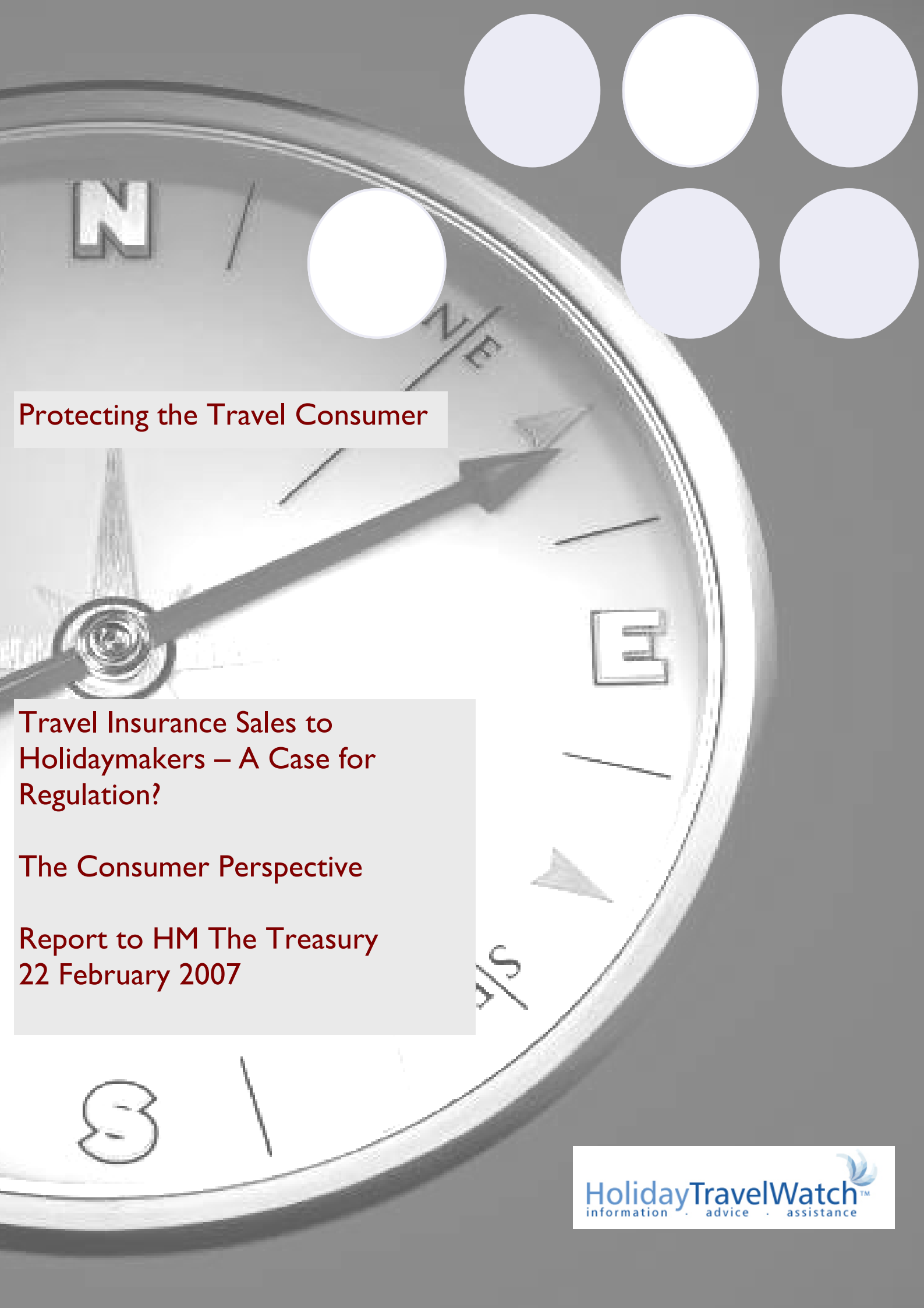

Protecting the Travel Consumer

Travel Insurance Sales to Holidaymakers – A Case for Regulation?

