakers have received such legal assistance, and have achieved in excess of £20,000,000 in compensation for their holiday complaints, holiday illness and injuries. This report will update and cite the relevant experience of this Organisation and the Travel Consumer, in support of its conclusions.

FURTHER COMMENT TO THE TRANSPORT SELECT COMMITTEE:

INTRODUCTION

This report will focus on three areas; The Consumer Experience of ATOL, A Commentary on Evidence and Financial Regulatory Oversight.

CONSENSUAL CONCERNS

On hearing the questions of the Committee and the evidence received, we consider that there was a general consensus of concern on the following key issues:

1. Definition of a Package Holiday.
2. Viability of travel companies.
3. Travel Insurance.
4. Credit Cards/Debit Cards.
5. Confusion for Consumers.
6. To extend/maintain the ATOL system.

The Consumer Experience of ATOL

HTW has through various crises, guided holidaymakers as to their rights when an airline or travel company collapses. For the purposes of this report, HTW has identified at random, 29 case studies, which demonstrate the real experiences of Consumers caught in the maelstrom of a failed company.

We have extracted Consumer stories covering a period between 2008–11. We have removed all identifying data and the names of companies that are currently trading, as we consider the Consumer experience to be more important, than simply laying the blame at one particular company's door. The stories are used to simply explain a typical experience. They are published in the exact wording of the holidaymaker, except where an amendment on formatting will make for easier reading.

To assist the Committee, we have summarised the Consumer complaints as follows:

1. Purchasing holiday the day before a company collapses.
2. Lack of clear information/understanding on the ATOL scheme and the claims process at the point of collapse.
3. Communication problems.
4. Abdication of service by travel companies.
5. Being passed from “pillar to post” by travel companies, credit card companies, ATOL & ABTA.
6. Being required to pay additional charges either pre-departure or in resort.
7. Lost Holidays.
8. Being required to buy additional products following a collapse.
9. Splitting the “Package”—redefining their product.
10. Poor administration of claim forms/submission by travel companies.
11. Receiving partial refunds.
12. Delays in repayment.

“We had a holiday booked to fly out 16.10.08 to 23.10.08 through [NAME OF TRAVEL COMPANY], the flights are with freedom travel and accommodation is at Costa Teguse, Lanzarote. We have been told today that the company has gone into liquidation, there are 12 of us, please advise me of what I can do”. (15/9/08)

⁷ Lord Treisman—FCO Reception March 2006.

⁸ <https://webgate.ec.europa.eu/transparency/regryn/consultation/displaylobbyist.do?id=63992152960-12>

“We’ve booked a holiday 26.09.08–03.10.08 through [NAME OF TRAVEL COMPANY] consisting of a flight, transfer and hotel. They texted us this morning to let us know that the accommodation provider, MedLife (part of the XL group) has gone bust. We could not get through on the phone. On their website it says:

“All accommodation bookings made with Medlife Hotels Limited are now null and void. We are hopeful, however, that we will be able to transfer or refund payments made against Medlife Hotels Limited bookings where the check-in date is on or after today.

You will now need to make a new hotel reservation with a different hotel provider.

We strongly recommend you book through this through [NAME OF TRAVEL COMPANY’S WEBSITE] without delay as there will be many travellers seeking new accommodation as a result of this failure and availability will be limited.” We have contacted the hotel directly, they have not gone bust, as MedLife were only a booking agent. They have the room and would supply it at the same price as before. However, we can’t book that directly with the hotel until we know we’re getting our money back for the hotel part of our booking with [NAME OF TRAVEL COMPANY]. Could you advise on the following:

1. As I see it, we bought the hotel accommodation from [NAME OF TRAVEL COMPANY]. The fact that their booking agency has liquidated is unfortunate, but not my problem. As [NAME OF TRAVEL COMPANY] have failed to provide the service we’ve paid for, so we should be entitled to a refund for the hotel -or the whole holiday. Is this correct?
2. The [NAME OF TRAVEL COMPANY] website booking conditions claim that our holiday does not constitute a package—so isn’t covered under ABTA. However the CAB website say that because the items were purchased together, it probably does. Which is right?
3. If the booking is covered by ABTA, I don’t think that they have followed ABTA guidelines, because they haven’t offered a full refund or alternative accommodation of the same standard, and to organise it themselves. They told us to book new accommodation ourselves at, possibly our expense.
4. If [NAME OF TRAVEL COMPANY] products don’t constitute packages, their ABTA membership is useless, and so advertising their membership is misleading, as is their claim that booking with them is “safe”.
5. If it is covered by ABTA, [COMMENT REDACTED]. I emailed them today and got an automatic response back, saying they can take 14–21 days to reply! Fat lot of use as we depart in two weeks”. (EM—15.09.08)

“Holiday date 13.09.08–19.09.08 booked through [NAME OF TRAVEL COMPANY] and lost everything due to XL airways collapse. We are told that we can try and claim for the flights but not the hotel. What are our rights? [NAME OF TRAVEL COMPANY] say that they have paid the airline and hotel and therefore won’t give us a refund. Can you advise?” (EM—20.09.08)

“We have booked a tailor-made holiday with [NAME OF TRAVEL COMPANY]. The flight is [NAME OF AIRLINE] but have noticed that the carrier is [NAME OF AIRLINE] on the tickets. We are due to go on 18 September and have heard nothing. It has been impossible to get through to [NAME OF TRAVEL COMPANY] and when we do the line is answered on a recorded message and then goes dead. [NAME OF AIRLINE] are unable to help us. Will [NAME OF TRAVEL COMPANY] sort out these flights/There is a website and I have left several logons. However, we have had no correspondence and are obviously at a loss knowing what we should do. The problem for us is we have paid for the Hotel, transfers and airport parking. I know they are ATOL protected but how on earth can we communicate with them. They don’t accept E-Mails”. (EM—23.09.08)

“Hi, I just wanted some advice on what to do, six months ago I booked holiday to Lanzarote 4* all inclusive when xl collapsed my flight was cancelled and [NAME OF TRAVEL COMPANY] who I booked with said they had put me on another flight same day to Lanzarote with [NAME OF AIRLINE], when me my partner and one year old baby arrived at airport bmi told us they don’t even do flights to Lanzarote and that we were on a flight to Benidorm, I rang [NAME OF TRAVEL COMPANY] to find out they said they couldn’t change flight and only accommodation they had was in Benidorm I agreed if it was 4* all inclusive, I am now in Benidorm and having a holiday from hell the hotel is 2* and absolutely disgusting my baby has become unwell, we have to go down the road to eat and food is disgusting so the three of us have hardly eaten for three days. I have rung [NAME OF TRAVEL COMPANY] and they advised if we want to change accommodation we will have to find it and pay the extra but we only brought 100 euros as we believed we were going to 4* Lanzarote, we’ve now run out of money and have no way of getting home or making calls, I haven’t stopped crying for three days. Do I have a case for a refund when I get home, thank you for your help”. (EM—25.09.08)

