



Summary of questions

Responses to this consultation document should be submitted via the Citizen Space page. Any material that is regarded as confidential should be clearly marked as such and included in a separate annex.

If you are unable to use the Citizen Space page, or if you have any questions about the document, please send them to: atol.consultation@caa.co.uk by **24 March 2023**.

The Financial Markets Option

1. Do you agree or disagree that the CAA should focus its further work on the use of financial products as a complementary measure sitting alongside other mechanisms, for example under a tailored or hybrid approach for individual businesses, rather than as a measure to cover the entire market risk?

The CAA has worked closely with ATOL Trusts and Trustees for 10 years. As a result, the CAA has a leading and unparalleled understanding of both Trust and Escrow arrangements. No other body has the depth of understanding and knowledge the CAA has of these arrangements.

The CAA's current proposals are an entirely logical extrapolation of Trust and Escrow arrangements. With the introduction of Escrow arrangements, the CAA has demonstrated an understanding of such arrangements whereby it has attempted to balance risk with the cash flow requirement of an ATOL Holder.

The CAA understands that Trustees such as PT Trustees ("PTT") hold "real time" and reconciled data of all bookings made under these ATOL Trusts and Escrows. Based on these capabilities, the introduction of Hybrid arrangements should pose minimal system challenges to both Trustees and ATOL holders. Data for segregating such funds exists since a business is required to record and maintain booking data so that it is able to service its clients AND as part of its Companies Act obligations.

PTT does not consider there is a viable financial products market to service ATOL licensees; Covid 19 and past failures appear to have reduced unsecured insurance products to a minimal quantum. This is not just a factor in the UK, it is true for the rest of Europe as well.

Currently both Insurers and Merchant Acquirers struggle to provide capacity since their risk is not being managed effectively as it is by an Independent Trustee. Tour Operators balance sheets were greatly undermined by the costs of surviving Covid 19 and that has added to the reticence of both Insurers and Merchant Acquirers.

PTT agrees that the CAA should focus its attention on a Hybrid Approach (Trust and Bond/Insurance) which is both realistic and effective in protecting consumers. This approach should be adopted by the CAA to allow it to take a balanced view as to the cash flow needs of ATOL Holders.

Such an approach should require an ATOL Holder to operate an Independent Trust account and the CAA should permit defined amounts to be claimed to pay Insurer approved Suppliers in advance of travel. These advance payments would be secured by Insurance.

The benefit of this approach would be to spread the risk between the ATTF and the Insurer with the Trustee overseeing the entire process by managing granular data. Such data should be available to Stakeholders to provide confidence and to assist in obtaining cover and at a cost-effective rate.

PTT believes such an approach should go a long way to address concerns noted about insurance capacity in the market. Insurers should be more willing to work with ATOLs knowing the risk is shared and Trustees hold granular data of risk.

Merchant Acquirers will find great merit in such arrangements as their risk is significantly mitigated and they would be more willing to provide acquiring facilities without demanding security or simply refusing to provide acquiring.

PTT already operates such systems for Trust clients - **the approach suggested above is based on real examples and success in working with Stakeholders for the past few years** and specifically over the period of Covid 19. Tour Operators, Other Travel businesses and Merchant Acquirers have found it relatively simple to work with PTT when operating full or hybrid arrangements. The arrangements are tailored to the needs of each business.

Currently, ATOL Trusts permit funds to be paid out in advance of travel, be this flight monies via the protection of SAFI (Scheduled Airline Failure Insurance) and cruise suppliers paid via the protection of SII (Supplier Insolvency Insurance). Non flights elements cannot be paid in advance from the Trust account.

Escrow arrangements require a percentage of funds (can be 70%) to be held in Trust with the Tour Operator utilising the funds at its discretion. The balance of 30% is retained by the Tour Operator for its use.

An ATOL Trust model which comprises a hybrid arrangement of Trust and Insurance works well. PTT works with such models and the proportion of the amount of cash held in trust and the amount that can be released in advance under the protection of a bond or insurance in respect of each ATOL holder can be set to the risk assessed.

There need not be many such models. In practice and based on PTT's real world experience such models are relatively simple and, in any case, risks would end up being assessed by the insurers as they are experts in that field and they in turn rely on the Trustee to manage the risk so far as operation of the Trust is concerned.

