

## **BAR UK response to call for evidence DfT – Airline Insolvency Review**

On behalf of its members, BAR UK is pleased to present its written response to the DfT call for evidence in respect of the Airline Insolvency Review.

BAR UK is an airline trade organisation representing 70 scheduled network airline brands undertaking business in the UK. Our airline members mainly operate into Heathrow, Gatwick, and Manchester, with a smaller proportion also operating across regional UK airports.

The following is our initial high level response to the main themes and principles within the call for evidence document and we welcome additional engagement, and participation at working sessions, in order to evaluate the various options and potential solutions presented for further analysis. Thus we do not currently have a final position on any changes to the current framework.

### **The issue and terms of reference**

Airlines recognise the value of the UK Government conducting this review as a means to seek and evaluate more effective ways to protect the travelling public, and to improve clarity over risks and financial responsibility in the event of an airline insolvency.

The call for evidence outlines four principles that we broadly agree with:

1. **The beneficiary pays for protection.** This will require a careful balancing of the level of risk covered and the affordability of protection. The corollary of this principle is that the taxpayer's exposure should be minimised or removed.
2. **Efficient allocation of risk.** The risks for passengers should be allocated to those best placed to manage and control them, whilst avoiding duplication where possible.
3. **Minimisation of market distortions.** Constraints on the competitiveness and size of the UK aviation market should be minimised and UK registered airlines should not be put at a competitive disadvantage vis-à-vis international competitors.
4. **Simplicity for passengers.** Passengers should understand the protection available and be able to identify which risks are covered, and to what level. In addition, passengers should be compensated in a timely and efficient manner: being brought home and compensated quickly.

Whilst we support evaluation of how the beneficiary can best fund a level of protection, BAR UK airlines wish to avoid implementing further regulation, or the creation of a new levy on airline passengers. We have identified a primary concern that potential proposals could instead create unintended consequences by layering additional costs on passengers and wrongly allocating risks. Avoiding duplication, and adding further costs and complexity, must remain primary considerations, given the historically limited number of airline insolvencies throughout the UK and Europe that have caused significant negative passenger impacts.

We support the objective to minimise market distortion, however, it is vital to recognise that foreign airlines, that tend to carry fewer UK passengers, are covered by a completely different set of bankruptcy processes and procedures – as witnessed with Air Berlin. In the context of 'proportionality', non-UK passengers booked on foreign airlines would not be subject to UK repatriation efforts, nor would they benefit from any UK fund or levy.

We therefore believe that it would be wholly disproportionate, and a serious misallocation of risk, to charge a foreign national booked with a foreign airline any form of UK levy.

Finally, with regard to efficient allocation of risk, the principles should not penalize financially sound airlines in the interest of protecting riskier operations.

### **Current airline position**

The scope of the issue has come under particular scrutiny following the recent failures of Monarch and Air Berlin, however, it is important to emphasize the circumstances that this 'call for evidence' is seeking to address – the case of airline failure are extremely rare as a percentage of UK passengers carried over an extended time period. Moreover, the occasions of airline failure where the carrier concerned is a UK registered carrier – and so carrying a large percentage of UK passengers, is even more so. According to a European Commission legal report, between 2011 and 2020 only 0.07% of airline flight only passengers are projected to be affected by airline insolvency, with only around 12% (0.0084%) of that figure stranded abroad and in need of repatriation. It is also notable that not all airline failures lead to mass hardship or Government intervention.

BAR UK believes that it is important to differentiate between major crises like Monarch serving many primarily leisure destinations; and the impact of some non-UK airline failures which have in practice been relatively minor with no Government intervention as a result of small numbers of passengers, and operating destinations served by other carriers. For example, when Cyprus Airways failed the rescue fares offered by other airlines were sufficient for repatriation and rebooking of future travel.

Furthermore, the CAA, as UK Regulator of Carrier Operating Permits, has a duty to ensure the financial, safety and operational health of all air carriers serving the UK. We believe that the Monarch case raises questions over whether the CAA has the information or adequate process in place to act in an effective manner where it becomes apparent that a carrier is at risk of insolvency. With hindsight, it appears that the CAA was aware of the financial situation and risks of a failure of Monarch long in advance of its eventual collapse. It is important to airlines and passengers that risks, and associated costs, from high risk operations are not transferred to low risk operations.

