

# Airline Insolvency Review Call for Evidence

## Summary of stakeholder views



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# 1. Introduction

- 1.1 As part of the independent Airline Insolvency Review a Call for Evidence was launched in April 2018.
- 1.2 The objective was to give an opportunity to stakeholders and interested parties to engage with the Airline Insolvency Review at the very start of the process. The Call for Evidence formed part of the initial engagement and evidence gathering undertaken by the review team ahead of the publication of the Interim Report.
- 1.3 The review received over thirty submissions from stakeholders including airlines, the travel industry, insurance, financial and legal sectors as well as relevant trade bodies.
- 1.4 This document is a summary of some of the key themes emerging from those submissions and is not an exhaustive record. In addition to this document, all submissions from representative bodies, industry representatives and other organisations, have been published on the Airline Insolvency Review's website.

## 2. Principles and scope of the review

- 2.1 A number of key themes on the principles and scope of the review were evident in the responses from stakeholders. They included, the need for a review, the role of airlines, impacts on consumers, and which passengers should be covered by the review.

### Need for the review

- 2.2 Most respondents agreed that the review was needed and timely. However, some stakeholders questioned this, pointing out that airline collapse is rare, affects relatively few passengers and that there are already a range of consumer protections in place. Moreover, some reflected that the review was a 'political' reaction to the insolvency of Monarch Airlines.

### Role of the airlines

- 2.3 Several stakeholders expressed a range of views relating to the role of the airlines and the appropriate allocation of risk, including:
- The review should avoid pursuing outcomes that add unnecessary burdens to the airline industry and risk damaging the UK's competitiveness.
  - Any proposed solution should be proportionate to the risks identified.
  - Responsibility should lie with the airlines and the burden of costs resulting from airline failure, should not be borne by taxpayer.
  - The review should consider whether it is appropriate to place all the risk on the consumer as there must also be some responsibility within the industry.

### Impact on the consumer

- 2.4 There was a view that the review must consider if any proposals could unfairly impact on specific groups of consumers.
- 2.5 There was some consensus that the review needed to both help consumers have a clearer understanding of the level of protections available to cover their travel arrangements, and also of the risks if they are not adequately protected.
- 2.6 Some stakeholders acknowledged that the current arrangements are complex and that consumers can experience difficulties in assessing and understanding the risks when making travel decisions. Moreover, any recommendation needed to result in a system which was easy to understand, where consumers could make informed decisions based on clear information.

## Which passengers should be covered by the review

- 2.7 While some stakeholders supported the suggestion that all UK-originating air passengers should be protected, some queried how the definition of UK-originating air passengers would be applied. Care would be needed over the definition of UK-originating to ensure measures would cover those passengers the Review wanted to be covered, given the complex travel arrangements consumers often make.

## 3. Practical solutions

3.1 Stakeholders offered a range of practical solutions that the review should consider. These included, but were not limited to:

- self-repatriation and airline 'rescue fares';
- a greater role for the Civil Aviation Authority (CAA) and the various regulatory regimes;
- improved passenger awareness; and
- measures to ensure an orderly wind down.

### Self-repatriation and rescue fares

3.2 There were divergent views on the potential role of self-repatriation and rescue fares. Some stakeholders believed that self-repatriation and or rescue fares are not certain enough to give consumers confidence, or scalable to deal with large failures. While others, viewed self-repatriation and or rescue fares as efficient solutions, which have already been demonstrated to be effective in responding to some failures. There was, however, a general consensus that the review should look at the evidence of the effectiveness of these.

### Role of the Civil Aviation Authority

3.3 A number of stakeholders identified the CAA as the best placed organisation to facilitate and manage any repatriation given its proven track record with Monarch Airlines. Pointing out that the CAA's ability to plan and prepare for Monarch's insolvency, helped minimise passenger delays and distress, and associated costs.

3.4 However other stakeholders questioned whether the CAA has adequate processes in place, calling for them to act earlier and improve oversight and monitoring of airlines.

### Improved passenger awareness

3.5 Stakeholders saw improved consumer awareness as a key part of any future practical solutions to airline insolvency. In particular, some made the case for greater clarity and a simpler system that would enable the travelling public to have an improved understanding of their options. Such an approach would be an improvement on the current arrangements which are seen as complex, not comprehensive and often misunderstood by passengers.

## Different solutions for different airlines

- 3.6 There was an acknowledgement that there would need to be different solutions depending on the size and ownership of the insolvent airline. For example, a small non-UK registered airline would need a different set of arrangements to a large airline operating across and with licences from several jurisdictions.

