



Role of Commission for Aviation Regulation in the Irish Travel Trade Sector

Note to the Joint Committee on Transport and Communications

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Commission for Aviation Regulation

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Background

The Commission for Aviation Regulation was established in 2001 and we have a number of duties including the following:

1. Set the maximum price daa can collect from airport charges at Dublin Airport.
2. Review the costs and revenues of the IAA as Air Navigation Service Provider.
3. Licence Irish-based air carriers and authorise groundhandlers.
4. Investigate complaints about flight cancellations, delays of at least two hours and instances of denied boarding (Regulation EC 261 of 2004).
5. Investigate complaints about assistance received by passengers with reduced mobility.
6. Licence travel agents and tour operators established in Ireland, administer a bonding scheme for licensed travel agents and tour operators and process claims if a travel agent or tour operator goes out of business.

I now turn to describe our work in relation to the Irish travel trade sector.

Licensing and Bonding Irish Travel Agents and Tour Operators

Tour operators and travel agents established in Ireland apply to CAR for a twelve-month licence. These licences are usually renewed in April and October of each year. We issue a licence when the tour operator or travel agent has fulfilled certain criteria. This licensing framework has been in place since 1982 although it has been updated over the years to reflect the ongoing monitoring requirements and a number of European Directives.

In 2020, we issued 181 licences (24 tour operator and 157 travel agent). This is a reduction compared to 2019 when 211 licences were issued. During the year we monitor licensees, where they provide CAR with a variety of information including monthly and quarterly management accounts and annual accounts. This is our only role in relation to solvent tour operators and travel agents.

Insolvency Protection Scheme

CAR has a second role and this is where, unfortunately, a tour operator or travel agent is unable to fulfil its obligations to its customers and becomes insolvent. As part of the licensing process a tour operator is required to put in place a bond calculated as 10% of its projected licensable turnover. For travel agents, a 4% figure applies. In the event of a tour operator or travel agent becoming insolvent, we call on their bond to cover the cost of consumer claims. Where the bond is insufficient, there is a Travellers' Protection Fund in place and this is used to cover the cost of legitimate claims.

In principle, the insolvency protection arrangements covers packages (e.g. accommodation, flight and transfer) where travel starts in Ireland and where the package has been cancelled due to the insolvency of the licensee. Flights, ex Ireland, booked through a licensee are also covered. Certain sales are not covered and these include accommodation alone and items such as visas and insurance.

Under secondary legislation dating back to 1983, claimants have 60 days from the date of the collapse to make a claim to CAR¹. We are currently in the process of extending the claim period to 120 days to provide affected customers with more time to submit a claim to CAR.

¹ S.I. No. 104/1983 — Transport (Tour Operators and Travel Agents) Act, 1982 (Claims by Customers) Regulations, 1983.

In June 2020, Government introduced a refund credit note scheme. This allows licensed tour operators and trade agents offer refund credit notes to their customers where a booking has been cancelled due to Covid-19 travel restrictions. By voluntarily accepting a note, customers could book another package holiday in the future and Government backed the value of the note in the event of insolvency. At the same time, Government provided that the Travellers' Protection Fund would be maintained in funds.

Merchant Service Providers

Merchant service providers give travel agents and tour operators the ability to accept debit and credit cards in payment for goods and services and charge for this facility. I understand, from travel industry representatives, that some providers have required significant upfront financial security deposits. CAR is not a party to these discussions and does not play a role in these commercial relationships.

There is one point of interaction between merchant service providers and CAR and this relates to how consumer financial protection arrangements operate in the event of a travel agent or tour operator becoming insolvent.

Following an insolvency, an affected customer may seek to recover monies from CAR or from the merchant service provider. If the customer submits a claim to CAR, it falls under the insolvency protection arrangements. The customer may also request their credit or debit card provider to consider reversing a transaction because the travel agent or tour operator has not delivered the services paid for. This is called a chargeback.

In 2016, in discussions with some merchant service providers, we provided clarity on how our two processes should work. We agreed that CAR would be the first point of contact for the customer. If CAR determines that the customer should be paid under the insolvency protection arrangements, the customer would then not be considered in the chargeback process. If CAR determines that the claim is not covered in whole or part under the insolvency protection arrangements, we notify the claimant accordingly and they can provide this information to their credit/debit card issuer where they choose to explore the chargeback route.

CAR Process for Reviewing Claims

When a travel company becomes insolvent, its customers can access a claims form on our website (<https://www.aviationreg.ie/>). We then assess each submitted form, together with all supporting documentation such as receipts, itinerary and proof of purchase. At the end of this process, we decide if the claim can be settled in full, part or rejected and notify the claimant. The claimant has an opportunity to have a decision reviewed.

At the end of this process, if the claim is not covered in whole or in part by the insolvency protection arrangements and if the claimant has paid by a credit or debit card, we suggest that they may be entitled to a chargeback from their bank and that the claimant contact their bank if this is the case. We suggest that they provide the bank with our communication as evidence that the claimant does not have a claim against the bond or refund credit note scheme of the insolvent travel company.

Where we can, we have provided any necessary clarity to merchant service providers that have contacted us about how Ireland's insolvency protection arrangements work and what is covered by the scheme.

Summary of Recent Insolvencies

In 2020, there were 6 collapses resulting in claims, the largest of which was USIT Travel Ltd (ceased trading on 27th March 2020). In total, we received over 3,600 claims and these have been closed out. In 2021, there has been two insolvencies, the latest of which was Joe Walsh Pilgrimtours Ltd who ceased trading on 27th April. To date, we have received 2,489 claims relating to Joe Walsh Pilgrimtours and are currently reviewing these claims.