Such a model is both flexible and transparent in that Stakeholders have full access to reconciled transactional data.

Segregation Methods

2. In considering the possible methods for segregation set out in paragraph 3.4, what are your views on the different approaches put forward by the CAA and are there other aspects that it should consider?

(1) Total trust segregation should be applied in situations where risk to the ATT is at its highest. In such situations the tour operator will need to ensure any advance supplier payments are secured by CAA approved insurance and/or merchant acquirer protection products – An example of such products is Scheduled Airline Failure Insurance (“SAFI”)

(2) Trust segregation that allows for release of funds for certain types of supplier payments – such funds being secured by Bonds and/or Insurance products. In PTT's opinion this is the best balanced and most practical option.

(3) Trust segregation whereby monies can be released to cover the value of all holiday supplier payments – presumably without cover of a Bond or Insurance product – is most undesirable in that funds released ahead of travel are unsecured. In an event in default or as Covid 19 has shown such funds are never repaid by suppliers be they Airlines, Accommodation suppliers, Car hire or other suppliers. Consumers and Regulators such as the CAA are placed in a very difficult situation. During Covid 19, Tour Operators in many cases ended up issuing unsecured refund credit notes (“RCN”) – was it not for Covid 19 loans and other special financing, many of the travel companies that issued these RCNs would have failed.

Only those Travel companies that were operating Trust accounts could provide certainty of refunding consumers and that without any impacting upon their working capital requirements!

(4) Client Account segregation whereby a designated company director takes responsibility of the client account. PTT sees very little merit in such a suggestion not least in that it is not consistent with the Independence required by the Package Travel Regulations 2018. Such a solution would place unfair pressure on the designated company director – we fail to see how such a conflict of interest could be managed with impartiality.

Operating Trust accounts managed by Independent Trustees are the best and most efficient option. Trust accounts work well in almost all situations regardless of the size of the ATOL holder, the nature of the ATOL holder's business and whether the ATOL holder is part of an integrated airline group.

Independent professional trustees are unconflicted and provide only Trust accounts unlike for example Trusts provided by Trade associations which seek to derive income by providing other services.

It is very clear from the data which consumer funds are protected, not least with Trustees such as PTT being able to track funds granularly.

Client account segregation whereby a designated company director takes responsibility of the client account that could operate under any of the approaches set out in (1) – (3) above, or indeed under an approach that also allows payments out of the account to cover other expenses (such as general prepayments made by an ATOL holder to secure commitment volume). The operation of the client account would be validated on a certain frequency by an independent auditor (ATOL Reporting Accountant).

We find this simply drafted 78-word paragraph very concerning. It is at odds with the stated aims of the consultation. There are so many issues with it and we are concerned that all stakeholders, and the impact upon these stakeholders, have not been considered not least it is not consistent with the requirements of having Independent Trustees under the PTR 2018.

1. The CAA has acquired in depth knowledge and understanding of how well these ATOL (and other PTR 2018 Trusts operate and their success in navigating the very difficult period of Covid 19. We cannot conceive how operating client accounts in any way supports the need to manage risk and pressures on the ATTF and indeed convince other stakeholders to provide services without seeking security.
2. **The Package Travel Regulations 2018 specifically addressed trust protections by requiring Independent Trustees** – the above stated proposals would be a retrograde step and effectively ignored the great success in managing risk with the appointment and use of independent trustees. There is so much empirical data and evidence to support Trust ATOLs managed by independent Trustees.

The CAA know the value of independent professional trustees and the protections afforded to the ATTF due to the skills in managing the disposition of funds. There is no question that client accounts overseen by a director will come close to the skill and expertise currently available.

We would question whether client accounts overseen by a company director will come close to the skill and expertise currently available.

3. **The operation of the client account would be validated on a certain frequency by an independent auditor (ATOL Reporting Accountant).**

The CAA in its current trust deeds has a section and an appendix which requires the ATOL Holder's accountants to provide the ATT with an accountants report confirming that they acknowledge that the ATT are relying on it and that accordingly the Accountant(s) owe the ATT a duty of care. The Accountant(s) signing each such report must be approved by the ATT - the contents of the report may be varied by written agreement of the ATOL Holder and the ATT.

