

# Monarch: lessons to be learnt

---

Rhys Griffiths, Partner and Head of Travel

Fieldfisher LLP

4 December 2017

## Introduction

- Monarch failure
- ATOL protection: flight only
- ATOL protection: flight-plus
- How can the travel agent recover the cost?
- The future
- 6 lessons

## A brief recap

- Monarch Travel Group failed on 2 October 2017
- 110,000 passengers overseas; 300,000 with forward bookings
- A tragedy
- Confusion about passenger rights, ATOL protection and obligations of travel agents

## ATOL protection – flight only

- Flight-only bookings with Monarch Airlines Limited not ATOL protected
  - Bookings direct with airline (s.9 ATOL Regulations 2012)
  - Bookings through travel agent
- (Some exceptions – First Aviation Limited pre 14 December 2016; Avro charter flights)
- Controversy – CAA provided “free” flights home until 16 October 2017
- “All flights levy”?
- Lesson 1: Customers are not protected against the risk of airline insolvency if buying flight-only

## ATOL protection – flight only

- Errors in customer-facing literature, leading to unnecessary legal liabilities:
  - Website explanation of ATOL
  - Terms and conditions
- Adverse publicity
- Which investigation, 7 October 2017:

*“An undercover investigation by Which? Travel has revealed that some of the UK’s biggest holiday companies are providing exaggerated or inaccurate information to customers about Atol protection.”*
- Martin Lewis – Money Saving Expert
- Lesson 2: Understand ATOL, audit your customer-facing literature and get it right

## ATOL protection – flight-plus

- Flight-Plus arrangers (similar for package organisers)
- Obligation on travel company to make *suitable alternative arrangements* (for pre and post departure customers) without charging the customer i.e. source other flights
- BUT: If impossible, or rejected for good reason, then refund
- In practice:
  - Customers already in resort were repatriated by CAA “for free” until 16 October 2017
  - Customers yet to depart – flights were significantly more expensive so impossible to make suitable alternative arrangements?
- Lesson 3: Have a plan for what you will do when an airline fails and what “*suitable*” means for you.

## How can the travel agent recover the cost?

- Using credit/debit card to pay airline?
- Chargeback claims
- Not section 75 Consumer Credit Act
- Claims under the MasterCard or Visa Scheme Rules

## How can the travel agent recover the cost?

- Page 46, MasterCard Chargeback Guide dated 1 August 2017

### **Goods or Services Not Provided**

**Chargeback Condition.** One of the following:

- The cardholder contacted the issuer claiming both of the following:
  - The cardholder engaged in the transaction.
  - The purchased goods or services were not received
- Travel services arranged through an online travel agency or tour operator were not received and the travel agency or tour operator is no longer in business.

## How can the travel agent recover the cost?

- Warning – there can be problems
- Another chargeback code: Goods or Services Not Provided—European Transactions for Travel Services
- Requires the travel company first to go to ATOL
- This is not relevant – concerns purchases through a travel agent or tour operator, which is not the case for most travel companies
- Lesson 4: use corporate credit/debit cards to pay for risky suppliers, ensure you understand the chargeback processes of your issuer

## How can the travel agent recover the cost?

- SAFI: Supplier Airline Failure Insurance
- Per passenger premium to cover risk of airline insolvency
- Be careful with the policy wording
  - Requirement to turn to other “*bond or insurance*” before it pays out
  - The position in relation to flight-only
- Lesson 5: understand what you are buying and make sure it pays out when you need it!

## What does the future hold?

- New Package Travel Directive
- ATOL reform
- Government reconsidering airline insolvency – winding down airlines in an orderly manner
- Lesson 6: Get involved!

## Any questions?

Rhys Griffiths

Partner, Head of Travel Group, Fieldfisher LLP

t: 020 7861 4000

m: 07815 787 923

e: [rhys.griffiths@fieldfisher.com](mailto:rhys.griffiths@fieldfisher.com)