



Protecting the Travel Consumer

**The Transport Select Committee
Inquiry into proposed reforms to
the Air Tour Organisers' Licence**

The Consumer Perspective 2012

19 January 2012

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ACKNOWLEDGEMENT

It is 7 years since the death of our Founder, Brenda Wall. Her outstanding determination and courage, led to a new dialogue between the Consumer and The Travel Industry. Such dialogue has created a greater awareness of corporate behaviour and the need for Consumer Protections that benefit both the Consumer and The Travel Industry.

At a time of great flux, never has there been a greater need for the continuation of her life's work and a wider recognition of the suffering of Travel Consumers from all over Europe!

INTRODUCTION TO HOLIDAYTRAVELWATCH

The UK Transport Select Committee has called for evidence on the issue of updating the Regulatory Framework for ATOL Financial Protection. This Inquiry follows on from the review by the CAA on the 'Consumer Objective in 2010, the EU Commission's review of Air Passenger Rights and the Package Travel Directive in 2010 and the Department for Transport Consultation of the future of the ATOL scheme. HolidayTravelWatch (HTW) provides its opinions through this report, based upon the relevant consumer opinion and its principal experience of EU Directives.

HolidayTravelWatch is British based consumers organisation founded in 1995. Through 16 years of operation, it has provided information, advice and assistance to over 220,000 holidaymakers, through its dedicated helpline and website. This should however be put into context with the 65,000,000 individual trips taken by British Citizens in 2005¹. It suggests that HTW only receives a small proportion of all complaints, however, these holiday complaints tend to reflect the more serious element of contractual, illness and injury difficulties faced by the consumer. HolidayTravelWatch is entered onto the EU Transparency Register – ID Number – 63992152960-12². The Organisation has developed its service to Consumers and currently provides information and advice, assisting some 90% of all travel consumers who contact HTW, to find a resolution to their travel complaint. Through its years of operation, the remaining complainants have been given the opportunity to progress toward litigation, through travel law specialists. It is estimated that in 16 years; more than 70,000 holidaymakers have received such legal assistance, and have achieved in excess of £20,000,000 in compensation for their holiday complaints, holiday illness and injuries. This report will update and cite the relevant experience of this Organisation and the Travel Consumer, in support of its conclusions.

¹ Lord Treisman – FCO Reception March 2006

² <https://webgate.ec.europa.eu/transparency/reg/in/consultation/displaylobbyist.do?id=63992152960-12>

Comment to the Transport Select Committee

We attach the report submitted by HTW, on the issue of ATOL reform, sent to the Department for Transport in September 2011.

The Committee will note that whilst HTW expresses serious concern on the 'updating' of the ATOL scheme, it nonetheless remains supportive of a scheme that is workable, fair and supportive of both the Consumer and the Travel Industry.

In our view there is a serious miscalculation being made in the proposed restructuring of the scheme; the principal error being that before any changes are made, the Department for Transport should at least wait for the anticipated draft of the new Package Travel Directive.

That draft is expected to be published during the early part of 2012; early indications reveal that the EU Commission will deal with the expansion of current financial protection issues contained within the Directive.

The second principal reason why there should be no rush to update the current ATOL scheme rests in the fact that the new Package Travel Directive is expected to offer a new and broader definition of what constitutes a Package Holiday.

The Committee will note that the Civil Aviation Authority (CAA) have suffered several defeats before the UK courts on the question of what constitutes a Package by reference to membership of the ATOL scheme.

The subsequent effect of these 'failures' have led to confusion within the market place, in particular for Consumers, who suffer serious consequences when pursuing contractual, injury or accident claims; **the Committee should not underestimate the importance of this aspect of the debate!**

Within our commentary to the Department for Transport, we highlighted several areas of concern:

1. The preamble to the Department for Transport's Consultation laid out a number of propositions which in our view present extending dangers to Consumers in this 'battle' of what constitutes a 'Package';
2. Within their 'Short Term Reform' proposals, it was clear that there is an attempt to introduce a definition of 'FlightPlus' "that may closely resemble 'package Holidays' but fall outside the legal definition";
3. The introduction of an 'Agent for the Consumer' category which it was suggested may fall outside the ATOL scheme and perhaps the definition of what constitutes a 'Package';
4. A heavy reliance on the Consumer Protection from Unfair Trading Regulations 2008; we have commented that following the introduction of this law, it is disappointing to note that little has apparently been done to enforce Travel Consumer rights using its provisions – we do not share the Department for Transport's optimism on this point;
5. We are concerned by the preamble to the Consultation which suggests that the reform's should deliver 'lower' costs to the Travel Industry and appears not to recognise that it is the Consumer that pays for their ATOL cover. The Consultation failed to acknowledge the additional costs suffered by Consumers when a company fails, such as, extra telephone costs, travel costs, bank charges and the cost of time in dealing with a poor response to an application for a refund from the ATOL fund;
6. The Consultation failed to deal with the real issue at the heart of this debate that is whether a company or an individual are fit to trade. Given that there is much debate about corporate behaviour and responsibility, surely this is an area ripe for consideration?
7. Prior to the Consultation we commented on the issue of how to deal with restoring the Consumer's faith in the Travel Industry, we suggested that the following should be incorporated into law:

