Up in The Air….? Proposed Changes to Airline Travel and Insolvencies

Article By:

Jennifer Jones

Last year we wrote an article *'Let's Fly Away'* reporting on the increasing number of airline insolvencies.

The Department for Transport has now published its final report reviewing airline insolvency and in this article, we look at the recommendations of that report.

Changes that we might expect to see in the future include:

-a new flight protection scheme (requiring passengers to pay an additional levy on flight costs);

-reforms to the UK airline insolvency regime; and

-better consumer safeguards.

The review was commissioned following the collapse of Monarch in October 2017 and the crisis that followed, with over 100,000 passengers stranded overseas. The UK government instructed the Civil Aviation Authority ("CAA") to repatriate all passengers (not just those ATOL protected), resulting in an eye watering £60 million bill for the taxpayer.

The report recommends measures which are designed to assist repatriation without the need for government intervention and consequently without the huge cost to tax payers.

It concludes that '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.'

Is there a real risk of further airline failures?

The latest analysis taken from the report states that: 'of the top 17 airlines serving the UK' there is a suggested '13% chance of an insolvency event within the next year.'

Whilst the risk is relatively low there is no getting away from the fact that if any of these airlines were to become insolvent a large number of passengers would be affected.

The report notes that there is currently a gap in the protections available to air passengers and that while around 80% of UK passengers benefit from some form of protection against financial loss, only around a quarter of these passengers are fully protected by the ATOL scheme when stranded abroad.

So what changes are recommended?

Flight Protection Schemes

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.

This is likely to see passengers paying an additional 50p a flight to cover the cost of protection from an airline failure, meaning that airline users, rather than the general taxpayer, would pick up the cost of repatriation in the event of an airline entering into insolvency.

This expected additional cost would only cover the repatriation of individuals whose flights originated from the UK and is insignificant when balanced against the protection it offers – a ticket home.

To put that cost into perspective, it cost the taxpayer approximately £476 to repatriate each passenger following the collapse of Monarch. An additional charge to passengers of 50p per flight seems fair. However financially secure airlines are less welcoming of this proposal, given the potential increased costs of collecting and administering the levy.

Changes to UK law and regulation

The report recommends a number of changes to UK laws and regulation including:

'Keep the Fleet Flying'

The review recommends a new special administration regime to allow the aircrafts of an insolvent company to fly for a short period to repatriate stranded passengers.

Under current UK law the aircraft of an insolvent company care grounded, which, on a practical level, makes organising repatriation difficult and expensive given the need to draft in assistance from elsewhere. If the insolvent airline can utilise its own fleet for a short while this makes the repatriation exercise less costly.

Additional power and responsibility to the CAA

The report also recommends expanding and given formal responsibility to the CAA to co-ordinate the response to any airline failure serving the UK market as well as enhancing the CAA's ability to monitor and enforce airline licence compliance regarding financial health.

It also recommends introducing a requirement for airlines to prepare and maintain plans to ensure repatriation is efficient and successful.

When can we expect these changes to happen

The report states that:

'*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'.

The report acknowledges that there is *'no one size fits all solution'* '*and the changes we recommend … some should be relatively uncontroversial and straightforward and others extend the role of the state and carry greater implementation risk*'. The chairman Peter Bucks concludes that 'ministers will therefore wish to weigh them carefully before deciding how to proceed'. For now it seems the reforms are up in the air but individual passengers should take note and make sure to protect themselves when booking their travel arrangements.

Conclusion and comment

However, we will have to see whether the recommendations will be implemented by airlines independently of changes to UK law and regulations, given concerns about the costs of implementation.

Travel agents welcome the proposed changes and one would also expect consumers to. They will receive reassurance that their return ticket is just that, and should the airline enter insolvency they can get home to the UK with minimal additional cost to them and less stress.

National Law Review, Volume IX, Number 157