An Coimisiún um Rialáil Eitlíochta

Commission for Aviation Regulation

Consultation:

Travel Trade Consumer Protection Measures

Commission Paper 8/2017

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Commission for Aviation Regulation

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1. Introduction

1.1 This consultation paper seeks views from interested parties on possible reforms to the travel trade licensing and bonding regime. The current travel trade licensing and bonding scheme aims to provide financial protection to consumers should their travel agent or tour operator be unable to fulfil its obligations under contract. In such circumstances, consumers can make claims for a refund for the costs of trips not yet taken, and for repatriation costs in the event that the collapse occurs while they are abroad.

1.2 Currently, if a licensed travel agent or tour operator collapses, the costs of claims and associated administrative costs of processing those claims are paid from the bond that the travel trade firm will have posted when getting a licence. If the bond does not cover the cost of all claims, the shortfall is covered by the Travellers' Protection Fund. This fund was originally financed by a levy on tour operators, but this levy was stopped in 1987. To date, it has not been deemed necessary to reintroduce the levy.

1.3 A review of the current scheme is appropriate. The original legislation dates back to 1982, and it is almost a decade since the last consultation with stakeholders on possible changes to the travel-trade legislation. Moreover, the collapse of Lowcostholidays.ie in summer 2016 has depleted most of the remaining money in the Travellers' Protection Fund.

1.4 We are now consulting on whether or not the current scheme continues to meet the objective of ensuring consumers are fully protected in the event of future collapses. If the answer to this question is yes, is the scheme the best way of providing this protection? If the answer is no, what feasible options for a reformed scheme can be considered?

1.5 The Commission, working with external advisors, analysed industry data including past collapses. We interviewed some members of the industry and looked at some schemes in place elsewhere in Europe. The findings of this analysis are included in a detailed report that the Commission has, today, published alongside this consultation paper.[1]

1.6 Section 2 of this paper provides a summary of the findings of this report relating to the effectiveness and efficiency of the current scheme while Section 3 sets out options for reform. Finally, Section 4 provides a list of consultation questions. The Commission welcomes the views of interested parties on these questions.

1.7 Respondents should be aware that we are subject to the provisions of the Freedom of Information legislation. Ordinarily we place all submissions received on our website. If a submission contains confidential material, it should be clearly marked as confidential and a redacted version suitable for publication should also be provided.

1.8 Any party making a submission has sole responsibility for its contents and indemnifies us in relation to any loss or damage of whatever nature and howsoever arising suffered by us as a result of publishing or disseminating the information contained within the submission.

1.9 Responses should be titled "Bonding of the Irish Travel Trade Industry" and sent by email to info@aviationreg.ie or by post to: Commission for Aviation Regulation, 3rd Floor, Alexandra House, Earlsfort Terrace, Dublin D02 W773.

1.10 The deadline for responses to this consultation is **5pm, Friday, 29 September 2017.**

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[1] Link: https://www.aviationreg.ie/_fileupload/Travel%20trade/TTConsumerProtectionMeasuresReport.pdf

2. Effectiveness and Efficiency of the Current Scheme

2.1 The Commission is responsible for licensing travel agents and tour operators and also administers a scheme to provide financial protection to consumers of these companies. In 2016, we licensed over 250 companies with a projected licensable turnover of €1.2bn.

2.2 All tour operators and travel agents trading in the State are required by law to be licensed and bonded to buy or sell overseas travel originating in the State to destinations outside the State or Northern Ireland. (They can qualify for an exemption as a retailer or organiser established in another Member State if they provide the Commission with sufficient evidence of security for the protection of consumers.) All licensees are required to provide a bond. The current bond required from travel agents and tour operators is a percentage of projected annual licensable turnover.

2.3 Since the scheme was introduced in 1982, the size of companies' bonds has been set at 4 and 10 per cent of projected licensable turnover for travel agents and tour operators respectively. Should the bond be insufficient to fund all claims, the Commission can draw down from the Fund.

