



# PT Trustees response to the ATOL Reform:

## Assessment of funding arrangements and the protection of customer money

**April 2021**



## Segregation of Monies

Do you believe that the CAA should adopt segregation of customer monies as the mainstay of the system? Do you have a preference as to what method that should take and why?

### Segregation of customer monies should be the mainstay of the system

We support the principle that the CAA should adopt segregation of customer monies as the mainstay of the system. The model should have tailored options agreed with the CAA where either 100% of booking funds are placed in Trust or a substantial proportion is placed in Trust with the balance protected by other approved means.

The Travel Industry is now at a stage where significant important steps need to be taken to improve confidence with the travelling public and stakeholders regarding safeguarding consumer funds. It is not enough to stay with the status quo – important stake holders such as Insurers and Merchant Acquirers (“acquirers”) are gradually distancing themselves from the industry. They are the lifeblood of travel business activity.

Travel businesses use of customer monies for working capital purposes appears to be the norm. The degree to which this occurs, has depended upon how well capitalised a business is. Greater use of customer monies occurs during the shoulder months, precisely when the business is at its weakest and incurring losses or experiencing low profitability.

As the consultation says using customer monies requires a constant inflow of new customer monies to meet the costs of providing the original services sold. It is the lowest cost of finance available to a travel business – at least it was until the misfortunes of Covid 19 befell the industry.

The Travel Industry is one of few business sectors that collects 100% of the value of its sale (the booking) many weeks before delivering the product (at least 10 to 12 weeks before travel) and where flights are concerned many months before the flight.

Whilst it is understandable, it is nevertheless the case that there is no disclosure to their clients that booking funds may be used for purposes other than for paying suppliers for their holiday or flight.

We support a managed transition to safeguarding consumer funds, so the percentage placed into Trust is increased over a defined period of time.

### ATOL bonding

ATOL bonds have not always been successful when package organisers have failed and given the current state of the Air Travel Trust Fund that backs ATOL, it seems this rebalancing in favour of segregating travel funds is due. This is a proven and successful model.

Time and again the Air Travel Trust (“ATT”) Fund and Acquirers have had to step in and underwrite a shortfall of booking funds available to refund unfulfilled holidays and flights. Reason – the original booking funds have been utilised for working capital and irrecoverable deposits advanced to suppliers. This may occur with a Trust ATOL in respect of flight monies, but any losses will always be substantially mitigated and limit the exposure of the ATT Fund and acquirers.



### Covid 19 and Refunds

Covid 19 has brought the matter of unprotected consumer funds to the fore and demonstrated that many travel businesses –airlines, tour operators and travel agents - were inadequately capitalized. They have had to draw down on material Government supported and other sources of finance and utilise unsecured instruments such as Refund Credit Notes (“RCN”) to continue operating.

The travel industry’s reputation has been tarnished in a most public manner due to its inability to refund consumers on a timely basis following the cancellation of travel arrangements due to the pandemic. Travel businesses began issuing cash refunds having initially resorted to issuing RCN which were not welcomed by the public. Refunds were in general substantially delayed for a number of reasons but lack of funds was the major factor. Outstanding refunds are still an issue in August 2021, nearly 18 months after the Pandemic began.

A recent press article based on YouGov data made the following observations:

- c.851,000 consumers were holding c£780m of Refund Credit Notes for Covid-19 cancelled holidays
- data suggests c.8.1 million people had a package holiday cancelled due to Covid-19 with only half receiving a full refund and almost 11% accepting an RCN rather than cash
- 43% of consumers surveyed claim their travel provider did not offer them the option of a cash refund when their holiday was cancelled, despite this being a legal requirement

The Competition and Markets Authority have got involved in addition to the CAA and other bodies to deal with the matter of refunds not being made on a timely basis or at all. The press has named a number of travel businesses with inadequate refund policies. This is not good for the industry especially when travel businesses have worked very hard to support their clients.

