

ATIPAC Response to *Reforming Aviation Consumer Policy: Protecting Air Passenger Rights*, published by the DfT on 31 January 2022

Deadline for submission: 27 March 2022

The Committee

The Air Travel Insolvency Protection Advisory Committee (ATIPAC) was created by the Secretary of State for Transport in 2000 to provide informed advice to Government on financial protection of air travellers and customers booking with air travel organisers.

The Committee is devoted to furthering the interests and financial protection of air travellers. The Committee has an independent Chair, and its membership is uniquely balanced between passenger representatives, independent members and trade representatives who bring a breadth and depth of knowledge and experience from all areas of the travel industry.

The CAA provides the secretariat function for the Committee, but the views expressed in this response are not those of the CAA. The CAA has submitted its own response to the consultation.

The main components of financial protection for air travellers are:

- an appropriate regulatory regime for consumer protection
- affordable and effective travel insurance for eventualities not covered by regulations
- a thriving and competitive travel industry with low risk of company failure.

Given the diversity of its membership, it is not possible for this response to cover all points of view, it does however reflect the views of the majority of members who chose to take part. Some have decided to respond directly rather than as part of the Committee.

Observations of the Committee

At a recent meeting of the Committee there was a discussion focussed on Q22 of the consultation, relating to the option for package organisers to be given a statutory right to a refund from airlines in the event of a flight cancellation, and to a lesser extent questions 1, 2 and 3 which are related. The comments below therefore represent ATIPAC's views on these questions as they are most pertinent to the remit of the Committee.

ATIPAC's Response

1. Introduction

Q22. What would be the advantages and disadvantages of enabling package organisers to seek a refund for cancelled flights that are part of a package holiday through legislation?

- 1.1 Some ATOL-holders (i.e. package holiday organisers licensed under the ATOL regulations) have, according to some of our members, faced financial difficulty because some airlines did not refund them promptly for cancelled flights during the Covid-19 pandemic. These ATOL-holders were obliged under the Package Travel Regulations to refund consumers within 14 days where the flights were part of a cancelled package holiday, even if they had not themselves received any refunded

money from the airline. This cash-flow imbalance was detrimental to the finances of these ATOL-holders and, according to some of our members, potentially contributed to some going out of business. Many ATOL-holders stayed solvent only because of the furlough scheme and because their customers voluntarily accepted Refund Credit Notes. Conversely some airlines argue that they provided refunds to organisers which were not passed promptly to customers. They have reported that in some cases airlines do not know that flights are being purchased for a package, a situation which could create an inherent difficulty in fulfilling any new statutory rights. In either scenario the customer experienced detriment which the current regulatory regime does not prevent.

- 1.2 The Committee would support introducing direct refund rights for customers against travel suppliers, such as airlines, where these suppliers provide services that make up part of a package holiday. Under the current legal framework of the Package Travel Directive and the 2018 Package Travel Regulations, organisers already have the right to bring claims against travel suppliers for refunds (Reg 29); this could be changed to impose an obligation on travel suppliers to refund the organiser. A proviso could be included that if the supplier refunds the organiser, then they should be released from the obligation to refund the customer. Further discussion on this is provided below.

2. Context

- 2.1 The travel industry operates as a chain, in which money changes hands between customers, travel agents, tour operators/package organisers and airlines and other suppliers. The regulation of the different parts of the industry is uneven, and where it exists derives from different European and UK laws and regulations, overseen by different Government departments and enforced by different regulators. Enforcement against different areas of the industry has also been uneven. The cash enters this chain from individual consumers who are not only making what, for most of them, is the largest payment their household will make all year, but with a significant lapse of time before they see any return. Consumer trust is therefore absolutely essential for the operation and sustainability of the market.
- 2.2 It is critical for the recovery of the entire travel industry that confidence is restored and customers can be reassured that monies will flow in a timely fashion. It is also important in the interests of the Air Travel Trust and of taxpayers, that monies flow back to package organisers from airlines, as a delay in receiving refunds from airlines can quickly lead to financial failure.

3. Commercial arrangements

Extract from the consultation:

Refund for cancellations by the airline

3.10 Currently when a consumer books a flight as part of a package holiday, and where that flight is cancelled, the package organiser who arranged the holiday is responsible for ensuring the consumer receives their refund. The package organiser would then claim the money back from the airline through their commercial arrangement.

