

On behalf of the Civil Aviation Authority
Paul Smith
First Witness Statement
Exhibit: PAS1
Dated: 22 September 2019

No.

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF THE LIQUIDATION COMPANIES
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

WITNESS STATEMENT OF
PAUL ANTHONY SMITH

I, Paul Anthony Smith, Director of the Consumers and Markets Group of the Civil Aviation Authority of 11 Westferry Circus, London E14 4HD will say as follows:

1. I am the Director of the Consumer and Markets Group ("**CMG**") at the Civil Aviation Authority ("**CAA**"). I am duly authorised on behalf of the CAA to make this witness statement in the applications by the directors of those companies listed in Schedule 1 of this witness statement (the "**Liquidation Companies**"), pursuant to section 124(1) of the Insolvency Act 1986. I am also one of the air travel trustees, on whose behalf the CAA acts as agent in respect of certain functions as further explained below. I further make this statement on behalf of the trustees of the Air Travel Trust (the "**Air Travel Trustees**"), and on behalf of the Air Travel Trust ("**ATT**") as a contingent creditor of those Liquidation Companies which hold an air travel

organisers' licence ("ATOL") under the Civil Aviation (Air Travel Organisers' Licencing) Regulations 2012 (the "ATOL Regulations").

2. Five of the Liquidation Companies, namely, Thomas Cook Tour Operations Limited, Thomas Cook Retail Limited, TCCT Retail Limited, The Freedom Travel Group Limited and Future Travel Limited hold an ATOL. One more of the Liquidation Companies, Thomas Cook Services Limited, holds an ATOL trade licence (a trade licence is restricted to business to business sales only, whereas the full ATOL permits sales to, among others, consumers, thus members of the public) (together, the "ATOL Liquidation Companies").
3. I am aware that the directors of each of the Liquidation Companies intend to apply for winding up orders to be made in respect of each of those companies, and for the Official Receiver to be appointed as liquidator of the Liquidation Companies and the Official Receiver shall make an application for the partners and licensed insolvency practitioners in AlixPartners UK LLP ("AlixPartners") and KPMG LLP ("KPMG") to be appointed as special managers of the Liquidation Companies pursuant to section 177 of the Insolvency Act 1986. The CAA has worked with the Official Receiver and the relevant special managers to mitigate the impact on consumers should the winding up orders be made.
4. There is now produced to me an exhibit marked 'PAS1'. References to page numbers in this statement are references to the pages of this exhibit.

The functions of the CAA and the ATT

5. The CAA is responsible for, amongst other things: the economic regulation of certain UK airports under the Civil Aviation Act 2012; the regulation of air traffic services as the 'competent authority' under Commission Regulation (EU) 2015/340; the licensing and the financial fitness of airlines under Regulation (EC) No 1008/2008; and enforcing general consumer protection law and licensing of air travel organisers

under the ATOL Regulations. Within the CAA, these functions are the responsibility of CMG.

6. The ATOL scheme operates pursuant to the ATOL Regulations. The protection offered by the ATOL scheme derives from the requirements in the ATOL Regulations and associated legislation that: i) every person who makes available accommodation for the carriage of persons on flights in the UK must hold an ATOL unless certain exceptions apply (regulation 9 of the ATOL Regulations); ii) ATOL holders must pay to the ATT a contribution per passenger booked on an ATOL protected booking (regulation 3 of the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007 (the “**APC Regulations**”)); and iii) the ATT will pay compensation to consumers that have booked ATOL protected flights and holidays that are not provided due to the failure of the ATOL holder (clause 6(2) of the Air Travel Trust Deed dated 5 January 2004 as amended by deeds of variation dated 4 January 2005, 18 March 2008, 27 April 2012, 18 May 2016 and 29 April 2019 (the “**ATT Deed**”) (exhibited at page 1)).
7. The exemption in the ATOL Regulations referred to in paragraph 6 means that not all flights sold in the UK require ATOL protection. For example, airlines do not need an ATOL to sell seats on their own flights. Consequently flights sold by airlines are not ATOL protected. There are, therefore, a number of services, purchased by consumers that do not receive ATOL protection under the ATOL Liquidation Companies’ ATOLs (“**Non-ATOL Services**”).
8. The ATOL scheme is the system by which the CAA:
 - a. monitors compliance with the ATOL Regulations;
 - b. licenses those who need an ATOL in order to make available flight accommodation;
 - c. determines the terms of an ATOL, in part to protect consumers of flight accommodation; and

