

# **AIR TRAVEL TRUST**

**Report and Accounts**

**31 March 2003**



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**31 March 2003**

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**Air Travel Trust  
CAA House  
45–59 Kingsway  
London WC2B 6TE**

10 July 2003

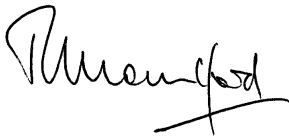
Secretary of State for Transport  
Great Minster House  
76 Marsham Street  
London SW1P 4DR

Sir

I submit herewith the Report and Accounts of the Air Travel Trust for the year ended 31 March 2003.

The holiday industry faces challenging market conditions and the possibility of a higher rate of failures than in recent years. The failure of holiday companies, if not effectively managed, would result in UK holidaymakers abroad being faced by demands for further payment from hoteliers and needing to find and pay for flights home without support.

The UK's financial protection system can only handle failures effectively if it has immediate access to enough funds to guarantee payments to those suppliers, and given that failures can occur with little or no warning, those funds would best be provided by ensuring that the Trust has sufficient assets and a continuing source of new funds as necessary. I am encouraged to note that preliminary steps have been taken to establish the means to replenish the Trust.

A handwritten signature in black ink, appearing to read 'R Mountford', with a long horizontal stroke extending to the right.

Roger Mountford  
Chairman

# Air Travel Trust

CAA House  
45-59 Kingsway  
London  
WC2B 6TE

## TRUSTEES

Mr C Senior (Chairman until 26 March 2003)  
Mr R P Mountford (Chairman from 8 April 2003)  
Mr R J Britton  
Miss C Jesnick  
Mrs H M Simpson

## OFFICIALS

Mr M Ashby, Treasurer  
Mr D J Bourne, Secretary  
Miss S Springett, Assistant Secretary

## BANKERS

National Westminster Bank plc  
Bloomsbury Parr's Branch  
214 High Holborn  
London WC1V 7BX

Bank of Scotland  
38 Threadneedle Street  
London EC2P 2EH

## AUDITORS

Deloitte & Touche  
180 Strand  
London  
WC2R 1BL

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# Report of the Trustees

## CONSTITUTION AND TERMS OF REFERENCE

The Air Travel Trust provides back-up funding to the Air Travel Organisers' Licensing system (ATOL), which is managed by the Civil Aviation Authority.

ATOL, which exists by statute, is the UK's scheme providing financial protection for air holidaymakers and air travellers and, with few exceptions, all travel firms advertising or selling air travel in the UK must hold an ATOL. Each ATOL holder provides a bond and if it ceases to trade the CAA can use the bond money to enable customers abroad to complete their holidays as planned and refund those who have not yet travelled. The Air Travel Trust Fund acts as a back-up when individual bonds prove to be insufficient to meet all the customers' claims made upon them.

The Trustees are all Board Members and officials of the Civil Aviation Authority, appointed ex officio. On 26 March 2003, Mr Colin Senior retired as a CAA Board Member and therefore stood down as a Trustee. He was replaced as a CAA Board Member and as a Trustee by Mr Roger Mountford, who was then appointed Chairman of the Trust. The Trust met once during the year, in June 2002.

The terms of reference of the Trust remain unchanged and are contained in the Trust Deed, which is at Appendix 1 of this report.

Two of the Trustees, Mr Roger Mountford and Mrs Helen Simpson, are also members of the Air Travel Insolvency Protection Advisory Committee (ATIPAC). This committee represents parties affected by the financial protection of air travel, including travel trade associations, air travel consumers and the CAA. The Trustees invite a representative of ATIPAC to Trust meetings and that role is presently filled by Mr Martin Brackenbury.



## **REVIEW OF THE YEAR**

The Trust Fund has been in deficit since 1996 and the credit facility which the Trustees negotiated with the Bank of Scotland in summer 1996 remains in force. The facility is secured by a Government guarantee of £21 million, inclusive of interest and charges. At the beginning of the year, the Trust Fund was in deficit by £8.3 million; by the end of the year the deficit had increased to £9.1 million. During the year, interest payable on the debt amounted to £372,000 and in addition there was expenditure of £416,000 on new failures. There were no liquidation dividends or settlements.

## **REPLENISHMENT OF THE TRUST FUND**

The Trust Fund was established by a levy on holidays (while under the management of the Air Travel Reserve Fund Agency), but from 1978 onwards the Trust's only income came from investments in the period during which it was in surplus. Following a number of large calls on the Fund during the early 1990s it became apparent that unless new powers were introduced to raise funds for the Trust by way of another levy, its assets would become exhausted. That point was reached in summer 1996 and since that date the Trustees have satisfied themselves that they are able to continue to meet customer claims based on the Government guarantee; they also rely on assurances from the Department for Transport (previously Department for Transport, Local Government and the Regions) that the Government remains committed to ATOL and that the guarantee will be further extended if the need arises.

It is now more than 12 years since the Trustees first drew the Government's attention to the rapidly diminishing Fund and the fact that it was looking increasingly inadequate in view of the overall volume growth of the travel industry in the UK. The current deficit compares very unfavourably with the position at March 1979, when the Trust had assets equivalent to 2.6% of licensed industry turnover. The Trustees believe it is vital that new levy powers are available soon, and are encouraged that DfT has taken preliminary steps towards this end.

## **BONDS CALLED IN THE YEAR UNDER REPORT**

The year ending 31 March 2003 saw the failure of only nine licensed firms, which is the lowest number since 1989, although calls on the Trust were slightly higher than in any of the previous three years.