In 10 years, the CAA has not been able to obtain the agreement of accountancy bodies such as the ICAEW (Institute of Chartered Accounts in England & Wales) to provide such a report. So accordingly, the CAA has suspended compliance with this element of the Trust Deed by issuing side letters saying they do not expect the ATOL Holder to comply with this obligation.

After some consultation it is clear to us that the ICAEW and other accountancy bodies will not agree to their members (the reporting accountants/auditors) providing these reports and/or opinions to the CAA in respect of these client accounts.

Auditors are under a great deal of pressure from regulatory bodies such as the Financial Reporting Council and Institute of Chartered Accountants in England and Wales and public pressure to improve their performance and enhance their auditing capabilities following a number of high-profile failures and following monitoring inspections by their regulating bodies. We do not believe they would willingly add to their obligations – certainly not without adding significantly to the costs borne by their clients. Audit fees have gone up very substantially to reflect these increased reporting obligations for statutory audits.

Regardless, it follows that professional indemnity insurers will not provide insurance cover to these reporting accountants/auditors if they were to act outside the approval of their regulatory bodies.

4. Existing segregated accounts, we understand anecdotally, may not have fared well during Covid 19 and have been less than robust. We are aware of non-regulated trust accounts being used to provide working capital during Covid 19. This paragraph has been written with some trepidation and we are sure there will be companies that would not ever do this.

5. The cost of operating segregated trust accounts will undoubtedly lead to increased cost (**systems, staff and accountants' fees amongst others**) and effort. By way of example:
- ATOL tour operators will need to build and maintain systems to manage and track these segregated transactions and balances. As the CAA fully knows, Trustees such as PTT provide the capabilities of such systems at a fraction of the cost. These systems developed over the last 10 years are continuously being improved because of experience, coupled with ongoing investments. Stakeholders that work with PTT absolutely rely on these capabilities.
 - Assuming, in the unlikely event, the CAA was to convince the accountancy bodies to agree to these reports, then how often – daily, weekly, fortnightly, monthly, every three months, every six months, annually? Currently, PTT, can provide daily reports with granular booking data reconciled to the bank confirming the status of ATOL (and other) Trust accounts.
 - In current ATOL Trusts, the CAA require reporting accountants to provide such reports on a monthly basis within 30 working days and an annual report 30 days after the financial year end. The cost of such audits which require the entire MIS system to be audit tested will be prohibitive. Any less than one month and reduced testing will greatly reduce the value of this process. Auditors have overhauled and enhanced their audit processes and will be unlikely to agree to any curbs on their work – testing and number of visits – they will exercise their professional judgement.
 - There is no question of accountants being able to replicate this without significant investment – we repeat existing ATOL Trustees have been providing their expert services for up to 10 years. The cost of such systems and the investment will undoubtedly be high and currently has not been quantified but based on our experience we know it will be high. We have not even begun to address what it means to tour operators Of different sizes.
6. **Banks are not so willing to provide client/segregated accounts** – this is also a fact that is well known to the CAA based on the limited number of banks that are willing to provide Trust accounts. Increasing numbers of professional firms of accountants and lawyers are discontinuing the provision of client accounts due to pressures from the regulatory bodies and money laundering issues.
7. **Merchant Acquirers** who have only in the recent past started to become comfortable with ATOL Trusts **will undoubtedly either seek additional security (bonds, deferrals, cash reserves, etc) or simply refuse to provide acquiring facilities** – merchant acquirers are the “life blood” of the travel sector. There is no better way for clients to pay not least due to the protection afforded by scheme rules and consumer legislation.
8. **Professional Indemnity Insurers (“PII”)** do not support client accounts and particularly focus on the existence of client accounts whenever PII renewal proposals are submitted – that invariably either means they seek much higher premiums or in reality refuse to provide PII cover. Covid 19 has only further exacerbated this situation for accountants.

Key factors to consider in the context of the different segregation options.

3. Are there additional key factors other than size of the ATOL holder, the nature of the ATOL holder's business and supplier payments, and whether the ATOL holder is part of an integrated airline group, that the CAA should take into account when considering the advantages and disadvantages of the different methods of segregation?

Operating Trust accounts managed by Independent Trustees are the best and most efficient option. Trust accounts work well in almost all situations, regardless of the size of the ATOL holder, the nature of the ATOL holder's business and whether the ATOL holder is part of an integrated airline group.

It is very clear which consumer funds are protected, not least with Trustees such as PTT being able to track and reconcile funds granularly.

