



BRIEFING PAPER

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Airline Insolvency Review

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Summary

At present there are several mechanisms that protected passengers from airline insolvency, but existing protections are incomplete. Only around 80% of UK-originating passengers have some form of protection from financial loss due to the failure of an airline.

The Department for Transport published on 9 May 2019 the final report from the independent Airline Insolvency Review, which was chaired by Peter Bucks. The report has been published online on the [Gov.UK website](#).

The Secretary of State, then Chris Grayling, commissioned the review following the collapse of Monarch Airlines in October 2017, when 85,000 passengers were repatriated by the Civil Aviation Authority (CAA) at a cost to the taxpayer. More recently, in September 2019, winding-up orders were made by the court against the Thomas Cook Group companies. Following authorisation by the Government, the CAA orchestrated the repatriation of over 140,000 passengers.

The Airline Insolvency Review considered both refund and repatriation protection in the event of an airline's failure. Its key recommendations, as outlined in its final report, are as follows:

- A new Flight Protection Scheme, which would protect passengers if an airline became insolvent while they were abroad. It is estimated the cost of the protection will amount to less than 50p per passenger on average.
- Reforming the UK's airline insolvency regime so an airline's own aircraft can be used to repatriate its passengers should it fail.
- Providing the CAA with the necessary powers and capability to coordinate repatriation operations for all sizes of airline.
- Improving awareness and take up of safeguards which protect the future bookings of customers, when airlines collapse.

The Government has yet to publish a formal response. However, on 25 September, in response to questions about the collapse of Thomas Cook, the Secretary of State for Transport, Grant Shapps, told the House that the Government would be looking at the reforms proposed by the review. In a subsequent letter to Lilian Greenwood, Chair of the Transport Committee, the Secretary of State wrote that he was determined to bring in a better system for dealing with airline insolvency and repatriation.¹ The [Queen's Speech](#), delivered on 19 December 2019, included proposals for [legislation on airline insolvency](#).

This Commons briefing paper provides a summary of the background to the Airline Insolvency Review and its key recommendations. In the process, it provides an outline of the different protections against financial loss currently available to passengers in the event of the insolvency of an airline.

¹ Department for Transport, [letter from the Secretary of State, the Rt.Hon. Grant Shapps to Lilian Greenwood MP, Chair of the Transport Committee](#), dated 11 October 2019 [online] (accessed 11 March 2020)

1. Existing protections against insolvency of an airline

1.1 Overview

At present, passenger protection against financial loss in the event of the insolvency of an airline may be provided by one or more of the following:

- the Air Travel Organiser's Licence (ATOL) scheme - broadly speaking, UK firms selling air packages, flight plus trips and some flight only bookings must hold an ATOL and if the firm fails, the [CAA](#) draws on the Air Travel Trust (funded by payments from purchasers of ATOL-protected bookings) to cover repatriation and refunds;
- a travel insurance policy (potentially packaged with other financial products), of which around 50% provide cover for an airline failure; and
- a claim against credit card issuers who are jointly and severally liable for a breach of contract under the [Consumer Credit Act 1974](#) (the "CCA 1974");
- reversal of a transaction by a debit card issuer where services have not been provided.

ATOL scheme

Travel insurance

Credit card

Debit card

The outcomes differ with the various protections. For example, ATOL protection results in repatriation organised by the CAA or a refund for cancelled bookings. Protection under the [CCA 1974](#) covers claims above £100 for both losses from the original flight and consequential loss. By contrast, the debit card protection covers loss from the original flight but not consequential loss.

The crucial point to note is that the existing protections are incomplete. Only around 80% of UK-originating passengers have some form of protection from financial loss due to the failure of an airline.

ATOL is a UK financial protection scheme managed by the CAA and backed by the Government. Whilst it has been effective in mitigating financial losses to most passengers incurred as a result of the insolvency of small airlines (e.g. FlyBMI and Wow Air), the collapse of Monarch and Thomas Cook have demonstrated the scheme's limitations and the challenges of repatriating stranded passengers when large airlines fail. Detailed information about how the ATOL scheme operates, what it covers and how it is funded, is set out below.

1.2 ATOL scheme

UK and European law require travel businesses to financially protect their package holidays in the countries in which they are established. Businesses based in the UK provide their protection under the ATOL scheme.

The ATOL scheme was set up in 1973, after several high-profile travel business failures left people stranded overseas. The scheme was

substantially overhauled in 2012 and again in 2018. **Box 1** below provides an overview of the legislative background to ATOL.

Box 1: Legislative background to ATOL

The [EU Package Travel Directive](#)² is implemented in the UK by the [Package Travel and Linked Travel Arrangements Regulations 2018](#) (PTR 2018).³ The Directive places an obligation on businesses selling package holidays to have insolvency protection in place.

The [PTR 2018](#) protect consumers buying package holidays or linked travel arrangements (LTAs). An LTA is formed when a business facilitates the sale of two or more travel services (e.g. a flight and hotel booking) but does so in a way that it is not classed as a package.

