



Protecting the Travel Consumer

**Consultation Paper 07/22
Financial Services Authority:
Regulating Connected Travel
Insurance**

The Consumer Perspective

**Comment on the Proposed
Regulation of Travel Insurance**

14 March 2008

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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. The FSA have now concluded their enquiries, and have produced a consultation document which outlines how they propose to regulate the sales of Travel Insurance. Their consultation document can be found at http://www.fsa.gov.uk/pages/Library/Policy/CP/2007/07_22.shtml

HolidayTravelWatch (HTW) has been invited by the FSA to respond to their Consultation Document.

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 nearly 13 years of operation, it has provided information, advice and assistance to over 155,000 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 2005¹. 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 85,000 holidaymakers have received such legal assistance, and have achieved in excess of £20,000,000 in compensation for their holiday complaints, holiday illness

¹ Lord Treisman – FCO Reception March 2006

and injuries. This report will analyse and cite the relevant experience of this organisation and the travel consumer, in support of its conclusions.

RESPONSE BY HOLIDAYTRAVELWATCH TO THE QUESTIONS RAISED BY THE FSA IN CONSULTATION

We shall set out each question raised by the FSA, and provide our comment thereafter. Where appropriate, we shall provide an explanation of terms for the benefit of Consumers reading this document.

The FSA, through its document -

http://www.fsa.gov.uk/pages/Library/Policy/CP/2007/07_22.shtml (This relates to the sales of Connected Travel Insurance (CTI). CTI is an insurance product which is sold alongside and purchased at the same time as other travel products), it raises a regime for Regulation and provides a number of questions for consideration by stakeholders in the travel debate.

Reference should also be made to -

http://www.fsa.gov.uk/pages/Library/Policy/CP/2007/07_24.shtml (This relates to an Insurance Product which is not sold alongside holiday products and is purchased separately from an insurer or other provider – this could be purchased from an online retailer or through a supermarket).

Question 1:

‘Do you agree with the proposed application of the AR (Appointed Representative – usually of an Insurance Company) regime?’

Response to Question 1:

We agree with the proposal.

Question 2:

‘Do you agree with our proposed application of the ‘approved persons’ regime?’

Response to Question 2:

We agree that this is a proportionate at this time. We consider that this option should not be viewed as a 'soft option' for any company selling such an important financial product. We would hope that the FSA would seek to underline the importance of the appointment of such an individual within a company, ensuring that such a position does not 'water down' the importance of Regulation.

Question 3:

'Do you agree with the changes proposed to PERG (this relates to companies obtaining insurance products from outside the UK area, in particular the European Economic Area EEA)?'

Response to Question 3:

We agree that this is proportionate. We do have some reservations on this issue as we can see that there is a small but growing trend for travel companies to move their operations away from the UK, particularly into the EU area. The issues that arise from such areas of operations have created problems for both consumers and hoteliers. We would hope that this proposal will defeat any attempt at sharp practice against the Travel Consumer insofar as the Sale of Travel Insurance is concerned.

Question 4:

'Do you agree with the Regulatory Fees proposals?'

Response to Question 4:

This is outside our area of operation and therefore we have no specific comment on this issue.

Question 5:

‘Do you agree with our proposed application of the T & C (Training and Competence regime)?’

Response to Question 5:

We have some reservations on this issue. We consider that at paragraph 4.4 there is an implication that the ABTA Code of Conduct provides for wholesale monitoring and action where a breach has occurred. This very issue formed part of the debate during the hearings before the Treasury Select Committee. During that hearing we described the effectiveness of the ABTA Code of Conduct as a ‘toothless tiger’. There will be those who will reject that opinion, and will no doubt cite their successes at dealing with major fraud issues. Whilst that may be a valid point, it nonetheless does not remove the fact that many consumers face great difficulty in pursuing Code of Conduct complaints. This may be an Institutional problem, or perhaps it is a problem that exists with what is after all a trade body, attempting to satisfy consumer concerns, whilst balancing its member’s interests? We accept that many corporate bodies do take their activities seriously; however, we consider that the ‘light touch’ on training and competence, proposed by the FSA, particularly on the issue of examinations, may not be strong enough. We believe that the problem with past sales of Travel Insurance is the fact that staff was perhaps lightly aware of their responsibilities through a Code of Conduct, but failed to recognise the wider implications of such a sale, and the importance of the sale of a vital financial product. We consider T & C to be a vital area in that regard.

