

# Consumer protection: myth busting

*MPI Brokers examines the confusing landscape of consumer financial protection and what travel companies and customers should know and do.*

## Protecting holiday (trip) deposits

Under the Package Travel Regulations ('PTR', derived from an EU directive in 1992) any person, firm, or association, including charities and clubs, must protect its customers' deposits (full trip costs) in one of several ways. This applies where they organise and offer for sale a holiday or trip, including sports trips, of a duration greater than 24 hours or which involves an overnight stay. This applies to all trips abroad and within the UK.

Not all travel companies or organisations are caught by this legislation and thus do not have to comply but may wish to for marketing reasons. Where a travel company or association is 'caught' by the PTR it is usually known as a tour organiser or in the UK a tour operator.

This description should not be confused with a travel agent who normally sells the trips or holidays of a tour operator, the consumer thus contracting with the latter.

## What is a Bond?

A Bond is a promise to pay a person or organisation (usually a trade body e.g. ABTA) in the event of another filing for liquidation (going bust).

A Bond can be issued by a bank or an insurance



company known as an Obligor. A Bond is not insurance (thus no insurance premium tax is levied): it is a financial guarantee and is only as secure as the financial strength of the Obligor.

Where a Bond is provided by an Obligor it is not usual for them to ask for security (property, shares, or cash) but they may require a personal guarantee from the directors or proprietor.

Banks will usually require security.

## What is ATOL?

ATOL is an Air Travel Organiser's Licence and is issued by the Civil Aviation Authority (CAA). Any

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person, company or association that provides a flight and any other element of travel (usually accommodation) as a package must obtain an ATOL. This protects customers' deposits for the whole trip paid to the travel company and is known as 'licensable turnover'.

This is not a Bond but rather is funded by a levy per passenger and held by the Air Travel Reserve Fund. However there are occasions where the CAA may require a Bond in addition to the levy. Consumers are refunded/repatriated from the fund in the event of liquidation.

## What if there is no flight?

A travel company can still offer a package if other elements of travel are arranged such as accommodation and excursions (the later forming a significant part). In this event a Bond will be obtained in favour of a trade body and is known as 'non licensable turnover'.

## What if there is no trade body?

If the travel company is not a member of a trade body or one that does not accept bonds there are two options:

- a trust account (escrow), or
- insurance in favour of the travel company's customers. The premium however must be paid by the travel company in order to comply with PTR, thus a master policy is issued. Note this is not a Bond, rather an insurance policy, and is subject to insurance premium tax.

## What if I book direct?

If you book some or all elements of a trip direct with the end supplier e.g. a flight you are 'on your own' and there is no requirement for providers to protect your deposits.

## Does my travel insurance cover this?

No. Travel insurance falls under the accident and health departments of insurance companies and as such are not permitted to underwrite financial failure. The company itself may not even have the required

licence to do so.

Some travel insurance providers (usually brokers) do however organise a separate insurance with another insurance company providing this cover provided the trip was booked in the UK.

## What about my credit card?

This can provide some comfort but it is not a Bond or insurance. The protection is provided under the Consumer Credit Act ('CCA') which makes the credit card company jointly liable for the provision of the holiday or trip. So if one fails (e.g. the tour operator) the credit card company is liable under the Act.

There are further conditions e.g. it does not apply to payments under £100 and all bookings must be made and paid for in the UK. This arrangement does not satisfy the PTR as the tour operator still has to protect its customers' deposits.

## And debit cards?

There is no protection under the CCA when using a debit card or any other form of payment.

## Is a Tour Operator responsible?

If you are offered a flight as part of a package as per the PTR and the airline (or any other supplier) goes into liquidation the liability rests with the tour operator. He must find you an alternative flight at his cost or refund the deposits. He in turn may or may not have supplier failure insurance.

## The Monarch Airlift

On 2 October 2017 the airline, Monarch, went into liquidation. While some customers were protected by an ATOL (Monarch had its own tour operator division) the majority had booked flights direct. The Government decided to repatriate all 110,000 customers regardless of other financial protections in place.

It would seem this was done for political reasons and thus on a pro-bono basis and should not be considered as a precedent or absolving tour operators from protecting customers' deposits.

**'... if you book direct, you are on your own ...'**

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