During the year ATOL enabled 516 customers to complete their holidays, and 3,849 received refunds. Total expenditure was £1.3 million, of which £0.5 million was provided by the Trust. These figures indicate that only 66% of the cost of managing failures was met by bonds in the year in question, which is low by recent standards although considerably higher than in the mid-1990s. Full details of all bonds called can be found at Appendix 2. The low proportion of the cost of failures met by bonds arose because even though only three of the nine failures resulted in calls on the Trust, those calls were large relative to the scale of the companies.

The failure resulting in the largest call on the Trust was Journeys East Limited, which required total expenditure of £233,000 although its annual licensed turnover was only £239,000. The bond of £32,000 was completely inadequate: the circumstances of the failure are the subject of an investigation by the police and the Directors are believed to have left the UK.

CAA imposes a number of policies designed to reduce calls on the Trust arising from fraudulent behaviour but it is impossible to guarantee the prevention of fraud, especially where the persons responsible have no previous record.

The next most expensive failure was that of Vacation USA Limited, which required expenditure substantially in excess of its licensed turnover and bond. The call occurred because having applied for a substantially larger licence and sold an expanded programme in the expectation that the larger licence would be granted, the company could not obtain an adequate bond for the enlarged programme and subsequently failed.

The failure resulting in the smallest call on the Trust was that of Tyche Tours Limited. The failure resulted in a call of £72,000 only because it occurred in the peak season, whereas the size of bonds is set primarily

to be sufficient in the off-peak, when failures are more likely to occur. This policy keeps the cost of bonding down for all ATOL holders.

## **ACKNOWLEDGEMENTS**

The Trustees are grateful to the Civil Aviation Authority for the continuing administrative support and secretariat services provided during the year.

**Accounts for the year  
ended 31 March 2003**



## **INDEPENDENT AUDITORS' REPORT TO THE SECRETARY OF STATE FOR TRANSPORT AND THE TRUSTEES OF THE AIR TRAVEL TRUST**

We have audited the accounts of the Air Travel Trust for the year ended 31 March 2003, which comprise the fund account, the balance sheet and the related notes 1 to 5. These accounts have been prepared under the accounting policies set out therein.

This report is made solely to the Secretary of State for Transport and the Trustees, as a body, in accordance with Clause 15 of the Trust Deed. Our audit work has been undertaken so that we might state to the Secretary of State for Transport and the Trustees those matters we are required to state to them in an auditors' report and for no other purpose. To the fullest extent permitted by law, we will not accept or assume responsibility to anyone other than the Secretary of State for Transport and the Trustees as a body, for our audit work, for our report, or for the opinions we will form.

### **RESPONSIBILITIES OF TRUSTEES**

Clause 15 of the Trust Deed requires the Trustees to prepare accounts for each financial year.

The Trustees consider that in preparing these accounts, they have used appropriate accounting policies, consistently applied and supported by reasonable and prudent judgments and estimates. The Trustees have prepared the financial statements on a going concern basis.

The Trustees are responsible for keeping proper accounting records to enable them to ensure that the accounts comply with the Trust Deed and the directions made thereunder by the Secretary of State. They are also responsible for safeguarding the assets of the Trust and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

## **RESPONSIBILITIES OF AUDITORS**

We report to you our opinion as to whether the accounts give a true and fair view and are properly prepared in accordance with the provisions of the Trust Deed and the directions made thereunder by the Secretary of State. We also report if, in our opinion, the Report of the Trustees is not consistent with the accounts, if the Trust has not kept proper accounting records or if we have not received all the information and explanations we require for our audit.

## **BASIS OF OPINION**

We conducted our audit in accordance with United Kingdom auditing standards issued by the Auditing Practices Board. An audit includes an examination, on a test basis, of evidence relevant to the amounts and disclosures in the accounts. It also includes an assessment of the significant estimates and judgements made by the Trustees in the preparation of the accounts, and of whether the accounting policies are appropriate to the Trust's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the accounts are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the accounts.

### *Going Concern*

In forming our opinion, we have considered the adequacy of the disclosures made in Note 1 to the accounts concerning the current Government guarantee which enables the Trust to meet its current obligations as they fall due. Note 1 explains the Trustees' belief that the Government will support the Trust by continuing the loan guarantee. If the Government were to withdraw support the Trust would not be able to continue as a going concern. In view of the significance of the situation we consider that it should be drawn to your attention but our opinion is not qualified in this respect.

## **OPINION**

In our opinion the accounts give a true and fair view of the state of the Trust's affairs at 31 March 2003 and its income and expenditure for the year then ended and have been properly prepared in accordance with the provisions of the Trust Deed and the directions made thereunder by the Secretary of State.

Deloitte & Touche  
Chartered Accountants  
and Registered Auditors  
London

3 July 2003





## AIR TRAVEL TRUST

### FUND ACCOUNT for year ended 31 March 2003

|   | Note | Year to<br>31.3.03<br>£ | Year to<br>31.3.02<br>£ |
|---|------|-------------------------|-------------------------|
| <b>INCOME</b>   |      |                         |                         |
| Liquidation dividends and settlements                 | 2    | –                       | 1,570,537               |
| <b>EXPENDITURE</b>                                    |      |                         |                         |
| Compensation claims                                   | 3    | (416,443)               | (413,086)               |
| Legal and administration expenses                     | 4    | (5,978)                 | (79,132)                |
| Loan interest   |      | (371,622)               | (414,680)               |
|   |      | (794,043)               | (906,898)               |
| <b>NET (DECREASE) / INCREASE IN FUND FOR THE YEAR</b> |      | (794,043)               | 663,639                 |
| Fund at beginning of year                             |      | (8,298,916)             | (8,962,555)             |
| Net (decrease) /increase in fund for the year         |      | (794,043)               | 663,639                 |
| <b>FUND AT END OF YEAR</b>                            |      | (9,092,959)             | (8,298,916)             |

The following notes 1 to 5 form part of these accounts.