“I had a holiday booked at the [NAME OF HOTEL], Oludeniz, Turkey. The holiday was cancelled due to the XL flight administration. I tried to book the same hotel through an alternative company but there was no availability as they were fully booked (this was for the same dates) however I am being charge £40 cancellation fee by [NAME OF TRAVEL COMPANY]. Apparently this is a charge

levied by the hotel though [NAME OF TRAVEL COMPANY]. I am not convinced of this charge and would like to contact the hotel to discuss and verify this". (EM—19.10.08)

"Booked holiday through [NAME OF TRAVEL COMPANY] flights with XL. Flights to depart 27 September. Booking ref [NUMBER]. Alternative flights were arranged by the travel company at a further cost of £1,800 we are still waiting for the refund of £1,100. Spoke to travel agent three weeks ago. they confirmed that the forms have been sent to ABTA, still not heard anything? [NAME OF TRAVEL COMPANY] cannot provide a date the forms were sent" (EM—08.11.08)

"Please see attached my letter to [NAME OF TRAVEL COMPANY] re. compensation claim for losses. This was due to the XL airlines collapse. Their reply was that they are unable to meet any claim and that I should contact the CAA for advice. What should be my next step?" (EM—14.11.08)

"Went on holiday with [NAME OF TRAVEL COMPANY] holidays last September. xl airways collapsed and we had to find alternative flights.

On the beach were informed we would still be going on holiday a day late and assured us the hotel would be informed. Hotel was not informed resulting in us losing our rooms. Have tried at least 10 times to correspond with [NAME OF TRAVEL COMPANY] who promise to investigate and do nothing" (EM—15.04.09)

"Back in September 2009 a company called Excel went bust. Through Freedom Direct we had booked to fly to Rhodes. As with a lot of other people we lost this holiday. We have not heard anything from anyone about this since January, is there anything that we can do, as we would like to know what is going on". (EM—19.04.09)

"I booked a holiday with Freedom Direct which then ceased trading. Contacted ATOL and their advise was that the flights might possibly still be valid but accommodation certainly would not, so to put in a claim with ATOL. Freedom Direct sites stated they were ABTA/ATOL bonded. Having placed my claim I presumed that my holiday would no longer exist and as we live in Guernsey we would lose our connecting flights from Guernsey to Gatwick. We therefore decided to rebook with another travel agent. Two weeks after doing this we were contacted by [NAME OF TRAVEL COMPANY] telling us that our original flights and transfers were still valid. This was the first communication we had received from anyone at all, I had only found out that Freedom Direct had ceased trading because I went on their website. ATOL having received my claim phoned me to advise that my holiday was not covered by them as Freedom Direct had not booked it as a package holiday, but as three individual bookings. I am now in the situation that because of the information I received in the first place from ATOL I have now paid for two complete holidays, I now have two [NAME OF AIRLINE] flights which are valid, two transfers which are valid and one accommodation booking which is valid. Despite having spoken to ABTA, ATOL, my [NAME OF CREDIT CARD COMPANY] company, [NAME OF TRAVEL COMPANY] no one will refund me my accommodation money, and neither will [NAME OF AIRLINE] refund one set of airlines tickets, offer vouchers or change them to a different date. I have contacted everyone I can think of for help but just get told it is someone else's fault. Please help! I acted in good faith the whole way through this matter and £1,135.83 is a large amount of money for me to lose. I have contacted my holiday insurance, [NAME OF CREDIT CARD COMPANY] company, ABTA, ATOL, [NAME OF TRAVEL COMPANY], [NAME OF AIRLINE], no-one will help. I'm desperate please" (EM—06.05.09)

"We booked a 'package' holiday with Freedom Direct who are now in liquidation. ATOL claim our holiday was made as a split booking—unbeknown to us—ABTA are having a legal argument with the people who the hotel was booked thru [NAME OF TRAVEL COMPANY] we paid by direct debit and are having difficulty as to how to reclaim the hotel/transfers—our flight has been paid for and confirmed". (EM—6/5/09)

"I have just received letter from CAA about the claim I sent in against freedom flight tickets for the value £560 letter dated 05.10.2009 all they want to pay me from a straight forward claim is £120 they have said I have the to bring a legal claim against [NAME OF TRAVEL COMPANY] under the Package travel regulations 1992 here we go again £120, it has taken one year as they kept sending me letters saying we want this document that document, which was all sent in together receipts claim form" (EM—13.10.09)

"I am finding it difficult to claim back my money for what I paid for my holiday through [NAME OF TRAVEL COMPANY].

On two occasions our travel flights went into liquidation and lost our holiday

First one with Goldtrail booking ref BNE206687 of where I paid £592 and second one with Kissflights under the same booking ref of where I paid for further flights of £451 making a total of £1,044.00 I have been told by [NAME OF TRAVEL COMPANY] that CAA are sorting it, they have been in touch via letter and appropriate forms have been filled out and all the required original documents sent, they have then wrote back saying the bank statements don't have our name on the top of all of them and need to send more. I have refused this as each statement costs me £10.00 and on every statement is the credit card number so they will correspond with who they belong to.

I managed to get the number for CAA but was told that it's ABTA that will be sorting it not them I have now been in touch with the credit card company for the second payment that I have paid as

the first one was paid by a current account bank card. They will be investigating it. I feel I am just being shifted from pillar to post and no one wants to take responsibility and as for [NAME OF TRAVEL COMPANY] I have filled all the forms out and still waiting for them to sort out of what I have paid for accommodation and shuttle transfers they told me they were going to pay me back that was 10 weeks ago. Now I've been told it won't be them. So who is going to sort it, as I want my money back I don't like to complain but why am I doing all the chasing around why isn't the company that we booked with [NAME OF TRAVEL COMPANY] sorting all of this for us as they were the company that arranged the package holiday for us. My husband is recovering from a stroke so we could do without all this stress and to top it all we lost the holiday". (EM—06.12.10)

"Booked holiday with [NAME OF TRAVEL COMPANY]. travelling on 24.08.10 return 31.08.10 to Turkey cost £1,562.33. Holiday company Goldtrail went bust and holiday had to be cancelled. We have not got our money back despite sending numerous e mails to [NAME OF TRAVEL COMPANY].they keep fobbing us off with excuses. Can you give us advice please because we do not seem to be getting anywhere fast." (EM—08.12.10)

"Further to the above holiday reference I have phoned your company again this morning for the fourth time only to be told, yet again, that the deposit that you took for this holiday would be returned to me within the next two weeks. I have been hearing this story since the middle of October. My ATOL Claim Form was received by yourselves on 10 August this year and yet you are unable to give me a claim number which I find very strange. My deposit was paid by credit card and the credit card company have been informed of the situation now and are looking into it, also I have informed ATOL this morning of the situation and am copying them into this email as they have suggested I should try once again to get a response from you. So far you have not acknowledged in writing your receipt of the claim nor a letter that you received on 4 September from myself concerning cancellation of the entire holiday package. To be honest I am amazed at how completely ignorant your company has been to all my communications and not only will I not be booking with you again I am advising my friends and relatives not to do so as your treatment of customers is disgusting.