The Consumer Perspective

Report to HM The Treasury
22 February 2007

HolidayTravelWatch™
information · advice · assistance

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INTRODUCTION TO HOLIDAYTRAVELWATCH

HM The Treasury called upon 'stakeholders' within the Travel Industry to comment upon the sale of the travel insurance product to consumers, and whether there is a case for regulation. This follows on from the enquiry carried out by The Treasury Select Committee in the latter part of 2006. In addition to its own oral evidence, HolidayTravelWatch (HTW) submitted two written reports to The Treasury Select Committee, on the sale of travel insurance, either generally, or through the service of travel agents or travel providers. The aim of this report is to combine those issues and provide further comment where necessary.

HTW 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 11 years of operation, it has provided information, advice and assistance to over 130,000 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 43.5% 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 65,000 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 sales of travel insurance products, and where appropriate, reference will be made to relevant legal provisions. The report will also cite the relevant experience of this organisation and the travel consumer, in support of its conclusions.

[1] Lord Treisman – FCO Reception 21.3.06

INTRODUCTION TO THE REPORT

Since 1995, HTW has received a number of complaints, either about the sale or operation of travel Insurance. For many years, HTW has advised holidaymakers of:

1. The need to adopt personal responsibility for their actions and travel arrangements;

2. The possession of an E1-11 Health Insurance document, which has now been superseded by the European Health Insurance Card, and

3. The absolute requirement to carry appropriate travel insurance.

The purchase of any travel arrangement creates a seamless, but nonetheless complex contractual relationship, between the holidaymaker, the tour operator and their suppliers.

In traditional holiday contracts (package holidays), insurance contracts purchased from a travel agent or travel provider, import a similar complexity. That relationship will arise between the intending holidaymaker, the travel agent and/or tour operator, the insurance company and their agents.

The development of internet/e commerce based technologies has given rise to the 'click n'go' generation. An internet based contractual transaction can now be completed in a matter of minutes.

Despite this relatively new method of purchasing products, we again witness the same complexity in the contractual relationship. A holidaymaker purchasing a contract of travel insurance online will establish a relationship between the holiday website owner and/or the tour operator/airline/travel agent and/or the insurance company and their agents.

That complex relationship is aided by the supply of the extensive terms and

conditions that accompany travel insurance. It is suggested that whilst insurance is a very necessary part of our society, it is nonetheless, rightly or wrongly, considered by many as being dull and boring. This view stems from a product that is extensive in its legal explanations.

We must accept however, an insurance company is being asked to share in the potential risks of travel, a risk that it wants to limit through its terms and conditions.

These new consumer protections have produced slick 'essential' travel insurance product information, providing the message to the consumer; it's simple; it's straightforward; it does exactly what it says on the flyer, or does it?

The sale of the travel insurance product is now not just confined to the travel agent. A visit to a pharmacy, the post office, banks and supermarkets will provide access to the relevant flyer or a sealed pack containing the relevant travel insurance. Web based tour operators, airlines, and insurance companies all provide a 'click n'go' solution to the hungry consumer.

The shake up in the operation of the financial markets, provided the said purchasers of financial products, with clearer explanations and cooling off periods. These new consumer protections have produced slick 'essential' travel insurance product information, providing the message to the consumer; it's simple; it's straightforward; it does exactly what it says on the flyer, or does it?

HOLIDAYMAKERS EXPERIENCES & SOLUTIONS

HTW primarily deals with holiday complaints which concern holiday illness and/or contractual complaints. During the course of its contact with intending or returning holidaymakers, the organisation receives complaints about the sale of, or operation of travel insurance contracts. The following is a small selection of holidaymaker's problems and how we suggested that some of those problems were or could have been resolved.

Example A:

Mrs A travelled to France, some 7 weeks before the scheduled end of her pregnancy. She had been advised by her GP that she was fit to travel, and that she should not experience any adverse effects before her due date. She travelled by car and ferry and on arrival settled into her holiday. Halfway through the holiday, she was admitted to hospital and prematurely delivered her baby. The baby required emergency treatment in a special care baby unit. Mrs A believed that she would not encounter a problem with her travel insurance, and she was also in possession of an European Health Insurance Card (EHIC). However, she discovered that her travel insurance company refused cover, on the basis that she had travelled abroad outside the threshold period stated within her insurance. She also discovered that the EHIC only covered up to 75% of medical treatment costs in France, and it did not cover repatriation. This was not only personally distressing for this family, but it also had the potential to be financially disastrous.