The consultation states "the CAA acknowledges that smaller ATOL holders could be disproportionately impacted due to the fixed costs associated with setting up and operating a trust account. This does depend upon the definition of what is meant by smaller.

PTT believes ATOL Trusts costs, in almost all cases, are significantly less expensive. PTT understands that:

- Bond levels set by the CAA are generally expressed as a percentage of authorised licensable turnover but the percentage can vary on a case-by-case basis. In the best cases, for highly rated ATOL holders, the CAA may agree to bond percentages as low as 10% in some circumstances (i.e. as part of change of control transactions or where existing ATOL holders fail the CAA tests) but new ATOL applicants (that elect the bonding route) must have a non-negotiable bond level in place during the first 4 years of holding an ATOL. The starting point is 15%, which tapers down each year provided the company continues to meet the CAA financial criteria over the 4 years.
- In terms of bond premiums, underwriters will generally set these levels based on a combination of size and their view of risk. If one was to consider this generically, the following would be a reasonably fair representation of what is seen in the market:
 - *TTV <£10m – c.5%*
 - *TTV >£10m – c.4 to 4.5%*
 - *"Blue Chip" travel companies achieve somewhere in the region of c.3 to 3.5%.*
- PTT fees are a combination of time, transaction volumes & any special factors. PTT has been able to hold fees at levels significantly below bonding costs arising from the ratios above. Furthermore, PTT's Fees are a known from year to year; the cost of the Trustee service and operation are not subject to material changes. For bonding, there are annual applications which are subject to risk assessment by the CAA and Insurers – both bond levels and premiums are reset each year leading to uncertainty and concern at the time of renewal. With ATOL Trusts the CAA generally renew most without too much difficulty, in the knowledge their risk is being well managed by Trustees they know and understand.
- Premiums payable upfront or if monthly, subject to borrowing costs. Trustee fees are due monthly.
- Cash balances are now attracting increasing rates of deposit interest. This interest can partly or totally offset the cost of operating ATOL Trusts.

4. On the issue of the size of the ATOL holder, should smaller ATOL holders (up to a certain size limit) be entitled to operate segregation in a way which is proportionate to their size and the risk they pose to the ATTF (for example a client account with appropriate level of third-party oversight)? Please explain your views along with what, if any, size limit should be set, and what other corresponding requirements such as bonding or APC might be required.

The concern of the smaller ATOL holder would be both the cost and effort required managing such transactions and data. These are readily addressed by the systems operated by PTT.

Such a model is both flexible and transparent in that Stakeholders have full access to reconciled transactional data.

5. As set out in paragraph 3.8, Accredited Bodies and Franchise Arrangements provide options for smaller businesses and smaller ATOL holders to operate within a framework overseen by a third party. Do you consider that it is a viable option now (or in the future) for all smaller businesses/ATOL holders to be required to be a member of an Accredited Body or Franchise?

PTT has worked well with the major Accredited Bodies and Franchise Arrangements since 2013. This model works and particularly through the difficult times experienced over the Covid period.

These bodies and arrangements have provided invaluable support to the smaller ATOL holders who would otherwise have had to develop and maintain their own systems.

PTT agrees that Accredited Bodies and Franchise arrangements play a valuable role in supporting the smaller ATOL holders – these ATOL holders receive a whole suite of services from these bodies.

So far as managing ATOL responsibilities, PTT's ability to provide access to data at a granular level, and the reconciliation capabilities of its systems, has proved its worth and we believe is valued by all clients including Accredited Bodies and Franchise Arrangements.

6. Should the CAA consider general prepayments made by an ATOL holder to secure commitment volume (whether air, accommodation or other travel services) in the same way as specific prepayments required to secure an airline seat, accommodation or other travel service component for an individual booking? Please explain your views.

If there was no requirement for protection of such prepayments then the CAA would have to decide upon the level of risk it is willing to underwrite by way of the ATT in respect of each licence holder. There is precedent for this under the Escrow trust arrangements which the CAA have agreed to for various Trust ATOL licence holders.

For PTT, this requirement only further endorses the operation of hybrid ATOL trusts where the Insurer would underwrite prepayments – these might comprise a judicious mix of trusts monies released in advance and use of working capital. The Trustee would be instrumental in sharing granular data and pertinent information with the insurers to help manage the insurers risk exposure. .

