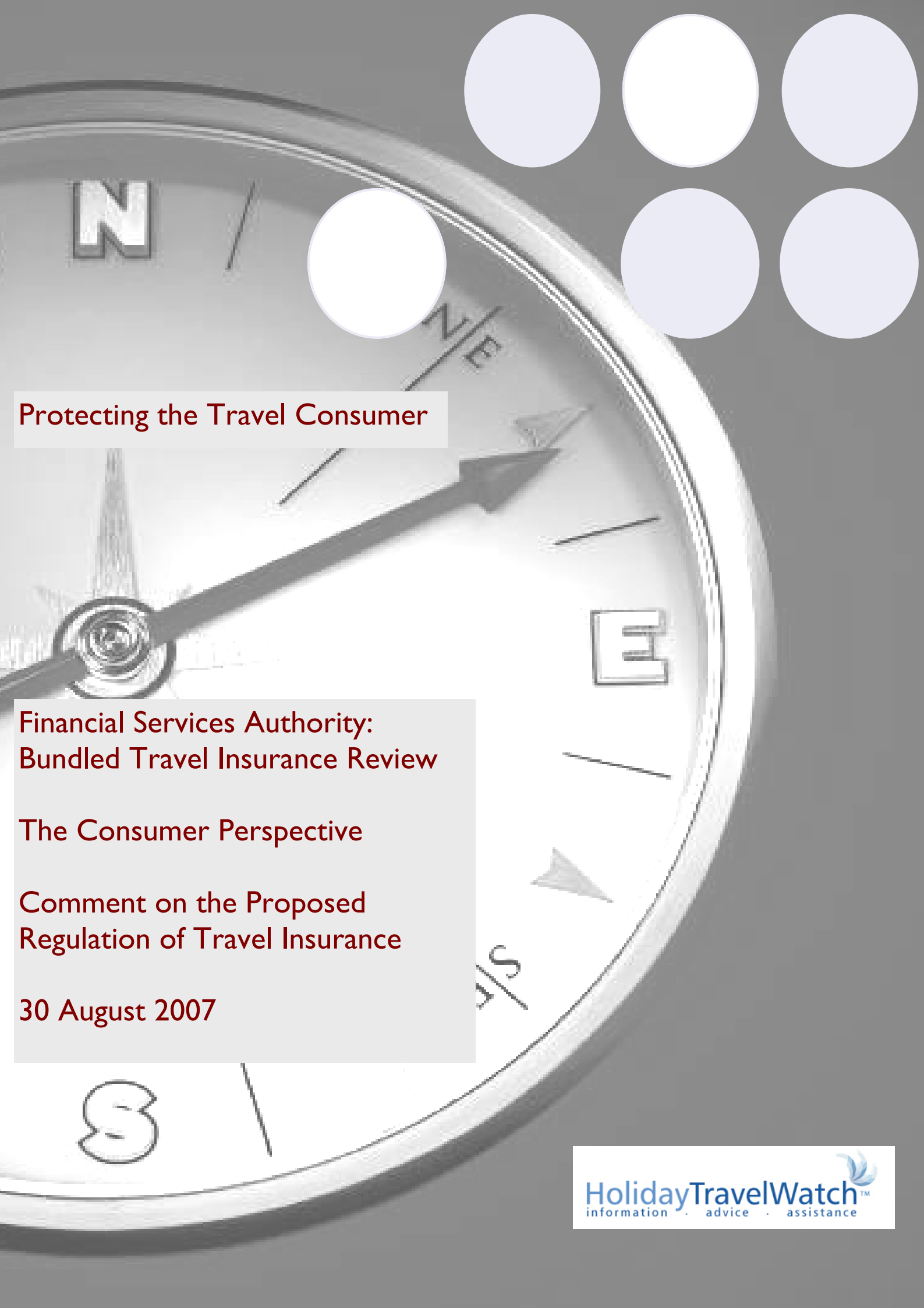

Protecting the Travel Consumer

Financial Services Authority: Bundled Travel Insurance Review

The Consumer Perspective

Comment on the Proposed Regulation of Travel Insurance

30 August 2007

HolidayTravelWatch™
information · advice · assistance

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INTRODUCTION TO HOLIDAYTRAVELWATCH

Following the review of Travel Insurance Sales by the Treasury Select Committee and The Treasury, the Government has ordered the Financial Services Authority (FSA), to take steps to include the sale of Travel Insurance within a platform of regulatory control. HolidayTravelWatch (HTW) has been invited by the FSA to respond to their preliminary review. HTW is grateful to the FSA for agreeing to an extension of time for the submission of its views.