HTW were not called upon to directly advise Mrs A. However, in a public statement, the organisation highlighted the need for holidaymakers to read their terms and conditions before travel. An additional issue arose over the use of an EHIC. HTW called upon the Department of Health to make a clearer statement on its promotion of the EHIC. The organisation considered that there was a need to ensure that those applying for the card were aware of the potential for a shortfall in medical costs, and that repatriation is not included.

Example B:

Mr B is a pensioner living in the South of England. He is a man in good health, with no substantial medical history or pre-existing conditions. He decided that he wanted to travel to Italy on a traditional package holiday. He booked the holiday through a small but established tour operator. At the time of booking, he realised that his annual travel policy had expired.

‘the managing director encouraged him to go ahead stating that, “any bad news is always good news” ‘.

He advised the tour operator, who told him that he could not travel unless he purchased their travel insurance. He was quoted a premium of £400. Mr B knew that he was being overcharged and when he protested to the tour operator, the managing director encouraged him to go ahead stating that, “any bad news is always good news”. Mr B felt that as he had bought the holiday, he had no option but to purchase the insurance.

HTW was advised by Mr B that the holiday was a disaster for him and a number of other holidaymakers. He was advised as to his rights under the Package Travel Regulations (PTR), and he chose to try and establish his own resolution with the tour operator. With regard to his insurance complaint, he was advised as to the ABTA Code of Conduct, but he indicated that he wished to pursue his insurance complaint through his membership with another consumer grouping.

Example C:

Mr C went on holiday to Florida with his family. Before travel he purchased travel insurance through his travel agent. During the holiday, his daughter developed a water infection requiring emergency treatment. Once the treatment was completed, he was informed that the insurance company, through which his policy was held, was ‘blacklisted’. The apparent reason was that the insurance company had failed to pay

its bills with several hospitals within the Orlando area. This dire situation required the family to immediately use its reserves of $400, effectively ending their holiday. They attempted to contact the tour operator's representative for further assistance, but their calls were not returned. Mr C rang the insurance company in England. They confirmed that they knew of the problem in Florida but could not offer the family with any assistance.

Upon his return to the UK, Mr C discovered that the travel agency was still selling the same policy to potential holidaymakers. The agency stated that they were unaware of the problems he experienced whilst he was on holiday and could offer him no further assistance.

Mr C contacted HTW and was advised to write to the insurance company. At first they did not respond, so he was advised to contact the Financial Services Ombudsman. The response he received was less than satisfactory. He was advised that as he had been re-paid the $400, there was nothing further they could do.

"Once the treatment was completed, he was informed that the insurance company through which his policy was held was 'blacklisted'. The apparent reason was that the insurance company had failed to pay its bills with several hospitals within the Orlando area".

The organisation found the responses from the travel agent and the Ombudsman to be staggering. It was considered important to confront the issues raised by the travel agents/tour operator's failure to investigate a product, designed to provide the holidaymaker with the ultimate protection, when something goes wrong. Equally, it was also important to confront the issues raised by the insurance company's failure to pay its bills and provide the contracted cover. More importantly, this was an insurance company not based within the UK; there was a need to confront the ethical operation of this product. With HTW's guidance, Mr C wrote to the travel

agent/tour operator; the insurance company, and the Financial Services Ombudsman to investigate and report on this serious issue. To date, HTW has not been advised as to the outcome of those further complaints.

Example D:

Mrs D booked and paid for a holiday with a travel agent, for her family which also included her Father. At the time of booking, she advised the agent that her father had not been well, and that this holiday was to aid his recuperation. As she was organising the holiday, she also purchased travel insurance. Regrettably, Mrs D's Father became too ill to travel, with the result that the family had to cancel the holiday. When Mrs D tried to resolve the problem with the travel agent, she was referred to the insurance company. The insurance company referred to their terms and conditions; she had not advised of her Father's pre-existing conditions at the time of arranging the insurance contract, therefore no cover could be provided; the family would lose their holiday cost.

