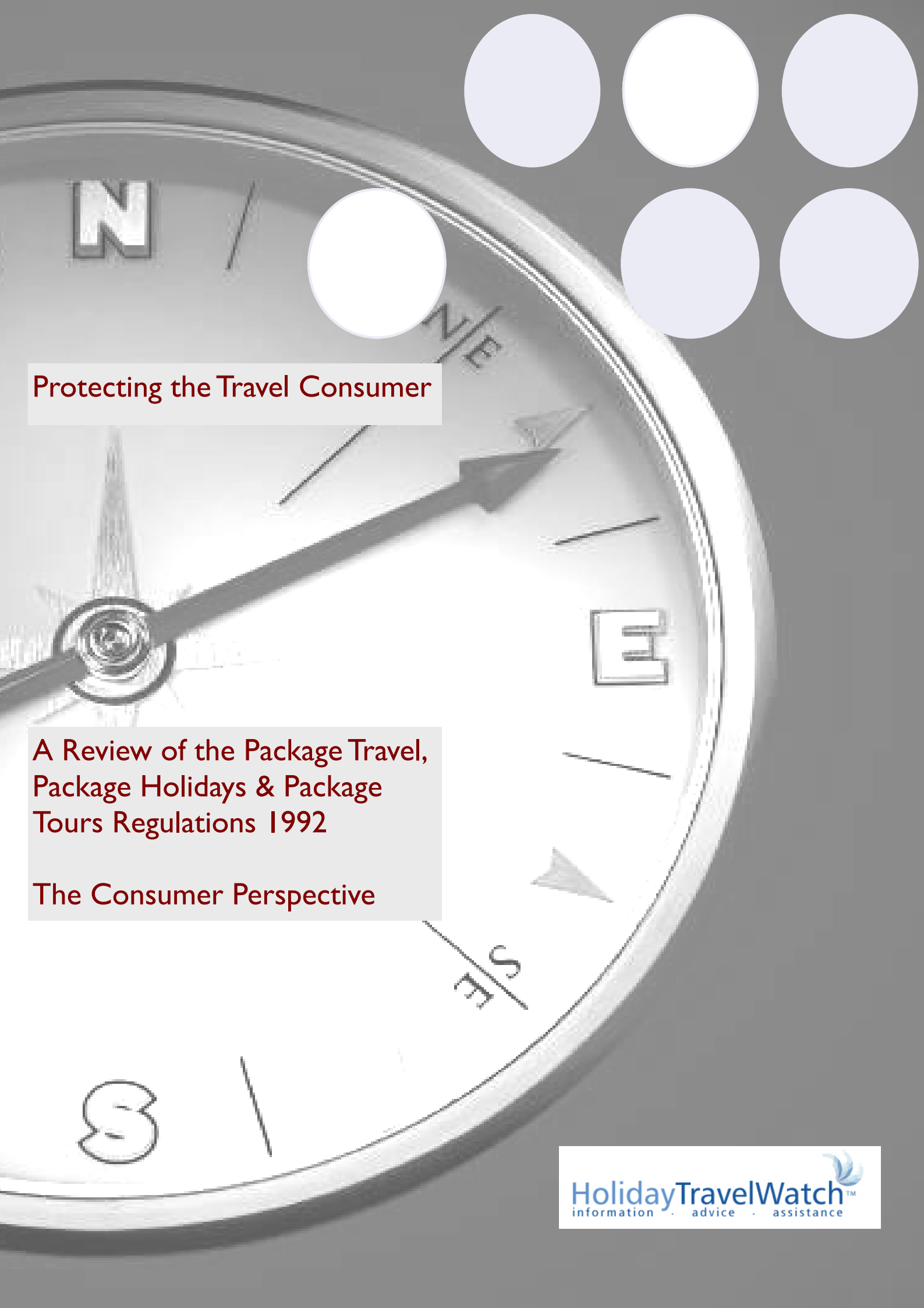

Protecting the Travel Consumer

A Review of the Package Travel, Package Holidays & Package Tours Regulations 1992

The Consumer Perspective

HolidayTravelWatch™
information · advice · assistance

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DEDICATION:

This report is dedicated to the following:

- To Brenda Wall, Founder of HolidayTravelWatch, whose fearless campaigning and dedication, over many years, improved travel conditions for many British Holidaymakers.
- To the many supporters and those who work or have worked within HolidayTravelWatch.
- To the Victims of Holiday Contract Disasters. Their determination and courage in the pursuit of justice, never fails to impress and motivate.

INTRODUCTION

The European Commission (EC), through the Department of Trade & Industry (DTI), has requested that all eight consumer directives be reviewed as to their operational effectiveness. This review is taking place throughout Europe, to determine whether any of the directives require amendment, and how the issue of harmonisation could be given greater effect within the European Union (EU).

The DTI has invited submissions from 'stakeholders' within the travel debate. HolidayTravelWatch (HTW) submits its opinions through this report, these are based upon the relevant consumer opinion, and its experience of The Package Travel, Package Holidays and Package Tours Regulations 1992 (PTR).

HolidayTravelWatch is British based consumers organisation founded in 1995. Through 10 years of operation, it has provided information, advice and assistance to over 120,000 holidaymakers, through its dedicated helpline and website. This should however, be put into context with the 65,000,000 individual trips taken by British Citizens in 2005[1]. It suggests that HTW only receives a small proportion of all complaints, however, these holiday complaints tend to reflect the more serious element of contractual, illness and injury difficulties faced by the consumer.

The Organisation currently provides information and advice, facilitating some 40% of all travel consumers who contact HTW, to find a resolution to their travel complaint. The remaining complainants are then given the opportunity to progress toward litigation, through travel law specialists. It is estimated that some 60,000 holidaymakers have received such legal assistance, and have achieved in excess of £15,000,000 in compensation for their holiday complaints, holiday illness and injuries.

This report will analyse the PTR and associated legal provisions, citing the relevant experience of this organisation and the travel consumer, in support of its conclusions.

[1] Lord Treisman – FCO Reception 21.3.06

THE HOLIDAYTRAVELWATCH SURVEY

HTW has recently provided a survey facility through its website. The current survey posed several questions relevant to the travel debate on Package Holiday issues.

The survey was entitled 'The Package Holiday Overview'[2]. The survey control on the HTW website is purely voluntary, and no prompts are provided to visiting consumers to take part in the survey. As a result, the survey currently provides modest returns. It should be noted that the survey does not have any compulsory controls; therefore some consumers have not answered every question within the query group. At the time of writing this report, HTW has recorded some 87 distinct returns.

The questions posed to the consumer, only required a use of a simple control feature, indicating either a yes or no to the questions asked.

The questions were intended to determine whether there were any discernable differences between a traditionally organised Package Holiday, and a Package Holiday created through a 'Do It Yourself' (DIY) facility. The questions are therefore addressed twofold; those who booked a traditional package holiday and those who booked a component based DIY Package Holiday.

