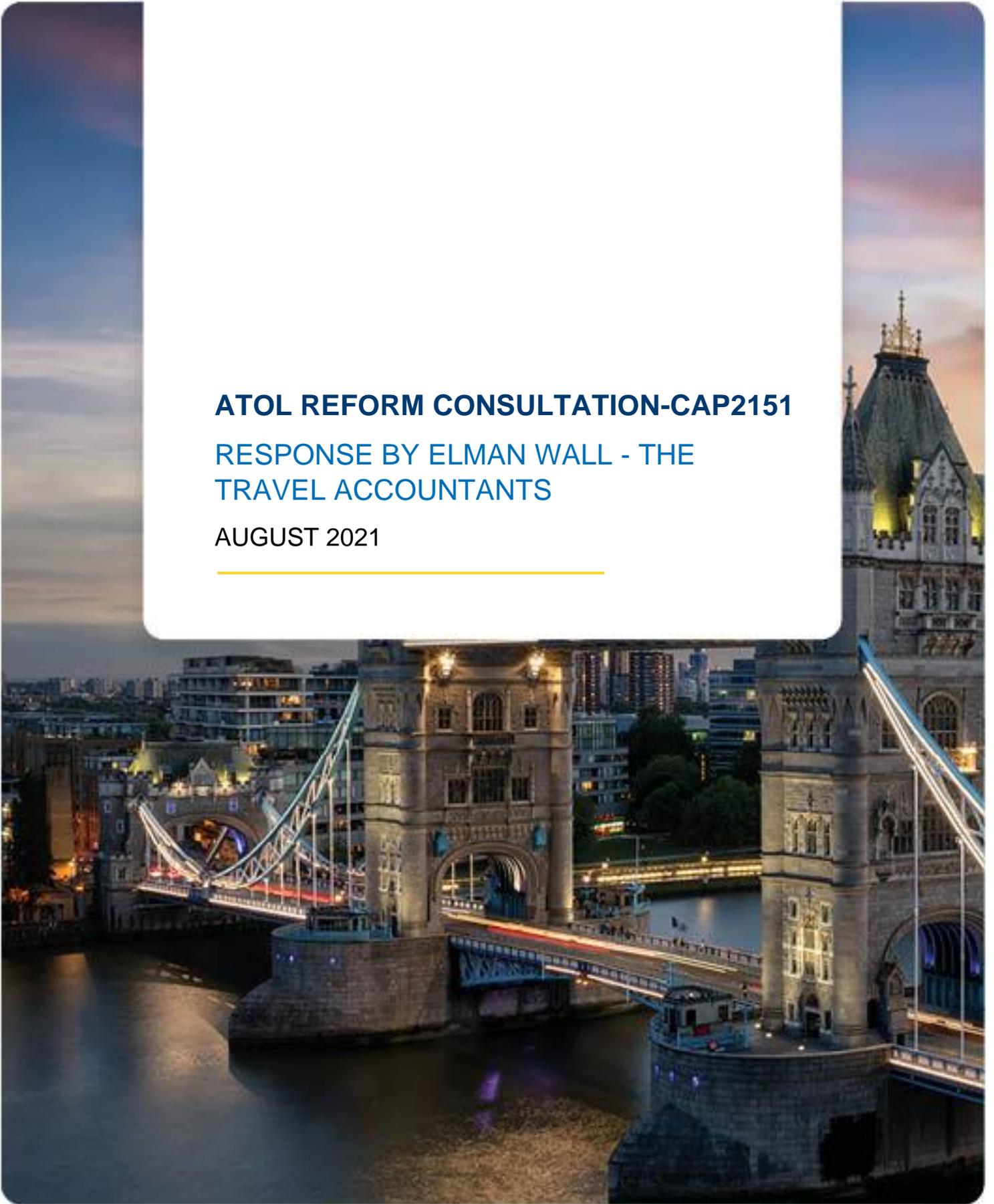


**ATOL REFORM CONSULTATION-CAP2151**  
**RESPONSE BY ELMAN WALL - THE**  
**TRAVEL ACCOUNTANTS**  
**AUGUST 2021**

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## ATOL Reform Consultation-CAP2151

### Response by Elman Wall -The Travel Accountants

August 2021

#### Overview and General Observations

Elman Wall Limited, a Xeinadin Company, are a full-service firm of auditors, accountants, business and tax advisors. We are one of very few firms of accountants in the UK who have an expertise and are highly experienced in the Travel Industry.

We have acted for hundreds of travel businesses, and pre Covid, our clients' combined UK turnover was approaching £4billion.

We currently act as ATOL Reporting Accountants to over 100 ATOL holders.