Question 6:

‘Do you agree with our proposals to apply client money requirements to CTI Firms that do not have risk transfer agreements in place?’

Response to Question 6:

We agree with the proposal.

Question 7:

'Do you agree with:

- (i) our proposed requirements for capital resources for a CTI Firm not holding money, and***
- (ii) our proposed requirement for higher capital resources for CTI Firms that hold client money?'***

Response to Question 7:

We agree with the proposals.

Question 8:

'Do you have any comments on how our proposed requirement for capital resources sits with those already required?'

Response to Question 8:

This is outside our area of operation and therefore we have no specific comment on this issue.

Questions 9, 10, 11 & 12:

- 9. Do you agree with our proposal to apply a minimum PII (Professional Indemnity Insurance) requirement to all CTI Firms?***
- 10. Do you believe Option 1 or Option 2 (as set out in the Consultative Document) is an appropriate level of PII taking account of the***

potential risks posed by CTI?

11. Do you have any views on:

- a. the cost of PII for CTI Firms;***
- b. the ease of CTI Firms being able to obtain PII and the capacity in the market; and***
- c. the size and range of customer claims relating to CTI?***

12. If you are a general insurance Firm, would you consider it inappropriate if CTI Firms had lower PII requirements than you, as both CTI Firms and general insurance Firms will be part of the same FSCS broad class?

Responses to Questions 9, 10, 11 & 12:

- 9. We agree with the proposal.
- 10. We would support Option 1 as this would appear to present less risk of Consumer Detriment.
- 11. The issue of cost is always difficult to assess in a new and emerging market. The analogy can be drawn with developments within the legal market. As the market has developed, bringing new work types, either providing new full legal services, or a service related to claims management, the market has adapted and developed both product and pricing structures. Perhaps the FSA could refer to the Claims Management Regulator and his extensive enquiry and experience into emerging PII markets? With regard to the size of customer claims, we would suggest that this could be variable and dependant upon the detriment suffered, with the greater detriment, and therefore the size of the potential claim, where illness, injury or death occurs.
- 12. This is outside our area of operation and therefore we have no specific comment on this issue.

Question 13:

‘Do you agree with our proposed application of the reporting requirements?’

Response to Question 13:

We agree that this is proportionate.

Question 14:

‘Do you agree with our proposal to apply the ICOBS (Insurance Conduct of Business Source Book) provisions for general matters, including financial promotions, to CTI?’

Response to Question 14:

We agree with this proposal.

Question 15:

‘Do you agree with our proposal to apply new ICOBS disclosure provisions outlined [within the consultative document] to CTI?’ (Note: this relates to information on fees, statutory status etc)

Response to Question 15:

We agree with this proposal.

Question 16:

‘Do you agree with our proposals to make CTI subject to the guidance on eligibility and the disclosure of material facts, and the high level suitability rule?’

Response to Question 16:

We agree in principle. However, we are concerned that material facts could relate

to such issues as children being excluded from cover, age restrictions, or the fact that Legal Expense cover will not be available for claims against airlines, hotels, travel agents or tour operators. We have already highlighted these issues to the Treasury Select Committee and the HM Treasury in our previous reports. We consider that the fact that a benefit may exist, and may on its own present an attractive policy, should be clearly balanced and highlighted, as potentially having no benefit at all. On the issue of Legal Expenses cover, we are aware of considerable Consumer Detriment being suffered, following the completion of travel arrangements, only to discover that they cannot use the benefit against the travel provider, simply because the material fact of the exclusion was not brought to the consumer's attention. Surely such an issue cuts to the heart of the suitability rule? We consider that it would be helpful to both Consumer and the Industry alike, if a clear and unambiguous material facts standard statement was produced for all Travel Insurance Contracts.