### Critical developments following Covid 19

Travel Sector continues to fend for itself in the perfect storm caused by developments such as:

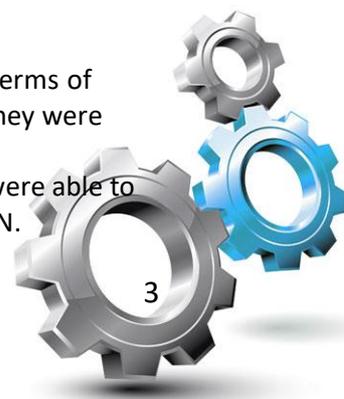
- Collapse of bookings to practically Zero with recovery still a way off
- Businesses had to furlough key persons with the consequent loss of capabilities
- The stop start nature of travel since Summer 2020 has continued to date
- Acquirers either withdrawing facilities or demanding high levels of security in the form of bonds and greater deferral periods – this has placed great pressure on working capital requirements
- Insurers withdrawing from the travel sector
- Airlines not refunding flight monies on a timely basis or at all
- Accommodation suppliers not being forthcoming in returning advance deposits to operators

The failure of Thomas Cook set in motion many of the issues noted above with Covid 19 crystallizing these and other difficulties.

### Trust accounts since March 2020

Travel businesses operating Trust Accounts have altogether had a better experience in terms of being able to fund cash refunds and they were able to retain customer bookings since they were able to demonstrate that the funds were held in the CAA approved Trust accounts.

Our experience of the past eighteen or so months has been that Trust ATOL operators were able to refund their clients with greater ease without ‘arm-locking’ the consumer to take an RCN.



Where Trust ATOL operators have issued RCN, those RCN are supported by cash held in Trust. RCN issued by non-Trust operators are not generally a secure instrument. Additionally, they have had finite expiry dates which have had to be extended as the pandemic has taken hold.

Furthermore, since most if not all booking funds were held in Trust, these businesses should have had to resort lower levels of funding support – either as loans or having to issue more capital.

**What impact would segregation of funds have on your business?**

Not relevant for PT Trustees to comment other than to we are providers of Trustee services.

**If the CAA chose partial segregation, what do you think the mandatory minimum should be segregated until the customer returns should be?**

We believe that for many businesses 100% of funds should be placed in Trust in view of their circumstances and working capital status.

The CAA has recently introduced escrow arrangements where a defined percentage of funds such as 70% are placed into Trust.

It does, however, seem logical that for certain travel businesses it would be desirable to have a hybrid arrangement which protects 100% of consumer funds albeit with a mix of Trust accounts and Insurance. The percentage in Trust should be determined on a case-by-case basis and it would not be fair to set out an arbitrary value suffice to say based on our experience, it should not be less than 50% or 60% of all travel funds.

We should be aware that many acquirers will not agree to providing facilities where a substantial percentage if not 100% of the funds are not protected

Balance sheet capitalization and working capital status should be significant drivers and taken into consideration. Risk models should be developed and implemented. There should be transparency and clarity in this.

**In respect of partial segregations, should some supplier payments be considered as permitted payments? What do you think should be included within the definition of a supplier payment?**

We agree with the current ATOL Trust Deeds which operate under the following general rules where only flight monies may be paid out in advance of travel as reimbursement before the date of travel but only to organisations providing acceptable (to the CAA) levels of protection. These include:

- Another ATOL holder;
- IATA bookings - under the protection of Scheduled Airline Failure Insurance (SAFI);
- Low-Cost flights, under the protection of SAFI
- Corporate Credit Card

Non-flight monies (accommodation, car hire, other), including profits, should not be paid out of the Trust ATOL until the consumer has returned from holiday. The reason is these funds are not protected nor secure in any way should they be paid to the relevant supplier.



The risk of paying non-flight suppliers and not being able to recover monies is quite significant as the Covid 19 experience has shown. Travel businesses were not able to recover advance payments made to accommodation suppliers. And that is without saying more about how airlines dealt with refunds.

We do not believe that in general there needs to be any change to the existing rules as to which funds may be paid out to Suppliers in advance of travel arrangements being completed. The one exception is funds paid out of trust under CAA approved insurance cover.

There will need to be different rules for escrow arrangements and hybrid trusts. In the case of current Escrow arrangements, suppliers do not feature. For Hybrid trusts, funds are either in trust or protected by insurance – again payments out of trust need not be supplier specific.

**In respect of agents that take ATOL holders' bookings, should the ATOL holder's monies be immediately passed on to the principal or is there a case for the agents keeping the money in a form of segregation?**

We believe that agents should pay over monies collected from clients to the principal once a week as a minimum.