The [PTR 2018](#) impose obligations on the organisers of package holidays and traders which facilitate LTAs to provide certain protections, the degree of protection is greater in the case of packages. Those protections include:

- the provision of information to travellers, so that travellers have clear information about their package holiday or LTA and their statutory rights; and
- a requirement that organisers put in place adequate insolvency protection to cover, in the event of the organiser's or trader's insolvency, the refund of payments made by or on behalf of passengers and, if necessary, their repatriation.

The ATOL scheme is a key mechanism by which insolvency protection is provided.

In brief, the ATOL scheme protects most air package holidays sold by travel businesses that are based in the UK. The scheme also applies to some flight bookings, usually those where you book flights but do not receive your tickets immediately. The scheme is designed to reassure consumers (when they book with a UK ATOL holder) that their money is safe, and assistance will be given in the event of a business failure. The benefit of the scheme is that:

- if the business collapses (i.e. goes into insolvency) while the consumer is on holiday, the scheme will make sure they can finish their holiday and return home;
- if the business collapses before the consumer is due to travel, the scheme will provide a refund or replacement holiday.

Under the [Package Travel and Linked Travel Arrangements Regulations 2018](#) (PTR 2018), a holiday must be protected if the consumer books an **air package holiday** from a UK travel business. Specifically, the law says that a holiday must be protected if the consumer books a holiday with a single travel firm that includes:

- flights and accommodation (including a cruise), or
- flights and car hire, or
- flights, accommodation and car hire.

The scheme also applies to some **flight only bookings** - usually those where a consumer books flights (including UK domestic flights) but do not receive their tickets immediately. (This is most common with charter flights but can also apply to discounted scheduled flights or where a consumer pays for flights in instalments.)

Types of holiday covered by ATOL

² 2015/2302

³ S.I. 2018/634

However, it is important to note that **ATOL does not apply to flights booked directly with scheduled airlines or flights booked with airline ticket agents.**

As outlined in **Box 1**, since a linked travel arrangements (LTA) does not constitute a package it does not need to be protected under ATOL. However, an LTA may include an ATOL protected element within it (such as an ATOL protected “flight-only” booking or an ATOL protected flight inclusive package). If a travel business sells an LTA, it must inform the consumer that this is the case and what protection (if any) they may have.

The Air Travel Trust fund—that guarantees the protection provided by ATOL bookings—is funded, in part, by contributions from licenced travel companies (ATOL holders). Specifically, travel businesses are required to pay £2.50 per consumer into a central ATOL fund. This money is used to allow consumers to complete their holidays or issue refunds should a travel business collapse. This charge is not a tax on individuals or an insurance premium - the law requires travel businesses to pay it, not consumers.

How is ATOL funded?

Further information on current insolvency protections provided by ATOL is provided in a separate Library briefing paper, “[Brexit: ATOL protection scheme](#)” (CBP 8559).

It is worth noting here that the UK Government has been publishing Technical Notices in several areas for UK citizens and businesses in the event of a “no-deal” Brexit. In tandem, it has also begun an overhaul of the UK’s legal and regulatory environment and has published statutory instruments (SIs) to ready UK law for Brexit. Of importance in relation to the ATOL scheme are:

In the event of a “no deal” Brexit

- Technical Notice on “[Consumer rights if there’s no Brexit deal](#)” and
- The [Package Travel and Linked Travel Arrangements \(Amendment\) \(EU Exit\) Regulations 2018](#) (SI No. 1367)

2. Recent airline insolvencies

2.1 Collapse of Monarch

Monarch Airlines (known as “Monarch”) entered administration in October 2017, resulting in 110,000 passengers left stranded overseas and 30,000 future bookings lost. The Civil Aviation Authority (CAA) were instructed by the Government to repatriate not only ATOL protected consumers, but all UK overseas passengers; the cost to UK taxpayers was over £60 million.

2.2 Collapse of Thomas Cook

On 23 September 2019, winding-up orders were made by the court against the Thomas Cook Group companies, and the Senior Official Receiver was appointed as liquidator.⁴ The Group’s directors had petitioned for the immediate winding up of the companies (i.e. waiving the need for notice) on the basis there was an urgent requirement for office holders to be appointed to the companies and giving notice would serve no purpose. Insolvency practitioners from Alix Partners have been appointed as Special Managers over the airline and tour operator companies, while insolvency practitioners from KPMG LLP have been appointed as Special Managers to the Group’s retail division and to its aircraft maintenance companies.

Faced with the prospect of passengers having to wait weeks to return home, the CAA was again instructed by the Government to undertake a complete repatriation exercise, which it began implementing immediately upon the winding up orders coming into force. For the CAA, this meant putting into effect complex contingency planning in order to procure aircraft to repatriate UK holidaymakers.⁵ Dubbed Operation Matterhorn, this repatriation of over 140,000 passengers was completed on 7 October 2019. The CAA has said it expects the cost of the operation to be twice that of the Monarch airlift.