We also wish to point out that all airline passengers over the age of 16 years departing the UK are charged Air Passenger Duty (APD), the highest tax of its type in the world, which generates over £3.2bn per year revenues to the UK Government. Therefore, with any move towards a new fund or levy there is a substantial risk of duplicate, layered, and excessive, cost burden to passengers - many of which would already have contributed to the ATOL fund where their flight is part of a package transaction. This reinforces the importance of no layering of additional charges since it would not be acceptable for consumers to pay twice, or to pay for wrongly allocated or non-existent risks.

### **ATOL & PTD**

It is evident that the rate of risk for airline flight only passengers is fundamentally lower than the risk incurred within the package travel market, currently covered under ATOL in the UK.

Airlines have consistently stated that ATOL is not the right mechanism for allocating risks to airline flight only passengers, or as a means to insure against airline insolvency. It is also important to recognise that ATOL, and the EU Package Travel Directive (PTD), do not cover consumers who have purchased business travel. Extending an ATOL levy on flight only passengers would likely unbalance the entire ATOL mechanism, due to the significant number of new passengers brought into scope. Furthermore, any such levy would result in excessive

revenues that could not be justified. There is also significant concern over the administrative costs of operating such funding schemes.

### **Insurance**

BAR UK airlines do not support regulation that would oblige airlines to undertake mandatory insurance cover for insolvency, as being a workable solution. Instead, airlines should be able to promote insolvency protection as a differentiated consumer benefit.

We also recognise the challenges in relation to the potential use of mandatory insurance mechanisms directly to passengers to cover against airline insolvency impacts. Such a move could be considered excessive Government intervention in a working market and would require detailed input from the insurance sector and consumer groups. Airlines would not be agreeable to mandatory increased costs to consumers where benefits are not clearly demonstrable in relation to risk. It is also not clear how an insurance based solution could assist in any repatriation effort.

It is also apparent that UK consumers increasingly appear to perceive travel insurance as a form of medical insurance whilst travelling and are not making adequately informed decisions on what risk they are actually covering through their travel insurance policies. We believe that most consumers will be unaware whether their travel insurance policy is inclusive of Scheduled Airline Failure (SAFI), particularly the significant number who now purchase annual multi-trip policies.

Furthermore, airlines are already experiencing that where a service delivery failing occurs, such as damaged or missing baggage, then a high proportion of passengers will claim directly against the airline even where travel insurance is held. This is also evident with EC261/2004 consumer protection for cancellations, delays, and duty of care, which has also undermined the perceived importance of travel insurance to UK consumers.

Clear guidance to the consumer that purchasing comprehensive Travel insurance – that should include SAFI, should be considered as a potential solution.

### **Card Payments**

The Section 75 of the Consumer Credit Act 1974 is a useful supplementary protection but in isolation does not provide the level of protection to meet the objectives of the review.

### **IATA rescue fares**

The IATA rescue fare package is a positive industry innovation to help mitigate impacts to passengers in the unlikely event of an airline insolvency. The IATA initiative is supported by the industry as a working example of voluntary action in place of regulation, being a well-established public policy tool in many sectors.

### **IATA BSP system**

We support detailed engagement with IATA with regard to mechanisms whereby the IATA BSP may be able to reimburse travel agents for moneys submitted, subject to type of payment and UK insolvency law. It would seem preferable that consumers, who have paid for but not commenced travel, could receive a higher priority for refund through the BSP mechanism than potentially allowed for under company administration.

### **Repatriation of UK originating passengers**

The repatriation of stranded passengers remains the principle priority for the industry and the Government. This shared objective is fundamental to the creation of the IATA rescue fares guidelines and we believe that identifying a more effective means for different repatriation scenarios should remain the principle objective of the airline insolvency review.

The well documented differences in the repatriation approach in the Air Berlin and Monarch cases demonstrate the importance of legislation in this regard. Defining the period of time needed for repatriation, and whether the airlines assets can be effectively utilised for this purpose, are fundamental questions.

If the primary objective is passenger repatriation, then it is likely that the airlines assets are best equipped to meet this objective. If the primary objective is to minimise costs to the tax payer, then other methods, or a hybrid, may be best placed to achieve this, such as a special administration vehicle or the ability for the CAA to evaluate the lowest cost option according the specific requirements.

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