The agency agreements should ensure client funds are placed into separate accounts and also state any monies held by the agent that have not been passed over are held in Trust for the ATOL Holder.

Alternatively, agents could be made to operate segregated accounts that have trustees but that would involve designing a new process and educating agents.

On balance it would probably be better that the principals (ATOL Holders) continue to operate the safeguarding Trust structure.

**Do you have any other comments about the segregation of monies?**

There have traditionally been three principal concerns about operating Trust accounts for travel when segregating consumer funds.

The first concern involves cashflow implications for the principal. It is clear the CAA recognise this concern and have addressed and/or are attempting to address the matter as evidenced by:

- Permitting flight monies to be paid out in advance under defined circumstances
- Operating Escrow arrangements which require a percentage of booking funds to be safeguarded
- Proposing hybrid arrangements involving trust accounts with insurance of early release funds

The second concern involves the cost of operating Trust accounts. The costs of operating trust accounts are not prohibitive, and the Trustee is always aware it must operate not only effectively but with efficiency to keep costs to a minimum. These costs are now even more competitive when one considers the cost of securing Bonds and the resultant guarantees. Bond costs which have continued to increase, are much higher than a year ago - assuming a business can secure a bond(s) - and the considerations of the CAA required various ratios pertaining to liquidity and free assets will have become more onerous.



The third concern involves the administrative efforts of operating a Trust account. We do not believe these are as onerous as some may believe. Most of the processes of funds paid into Trust and claimed out of Trust can be and are automated. There is always a degree of manual effort but that can be reduced over time as confidence is built by the Trustee and Travel business working with each other.

The comments we make in this section are borne out by our experiences in operating numerous Trusts in the Travel sector for the past Twenty years. Trustees are knowledgeable, well trained, and efficient in their work processes. Systems for managing these Trusts have come far.

### **Mandatory Bonds**

#### **Should the CAA mandate the use of bonds? Please explain your response**

It isn't clear how the CAA could achieve this bearing in mind the capacity constraints that exist due to insurance companies being selective in which bonds they is willing to underwrite.

Should cash bonds or guarantees (which will be most likely cash backed) be sought then it is difficult to see how that would be a better solution than a Trust for all of the reasons noted above.

A combination of bonds and trust on the other hand and as we noted above should work depending upon how the structure and the rules surrounding it. Our experience of ATOL Trusts thus far shows that the CAA know what is expected and ATOL trust structures have been practical and clearly laid out.

#### **What impact would mandatory bonding have on your business**

See comments above.

#### **At what level should the CAA set a mandatory minimum bond**

Presumably that will vary depending upon the risk posed by the ATOL Holder.

Also, that too would be dependent upon bonds capacity available.

Again, we believe hybrid arrangements should work with bonds. Insurers should gain a great deal of comfort from the existence of a trust and there would be clarity as to which funds are protected and how.

#### **Do you have any other comments on the mandatory use of bonding?**

No other comment

### **Tailored Approach**

#### **Should the CAA allow ATOL holders to choose between segregation of monies and bonds or a mix of the two?**

We believe it would be reasonable to permit ATOL Holders to choose between the two options and/or a mix of the two. ATOL Holders would be best placed in deciding upon the option.

It, however, would be important, that the CAA issue clear guidelines and rules concerning the process and state what the boundaries are.



We would suggest the CAA should separately consult with Insurers and Acquirers so that any concerns they may have are addressed. It may well be they may not agree to work with a model that has not been “pre-cleared” with them.

Should different levels of APC be used to reflect the residual risk not covered by the measures ATOL holders had put in place?

We agree with varying the APC depending upon assessment of risk and how an ATOL Holder has best addressed that risk.

What impact would the setting of a minimum level of security have on your business?

Not relevant for PT Trustees to comment on other than to we are providers of Trustee services.

Would it be appropriate for the CAA to adopt different approaches depending upon the ATOL holder?

Yes, it would be appropriate for the CAA to adopt different approaches and that must be because risk types can and will be different.

Are there any other considerations the CAA should take account of in determining a tailored approach?

As noted above the CAA should set boundaries, provide guidelines, and consult with key stakeholders such as Merchant Acquirers, Insurers and Banks.

### **Sections A and B**

To what extent might the different options of segregating customer money and/or mandatory bonding assist ATOL holders in negotiating better terms and conditions with merchant acquirers or other financial stakeholders?