2.4 The travel trade market has changed significantly since 1982. Material developments include:

- a significant growth in direct bookings with airlines and accommodation providers;
- payments by credit and debit card proliferating; and
- travel agents holding onto customers' money for shorter time periods, in part because of the greater use of scheduled airline services.

2.5 These changes are sometimes offered as reasons why the current bonding levels are no longer appropriate, as the business models today do not correspond to those in place when the bonding levels of 4% and 10% were determined.

Are there material developments in the market that have been ignored that are relevant when thinking about the effectiveness and efficiency of the current travel trade protection scheme?

Effectiveness of the scheme

2.6 The current scheme needs reform if it is to remain effective. To date, it has been effective in the sense that consumers who have bought overseas travel covered by the current regime from licensed and bonded Irish travel agents or tour operators have enjoyed financial protection. Those needing repatriation have been repatriated, and those with valid claims have been refunded in full.

Table 2.1: Travellers' Protection Fund levels and major claims

	Value
Amount in TPF (end 2016)	€1.8m
Two Largest Draws	
Claims on TPF from Failte Travel collapse (2008)	€1.6m
Claims on TPF from Lowcostholidays.ie collapse (2016)	€3.5m

2.7 However, the Fund would be at risk in the event of another major collapse or market-wide downturn. Not all claims could be paid in full should there be another collapse of the scale of

Lowcostholidays.ie. If the scheme is not reformed consumers with valid claims may suffer as a result. The bonds will probably suffice to provide satisfactory protection for those that need repatriation.

2.8 Average claims for travel agents and tour operators have exceeded the current bonding levels. However, there is notable variation around the averages. The finding that the average claims exceed current bonding levels is driven by just two collapses, those of Lowcostholidays.ie and Failte Travel. Excluding these two collapses from the data, the average collapse has generated claims of 3% of projected licensable turnover for travel agents and 6% for tour operators.

2.9 Most claims relate to refunds for upcoming holidays rather than repatriation. Although most travel-trade firms ought to be cash rich in the summer, this does not lessen the likelihood of collapsing occurring at that time. Moreover, because claims against turnover will be higher for summer collapses, they are more likely to result in draws against the Fund than collapses at other times of the year.

2.10 Current bonding levels are based on projected licensable turnover rather than actual licensable turnover. The biggest risk regarding these projections might be that firms under estimate this figure. The available evidence suggests that most firms provide reasonable projections of licensable turnover, although some appear to have underestimated (and thus had to post a lower bond than would have been the case had they correctly forecast licensable turnover). Firms that have both travel agent and tour operator licences tend to project a greater share of turnover for their travel agency business, to which the lower 4% bonding rate applies.

Do you agree with the finding that the current scheme is not effective in protecting consumers?

Efficiency of the scheme

2.11 Leaving aside the question of whether there is a need for a financial protection scheme, the report does not identify large concerns with the efficiency of the current scheme. The licensing costs do not appear to be material. Bonding costs are more material, but remain a small fraction of turnover. When collapses do happen, the administration costs represent a small portion of the total claims costs.

2.12 However, the current scheme cannot provide effective consumer protection without reform. In thinking about reform, careful thought has to be given to the effect that it will have on costs to the industry, to ensure that it remains as efficient as possible while realising its intended policy objective.

Do you agree with the finding that the scope to reduce the costs of the current scheme while maintaining the current level of consumer protection is limited?

3. Reform options

3.1 The need for reform is prompted by the fact that the existing scheme would no longer be able to provide full financial protection to all affected consumers should there be a large-scale collapse. Most firms will not collapse. Those that do, in most cases, will result in claims that are less than the sums that travel trade currently have to bond. The need to reform is to cover the tail risk of a single firm collapsing with a large value of claims relative to its bonding level.

3.2 The current scheme intends that all customers should enjoy financial protection. The report has attempted to identify reforms that would allow the scheme to have been able to meet all claims should there be two large collapses in quick succession, generating claims in line with the two collapses that gave rise to the largest claims in the last 10 years.