For the purposes of this report, the questions are restated and should be considered in the alternative[3]

1. Have you recently taken a Package Holiday? (Results combined with Q 2).

2. *Have you recently taken a DIY Holiday? (Results combined with Q 1)*

3. Did you have any reason to complain about your Package Holiday?

4. *Did you have any reason to complain about any element of your DIY Holiday?*

5. Did you become ill or were you injured during your Package Holiday?

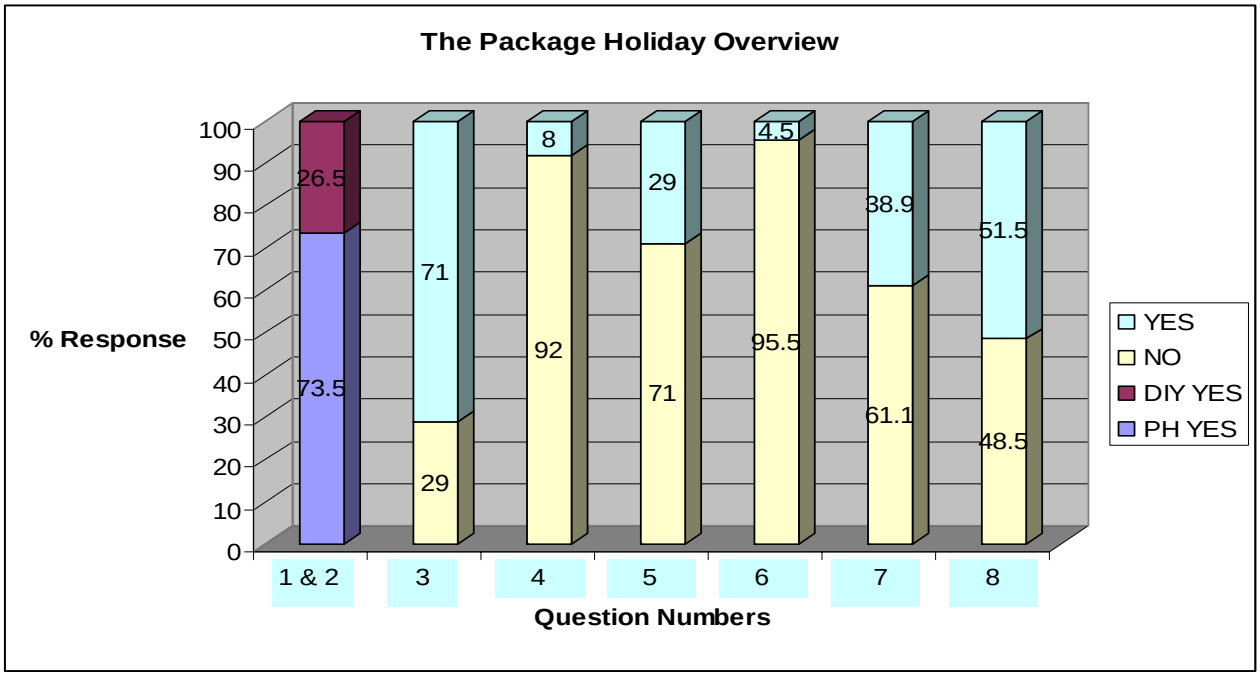
6. *Did you become ill or were you injured during your DIY Holiday?*

7. Would you take another Package Holiday with the same tour operator again?

8. *Would you take another holiday by DIY arrangements again?*

[2] HTW Survey 1
[3] HTW Survey 1

The responses are summarised[4]:



The analysis of the survey reveals several trends and confirms some market predictions.

QUESTIONS 1 & 2 – HOW DID THEY ARRANGE THEIR HOLIDAYS?

Questions 1 & 2 sought to ascertain how British Holidaymakers take their holidays.

It was confirmed that 73.5% still book and take a holiday through the traditional Package Holiday method. By comparison only 26.5% made their travel arrangements through the DIY method.

This simply reflects our own observations that the travelling public prefer to arrange a traditional Package Holiday, as opposed to a DIY holiday arrangement.

However, market predictions suggested in March 2005[5] that 25% of DIY holidays would account for bookings made in that year.

The HTW survey suggests that this prediction is correct. Therefore, it must be concluded, that with the advent of more sophisticated digital technologies; a greater confidence in that technology and perhaps confidence in the tour operator offering the facility, will witness the DIY trend developing and increasing the numbers of travel consumers, willing to create a component package holiday.

[4] HTW Survey 1
[5] TTG 18.3.05 – Is the web closing in on agents?

QUESTIONS 3 & 4 – DID THEY COMPLAIN ABOUT THEIR HOLIDAYS?

Questions 3 & 4 sought to examine whether British Holidaymakers complained about their travel arrangements.

It was confirmed that 71% of traditional Package Holidaymakers complained about the holiday that was delivered. This is compared to the 8% of DIY Holidaymakers who made complaints about their travel arrangements.

This can be considered in several ways.

Firstly, it is thought that the Package Holiday consumer is probably reasonably well informed, when it comes to issues concerning their rights. Those consumer rights are addressed within a number of public arenas, and therefore it can be assumed that those rights are either practised within the resort or upon their return to the United Kingdom.

We would suggest that the low figure of those who have complained about their DIY Package Holiday is not reflective of the actual situation. HTW has received complaints from many such holidaymakers who have suffered a failure to fulfil contractual obligations leading to no hotel booked on arrival, no flight, no representative or no response to correspondence. Examples of these complaints are summarised[6]:

One client has recently experienced difficulty with an internet booking. She discovered that she only had one of her two rooms booked, despite having printed confirmation. She tried to contact the internet company by e mail and phone. After repeated attempts, she was eventually told to contact the resort directly – it was not the tour operator's responsibility. She has contacted the resort, they have stated that they can give her two rooms, but she has received no additional confirmation.

In another case a holidaymaker booked a component holiday to South Africa. She made some of the arrangements with a major tour operator, through their website, the remainder with a travel agent. The components were joined together to form a Package Holiday, as the extra elements booked through the travel agent were sold by the same tour operator. When the different documentation arrived, she discovered that there was an error in the hotel details and dates. She tried to get the tour operator to deal with the problem, they told her that she had to deal with the travel agent, when she approached the travel agent, they told her to go to the tour operator. After many calls to both, she contacted the hotel directly. She discovered that in fact the hotel was never booked. It took some considerable time thereafter to persuade the tour operator that they should accept responsibility for the failure to organise the arrangements as originally requested.

[6] HTW - OL

Another holidaymaker made a telephone booking for a package holiday to South Africa, with a major tour operator. When they arrived in Johannesburg they discovered that there was no transportation – they were handed keys to a hire car with information on how to get to the different locations for their holiday. They did not receive any information at the time they booked their holiday to suggest that it was a Fly/Drive. They experienced difficulty in getting a response to their complaints. They have only recently managed to receive information, which clearly suggests, that the travel representative was looking at the wrong brochure at the time of the booking.

Clearly, the process of making a DIY component package holiday arrangement has some considerable distance to go, and until proper safeguards are in place to protect the consumer, the point of redress, will remain blurred.

QUESTIONS 5 & 6 – DID THEY BECOME ILL OR INJURED WHILST ON HOLIDAY?

Questions 5 & 6 sought to examine how many people were affected by the more serious complaints whilst on holiday.

It was found that 71% of traditional Package Holidaymakers did not suffer illness or injury. This compares to 95.5%, who were not affected by these issues, during their DIY Holiday arrangement.

In examination of the DIY Holiday issue, we would suggest that the same issues apply within these questions, as appeared in our analysis of questions 3 & 4 above.

In considering the traditional Package Holiday result, it is suggestive of two issues; firstly that two thirds of travellers may be experiencing better health & hygiene conditions, this has no doubt arisen due to the continued pressure applied by the travel consumer, pressure groups and legal actions. It is also important to acknowledge that some tour companies have made great improvement in their duties and responsibilities, to promote a better hygiene standard amongst their suppliers.

It is also important to note that there remains a considerable debate, on the issue of what constitutes the correct 'standard' to apply, when dealing with questions of Health & Safety. Two legal cases are relied upon to determine the correct 'standard'. They are cases which relate to the structure or the fabric of a hotel, but are nonetheless used in all aspects of Health & safety issues.

In Wilson v Best Travel[7] the judge stated,

"What is the duty of the tour operator in a situation such as this? Must he refrain from sending holidaymakers to any hotel whose characteristics, in so far as safety is concerned, fail to satisfy the standards which apply in this country? I do not believe that his obligations in respect of the safety of

[7] Wilson v Best Travel Limited (1993) 1 All E.R. 353

his clients can extend this far".