Travel suppliers receiving such advance funds can be vetted and approved in advance. The Trustee's systems should be capable of managing such releases and with any number of parameters per supplier of otherwise – data such as names, dates, days, amounts, percentages, etc.

7. Do you agree or disagree that, where there is a degree of concentration risk with a particular supplier(s), payments made to these suppliers should be considered differently? Please explain your view, including quantifying a threshold that would represent a concentration risk.

The insurance sector should be consulted more closely but in practice PTT already operates and, has in place, models (Not ATOL) where prepayments occur and in practice risk is being carefully managed.

By way of example the insurer could specify the absolute percentage of booking's funds that may be released in advance, the maximum amount by supplier and any ceiling under the policy.

Clearly with a bond it is an absolute amount and the Insurer does not require management of risk by any parameter, other than the amount released may not exceed the bond level.

8. Do you agree or disagree that payments made by ATOL holders to airlines within the same group structure (integrated groups) should be treated differently to payments made to third party suppliers? Please explain your view.

We believe payments by ATOL holders to airlines for an ATOL booking within the same group should be treated the same as ATOL bookings made using third party airlines.

This should be the case until airlines are brought under the same or similar umbrella as ATOL protection. Monies paid to airlines in general are not protected and in the event of an airline's failure it is highly unlikely the consumer will recover any advance payments unless it is say an IATA protected booking.

There are examples of flight bookings made under the protection of ATOL being refunded in the event of failure of a group, whereas consumers have not been able to recover advance payments made for direct bookings with an airline within that group.

On a general note, airlines should not be permitted to force advance payments from consumers for 100% of the value of the booking so far ahead of the date of departure. This is in our opinion an abuse of their power and leaves the risk with merchant acquirers in many cases.

9. Do you agree or disagree that payments made to other suppliers (e.g. hotels, destination management companies, cruise operators, etc) that are part of the same group structure should be treated in the same way as payments made by an ATOL holder to an airline in the same corporate group (integrated airline groups).

We believe payments by ATOL holders to other suppliers for an ATOL booking within the same group should be treated the same as ATOL bookings made using other third party suppliers.

Otherwise, there is no or limited protection.

Interaction between APC and the method of direct protection of consumer monies

10. Do you think a reduction should be applied to the rate of APC based on the degree to which each ATOL holder provides for their own risk of failure? Please provide an explanation for your answer and, if you do agree that such a discount should be applied, please explain on what basis the discount should be applied and the amount of the discount.

PTT does not have sufficient data or information to advise on the amount of the discount. That would necessarily involve complex modelling, statistical analysis and understanding the cost of past failures. The CAA will no doubt utilise the services of experts (actuaries and accountants) in preparing such risk models and then computing the amount of total funds that the ATT should hold.

There will need to be an element of carefully timing when the total value held by the ATT will be achieved as it would not be practical to achieve “100% funded” on Day 1.

It is highly desirable that there should be a higher value for baseline APC, with appropriate discounts being applied, depending upon the risk factor.

It should be borne in mind that when Covid 19 struck there was no entity that could be considered “financially sound”. We doubt many businesses would have survived without massive Government support and the creation of unsecured credit refund notes and similar instruments. Indeed, reputable financially sound businesses amongst others forced credit notes of one kind or another upon consumers since they had sufficient funds to refund consumers. Nothing illustrated better how cash collected in advance was not used in many cases to book flights, accommodation, car hire, etc.

What is absolutely clear is that ATOL Trusts being managed in a supportive manner by experienced trustees utilising high quality systems and well trained executives would pose the lowest risk to the ATT.

No other form of ATOL protection - Other than Trusts that hold 100% of funds until date of return - could ever deliver the lower risks and quality of protection afforded by Trust accounts working alongside Insurance/Bond arrangements.

11. Do you think that integrated airline groups should pay a different rate of APC to reflect the potential cost of a repatriation?

It is possible based on recent past experience of Monarch and Thomas Cook that integrated airline groups should pay a different and possibly higher rate of APC to reflect the potential cost of repatriation.

Airlines do not provide protection of such funds and so long as airlines manage to keep themselves outside the ATOL protection regime, they may logically be considered of higher risk.

Covid 19 and the experience of consumers when claiming refunds from airlines seems to also support this argument.