## AIR TRAVEL TRUST

### BALANCE SHEET as at 31 March 2003

|                                   | 31.3.03<br>£       | 31.3.02<br>£       |
|-----------------------------------|--------------------|--------------------|
| <b>ASSETS</b>                     |                    |                    |
| Cash                              | 1                  | 1                  |
|                                   | <u>1</u>           | <u>1</u>           |
| <b>LIABILITIES</b>                |                    |                    |
| Compensation claims outstanding   | (79,500)           | –                  |
| Bank loans                        | (8,845,638)        | (8,181,969)        |
| Loan interest and other creditors | (167,822)          | (116,948)          |
|                                   | <u>(9,092,960)</u> | <u>(8,298,917)</u> |
| <b>NET LIABILITIES</b>            | <u>(9,092,959)</u> | <u>(8,298,916)</u> |
| Represented by :                  |                    |                    |
| <b>FUND ACCOUNT</b>               | <u>(9,092,959)</u> | <u>(8,298,916)</u> |

R P Mountford, Trustee

C Jesnick, Trustee

3 July 2003

*The following notes 1 to 5 form part of these accounts.*

# AIR TRAVEL TRUST

NOTES TO THE ACCOUNTS for the year ended 31 March 2003

## 1 ACCOUNTING POLICIES

### (a) **Basis of preparation :**

The Trustees have prepared the financial statements in accordance with the terms of clause 15 of the Trust Deed shown at Appendix 1 and directions from the Secretary of State as referred to therein.

The Trust Deed allows liabilities to be paid out of the Trust Fund at the absolute discretion of the Trustees. The Trust meets its day to day working capital requirements through bank loans which are currently secured by a Government guarantee of up to £21 million. The Trustees have been informed that the Government will continue to support the Trust Fund by continuing the loan guarantee which will be further extended if the need arises. However, there is currently no mechanism in place to replenish the Trust Fund by means of levies authorised by legislation or otherwise.

The Trustees have prepared the financial statements on a going concern basis. The financial statements do not include any adjustments that would result from a withdrawal of support by the Government.

### (b) **Accounting Convention :**

The accounts are prepared under the historical cost convention.

### (c) **Income and Expenditure :**

Liquidation dividends and settlement income are accounted for on a receipts basis. Provisions are made for compensation claims on a full provision basis. Administration expenses and bank interest are accounted for on an accruals basis.

(d) **Cash Flow Statement :**

The Trust has taken advantage of the provisions of paragraph 5(g) of Financial Reporting Standard 1 'Cash Flow Statements' and has not produced a Cash Flow Statement.

## 2 LIQUIDATION DIVIDENDS AND SETTLEMENTS

No liquidation dividends or settlements were received during the year.

(In the year to 31 March 2002, dividends were received from the liquidation of Australia House Travel Ltd £24,084, Hards Travel Ltd £11,711, Travel Trade Consultants Ltd £31,312 and Villmar Travel Ltd £249,771. A settlement of £1,253,659 was also received in 2002 regarding the failure of The Flight Company (UK) plc.)

## 3 COMPENSATION CLAIMS

The compensation paid or provided (or prior advances released) during the year as a result of the failures of holders of Air Travel Organisers' Licences :

|                                  | <i>Year to<br/>31.3.03<br/>£</i> | <i>Year to<br/>31.3.02<br/>£</i> |
|----------------------------------|----------------------------------|----------------------------------|
| <b>Failures prior to 31.3.02</b> |                                  |                                  |
| Bon Voyage Travel Ltd            | (2,685)                          | 38,000                           |
| Evergreen Travel Service Ltd     | -                                | (4,037)                          |
| Parkline Ltd                     | (1,732)                          | 164,738                          |
| Riddle B J                       | -                                | (2,705)                          |
| Sun & City Holidays Ltd          | -                                | (2,876)                          |
| Sunrise Holidays Ltd             | (5,000)                          | 170,500                          |
| Sunscape Tours Ltd               | (20,849)                         | 26,466                           |
| Taymead Ltd                      | (3,215)                          | 23,000                           |
| <b>Failures since 31.3.02</b>    |                                  |                                  |
| Journeys East Ltd                | 200,300                          | -                                |
| Tyche Tours Ltd                  | 71,870                           | -                                |
| Vacation USA Ltd                 | 177,754                          | -                                |
|                                  | <hr/> 416,443                    | <hr/> 413,086                    |

#### **4 ADMINISTRATION EXPENSES**

|            | <i>Year to<br/>31.3.03<br/>£</i> | <i>Year to<br/>31.3.02<br/>£</i> |
|------------|----------------------------------|----------------------------------|
| Audit fees | 4,113                            | 4,056                            |
| Legal fees | 1,865                            | 75,076                           |
|            | <hr/>                            | <hr/>                            |
|            | 5,978                            | 79,132                           |
|            | <hr/>                            | <hr/>                            |

Administration is provided by the Civil Aviation Authority at nil cost to the Trust.

#### **5 POST BALANCE SHEET EVENTS**

Since the balance sheet date and up to 13 June 2003, there have been four failures of holders of Air Travel Organisers' Licences. There is no indication at present that any of these will result in a call on the Trust.