In Codd v Thomson Holidays Limited[8] the judge stated,

"The Law of this country is applied to the case as to the establishing of negligence, but there is no requirement that a hotel for example in Majorca is obliged to comply with British Safety Standards".

'The dicta in Codd, cuts to the core of all 'standard' and liability questions. The Judge clearly stated that there was 'no requirement' to apply a British Safety Standard to Health & Safety questions in a foreign travel complaint. The EC is currently reviewing the operation of all consumer directives. Within that remit, we would suggest that there should now be recognition that in order to harmonise legislative provisions, there must also be a harmonisation of standards. If there is not, then there can be no unified and logical operation of consumer law within the internal market. It is clear, the consumer should not be exposed to a multitude of standards, and they should expect and receive, one 'safe standard'.'

'It is clear, the consumer should not be exposed to a multitude of standards, they should expect and receive, one 'safe standard'

Our survey illustrates that nearly one third of those responding under the Package Holiday illness and injury question had suffered with such complaints.

When this is translated into all Package Holidays taken, this would suggest that there is still a high volume of returning UK citizens suffering either illness or injury. Examples of such illness problems are contained within a number of HTW Articles now summarised:

- Reports of a large number of people returning from a Nile Cruise suffering with illnesses[9]
- Reports of over 200 people returning from the Kaya Belek Hotel in Turkey suffering with Cryptosporidium[10]
- Reports of many hundreds of people suffering with serious gastric illness, Cryptosporidium, Salmonella, Giardia, Pylora Heliobacter, between October 2004 to the end of 2005, following

[8] Codd v Thomson Holidays Limited, The Times October 20, 2000
[9] HTW Article – 11.9.05
[10] HTW Article – 11.9.05

their holidays to the Dominican Republic[11]

We would suggest that one third of returning UK citizens, suffering with illness and injury, is one third too many. The issue of standards throughout Europe must be considered urgently.

QUESTIONS 7 & 8 – WOULD THEY MAKE THE SAME TRAVEL ARRANGEMENTS AGAIN?

These questions sought to establish the view of returning holidaymakers, of whether they would use the same tour operator or DIY Package Holiday Organiser again.

It was found that 61.1% of those who took a traditional Package Holiday would not return to book with the same tour operator again. Of those who took a DIY Package Holiday, 48.5% stated that they would not take another DIY holiday again. We would suggest that these figures do not endorse the overall satisfaction level often proclaimed within holiday contracts.

We consider that these figures reflect, the lack of confidence in either some Organisers of traditional Package Holidays, or those who Organise or Facilitate the travel consumers wish, to purchase a component Package Holiday. The themes of poor contact, poor provision of contractual documentation, last minute changes, and poor standards contribute to this lack of confidence.

[11] HTW Article – 11.9.05 & HTW Press Release – 5.12.05

ANCILLIARY EUROPEAN PROVISIONS TO THE PACKAGE TRAVEL REGULATIONS 1992

HTW has analysed the accompanying documentation to the review process, and will set out its observations, and where appropriate, its views on the ancillary European directives.

Unfair Commercial Practices Directive (UCPD)

This Directive was passed into European law on the 12 June 2005. At the time of writing this report its provisions have not yet been incorporated into UK domestic law, and are subject to an implementation review by the DTI. Nonetheless, whilst such a provision is not yet considered to be UK law, it is the view of this organisation that its status should at this time be highly persuasive, both within the UK courts and amongst commercial entities in their dealings with the consumer.

The Directive provides two major consequences for the consumer and traders[12]:

- [to] harmonise unfair trading laws in all EU Member States, and
- [to] introduce a general prohibition on traders not to treat consumers unfairly. This prohibition is intended to act as a safety-net consumer legislation

This is to be achieved through a number of measures and principles, such as[13]:

- the general prohibition
- specific categories of:
    - misleading actions and omissions
    - aggressive commercial practices
    - use of harassment, coercion and undue influence
    - the annex of banned practices

One note of concern that arises within the UCPD, is the provision to reduce the powers of an existing consumer law. Such laws can provide the Consumer with a greater protection, than would be allowed either under an existing Directive or law, simply because a member state has chosen to go beyond the relevant Directive provision[14]. This organisation would not support a wholesale 'watering' down of present laws, but our understanding indicates that this provision may be limited to the provisions of Regulation 11 of the PTR, which deals with price increases within holiday

[12] DTI - Executive Summary of the Consultation on implementing the EU Directive on UCP and Amending Existing Consumer Legislation – December 2005 – Page 4
[13] DTI - Executive Summary of the Consultation on implementing the EU Directive on UCP and Amending Existing Consumer Legislation – December 2005 – Page 5
[14] DTI – Review of eight minimum harmonisation consumer acquis directives – Page 4, para 5 - 2005

contracts[15].

'In answer to point 4 of the schedule of questions raised by the DTI[16], this organisation considers that the general provisions of the UCPD, to be generally positive. It is likely that the provisions of 'Misleading Actions', 'Misleading Omissions', 'Aggressive Commercial Practices' and the 'Use of harassment, coercion and undue influence' will positively contribute to the operation of holiday contracts. We would support their implementation into the sale of traditional Package Holidays and Component Package Holidays'.

'We would support their implementation into the sale of traditional Package Holidays and Component Package Holiday's'

However, we have some concern as to the apparent 'limited' nature of the list of practices that are deemed to be unfair, under Annex 1 of the Directive[17]. It is accepted that Article 6 of the Directive[18] makes clear distinctions of what constitutes a 'misleading action', and such misleading actions can be found within the formation and operation of holiday contracts. HTW will summarise two examples[19].

In the first case a group of holidaymakers, who had a particular interest in rain forest flora, booked a holiday to Borneo. It was very important to the group that they stayed within one area of the Borneo Rainforest, which had some rare flora. When the group arrived in Borneo, they discovered that the vital part of the trip had been cancelled – the cancellation had been effected the day before departure. The tour operator did not advise the holidaymakers, and did not give clear reasons why half the holiday was cancelled. The holidaymakers consider that they had been misled, they would have preferred to rearrange the trip to a later date, but they were not given the opportunity to do so.

On family went to the Dominican Republic in 2005. They were aware of reports concerning illnesses and received assurances that everything was in order. The family contracted 3 notifiable diseases, and consider that they had been misled about the safety of the resort.

It is clear that a line that exists between what is termed an unfair commercial practice, and a

[15] DTI – Review of eight minimum harmonisation consumer acquis directives – Page 31, para 35 - 2005
[16] DTI – Questions on the review of the consumer acquis – Page 1 - 2006
[17] Official Journal of the European Union – L149/35 – 11.6.2005
[18] Official Journal of the European Union – L149/28 – 11.6.2005
[19] HTW - OL

misleading action. We are concerned that the latter could be confused or limited to that contained within Annex 1.

It should be noted that at Article 5 (5)[20] it states that,

"Annex 1 contains the list of those commercial practices which shall in all circumstances be regarded as unfair. The same single list shall apply in all Member States and *may only be modified by revision of this Directive (HTW's italics)*"

In considering the two aforementioned cases, the consequences of both could be considered to be a misleading action or an unfair commercial practice.

An examination of the Annex provisions, generally refer to 'prizes' or 'inducements' to enter into a contract. The majority of holiday contracts do not fit into the category list. Whilst we are generally supportive of the provisions of the UCPD, this organisation considers that the limited nature of the Annex could lead to a narrow interpretation of unfair practices; particularly where it relates to the formation, sale or delivery of a holiday contract.

[20] Official Journal of the European Union – L149/28 – 11.6.2005

Unfair Contract Terms within Holiday Contracts

The issue of how contract terms generally operate within holiday contracts is best illustrated by the experience of one holidaymaker. The circumstances of her holiday complaint are presented in her own words[21]:

"My baggage was delayed for 6 days whilst on a package holiday, due to negligence of check-in staff. Although I didn't yet know at that time, I found that the carrier was liable under the Package Travel Regulations and Article 19 of the Warsaw Convention.