Additional risk-based requirements

12. Do you agree or disagree that the CAA should retain a risk-based licensing approach? Please explain your view.

We strongly agree that the CAA should operate a risk-based licensing approach and experience of ATOL failures and Covid 19 has only strengthened the need for such an approach.

This is a logical approach to managing the risk associated with consumer funds collected so far ahead of delivery of the flight, accommodation, car hire and other related travel products.

Merchant acquirers are major stakeholders and the CAA should adopt such risk-based approach to afford merchant acquirers confidence to provide acquiring facilities for obvious reasons – two such reasons being their risk under scheme chargeback rules and consumer protection legislation (Sections 75 of the Consumer Credit Act 1975), which the CAA and other organisations rely upon, and the fact that payments by credit and debit cards is the main source of booking funds for travel companies.

Such a risk-based approach would be required even if alternatives to using merchant acquirers gain traction.

13. If you agree, in the context of the different segregation options discussed in paragraph 3.4, do you think that the CAA's risk-based approach should extend to it being able to implement different methods of segregation for each ATOL holder depending on its risk assessment? Alternatively, do you consider that a method of segregation should be chosen to apply to all ATOL holders, and then the CAA could set additional requirements based on the risk assessment of that particular ATOL holder?

We refer to the paragraphs above and (1) and (2) specifically.

Simple client account segregation would be ineffective in that there would not be the quality of independent granular oversight that can be provided by trustees such as PTT.

14. If the CAA continues to operate a risk-based focus in its licensing of ATOL holders and if ATOL holders posing an increased risk are required to provide increased segregation or bonding, should the APC (banding or adjustment) be the same as another ATOL holder that voluntarily provides the same direct protection of consumer monies?

No, APC banding or adjustment should be set based on the risk posed by an ATOL holder and the form of consumer fund protection in place.

Identifying the mechanisms by which the proposed options impact stakeholders

15. As described in paragraphs 4.4 to 4.15 above, has the CAA identified the main mechanisms through which the options proposed in the first consultation will impact on stakeholders?

We agree that reliance on customer money as a source of funding working capital should be stopped and travel companies improving capitalisation of their businesses is a necessity. Covid 19 and past failures provide a great deal of empirical data and information to support that view. The ATT fund has been called upon on numerous occasions not least as bonding in place has generally been insufficient. This is certainly true of major failures.

PTT supports the establishment of hybrid Trust ATOLs involving Trusts and Bonds/Insurance permitting prepayments to suppliers under tightly controlled arrangements. The Trustee would be best placed to assist in the management of the arrangements.

PTT supports the introduction of variable APC modelling.

PTT accepts that certain strongly capitalised businesses would be able to “go it alone” and provide insurance and/or cash bonds. We question how the CAA would ever know whether the amount of the bond is sufficient with access to granular data held by a Trustee such as PTT.

16. What are your views on the risk of market exit, de-packaging and / or changes in business model of the different options for reform put forward by the CAA? What factors do you think are most likely to drive this sort of response by ATOL holders?

Risks to consumers are not mitigated and if anything increased. These do not address the issue of risk posed to the Government.

ATOL holders that do not operate under Trusts and /or Bonds are unlikely to agree to models that may deprive them of their perceived freedoms. Conversely those, for example, that have operated Trust ATOLs find significant comfort from the benefits provided by such arrangements.

17. In your view, how might consumers respond if such measures (market exit, depackaging and / or changes in business model) are taken by ATOL holders?

We are not certain that consumers fully appreciate the superior value of say an ATOL Trust and the protections afforded by the CAA’s risk management processes.

Consumers probably believe it is sufficient to pay by credit or debit cards to be protected. Merchant acquirers on the other hand object to being protection providers of last resort which is why they now look for tangible security which adds to the cost of operations for a travel business.

18. As set out in paragraphs 4.16 to 4.27 above, what are your views on the wider impacts, both constraints and benefits, that the CAA has identified for the different options for reform?

We have addressed these wider constraints in the body of our submission above where we endorse Hybrid Trust Accounts. The benefits of the Hybrid structure are, we believe, most compelling and vastly superior to any of the other options discussed in the ATOL Reform proposal. This view is derived from the numerous Trust and Escrow arrangements we have been operating for quite some time.

19. In your view, to what degree would it be possible to manage these constraints, for example through a staged implementation over a particular timeframe?

