

*ATOL Reform: Assessment of funding arrangements and the
protection of customer money CAP 2151*

CAA CONSUMER PANEL RESPONSE

Background

The CAA Consumer Panel is a non-statutory critical friend, giving expert advice to the Civil Aviation Authority (CAA) as policy is being developed, and making sure the consumer interest is central. The Panel's objective is to champion the interest of consumers.

General comments

The Consumer Panel welcomes this consultation. It finds the document explains the aim of the proposed changes clearly. Likewise, the measures under consideration are clearly explained and the questions to which stakeholders are asked to respond are well-formulated. The Panel notes however that the latter are phrased predominantly in terms of the impact upon business, which may inadvertently give the impression that this is the focus of CAA concern.

The Panel considers that successful financial protection from the consumer perspective is likely to meet the following indicators: be accessible to all, work effectively for consumers, and be transparent, independent, and subject to effective oversight. We have assessed the proposals in this context.

One of the key issues for the Panel is having a clear understanding of what the basic protections are, what the protections should be, and any gap between the two. It may be helpful for the CAA to carry out some form of gap analysis of ATOL protection overall. For example, we note that 'flight only' bookings are not considered within the consultation. However, it is possible, and evidence tells us, that consumers may see the ATOL logo and assume a flight only booking is protected when in reality it is not. The same applies to bookings cancelled due to Covid-19 issues. Alongside the Panel's views and those of other consumer organisations that may respond to the consultation, it could therefore be helpful for the CAA

to gather primary consumer insight to further inform its decision making and the wider context. The Panel would be happy to assist with developing this.

Finally, we note the interaction with the ongoing Airline Insolvency Review and the proposals (and responses) of course need to be considered in this context.

Detailed proposals

Separation of client monies

The Panel supports the separation of client monies from operating capital. Holidays are a significant purchase and consumers will feel reassured that funds are readily available for a refund should the travel company fail or - as with the pandemic – some unexpected event cause widespread cancellations. The refusal of some travel companies to make refunds, or the delay in so doing, over the past year has demonstrated the fragility of a business model which uses consumers' payments to fund operations and has shaken consumer confidence in the travel industry.

While full separation is very attractive for consumer benefit, partial separation also offers significant benefits for consumers and is likely to be fairer to businesses. The consultation suggests that up to 20% of the total value of a licensable package holiday could be removed from the separated account to pay for flights or other types of payments related to the booking. The Panel view is that this is likely to provide the best balance. This would need to be done against a very clear set of rules and should be subject to annual review. Our reading of the consultation is that this is the CAA's intention.

On the method of safeguarding consumer money, the key issue is ensuring independence. For this reason, we support the continuation of the Air Travel Trust. We would not support a 'customer monies account' since this would not meet the independence criteria. Either a Trust or an Escrow system would be acceptable, although Escrow is likely to be a swifter mechanism.

We do however have concerns about the impact a change in the rules might have on market entrants: a well-functioning market needs new entrants to offer innovative products and challenge incumbents. We would hope that the CAA would explore this and consider whether a ban on the use of client monies would create an additional barrier to new providers entering the market, thus restricting consumer choice.

ATOL Protection Contribution (APC)

On the funding of ATOL, the Panel understands the rationale behind the proposed introduction of a variable charge based on risk, value, or a combination of both. A risk-based approach should have the merit of incentivising businesses to exit the market in an orderly manner (should the cost of securing ATOL protection become unaffordable) thus avoiding catastrophic failures. However, it requires an individualised assessment of the risk by the CAA and the Panel wonders whether the consequent demand on resources is sustainable. On balance, the Panel supports a hybrid risk and value-based approach, whereby the value of the holiday and the risk profile of the ATOL holder are both taken into account. This should ensure that companies at greater risk of failure contribute proportionately, incentivise more effective and less risky business models, and also help to mitigate risks to higher value bookings.

A further issue is consumer awareness of the APC. Currently regulations allow the flat-rate APC to be displayed separately on the customer invoice or rolled up into the cost of the holiday. If a risk-based APC were to be introduced, the question arises as to whether consumers should be able to compare APCs and consequently make their own assessment of risk (in reality, such an assessment would more likely be carried out by an intermediary, such as a travel journalist or consumer body) or whether mandated transparency might have the effect of creating self-fulfilling prophecies, driving riskier but still viable businesses into liquidation. We would like to see the CAA consider this in detail to identify the best way to ensure consumer information and protection.

Managing potential market exit

It is important that businesses that decide to exit the market are able to do so in a managed way, whilst honouring existing commitments. Disorderly exit may put pressure on the new system. To manage this, the CAA may wish to consider having a policy objective (and potentially seek additional powers) to prevent those at risk of failure from continuing to take on new business. Other regulators, particularly in the financial services sector, have objectives around the stability of the system and are able to work behind the scenes to ensure businesses wind down in a way which does not affect the overall system. There may be learning which can be applied to the aviation sector.

Concluding remarks

In summary, the Panel welcomes this consultation and we look forward to working with the CAA as the work proceeds. We would appreciate an update from the CAA in due course as



to progress. In the meantime, we hope the policy team will call on the Panel if there are any further clarifications or questions that would benefit from a discussion with the Panel.