Question 17:

'Do you agree that these ICOBS product disclosure rules should apply to CTI?'

Response to Question 17:

We agree with this proposal.

Question 18:

'Do you agree that cancellation rights should apply to all CTI Contracts, except for contracts of less than one month?'

Response to Question 18:

We agree that this is proportionate.

Question 19:

‘Do you agree with our proposals not to apply the IMD (Insurance Mediation Directive) requirements for detailed status disclosure, disclosure of the scope of service and demands and needs statements?’

Response to Question 19:

We take the view that for the protection of the Consumer and the Industry, it would be prudent to provide a demands, needs and advice given statement.

Question 20:

‘Do you agree with our proposal to bring CTI Firms into the compulsory jurisdiction of the FOS (Financial Ombudsman Service) and make them subject to our complaints handling rules in DISP?’

Response to Question 20:

We agree with this proposal. We are concerned that reference to existing trade complaints processes, could be argued, as being sufficient to protect the consumer in the event of a complaint. We would refer to our response at Question 5. We support the FSA view expressed, that being, that compulsory access to the FOS will strengthen and increase consumer protection.

Question 21:

***‘Do you agree with our proposal that CTI Firms should be subject to FSCS?’
(Note: Safety Net for Consumers in the event that a Firm does not have sufficient assets to meet its liabilities)***

Response to Question 21:

We agree with this proposal.

Question 22:

‘Do you agree with our proposal that CTI Firms should fall into the general insurance intermediation sub-class?’

Response to Question 22:

This is outside our area of operation and therefore we have no specific comment on this issue.

Question 23:

‘Do you agree with our proposed transitional arrangements for brochures?’

Response to Question 23:

We agree with this proposal. However, Travel Companies are utilising the internet in greater numbers to produce their online ‘brochures’. We would suggest that such transitional arrangements should not be applied to any online brochure; as such a medium is capable of easy amendment as is evidenced by the daily updating of such websites.

Question 24:

‘Do you agree that transitional provisions are not needed for cancellation or status disclosure?’

Response to Question 24:

We agree with this proposal.

Question 25:

‘Are there any other areas where we should provide transitional provisions?’

Response to Question 25:

We have no comment on this issue except to state again, that transitional arrangements should not apply to internet based businesses, whether based wholly or in part on the internet.

Question 26:

‘Do you have any comments on our CBA (Costs Benefits Analysis)?’

Response to Question 26:

In providing our response we refer to paragraph 8.17 of the consultative document. It states:

‘Finally we note that the market segment that could potentially benefit from regulation is limited. This is because a significant percentage of travel insurance is not CTI; many travel Firms effectively already comply with many of our requirements; and some redress and compensation is available to customers through trade associations’.

We would again refer to our response to Question 5 above. We are concerned that by reference to complaint schemes, this will somehow produce a ‘watered’ down regulatory product. We again accept that many Travel Businesses operate openly and ethically, however, we consider that the nature of this financial product is

too important to be left within the confines of pre-regulatory existing structures for redress.

Question 27:

'Do you have any comments on our compatibility statement?'

Response to Question 27:

We have no comment on this issue.

CONCLUSION

We broadly welcome the proposed changes to the sales of Travel Insurance.

We remain concerned that there may be a temptation to allow some processes to fall into Trade Associations Codes of Conduct or form of redress. We hope that the FSA will remain resolute with their proposals, and repeat again, that such Regulatory structures can only be for the benefit of the Travel Consumer and the Travel Industry.

We look forward to the introduction of the proposed regulatory framework and hope that many more Travel Consumers will see this important product as part of the necessary purchases for their journeys. We also hope that the Travel Industry will embrace this new regime, and seize the opportunity to enhance their own products, through the regulated sale and practice of an important financial product.

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14 March 2008