We believe the CAA should undertake a review of its ATOL licensees and categorise them into 3 categories of risk.

This list should then be used to define the staged implementation timeframe which should require licence holders to adopt these hybrid Trust ATOLs over 36 months. Any exceptions would have to be managed.

Variable APC should be introduced as soon as possible and adjusted to benefit licence holders as they migrate to the hybrid Trust ATOLs

CAA's consumer research

20. Are you aware of any other research that can provide insights into consumers' attitudes towards insolvency protection? In particular how consumers view and value insolvency protection when purchasing a holiday and their expectations on the financial resilience of the travel companies they book with.

No research known to PTT other than the understanding of the degree of reliance placed upon Credit and Debit cards.

But PTT has 10 years' experience of operating travel trusts and the writer of this submission has nearly 23 years' experience of operating travel trusts. PTT's team operates travel trusts supported by IT systems that are unrivalled in this industry

21. Do you agree or disagree with the CAA's view that, although the research revealed that there is little indication that most consumers spontaneously think about how travel companies finance their operation, this attitude is very strongly underpinned by the belief that their chosen holiday company has the financial resources available to deliver their holiday?

PTT accepts the CAA's view but is not able to comment further.

Anecdotally the consumer became aware how fragile their travel company was when Covid 19 struck and no entity could be considered "financially sound". We doubt many businesses would have survived without massive Government support and the creation of unsecured credit refund notes and similar instruments. Indeed reputable financially sound businesses amongst others forced credit notes of one kind or another upon consumers since they had sufficient funds to refund consumers. Nothing illustrated better how cash collected in advance was not used in many cases to books flights, accommodation, car hire, etc.

22. Do you agree or disagree that it is a reasonable expectation on the part of consumers that travel companies should have in place their own financial contingencies and practices to be able to deliver consumers' holidays, without consumers knowing, or needing to know, what these practices are in detail?

We believe this is a reasonable expectation.

Such expectations probably ebb and flow based on personal experience of failures, how the press reports these risks; such anxiety would have been at its greatest during Covid 19 when consumers were issued unsecured credit refund notes and try as they might their travel companies would not return their money on a timely basis or at all – not that they could in many cases having used those funds!

Consumers, if they were able to, probably are not too interested in understanding travel law in this context – some know what ATOL does but also rely on being protected because they paid for their product using a debit or credit card.

Review of APC

23. What practical barriers do you see to the implementation of a variable APC based on the findings of the review?

The modelling of the tiers will need to be carefully managed to ensure the model is fair and transparent. Travel companies will need to understand why they are in a band and what they need to do to get into a better band.

24. Are there any additional factors that you consider should be used to calculate a variable rate APC? If so, please explain which factors and why.

This will be a combination of modelling by experts and balancing with practical steps.

25. Alternatively, with reference to the three factors identified through the review (the size of ATOL holder, the average cost of trips sold, and its financial leverage), do you think that any of these factors should not be included in the calculation of a variable rate APC? If so, please explain which factors and why.

In addition to the factors identified through the review, the CAA should also consider:

- The quality of management
- Systems
- Any special financial matters such as the need to pay in advance and invest in securing product and its market (seasonal factors, long or short haul, etc).

The modelling framework for the CAA's impact analysis financial model

26. As set out in paragraphs 4.46 to 4.49 above, do you think the impact assessment financial model incorporates the main elements and criteria necessary for assessing the impacts on ATOL holders of each option? If not, please explain why, and please provide details of any different or additional elements or criteria you consider the CAA should be using, including how these should be defined.

The modelling looks to be sound other than we believe (1) the impact of cash outflows as a result of Covid 19 should have been taken into account; (2) the quantum of refund credit notes and (3) support received from Covid 19 loans. These three items would have been instrumental in identifying the state of balance sheets and utilisation of working capital.

Mandatory options

27. Do you agree or disagree with the outputs of the CAA's impact analysis financial model as set out in paragraphs 5.3 to 5.8? If you disagree, please explain why.

This section only serves to highlight that a balanced protection mechanism using hybrid of trust and bonding/insurance can provide the optimum arrangement that should satisfy stakeholders and varying size of businesses.

Paragraphs 5.6 to 5.9 make very important points:

- "...the segregation options are shown to be generally more favourable than bonding..."