Do you agree that the scheme needs to be designed with sufficient contingency to be able to meet all claims in full in the event that there are two collapses in a single year that give rise to the same level of claims as the two largest collapses in the history of the scheme? If not, what criteria would you propose?

3.3 Table 3.1 below sets out five options and Table 3.2 assesses how they fare against three criteria:

- the need for legislative change;
- the impact on scheme effectiveness in terms of the consumer protection offered; and
- the impact on scheme efficiency in terms of the costs of the scheme to the industry and the regulator.

Table 3.1: Possible Reform Options

Item	Option A	Option B	Option C	Option D	Option E
Bonding, travel agent	200%	4%	4%	8%	8%
Bonding, tour operators	100%	10%	10%	20%	20%
PLTO definition	No change	No change	No change	Excludes payments passed onto supplier immediately and bills paid in arrears	Excludes payments passed onto supplier immediately and bills paid in arrears
One-off levy	No	2.5%, TO only	0.35%, TA and TO	0.35%, TA and TO	0.25%, TA and TO
On-going levy	No	0.2%, TO only	0.03%, TA and TO	0.03%, TA and TO	0.02%, TA and TO
Other	-	-	-	-	Firms cannot exceed PLTO. Firms must identify at point of sale to consumer whether eligible to claim.

Table 3.2: Assessment of Reform Options

Item	Option A	Option B	Option C	Option D	Option E
No legislative change	✓	✓	✗	✗	✗
Impact on effectiveness	✓✓✓	✓✓	✓✓	✓✓	✓✓
Impact on efficiency	✗✗	✗	~	✓	✓

Are there other reforms that you think should have been considered? How would these reforms ensure that all consumers protected enjoy full financial protection?

3.4 The report favours Option E. This would require legislative change. A change in bonding levels alone is unlikely to be the most efficient response. Unless some way is found to identify in advance which companies may collapse and generate large claims, it would require all firms to post much larger bonds than is currently the case. Although many of the industry stakeholders interviewed indicated a preference for higher bonding rates rather than a levy, the scale of the change in bonding rates is unlikely to be what they had in mind and arises from the fact that the goal is to devise a scheme that is robust to all types of collapses, including “tail” events.

3.5 One reform that requires no change in legislation would be to impose a levy on tour operators. This would impose a burden on one section of the travel-trade industry that is hard to justify. An option would be to introduce a levy on tour operators that could then be extended to cover both travel agents and tour operators.

3.6 Consideration could be given to reforming the way that bonds are calculated to align better the bonding requirements with the risks associated with a given travel-trade firm’s business model. Our advisors have suggested that the level of the bond could be calculated to exclude from licensable turnover payments from customers that are passed onto suppliers immediately and/or bookings from business customers that are invoiced after the travel. This would be more administratively efficient than the Commission determining from scratch a risk adjusted bonding requirement for each individual firm.

3.7 Another suggested area of reform is designed to limit the scale of claims that can arise from an individual travel-trade firm collapsing. The report suggests that firms should only be allowed to sell overseas travel for so long as their licensable turnover is less than or equal to the projected turnover on which their bond is based. To help with tracking this, they suggest firms should clearly identify whether the holiday is covered at the time of the sale.

Which of the reforms do you think we should pursue, if we conclude that the current scheme needs changing? Why?

4. List of consultation questions

1. Are there material developments in the market that have been ignored that are relevant when thinking about the effectiveness and efficiency of the current travel trade protection scheme?
2. Do you agree with the finding that the current scheme is not effective in protecting consumers?
3. Do you agree with the finding that the scope to reduce the costs of the current scheme while maintaining the current level of consumer protection is limited?
4. Do you agree that to be effective, the scheme needs to be designed with sufficient contingency to be able to meet all claims in full in the event that there are two collapses in a single year that give rise to the same level of claims as the two largest collapses in the history of the scheme? If not, what criteria would you propose?
5. Are there other reforms that you think should have been considered? How would these reforms ensure that all consumers protected enjoy full financial protection?
6. Which of the reforms do you think the Commission should pursue, if we conclude that the current scheme needs changing? Why?