## Appendix 1 Text of the Trust Deed dated 28 January 1986

THIS DEED OF TRUST is made the twenty eighth day of January One thousand nine hundred and eighty-six BETWEEN THE SECRETARY OF STATE FOR TRANSPORT of the one part and RAYMOND COLEGATE CBE IAN EDWARD DONOVAN THOMAS McMILLAN and GILLIAN MARY EVE WHITE (hereinafter called the “Original Trustees”) of the other part

WHEREAS:-

- (A) It is intended that the Secretary of State for Transport shall by order made under Section 6 of The Air Travel Reserve Fund Act 1975 (hereinafter called “the 1975 Act”) transfer all the assets presently standing to the credit of The Air Travel Reserve Fund ( hereinafter called “ the Fund”) to the Original Trustees
- (B) The Secretary of State for Transport desires that the said assets and further money investments and property to be paid or transferred to the Original Trustees should constitute a trust fund to be applied for the benefit of the persons and in the manner hereinafter described

NOW THIS DEED WITNESSETH as follows:-

1. THE Trust constituted by this Deed shall be known as the Air Travel Trust unless and until the Trustees adopt and apply to it (as they are hereby entitled to do) some other name

2. IN this Deed the following expressions have the following meanings:

- (1) “The Trustees” means the Original Trustees or other the trustees or trustee for the time being of this Deed namely the holders for the time being of the following Offices within the Civil Aviation Authority (hereinafter called “the CAA”): Group Director Economic Regulation; Group Director Finance & Central Services; Board Member Licensing Finance; Secretary and Legal Adviser or the holder for the time being of all or any of the offices under whichever title might be certified by the Secretary or Deputy Secretary of the CAA for the time being as applicable and “Trustee” means any one of the “Trustees”



- (2) “the Trust Fund” means and includes
- (a) any sums of money and other assets transferred to the Trustees as a consequence of an Order made under Section 6 of the 1975 Act disposing of the assets of the Fund
  - (b) all other money investments or other assets hereafter paid or transferred by any person or persons to or into the control of the Trustees and accepted by them as additions to the Trust Fund
  - (c) any property the proceeds of sale whereof are required or directed to be held upon the trusts hereof
  - (d) all other capital assets including any choses in action and capital money which hereafter by any means become or are made subject to the trusts hereof
  - (e) the investments property and other assets from time to time representing the foregoing items or any part or parts thereof
- (3) “Customer” means a person (other than an air travel organiser) who has made a payment or on whose behalf a payment has been made to an air travel organiser under or with a view to entering into an air travel contract with him for the provision of accommodation for the carriage of that person
- (4) An “en route customer” means a customer who has commenced but not completed his journey by the time the air travel organiser ceases to be able to meet his obligations under the air travel contract
- (5) “Air travel contract” means any contract for the provision of accommodation for the carriage of a customer of an air travel organiser (with or without any other persons) on a flight (whether the provision of accommodation in question is the sole subject matter of the contract or is associated with the provision thereunder of any other service accommodation or facilities) where the accommodation on the flight to which the contract relates is to be made available in such circumstances that the making of it available constitutes an activity in respect of which the air travel organiser is required to hold an air travel organiser’s licence

- (6) “Air travel organiser” means a person whose activities consist of or include activities in respect of which he is required by virtue of any regulations for the time being in force under Section 71 of the Civil Aviation Act 1982 (hereinafter called “the 1982 Act”) to hold an air travel organiser’s licence
- (7) “ The Specified Period” means the period beginning at the date of this Deed and enduring for eighty years and the said number of years shall be the perpetuity period applicable to this Deed

**3.** THE Trustees shall stand possessed of the Trust Fund and the income thereof during the Specified Period upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same respectively

**4** (1) THE Trustees shall hold the Trust Fund and the income thereof upon trust to pay or apply the same (without making any distinction between capital and income) in their absolute discretion at any time or times during the Specified Period but subject to the provisions of Clause 6 hereof

- (a) in providing carriage by air or other means of transport for passengers (including the cost of providing food, hotel accommodation the movement of baggage and other incidental expenses) in substitution for carriage which a defaulting air travel organiser has in the opinion of the trustees failed to provide in accordance with his obligations under any air travel contract and
  - (b) to or for the benefit of customers of a defaulting air travel organiser in respect of losses and liabilities incurred by them or on their behalf in connection with any air travel contract
- (2) a loss or liability incurred by or on behalf of a customer of an air travel organiser is a loss or liability incurred in connection with an air travel contract if
- (a) it is a loss incurred in respect of any payment made by or on behalf of the customer to the defaulting air travel organiser under or in contemplation of such a contract or
  - (b) it is a loss or (as the case may be) a liability incurred in consequence of a breach by the defaulting air travel organiser of any of his obligations towards the customer under such a contract

- (3) For the avoidance of doubt it is hereby declared that the Trustees may exercise their discretion hereunder in respect of claims arising from or in connection with any defaults occurring before the date hereof

**5.** IN default of and subject to the foregoing trusts and to the extent that the same shall not validly take effect and subject to Clause 16 hereof the Trustees shall hold the capital and income of the Trust Fund upon Trust for such persons and purposes in such shares and upon such conditions as the Secretary of State for Transport shall by Order made before the end of the Specified Period direct

**6.** IN exercising the discretion as set out in Clause 4 hereof

- (1) payments may only be made where the air travel organiser has failed to meet his obligations to the customer under an air travel contract in the following circumstances:

- (a) in the case of a company-
- (i) a petition has been presented to a court for its winding up by the court under the Companies Act 1985 on the grounds that it is unable to pay its debts
  - (ii) a meeting of its creditors has been held in accordance with Section 588 of that Act
  - (iii) a meeting of its creditors has been held otherwise than under Section 588 of that Act for the purpose of considering any compromise or arrangement with respect to the debts of the company
  - (iv) a receiver or manager has been appointed over any of its property or assets
  - (v) it has stopped payment of its debts or is unable to pay its debts within the meaning of Section 518 of that Act
  - (vi) it has ceased to carry on its business as a result of being unable to pay its debt as they fall due
- (b) In the case of an individual-
- (i) he has committed an act of bankruptcy specified in Section 1(1) of the Bankruptcy Act 1914
  - (ii) he has stopped payment of his debts or is unable to pay his debts
  - (iii) he has ceased to carry on business as a result of being unable to pay his debts as they fall due