HolidayTravelWatch submits its opinions through this report, 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 12 years of operation, it has provided information, advice and assistance to over 140,000 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 46% 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 approximately 70,000 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 and cite the relevant experience of this organisation and the travel consumer, in support of its conclusions.

[1] Lord Treisman – FCO Reception March 2006

SUMMARY OF THE REPORTS TO THE TREASURY SELECT COMMITTEE & HM TREASURY

HTW was invited to submit a report to the Treasury Select Committee ahead of their evidence session into the sale of Travel Insurance. That report is attached for reference purposes at Appendix 1.

The conclusions contained with Appendix 1 can be summarised thus:

- A review of the then ABTA Code of Conduct concerning the sale of travel insurance;
- The use of the travel insurance product by the consumer led to shortfall of or disqualification of cover;
- That agents were failing to comply with their own professional rules or properly investigate the needs of the consumer;
- We expressed concern as to the enforcement and disciplinary procedures of ABTA;
- We questioned how many consumers obtained compensation under the FSA compensation scheme;
- We were concerned as to the protection afforded to the consumer when the insurance product was sold by the 'unregulated' part of the travel industry;
- We expressed the view that the consumer required greater protection within a real and growing 'de-regulated' market;
- A concern that the insurance product falls short of providing real protection to the travel consumer;
- We called for the Office of Fair Trading (OFT) to investigate the all important legal expense clause;
- We suggested that the travel insurance contract have an industry wide set of terms and conditions – a standard form contract

Our second report to the Treasury Select Committee is attached as Appendix 2. The conclusions of that report can be summarised as follows:

- A further examination of a standard form of contract for the travel insurance product;
- We again highlighted issues relating to terms and conditions within the travel insurance product, revealing a shortfall for the consumer contained within the force majeure and legal expense clauses;
- We repeated our call for the OFT to examine the 'monopoly' created by the legal expense clause within the travel insurance product;
- Our principal concern related to the growing threat to the Package Travel Regulations and the effect of a de-regulated travel market on the sale of the travel insurance product.

Following the Select Committee's review, the Government ordered their own enquiry through HM Treasury. We contributed our views to The Treasury; this is attached at Appendix 3.

That report provided a review of our previous opinions but concluded additionally:

- To ensure that a company or individual selling such a product, be properly trained, assessed and regulated. We called for the recognition of the travel insurance product status to be raised to a higher level, above that of the level of a commodity within the holiday product.

COMMENT ON FINANCIAL SERVICES AUTHORITY QUESTIONS

HTW will set out the questions posed by the FSA and provide its answers, where possible, in the same rotation.

Question1:

"The current regime

- To what extent do you consider that current regulation (e.g. the ATOL regulations) in respect of the sale of travel already protects the customer buying travel insurance?
- How important is bundled travel insurance to the operation of most travel agents and tour operators
- Do you have any views on the extent to which travel agents and tour operators are likely to become (or already are) appointed representatives or introducers?"

We would refer to our reports at Appendix 1 – 3. Those reports clearly demonstrate the failure of the travel insurance product, insofar as its presentation, delivery and benefit to the travel consumer. Reference is made to the ATOL regulations, however, we take the view that the ATOL issue is separate and distinct, a matter which has been addressed by the Government with its proposed £1 levy on all air holidays sold. Therefore at this time the state of regulation is limited to the ABTA Code of Conduct. We consider that this level of regulation has failed the consumer, and that a more formal process of regulation is required to cover this very important financial product.

We have no direct experience of how important the sale of bundled travel insurance is to the travel industry. It is clear however that sale of such an insurance product is integral to a travel agents or tour operator's level of sales. When a consumer is purchasing a holiday, either through a shop, by telephone or through the internet, they are already within the 'natural environment' where such a sale can take place. We argue that there is a need to protect the consumer within such a sales environment.

Again we have no direct experience of the issue concerning their status as representatives or introducers. It has been noted that the industry have openly discussed the issue of selling the insurance product, some have declared that they will seek representative status, others have been invited to join with the ABTASure product.