From our experience of the last Eighteen months, we do not believe many merchant acquirers will agree to work with Trust/Escrow arrangements whereby 100% of consumer funds are not protected.

There is also an area of doubt for Trust accounts so far as Merchant Acquirers are concerned in the event of the ATOL Holder failing. We understand that the CAA is unable to give assurances to Merchant Acquirers by not being able to state that monies held the Trust account will be made available for Chargebacks and/or Refunds.

Do you have any other comments regarding merchant acquirers or other financial stakeholders that would be relevant for the CAA to consider as part of the new framework?

It would help if all stakeholders were to understand that consumer protection laws and acquiring scheme rules are so stringent that merchant acquirers are effectively loaning money for each consumer transaction. In the event of non-performance, the acquirer must return booking monies to the consumer with little or no prospective of mitigating this financial exposure.



### **ATOL Payment Contribution**

Which model should the CAA implement to determine whether the value of the APC, and why?

Full trust ATOL accounts with 100% protection should enjoy the lowest APC and that is because of the low risk to the Air Travel Trust. It may well be a lower APC should be offered to “Gold standard” Trusts where booking monies are only released to the ATOL Holder post the date of return.

Hybrid ATOL trusts should enjoy the next tier up in terms of APC charges although probably not a great deal more than the best rate on offer to full trust accounts requiring 100% of funds to be placed into Trust.

The next one up in costs should be for Bond ATOLs where there is no direct control over the use of consumer funds and concerns surrounding how consumer cash is utilised.

Should the CAA consider any other factors in the methodology to determine APC?

The methodology to determine APC has to demonstrate value for money.

APC should also perhaps be based on the value range for a booking. At the end of the day, APC is akin to insurance and one of the main factors in arriving at the cost of insurance is determined by the quantum of the risk.

### **Financial markets option**

Should the CAA explore further the financial markets model

It is highly questionable there is currently an insurance market as envisaged by this section.

What risks do you see in implementing such a model?

Should such a market come about it is likely it will be expensive and complicated by the need to build systems, knowledge and expertise.

If the CAA were to implement the financial markets model, should they retain their claims and repatriation services

Yes, since the CAA have a unique position, knowledge and capability that would need to be built from the ground up.

### **Options that the CAA has considered but does not propose to consider further**

Do you have any comments on whether or not the CAA should give further consideration to restricting when ATOL holders should be permitted to take balance payments?

Agree not an option to pursue



## **Transition Period**

Do you have any comments on the incentives the CAA could offer for early compliance?

Do you have any comments on the duration of the transition period and implementation of the new framework?

We agree there should be a transition period of perhaps 24 months but we believe the Travel companies are best positioned to make suggestions based on the financial standing of their businesses and how the industry recovers from the effects of Covid 19.

Incentives such as lower APC and lower licencing charges should be considered to assist companies in the transition to a model that precludes them from relying on consumer funds as a source of working capital.

Insurance companies are likely to provide better and cheaper terms knowing there is a trust model in place and the confidence in protecting consumer funds that arises from the discipline and control that should arise from the operation of a trust.

## **Pipeline monies**

Do you have any comments on how pipeline monies should be treated under the different frameworks presented above?

Should the ATOL holder's monies be immediately passed on to the principal and remove the need for agents to hold pipeline monies?

If agents continue to hold pipeline monies should agents be required to use a form of segregation?

Agents have exactly the same issues of using these pipeline monies as a cheap form of financing their working capital requirements. Whereas ATOL Holders carry all of the risk being principals, agents carry relatively little risk and their use of client funds if anything is even more of an issue.

Agents should hold pipelines monies no more than a maximum of one week from receipt of those funds from the customers.

Agency agreements should ensure client funds are placed into separate accounts and also state any monies held by the agent that have not been passed over are held in Trust for the ATOL Holder.

The principals provide the protection and are entitled to receive those funds without a delay of more than a week.

## **Agency Agreements**

No comments



### **Online ATOL Certificates**

In addition to the responses submitted to consultation CAP 1631, do ATOL holders have any other comments on the proposal to introduce online ATOL certificates.

There would be much merit in having an electronic and automated process for reporting. Should result in greater transparency of protection for clients.