- (2) Payments may only be made if the air travel organiser held an air travel organiser's licence at the time of booking by or on behalf of a customer or at any time in the three months prior to the time of booking the time of booking means the time when a payment was first made by or on behalf of a customer to the air travel organiser under or in contemplation of an air travel contract
- (3) Where any money is available under any bond or other security which has been provided or procured by the air travel organiser in accordance with any requirements applicable to air travel organisers by virtue of any regulations made under Section 71 of the 1982 Act payments may be made out of the Trust Fund before all that money which is available under the bond or security has been paid to or for the benefit of the customers in question or any class or description of the customers provided that no such payments shall be made by the Trustees unless and until the Trustees are satisfied that insufficient money will be available under the bond or security to satisfy all valid claims arising from or in connection with the default
- (4) Where any money has been available under any such bond or other security as is referred to in the previous paragraph which has been provided or procured by the air travel organiser but the amount has been inadequate to enable all en route customers of the air travel organisers to travel to their destination then any payments made out of the Trust Fund for the benefit of the en route customers shall be made only to the person or body who administered the money available under the bond or other security to be used by that person or body for the benefit of the en route customers

**7.** THE Trustees may during the period of 21 years from the date hereof if in their absolute discretion they think fit from time to time accumulate the whole or any part of the income of the Trust Fund by investing the same and the resulting income thereof in any investments hereby authorised and adding the accumulations to the capital of the Trust Fund

**8** (1) ANY land and hereditaments situate in England or Wales which shall at any time or times hereafter become subject to the trusts hereof (and any land situated elsewhere than in England or Wales becoming so subject to which the Trustees in their discretion may decide that this provision shall apply) shall be held by the Trustees upon trust for sale with power for the Trustees in their discretion to postpone the sale of the whole or any part or parts of it for so long as they shall think fit

- (2) The Trustees shall hold the Trust Fund as to so much of it as does not consist of money and as is not held upon trust for sale Upon Trust either to retain it or any part or parts of it in its or their actual condition or state of investment for so long as the Trustees shall think fit or at any time or times in the discretion of the Trustees to sell call in and convert it or any part or parts of it into money
- (3) The Trustees shall hold the net proceeds of every sale and conversion of any part or parts of the Trust Fund and so much of the remainder of the Trust Fund as consists of money and all other capital moneys (if any) requiring investment under this Deed upon trust to lay out or invest the same in the names or under the control of the Trustees in any investments or investment of any nature authorised by this Deed with powers of any nature at any time and from time to time to vary or transpose any of such investments for or into any other investments or investment of a like nature

**9.** ANY money for the time being subject to the trusts hereof may be invested by the Trustees in any part of the world in any way in which they in their discretion think fit (whether or not money so invested will produce income) as if they were a sole absolute beneficial owner of the money and for the purpose of this clause the lending of money to any person with or without interest and with or without security shall constitute investment and the provisions of section 6(1) of the Trustee Investment Act 1961 shall not apply to this Deed

**10.** THE trustees shall have and may exercise at any time or times the following additional powers -

- (1) Power to effect or concur in effecting any transaction concerning or affecting any part of the Trust Fund or any other property whatsoever if the Trustees think the transaction is for the benefit of the Trust Fund or the persons interested in it as if the Trustees were a sole absolute beneficial owner of the Trust Fund and for the purpose of this paragraph "transaction" includes any sale exchange assurance grant lease surrender reconveyance release reservation or other disposition and any purchase or other acquisition and any covenant contract licence option or right pre-exemption and any compromise partition insurance or other dealing or arrangement and "effect" has the meaning appropriate to the particular transaction and references to property include references to restrictions and burdens affecting property;

- (2) Power to make improvements to or to develop any land or building or other structure which forms part or the proceeds of sale of which form part of the Trust Fund and in particular to erect enlarge improve or rebuild any building or other structure on such land if the Trustees think it will be for the benefit whether permanent or temporary of the Trust Fund and to pay the cost of such improvement and development and all incidental costs out of the capital of the Trust Fund;
- (3) (In addition to the powers of improving land and maintaining and repairing property conferred by law upon trustees holding land and property upon trust for sale) power to pay as they in their discretion think fit out of income or capital the cost of improving maintaining and repairing (including decorative repair) any land or property which or the proceeds of sale of which form part of the Trust Fund;
- (4) Power to keep any property whether real or personal movable or immovable forming part of the Trust Fund insured against such risks and for such amount as they think fit with an insurance office of repute and to arrange for the installation improvement repair maintenance and servicing of any system designed to protect any such property against theft or any other risk and to pay all premiums installation maintenance servicing and other charges and any other moneys which may be required for these purposes out of income or capital and to apply any money received in respect of any such insurance as if it were proceeds of sale of the property insured;
- (5) Power to borrow money for any purpose connected with the trusts hereof (including the making of investments to be held as part of the Trust Fund) and to mortgage charge assign or pledge the whole or any part of the Trust Fund by way of security for the repayment of any money borrowed in the same unrestricted manner as if the Trustees were absolute beneficial owners thereof;
- (6) Power to purchase any additional property to be held subject to the trusts hereof and for that purpose to enter into contracts and to bind themselves by promissory notes or by any other security for the purchase price and generally to acquire such additional property as fully and as freely as a beneficial owner might do;
- (7) Power in respect of any buildings or any chattel or other assets forming part of the Trust Fund;
  - (a) to grant such leases or tenancies thereof or to let or lend or hire out the same to any person or persons on such terms as the Trustees think fit;

- (b) to sell or grant options to purchase the same on terms under which the price is payable to the Trustees by instalments;

and otherwise to exploit manage and deal with the same in the same unrestricted manner as if the Trustees were the absolute beneficial owners thereof;