Both the airline and tour operator limited liability to £75, based on the carrier's conditions of carriage. I was informed many times by various bodies in the UK that, under the law, airlines are only liable to pay for immediate necessities. I have been unable to find that specified anywhere in the Warsaw Convention.

I looked into the work undertaken by the European Commission in implementing the Voluntary Airline Passenger Service Commitments (APSC). The airline had refused the Air Transport Users Council's (ATUC) recommendation to increase the amount of compensation. I found that the APSC rules/recommendations were not being adhered to by the airline, and I complained to the Civil Aviation Authority and the Department for Transport. My MEP subsequently contacted the tour operator and ABTA on this subject.

I researched the Package Travel Regulations and found that a tour operator can be liable under Article 15. The problem was however, that liability was still being restricted to the carrier's conditions of carriage.

I discovered that the Round Table on Unfair Terms in Package Travel Contracts states, that tour operators are responsible for foreseeable indirect loss caused by suppliers' negligence, and that compensation should not be restricted by limitations stated within International Conventions.

On being told by the tour operator that the carrier was not responsible for 'loss of enjoyment', I threatened court action – had court papers ready – I meant business. Compensation was then paid but at great personal cost to me in terms of time taken to research what my rights actually were, and trying to grapple with issues previously unknown to me.

'Compensation was then paid but at great personal cost to me in terms of time taken to research what my rights actually were, and trying to grapple with issues previously unknown to me'.

It was an exhausting process, indeed it was sheer madness to devote so much of my time for what I know would only be compensation of approximately £300.

[21] HTW - PM

It is unrealistic and grossly unfair to expect consumers to have to do this, which is why I have tried unceasingly to bring what is happening to the attention of the relevant UK authorities and Members of Parliament.

Yes, International Conventions are referred to in the booking conditions of tour operators. As the UK OFT points out, International Conventions are not covered by UTCCR, the problem being that it is carriers' conditions of carriage that are actually used, and they should be covered by UTCCR.

Consumers, in the main, do not know the contents of International Conventions and could well consider themselves bound by conditions of carriage and be deterred from seeking redress. This is quite ingenious and has the effect of deceiving consumers about their rights.

'This is quite ingenious and has the effect of deceiving consumers about their rights'.

Limiting liability to £75 for a 3 day baggage delay of unknown cause may possibly be reasonable. However, limiting liability to £75 for a 6 day baggage delay caused by an airline's negligence is unfair and unreasonable, according to the Round Table on Unfair Terms in Package Travel Contracts criterion.

What is required now, in my opinion, is for government departments, national authorities and ECTAA[22] member associations to accept the conclusions of the Round Table, act on them and give correct information to consumers who are struggling to enforce their rights under Community law".

This particular consumer had the determination and guts to seek redress for her travel related problem. Not all consumers possess the same 'savvy' as this client. HTW has recorded many instances of lost luggage, hotels changed on arrival, flight changes - reducing the overall holiday period – all delivered to the consumer without prior notice, most without any proper form of redress provided to the holiday consumer.

The principal areas affected by the interpretation of contract terms, or limitation of liability, are seen within the operation of Regulations 6, 12, 13 & 14 of the PTR. Issues relevant to these unfair practices will be dealt with in the following section.

HTW has noted the provisions of the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and the provisions of UK domestic law.

[22] The European Tour Operators Representative Body

The points raised by the client above, underpin an essential aim of this review.

Compensation should be fair and equitable; it should also be accessible, without resort to fudge and interpretation, in favour of one party, only by reliance or interpretation on terms that may be unfavourable to the consumer.

Further, access to such information should be open and freely available, providing express provisions on parties to a contract to provide information without undue delay.

If this review leads to a greater movement toward harmonisation, then it must remove the contradictions within different laws, whereby the potential to expressly or impliedly impose limits to consumer rights is severely curtailed. Perhaps this will be achieved by the implementation of the aforementioned UCPD, only time will tell!

REVIEW OF THE PACKAGE TRAVEL, PACKAGE HOLIDAYS AND PACKAGE TOURS REGULATIONS 1992 (PTR)

The explosion of travel in the 1960's, through the Package Holiday, created a new generation of 'explorer'. The advent of innovative marketing and the development of logistical operations, expanded that desire to visit new shores, and created a multi-billion pound industry.

The consequence of the holiday contract brought a new form of claim before the UK courts. A claim in contract for the failure in the provision of services, not provided in this country, vexed legal minds. This problem was not just confined to the UK, but extended itself throughout what was then known as the European Economic Community.

Advances in legal argument and new selling technologies, were discussed in a review by the EEC[23] into the operation of the PTR. In particular, they considered an issue which has great relevance at this time that being the definition of what constitutes a 'pre arranged' package holiday. The report states[24],

"Also, the meaning of the word *"pre-arranged"* in the definition of package travel occasions some uncertainties. In the original proposal for the Directive17, it had been made clear that the Directive should be applied only to packages that were offered *"by means of brochures, or other forms of advertising, to the public generally"*18, so as not to include tailor-made arrangements. In the later course of the legislative procedure, however, the Economic and Social Committee and the European Parliament considered that this was an excessive restriction upon the scope of the proposal. The amended proposal eliminated this restriction19. Accordingly, also packages that have not been advertised as such are to be considered "pre-arranged". If this is the case, then it would be difficult to argue that tailor-made packages are excluded. Within the definition of "package" in Art 2 of the Directive, the word "pre-arranged" appears to be artificial, of unclear meaning and effect and could be eliminated. The consumers' need for protection may, in some circumstances, be the same with regard to tailor-made as with regard to other packages".

By the mid 1990's, the expression 'group action' had filtered into the legal consciousness, and led to a plethora of so called consumer TV advice programmes to highlight the plight of the travel consumer. This Organisation worked closely with early innovative programming, to promote the rights of the consumer and the obligations of the travel providers, not just within the PTR, but through other legislative provisions and jurisdictions.

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[23] Report on the Implementation of Directive 90/314/EEC on Package Travel and Holiday Tours in the Domestic Legislation of EC Member States

[24] Report on the Implementation of Directive 90/314/EEC on Package Travel and Holiday Tours in the Domestic Legislation of EC Member States – Page 8

The conclusion in the EEC report, contains an important caveat for the future of consumer protection. It is the object of this report to analyse and highlight where consumer protection is either weak or ineffective, and it will make suggestions for amendment from the consumer perspective.

'The consumers' need for protection may, in some circumstances, be the same with regard to tailor-made as with regard to other packages'

Regulation 1 – The Citation

The growth in 'e-commerce' and the 'digital' economy suggest that a new and diverse method of forming holiday contracts is now taking shape. The present citation of the PTR reflects a period when there were varied expressions for what amounted to the same product – a Package Holiday.

The diversity of the 21st Century beckons with an ease of use, a simpler method of operation, the 'Click n'Go' generation. In light of the new realities, and the ever present problem of language within the European Union (EU), HTW suggests that an amended Regulation should attract a new citation, that being:

'The Consumer Holiday Contracts Regulations'

We consider that by simplifying the citation to speak of 'Holiday Contracts', it brokers a route into creating a simple identity as to what constitutes a 'Holiday Contract'. The inclusion of the word 'Consumer' is deliberate. The advent of the UCPD suggests a lifting of consumer awareness in contractual dealings. In addition, the Consumer Policy Strategy 2002 – 2006[25] states,

"A high level of consumer protection is required. This will be fully taken into account into the definition of other policies".

It is therefore correct that the new Regulations should identify the consumer at the heart of its citation.

[25] Official Journal of the European Communities – C137/6 – 8.6.2002

Regulation 2 – Interpretation

It is clear that Regulation 2 has not experienced the impact that Regulation 15 has enjoyed since the implementation of the PTR.