On 25 September 2019, Grant Shapps, the Secretary of State for Transport, made a Ministerial Statement about the collapse of Thomas Cook. During this Statement, the Minister explained the scope and funding of Operation Matterhorn. The relevant extract is reproduced below (the full [Ministerial Statement](#) can be read online):

[...] Normally, the CAA’s responsibility for bringing back passengers would extend only to customers whose trips are covered by the ATOL scheme. However, there would have been insufficient capacity worldwide in the aviation market to allow people whose trips were not covered by the ATOL scheme to book tickets independently and bring themselves home. Some passengers would have had to wait for perhaps a week or longer, and others would have suffered financial and personal hardship as they waited for another flight. In my view, that would have created further economic problems, with people unable to return to work and unable to be reunited with their families. With tens

⁴ Judgment, [2019] EWHC 2626 (Ch), 23 September 2019, Chancery Division

⁵ See 30-31 of the judgment, [2019] EWHC 2626 (ch)

of thousands of passengers abroad and with no easy means of returning to the UK, I instructed the CAA to ensure that all those currently abroad were able to return, ATOL or non-ATOL.

[...]

I am also aware of the duty that this Government have to the taxpayer, and while affected passengers have been told they will not have to pay to be flown back to the UK, we have entered into discussions with third parties with a view to recovering some of the costs of this large operation. Around 60% of passengers have ATOL protection, and the CAA's air travel trust fund will contribute proportionately to the costs of the repatriation, as well as refunding ATOL future bookings. We will also look to recoup some of the costs from the relevant credit and debit card providers and travel insurers and will look to recover costs from other travel providers through which passengers may have booked their Thomas Cook holiday. We are also in discussion with the Official Receiver to understand what costs can be recouped through the company's assets.

The final cost of the operation to repatriate Monarch passengers back in 2017 was about £50 million, including ATOL contributions. The repatriation effort for Thomas Cook is now known to be about twice the size and is more complicated, for reasons that I have explained.⁶

2.3 Collapse of Flybe

Flybe Limited, Europe's largest regional airline, entered administration on 5 March 2020 and ceased trading with immediate effect. According to the CAA, very few Flybe passengers were ATOL protected and the government did not commission it to organise any repatriation flights; it was thought there was sufficient capacity in the market for people to travel via alternative airlines, rail and coach operations.

The importance of Flybe lay in the valuable "connectivity" it could provide. Flybe was a significant presence at many regional airports including, Birmingham, Glasgow, Southampton, Manchester and Cardiff. It was the main operator at both Exeter and Newquay airports and the major provider of flights for the Channel Islands. Flybe also provided many routes to and from George Best Belfast City Airport and had a contract with the government to transfer NHS patients from the Isle of Man to medical facilities in Liverpool. In total, Flybe served 119 routes in the UK and Europe; it served many near-European cities, including, Amsterdam, Dusseldorf and Paris.

Recognising that for regional airports, the withdrawal of routes can have serious consequences, the government said that it would work with other airlines to replace Flybe services:

We are working closely with industry to minimise any disruption to routes operated by Flybe, including by looking urgently at how routes not already covered by other airlines can be re-established by the industry.⁷

⁶ [HC Deb. 25 September 2019 c.688-691](#)

⁷ ["Collapsed Flybe tells passengers not to travel to airports"](#), BBC News, 5 March 2020, [online] (accessed 11 March 2020)

Flybe, an Exeter based company, was set-up in 1979 as Jersey European Airways, it then became British European in 2000 before changing its name again to Flybe in 2002. Flybe was floated on the stock market in 2010 as part of a pan-European expansion plan. In March 2019, Flybe was bought by a consortium comprising Virgin Atlantic, Stobart Group and Cyrus Capital. To restructure Flybe, the consortium set about rationalising its route network, it also bought the right to rebrand the airline as “Virgin Connect”. However, the expected recovery never happened, losses increased, and the end of the year the airline faced collapse. In a last minute attempt to save the airline, the then-chancellor, Sajid Javid, the then-business secretary Andrea Leadsom and the current transport secretary Grant Shapps agreed to provide a tax “holiday” in respect of [Air Passenger Duty](#) (APD) passengers had already paid to Flybe. Entering administration on 5 March 2020, Flybe blamed the coronavirus outbreak and the consequential fall in demand for air travel for tipping it into insolvency.

Air Passenger Duty (APD), a tax per passenger on flights taking off in the UK.

However, the airline had experienced many long-term problems. The fact that it operated about 40% of regional UK flights meant that Flybe was particularly exposed to a fall in demand for air travel caused by Brexit, storm disruptions, and then the coronavirus. It also faced fierce competition from rail and road travel. Arguably, the fact that many Flybe routes were domestic also placed it at a disadvantage in respect of [APD](#). For flights within the UK, APD is paid both on departure and on arrival; unlike international flights where APD must only be paid on the route out of the UK.⁸ Many commentators have also highlighted the fact that aviation is a highly regulated, competitive industry sector.