The young man I spoke to this morning at your company has asked that I send this email and request a date from you as to when I will see my deposit as he is unable to help me. It has now been five months since you received my claim." (EM—21.12.10)

"Family of three went on week's cheap package to Turkey July last year, booked through [NAME OF TRAVEL COMPANY] but flights were with Goldtrail. After Goldtrail crash, we lost flights (£692) and booked with [NAME OF AIRLINE] (£200 more). We are still awaiting £692, having completed claim form early on 9 August 2010. I have rung many times and also emailed. Only received one apology email and vague verbal reassurances. We were told 10–12 weeks, then 12–14 weeks. It is now 20 weeks. We received a short apology email last year saying we would have our refund by Xmas. I attach text of [NAME OF TRAVEL COMPANY] email and my later response. Please could you advise what further action we should take." (EM—06.01.11)

"Three of us booked a holiday through [NAME OF TRAVEL COMPANY] to Turkey last year. Goldtrail collapsed and because our hotel was booked through another company we decided to keep the hotel but pay for another flight each. We are due compensation for these flights. Initially, [NAME OF TRAVEL COMPANY] sent us forms which were duly completed and returned. Recently they sent an e-mail asking for documents. These have already been sent. Since then I have sent numerous e-mails which remain unanswered. I have telephoned several times and been left holding on for 25 minutes without an answer. (These calls are expensive) I cannot get a reply from them to tell us where our money is." (EM—10.01.12)

"[NAME OF TRAVEL COMPANY]. I lost my flights due to Goldtrail going bust, but the company have still not given me my money back of over £500. They are very slow other people who booked with another company have had their payments back but [NAME OF TRAVEL COMPANY] still hold my money. Terrible company" (EM—27.01.11)

"Good morning, I wonder if you could please advise regards Goldtrail refunds. I appear to be getting 'the run around' from [NAME OF TRAVEL COMPANY]. I was told in November I would be reimbursed before the Christmas period, Then in December 'within two to three weeks', at the end of December I was told 'two to three weeks'. I have had no response to my e-mails since 31 December, however their web site states 'two to three weeks. I was due to fly on 31 July. Your advice would be much appreciated" (EM—01.02.11)

"I made a package holiday booking with [NAME OF TRAVEL COMPANY] in May 2010, in July 2010 the flight company Goldtrail went bust. [NAME OF TRAVEL COMPANY] offered me alternative flights at almost the cost of the whole holiday cost so I refused the alternative flights and was told I could have a total full refund within 60–90 days. We are now around seven months later and I have not received any refund on my £721.60 payment. [NAME OF TRAVEL COMPANY] ignore all my emails requesting updates on my claim, I have complained to ABTA who inform me that [NAME OF TRAVEL COMPANY] should contact me within 14 days, I have made a complaint

to ABTA that [NAME OF TRAVEL COMPANY] have breached the code of conduct by not responding to my reasonable requests for information updates. ABTA have today replied to my complaint of breach of conduct by [NAME OF TRAVEL COMPANY], by informing me that they have forwarded a copy of my complaint to [NAME OF TRAVEL COMPANY] who should contact me within 14 days and should they fail to contact me then I can call ABTA on a premium rate telephone number charged at 51.062p per minute plus any network charges, this is ridiculous that there is an obvious breach of code of conduct by [NAME OF TRAVEL COMPANY] and ABTA are now going to charge me extortionate call rates to inform them of their members breach of code of conduct and ABTA appear to not address this breach by this ABTA member: [NAME OF TRAVEL COMPANY]. This is absolutely disgraceful, the general public like me are falsely misled into thinking that we have a level of protection by booking holidays with and ABTA company, but I have discovered this is not the case, even ABTA do nothing about members breaching the code of conduct.” (EM—05.02.11)

“Fights were booked for five people, travelling to Turkey 03.08.10. The company Goldtrail went bust. Our travel agent has still not confirmed our outstanding claim and we have not had confirmation from CAA that it has been submitted. The travel agent is being vague and keeps putting us off. Is there anything further we can do to hurry along the settlement of our claim?” (EM—09.02.11)

“In August of last year I booked an holiday with [NAME OF TRAVEL COMPANY]. Unfortunately the airline (Goldtrail) collapsed. I have made repeated phone calls to [NAME OF TRAVEL COMPANY] only to be put through to a call centre in India and be promised my refund within two to three weeks, this has been going on since last year as I was told I would get my refund within 12 weeks. I have also sent repeated e mails only for them not to be answered. Please advise” (EM—15.03.11)

“Huntswood CAA Team have been dealing with my claim Goldtrail Travel Ltd. I booked online through [NAME OF TRAVEL COMPANY], debit card, total cost of holiday £1,264 and they have only reimbursed the flights of £403. How do I get the hotel costs reimbursed; is this not covered by ATOL (EM—18.03.11)

“Went on holiday July 2010 to Turkey five passengers had a fantastic holiday until we were ready to come home we arrived at Dalaman airport only to find out there was no flight for us as the airline company had gone into liquidation ie Goldtrail, but the actual holiday was booked with [NAME OF TRAVEL COMPANY]. We had to spend two days in the airport with no information forthcoming we were eventually put on a plane back to London Gatwick and a coach from there to Glasgow but had to fend for ourselves in the airport food and drinks which is very expensive. My reason for writing to you is for advice if I can claim compensation for this matter I look forward to hearing from you.” (EM—25.03.11)