- 3.1 In the highlighted section above, the consultation wrongly assumes that there will always be a commercial arrangement between organisers and airlines, or indeed that that commercial arrangement will provide for rights of refund to the organiser in the event of cancellation.
- 3.2 A significant proportion of flights booked by travel agents (online or traditional) for consumers are booked by the travel agent as agent of the consumer, not as an agent of the airline. Where the travel agent is acting as agent of the customer to book the flight, there will be no commercial agreement in place with the airline.
- 3.3 Even where an airline provides an agent-facing booking system through which agents can book flights for their customers, the terms of that booking system are non-negotiable and will not always provide specific rights for the agents to claim refunds.
- 3.4 The International Air Transport Association (“**IATA**”) has a standard-form agency agreement, and its agents typically remit payment to the airlines (and receive refunds) through IATA’s Billing and Settlement Plan (“**BSP**”). However, that was not always effective in delivering refunds during the pandemic.
- 3.5 It is therefore not feasible to rely on commercial agreements to provide for refunds to flow between airlines and agents. Regulation 29 of the Package Travel Regulations provides that a package organiser has a right to redress from any third parties which contributed to the event triggering financial obligations, but it is not clear and concrete enough to ensure that this happens, or happens promptly; also it has been argued by the airline sector that Regulation 29 does not discharge its obligation to refund the customer directly.

4. Answer to Q22, Q1-3 & Recommendations

Q22 asks “*What would be the advantages and disadvantages of enabling package organisers to seek a refund for cancelled flights that are part of a package holiday through legislation?*”

Advantages

- 4.1 The first advantage is basic logic and fairness. Money flows from customer to intermediaries to airlines/suppliers. Where customers are due full refunds by law because of a flight cancellation, it is clearly logical and fair that the customer’s payment should flow back down the supply chain.
- 4.2 Second, it is not sustainable for package organisers to fund the refund of flights in circumstances where there are mass flight cancellations, such as with the pandemic or the volcanic ash of 2010, unless the cash to fund the refund is transferred swiftly from the airline to the package organiser. Notwithstanding the impact on the finances of package organisers in cases where refunds do not flow swiftly from suppliers, there is the additional exposure to the Air Travel Trust due to the potential increase in the risk of insolvency.
- 4.3 Third, a mechanism which clarifies how refunds should flow back down the supply chain will ensure consistency and prevent duplication between travel regulations and chargeback rights. Consumers who pay package organisers with a payment card have chargeback rights where packages are cancelled. Similarly, package organisers which

pay airlines with a corporate payment card (which is very common) have chargeback rights where flights are cancelled.

Disadvantages

- 4.4 In changing the law there are some risks which would need to be addressed through clarity and detail. For example:
- A time frame such as 7 days could be specified which enables package organisers to **receive** the refund in time to meet their obligation to **give** the refund within 14 days
 - It must be clear that airlines do not have to refund the customer directly once they have made the refund to the package organiser
 - Where organisers package products using opaque or marked up pricing to the consumer, it would not necessarily be clear to the consumer the amount of the refund due for the cancelled flight. This could lead to disputes between the consumer and the organiser and/or the consumer and the airline
 - There must be a method by which the airline knows that the flight has been purchased and sold on as part of a package if any new right to a refund sits with the consumer
 - There must be documentation of refunds to prevent disputes
 - There must be adequate enforcement measures on both parties (supplier and organiser) though it is to be hoped that enforcement action would rarely be needed.
- 4.5 It will also be important to clearly distinguish any new refund right from the other consumer protections in the Package Travel Regulations. For example any new refund right should not extend to scenarios where an organiser has to refund a customer due to a "significant change to the package", which, under the Package Travel Regulations, can be very subjective. There may also be cases where an organiser's request for a refund may not align with the passenger's intentions, for example where they have contacted the airline directly to manage their booking.

Questions 1 to 3

- 4.6 These questions concern whether the CAA should have increased enforcement powers. We are supportive of the CAA having additional powers to enforce civil sanctions for businesses who break the law, including those outlined at paragraph 1.6 of the consultation. It is important that enforcement is applied evenly as between airlines and package organisers.

5. Conclusion

- 5.1 As stated above, the Committee is supportive of the implementation of legislation to enable ATOL-holders to seek a refund for cancelled flights that are part of a package holiday and for additional powers to enforce aviation consumer protection laws. However, it is acknowledged that implementation of such legislation would need to take account the complexities of the relations between airlines and travel organisers as well as the needs of consumers.

- 5.2 The Committee would like to thank the DfT for the opportunity to respond to this consultation and hopes that the specific examples and recommendations provided will be beneficial in informing future legislation.
- 5.3 The Committee would welcome any updates or further consultation in due course.