⁸ The Government was considering reducing APD on domestic flights to help Flybe, but with the UK still bound by European Single Market rules until the end of the transition period, this was unlikely to come into effect until the end of 2020. See “[Flybe: UK government considers new funding for airline](#)”, BBC News, 14 January 2020, [online] (accessed 11 March 2020)

3. Airline Insolvency Review

3.1 Commissioning of an independent review

In November 2017, following the failure of Monarch, the Government commissioned the Airline Insolvency Review, chaired by Peter Bucks. According to its terms of reference, the Review was asked to:

- consider new forms of repatriation and refund protection;
- identify the market reforms necessary to ensure passengers are protected; and
- consider how to place existing financial protection (the ATOL scheme) on a more commercial basis.

The Review's focus was on how best to secure future repatriation given the following context:

- The risk of an insolvency amongst the top 17 airlines serving the UK within the next year is estimated at 13%.⁹ If any of these airlines were to become insolvent a large number of passengers would be affected.
- Significant gaps exist in the protection against airline insolvencies currently given to UK air passengers. Whilst 80% of passengers benefit from some form of protection against financial loss, only around a quarter of these passengers are fully protected by the ATOL scheme.

3.2 Review's recommendations

The Airline Insolvency Review's [final report](#) was published on 9 May 2019¹⁰ and its recommendations replaced those made in the [Airline Insolvency Review interim report](#) of 12 July 2018. The final report concludes:

[...] our recommendations would, if implemented provide UK originating passengers with reasonable assurance that they will be appropriately protected in the event that their carrier were to become insolvent in all but the most extreme cases.¹¹

The Review's main recommendations are:

- the introduction of a **Flight Protection Scheme** (requiring passengers to pay an additional levy on flight costs) and the implementation of a privately funded repatriation scheme;
- the introduction of a **new Special Administration Regime (SAR)** for airlines, and
- **enhancing the commerciality of ATOL.**

it should be noted that these recommendations are designed to assist repatriation without the need for government intervention and without

⁹ [Airline Insolvency Review – Final Report](#), March 2019 [online] (accessed 11 March 2020)

¹⁰ Department for Transport, [Airline Insolvency Review – Final Report](#), March 2019, [online] (accessed 11 March 2020)

¹¹ Ibid

the huge cost to tax payers. Each recommendation is considered in detail below.

Flight Protection Scheme (FPS)

The report's principal recommendation is the introduction of the "Flight Protection Scheme" (FPS), a repatriation scheme. The report recommends making it a condition of UK Air Operating Licences and Foreign Carrier Permits that suitable financial protections are put in place to cover the estimated cost of repatriation.

The proposed FPS is described in the report as:

"[...] a private-sector initiative to protect UK air passengers in the event of airline or travel company insolvencies."¹²

In effect, a single mechanism would ensure that the best repatriation option can be deployed in the event of an airline failure. A summary of possible options is provided in **Box 2** (below).

Box 2: Repatriation options under the proposed FPS

The proposed Flight Protection Scheme is essentially a single mechanism to ensure that the best repatriation option can be deployed for a particular airline failure. The options that may be deployed depending on the particular facts are:

- **Self-repatriation:** where passengers book and pay for their own repatriation flights. This is currently the default approach where there is no ATOL protection.
- **Assisted repatriation:** as above but with a more active role played by a coordinating body. For example, the body could work with airlines to increase the number of flights, size of aircraft and, by agreeing a code of conduct on rescue fares, improving the availability of rescue fares and operate a central information and booking facility for affected passengers.
- **Organised charter:** where aircraft are chartered from third party airlines specifically to repatriate customers of the insolvent airline. This was the approach deployed by the CAA following the collapse of Monarch and Thomas Cook.
- **Keep the fleet flying:** where the fleet of the failed airline continues flying for a short period to repatriate stranded holidaymakers. This would require the introduction in the UK of a special administration regime for airlines.

It is proposed that the FPS be coordinated by the CAA, who would also administer funding to bring about the same-day repatriation of passengers by both the insolvent airline and assisting airlines. The proposed FPS would extend to all UK-originating passengers who have return flights to the UK with an airline that becomes insolvent. However, the proposed FPS would **not** cover refunds for lost bookings.

The review suggests that this new scheme only apply to bookings that are not already ATOL-protected, to avoid overlap or duplication of protections.

The report also recommends giving additional powers to the CAA to enable it to manage repatriation processes effectively. These would include the power to:

Additional power and responsibility to the CAA

¹² Ibid

- require annual certification of financial fitness;
- grant licences to insolvent airlines;
- impose licence conditions to encourage repatriating airlines to mitigate consumer risks; and
- create rules to require the provision of information by insolvent airlines.

It recommends enhancing the CAA's ability to monitor and enforce airline compliance regarding financial health. It also recommends introducing a requirement for airlines to prepare and maintain plans to ensure repatriation is efficient and successful.