“Last year, me and my friend booked a holiday on a [NAME OF CREDIT CARD COMPANY] credit card with Kiss/Goldtrail to travel for one week to Marmaris in Turkey from 8–15 October 2010. In August last year, a day after we had made the full balance payment for the holiday my friend who made the booking got a letter through the post stating that Goldtrail tour operator had collapsed, and they would be processing refunds as soon as possible. We had a refund for the flights in early February 2011, but they did not refund the cost of the hotel and actual holiday we had paid for, even though we booked it as a package. Since then, I have been told by the [NAME OF TRAVEL COMPANY] customer service representatives that they refuse to refund the rest of our money, because an answer phone message was left on my friends mobile phone on 27 August 2010 (which I attached for you to listen to). They are saying that our actual holiday was still “live” and all we needed to do was re arrange flights or cancel the holiday with the hotel to get the money back. As you can hear from the message, no further detail was left and no further attempt was made to contact us in writing to let us know we would need to independently cancel the holiday. The hoteliers have of COURSE refused to refund [NAME OF TRAVEL COMPANY] the money for us not checking in to the hotel which means they will not refund us our money, even though we booked everything through them and did not do it separately. I have made repeated attempts to try and get an answer out of them, which I have attached for you to see, but I am yet to receive much more than a ‘we’re looking into it’ and as it stands I have not heard from them for over a week now Even if I don’t get my money back, I really just want to put this story/complaint out there, so that someone else may not suffer the same loss of money for a holiday they never got to take, I think it’s been the most disgusting service I’ve ever been given and I’m out of pocket around £150 because of it. If anyone can help me with this I would be so grateful, as all I’ve hit so far is brick walls and dead ends.” (EM—13.04.11)

“I am after advice on who can I contact about the collapse of Goldtrail I booked my holiday with going on holiday I took insurance with ATOL and Huntswood CTC Ltd are dealing with it but [NAME OF TRAVEL COMPANY] will not release the final moneys of £182.73. Huntswood do have the other moneys of £260.27 but will not release until the other moneys from [NAME OF TRAVEL COMPANY] is released to them [NAME OF TRAVEL COMPANY] will not return my calls plesae help” (EM—28.04.11)

“We have failed to get our claim to [NAME OF TRAVEL COMPANY] answered, it is only a small amount £140, as we claimed £260 from ATOL. (The claim was actually dealt with by a subsidiary “Huntswood” acting on behalf of ATOL when ‘Goldtrail’ went into Liquidation. Our payment to [NAME OF TRAVEL COMPANY] was initially with a [NAME OF CREDIT CARD COMPANY] credit card, and it doesn’t appear [NAME OF CREDIT CARD COMPANY] can help either.” (EM—03.05.11)

“Booked holiday to Skiathos Greece through [NAME OF TRAVEL COMPANY]. During holiday received text about a company called Goldtrail going bust but all was ok. Got to airport told that our tickets were no longer valid as the airline had not been paid. Our seats were given away to a flight which had mechanical issue. Made our own way back to UK. Contacted [NAME OF TRAVEL COMPANY] and then put in claim to ATOL. later informed that [NAME OF TRAVEL COMPANY] didn’t pay [NAME OF AIRLINE] in the correct manner. [NAME OF TRAVEL COMPANY] ask me to re submit the ATOL claim again which I did , have had one email that they were waiting for a reply from ATOL within days . Months have past no communications with [NAME OF TRAVEL COMPANY] and the do not return my contacts. Please could you give me any advice on a way forward. My claim was for approximately £400.00 to cover repatriation back to the UK.” (EM—05.07.11)

“Booked a holiday through [NAME OF TRAVEL COMPANY]. On holiday when called into a meeting and it was announced that the tour operator had gone into liquidation. All the passengers had to re-pay for the hotel and claim the money back once they have returned to the UK. Went on holiday in July and tried to claim immediately after returning to the UK ... only just received a response with a letter ... been advised that the letter will need to be signed but a solicitor will need to witness.” (EM—25.11.11)

In reviewing these experiences the question must be asked; what should Consumers expect from the ATOL product?

What does ATOL have to say about the Consumer “payment” to the ATOL scheme?

Consumers are protected when a payment is made into the scheme. This “insures” the Consumer against the collapse of a travel company or airline, where a holiday product is purchased.

On listening to the comments made by the various witnesses, we considered that it was possible to infer that the ATOL cost is a cost burden on industry.⁹ Do Consumers have no say in either subscribing to or commenting on this “insurance” scheme; it would seem that they do?

On the CAA website it states:

“My invoice says I have paid for ATOL protection. Is this right, and do I have to pay this?”

The ATOL Protection Contribution (APC) is not a charge on individual customers. It is a per person contribution ATOL holders must make to the CAA. *The APC is usually built within the overall cost of the holidays and flights it sells*¹⁰ (Our emphasis)

This suggests that the Consumer has a choice to opt in or out of the scheme. We would always advocate that Consumers seek protection. However, it is important to remember that under the current rules, it is the Consumer who pays for the bad management of Companies; is it reasonable therefore that the Consumer has a greater say in how the ATOL scheme or its replacement should operate?

It is important to remember when considering the Consumer stories above, that it is they who have paid for this “service”. It is a service without any real understanding of the cover they will receive, nor importantly how the “stability” of travel companies are assessed. It is also the Consumer who has to suffer a further lack of control over his “insurance” product, particularly in light of the covert “exclusions” that are often applied during the claims process. Would Consumers experience such a lack of clarity and service in their various domestic insurance contracts, we think not, so we call for a greater clarity and service for Consumers!

A Commentary on Evidence

The evidence considered a wide range of issues and we would like to offer comment on several aspects.

Package Definition

It is important for the Committee to note that Consumer protection is not just about Financial Protection. The issues that are currently being debated cut across several areas, one of which is the protections accorded by the Package Travel Directive/Regulations.

We have made clear to the Committee our reservations about the “Flight-Plus” definition in the new ATOL regime; we would ask the Committee to refer to our previous report and attachments for our detailed comments.

⁹ Evans at Q6 & Q 10- Written Transcript.

¹⁰ Link to the ATOL CAA website—
<http://www.caa.co.uk/default.aspx?catid=1080&pagetype=70&gid=1872&faqid=1042>

We consider that the introduction of this “definition” is somewhat premature and the DfT should have waited for the forthcoming draft publication of the new Package Travel Directive. There was discussion as to when this was likely to happen with an acceptance that this was some way off.

It is expected that the draft Package Travel Directive will be published during the first half of 2012. Commentators have noted that following its passage through the EU Parliament, it will likely pass into law in 2015; thereafter, it will have to be adopted into the various Member States.

The issue of Financial Protection featured heavily during the 2010 EU Commission Inquiry into the new Directive. It was considered important to bring into any new protection regime, a clear definition of what constituted a Package.