- (8) Power to carry on any business and for that purpose to employ in the business (as working capital or otherwise) any trust money or other trust assets and to raise money by overdraft and to make any outlay out of the capital or income of the Trust Fund;
- (9) Power at the expense of the Trust Fund to promote and incorporate or join in promoting and incorporating in any part of the world any company or companies for the purpose of conducting any business or of acquiring (with or without other property) any property comprised in the Trust Fund and of holding or developing or otherwise dealing with any such property and so that the Trustees or any of them may act as directors or director of any such company or may appoint nominees or a nominee to act as directors or director thereof on their behalf;
- (10) Power to cause or permit any company the shares or securities whereof are comprised in the Trust Fund to retain the whole or any part of its income undistributed and so that (whether or not the Trustees have a controlling interest in any such company) the Trustees shall not be under any obligation to take any step to remove directors of any such company who recommend such retention of the company's income and if any Trustee is a director thereof he may recommend such retention;
- (11) Power to permit any investments or property forming part of the Trust Fund to be held in any part of the world by or in the name or names of any nominee or nominees of the Trustees on such terms (if any) as to execution of blank transfers or declarations of trust and as to custody of the documents of title relating to such investments or property and otherwise as the Trustees may think fit and so that (but without prejudice to the generality of the foregoing) this power may be exercised for the purpose of qualifying any nominee (including any Trustee) to act as a director of any company;
- (12) Power to apply trust capital in purchasing effecting or acquiring by any other means policies of insurance (whether life policies or endowment or sinking fund policies or policies of any other kind) and annuities perpetual or terminable and for lives or any other periods and power in relation to any insurance policy effected by the Trustees to surrender exchange sell charge or otherwise deal with the same in the same unrestricted manner as if they were the absolute beneficial owners thereof;

- (13) Power in connection with the investment and changing of investments of trust money
  - (a) to obtain and pay for the advice of such broker or other persons as the Trustees may think fit and
  - (b) to employ any banking or merchant banking company or firm or other person or persons to manage such investments and to delegate to such manager or managers all or any of the duties or powers of the Trustees in respect of the investments or changing of investments of trust money;
- (14) Power in respect of any trust capital or income which becomes the property of or payable or applicable to or for the benefit of any person who is for the time being under the age of eighteen years to apply the same in any manner which the Trustees consider to be for the benefit of that person;
- (15) Power to appoint any one or more of the Trustees to be the agents of the Trustees for the purpose of operating any bank or building society account of the Trustees or for the purpose of collecting any rents or income of or managing or administering any property (in any part of the world) comprised in the Trust Fund or for any other purpose for which the Trustees may appoint agents;
- (16) Power (without prejudice to the jurisdiction of the Court) to decide what money or property represents income and what represents capital and how as between the capital and income of the Trust Fund any expenses or costs shall be borne or provided;
- (17) Power to agree to any scheme for amalgamations or reconstruction of any company in which shares stocks or securities are held by the Trustees or any other scheme relating to any such company
- (18) Power for the purpose of the trusts hereof to enter into any arrangement or contract notwithstanding that the person or persons with whom or on whose behalf the arrangement or contract is made are or include one or more of the Trustees;
- (19) Power to make rules and regulations for the management and administration of the Trust Fund or any part thereof and for matters connected therewith as the Trustees from time to time may think fit and from time to time revoke and replace all or any such rules or regulations;



- (20) Power to appoint such persons as the Trustees may think fit or convenient to act in connection with such management or administration and (pursuant to the general power for that purpose conferred by sub-clause (19) of this clause) to make amend revoke and replace rules and regulations for the purpose of defining the functions and powers of any such persons and power also (if the Trustees think fit) to pay an honorarium fee or salary to and the expenses of any persons;
- (21) Power to delegate from time to time to any such persons all or any of the powers and duties of the Trustees hereunder;
- (22) Power to insure the Trust Fund against claims for payments arising as a result of the inability of one or more air travel organisers to meet their financial commitments or for sharing with insurers the burden of payment of such claims;
- (23) Power to pay the expenses incurred by the Air Travel Reserve Fund Agency ("the Agency") between 28th February and 30th June 1986 in performing their duty under paragraph 9 of the Schedule to the 1975 Act in preparing a statement of accounts in respect of the period of account ending with 31st March 1986 and in making a report to the Secretary of State on the performance of their functions during that period and to pay any remuneration or allowances to the members of the Agency between 28th February and 30th June 1986.

**11.** **THE** statutory provisions about the appointment retirement and discharge of trustees shall apply to the trusts hereof subject to the following provisions of this clause

- (1) Upon retiring from or otherwise vacating any of the offices of the CAA referred to in clause 2(1) hereof and subject to the provisions of that clause the Trustee who until retirement or otherwise held the relevant offices in the CAA shall automatically cease to be a Trustee hereof and the vacant office of Trustee shall devolve on the person appointed to fill the vacant office in the CAA provided that in the event of a delay in the appointment of person to the vacant office of the CAA the remaining Trustees can act notwithstanding a vacancy in their number
- (2) The remaining Trustees shall have power to vest the Trust Fund in the new Trustee so that thereafter
  - (a) the new Trustee shall have all the same powers and discretions as are hereby conferred on the Trustees in relation to the Trust Fund and the income thereof;

- (b) subject to paragraph (a) of this sub-clause all property held by such new Trustees and all property retained by the Trustees shall remain subject to the same trusts powers and provisions as if no new trustees had been appointed

**12.** ANY act or decision by two of the Trustees shall have the same force and effect as if it were the act or decision of all of them

**13.** THE Trustees may in the execution of any of the trusts of this Deed or in the exercise of any of the powers given to them by this Deed or by law sell property or lend money to or buy property or borrow money from or carry out any other transaction with the trustees of any other trust or the executors or administrators of any estate notwithstanding that the Trustees or any of them are or is the same person as those trustees executors or administrators or any of them and where the Trustees are the same persons as those trustees executors or administrators the transaction shall be binding on all persons then or thereafter interested under this Deed though effected and evidenced only by an entry in the accounts of the Trustees