In terms of funding the FPS, an important consideration for those involved in the Review was that the taxpayer should not be burdened. Instead, it recommended that the FPS be funded exclusively by the private sector, with each airline that operates in the UK being required to provide financial protection based on the estimated cost of repatriating its own passengers (see **Box 3** below).

Funding the Flight
Protection Scheme

In effect, the lion's share of funding would be met by requiring airlines to grant security via financial instruments that could be relied on to pay out in the event of an airline's insolvency. The remainder of the airline's exposure would be covered by a small central fund. The licences of all airlines operating in the UK would be conditional on making this financial contribution. The expectation is that costs would be passed indirectly to consumers. That said, the report estimates that the FPS would cost no more than 50 pence for each protected passenger; the aim being to ensure that sufficient funds are available to avoid bailouts by the taxpayer.

Box 3: Funding the FPS

- It is proposed that the FPS be funded entirely by the airlines. Each airline that operates in the UK being required to provide financial protection against insolvency.
- The principle is that the coordinating body (the CAA) would assess each airline's repatriation exposure based on a pre-agreed and publicly available formula. Each airline would then be responsible for posting security products (such as letters of credit) for a percentage of its repatriation exposure. Such percentage would be determined by the co-ordinating body, but the report suggests it would cover 60 to 70 percent of the exposure.
- Costs beyond this protected amount would be met from a centrally managed fund (possibly separate from the **Air Travel Trust**) capitalised by an airline levy calculated by reference to UK originating seats sold.
- According to the report, indications are that the target amount of the fund would be £35 million and would be built up by a 15p levy per departing UK passenger for the first five years, falling to 6p thereafter.
- The co-ordinating body would then use the cash in the fund to take out insurance to protect against excess loss. The insurance would be placed so far as practicable in the market with the government providing cover on commercial terms where this is not possible.

Special Administration Regime

As outlined in **Box 2** above, a possible repatriation option is to “keep the insolvent airline’s fleet flying for a short period”. At present, in order to repatriate stranded airline passengers, the CAA must source its own aircraft to replace cancelled flights. This can be challenging—particularly in the event of the failure of a large airline—and it is not always possible to find like-for-like replacement aircraft. However, to be a viable option, it would first require the introduction of a Special Administration Regime (SAR) for airlines.

Without a SAR, it is unlikely that an insolvency practitioner would “elect” to keep an airline’s fleet operational once it had gone into administration or liquidation. There are two reasons for this:

- First, insolvency practitioners (and their firms) would be concerned about the risk of liability should an accident occur after they have been appointed by the court. As highlighted in the report, administrators did continue to trade Paramount Airways in 1989, but it is far from certain whether a similar approach would be taken today.
- Second, the appointed insolvency practitioner would require access to significant funds to continue to fly. For example, operational costs would include insurance cover; the retention of essential management and staff; and essential suppliers.

There is also the very real risk that creditors would assert liens over or detain or repossess aircraft required for continued trading. (For example, overseas airports seeking to recover unpaid airport charges).

Special Administration Regimes already exist in other sectors, including energy, further education colleges, and banking.¹³ In brief, a SAR creates a bespoke administration regime for a particular sector and, in the process, implements several important changes to a standard administration under the [Insolvency Act 1986](#), including different statutory objectives.

The primary purpose of the proposed SAR for airlines would be the repatriation of stranded passengers (this would take precedence over duties to creditors). Other key elements of the proposed SAR are as follows:

- The appointed special administrator (an insolvency practitioner) would be under a duty to **use all available funds until repatriation is concluded**.
- The Secretary of State for Transport would **control the identity of the special administrator** and be able to prevent alternative insolvency proceedings being commenced in the UK. This is common in existing SARs for other sectors.
- An **enhanced moratorium** to prevent creditors taking legal action for a 14-day period at the start of the special administration, including to prevent key suppliers such as aircraft

When an airline fails in the UK it is highly likely that its fleet will be grounded following the appointment of an administrator or liquidator.

Operation of the proposed SAR for airlines

¹³ For example, in the wake of the Lehman Brothers collapse, the Treasury enacted the [Investment Bank Special Administration Regulations 2011](#) pursuant to its rule-making powers under the [Banking Act 2009](#)

lessors and fuel suppliers from terminating contracts or demanding ransom payments. (According to the report, the key challenge is ensuring this is respected in other jurisdictions which may require the special administrator to pay those overseas creditors threatening action).

- Arrangements to ensure **funding** is available to enable the special administrator to achieve the purpose of the special administration. (For example, arranging payments agreements with staff and suppliers to ensure costs associated with repatriation would be paid as expenses of the administration.
- Finally, the Secretary of State would have an **express power to provide a grant, loan or indemnity** to the special administrators to alleviate concerns over their personal liability.