It was noted at the Package Travel Directive Stakeholder Conference in Brussels (22.04.10), that the UK was apparently the only country in the EU where Consumers were experiencing problems with the “Package” that they bought when trying to enforce their rights under the Directive/Regulations. This situation has arisen out of various sets of litigation which we say only explored abstract questions connected with a “Package”, and the commentary and decisions bore no resemblance to the Consumer experience when buying a holiday.

The issue is important to Consumers, as the proposed “Flight-Plus” definition, without a clear link to the definition to a “package”, will in our view, allow for a new or greater argument that a “package” holiday is not being sold and therefore any claim on rights under The Package Travel Regulations will be extinguished.

Witnesses and indeed committee members, considered what constitutes a “holiday”. From our experience with holidaymakers, we would suggest that the ordinary Consumer views a “holiday” as something that includes a flight or cruise, accommodation and any ancillary service, booked and paid for via one portal/or one office, at the same time, in one price transaction. They do not on the whole understand the distinction of “components” and do not see their purchase as one of “component” choice. They are simply looking for one product, purchased as they have done over many years in the easiest and most convenient manner. The fact that the internet is now a feature of Consumer life makes no difference to how you choose a “holiday”, as it is an identical process of choice as from a brochure taken from a shelf.

In our presentation to the Stakeholder meeting in Brussels (22.04.10), we demonstrated that there was no difference between “new” online brochures and those that existed prior to the Package Travel Directive in 1990. Both offer components, bundled together for the convenience of the Consumer. We also suggested, and we believe that the EU Commission will introduce a new feature in the new Directive, that “Holiday” contracts should carry with them warning “health” notices, describing what you protection you will or will not receive according to the product a Consumer has purchased.

Travel Insurance

We noted the many comments made about travel insurance. We are not at this stage convinced that this option is viable at this time simply because Insurance companies will be perhaps cautious as to what risks they expose themselves to.

We would point out to the Committee that Travel Insurance is a regulated product and became so after the inquiries by the Treasury Select Committee, HM Treasury & the Financial Services Authority in 2006–07 and 2008. This Organisation contributed to all the said enquiries and welcomed its transit to Regulation.

We have noted that in the proposed “bonfire” of “red-tape”,¹¹ the present government has been persuaded by the Travel Industry to de-regulate the travel insurance product. This has wide implications for the Consumer and affects the current thinking within the ATOL debate.

This organisation is currently preparing evidence to rebut the advance toward de-regulation.

Inclusion of the airlines?

There is no question that the airlines should be included in any new Financial Protection Scheme.

This was made clear, apart from the airlines representations, that this was not only correct but a timely move.

We have experienced much objection to this issue and have been criticised publicly for referring to the matter as the “elephant in the room”.

We have taken nonetheless a pragmatic view that there is insufficient political will to bring about this change, whether this is here in the UK or within the EU.

We take the view that inclusion is not only logical but will prove ultimately beneficial to the airlines when they market how safe a passenger’s money or purchase is over and above non-EU carriers!

¹¹ Link to the Report proposing to remove ‘red-tape’ for the Travel Industry—
http://www.culture.gov.uk/images/publications/BHA_Taskforce_Report.PDF

Financial Regulatory Oversight

We reject the future view expressed by Mr Tanzer at Q12, where he suggested that Financial Protection might evolve toward an industry run scheme following the removal of the debt held by the Trust, he stated; *“In the medium term, a system of financial protection that is basically handed to the industry and the financial markets would be a better solution. To get to that, there is a deficit that has to be paid off, and you have to have markets that are comfortable with the level of risk that they would be taking on. For that, they have to have experience and they have to get comfortable with the nature and quantum of the risk”*.

We noted with interest the comments made by Mr Hanlon at Q.54 where he called for *“greater preventive regulatory oversight”*.

We also noted the comments made by Mr Evans at Q22 where he expressed concern that *“my colleagues over here have stated that they have considered turning themselves into airlines so that they do not need to pay this fee”*.

We are concerned that in constructing any new regime, the failure to address the “fit to trade” issue, will create a flawed scheme or further difficulty for the Consumer.

We again call for and repeat:

- (a) That all person(s) operating a travel company are fit and proper persons.
- (b) That all those operating travel companies undergo a criminal record and “viability” check before they operate.
- (c) That those operating travel companies have relevant experience.
- (d) That those operating travel companies have relevant professional qualifications.
- (e) That those companies state clearly and openly their willingness to abide by and operate within regulatory environments.
- (f) That there are clear statements about the handling of client monies and that the Consumer can see the “trail” of how their money is kept.
- (g) That those operating travel companies are required to become members of travel trade bodies.
- (h) That those travel trade bodies and their members are subject to independent scrutiny/on the spot checks, through a regulatory environment.
- (i) That the law imposes criminal sanctions on those failing to comply with its provisions, particularly on financial issues.

CONCLUSION

We are concerned that following the evidence session of 31 January 2012, the government announced that the new scheme will be launched.

It is our view that whatever the Consumer position, the doubts expressed by all stakeholders have not been listened to sufficiently.

We hold the strong view that corporate responsibility lies at the heart of any proposed change; have we not learnt from the fall-out of this financial crisis? Support for our view came from a surprising source; Mr Hanlon. We would encourage the Committee and Government to read his contribution at Q54.

We are also concerned at the effect these changes will have on the interpretation of what constitutes a “package” and the wider detriment that Consumers will suffer.

In short, it is still not too late to put the brakes on this new scheme, so allowing time for a greater discourse and consideration of this very complex issue! We would hope that the Committee will raise further concerns with the Minister on 22 February 2012.

February 2012

Written evidence from the Society of Our Lady of Lourdes (ATOL 11)

The outline proposal for ATOL reform is that anyone who books a flight together with accommodation or car hire *within a day* of each other is eligible for compensation.

I wish to argue that for those with disabilities, one day is insufficient.

I speak as a participant in an annual pilgrimage (now celebrating its centenary) which takes 60 people of varying disabilities to Lourdes. Over the years, I have become aware of the complexity of the transport and care requirements for those who cannot travel without assistance. From personal experience of waiting with someone in a wheelchair for hours at Stansted because their specialised transport has not arrived due to misunderstanding or delay it is apparent that arranging transport is not straightforward—it requires careful co-ordination and is anything but “turn up and go”.

The practicalities and availability of arranging dedicated disabled transport and carers both for the journey and to “meet and greet” and the availability of what are scarce resources rarely allow the complete travel package to be booked within a 24 hour period.

These are specialised services, which are less likely to be supported by a user friendly internet front end, and may well require input from several sources: medical and caring to arrange—and rearrange.