HTW advised of the difficulties of pursuing the matter through litigation. Mrs C was advised of the ABTA Code of Conduct, and she was advised to write to the insurance company. In addition, she was also advised to contact the Financial Services Ombudsman to seek their advice and guidance.

Example E:

Mrs E booked a holiday with a travel agent for herself and her husband. At the time of booking, she advised that she had travel insurance, and therefore rejected the offer of travel insurance. At no stage did the travel agent seek to confirm the details of the insurance before confirming the booking. Unfortunately, several hours after she booked the holiday, her husband became ill, and she had to cancel the holiday with the resulting loss of the holiday cost. Mrs E protested to the travel agent and the tour operator, to no avail. The travel agent/tour operator refused to accept that they had responsibility. HTW sought to promote a sensible settlement through letter writing advice or to progress the matter through litigation. To date, HTW has not been advised as to the outcome of Mrs E's attempts to resolve the matter.

THE HOLIDAYTRAVELWATCH MYSTERY SHOPPING EXPERIENCE

In the course of considering the issues of purchasing travel insurance, the author of this report decided to engage in a 'mystery shopping' experience. Whilst it is important to use the experience of genuine consumers, it was also considered important to understand the process by which the consumer can purchase their travel insurance. It was decided to explore the process through the attempted purchase of a travel insurance in travel shops, a supermarket, a pharmacy and through the internet. We considered it important to establish the method of selling, and how flexible travel insurance policies were. When returning holidaymakers contact HTW, it is usually because they have encountered some illness and/or contractual problem. They often discover the legal expenses insurance they purchased; either prevents them from using the policy to sue the travel agent/travel provider or provides no choice on the solicitors they can choose.

Tui Travel Shops

The first visit took place on Wednesday 15 November 2006 at the New Street Birmingham Branch. Unfortunately, no representative was available. An examination of the shelves and public areas, found that there was no information on travel insurance, only brochures were available.

The second visit took place on the same day at their Bull Ring Birmingham branch. A request was made for a travel brochure, followed by information on travel insurance. We were advised that no holiday would be sold without a relevant travel insurance policy being in place. We were advised that they could provide travel insurance, and that it would be added to the final bill. No insurance brochure was available. However, the assistant did print off a summary of the insurance 'benefits'. The summary provided basic details, but no information on exclusions; it was not possible to establish the nature of the limits to any travel insurance policy or its exclusions. No terms and conditions were available; these would be given at the time of purchase. When questioned about whether 'external' insurances would be acceptable, we were advised that at the time of booking, details of the insurance company and the policy number would have to be provided before the holiday

booking could be confirmed. The Thomson Holiday Brochure confirmed this information, it states;

"All party members, including infants and children, must be adequately insured on holiday, and this is a condition of booking with us. You may either: accept our recommended policy, in which case the premium will be added to your holiday invoice; or choose a policy at least as good with another company. If you choose a different company, you must tell us so that the insurance company details and policy number can be recorded by us. We must have this information before we can confirm your booking. Details of our recommended policy are available upon booking. Adequate insurance is important in case your holiday is affected before or after departure by illness and other events beyond our control as we do not pay compensation for these".[2]

Thomas Cook

The Bull Ring Branch in Birmingham was visited on Wednesday 15 November 2006. An examination of the store could not establish any available detail on travel insurance. We managed to speak with an assistant who initially had difficulty in finding information on travel insurance. She spoke with a colleague who found some brochures at the bottom of a cupboard. The assistant provided us with that insurance brochure. We discovered that where a personal injury had occurred, benefits were limited to death or permanent disability. It did not include injury through food poisoning or water borne diseases. There was a general exclusion to benefit for any pregnancy related issue beyond 8 weeks.

With regard to legal expenses, the holidaymaker was excluded from using this benefit for;

"Claims against a carrier or the travel or holiday agent or tour operator arranging an overseas journey covered by this insurance or AXA Insurance, AXA Assistance or their agents

[2] Thomson Destinations Summer Collection – April to October 2007 2nd Edition (P.541)

Claims where in our opinion there are no reasonable prospects for success"[3]

Within the Thomas Cook Brochure there is a summary of the potential cover that can be provided, warning the reader of the need to provide details of pre-existing conditions. Within the same brochure, there is a section marked 'Before You Travel', it states;

"You must take out Holiday Insurance suitable for your needs before you travel. We cannot be responsible for any costs you incur as a result of failing to do so. For your own peace of mind the insurance should cover you if you have to cancel your arrangements, or for any emergencies that arise while you are away. We recommend the insurance we offer (see page 538) as it provides cover, which meets most people's needs. Please check your policy when you receive it and take it with you on Holiday".[4]

When we were provided with the insurance document and brochure, we were not advised about their own insurance, or whether it was a formal requirement of the booking.