According to the report, the introduction of a SAR for insolvent airlines has the potential to ensure a smooth repatriation service, since the insolvent airline's own aircraft could be used for a limited time. However, some commentators suggest that the success of any repatriation operation is likely to depend on the cooperation of creditors who might otherwise seek to repossess aircraft whilst they are outside the jurisdiction of the English courts and, therefore, outside the protection of the SAR's moratorium.

Enhancing the commerciality of ATOL

As outlined in Section 1.2 above, ATOL provides insolvency protection under the existing EU regulatory framework for consumers who have purchased flights as part of a package, or together with other travel products. The Air Travel Trust (ATT) is the body that finances ATOL protection through a combination of passenger contributions, insurance policies, and credit facilities.

In the Review's report, there are recommendations to enhance the commerciality of the ATOL scheme, including:

- amendments to the Trust Deed to remove the Secretary of State's powers in relation to the ATT;
- removing the Secretary of State from the trustee appointment process; and
- ensuring at least some of the trustees of the ATT are independent of the CAA.

The effect of these changes would be to diminish the Secretary of State's involvement in the ATT.

Next steps

Given the complexity of the issues raised, the report recognises that there is no simple solution and no timetable is proposed for the implementation of its recommendations. Instead, the report concludes:

[...] if government choose to fully implement our recommendations, legislation will be required to give effect to several of our proposals, and a transition period may be necessary to allow airlines time to prepare. In the interim period, several of

our recommendations could be implemented in isolation, with the benefit of reducing the cost of failures and improving passengers' experiences should they occur.¹⁴

It is readily acknowledged in the report that certain recommendations (such as increased multinational collaboration) are low cost objectives, while others (such as the introduction of a new Special Administration Regime for airlines) would need primarily legislation.

3.3 Government's response to the review

The Government's formal response to the Review's report is still awaited. However, on 25 September, in response to questions about the collapse of Thomas Cook, the Secretary of State for Transport, Grant Shapps, told the House that the Government would be looking at the reforms proposed by the Airline Insolvency Review.

On 30 September 2019, Lilian Greenwood, Chair of the Transport Committee, wrote to Grant Shapps MP, Secretary of State for Transport, to ask for an update on the Government's implementation of the Review's recommendations. Specifically, she asked for clarification on the following:

- the area of the Review on which the Department has already started to act, and what action has been taken;
- the recommendations on which the Department has not acted, why this is, and what would be required to implement these recommendations;
- what future plans the Department has to implement the recommendations made by the review; and
- what plans the Minister has to bring forward legislation on this matter, and whether any legislation will be published in draft for pre-legislative scrutiny.

In his written response, dated 11 October 2019, Grant Shapps said:

This is a clear priority for me and my Department, and I am determined to bring in a better system for dealing with airline insolvency.

[....]

The focus for policy officials in recent weeks has necessarily been on contingency planning for Thomas Cook's failure, to ensure that all those affected are safely repatriated back to the UK. Now that this operation has completed, our efforts will be focused on ensuring that airline insolvency reforms are brought forward, taking into account the lessons learned from both the Thomas Cook and Monarch failures.¹⁵

¹⁴ Department for Transport, [Airline Insolvency Review – Final Report](#), March 2019, [online] (accessed 11 March 2020)

¹⁵ Department for Transport, [letter from the Secretary of State, the Rt.Hon. Grant Shapps to Lilian Greenwood MP, Chair of the Transport Committee](#), dated 11 October 2019 [online] (accessed 11 March 2020)

The Minister addressed the specific points raised by the Committee as follows:

Areas of the Airline Insolvency Review which the Department has already started to act and what action has been taken.

The Review outlined over 30 recommendations but noted there is no “silver bullet or one-size-fits all solution”, to ensure consumer protection in the event of airline insolvency. Therefore, it is important that we fully consider the work performed and conclusions drawn by the Review. Following the publication of the Report, formal responses to the Review were sought by the Department as part of the Aviation 2050 Green Paper consultation, to provide the industry with an opportunity to make written representations on the Review’s recommendations.

In addition, ministers and officials have held bilateral meetings and roundtables with key stakeholders, including representatives of airlines, airline associations and trade bodies to ensure their views are taken into account. We will continue to work closely within industry in bringing forward reforms in what is clearly a priority for the Department. Since the Report was issued, policy officials have explored various options for operating an airline in insolvency. This has considered how the approach might need to vary, depending on whether an airline into liquidation or administration. Work has also focused on addressing the various operational challenges identified by the Review in putting in place a Special Administration Regime (the need to retain key airline staff to operate the airline, the misalignment between the directors’ and Insolvency Practitioners’ (IPs) duties and the purpose of repatriating passengers and the associated indemnities required by the IP to deliver the repatriation). In addition, the Department and the CAA have taken forward work to expand the CAA’s ability to pre-secure aircraft to operate a repatriation; we have also taken steps to improve the availability of rescue fares to passengers through the provision of booking services for Thomas Cook passengers.

Recommendations on which the Department has not acted, why this is and what would be required to implement the recommendations made by the Review.