- “...the negative impact on cost and liquidity of the bonding option is shown to be generally greater than the segregation options for equivalent levels of protection...”
- “...in practice bonding can lead to periods....over or under collateralising...”
- “....the segregation options appear to be more favourable...than the bonding option...”

Experience suggests that bonding has proved to provide adequate security on many occasions.

28. With reference to paragraph 5.10, do you agree or disagree with the CAA’s assessment of how the wider factors apply when comparing the segregation and bonding options? If you disagree, please explain why.

This section is accurate and clearly spells out the very significant challenges faced when the bonding option is selected and the reticence of insurers. The same challenges and uncertainty of being able to secure bonding is a worrisome challenge each year at renewal.

That does not even address the inadequacy of bonding and the fact that an ATOL holder would have to fail before the ATT can access those funds in a situation such as Covid 19.

PTT was able to assist in supporting very high levels of refunds during Covid 19 and whenever a Trust operating Tour Operator issued Refund Credit Notes these would generally have been backed – indirectly – by funds held in Trust. Refund Credit Notes issued by those operating with Bonds were unsecured

29. If you consider that the CAA should conduct further work on bonding as a mandatory option to apply uniformly across all ATOL holders, please explain why and please provide details on the research and analysis that you consider the CAA should undertake.

The CAA has no control over the Insurance market so it is difficult to see how the Bond market capacity can be increased.

Insurers too must look at adequacy of working capital maintained by a business to fund activity without resorting to using consumer funds collected in advance.

Quite to the contrary, in our experience, insurers and (merchant acquirers) see great merit in a hybrid trust arrangement such as those offered by PTT.

As noted above, the CAA solvency tests are very strict, the ratio of bonding for licensable turnover and premiums charged by insurers are significant and cause significant issues each year. Covid 19 has only made this situation more difficult.

Tailored options

30. Do you agree or disagree with the CAA’s minded to view to focus its further work on tailored options on developing a hybrid approach – i.e., where bonds and other financial products are be used as additional measures to enhance the protection of customer monies alongside a form of segregation?

Yes, and our views noted above are based on real life experiences of operating such hybrid arrangements (non ATOL Trusts). PTT works closely with the Travel companies and Insurers in particular.

Trustees should provide and report granular data, other relevant information and daily reconciliation of funds. Effectively the capability to monitor risk.

If you disagree with the CAA's minded to view, please explain why and how you consider the tailored option should be developed further.

We agree

If you agree with the CAA's minded to view, please explain how you think a hybrid approach should work. In particular, please explain which form of segregation (trust, escrow, or client account) would work best under such an approach.

We support trust and escrow for reasons noted above in Question 1. PTT does not support client accounts for reasons note above in Question 2.

Pipeline monies

31. In light of the issues raised in this document and, in particular, the views expressed by the CAA in this chapter on those options for reform where it is minded to focus its work further, what are your views on how pipeline monies should be treated?

Pipeline monies should be treated with the same degree of attention and management as required by the CAA in its management of risk for ATOL Holders

Pipeline monies are consumer funds and the ATOL holder carries the ultimate risk.

Here too, Travel Agents can and do use such funds for Working Capital requirements.

Such funds can also be managed and administered by trustees such as PTT.

32. Do you consider that agents should be subject to the same requirements as ATOL holders in terms of protecting customer monies, or do you think there should be a different set of requirements specifically designed for agents and pipeline monies? Please explain your view.

Yes, particularly in relation to managing consumer funds that belong to ATOL Holders.

Where agents operate non flight protection mechanisms with bonds, the bodies that oversee them have not been particularly effective in their management as evidenced by the failures they have had to contend with – by way of example there was the failure of a major cruise company that cost their regulator a not insignificant sum of money and impacted their balance sheet. That regulator has had to change its formulation of licencing costs significantly and takes a much more stringent in assessment of risk.

Most bodies try to pass on the costs of failure onto merchant acquirers as a first resort.

We do not make these comments to be critical but just stating the facts and in particular the unbelievable impact of Covid 19 and the reticence of insurers and merchant acquirers to reduce their risk quotient.

33. Given that the scope of the CAA's regulatory oversight does not extend to agents directly, in your view how could the implementation of any such requirements be achieved?

CAA is best placed to advise under its regulatory oversight powers although we do believe the quicker Agents are brought into the protection regime, the better.