## Orderly wind-down

- 3.7 There was wide support among stakeholders for the Review to look at the role that an 'orderly wind-down' could play in tackling airline insolvency. In addition there was a broad recognition that allowing an insolvent airline to continue to operate for a limited period of time could mitigate disruption and cost to both consumers and taxpayers.
- 3.8 However, while supporting the idea of 'orderly wind-down' some stakeholders also questioned whether it was a viable option given the significant operational, legal, financial and regulatory risks involved in flying an insolvent airline. Additionally, the point was made that where 'orderly wind-down' has been successfully used in the past, for example in the case of Air Berlin, a key factor was the availability of a significant amount of funding, often from Government, to underpin the process.



## 4. Financial

- 4.1 A significant number of stakeholders touched on the financial issues involved in consumer protection against airline insolvency. This included:
- the impact on the market of any reforms;
  - the role of the current insurance products e.g. Scheduled Airline Failure Insurance (SAFI);;
  - mandatory travel insurance; and
  - the creation of a levy specifically to cover airline insolvency.

### Impact on the market

- 4.2 Some stakeholders were concerned with the impact that any new additional financial arrangement to deal with airline insolvency could have on the market. Their reservations were related to two broad areas. Firstly, that any new additional financial arrangement, for example a requirement for airlines to have insurance, could lead to market distortions. Secondly, that any new arrangement could penalise smaller airlines, as larger airlines may be able to negotiate better deals with the financial services sector.

### Scheduled Airline Failure Insurance (SAFI)

- 4.3 Several stakeholders commented on the existing provision of Scheduled Airline Failure Insurance. There were a range of views but most stakeholders who commented on SAFI did not see it as a viable option for extension or improvement. Many felt there was unlikely to be enough capacity in the market to provide sufficient cover if extended, even if it was made compulsory. Additionally, the point was made that some felt that insurers were able to unilaterally withdraw or change the terms of insurance under SAFI, which could have a significant impact on airlines and their consumers.

### Mandatory travel insurance

- 4.4 Some stakeholders believe that mandating personal travel insurance for all passengers is the most equitable way forward and should therefore be a key part of the solution. Others thought that mandating airlines to provide consumer protection against their own insolvency as part of the ticket was an option worth exploring. Views were split as to the efficacy of either approach and many questioned the impact mandatory schemes would have both on ticket prices and the operation of the market for air transport.

## Introduction of a levy

- 4.5 Many stakeholders had views on the introduction a 'levy' which would be specifically used to create a fund, ring-fenced for use in the event of an airline insolvency. There were a range of opinions both for and against the introduction of such a levy. Points put forward included:
- an all-flight levy is unwarranted and unusual compared with other industries;
  - current protections for card purchases are adequate and make a levy unnecessary;
  - a flat rate levy would entail cross-subsidisation;
  - difficult to know how a levy on UK departures would be used in the event of the insolvency of a non-UK registered carrier;
  - spreading costs across all passengers will mean a levy can be quite low;
  - it would take time to capitalise a fund and therefore may need interim government funding if a failure occurs before the fund is of a suitable size; and
  - consideration is needed as to how a levy would align or overlap with existing protections.

## Credit and debit card protections

- 4.6 Some respondents made the point that relying on existing payment card protections such as 'charge-back' schemes and the Consumer Credit Act is not a complete solution. In particular some felt that the restrictions to personal loss meant that many passengers with credit card bookings mistakenly felt they were protected by Section 75 of the Consumer Credit Act when they were not. Many felt that the lack of cover for consequential losses in 'charge-back' schemes meant that they were unsuited to protecting passengers that needed repatriation, where costs could exceed that of the original ticket by some margin.

## 5. Wider reform

- 5.1 Several stakeholders also raised a number of points relating to wider reform. These included the role of the Air Travel Organiser's Licence (ATOL), reforms to insolvency law and issues around airlines financial fitness and bankruptcy.

### Role of ATOL

- 5.2 A few respondents expressed views about changing and or expanding the role of ATOL. Some noted that ATOL had dealt effectively with passenger repatriation in small tour operator failure. These arrangements had worked well and therefore could be left intact to deal with future failures in these categories. Some supported the idea of an expanded role for ATOL, for example, extending ATOL protection to all flight-only passengers departing from and arriving in the UK. While others saw the case for wider reform such as a single travel regulator to ensure equity in provision of insolvency protection across different segments of the market for travel.

### Changes to insolvency laws

- 5.3 Stakeholders also raised issues around insolvency law. Some asked for the review to look at the case for changing insolvency law or actively supported changes to the current UK insolvency regime if the review was to recommend an 'orderly wind-down' concept. However, other stakeholders viewed reform of insolvency law as unlikely to be useful due to the multiplicity of creditors and jurisdictions that would be affected by an insolvency of an airline carrying UK originating passengers.