These range from some of the most financially secure and robust travel businesses in the industry to owner operated licensees, whose entire professional and personal future is on the line every annual ATOL renewal.

We are also authorised by the CAA to act as Trustees over Clients' money in ATOL Air Travel Trust arrangements with certain ATOL holders.

As Travel Industry expert accountants looking after so many ATOL Holders, we are almost uniquely placed to see the breadth of different business models operating under ATOL and why, like our diverse client base, there needs to be a range of options available for those businesses to be able to comply with consumer protection and ATOL regulation, as opposed to "one size fits all".

We believe that the ATOL system generally works well. It is not perfect, and there is room for improvement, but it is certainly not "broken".

In paragraph 2.17 of the Consultation, the CAA points out that between 2014-2019, there were on average 13 failures a year, which does seem a tolerable and manageable number.... around 1%. Of course, we would all want no failures.

However, by volume of consumers affected in that period, a staggering 93% (over 900,000 people) were due to the failures of Monarch and Thomas Cook. Both were companies that arguably should not have had ATOL licences renewed for some years prior to their failure, and both also operated their own airlines. Is the entire ATOL holding population now having their landscape changed as a result of the failure of these two giants, and for years very "sick" companies, who bear no resemblance to most licensees? If so, this would seem an overreaction to their failures and the specific problems arising out of mismanaging them.

Paragraph 1.3 says that "the experience of the Covid-19 pandemic has amplified the need for change..... This can result in a bad consumer experience when refunds in respect of cancelled holidays have taken a long time to be repaid."

Covid-19 has of course had an extraordinary impact on the Travel Industry which is well documented. It is a once in a lifetime situation that shouldn't define the next generation of ATOL regulation. No-one

had anticipated that travel globally could have all but ceased for nearly 18 months and consumer protection and other regulation was never designed for such a circumstance.

Paragraph 1.5 references the Government's Airline Insolvency Review. It is ironic that many Tour Operators have been unable to refund consumers as they are required to under the Package Travel Regulations within 14 days because monies paid to Airlines (amongst other service providers in the supply chain) by ATOL holders in advance of travel were not refunded by the Airlines in the same timeframe. Surely, there needs to be alignment between the duties and obligations of Tour Operators and Airlines to their customers, both direct to the consumer and where a Tour Operator is an intermediary between Airline and consumer. It is still difficult to comprehend that there is consumer protection in place for the sale of holidays, but not for the direct sale of Airline seats, and the many failures of Airlines in recent years just explodes the myth that Airlines don't fail. They clearly do!

We would also take the opportunity to add that we believe that the CAA needs to increase its monitoring and enforcement of ATOL Regulations. Most ATOL holders are compliant and well meaning. There are some bad actors with licences and there are companies that do not hold ATOL licences that profess they do, and the CAA should focus on abusers and impersonators as opposed to over monitoring companies that are unlikely to cause a loss to the ATT.

Furthermore, we believe that the CAA have missed a real opportunity with the ATOL Reporting Accountant (ARA) scheme. This was meant to ensure the quality of financial information submitted to the CAA as part of annual accounts and ATOL Annual Returns.

It is easy for an Accountancy firm to become an ARA. There is no relevant training (we believe the existing training model to be wholly inadequate as it has not been tailored in any way to external accountants) on becoming an ARA, nor ongoing training and quality control and development. Elman Wall have taken on many an ATOL Holder as a client and found that accounts previously submitted to the CAA are technically incorrect, and in some cases have material errors in fundamental aspects such as revenue recognition and fully identifying consumers money held and suppliers paid in advance. We would urge the CAA to develop the ARA scheme further and ensure there is adequate training and monitoring of accounting firms that are allowed to undertake ARA work. We don't believe that the original intention of the ARA scheme is being met and this should be revisited.

**In summary, the ATOL system is not broken. The vast majority of ATOL Holders act responsibly and within the Scheme rules. They are largely compliant; principled and well intentioned. The calls on the Air Travel Trust have, to an overwhelming proportion, been as a result of the failures of Thomas Cook and Monarch, two Airline operating companies that bear no resemblance to almost any other ATOL Holder. The resilience of ATOL Holders during Covid shows the lengths they will go to in order not to fail. That should be commended.**

**As such, we believe that once the impact of Covid has passed, there should be no fundamental change to the ATOL regulations with respect to the current protection of Consumer funds.**

We turn to the questions raised in the Consultation and limit our responses to specific questions where we have particular points to make. We answer on the basis that the CAA will proceed with segregation and our comments are on how we think this can best work, despite our view that the current system should not be fundamentally altered.