The report itself notes that the Review has not undertaken a formal options appraisal nor cost-benefit analysis. And therefore, the recommendations are likely to require further analysis.

Significant, detailed policy design and quantitative assessments will be needed to ensure that any reforms are proportionate and effective, are practical to operate and monitor once in force, and mitigate any unintended consequences. The Review acknowledged Ministers will wish to weigh the recommendations carefully against the challenges faced by the aviation sector and consider feedback from industry before deciding how to proceed, given the significant stakeholder impacts. As part of their responses to the Aviation 2050 Green Paper, some airline and other sectoral stakeholders have outlined their concerns with the proposals, particularly those relating to funding the scheme. The proposal for a new “Flight Protection Scheme” would require airlines to purchase risk-based securities to cover the majority of their exposure, with a flat levy to fund the scheme’s running costs and reinsurance, costing c.50p overall per UK originating passenger not already covered by ATOL protection. We are

considering these representations in light of concerns around risk assessment, proportionality and deliverability.¹⁶

An [Airline Insolvency Bill](#) was announced in the [Queen's Speech](#) on 19 December 2019, but no date has yet been given for its introduction and Second Reading in Parliament. It is clear from the [briefing material](#) published on the same day, that many of the Review's recommendations are to be included in the Bill. Its stated purpose is to protect passengers in the event of an airline going bust by reforming the airline insolvency process.

The Bill's main benefit would be making sure the industry can get passengers home quickly and effectively if an airline collapses; this would balance strong consumer protection with the interests of the taxpayer. The main elements of the proposed legislation are:

- The introduction of a "Special Administration Regime" (SAR) for airlines to support passenger needs post-insolvency, and to keep the aircraft fleet flying long enough for passengers to be repatriated.
- Enhancing the CAA's regulatory powers to improve their oversight of airlines in distress and mitigate the impacts of a future airline failure.
- Reforms to airline insolvency, to strike a better balance between strong consumer protection and the interests of taxpayers.
- Extending the CAA's remit to apply to the repatriation of both ATOL and non-ATOL protected passengers. (Currently they do not have to repatriate non-ATOL passengers).
- Establishing and enhancing a repatriation 'toolkit' of mechanisms for companies and passengers, including making it easier for the CAA to grant a "Temporary Airline Operating Licence" so that an airline can continue repatriating passengers following insolvency.

The expectation is that the Bill's provisions would extend and apply to the whole of the UK.

¹⁶ Ibid

4. Commentary

Clearly, some of the recommendations, if acted upon, have the potential for far reaching changes in the sector.

The Review's recommendation for the introduction of a new Flight Protection Scheme (FPS) with a comprehensive repatriation mechanism, has led some commentators to question whether the ATOL scheme would remain viable. Indeed, the report itself highlights the significant risk of overlapping protection. A solution suggested in the report is that the FPS would not cover ATOL protected consumers.

If implemented, airlines would be required to meet obligations to fund the FPS – which the report proposes would be implemented as a condition of the UK operating licence or route licence for overseas airlines. At a time of stress on the industry, many commentators thought the levy would be passed on to passengers. For some, to charge passengers an additional 50p a flight seemed fair. For example, R3 (the Association of Business Recovery Professionals) welcomed the recommendation on the basis that it “spreads the cost of the process without hitting the taxpayers” and “looks like it would work on a similar basis to the ATOL scheme, which is an already well-established part of the framework.”¹⁷ However, others thought it might be difficult to calculate the amount to pass on to passengers because the cost of providing the security product is likely to fluctuate with an airline's financial health.

Responding to the publication of the Airline Insolvency Review report, [Airlines UK](#), the industry association that represents 13 UK-registered carriers, said:

Airlines face rising costs, and this is not the time to make it more expensive to travel. 50p may not sound much but airlines operate on wafer thin margins and passengers already pay over £3 billion each year to the Treasury in Air Passenger Duty. The chances of booking with an airline that goes bust remain extremely small. When it's happened, airlines have demonstrated their commitment to bringing passengers home through voluntary rescue fares which worked extremely well and without any taxpayer liability.¹⁸

For airlines, there are costs involved in implementing other recommendations. For example, the Review recommends that UK airlines should be required to develop “repatriation plans” setting out detailed information required to repatriate passengers.

Currently, the Air Operating Licence regime requires an analysis of the financial health of an airline. The report recommends that as part of the requirements for holding a licence, the board of each UK airline would need to provide the CAA with “an annual certificate of financial fitness

¹⁷ R3 (Association of Business Recovery Professionals), “[Airline Insolvency Review – Proposals do not overcome challenges](#)”, 9 May 2019 [online] (accessed 11 March 2020)

¹⁸ Airlines UK, “[Airline Insolvency Review: This is not the time to make it more expensive to travel](#)”, 9 May 2019, [online] (accessed 11 March 2020)

for the next 12 months". Some commentators have suggested that this would require airlines paying for a significant amount of extra analysis, not least because directors would want to demonstrate that they have discharged their duties properly in issuing such a certificate in the event the airline subsequently fails.