In the Travel Weekly (29/6/07), Mike Monks (Head of Financial Services – ABTA), expressed concern as to the status position of agents or operators by stating,

"The key issue will be the time it takes to explain the average policy to a client under the changed regime. If this takes considerably more than the current 5 to 10 minutes, many agents are likely to conclude the time would be better spent selling holidays – ABTA fears that will mean more people will travel uninsured"[2]

This confirms our own concerns; that the selling of travel insurance has received very little attention at the point of sale. In the same article, Mr Monks hopes for a 'light touch' in the new regulatory framework. We argue that in their consideration of whether to sell insurance, either as a representative or introducer, any proposed scheme must have teeth; otherwise the detriment to the consumer will continue.

Question 2:

"What are the key issues the potential new regime should address?"

In the letters page of the Travel Trade Gazette (13/7/07), Mark Hall (Head of Travel Law – Weightmans LLP), expressed the concern of the industry to the advent of the sale of a regulated insurance product. He considered that in any new regime there is a potential solution, he stated,

"An answer lies with the FSA Appointed Representative (AR) scheme where an agent or operator can act as the AR of an insurer and receive training, monitoring and accreditation. The insurer is regulated by the FSA and takes responsibility for

[2] Travel Weekly – 29/6/07 – Page 3

the AR's compliance. This is preferable to applying for FSA authority which is time consuming and costly"[3]

As an Organisation we are not unsympathetic to the concerns of the travel industry, however, we must also highlight the plight of the travel consumer where a travel insurance product has failed them. The idea that somehow a 5 to 10 minute conversation with a holidaymaker, is sufficient to determine appropriate cover, clearly does not work. Our concern is that in any regime introduced, whilst a considerable improvement on the status quo, must not merely rubber stamp existing practices.

The logical step is to bring the sale of the travel insurance product under full regulatory control by the FSA. However, if a suitable solution, stopping short of full regulatory control, could be determined, thereby raising the status of the product, we are of the view that not only would there be an increased consumer awareness of the need for travel insurance, but a cross benefit to the travel industry of providing an ethical and responsible service to the travel consumer.

However, if a half-way house is found, it would also serve as a warning to the travel industry at large, that failure to comply with its provisions, would lead to an increased prospect of full regulation.

Question 3:

"What risks/issues should we be aware of in developing a new regime to regulate the bundled travel insurance?

- Are any additional protections needed to enable consumers to achieve a fair deal?
- If so, are there any particular issues that we should be aware of in developing a regime for these additional activities (i.e. travel insurance sold with a holiday)?"

[3] Travel Trade Gazette – 13/7/07 – Page 26

We consider that there is a need for a clear, unambiguous disclosure as to each element of the travel insurance product. This is particularly so where exclusions relate to:

- Age limits
- Cover for children
- Medical Cover
- Financial limits of cover
- Ascertaining details of pre existing medical conditions
- Explanations of what a product will or will not cover
- How complaints can be made
- Each client be provided with clear and adequate summary and 'full' documentation relating to the sale of the travel insurance product

Where products are sold that are integral to the holiday product, we would recommend that this practice ceases. We are concerned that the insurance product should be viewed as the single most important part of an otherwise complex transaction. Whether the product is sold as part of the holiday or separately it requires the protection of regulation.

As part of a final layer of regulation, there should be a clear and unambiguous method of complaints handling. Any process of complaint making should be clear and avoid legalese. We would recommend that a proper level of disciplinary action be introduced into the regulation of the travel insurance product, failure you do so would import a lack of confidence, the same lack of confidence that currently exists in the current regime.

CONCLUSION

We again call for full regulatory control; however, we recognise that there may exist suitable vehicles of regulatory control, which could be adapted to the needs of the travel consumer and the travel industry. If the latter is chosen, it must not simply 'rubber stamp' the present system of selling a travel insurance product within 5 to 10 minutes!

Confidence will be further enhanced if the same level of explanation, documentation and particularly an enhanced complaints and disciplinary process is applied to this product.

Whatever the solution, if the Travel Industry are successful in their arguments, and win less than full regulatory control over the travel insurance product, this should serve as a warning that they may be in the last chance saloon. Politicians and certainly the travel consumer will not be so forgiving next time!

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