However, this would appear to be changing.

Introduction:

This Organisation considers that there is a real threat to the viability of the current Regulations, not directly from its provisions, but from the argument that is currently raging on whether an agent is in fact a tour operator.

This dispute stems from the expansion of technological possibilities in 'e-commerce'.

Agents are fighting to compete either with, large tour operators, budget airlines or a new travel entrepreneur. It should be noted that airlines have traditionally been excluded from licence requirements for air holidays; a situation agents believe is unfair. The budget airlines and travel entrepreneur have created portals that provide the travel consumer with a myriad of 'component' travel opportunities. In doing so, they claim that they are selling each part of a 'Package' separately, and therefore are not required to obtain an Air Tour Operators Licence (ATOL).

The requirement for bonding is found within Regulations 16 to 20 of the PTR. The ATOL licence is granted by the Civil Aviation Authority (CAA), and provides protection to the consumer in the event that the airline or holiday fails.

The CAA sought to extend the operation of this licensing scheme in 2003, recognising that many holidaymakers were purchasing and taking holidays that were not protected. As travel agents do not have the financial clout or possess the business ethics of some operators, they were presented with the option of having to either join a cartel providing such cover, or purchase and apply for their own ATOL licence.

The agents through their own professional body, The Association of British Travel Agents (ABTA), fought the provision on two fronts. Firstly by campaigning for a £1 levy on each holiday sold and by fighting a rearguard action to challenge the decision of the CAA in the courts. In November 2005, it was reported that[26],

[26] TTG – Page 8 – 29 November 2005

"It is widely believed that the government bowed to pressure over the £1 levy….[and that]….the Government is likely to rush through laws to enable operators to be rid of ATOL bonding".

However, the reported event has been overtaken by the decision in R v Civil Aviation Authority[27]. In that decision Mr Justice Goldring stated[28]:

"Third, the words "inclusive price" should be given their ordinary and natural meaning. The ordinary and natural meaning of the word "inclusive" connotes more than a mere arithmetical total of the component parts of a price. If the substance of a transaction is the sale by the travel agent of separate and discrete components of (for example) a holiday, with no one part being connected with or dependent upon any other part (other than that they are sold together), to call the resulting price "inclusive" is in my view to stretch the ordinary and natural meaning of that word. It is in reality no more an "inclusive price" than is the total price of goods at the check out of a supermarket. For the sale of a package at an inclusive price the relationship between the component parts of that package must be such as to mean that the consumer is buying and paying for them as a whole: that the sale or offer for sale of one component part is in some way connected with or dependent on the sale or offer for sale of the others".

He added[29]:

"The fundamental difficulty, as it seems to me is this. The Directive and the legislation following it were, as the CAA has in the past stated, based upon a concept of a "package" which is now to a significant extent out of date. The use of the words "inclusive price" reflected that old concept of a package. It may be as the CAA has said, that fresh legislation is needed to cover the current way in which flights are sold. Although my ruling might, as Mr. Griffiths submitted, make it more difficult to decide in any given case if what the travel agent is selling or offering to sell amounts to a package, I do note the CAA's current advice to consumers does appear adequately. to do so".

The decision is not good news for the consumer. We now have a developing scenario where airlines selling component DIY Package Holidays, are not required to have an ATOL licence; travel agents putting 'component packages' together may not need a licence; large tour operators have already begun the process of deconstructing elements of the Package Holiday, so as to bring it outside bonding requirements (see further comments in Regulations 16 – 20 below).

[27] R (on the application of the Association of British Travel Agents Ltd) v Civil Aviation Authority – (2006) All E.R. (D) 54 (Jan)
[28] R (on the application of the Association of British Travel Agents Ltd) v Civil Aviation Authority – (2006) All E.R. (D) 54 (Jan) – Para 156
[29] R (on the application of the Association of British Travel Agents Ltd) v Civil Aviation Authority – (2006) All E.R. (D) 54 (Jan) – Para 185

However, it is the decision of Mr Justice Goldring which is of concern to the travel consumer. He has provided a decision which effectively reduces the definition of what constitutes a 'Package', and in our view ignores the original drafting intentions of the PTR. Based on the change in market conditions, he is correct in his analysis that the package concept is 'now to a significant extent out of date', and that the use of the words 'inclusive price' reflected an old concept of what constitutes a 'package'. However, the decision creates a perilous situation for travel consumers in what is after all a very complex contract.

This Organisation has noted that the CAA has been given leave to appeal against the decision. It is expected that the first hearing will take place by the Summer of 2006.

HTW is concerned that within the next 12 to 24 months, we shall witness many problems arising from this uncertainty. The problem is simple. If the method of selling a DIY Package Holiday does not qualify as a Package Holiday, then the provisions and protections for the consumer under the PTR do not logically apply. HTW sought to raise early awareness of this problem for consumer protection in its Article advising consumers, what lay ahead, it states[30]:

"The moral of the story is understand what you are buying, and more importantly, who you are buying from! When you have established that, understand how you can enforce your rights and who and where you can enforce them against! If in doubt book a true Package Holiday it is ironically the best guarantee to securing at least some consumer rights".

'If in doubt book a true Package Holiday it is ironically the best guarantee to securing at least some consumer rights'.

The Reformation of Regulation 2

In order to return certainty to contracts that provide Package Holidays it is our view that Regulation 2 should be reformulated. In doing so, it is necessary to redefine the expressions currently used within the PTR, thereby creating clear consumer protection. We believe that the current structure needs to be amended to create a clear and distinct section containing all relevant definitions, within which is the new definition of 'Holiday Contract'.

[30] HTW – To Package or Not to Package, That is the Question – 11.9.05

Definitions:

Term or Expression:	**Definition:**
Brochure	"means any brochure, whether it is created or formed on paper, in electronic form (which includes web based documents, telephonic displays, SMS text construction – this list is not intended to be exhaustive), television based or presented (which includes digital information pages or other displays – this list is not intended to be exhaustive) in or on which holiday contracts are offered for sale".
Contract	HTW does not propose any changes to this definition.
The Directive	HTW does not propose any change to this definition other than that proposed to change the citation.
Offer	HTW does not propose any change to this definition.
Organiser	"The person, body, organisation or other legal entity who organises holiday contracts either on behalf of that person, body, organisation or other legal entity or at the request of the consumer and sells or offers to sell the said holiday contract whether directly or indirectly through any brochure".
Organises & Organised	"The creation of a Holiday Contract by an Organiser either by creating a Package Holiday to sell or offer to sell or to create a component Package Holiday at the request of the consumer or some other person to sell or offer to sell".
The Other Party to the Contract	HTW does not propose any changes to this definition.
Retailer	"The person who sells or offers to sell the Holiday Contract put together by the Organiser and who does not assume either directly or indirectly the role or definition of an Organiser".
Pre-Arranged	"Means a Holiday Contract which is Organised through one transaction, containing at least two of the components required within a Holiday Contract, with each component being directly