Importantly, some commentators have also suggested that an airline's general funding costs might increase if their lenders (i.e. a bank) or bondholders thought their returns in the event of insolvency would be less than anticipated.¹⁹

Commenting on the recommendation for a new SAR for insolvent airlines, [R3](#) (the Association of Business Recovery Professionals) said that the proposal did not address the practicalities that prevent Insolvency Practitioners operating aircraft post-insolvency, including risks to assets and personnel.²⁰ An extract from R3's published statement is reproduced below:

The introduction of a new Special Administration Regime to allow insolvent airlines to continue to fly, at first glance, doesn't seem to resolve some real practical difficulties. One of the reasons an insolvent airline's planes are safely grounded at home in the UK is that – without well-publicised financial backing for a rescue – planes are vulnerable to creditor action. It's all too easy for a disgruntled food or fuel supplier to block a plane on a taxiway at an overseas airport until they've been paid what they're owed. This would pose a risk to passenger safety and disrupt the whole insolvency process.

If full financial backing is there, the risks of creditor action are lowered because creditors are more confident of being paid. Without full financial backing, there are other complex issues to resolve, including crew wellbeing and insurance costs. A Special Insolvency Regime for airlines won't make these problems go away.

Another concern is the proposal that the primary purpose of an airline administration be altered so that passenger repatriation takes precedence over duties to creditors. This will have an impact on creditors' risk analysis when it comes to trading with or lending to an airline and could affect access to finance for the sector.

The Government is already considering a number of reforms to the wider insolvency and restructuring framework, which we think would make more of a difference to rescuing businesses – including airlines – than the creation of a plethora of special administration regimes. The Government would be better off pursuing these wider reforms.²¹

¹⁹ See "[Airline Insolvency Review](#)", Herbert Smith Freehills, undated [online] (accessed 11 March 2020)

²⁰ R3 (Association of Business Recovery Professionals), "[Airline Insolvency Review – Proposals do not overcome challenges](#)", 9 May 2019 [online] (accessed 11 March 2020)

²¹ Ibid

5. Other initiatives: Thomas Cook Compensation Bill

On 5 November 2019, the Business Secretary Andrea Leadsom made a statement in the House of Commons announcing the government's intention to support customers of Thomas Cook facing the most serious hardship as a result of life-changing injuries, illness or loss of life for which Thomas Cook companies would have been liable. This decision followed a discovery by the Official Receiver, as part of his investigation into the collapse of Thomas Cook, that the group had only taken out insurance cover for the very largest personal injury claims. For agreed claims below this figure (up to a high aggregate amount), it had decided to self-insure through a provision in its accounts. Consequently, the majority of claimants who are not covered by insurance will be treated as unsecured creditors in the liquidation and as such, it is uncertain whether they will receive any of the compensation they would have ordinarily received against their claims. The government has now said it will step in to provide support for the most serious claims. An extract from the [Minister's oral statement](#) is reproduced below:

Mr Speaker, this raises a potentially unacceptable prospect for some Thomas Cook customers who face significant financial hardship through no fault of their own where Thomas Cook should have rightly provided support; customers who have already suffered life-changing injuries or illness and who may face financial hardship as a result of long-term loss of earnings or significant long-term care needs. This is an extraordinary situation which should never have arisen.

While the government cannot and will not step into the shoes of Thomas Cook, we do intend to develop proposals for a statutory compensation scheme. Any scheme must strike a responsible balance here between the moral duty to respond to those in the most serious financial need and our responsibility to the taxpayer. Accordingly, it will be a capped fund, sufficient to ensure there is support for those customers facing the most serious hardship as a result of injuries or illness for which UK-based Thomas Cook companies would have been liable. We will develop the scheme to ensure only genuine claims are provided with support. The scheme will not consider routine claims covering short-term problems.

After the election, we intend to bring forward urgently the legislation necessary to establish such a scheme, and I am sure that any new government will wish to do likewise.

I have also written to the Official Receiver to ask him to take this very serious matter into account as part of his investigation into the conduct of Thomas Cook's directors relating to the insolvency.

I am sure that the House will agree it was important to act quickly today to give reassurance to those individuals and families who would otherwise be left with unfunded serious long-term needs or other financial hardship as a result of injuries or illness sustained abroad for which Thomas Cook would have been liable.

The House will have the opportunity to consider the matter in more detail in the new Parliament.²²

The "[Thomas Cook Compensation Bill](#)" was announced in the [Queen's Speech](#) but no date has yet been given for Second Reading. According to [briefing material](#) published on 19 December 2019, the Bill will provide the legal basis for making payments to claimants under a new "capped compensation scheme" to support customers of Thomas Cook facing the most serious hardship as a result of life-changing injuries, illness or loss of life for which Thomas Cook companies would have been liable". The Bill's provisions would extend and apply to the whole of the UK.

²² [HC Deb 5 November 2019 c.659-660](#)

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