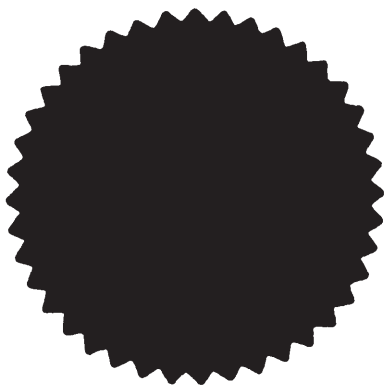
**14.** IN the professed execution of the trusts and powers hereof no Trustee shall be liable for any loss to the Trust Fund arising by reason of the failure depreciation or loss of any investments made in good faith or for the negligence or fraud of any agent employed by him or by any other Trustee hereof although the employment of such agent was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by any Trustee hereof or by reason of any other matter or thing except wilful and individual fraud or wrongdoing on the part of the Trustee who is sought to be made liable

**15.** THE Trustees shall keep proper accounts and proper records in relation to accounts and shall prepare in respect of each period .of account a statement of accounts in such form as the Secretary of State may direct and shall arrange for the accounts to be audited in such manner as the Secretary of State for Transport may direct and shall make to the Secretary of State within a period to be specified by him at the end of each period of account a report on the performance of their functions during that period and to include in that report a copy of the Statement of accounts prepared in respect of that period in accordance with this clause and any report made by the auditors on the statement or on the accounts: and in this clause "period of account" means the period beginning with 28th February 1986 and ending with 31st March 1987 and any subsequent period of twelve months ending with the 31st March in any year

**16.** THE Trusts of this Deed shall by varied or terminate upon an Order to that effect being made during the Specified Period by the Secretary of State for Transport who may in his complete discretion direct the Trustees to dispose of the Trust Fund as he thinks fit

IN WITNESS whereof the Original Trustees have caused their Corporate and Common Seals to be hereunto affixed and The Corporate Seal of The Secretary of State for Transport has been hereunto affixed the day and year first above written

THE CORPORATE SEAL of  
THE SECRETARY OF STATE FOR  
TRANSPORT hereunto affixed is  
authenticated by:--



*David Rowlands*  
An Assistant Secretary

Authorised by The Secretary of State  
for Transport

SIGNED SEALED AND DELIVERED  
by the said RAYMOND COLEGATE CBE  
in the presence of:--

*Raymond Colegate*



*Helen Lydon*

SIGNED SEALED AND DELIVERED  
by the said IAN EDWARD DONOVAN  
in the presence of:--

*I. E. Donovan*



*Helen Lydon*

SIGNED SEALED AND DELIVERED  
by the said THOMAS McMILLAN  
in the presence of:--

*Thomas McMillan*



*Helen Lydon*

SIGNED SEALED AND DELIVERED  
by the said GILLIAN MARY EVE WHITE  
in the presence of:--

*Gillian M E White*



*Helen Lydon*

## Appendix 2 Details of Bond Calls and their effects,

| <i>Licence Holder</i> | <i>Date<br/>Bond<br/>Called</i> | <i>Licensed<br/>Passengers</i> | <i>Licensed<br/>Revenue</i> |
|-----------------------|---------------------------------|--------------------------------|-----------------------------|
|                       |                                 |                                | <i>£'000</i>                |
| MacFarland G          | 24 Apr 02                       | 3,444                          | 1,141                       |
| KB Golf Ltd           | 20 May 02                       | 1,565                          | 597                         |
| Vacation USA Ltd      | 22 May 02                       | 405                            | 105                         |
| Origins Travel Ltd    | 08 Jul 02                       | 124                            | 330                         |
| Tyche Tours Ltd       | 14 Aug 02                       | 500                            | 440                         |
| Intadirect Ltd        | 15 Nov 02                       | 5,545                          | 3,600                       |
| Journeys East Ltd     | 13 Dec 02                       | 1,040                          | 239                         |
| Alecoss Travel Ltd    | 03 Jan 03                       | 102                            | 60                          |
| Apple Air Ltd         | 03 Feb 03                       | 111                            | 51                          |
| <b>Total 9</b>        |                                 | <b>12,836</b>                  | <b>6,562</b>                |

### NOTES

- 1 The administration of all cases above may not have been completed. Administration costs which were incurred in paying passengers' refunds have been included in the Cost of Refunds.
- 2 The figures for Total Expenditure and any call on the Air Travel Trust reflect amounts already spent and estimated further expenditure.
- 3 Where a call on the Air Travel Trust is indicated, this is the difference between expected total expenditure and available bond monies. The call on the Air Travel Trust may include the expenditure of accrued interest.
- 4 The above totals may not agree to the sum of the figures shown in the table due to rounding differences.