	related to the other, and made on the date a consumer agrees to the offer of sale of a Holiday Contract for an inclusive price, between the Organiser or Retailer or both and the Consumer. Such a transaction will be considered to be one transaction and therefore pre-arranged on the date the Consumer signs the Holiday Contract and provides the required payment on the date of the transaction".
Inclusive Price	"Means a total price stated on an invoice provided by the Organiser or Retailer or both to the Consumer for the pre arranged Holiday Contract. For the purpose of the definition of a Holiday Contract, it is irrelevant if each part of the Holiday Contract price is separately stated".
Invoice	"A document provided to the consumer either by the Organiser or Retailer or both and is so provided at the time the Holiday Contract is transacted and is provided either in paper, electronic or other form. The document should clearly state the elements set out in Schedule 1 to these Regulations and must contain the inclusive price agreed at the pre-arranged stage of the Holiday Contract".
Package Holiday	"A Holiday which is constructed with component parts and is pre – bundled and is then presented by the Organiser or Retailer or both in a brochure and is then offered for sale to the Consumer through a brochure or through the direct or indirect representation of the Organiser or Retailer or both".
Component Package Holiday	"A Holiday which is constructed by the Organiser or Retailer or both with component parts requested by the Consumer either directly or indirectly and is then offered for sale to the Consumer through a brochure or through the direct or indirect representation of the Organiser or Retailer or both".
Holiday Contract	"Is a contract for the provision of a Package Holiday or a Component Package Holiday or other Package Holiday arrangement which includes a pre-arranged combination of at least two of the following components, when sold or offered for sale at an inclusive price, and when the said components cover a period of more than twenty four hours or includes overnight

	accommodation: a) Transport; b) Accommodation; c) Other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the Holiday Contract. The submission of separate invoices for different components of the Holiday Contract shall not cause it to be considered as anything but a Holiday Contract. The fact that a Holiday Contract consisting of a Package Holiday or a Component Package Holiday or other Package Holiday arrangement is arranged at the request of the consumer, whether directly or indirectly with an Organiser or Retailer or both, and in accordance with the Consumer's specific instructions (whether modified or not), directly or indirectly shall not cause it to be treated as anything other than pre-arranged".
Consumer	We would support a change to this definition, using the definition contained within the UCPD.
Non Force Majeure Event	"Means an event which cannot be considered to be a Force Majeure Event. Force Majeure means an event that is unexpected, sudden, catastrophic or serious event, either natural or man made, that could not be predicted, or an unexpected or sudden 'Act of God', such an event could be either an earthquake, tsunami or serious climatic event, this list is not intended to be exhaustive. A Non Force Majeure Event means an event which could ordinarily be classed as a Force Majeure Event but for pre-existing conditions which would identify the Force Majeure event in advance".

Regulation 3 – Application of the Regulations

We would suggest that this Regulation be amended to reflect any changes made to the PTR.

Regulation 4 – Descriptive Matter Relating to Packages

HTW would suggest that any reference to the word "package" be replaced with the expression "Holiday Contract".

This area presents difficulties for potential complainants/litigants. It must be recognised that holidaymakers will not always receive holiday documentation from the Organiser or Retailer. This is particularly so when holidays are arranged by telephone, often at the last minute. When holidaymakers seek to obtain details or documents relating to the brochure, they are either stonewalled or refused access.

Consider the case of one Holidaymaker who arranged a Package Holiday, and decided to stay part of the time at another hotel. He was subsequently advised that because he had not stayed the full duration at the contracted hotel, he would be considered as a 'no show', and he was prevented from taking the return flight to the UK. When he sought to receive copies of the brochure, and the terms and conditions that applied to the brochure, he was refused without any reason being given. This holidaymaker was concerned that he had either failed to understand the nature of the brochure, and the accompanying terms and conditions, or that the travel company had acted improperly. Either way, he remains without information to determine his position without which, he has no other opportunity but to resort to litigation[31].

In order to ensure reasonable access to a brochure and its descriptive element, HTW suggests that the additional provision suggested at Regulation 15 (9) below be adopted.

Regulation 5 – Requirements as to Brochures

HTW would recommend that references to "Packages" be changed to "Holiday Contract". We would concur with the details set out in Schedule 1.

We would suggest that our recommendations at Regulation 15 (9) below be incorporated into this Regulation.

The brochure is an important contractual document. In disputes, the Consumer and/or their legal representatives often find themselves either without a copy of the brochure, or are denied access to a copy of the brochure. Access is often secured only through the progression of the litigation process.

We would observe that the most difficult area concerns those who arrange their holidays by telephone or internet, often at the last minute. In these circumstances we would recommend a provision that would require the Organiser or Retailer or both, to provide a brochure at the time an invoice is provided. Where a holiday is booked and paid for shortly before departure, a copy of the brochure should be provided at the point of departure.

[31] HTW - TAFlight

Regulation 6 – Circumstances in which parts of the brochure are to be binding

HTW takes issue with Regulation 6 (2) (b). This concerns the limiting of an Organisers liability, by expressing that a holiday contract can be subject to change. It states that such changes can be made before "a contract is concluded". It also requires the Organiser to notify the Consumer of any changes to the holiday contract before a contract is concluded.

There are clearly situations when either due to external business developments, natural or man made disasters, a holiday must be changed. We consider that this was clearly in the minds of the original draftsmen when the Regulations were formed.

The practice however has seen the "changes may be made" clause being used to change holidays before they start, to defeat a returned holidaymakers complaint, or change the very nature of the holiday, whilst the holidaymaker is in resort.

During the Summer of 2005, HTW experienced the new phenomena of hotel overbooking.

Many families had arranged their holiday, some 12 months in advance. When they arrived at their destination airport, they discovered that the hotel they had booked was not available or it appeared that it had never been booked.

This is clearly a major change to a holiday and one we would suggest lies outside this sub-section.

However, holidaymakers were confronted with the position that Organisers are entitled to make these changes, because of the express provision contained within the contract.

HTW queries whether such a broad interpretation of the sub-section, has led to the over extension of its original intended use. Has the actual practice of this sub-section created an Unfair Contract Term?

In determining this point HTW points to the provision contained in Section 3 (2) (b) of the Unfair Contract Terms Act which states:

"the other cannot by reference to any contract term…..claim to be entitled (i) to render a contractual performance substantially different from that which was reasonably expected of him".[32]

Within the discussion by Grant & Mason, it is concluded that a consumer who wishes to rely on this clause must find that "the performance must not only be contrary to the client's reasonable

[32] Holiday Law – Grant & Mason – Page 199

expectations, it must also be substantially different".[33]

In order to remove uncertainty or abuse of this provision, HTW would suggest the following amendment to this sub-clause:

"Where a brochure contains an express statement that changes may be made in the particulars contained in it, such reliance on a changes clause will only apply to reasonable changes that occur after the due departure date of the Holiday Contract. Changes occurring before the due departure date shall have the provisions of Regulation 12 & 13 applied to those changes. Changes allowed under this sub-section shall require those changes to be communicated in writing to the Consumer before the Holiday Contract is concluded and in any event within 24 hours of those changes being made, with the provisions of Regulation 14 being applied to subsequent changes to Holiday Contracts thereafter".

It is important to note the brief examples provided in the use of this sub-clause and its use. In order to avoid confusion that could exist by the expression "before a contract is concluded" there is a need to consider its true application. The same phrase is repeated within Regulation 7 (1).

On examination it appears that Regulation 6 (2) (b) deals with situations before the conclusion of a Holiday Contract, in other words, at the end of the holiday, whereas, Regulation 7 (1) uses the same phrase to describe an event at the time the contract is made. HTW would suggest a further amendment, as stated in Regulation 7 below to distinguish the two events.

Regulation 7 – Information to be provided before a contract is concluded

We would refer to the comments in the preceding section. For the sake of clarity we would suggest amendments to Regulation 7 (1):

"At the time the contract is agreed and the Consumer is provided with an invoice, the other party to the contract shall provide to the Consumer with the information specified in sub paragraph (2) below in writing or in some other form at the time that the invoice is provided".

HTW does not propose any further changes to this Regulation.

Regulation 8 – Information to be provided in good

In considering the practicality of this Regulation and the problems experienced by Holidaymakers, we would recommend that the expression "shall in good time before the start of the journey" be redefined to state:

[33] Holiday Law – Grant & Mason – Page 199

"shall eight weeks before the due departure date stated on the Holiday Contract".

In cases where the tickets are being collected at airports or at ticket agencies, we would suggest that this requirement be extended to ensure provision of this information at the time the tickets are collected.