- d. establishes and runs a scheme to protect consumers of ATOL-protected products in the event that the ATOL holder fails to fulfil its obligations to those customers.
9. The Air Travel Trust (“ATT”) is a trust fund established by the Secretary of State for the Department for Transport (the “**Secretary of State**”) under the ATT Deed. The purposes of the trust fund are set out in the ATT Deed and include, for example at clause 6(2)(b), making funds available to pay the costs necessary to repatriate stranded consumers who have purchased ATOL-protected products (“**ATOL Customers**”), and also to meet claims for losses incurred by ATOL Customers of failed ATOL holders due to purchased ATOL-protected products not being provided (clause 6(2)(a) of the ATT Deed). The ATT may also provide funds to cover incidental losses incurred by ATOL Customers whilst stranded abroad (under clause 6(2)(c) of the ATT Deed), for example by way of additional accommodation charges occasioned due to a delay in returning home. The ATT is primarily funded by contributions from ATOL holders, who must pay a contribution (currently set at £2.50) into the scheme for each person included in a relevant booking under the APC Regulations. The ATT also has access to additional funds through an insurance policy and a credit facility. I am one of the Air Travel Trustees, as mentioned above.
10. The ATT is a creditor of the ATOL Liquidation Companies: i) for payments due to it under the APC Regulations; ii) under a guarantee entered into in favour of the CAA (as agent of the ATT) dated 10 October 2013 (and a deed of accession to the guarantee dated 2 August 2019) which provides a cross-guarantee from each Liquidation Company to the ATT in respect of all amounts owed to the ATT by (amongst others) the Liquidation Companies and; iii) due to the ATT assuming consumers’ claims against the ATOL Liquidation Companies by way of assignment. Pursuant to terms under which all ATOLs are issued, the CAA requires that the standard terms and conditions of ATOL holders with their consumers provide for the claims of consumers to be automatically assigned to the ATT when the consumer receives a benefit or payment from the ATT following the failure of the ATOL holder and following payments made to those consumers by the ATT.

11. The CAA performs certain functions as agent on behalf of the ATT. Where an ATOL holder fails, the CAA acts as agent of the ATT in exercising the ATT's powers to fund the costs of repatriation of ATOL Customers and to meet claims for losses incurred by ATOL Customers as a result of the failure in accordance with the ATT Deed and Air Travel Trust Payment Policy. Where the CAA acts as agent for the ATT, it recovers its costs of doing so from the ATT.

The Repatriation Exercise

12. A winding up order being made in respect of the ATOL Liquidation Companies will automatically allow the CAA to exercise its discretion to publish a notice of licence holder failure in relation to the ATOL Liquidation Companies under Regulation 23 of the ATOL Regulations. Following the publication of a notice of licence holder failure, the powers of the ATT (acting through the CAA as its agent) under the ATT Deed will become exercisable. I understand, following discussions with my colleagues in the Crisis Management Department at the CAA that, a failure of the ATOL Liquidation Companies at this time would require the ATT to provide funds to repatriate approximately 95,000 UK based ATOL Customers who are presently abroad. In these circumstances, the function of the CAA will be to carry out the repatriation exercise on behalf of the ATT (the "**ATOL Repatriation Exercise**").

13. Additionally, the Secretary of State has issued the CAA with a letter under section 16 of the Civil Aviation Act 1982 (the "**Section 16 Letter**"). The Section 16 letter requires that the CAA undertake contingency planning with a view to repatriating UK based holidaymakers who have purchased Non-ATOL Services from the Liquidation Companies, who would otherwise not be entitled to assistance under the ATOL Repatriation Exercise ("**Non-ATOL Customers**"). Under the terms of the Section 16 Letter, a second letter, substantially in the form attached to the Section 16 Letter, will be issued under section 16 of the Civil Aviation Act 1982 in the event of a failure of one of the Liquidation Companies (the "**Post-Insolvency Section 16 Letter**"). The

Post-Insolvency Section 16 letter will require the CAA to put the contingency plans into action and to repatriate the Non-ATOL Customers.

14. In order to fulfil their obligations under the Section 16 Letter the CAA will need to provide for the repatriation of approximately 50,000 Non-ATOL Customers who are presently abroad, the Non-ATOL Customers requiring repatriation are customers of Thomas Cook Airlines Limited (the “**Non-ATOL Repatriation Exercise**”, together with the ATOL Repatriation Exercise, the “**Repatriation Exercise**”).
15. Under the terms of the Section 16 Letter and the Post-Insolvency Section 16 Letter, the CAA is entitled to recover its costs in effecting the Non-ATOL Repatriation Exercise from the Secretary of State.
16. The cost of the Repatriation Exercise will be very considerable. Having consulted with the Official Receiver, the relevant special managers and CAA colleagues during contingency planning for the Repatriation Exercise, I anticipate that the actual costs of the total Repatriation Exercise will be approximately £100 million. The nature of the Repatriation Exercise means that this figure can only be an estimate at this stage and this figure excludes the costs of dealing with the ATOL Customers who have not yet travelled to their destination. I further understand that the costs of the Repatriation Exercise will be apportioned between the ATT and the Department for Transport in an equitable manner to be agreed between the ATT and the Department for Transport of ATOL Customers and Non-ATOL Customers .
17. Given the very high number of consumers abroad and of the additional consumers affected by forward bookings, the efficiency and success of the Repatriation Exercise depends greatly on the CAA’s ability to implement its contingency plans quickly, working closely with the Official Receiver and special managers of the Liquidation Companies.