Additionally carers and helpers own practical availability is not elastic—and if professionally paid for will require scheduling against the needs of other disabled clients. If undertaken by family and friends then booked leave from work and personal commitments to children can not be quickly be arranged and aligned with a flight booking.

Should other aspects of Public Transport provision come to be considered by the Transport Committee which are of concern to disabled travellers *The Society of Our Lady of Lourdes* has particular knowledge of the detailed needs of many people with different sorts of reduced mobility who choose to travel with us, and have done so over the course of almost a century and would welcome the opportunity to comment if we are included in your future calls for evidence.

January 2012

Written evidence from lastminute.com (ATOL 13)

I am writing on behalf of lastminute.com group in response to the Transport Committee’s Call for Evidence on ATOL. lastminute.com is an online travel agency operating the website www.lastminute.co.uk in the UK and is subject to and complies with the current ATOL regulations. Whilst lastminute.com is supportive of the UK Government’s decision to reform the existing ATOL scheme and in particular agrees that there is a need to for further clarity for consumers and travel providers in this area, we have a number of fundamental concerns about the effect of the proposed changes on the online travel industry in particular relating to the proposed “Flights plus” scheme.

In summary, our concerns relate to three key areas:

1. Flights Plus—two day booking window.
2. Lack of level playing field.
3. Timeframes for implementation.

1. FLIGHTS PLUS—TWO DAY BOOKING WINDOW

Whilst we support the overriding criteria that consumers purchasing travel products relating to the same trip should be protected, we believe that this should only be the case where consumers purchase components for their trip as part of the same transaction. The proposed “flights plus” scheme is intended to protect customers booking component parts of their trip separately within a two day window. Not only does this fail to take into account customer shopping behaviours online (lastminute.com does not believe that the majority of its customers book in this manner. They are extremely price led and shop around. In reality they are more likely to book a hotel on one travel site and a flight on another, or else benefit from the discounts available when booking an all inclusive package in one transaction from one provider (ie a traditional package or dynamic package) but it also does not seem to reflect what customers expect in terms of financial protection. In our view consumers are heavily price led in making their purchasing decisions online and although we bond packages and other products which the regulations require us to today, we see no evidence that this is a key element in the customer’s decision to buy. We believe there is even less of an expectation that customers should be financially protected when they buy two or more travel products separately online. We have also seen no compelling fact based analysis to support that the reforms proposed as part of Flights Plus are what the customer expects or needs. Further we believe that by introducing a new category of protected booking in the form of Flights Plus, this will only add to confusion around what is and is not protected.

Additionally, “Flights Plus” would create a disproportionate technical and operational burden on online travel companies like lastminute.com. Today, lastminute.com is not able to recognise that customer orders are linked when purchases are made at different times or days and it would require very significant changes to our booking and financial systems to ensure “flights plus” bookings could be accurately tracked and reported. Not only would this be extremely costly (our initial internal swag analysis suggests an investment cost which could easily exceed £1 million) but would take nine to 12 months to complete and even more critically would divert scarce resources away from business critical and innovation projects.

2. LEVEL PLAYING FIELD

We do not believe that the UK Government has given due consideration to the impact of this reform on online travel agents and in particular the distorting effect this will have on the market place in favour of airlines and travel companies operating an “agent for the consumer” model. We believe consideration needs to be given to all travel distribution providers in contemplating this reform.

As an online travel agency, lastminute.com operates in an extremely competitive, heavily price sensitive market place. Consumers are internet savvy and spend their time shopping around the various travel sites online investigating the different product offerings to find the best deal. In addition, the companies that sell travel products have changed. When the ATOL scheme was introduced in the 1970s consumers would invariably go to travel agents and tour operators mainly on the high street (bricks and mortar travel agents) for their full range of travel products (car, hotel, flights etc). Now travel has gone online and the market is saturated with multiple travel companies (online travel agents, supplier direct channels (eg airline, hotel and car rental sites) meta search sites (eg travel supermarket) etc all providing a variety of options for accommodation, flight and car hire amongst other things. All compete in the same market as lastminute.com—a market where a price difference of as little as £1 pound could be enough to sway a customer away from lastminute.com towards a competitor. Whereas airlines will not be required to pay or charge the APC ATOL levy (£2.50 per booking) in any circumstances as is the case today, online travel agents would be expected to support this cost (either by passing it to the customer or absorb it ourselves) in relation to a new category of “flights plus” in addition to traditional packages. We believe this will increasingly push our customers away towards airlines and other sites which are not compelled to support these costs. By excluding airlines and other direct distribution channels from the new ATOL reform, this will further distort the market in their favour.

Similarly lastminute.com considers that it is essential to bring holidays sold under an “agent for consumer” model into the scheme. Consumers do not understand the difference between purchasing a trip from companies acting as “agent for the consumer” and a traditional ATOL bonded packaged holiday in the financial protection these purchases afford them. By omitting “agent for the consumer” companies from the scheme this may also push travel providers that are currently compliant with the ATOL scheme to adopt the agent for the consumer model.

Until there is consistency and a level playing field in terms of the application of the rules across all travel distribution channels (airlines and “agent for consumer” companies included) not only will encourage unfair market distortions but we believe it will not be possible to eliminate confusion and ensure that consumers are adequately protected when they purchase travel.

3. TIMEFRAMES

As a final point, we note that the UK Government is intending to introduce these rules on 1 April 2012. Between now and then it is intended that there will be a six week consultation on the ATOL standard terms and that the final reform regulations will be published thereafter. In the circumstances this may leave only a couple of weeks from publication to companies having to be compliant. This is a major concern in view of the technical and operational demands this will put on our business (as described above) not to mention all of the other compliance aspects such as new processes for delivery of the various ATOL certificates, amending contracts, site changes, terms and conditions and adapting customer call handling processes.

In addition, we are aware that the EU Package Travel Directive is due to be reviewed and consider that there will be considerable overlap with ATOL in the UK. Not only does it seem to make sense to review these in tandem to ensure harmonization but also we also have concerns about the challenges of having to work towards compliance with ATOL reform only to have to change our processes and operations again to accommodate the revised PTD when those rules are introduced.

We therefore urge the Government to carefully consider postponing the ATOL reform to allow time for appropriate legislation to be passed (capturing airlines and “agent for the consumer” companies alike) to ensure a consistent body of rules which apply equally and simultaneously and may be duly implemented by all travel distribution channels.