## **Mandatory segregation of monies**

Consumer protection in travel has never mandated that ATOL holders or other regulated Tour Operators cannot use consumers advance receipts in their businesses. To insist on this now is a major departure from the current position, which recognises financial protection by way (simplistically) of Trust Account,

bonding or certain insurance products. The reason why funds are co-mingled by so many ATOL holders, is because they are allowed to be.

If the CAA are going to make changes to the ATOL Regulations, Elman Wall are advocates of Escrow (partial segregation) or Trust Accounts (full segregation) for larger ATOL holders. Our personal preference is for escrow/partial segregation accounts as they are more economic, flexible and easier to implement and operate than full Trusts whilst mitigating a high proportion of any risk or loss to the ATT on failure.

We consider it essential that experienced independent trustees holding appropriate levels of professional indemnity insurance are in control of the Trust Account with the approval of the CAA, as happens now. The CAA should take care not to allow a wide pool of Trustees, with limited skill and experience, as they have done with the ARA's.

However, we believe that licensees should have a choice as to continue to protect consumers by way of bonding or insurance-based models, rather than having to segregate funds. Certainly, there should be an extended transition period towards segregation of customers' monies, whilst the industry recovers from the ravages of Covid, where choices are available. The last thing the CAA wants or can even afford is mass failure of otherwise perfectly good Tour Operators, resulting in calls on the ATT and eroding consumer confidence in the packaged industry due to the inability to cope with the cash flow requirements of a new model.

We would also suggest that the smallest ATOL holders should have to become part of an Accredited Body/ Franchise Holder organisation (which all operate trust models) and that they are unable to apply directly to the CAA for an ATOL. The CAA would need to determine the minimum size of licence or balance sheet worth required for a Tour Operator to hold an ATOL themselves. Potentially, this could encompass some of the operators currently holding Small Business ATOLs.

In paragraph 2.14 the CAA states that "new applicants are considered to pose more of a risk to consumers". We don't agree with this statement as some new entrants are very well capitalised and well managed. However, the CAA may want to consider making mandatory segregation of consumer funds for new entrants who will know what they are signing up to. This means the present risk exposure cannot worsen in the eyes of the CAA.

From the early experiences we have had operating Escrow Accounts on a partial segregation basis for several licence holders, we believe this can be an optimal model moving forward for much of the industry. Once the Trust Deed is signed and a Trust Bank account set up (easier said than done), the escrow model is relatively easy to operate, maintain, report on and monitor. ATOL holders can embrace it as it gives other stakeholders comfort, reduces operational risk and cost and sends positive messaging to consumers that their money is safe.

Trustee and bank fees can be offset by:

- elimination of capital injection requirements by the CAA
- reduced security terms and charges with merchant acquirers
- elimination of bonding or certain insurance premiums
- minimised APC charges
- more favourable payment terms from key suppliers

The key to the success of the Trust model is alignment with supply cycle economic models to make this viable. If consumer funds are held in escrow or trust until a holiday has completed, but suppliers, which in all likelihood amount to 70-85% of the funds held, require payment in advance of commencement of travel, the numbers just won't stack up and the Tour Operator will face an ever-increasing cash

requirement to fund this gap as its business grows. This is the biggest challenge that the CAA and ATOL Holders must overcome.

As mentioned earlier, we believe that there should not be a difference in consumer protection as to whether a flight is booked by a consumer direct or as part of a package provided by a Tour Operator and accordingly, customer monies should be able to pass from a Tour Operators Trust Account to an Airline in a “flow through” manner with no impact on consumer protection.

In respect of agents taking ATOL holder’s bookings, we believe that monies should be passed immediately (or within 7 days) from the agent to the principal, or even that the consumer pays funds to the principal directly, bypassing the agent. This makes commercial sense to us as well as from a regulatory point of view. Commissions and other incentives are then dealt with as contractual arrangements between Agent and Tour Operator.

## Mandatory Bonds

We do not believe that there should be mandatory bonding requirements but do believe that bonding should continue to be a mechanism to achieve consumer protection, especially in the short term if there is an extended transition towards mandatory segregation.

Many ATOL holders currently are not required to have a bond due to their financial position (and are not new entrants to ATOL) and it would, in our opinion, be a retrograde step to reintroduce bonding for all.

If the CAA did make one pathway mandatory, we would say that segregation of consumer monies achieves a better outcome than bonding in protecting consumer funds.

We would also make the point that in recent times there has been a less than enthusiastic marketplace of bond obligors and there is no certainty that a competitive and efficient bonding market could be achieved.

## Tailored Approach

Yes, we believe that ATOL holders should be allowed to choose between segregation of monies and bonds, at least in the short, or a transitory term.

