

Airlines UK response to the Airline Insolvency Review: a call for evidence

May 2018

1. Introduction

2. Airlines UK is the trade association for UK airlines. Our members are British Airways, CargoLogicAir, DHL, easyJet, Flybe, Jet2.com, Norwegian Air UK, Ryanair, Thomas Cook, TUI Airways, Titan Airways, Virgin Atlantic and West Atlantic. In 2017, Airlines UK members employed in excess of 90,000 people, served over 276 million passengers and carried around 1.2 million tonnes of cargo.
3. We welcome the opportunity to submit our views to this initial call for evidence, and the commitment by the review team to consider carefully input from affected industries, including the airlines sector.
4. Given the complexity of the issues under consideration, and the short deadline for initial input, this paper does not seek to provide a detailed or definitive set of answers to the questions raised or options proposed within the call for evidence.
5. Rather, it sets out an initial set of views that we believe should inform any approach to addressing the issues surrounding airline insolvency, emphasising the importance of seeking outcomes that are fair, proportionate, and which deliver confidence to the consumer that they are protected should things go wrong.
6. This response has been prepared with input from the members of Airlines UK and agreed by them.

7. First thoughts

8. We understand the desire to review the protections afforded to the consumer in the event of airline insolvency, not least given the recent high profile collapse of Monarch Airlines and the proactive role undertaken by government and the Civil Aviation Authority in coming to the assistance of holiday makers who were stranded abroad.
9. It is important, nonetheless, to recognise that incidents of airline insolvency remain extremely rare. European Commission figures¹ highlighted by the International Air Transport Association show that between 2011 and 2020 only 0.07% of flight-only (as opposed to package travel) passengers would be affected by air carrier insolvency. Of those affected, just 12% (or 0.0084% of the total number) would be stranded abroad and need repatriation.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0129&from=EN>

10. Whilst not seeking to underplay the impact on affected passengers of their air carrier becoming insolvent, we believe it is important to highlight these figures as well as the point recognised within the call for evidence that incidents can and do vary considerably in their circumstances and scale, and that a range of protections are currently in place (including Scheduled Airline Failure Insurance products and S75 protection under the Consumer Credit Act).
11. This, we believe, speaks to the importance of any proposed solution or set of solutions resulting from this process being proportionate to the risk/s identified, and not causing regulatory overreach by seeking absolute certainty against any outcome or event, however unlikely (i.e. the maxim 'hard cases make bad law').
12. **Risks of a levy** - With the above in mind, and whilst recognising the aim of avoiding the 'moral hazard' of a system where airline operators work under an implicit taxpayer guarantee, approaches should not transfer these liabilities - i.e. subsidising the activity of riskier airlines - onto financially prudent, solvent airlines instead, which already operate under some of the highest levels of aviation taxation in the world.
13. Such an outcome would, we anticipate, be one practical consequence of any form of mandatory, universal levy (e.g. paid by airlines on each ticket sold). This would both fail to address the underlying moral hazard, and no other economic sector of activity is under such a collective obligation to protect its customers in case of a bankruptcy by one of its individual operators.
14. Whilst a levy would risk market distortion, there are also practical questions about how it would, or could, be used. For example, if intended to capitalise a fund to assist an insolvent airline to operate through administration, it is not apparent how this would apply in the event of the insolvency of a non-UK registered carrier, who in many cases carry a large number of UK customers, many of whom could require repatriation.
15. Going forward, we believe that several areas have greater potential to produce, individually or collectively, outcomes that might better deliver consumer confidence and choice, without the risk of distorting a competitive market. These include improved oversight of, and earlier intervention against, 'at risk' airlines by the Civil Aviation Authority; better consumer awareness of the risks and protections available to them, and; reforms to the insurance market.
16. **Improved oversight** - Notwithstanding the legal and financial challenges highlighted within the call for evidence, we recognise the potential benefits - not least practical - of enabling an airline to wind down in an orderly fashion as a means to prevent the need for a logistically challenging repatriation effort (particularly at peak season when the availability of alternative aircraft capacity will be limited). Ultimately, when it comes to repatriation, prevention is better than cure.

17. We encourage the review to explore possible avenues through the licensing regime to enable an orderly wind down, including whether and how regulators might intervene earlier or require that passenger funds are handled differently when an airline is at risk of insolvency.
18. The latter course might also help address one of the practical difficulties of enabling an orderly wind down, namely how to generate sufficient financial resources to facilitate it, whilst minimising the aforementioned risk of market distortion and unfairness that a levy option would entail.
19. **Insurance and passenger awareness** - The call for evidence highlights the role of passenger insurance against airline failure, available today to both passengers and businesses. Clearly, a situation in which the insurance market provided all travellers from the UK with affordable, tailored cover against airline failure would go a long way towards providing confidence against a range of insolvency situations.
20. Currently, UK nationals are responsible for ensuring they are able to cover the costs of any medical treatment incurred abroad, and are strongly advised to purchase discretionary travel insurance. The UK government highlights on its GOV.UK website the example of the circa £25k cost to an uninsured traveller from the UK of a moped accident in Greece requiring surgery and repatriation. We urge the review to explore how insurance models, particularly passenger insurance models, might work to address the risks of airline failure by giving choice to the consumer, either comprehensively or flexibly (e.g. addressing financial loss, repatriation, or both).
21. Any outcome/s must bring clarity and confidence to air passengers about their responsibilities, and the protections available to cover their travel arrangements. The review might, consequently, also consider the case for research into ways to counter incidents of poor risk management, for example via improved messaging at the time of booking and/or shortly before departure.
22. The review rightly highlights that there are no easy solutions to addressing what is a complex issue, for which identifying who should carry what burden, or bear what risk and under what circumstances, is not a simple equation. It is crucial, nonetheless, that the review avoids pursuing outcomes that add unnecessary burdens on the airline industry and risk damaging the UK's competitiveness.
23. We look forward to constructive engagement with the review process, not least about how areas highlighted (e.g. oversight, awareness and insurance) might form the basis of a basket of measures to address, proportionately, risks associated with airline insolvency and deliver improved consumer confidence.
24. We note, finally, that the insolvency of a cargo airline raises a different set of issues but which would not, ordinarily, affect passengers and so should not fall under the scope of this review.

25. For further information please contact

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