Regulation 9 – Contents and Form of the Contract

In reviewing this Regulation, HTW would recommend the replacement of the word "package" with the expression "Holiday Contract".

We would refer to Regulation 9 (2). Clearly last minute holidays present some practical problems. In organising such holidays, arrangements are made to collect tickets at an airport or through a ticket agency, such documentation is usually computer generated. There is nothing within present technology that would prevent the provision of information required in this Regulation. There should be no exclusion from a requirement to produce such information; HTW therefore recommends that this sub-section be deleted from the Regulations.

We would also suggest the inclusion of a sanctions clause similar to that found with Regulation 8.

Regulation 10 – Transfer of Bookings

HTW would recommend that the word "package" be replaced with the expression "Holiday Contract". HTW does not propose further amendment to this Regulation.

Regulation 11 – Price Revision

HTW would recommend that the word "package" be replaced with the expression "Holiday Contract". HTW does not propose further amendment to this Regulation.

Regulation 12 – Significant Alterations to Essential Terms
Regulation 13 – Withdrawal by a Consumer
Regulation 14 – Significant Proportion of Services not Provided

We have grouped these Regulations together, as they have revealed an area of difficulty experienced by many holidaymakers.

The two main areas of difficulty concern the change to holidays on arrival at the destination or where holidaymakers have been exposed to natural or man made disasters.

HTW will now illustrate these issues:

A holidaymaker and his family arrived in Mexico on 13 July 2005 just ahead of Hurricane Emily. The first time they were informed of the hurricane's imminent approach was at the welcome meeting, hosted by the tour operator's representative on 14 July 2005. Despite questions posed by the holidaymakers, the representative did not have information and persisted with the sale of excursions. This holidaymaker noted however the preparations being made by the hotel, and persisted with questions to the representative. He was eventually informed that they would be evacuated to a refuge centre and to "chill out" and take photographs of the beach! He was then later advised that representatives from the Federation of Tour Operators (FTO) would be on hand to assist them through the hurricane period, and that they would be allowed one fax back to the UK. The day before the hurricane arrived, a large number of guests arrived on a flight from Scotland. At this stage there were neither representatives available nor any representation from the FTO. They were placed into barricaded blocks, six to a room. The holidaymakers became concerned when they heard through CNN that

there was serious flooding some 6 miles inland. When the hurricane arrived, they were told by hotel staff to huddle into bathrooms for safety. They experienced flooding and damage to the block they had been placed into, and following the hurricane, they discovered that there was much devastation, no power and only very limited food and milk. As there was still no representation available to assist them, the holidaymakers set about a task of organising themselves within their flooded and damaged accommodation. This holidaymaker and his family endured several days thereafter of false starts and moves to different hotels before finally being evacuated back to the UK. In his letter to the tour operator he stated, "It is my belief you had ample opportunity to plan for this event and as opposed to flying out 360 people on the Saturday, you should have flown out extra staff"[34]

'It is my belief you had ample opportunity to plan for this event and as opposed to flying out 360 people on the Saturday, you should have flown out extra staff'

[34] HTW - 3369

‘but what I feel could have been prevented by you, by not evacuating us earlier and putting my family and myself through the most terrifying ordeal was quite shameless and totally irresponsible’

Another family were caught up in Hurricane Wilma. On the second day of their holiday they were informed by the representative that the holiday resort was to be hit by a hurricane. For 60 hours they were confined to their bedrooms with only 2 bottles of water between them. When the hurricane passed, they too experienced devastation, no power, no running water, flooded rooms, food rationing and large number of people all looking for assistance. In his letter to the tour operator, he stated, “but what I feel could have been prevented by you, by not evacuating us earlier and putting my family and myself through the most terrifying ordeal was quite shameless and totally irresponsible”.[35]

On the days the bombs were detonated in Sharm El Sheik in 2005, one family were busy preparing for departure the next day. Having seen the news reports they contacted the tour operator, aware that their hotel was in the vicinity of the blast. The tour operator advised them that there were no problems within the resort, and that they would be able to take their holiday as normal. They were advised that the danger from bombs had now passed, and the terrorists would be unlikely to return. The news reports provided grim viewing, and the family persisted with their questions with the tour operator. Still the same response from the tour operator, and when the family suggested a change in resort, they were advised that there were no holidays available and any cancellation would attract a total loss of the holiday cost. The next day the family continued to try and reason with the tour operator all to no avail. At the UK airport, the tour operator maintained their position, the resort was safe, and cancellation would mean the loss of the holiday cost. The family were so upset and frightened, half decided to go, and the other half remained behind and lost their holiday. When the family arrived at the hotel they found that many windows were blown out, utilities were not working correctly, they experienced a heightened security situation in all this was not the holiday they booked. The family then became ill and frightened, and demanded that they be returned to the UK, this was eventually achieved several days later. The family sought medical assistance when they returned to the UK and discovered that they were ill with a notifiable disease called Giardia. They unwittingly passed this disease onto the family members who had decided not to take the holiday.[36]

[35] HTW - 3599
[36] HTW - Sharm

One holidaymaker and his family went to Mexico in October 2005 and were caught up in Hurricane Wilma. They only experienced the first day of their holiday without interruption; the rest of the holiday was either taken up with sheltering from the hurricane for 62 hours or enduring the aftermath which included wet beds, no power, no assistance and a journey home that took 26 hours. When they wrote complaining to the tour operator, they were offered £346 pp in compensation for a holiday that cost £865 pp[37].

These examples are not new. One client and her family were flown into the aftermath of Hurricane Georges in Cuba. They were not given the option to cancel their holiday, despite the fact that it was clear that the hurricane was advancing toward their resort. They travelled to the resort assured that everything was in order; once there they experienced the full force of the hurricane, they suffered illnesses and robbery was committed against them and other holidaymakers.[38]

The experiences of those caught up with Hurricane Ivan, witnessed holidaymakers pleading with tour operators to watch the reports on CNN and the FCO about the approaching Hurricane before they departed. The tour operator advised that there would be no problem with the hurricane on their holiday. They were flown into the resort, which had already become affected by the preceding bad weather. For several hours, the holidaymaker's only shelter was an open sided covered bus stop outside the terminal building. When they were 'rescued', they were shipped to different hotels and suffered lack of power and basic facilities. On their return home, many of their complaints fell on deaf ears; many did not achieve any form of compensation.

It was claimed by the tour operator in many of these cases that it was an 'Act of God' that had affected the holiday. They claimed that they had they placed warnings in their brochures to advise potential holidaymakers of strong weather conditions. In an examination of many brochures offering holidays to these destinations, it can be seen that weather warnings are indeed placed in their brochures. The question however, is why they are not placed within a contractual document with more prominence and emphasis?

We would submit that many of these severe climatic events are not random unpredictable "Acts of God" they are in fact "Acts of God – With Notice"[39].

The "Act of God" argument is used to highlight that unpredictable events cannot be foreseen or planned for, therefore no rights accrue. The advances in predictive technology however, throw light into the shadow where tour operators currently hide. This is the area where they maintain nothing

[37] HTW - 3504
[38] HTW - 113
[39] HTW – Press Release - 2005

can be assessed or predicted – this is an excuse for failing to provide a proper response to an implied and obvious duty of care in Holiday Contracts.
How long we wonder will it be before a serious incident arises, where one or more British holidaymakers are killed or seriously injured?

The illustration of these events demonstrate clearly that information is available in good time to either the Organiser or in the case of natural or man made disasters, to the Organiser, Retailer and Consumer alike. We say that it is untenable to rely upon the "Act of God" or "Force Majeure" defence. As we have previously stated, predictive technology, developing science on Global Warming, greater security information, all facilitate a greater requirement on the Organiser toward a better duty of care to their clients.

In the case of Regulation 12, it is clear that the original intentions of the draftsmen must surely to have been to prevent the failure of delivering the Holiday Contract as agreed with the holidaymaker.