18. We note from the draft witness statement of Dr. Peter Fankhauser that Thomas Cook Group Plc engaged AlixPartners and the proposed special managers to assist the Liquidation Companies with their own contingency planning during the course of July 2019, with planning being significantly increased from mid-September 2019. With the consent of the Liquidation Companies, the CAA, the Official Receiver and the relevant special managers have cooperated to carry out preparatory contingency planning work. This work has included the CAA and the Official Receiver provisionally agreeing a Services Agreement that will enable the Repatriation Exercise to be implemented forthwith upon the making of winding up orders using certain resources and facilities of those Liquidation Companies listed in Schedule 2 of this witness statement (the “**Supplier Companies**”). Under the terms of the Services Agreement, the CAA will have oversight of the costs incurred in undertaking the Repatriation Exercise and may engage advisors to assist in monitoring these expenses.
19. Following the making of the winding up orders, the usual running of the Liquidation Companies will cease, and only those personnel and resources essential for i) the orderly wind down of the Liquidation Companies; and ii) the Repatriation Exercise will be retained. In order to undertake the Repatriation Exercise successfully the CAA will need access to, amongst other things: i) certain key staff members; ii) passenger data; iii) certain IT systems necessary for obtaining and interrogating passenger data; iv) certain data relating to the flight schedules; and v) information regarding hotel bookings, and details of contacts at accommodation providers. I understand, after consultation with the relevant special managers, that the Supplier Companies hold the majority of these resources. These resources will be used chiefly for the purposes of identifying the location and booking details of the consumers who are currently abroad and communicating with those consumers with regard to replacement flights.
20. The Repatriation Exercise will be the largest such exercise which the CAA has ever undertaken. It will involve very close co-ordination between the Official Receiver, the relevant proposed special managers and the CAA and will involve the

contingency planning being implemented immediately upon the winding up orders coming into effect. For example, it will be necessary for the CAA and the Official Receiver to issue press releases and communications on social media very shortly after their appointment, to advise and reassure consumers and employees of the steps which are being taken for their protection. This is of particular importance given the level of press interest which these matters have already generated, and which is likely to increase further upon the making of winding up orders. Identifying consumers abroad will require the use of the Liquidation Companies' existing workforce (including cabin crew), or sub-contractors (both in the UK and abroad), and will necessarily involve access to certain of the Liquidation Companies' premises and in particular their IT systems. The CAA will need to put into effect its complex contingency planning in order to procure or secure aircraft to repatriate consumers who might otherwise be stranded abroad. The CAA and the proposed special managers will need to contact the foreign hotels at which the consumers are staying, to seek to ensure that the consumers' accommodation for the remainder of their holiday is assured (it is estimated that consumers are staying at around 3000 foreign hotels).

21. It is highly desirable that, if the Court makes the winding up orders sought, these take effect in the early hours of the morning at or about 2 am, when at least the large majority of the fleet of planes of Thomas Cook Airlines Limited will be stationary, and so that the CAA, the Official Receiver and the proposed special managers can begin to give effect to the exercise within hours thereafter, before flights commence later in the morning. If the winding up orders sought are made at or about 2 am, it is likely that 6 planes of Thomas Cook Airlines Limited will be in flight. However, following consultation with representatives from the CAA's Safety and Airspace Regulation Group and the accountable managers of Thomas Cook Airlines Limited, the Official Receiver has agreed that while these flights can proceed to their planned destination, no further flights operated by Thomas Cook Airlines Limited will be authorised to depart.

STATEMENT OF TRUTH

I believe that the facts in this witness statement are true.

Signed: Paul Smith

PAUL ANTHONY SMITH

Date: 22 September 2019

Schedule 1
Liquidation Companies

1. MyTravel Group Limited
2. Thomas Cook Airlines Limited
3. Thomas Cook Airlines Treasury plc
4. Thomas Cook Continental Holdings Limited
5. Thomas Cook Finance 2 Plc
6. Thomas Cook Group Airlines Limited
7. Thomas Cook Group plc
8. Thomas Cook Group Tour Operations Limited
9. Thomas Cook Group Treasury Limited
10. Thomas Cook Group UK Limited
11. Thomas Cook In Destination Management Limited
12. Thomas Cook Investments (2) Limited
13. Thomas Cook Money Limited
14. Thomas Cook Services Limited
15. Thomas Cook UK Limited
16. Thomas Cook West Investments Limited
17. Thomas Cook UK Travel Limited
18. Blue Sea Overseas Investments Limited
19. Thomas Cook Tour Operations Limited
20. Thomas Cook Retail Limited
21. Travel and Financial Services Limited
22. TCCT Retail Limited
23. Thomas Cook Aircraft Engineering Limited
24. The Freedom Travel Group Limited
25. Future Travel Limited
26. Retail Travel Limited

Schedule 2

Supplier Companies

1. Thomas Cook Airlines Limited
2. Thomas Cook Tour Operations Limited
3. Thomas Cook In Destination Limited
4. Thomas Cook Group plc
5. Thomas Cook Retail Limited
6. Thomas Cook UK Limited
7. Thomas Cook UK Travel Limited
8. Travel and Financial Services Limited