A sliding scale of a mix of the two is possible, but may not be desirable, to achieve clarity of risk and wouldn’t achieve the objective of refunding customers’ monies quickly in the event of cancellations. Further work by the CAA on a matrix of possible outcomes would be necessary for the industry to be able to evaluate whether this mixing between a combination of segregated funds and bonds could be practicably achievable or not.

As mentioned, we believe that licences under a certain size should be operated through an ATOL Franchise body. Above that level, the CAA’s approach should be the same for all licence holders. Consumers and the protection of their monies paid in advance of holidays (or flights) undertaken should be treated the same regardless of whether they book through an independent Tour Operator or a large, mainstream one...or an Airline.

We believe that merchant acquirers, key suppliers and other stakeholders will take more comfort if consumer monies are segregated into an independently managed Trust or Escrow Account. Their own

risks are reduced if there is certainty that monies are held in an independently managed, ring-fenced account. As that isn't the purpose of bonding schemes, the existence of those bonds has not been factored into existing commercial arrangements by those stakeholders.

## ATOL Protection Contribution (APC)

If APC is based on risk and if ATOL holders must segregate client monies, then the risk of a large claim on the ATOL is much reduced, and APC contributions should reflect that.

APC contributions for a company holding consumer monies on trust should be lower than those who don't.

There is as much logic in APC being set as a percentage of booking value as there is on the current set amount per booking and we believe this should be explored further. There will be different ATOL holders who are advantaged (or disadvantaged) under either methodology.

## Financial Markets Option

We don't believe that the 3<sup>rd</sup> party market could realistically deliver a fit for purpose, cost effective product that was exclusion free and without ability for providers to revise their terms and appetite for business in future years.

## Transition Period

It is clear from this consultation, and recent behaviour shown by the CAA that the use of Trust and Escrow Accounts is firmly in the CAA's mind.

Some ATOL holders already operate Trust Account models, formally or informally, or take care internally to not use a high proportion of client's advance receipts in operating their businesses. These companies already comply with or will adapt reluctantly but without too much difficulty into new arrangements, so long as the issues over supply chain payment cycles are dealt with in a new operating framework.

New applicants for an ATOL should need to meet any new arrangements immediately from implementation.

As Consumer monies will be to a high or 100% proportion fully protected within an independently managed Trust Account, they should be incentivised by a lower APC charge and reduced balance sheet monitoring. An additional incentive should be better commercial terms from merchant acquirers and other key stakeholders.

As ATOL holders are allowed to currently use client monies as if it was their own, many do. The CAA rely on techniques such as monitoring liquidity ratios within the annual ATOL financial review to control how much Consumer monies remain within the business.

Therefore, once again we would stress that the criteria and monitoring of ATOLs to ensure that the CAA receive accurate and meaningful financial information to review from their ATOL Holder clients is important.

Especially with the impact of Covid-19 on the Travel Industry, decent and currently compliant ATOL Holders will need an extended transition period to recover to previous trading levels, wash Refund Credit Notes through the system and build up a cash buffer to enable them to viably enter a Trust Account model. Many of these businesses will not be able to secure external investment and funding and will need to be shepherded through transition by the CAA. For these companies, some form of bonding arrangement might be helpful during transition. We would stress that these are largely good businesses that will have their businesses severely impacted by a move towards segregation of customers' monies, and we would urge the CAA to ensure that they don't end up ruining perfectly good Tour Operators by "over protecting" the ATT.

That leaves a number of ATOL Holders who perennially struggle with ATOL renewals and who may never be able to adapt their businesses to be fit for purpose under new ATOL regulations. These possibly are the highest risk to the ATT. The CAA needs to consider whether it lets them continue under transition arrangements lasting a number of years without a viable methodology and plan to ensure continued compliance under new rules.

## Pipeline Monies

As previously mentioned, we don't see the logic in either regulatory or commercial terms for agents retaining monies which belong to the principal.

Look how IATA has been steadily reducing the BSP cycle from monthly payment by agents to airlines to 14 days and now many agents pay their BSP weekly.

If this logic is applied, there is no need for agents to segregate Consumer Monies, as they shouldn't be holding these monies for any length of time.

## APC Returns and Online ATOL Certificates

We believe that CAA creating and hosting Online ATOL Certificates will be a benefit for all parties - Regulator; ATOL Holders and Consumers and this initiative should be continued with and implemented.

As part of the "back office" function of the Online ATOL Certificates, APC returns will be effectively self-created by the CAA who will be generating the Certificates and have full visibility over the APC reporting, thereby eliminating any issues that currently exist.

End.