January 2012

Written evidence from the European Technology and Travel Services Association (ETTSA) (ATOL 14)

ABOUT ETTSA

1. The European Technology and Travel Services Association (ETTSA) was established in 2009 to represent and promote the interests of global distribution systems (“GDSs”) and online travel agencies (“OTAs”) towards policy-makers, opinion formers, consumer groups and all other relevant European stakeholders. Our OTA Members include Expedia, lastminute.com, eBookers/Orbitz, Opodo, Go Voyages and eDreams, most of which have significant business operations in the UK market. This submission represents the consolidated view of ETTSA and its Members.

INTRODUCTION

2. ETTSA and its Members welcome the Government’s initiative to improve the protection of consumers who are booking package holidays, and to provide consumers with more and better information about whether or not their holiday bookings are covered by the ATOL scheme.

3. We are, however, very concerned about:

- (a) the significant and disproportionate cost impact the current ATOL proposals, and in particular the definition of flight-plus, would have on the online travel sector;
- (b) the high cost and complexity and limited consumer benefits of having to provide a bespoke ATOL certificate for each booking;
- (c) the risk of continued distortion of the market place if airlines and “agents for the consumer” are not covered by ATOL; and
- (d) the proposed implementation timeframe which is not sufficient for OTAs to make the necessary changes to their systems, in particular to accommodate the flight-plus definition.

CURRENT DEFINITION OF FLIGHT-PLUS

4. The proposed definition of flight-plus to include any combination of travel services booked within a two-day window will entail substantial and disproportionate costs for OTAs. They do not currently have systems in place to track whether separate bookings over multiple days could potentially form a package which needs to be ATOL-protected. No such requirement exists in any jurisdiction in which our Members operate, and implementation of these types of tracking systems would require significant investment of time and resources.

5. From analysis of online consumer behaviour, it can be concluded that there is very limited demand for packages where the different elements are booked separately. Consumers are incentivised to book packages in one transaction as they benefit from considerable price advantages compared to separate bookings. If they chose not to book a package in one transaction, they typically compare and purchase different elements of the trip from different providers. Applying the two-day window would therefore have little if no benefits for online consumers, it would not produce any significant numbers of additional ATOL-protected trips, and it would not in our view justify the substantial economic cost. The Government has not sufficiently assessed online consumer behaviour, despite significant efforts by ETTSA and its Members to articulate our concerns.

6. We would recommend that the definition of flight-plus be limited to services bought by the customer in one and the same transaction (with a single payment). In addition, the Government, together with the industry, should educate consumers about which bookings are covered by ATOL protection and which are not, so that consumers can at all times make informed decisions.

BESPOKE ATOL CERTIFICATES

7. Equally, we believe that the proposed requirement to provide a bespoke certificate for each flight-plus, standalone flight and package booking would pose a heavy burden on the OTAs in particular, with very limited benefits for consumers.

8. We would like to draw the Committee’s attention to the technical complexity as well as the time and resources required for implementing a system which enables the ATOL holder to issue a new certificate every time the customer makes a change to his/her booking. Online customers typically amend and change their original bookings regularly (by phone, via the internet or directly with the supplier), thus requiring the OTA to track these changes and to issue a new certificate every time. Not even the most sophisticated tracking system could do this without error, also as changes made directly with the supplier are not known to the OTA. The proposal again demonstrates the limited assessment that has been undertaken by the Government of the impact on the online travel sector.

9. We would recommend that travel agents be allowed flexibility in terms of the mode of delivery of ATOL certificates, in particular to allow travel agents to use a static online certificate which can be accessed by the customer from his/her booking confirmation, rather than a bespoke certificate which needs to be reissued every time a change is made to the booking.

RISK OF DISTORTION BY EXEMPTING AIRLINES AND “AGENTS FOR THE CONSUMER”

10. ETTSA welcomes the Government’s announcement that the ATOL scheme may be brought into the Aviation Bill, thus potentially paving the way for inclusion of airlines and “agents for the consumer” in the ATOL scheme. This would create a level playing field for all providers of travel services, and would guarantee better consumer protection than the standalone revision of ATOL.

11. Airlines and “agents for the consumer” currently have an unfair competitive advantage because they do not need to pass on the ATOL protection contribution to their customers. This is especially unfair given the price sensitivity that online consumers exhibit.

12. Also, consumers do not (and cannot be expected to) distinguish between the legal status of airlines, “agents for the consumer” and conventional agents. Under certain circumstances, an ATOL holder may offer services as an “agent for the consumer” with the result that consumers may believe their holidays are protected when in reality they are not. This could be considered outright consumer deception. The recent Spanish bankruptcy once more shows that passengers who book directly with airlines enjoy less protection than those that have booked through travel agencies.

13. We would recommend that the draft ATOL regulations be included in the Aviation Bill, that they cover airlines and “agents for the consumer” on the same grounds as travel agents, and that the revised regulations enter into force once the Aviation Bill has passed through Parliament.

PROPOSED TIMEFRAME FOR IMPLEMENTATION

14. As we have outlined above, the implementation of the proposed flight-plus requirements and of bespoke ATOL certificates, would require OTAs to make significant investments in technology. We estimate that this process would take at least 12 months if not longer, and it can only start once we have certainty about the scope and detail of the regulations. Therefore, the planned implementation date of 1 April 2012 is unacceptable and unachievable for our Members.

15. If the requirements of flight-plus and the bespoke ATOL certificates were to go ahead, our sector would require at the very least a prolonged implementation period of at least 12 months, coupled with non-enforcement of the legislation.

16. We would, however, recommend that the ATOL reforms be included in the Aviation Bill, and only passed once the Aviation Bill has been voted by Parliament. This should then also be followed by a realistic implementation (and non-enforcement) period.

RECOMMENDATIONS TO THE COMMITTEE

17. ETTSA and its Members would like to make the following recommendations to the Transport Select Committee:

- (a) We would suggest the Committee carefully review the costs and benefits of the proposed flight-plus definition, and in particular its disproportionate impact on the online travel sector.
- (b) We would also suggest the Committee consider the complexity of applying the proposed ATOL bespoke certificate rules, particularly for OTAs.
- (c) We would encourage the Committee to question the Minister of State for Transport on her plans to include the ATOL proposals in the Aviation Bill, and in particular to include airlines and “agents for the consumer” in the ATOL scheme.
- (d) We would propose the Committee ask the Minister of State whether a more realistic implementation and non-enforcement period would be considered to account for the significant system changes that OTAs need to undertake.

We remain at the entire disposal of the Select Committee to provide further evidence and/or clarification, written or oral.

