

## ATOL – The History of ATOL & Consumer Protection

### The Early Days: Voluntary Arrangements

Financial protection for air travellers in the United Kingdom dates back to the 1960s, but in the early stages it had no statutory basis. It was provided instead by voluntary trade associations, primarily the Association of British Travel Agents (ABTA) and the Tour Operators Study Group (TOSG), the latter of which represented the largest tour operators.

TOSG (which later became the Federation of Tour Operators) introduced the first bonding scheme in October 1970 through a specially created trust company. TOSG's members had to obtain bonds, equivalent to 5% of their annual turnover and payable in the event of the member's failure to provide money to rescue stranded holidaymakers and to refund people who had paid for future holidays. In 1972 ABTA followed TOSG and introduced bonding requirements on its members, replacing the common fund arrangements that ABTA had introduced in the mid-1960s.

### The First Legal Requirement for Consumer Protection

In 1967, the Government set up a committee under the chairmanship of Sir Ronald Edwards to enquire into Britain's civil air transport. The Committee's findings were published in 1969 in a report called "British Air Transport in the Seventies", and one of its principal recommendations was the establishment of a Civil Aviation Authority (CAA) whose functions would include the licensing of air travel organisers. Parliament accepted the Edwards Committee's recommendations and the legal basis for the CAA was set in the Civil Aviation Act 1971; it was established in December 1971 and took over its full responsibilities on 1 April 1972.

The first ATOL Regulations, made under the 1971 Act, introduced for the first time a requirement for travel organisers – tour and travel firms who sold air travel as a principal, but not airlines, airlines' agents or agents of other licence holders – to hold a licence. This requirement took effect in 1973 and created the basis of the ATOL scheme as it is today.

However, the 1971-1973 legislation did not aim to provide a comprehensive consumer protection scheme. It had two principal aims. One was to prevent fraudulent operators engaged in the growing charter market from taking money for non-existent flights, and for this purpose the Regulations included "fitness" as one of the criteria for granting licences. The second aim was to introduce a compulsory bonding scheme to ensure that people were not stranded abroad after the failure of a tour operator; without bonding, the responsibility of getting people home had fallen to the Foreign Office.

The CAA required bonds to be provided as a condition of granting one of the new licences, but for ABTA and TOSG members it accepted proof of an ABTA or TOSG bond as good for grant of a licence. It granted 274 ATOLs in its first summer, 1973.

## The Introduction of Back-up for Bonds

The ATOL system was still settling down when the Court Line Group, which included the second largest tour operator at the time (Clarksons Holidays), collapsed in August 1974. Because of the timing at the peak of the holiday season this had a large impact on the travelling public; it also raised questions about whether people who had booked ahead would get their money back. Clarksons held an ATOL and there was a bond to pay for bringing home the 35,000 people abroad, but not enough money left over to refund about 100,000 people who had paid in advance for holidays. There was considerable public and press uproar.

The Government responded by giving a prompt commitment to protect all customer payments, and it subsequently introduced legislation in the Air Travel Reserve Fund Act 1975 to create a back-up fund for individual bonds. This back-up fund was called the Air Travel Reserve Fund (ATRF) and managed by a specially created statutory agency; it was financed initially by a Government loan of £15 million and afterwards by a levy on holidays, with ATOL holders being required to contribute first 1% and then 2% of their turnover to the Fund.

The Fund was used to refund Clarksons customers when the bond money ran out, and to meet claims arising from subsequent failures. Contributions ceased in November 1977 when the Fund stood at what appeared an adequate sum, and income after that came from the Fund's invested capital.

## New Advisory and Fund Management Arrangements in the 1980s

In 1983, the Government commissioned a fundamental review of the ATOL system and its back-up fund. This was conducted by Sir Peter Lane, senior partner in Binder Hamlyn (later Lord Lane) and he was asked to consider whether the licensing system might be replaced by less interventionist insurance arrangements. His report concluded that an insurance scheme could not replace licensing, and it endorsed the effectiveness of the scheme.

The Lane Report made some recommendations for improvements, one being that there should be an advisory committee to watch over the protection arrangements, with representatives of the main bodies involved. As a result the Air Travel Trust Committee was set up; this continued until 2000, when it was replaced by the Air Travel Insolvency Protection Advisory Committee (ATIPAC) which has a similar but rather wider make-up and includes a balance of trade and consumer representatives.

In 1986 Government concluded that the back-up fund was an integral part of the ATOL system and should be brought into the CAA. The Air Travel Trust was set up, with CAA Board members and officials being appointed Trustees.

## European Directive and UK Regulations in 1992

A major development in 1992 was the implementation of a European Council Directive on Package Travel. The scope of this Directive was wide, covering coach and ferry holidays as well as air; it contained a range of consumer measures, including a requirement for financial security. The UK Government took the view that with the ATOL system already in place only small changes were necessary to meet the UK's obligations, although some people favoured a comprehensive licensing scheme on the lines of the ATOL system. In the event the UK Regulations (The Package Travel, Package Holiday and Package Tours Regulations 1992)

adopted the ATOL system by providing that an ATOL was sufficient financial security for business where an ATOL was required; it made other provision for non-air packages.

## Changes in the Scope of ATOL in the 1990s

In theory, the new Package Travel Regulations had no direct impact on ATOL; in practice, they had a significant effect.

Before the early 1990s, packages constructed using scheduled air fares fell outside the licensing system because – chiefly because of restrictive agreements between governments on air services – tour operators using scheduled fares were the agents of airlines, and airlines' agents were outside the Regulations. The new legal requirement for these packages to be bonded was one pressure that led these operators to amend their contractual arrangements and seek ATOLs; another was a growing awareness of responsibility for customer security, and a wish on the part of airlines not to be responsible to customers for packages controlled by a third party. The change led to a large increase in the number of ATOL holders and in the volume of business licensed.