We then turned our attention to Boots The Chemist, High Street, Birmingham. We visited the store on Wednesday 15 November 2006. It took several attempts to establish the location of travel insurance information. We were directed to several flyer leaflets, one dealing with multi-trip policies, the other for city breaks. The first brochure briefly described the benefits and cost. It contained no information on exclusions or duties of pre-disclosure. The city breaks brochure contained some information on exclusions in medical cover (these being principally pre-existing conditions). There are references to policy wording and helpline numbers to aid in the completion of the application form. Within that document, there is reference to regulation by the Financial Services Authority and that they are covered by the Financial Services Compensation Screen. When requested, we were advised that the full policy document would be made available on purchase; it was not available prior to purchase.

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[3] Enjoy your holiday with our travel insurance – 6th Edition (P. 31)
[4] Thomas Cook Summersun – 2nd Edition – April to October 2007

On 16 November 2006 we sought to purchase travel insurance from the supermarket store, Tesco, Hall Green, Birmingham. On display were sealed packets containing 'ready made' policies for different travel requirements. Examination of those packets did not reveal the nature or summary of cover. We requested that information from the customer service desk within the store. Two assistants sought to provide a summary fact sheet but could not find any. They stated that the only way to determine the nature of the cover was to buy the product and if it was not satisfactory, to return it to them for a refund. The alternative was to visit their website where it was thought that the summary and terms & conditions could be located.

Our next shopping experience came from 3 internet providers:

1. www.insureandgo.com was examined on 19 November 2006. The web portal was quite simple to negotiate and within minutes, we had chosen a 'Silver' single policy for travel in Europe in December 2006 for £9.26p. A simple summary of the cover was available, but it took several minutes for us to determine that the full terms and conditions were available on the top toolbar. We discovered the terms and conditions amounted to 24 pages of script. Similar exclusions for medical claims were found in this policy that were found in earlier 'shopping' discoveries. The legal expense facility included the exclusion as to use if they considered that the claim would not be successful, and that no claim could be entertained against them, their agents, their representatives, a tour operator, a provider of accommodation or against anyone who arranges travel.[5]

2. www.easyjet.com was examined on 19 November 2006. The web portal directed the 'shopper' to a separate page – www.easyjet4insurance.com – and a search for appropriate insurance was carried out. We sought insurance for a 10 day trip to Turkey in July 2007. We were provided with a quote and a summary of cover. Again we encountered some difficulty in establishing the full terms and conditions, but found those

[5] www.insureandgo.com – 19 November 2006

under the 'Product Information' section. We discovered that we had changed sites again. We were now met with a message at the bottom of the page which stated, 'Welcome to Mondial Assistance Group E Commerce Website Authorised by the Financial Services Authority'. Within the product information, we established the extent of cover and exclusions. Before we could purchase the insurance we had to 'sign' an online warranty dealing with pre-existing conditions, these conditions were extensive and would need careful consideration by any consumer. Further exclusions contained a limit on legal expenses whereby the policy could not be used to sue the tour operator, travel agent, a carrier or easyjet. Where there was a claim for physical injury, no payment could be made to someone who was under 15 years of age and had suffered a permanent physical injury. Where an motor cycle injury was claimed, this would not be entertained if the injured party had not worn a crash helmet. No claim could be made where there was a failure by the tour operator or airline to provide transport in the event of a cancellation. In pregnancy claims, no such claim would be entertained if the pregnancy was beyond 24 weeks outside Europe and 28 weeks within Europe.[6]