January 2012

Written evidence from ebookers.com (ATOL 16)

1. ABOUT EBOOKERS.COM

ebookers.com is a UK-based, leading pan-European online travel agency (“OTA”) specialising in worldwide travel. ebookers.com’s origins trace back to its forebearer’s founding in Earls Court, London in 1983, and in 1996 was the first travel agency to launch an interactive travel website in the UK. We offer a wide range of travel products to consumers, including a choice of over 250 airlines, nearly 100,000 hotels, holidays, car hire and insurance. ebookers.com is part of Orbitz Worldwide, a leading global online travel company. The company offers a full range of travel products online and over the telephone. ebookers.com is headquartered in Central London, and it operates local online travel agencies across 13 countries in Europe. In July 2011, ebookers.com was ranked among the UK’s top-10 most popular travel agency websites.¹² Global travel sales across all Orbitz Worldwide brands exceed 7 billion GBP on an annualized basis.

2. SUMMARY OF CONCERNS

ebookers.com is an active member of the European Technology and Travel Services Association (ETTSA), and we fully support ETTSA’s separate submission of written evidence to the Select Committee on behalf of the OTA industry. We share ETTSA’s concerns with the ATOL reform proposals as they stand, and with the proposed timeframe for implementation of the new ATOL Regulations, and this brief submission serves to underscore the importance of industry opposition and concerns.

As the 28 January shutdown of Spanair demonstrates, under existing regulation, passengers who book directly with an airline are already afforded less protection than those who book through a company such as ebookers.com. The proposed changes to the ATOL provisions do nothing to address this discrepancy, and in fact, would exacerbate the exposure of online travel agencies to the financial shortcomings of suppliers that skirt both government and moral obligations to provide adequate consumer protection.

¹² Tnooz *Ebookers returns to leading pack—Top UK Sites, July 9 2011*
<http://www.tnooz.com/2011/07/11/data/ebookers-returns-to-leading-pack-top-uk-sites-july-9-2011/>

We are particularly apprehensive about the definition of flight-plus holidays and the proposed two-day booking window for completion of flight-plus arrangements. We believe this will result in customer confusion, and that presumed consumer benefits of the two-day window are actually quite limited.

With regards to CAA's approach to ATOL certificates, we believe there are problems with the requirement for bespoke certificates to be produced for each flight-plus package, standalone flight booking and traditional package booking, and that these particular issues affect the greater ATOL reform package.

Also, given the amount of technological development required to implement the flight-plus reforms, we still lack enough clarity about the final form of the new ATOL regulations. This development process can only begin once we are aware of the final regulations, and we estimate that change will require a minimum of 12 months (from publication) and considerable resources. Even then, the public benefits are minimal at best, and are dwarfed by the implementation and compliance costs for industry.

If the flight-plus reforms proceed, an implementation and non-enforcement period needs to be put in place that makes the process feasible for businesses such as ours.

The proposed changes also seem to focus on only part of the market through which consumers purchase travel. If in fact, this is such a worthy undertaking, then the scope of the ATOL scheme should be widened to include airlines and "agents for the consumer" to avoid both customer misunderstandings and competitive partiality.

If the Select Committee desires further dialogue or clarification on any of the aforementioned issues, we are available and open to discussion.

January 2012

Written evidence from the Association of British Insurers (ATOL 17)

1. The ABI is the voice of insurance, representing the general insurance, protection, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has over 300 members, accounting for some 90% of premiums in the UK.

2. EXECUTIVE SUMMARY

2.1 Most travellers have trouble-free trips when going overseas. Unfortunately, sometimes things go wrong, and having a comprehensive travel insurance policy can be a great help if you are faced with a problem abroad and huge bills to follow.

2.2 Not everyone buys a trip, or chooses to travel, in the same way. This is reflected in the range of travel insurance products available, with different policies covering different things. No insurance policy can cover absolutely everything that might happen during a trip, but policies will provide cover for the most common problems.

2.3 In addition to the standard features of a travel insurance policy, some policies will offer additional types of optional cover. It is important that consumers think about what is important to them and check if the policy under consideration provides the right level of cover for their circumstances. They may also be included as standard features of "premium" products. This will often depend on the holiday destination and how the trip was booked.

3. SCHEDULED AIRLINE FAILURE

3.1 Scheduled airline failure cover will pay out compensation where the customer has booked their own flights with a scheduled airline that goes out of business. It is usually underwritten by a third party rather than the main underwriter.

3.2 Cover for scheduled airline failure is not a standard feature of most travel insurance, but it is available in many policies and consumers should consider whether it is needed if they have booked their own flights for a trip. This approach reflects the protection of booking with chartered airlines or those operated through tour operators through the ATOL scheme.

4. TRAVEL DISRUPTION FOR INDEPENDENT TRAVELLERS

4.1 When people make their own holiday arrangements and book travel and accommodation separately, "independent traveller cover" will provide some of the financial compensation you would normally receive from a tour operator when purchasing a package holiday. This type of protection may also be called "travel disruption cover".

4.2 This development in the market reflects a move away from the majority of holidays being booked through travel agents or tour operators with more customers now booking a package of two or more services, including:

- transport;
- accommodation; and
- other tourist services such as car hire, airport parking, excursions and transfers that could also be included in the holiday booking to form part of a travel itinerary.

4.3 With legal protection given to travellers booking package holidays, travel insurance products only needed, in the past, to provide cover for events outside of the responsibilities of the travel agent or tour operator to provide financial and other assistance to their customers.

4.4 The advent of online booking, low-cost airlines and the use of regional airports for connecting flights has dramatically changed the way holidays are booked. This has meant that independent travellers no longer enjoy the same legal protection because they are booking components, such as flights, separately rather than as part of a package. Even booking one component of a trip—for instance a cheap flight—via a travel agent rather than direct, will not constitute a package.

4.5 Independent traveller cover is a relatively new feature on some policies in addition to the cover provided under other sections of a policy, such as cancellation or curtailment. This feature may be included as a separate section and be an optional extension to the standard cover or the additional coverage may be included within the relevant sections of cover.

4.6 The level of cover varies from product to product and might provide protection in the following circumstances:

- The *Foreign & Commonwealth Office* or the *World Health Organisation* have advised against travelling to your destination since booking the trip.
- Your holiday accommodation is unavailable due to fire, flood, earthquake, explosion, tsunami, landslide, avalanche or storm.
- Flight cancellations.
- Denied boarding.
- Delayed or missed connections.
- Loss of unused accommodation due to the insolvency of your accommodation provider, and necessary additional costs, such as extra transport or alternative accommodation.

5. CONCLUSION

5.1 Any changes to the type of booking covered by ATOL is likely to be reflected in future changes to “independent traveller cover” to avoid duplicating protection that is mandated through law or regulation.

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