

Travel Agency Commissioners' Report to PAPGJC/05
(without attachments on PAPGJC private page on TAC website)
London, April 2007

Introduction

This is the first report from the Office of the Travel Agency Commissioner to the PAPGJC. It is submitted under the new requirement of Resolution 860a, § 3.7 which calls for 'regular reports' to the council.

Status of Commissioner Appointments

2. The following describes the status of the Commissioners as at 19th March 2007:

Area One: After Maria Fernanda Gonzalez Rey stepped down, last September, Brian Barrow agreed to act, without additional payment, until a new Area One Travel Agency Commissioner can be appointed. He continues to do so.

Area Two (and Canada): Brian Barrow, who has served as Commissioner for six years, was re-appointed until the end of 2007.

Area Three: Stephen Lonergan has held the Area Three appointment for several decades. His current term was due to expire on 1st March 2007. However, as a successor has not been agreed upon and appointed, Mr Lonergan continues in office, per Resolution 820d, §3.

Principal Issues before the Travel Agency Commissioners

3. Although limited to a small number of BSP Airlines, contested ADMs continue to be an active subject of communication between Agents and the Commissioners, particularly in Area 2.

4. Resolution 850m has been refined and improved several times since its initial implementation in January 2005. However, ADMs remain a source of conflict, for the following reasons:

- a) some BSP Airlines, knowingly or unknowingly, disregard the requirements of Resolution 850m;
- b) there appears to be a disconnect between some BSP Airlines' head office based revenue management departments and their overseas field office managements which can result in agents falling between two stools;
- c) many BSP Airlines have still to publish their individual ADM policies, although that should have been done more than a year ago;
- d) there is no mechanism foreseen in Resolution 850m to enable the Commissioners to help sort things out when an ADM is either procedurally defective or the BSP Airline ignores its Resolution 850m obligations. In most instances, this is to the Agent's financial detriment and because the BSP machinery is usually implicated, the taint spreads to IATA itself.

5. The major source of recent conflict, particularly in Area 3 has been the alleged uneven application of Resolution 850p by IATA. Disputes of this nature will persist and spread unless PAConf itself adopts objective and stable criteria for financial security providers, rather than delegating the task to the IATA Secretariat whose discretionary decisions, whether expressed in guidelines or determinations about particular providers, are reviewable by the Commissioners.

6. An area of growing concern for both the serving Commissioners is the recent IATA change in tone and attitude towards the Commissioners, when a review is initiated at an Agent's request for alleged failings by the Agency Administrator. This was not previously the case, presumably because the Commissioners' powers of review for alleged IATA misfeasance are themselves recent. Essentially, the widened powers of the Commissioners put most discretions of the IATA Secretariat affecting Agents under review for the first time. IATA's use of expensive and procedurally driven external legal Counsel, is a natural reaction to challenge to the IATA Secretariat but, in the larger picture, this is not always in the interests of Member Airlines or of that of the Agency Programme.

7. The contentious course and outcome of one review in Australia, last year, were reported in the PAConf/29 Agenda. Not reported to PAConf but also highly charged was a series Philippines hearings. The above cases were heard by a substitute Commissioner since both incumbents considered themselves disqualified by virtue of personal acquaintance with a person having a financial interest in the outcome of the reviews.

8. Recently, however, there was another incident, this time concerning an Agent's request for review in Canada and one of the permanent Commissioners. IATA retained external counsel to represent its interests in all the above contentious cases. The Canadian case actually gave rise to a suit being filed by IATA in a Toronto Court against the Commissioner who is unfunded for the necessary legal representation costs and for any liability for payment of IATA's costs. The condition imposed by IATA's lawyers on the Commissioner for avoiding the threat of damages was that he withdraw from reviewing the case.

9. The implications of the above incident speak for themselves. Accordingly, consideration will now need to be given to providing indemnities to Commissioners for such exposures except, of course for fraud or gross misconduct. IATA also vetoed the use of Travel Agency Commissioner funds to enable the Commissioner to have legal representation in the Canadian case and this underscores the importance of setting in place an indemnity arrangement for the Commissioners.

10. The concept of the Travel Agency Commissioner programme has always been and remains to secure quick, equitable and inexpensive solutions to Agency Programme quarrels. This principle appears to be losing traction as far as the IATA Secretariat itself is concerned, reflecting adversely

the Airlines' image in the eyes of the outside world, especially among regulators.

11. The Commissioners have always worked on the assumption that each published decision creates a precedent the principles of which would apply to other similar cases. This assumption has recently been challenged by IATA external counsel. If the principle binding precedent indeed remains the policy of PAConf, then clear instructions to that effect must be issued to external counsel. If the binding precedent principle has fallen by the wayside, then reporting by the Commissioners to PAPGJC on leading cases decided would be devoid of any but cosmetic value.

12. The PAPGJC may wish to consider this development and ask itself why a system that has worked to common satisfaction for decades should now become derailed. The other question that calls for a reasoned answer, is how can the train be put back on the rails.

Budget

13. Notwithstanding the provisions of Resolution 820d, § 7, there has been cursory budget process for the Office of the Travel Agency Commissioner until now. Since January of this year Resolution 860a, § 3.6 calls for the PAPGJC to control the budget.

14. The principal activity centre for the Office of the TACs is the Area 2 operation since, by default, the administrative coordination between the three Commissioners is handled by the Area 2 Commissioner who maintains an office. A draft 2007 proposed budget is attached for PAPGJC consideration.

15. Prudent administrative practice would call for the PAPGJC to lay down firm guidelines on how the Office of the TACs is to control its budget, in a way that does not make any one Commissioner subject to interference, accidental or otherwise, by any of the entities listed in Resolution 820d, § 5.

16. By the same token, the PAPGJC may wish to consider its own new responsibility for exercising oversight on funds collected under the TAC programme from Accredited Agents and how they are administered and accounted for. As part of the Travel Agency Commissioner funds is assigned to a quite separate activity, a distinction between the two types of expenditure is needed and transparency of accounts becomes the more desirable.

Website Maintenance

17. A discrete Travel Agency Commissioner website www.travel-agency-commissioner.aero was set up by the Commissioners a few years ago and has been progressively developed and improved. In reflection of the assigned impartial status of the Office of the Travel Agency Commissioner, the website stands alone. Until now it has been maintained principally by resources provided by the Area 2 Commissioner. However, if there is a serious intention to develop and maintain a data base of Travel Agency Commissioner cases,

for whatever purpose, the issue of not inconsiderable website funding will need to be addressed.

18. The 2007 website update has been completed, reflecting Agency Programme resolution amendments that took effect on 1st January.

Conclusions

19. The Travel Agency Commissioner Area Two will be available in London to answer any PAPGJC questions arising from this report and its recommendations.