## April 2002 – March 2003

| <i>Bond Amount</i> | <i>Number Repatriated</i> | <i>Cost of Repatriation</i> | <i>Number Refunded</i> | <i>Cost of Refunds</i> | <i>Total Expenditure</i> | <i>Call on Air Travel Trust</i> |
|--------------------|---------------------------|-----------------------------|------------------------|------------------------|--------------------------|---------------------------------|
| <i>£'000</i>       |                           | <i>£'000</i>                |                        | <i>£'000</i>           | <i>£'000</i>             | <i>£'000</i>                    |
| 148                | 0                         | 0                           | 220                    | 105                    | 105                      | 0                               |
| 97                 | 0                         | 0                           | 112                    | 18                     | 18                       | 0                               |
| 15                 | 0                         | 0                           | 1,261                  | 193                    | 193                      | 178                             |
| 49                 | 0                         | 0                           | 11                     | 11                     | 11                       | 0                               |
| 55                 | 0                         | 0                           | 431                    | 127                    | 127                      | 72                              |
| 900                | 505                       | 52                          | 1,161                  | 591                    | 643                      | 0                               |
| 32                 | 11                        | 2                           | 590                    | 230                    | 233                      | 200                             |
| 10                 | 0                         | 0                           | 28                     | 5                      | 5                        | 0                               |
| 11                 | 0                         | 0                           | 35                     | 9                      | 9                        | 0                               |
| <b>1,318</b>       | <b>516</b>                | <b>54</b>                   | <b>3,849</b>           | <b>1,289</b>           | <b>1,343</b>             | <b>451</b>                      |

### Appendix 3 Historical Movement of Reserve Fund Against Industry Turnover

| Year ended 31 March | Turnover<br>£'m | Passengers<br>'000 | Bonds Called<br>During<br>Year | Calls on<br>Reserve Fund<br>During Year<br>£'m | Total<br>Fund at<br>Year End<br>£'m | Calls as<br>% of<br>Turnover | Calls as<br>% of Fund at<br>Start of Year | Fund as<br>% of<br>Turnover |
|---------------------|-----------------|--------------------|--------------------------------|--|-------------------------------------|------------------------------|---|-----------------------------|
| 1979                | 574             | 4,173              | 2                              | 0.08   | 14.78                               | 0.01                         |   | 2.57                        |
| 1980                | 813             | 5,304              | 2                              | 0.02   | 16.10                               | 0.00                         | 0.14                                      | 1.98                        |
| 1981                | 1,200           | 6,165              | 2                              | 0.00   | 18.05                               | 0.00                         | 0.00                                      | 1.50                        |
| 1982                | 1,488           | 6,662              | 9                              | 3.02   | 15.64                               | 0.20                         | 16.73                                     | 1.05                        |
| 1983                | 1,595           | 7,067              | 11                             | 3.10   | 16.61                               | 0.19                         | 19.82                                     | 1.04                        |
| 1984                | 1,893           | 7,938              | 9                              | 0.58   | 19.44                               | 0.03                         | 3.49                                      | 1.03                        |
| 1985                | 2,004           | 8,623              | 20                             | 1.91   | 19.52                               | 0.10                         | 9.83                                      | 0.97                        |
| 1986                | 2,123           | 8,662              | 18                             | 1.36   | 22.10                               | 0.06                         | 6.97                                      | 1.04                        |
| 1987                | 2,406           | 9,849              | 8                              | 2.20   | 22.75                               | 0.09                         | 9.95                                      | 0.95                        |
| 1988                | 3,118           | 12,598             | 16                             | 1.23   | 23.18                               | 0.04                         | 5.40                                      | 0.74                        |
| 1989                | 3,629           | 14,490             | 9                              | 0.28   | 23.44                               | 0.01                         | 1.21                                      | 0.65                        |
| 1990                | 3,704           | 13,982             | 21                             | 0.40   | 23.71                               | 0.01                         | 1.70                                      | 0.64                        |
| 1991                | 3,807           | 13,083             | 22                             | 11.61  | 26.70                               | 0.30                         | 48.95                                     | 0.70                        |
| 1992                | 3,253           | 10,110             | 16                             | 0.73   | 5.01                                | 0.02                         | 2.75                                      | 0.15                        |
| 1993                | 4,436           | 13,575             | 24                             | 6.66   | 9.84                                | 0.15                         | 132.83                                    | 0.22                        |
| 1994                | 5,180           | 14,528             | 20                             | 1.58   | 8.82                                | 0.03                         | 16.07                                     | 0.17                        |
| 1995                | 5,966           | 16,678             | 23                             | 3.51   | 5.65                                | 0.06                         | 39.77                                     | 0.09                        |
| 1996                | 6,874           | 18,812             | 31                             | 4.10   | 1.87                                | 0.06                         | 72.65                                     | 0.03                        |
| 1997                | 8,318           | 22,176             | 26                             | 7.60   | (5.26)                              | 0.09                         | 405.69                                    | (0.06)                      |
| 1998                | 9,426           | 25,673             | 21                             | 0.36   | (5.30)                              | 0.00                         | (6.76)                                    | (0.06)                      |
| 1999                | 11,211          | 26,284             | 20                             | 2.00   | (7.39)                              | 0.02                         | (37.73)                                   | (0.07)                      |
| 2000                | 11,982          | 27,824             | 17                             | 0.31   | (8.03)                              | 0.00                         | (4.20)                                    | (0.07)                      |
| 2001                | 13,155          | 29,675             | 12                             | 0.25   | (8.96)                              | 0.00                         | (3.15)                                    | (0.07)                      |
| 2002                | 13,881          | 30,723             | 23                             | 0.40   | (8.30)                              | 0.00                         | (4.44)                                    | (0.06)                      |
| 2003                | 14,766          | 32,157             | 9                              | 0.45   | (9.09)                              | 0.00                         | (5.43)                                    | (0.06)                      |
| 2004                | 14,750          | 30,464             |                                |  |                                     |                              |   |                             |

#### Notes

1. Turnover and Passenger figures represent the total value and number of holidays/flights authorised by all Air Travel Organisers' Licences at the start of the year. The figures exclude all trade sales between ATOL Holders.
2. Calls on Reserve Fund are retrospectively adjusted figures indicating the cost of failures occurring during each year. The figure for Total Fund at year end is taken from the Air Travel Trust accounts and thus incorporates provisions based on estimates at the time of audit; figures are not adjusted retrospectively to show actual expenditure.
3. Calls as % of turnover uses the base of turnover in the same year as the calls. Fund as % of turnover applies the Fund at each year end to the turnover licensed for the year following.