- a. **That all person(s) operating a travel company are fit and proper persons;**
 - b. **That all those operating travel companies undergo a criminal record and ‘viability’ check before they operate;**
 - c. **That those operating travel companies have relevant experience;**
 - d. **That those operating travel companies have relevant professional qualifications;**
 - e. **That those companies state clearly and openly their willingness to abide by and operate within regulatory environments;**
 - f. **That there are clear statements about the handling of client monies and that the Consumer can see the ‘trail’ of how their money is kept;**
 - g. **That those operating travel companies are required to become members of travel trade bodies;**
 - h. **That those travel trade bodies and their members are subject to independent scrutiny/on the spot checks, through a regulatory environment;**
 - i. **That the law imposes criminal sanctions on those failing to comply with its provisions, particularly on financial issues.**
8. In our report to the Department for Transport, we asked the question of whether we were right to be concerned about these issues. We observed that:

“Yes! It is clear that the Travel Industry are welcoming the advent of the ATOL reforms because they see this as an opportunity for the Industry to by-pass the current Package Travel Regulations and ‘free’ the products and perhaps market in which they are sold.

In the Travel Law Quarterly (July 2011 – Volume 3 – Issue 3), Peter Stewart offers the following comment on the proposed Flight-Plus reforms:

“The architects of Flight-Plus deserve considerable praise. They have set out to extend the ATOL scheme to multiple travel products, including flights, booked contemporaneously and to make obvious avoidance steps difficult to achieve. In the main they have succeeded. Praise is also due for finally lifting the blinkers off the CAA’s eyes – the blinkers being the manic, and misguided, obsession that the contemporaneous sale of more than one travel product must be a package, as defined in the Package Travel Regulations. What Flight-Pus also does – perhaps inevitably – is to expose the fallacy that the ATOL footprint could not be extended without primary legislation. The dogged retention of this fallacy, and the CAA’s blinkered approach to the package issue, have cost tax-payers many millions and created many years of delay in reform of the ATOL scheme”

These comments encapsulate the myth that DIY holidays sit outside the current Regulations and therefore deserve separate consideration and treatment. We consider that the balance of this Consultation to reflect this camp and fails to deal with the reality of what Consumers actually experience. We believe that such opinions are a recipe for further disasters, to be yet visited upon the Consumer and by default, their role as tax-payers!”

9. In support of our views, we have drawn parallels in the Department for Transport’s proposals, with some of the provisions contained within the UK Package Travel Regulations (obligations, liabilities etc). We would suggest that the Committee read our responses to the Consultation’s questions which demonstrate these facts, particularly on the issues of:
 - a. Definitions;
 - b. The Package Holiday issue and the potential for it to create greater difficulty in the operation of Consumer Laws and Rights;
 - c. Agent for the Consumer;
 - d. Questions of repatriation and who pays what;
 - e. The growing suggestion that the Consumer should insure against

failures when the real issue is whether a company or individual is fit to trade;

- f. Flight only sales and the thorny issue of bringing airlines into a new scheme;
- g. The poor method and management of the application process for refunds.

10. To demonstrate the point of the difficulties faced by Consumers on the issue of what constitutes a 'Package', we would suggest that the Committee refer to the case of *Titshall v Querty Travel* (Court of Appeal 2011). This case demonstrates the difficulties faced by Consumers. The Consumer was successful in their argument that what was sold to them was a Package and therefore they should be able to enjoy the protections of the Package Travel Regulations - <http://tinyurl.com/7dxwp7x> **The Committee must recognise that any attempt to follow these proposals will have consequences in other areas. We ask again, will these proposals lead to a greater confusion and detriment to the Consumer; in their current format, we believe that they will?**

CONCLUSION

For the sake of consistency, we again repeat our own conclusions to the Department for Transport's Consultation.

“We note with great disappointment the lack of real progress made on Consumer issues in early 2010.

This Consultation brings with it its own disappointment; the disappointment that we are looking at the creation of a new breed of Package Holiday being offered at an almost indecent haste! We are concerned that the proposals presented, without real reference and base to the current Package Travel Regulations, will bring about not only a reduced Financial Protection, but a failure of a wider Consumer Protection in the delivery of the holiday product.

Given all the financial failures suffered by Consumers, the real issue of whether a person or company are fit to trade have been completely ignored, in favour of a these proposals, which in our view, will only lead to further confusion.

We consider that it is not too late for this government to halt this present process and introduce better regulatory governance which will create a strong and confident Travel Industry”.

Frank Brehany
Consumer Director
MD – HolidayTravelWatch
19 January 2012