

SUBMISSION TO COMMISSION FOR AVIATION REGULATION (CAR)

21 MARCH 2017

John Galligan, Managing Director, John Galligan Travel
5 Sandyford Office Park, Dublin 18.

Strategic Review – Travel Agents & Tour Operators Licensing

The Commissioner is to be congratulated for undertaking this strategic review. The last review, in 2008, raised the hopes of the Irish travel profession that, finally, someone might be listening to our decade's long calls for better consumer protection. The 1982 Act was written before internet, mobile 'phones and low-cost airlines and by 2008 was clearly, badly out of date. Much effort by CAR went into the research for an excellent consultation paper, resulting in six recommendations (to the Minister), made after the consultation process. They were not earth-shattering recommendations but did display an understanding of some of the issues within the current regime. As so often happens in Ireland, the two easy recommendations were eventually implemented but everything else was ignored.

In doing the current review, it is noted that the Commissioner is open to reviewing the processes of the Commission and how these might have to change in the light of new legislation. It has to be very frustrating for the people within the Commission whose strident efforts are hampered by out-of-date and not-fit-for-purpose legislation. Issues that require new legislation are outside the remit of CAR but it is believed that CAR should play an active lobbying role in bringing about change to the current inadequate legislation. In doing so, it should be seeking to advance its mission statement objective of "protecting the interests of air passengers" by improving their protection from the 15% current consumer protection level. This should not be done by hitting the small micro-businesses that make up the majority of travel agents, through even more punitive licensing or bonding requirements. All that would do is drive out the small businesses and discriminate in favour of the bigger ones.

CAR – Protecting consumers?

Given that CAR are guardians for the consumer in this context, they have to work within a framework that denies them the opportunity to protect those very consumers. It has long been agreed that the current regime oversees mainly Irish based micro-enterprises (with less than 10 staff each), while ignoring much larger foreign online vendors, bed banks, airlines and other vendors. The result is that less than 15% of the travelling public are protected by the efforts of the CAR team. This must raise the question of efficacy, efficiency and the basic purpose of the CAR Regulatory regime. If our "consumer protection" fails to protect 85% of "consumers", it would appear to be an abject failure by any measure. Previous Ministers for Transport Dempsey, Veradkar and Donohoe have had this explained to them in great detail. They all appeared to understand and accept the madness of our "consumer protection" but preferred to wait until the EU effectively re-wrote the law for them. The new Directive does not do that and the new legislation requires a lot of consideration and debate. The fear is that Irish travel agents will be ignored again and presented with a new law which is poorly thought out.

New Package Travel Directive & New Legislation

The new Package Travel Directive (PTD) from the EU is due to be implemented by January 2108. Only 9 months from now. Given the recesses that our parliament takes, that does not leave a lot of time for legislation to pass through the Dail. At this point it is unclear which government department will have responsibility for enacting it into legislation, so the process has not even begun. There has been no dialogue with the travel profession about it. This is an appalling lack of activity, as the legislation which underpins this new directive, will (presumably) be the opportunity to correct the very poor and defective legislation, currently in place. It is also likely to affect CAR. Successive Ministers have said that they would not improve the existing legislation until the PTD was issued by the EU. That appears to be abdicating their responsibility and prolonging the uselessness of the current protection regime. But the PTD is here now. It is due to be implemented next year - 2018, a full ten years after it was first mooted! That is ten years our legislators have been procrastinating. Ten years of poor consumer protection.

Experience suggests that the people who know most about the inadequacies of the legislation are the last people to be consulted and the least likely to have their views considered. The concept that civil servants and politicians know more about the work-through consequences of legislation than the practitioners who have to live with it, is a dangerous premise. The travel professionals in the Irish travel industry have been calling for better consumer protection, pointing out flaws within the law and demanding change for decades. While being invited to make submissions like this one, views expressed therein, have largely been ignored. The first objective of this review should be to *consult more and to listen more*. In this regard a major consultation process should already be under way on the PTD and how it will affect CAR but if the government has failed to allocate the matter to any department yet, there is nobody to conduct a consultation process with. This is why we end up with poor legislation like the current one. Perhaps CAR should take the initiative here and start a consultation process.

The implementation of the new PTD and the attendant legislation is likely to be far more wide-ranging than simply incorporating the provisions of the directive into Irish law. There needs to be far more radical revisions of the 1982 & 1995 Acts than that. Such review may alter the role of CAR in the future. The strategic review will start with the premise that CAR continues to licence travel agents and tour operators in the current fashion but might consider alternative licensing and bonding models. Such alternatives have been proposed by the Irish travel professionals for decades. Given that CAR has a lot of experience in this area, CAR could take a more leading role in informing those in the department who might be writing the new legislation. Again, this can be frustrating, as the 2008 CAR Review and recommendations have proven. This was largely ignored by the then Minister Noel Dempsey and every Minister since. Almost 10 years later only 2 of the 6 recommendations have been implemented.

What does CAR Do?

The purpose of CAR has become largely one of issuing licences to compliant micro-businesses. This is a very costly, time consuming and intrusive enterprise for compliant licensees. It is very costly for CAR too. Through the recession, bonding was difficult to source and expensive to get. Compliant licensees, by being regulated, have a reasonable expectation of protection, from illegal competition. The perception is that the CAR effort is too focused on administration and not enough on policing illegal traders. Bill Prafiska, when he was Commissioner, told an audience of ITAA members, that CAR did not have the resources to police the legislation and that we should gather evidence ourselves. If we presented it to CAR they would "take action". Experience has shown that "taking action" can mean anything. Looking back at the record of CAR, the number of convictions for illegal trading is miniscule. This suggests there is no illegal trading in the travel sector in Ireland. Licensed travel agents will tell you otherwise. While the licencing of the profession is welcomed by compliant travel agents, the purpose of the whole exercise is defeated if one can simply avoid it by working away illegally, with impunity. Moreover, complaints made to CAR about illegal traders go into a "black hole" and the complainant never knows what has happened. This leads to a lack of accountability on the part of CAR and a suspicion that little has been done about complaints. This lack of transparency should be done away with, as compliant licensees should have a right to know that illegal activity is being tackled. CAR, for its own part, should be dispelling any impression that it is hiding inactivity under the guise of secrecy.

Conclusion

In any review, the predominant question should be “Why are we doing this”? “What is the result of this effort”? “Can we do this better”? “Should we be doing this at all”? All well managed companies do such reviews periodically. CAR can review its own processes in an effort to improve them. But are those processes productive? In this situation with the PTD about to require new legislation, CAR’s review will have to take into account what is happening outside the organisation itself. It is hoped that a pro-active approach to engaging with Government Departments to influence the outcome, would be taken. The Irish travel profession knows more about the inadequacies of the current legislation than any sector. We would be willing to guide and assist in any meaningful engagements but fear that the term “consultation process” might be an empty PR exercise. We can help to inform this strategic review in the area of Travel Trade Licensing. We are supportive of the regulating of travel agents and tour operators. We believe a licensing process that requires much less administration can be found. A stronger policing and enforcement element should be introduced and the ill-designed and ill-thought out bonding scheme should be replaced with a more comprehensive form of consumer protection. One that is better suited to the current travel environment. We want consumer protection for every traveller. We want a business friendly and micro-business appropriate licensing scheme. We want those acting illegally to be stopped, efficiently. We want a safe and secure environment for consumers to purchase travel. This new PTD and legislation will not cover every eventuality but we would like to help to make it cover as many possibilities as possible.

John Galligan