Clearly if a Consumer arranges a holiday for a 4 star, all inclusive hotel, situated on a beach and is told before departure that he can no longer have what he contracted for, but instead he must go to a 2 star hotel, on a bed and breakfast basis, which is situated in a town centre, this would in our view be a change to an essential term of the contract.

This has been the experience of many holidaymakers in 2005.

There appears to be two situations at play; firstly holidaymakers booking their holidays in advance to ensure certainty of product and location, secondly the delivery of the contract, changing it from one of certainty to a contract of "allocation on arrival".

Many holidaymakers have asked, what was the point of booking in the first place?

Likewise, if before departure it is clear that a resort or destination is either going to be or has been severely affected by a major climatic or terrorist event, it would be reasonable to assume that the infrastructure of that resort or destination would not be capable of supporting that holiday.

Having considered these issues, HTW would recommend the following changes:

Regulation 12

We would suggest that there be a deletion within Regulation 12 (a) – "such as the price (so far as Regulation 11 permits him to do so)". Our rationale is based upon the fact that this sentence has artificially placed its own limit on the effectiveness of the Regulation. We consider that the removal

of that sentence leaves the Regulation more open. An alternative would be to provide a schedule detailing inexhaustive examples of when a significant alteration to essential terms could occur.

HTW would also recommend the inclusion of an additional sub-clause to Regulation 12:

"As soon as the Organiser becomes aware that a significant alteration must be made to the Holiday Contract, whether it is due to a non force majeure event or any other event, the Organiser shall inform the Consumer of those significant changes within 24 hours of those changes becoming known".

HTW would also recommend that a sanction be introduced as can be found under Regulation 8 (3).

Regulation 13

HTW would also recommend the inclusion of an additional sub-clause to Regulation 13:

"As soon as the Organiser becomes aware that a significant alteration must be made to the Holiday Contract, whether it is due to a non force majeure event or any other event, the Organiser shall inform the Consumer of their rights that flow from Regulation 12 and within this Regulation within 24 hours of the significant changes becoming known".

HTW would also recommend that a sanction be introduced as can be found under Regulation 8 (3).

Regulation 14

This is an important provision in that it deals with rights that flow from the inability to provide what the holidaymaker has contracted for, or in the case of a natural or man made disaster, the inability to continue to provide components or elements of a Holiday Contract. In any of these circumstances we would recommend the inclusion of an additional sub-clause into Regulation 14:

"As soon as the Organiser becomes aware that they will not be able to provide a significant proportion of services within a Holiday Contract, whether it is due to a non force majeure event or any other event, the Organiser shall inform the Consumer of the inability to be able to provide the Consumer with a significant proportion of services within 24 hours of those changes becoming known and of the rights that are contained within this Regulation".

HTW would also recommend that a sanction be introduced as can be found under Regulation 8 (3).

Regulation 15 – Liability

It is the view of HTW that issues contained within this Regulation must be decided by reference to the Laws of the European Union or UK or Extra Jurisdictional Law.

The subject of standards, as discussed in page 8 above, is applicable and relevant to this section.

We would recommend that the issue of standards be urgently reviewed by the EC; any development on the harmonisation of standards should be eventually incorporated into the Regulations as a point of reference, or a requirement.

Regulation 15 (8)

Regulation 15 (8) produces many complaints. Ineffectual representation or the lack of customer complaints forms prevent Consumers from complying with their obligations. HTW recommends that this sub-section be extended to state.

"If the Consumer requests a customer complaints form, the local representatives for the Organiser shall provide such a form within 24 hours of the request".

Regulation 15 (9)

The main problem reported by returned holidaymakers is either no response from the Organiser or Retailer or both, or the lack of a reasonable response to enable the complaint to be resolved or for the holidaymaker to determine the viability of any potential litigation.

There is wide discussion on the so called "compensation culture". HTW rejects these views. If we suspect that the foundation of that debate is centred on the earlier Woolf Civil Law Reforms, then we consider that it would be appropriate to incorporate a pre-action protocol for the management of Holiday Claims. We would recommend that consideration be given to the present range of pre action protocols, which can be found at www.dca.gov.uk , as the basis for further debate on developing such a protocol. We would recommend that it be called the "Pre Action Protocol for Holiday Contract Claims".

Upon adoption of a protocol, we would recommend its insertion into the Regulations, under Regulation 15 (9).

Regulations 16 to 20 – The Bonding Issue

HTW has presented considerable comment on the bonding issue on page 19 above.

HTW refers to the article contained within the Travel Weekly in which the Chief Executive for TUI has stated that that it was their intention to 'ditch' ATOL protection for holidaymakers. He stated,

"We've got to start challenging the ATOL ruling because it's a complete nonsense….it's becoming a big problem both from the customer point of view and our point of view….we can't risk the business….it could take several years for the CAA to sort this out and we're not going to hang around".

He indicated that they would like to abandon ATOL cover for Consumers by September 2006 and that they would restructure their health & safety department 'to look after customers'.[40]

HTW is extremely concerned as to these comments. It suggests an unregulated structure is taking shape, particularly since the decision in R v CAA as described above. It seems to suggest that such an unregulated structure is in fact the best way to look after Consumer Rights.

If the view expressed in R v CAA on what constitutes a package holiday, and the ruling against the CAA stands, how far we wonder would it be before other forms of compulsory bonding becomes superfluous to requirements?

The holidaymaker would be left with an archipelago of sales specialists, against whom, the Consumer would be perhaps limited to pursuing a Holiday Contract complaint under the conditions that existed prior to the PTR, or entirely within a foreign jurisdiction. This brave new world would only benefit the owners and shareholders of the new style travel companies, Consumer Rights would take a retrograde step.

We consider that the issues within this section of Regulations lie beyond the remit of this review. We call upon the Consumer Affairs Minister to urgently deal with, and take steps to rectify the biggest threat to Consumer Protection to date.

[40] Travel Weekly – TUI to ditch ATOL – 23.3.06

Enforcement and Corporate Responsibility Provisions

These areas lie outside the experience of HTW, we would however encourage a review of current Corporate Responsibility provisions, and how they reflect any recent decisions in the UK courts. In addition, we would also recommend a review of enforcement be carried out with the relevant enforcement authorities, and to follow their recommendations.

Timeshare & Holiday Clubs

It is rare for HTW to receive complaints on Timeshares. In those circumstances we would normally refer clients to the DTI website, and in particular, the links to organisations that could possibly assist them.

Through 2005 we began to receive an increased number of e mails from people who had experienced problems with Holiday Clubs. They were provided with advices that gave practical tips on how to deal with their problems, but also assistance, where appropriate, toward receiving advices from a contract lawyer.

We consider that the issues of Timeshare and Holiday Clubs to be quite unique and distinct, and as such, they should have separate protective legislation.

CONCLUSION:

In this last year, we have directly or indirectly advised on some 30,000 individual holidays. The range, shape and sophistication of the holiday complaints reflect a developing commercial reality.

We consider that the proposals presented by this organisation, to be a timely reminder or the perilous state of consumer protection in Holiday Contracts.

If the worst case scenario develops, then Consumers will be left with a worthless set of Regulations, they will have no relevance to their situation.

A consequence of this deconstruction could see an increase in calls for assistance from British Holidaymakers. This could increase the workload of UK Consular Officials and stretch their resources. The CAA already recognise the risks ahead for Holidaymakers, they are now advising 'DIY' holidaymakers to take out additional insurance to cover insolvency[41]. We can recall the days in the 1970's following the Clarkson Holidays collapse. Such a similar event, occurring again, could raise difficult questions for politicians, who simply stood by, whilst Consumer Rights were lost.

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29 March 2006

[41] CAA Website – 9.2.06 – CAA visits Bournemouth to warn of DIY Holiday Dangers