The change in the scope of ATOL did not end with packages. During the early 1990s, the sale of "discounted" scheduled air tickets – sold by consolidators and travel agents at fares that were not government-approved – became increasingly open: the CAA had no powers under the original ATOL Regulations to insist on licensing these sales while they were sold by people who were airlines' agents, but it became clear that many airlines wanted to avoid responsibility after agents collapsed, and that customers were therefore unprotected.

The CAA proposed to the Department of Transport new Regulations, which would no longer exclude airlines' agents as such: the requirement would instead be that an ATOL was needed to cover any flight sale by anyone other than an airline, unless a ticket was immediately issued in exchange for payment. This was intended to continue to allow travel agents selling published fares and issuing tickets to remain unlicensed, but to bring discounted scheduled ticket sales, where a ticket was not normally issued at the time of payment and customer money was therefore at risk, into the ATOL system. The new legislation was agreed and became effective on 10 May 1995.

The change again led to a substantial increase in the scope of protection. It also meant that the licensing system became more sophisticated and complex, with different categories of activity having different conditions and bond levels. In particular, a new licence category was introduced for tickets sold as the agent of a scheduled airline, and this class of sales was protected mainly by guarantees from airlines rather than by bonds.

## Consideration of Protection for Scheduled Airline Customers

The change in the scope of ATOL did not change the position that there was no protection for people who book direct with scheduled airlines, and in fact this position could not be altered by Regulations – it would require primary legislation to change the basic provisions set in 1971. The assumptions behind those provisions were that no protection was needed for charter airlines' customers since they could not deal direct with the public, whereas scheduled airlines at the time were often state-owned and so less likely to fail. By 1990 both assumptions were questionable.

Two failures in 1990-1991 illustrated the contrast between the effective protection given to people who book with travel organisers and the lack of any financial security for scheduled airline customers, and led to demands for legislation to address the problem. The first was that of Capital Airlines, a regional scheduled service operator whose failure caused customer

and travel agent losses, and the second was that of the International Leisure Group, which was primarily a tour operating group but also operated scheduled services through Air Europe.

The Government said after Air Europe's failure that it would legislate to introduce a scheme, although it later concluded that any scheme would need to be on at least a Europe-wide basis. The European Commission also showed interest during the 1990s in the possibility of a scheme, but its initiative has not so far resulted in any proposals.

## Changes in Bonding Arrangements

In 1991/92 there was a change in the management of bonds. Before then, both ABTA and FTO (previously TOSG) held the ATOL bonds of their members – which at the time accounted for up to three quarters of licence holders – on the CAA's behalf, and managed repatriation and refunds after a failure. In the early 1990's ABTA and the FTO ceased to hold ATOL bonds. All ATOL bonds are now held by the CAA, which manages the rescue and refund exercises.

## Exhaustion of the Back-up Fund

After the failure of the Court Line Group, claims against the new Air Travel Reserve Fund were relatively small for several years until Laker Airways failed in February 1982. Although customer deposits were comparatively low because of the time of year, there were still claims of almost £12 million, involving 139,000 holidaymakers. £5.3 million was paid out of the bond and £6.5 million was met by the Fund.

The International Leisure Group, then the UK's second largest holiday group, failed in March 1991. The failure was managed by the CAA to ensure least disruption to customers, but with 23,000 people abroad at the time of the failure and 600,000 advance bookings, the cost of rescues and refunds depleted the Air Travel Trust Fund by £11 million. The Government at the time undertook to legislate for levy powers to replenish the Fund.

In the years from 1992 to 1997 there were no failures quite as large, but there was a constant stream of medium-sized failures; some of these led to substantial calls on the Fund, either because they failed in the peak season or because the scale of business was more than licences authorised. Significant calls on the Fund were:

Airbreak Group, Sungate, Euro Express (all in 1992)	£5.1 million
Sunseeker Leisure (1994)	£2.3 million
Villmar Travel (1995)	£3.2 million
The Flight Company + Go Air (1996)	£6.2 million

The Fund's investment income was no longer high enough to offset the claims on it, and by 1996 its assets were finally exhausted.

Since then, the annual claims have been greatly reduced (see the section on adjustments to the licensing system to deal with underbonding) and the Fund has continued to meet its liabilities through commercial borrowing against the security of a Government guarantee. There remains an intention to introduce levy powers by legislation as soon as parliamentary time permits.

## Adjustments to the Licensing System to Deal with Underbonding

After heavy calls on the Trust Fund in 1996 as a result of firms who were exceeding their licence authorisations and were therefore underbonded, the CAA introduced (in 1997) tighter controls to prevent abuses of the system. These involved various forms of monitoring and also a requirement in most cases for personal guarantees from tour operators' principals, which could be called to repay the Air Travel Trust if it had to make payments in cases where the licence holder had traded in excess of its licence authorisation. It is generally recognised that these measures were instrumental in reducing substantially the calls on the Trust Fund.

## Historical Overview of the ATOL System in Numbers

There are full statistical records only since January 1986, when the management of the Air Travel Reserve Fund moved into the CAA.

Between January 1986 and March 2005:

- 349 licensed companies failed, collectively authorised to provide 5.5 million holidays.
- 200,649 people were abroad when their tour operator failed, and arrangements were made at a cost of £33.4 million for them to complete their holidays and return home.
- A further 1,104,337 people were given refunds of advance payments totalling £140.7 million from bonds and the Air Travel Trust.
- Total expenditure from bonds and the Air Travel Trust was £170.5 million.
- Approximately one third of all failures in the period resulted in a call on the Air Travel Trust Fund, which provided £43.8 million of total expenditure.