3. www.ryanair.com was examined on 19 November 2006. Again we sought a quote for European travel in December 2006. We were provided with the option of cover with a Ryanair flight, or cover with another airline's flight. We chose Gold Cover and Scheduled Airline Failure Cover for £12.25p. Within the viewing window there was a 'cover details' summary button. This provided a brief summary of the available cover for the premium. After searching, we discovered that the policy documentation was contained in a menu on the left hand side. When we opened this facility, we discovered an array of .pdf documentation. We chose the gold cover information. Under legal expenses, the exclusion revealed that the policy could not be used to sue Ryanair, the Underwriters of the policy or the Insurance Company. Medical exclusions again mirrored previous policies examined, but we

[6] www.easyjet.com – 19 November 2006

found that this policy excluded the costs of private medical treatments, and claims had to be notified within 14 days. When we examined the Scheduled Airline Failure Cover we discovered that claims could not be made in 'force majeure' situations or where other policies existed. We then chose a policy without a Ryanair flight and received a quote for £25. This however did not include the Scheduled Airline Failure cover, which was not available.[7]

It was clear from our 'shopping experience', that the consumer is faced with a bewildering amount of information and some difficulty in accessing that information. What is of greater concern is the manner in which these policies are sold and the exclusions that are attracted by such policies. It is likely that many people do not read the terms and conditions, or find accessing them difficult. We would suggest that the average consumer would need to be quite determined to cross-check policies and exclusions before being in a position to make an informed choice.

"We would suggest that the average consumer would need to be quite determined to cross-check policies and exclusions before being in a position to make an informed choice".

[7] www.ryanair.com – 19 November 2006

DEVELOPMENTS WITHIN THE PACKAGE TRAVEL, PACKAGE HOLIDAYS AND PACKAGE TOURS REGULATIONS 1992 (PTR)

It is not only important, but also relevant to place the issue of travel insurance within the context of other consumer protections.

The Campaign by HolidayTravelWatch, highlighting the threat to the rights currently enjoyed by many thousands of British Package Holidaymakers, suffered a blow when the Court of Appeal supported the case brought by the Association of British Travel Agents (ABTA) against the Civil Aviation Authority (CAA).

The case arose when the CAA issued guidance which required travel agents to obtain an Air Tour Operators Licence (ATOL), whenever they created or sold a Package Holiday.

ABTA sought to challenge the decision making process of the CAA through Judicial Review. They contended that the guidance and requirements on the travel agents were flawed, and that the decision of the CAA should be overturned.

The importance of this bond cannot be underestimated. The ATOL Licence must be taken out by an organiser who sells an air package holiday. This Bond protects the holidaymaker whenever a holiday company ceases to trade. It provides a lifeline to a holidaymaker and for that matter the supplier, who is stranded as a result of the failure.

The cover allows for the continuation of the holiday, or the return of the holidaymaker back to their home airport. Many ask us, why is this case important? If it only affects travel agents, how can that affect the holidaymaker who buys his holiday from a tour operator?

The guidance was issued by the CAA, because an imbalance was being created within the travel market in the way holidays are being sold. The advance of internet and broadband technologies has seen a rapid demand for the services provided by the

low cost budget airlines. The speed of this growth has cut to the very heart of the Travel Industry, and in its wake follows the travel consumer.

The importance of this case is not just about whether a travel agent needs an ATOL Licence; it was also about the definition of a Package Holiday. The question asked was, how could a travel agent be held to be creating a Package Holiday, when conversely a budget airline does exactly the same thing through their website, but they do not require bonding?

It exposed the lack of courage by the Travel Industry and successive Government's, in not challenging the airline industry's untouchable monopoly. We know from the earlier court decision, that the lower court held that the definition of a Package Holiday, contained in the Package Travel Regulations (PTR), was somewhat redundant, out of date. The court was not tasked with redefining the Package Travel Regulations, merely to understand how the CAA made their decision and whether that process was flawed.

The Court of Appeal was attracted to the argument made by ABTA, that in the purchase of an online holiday product, it was akin to purchasing the week's shopping, and therefore not one product, but many. As a result there could be no package. However, the Travel Industry did not have it all its own way. The Court of Appeal raised the real possibility of uncertainty, effectively asking, when is a package not a package – when it is a question of fact!

Chadwick LJ stated,

"difficult questions of fact are likely to arise if the customer chooses and contracts for two or more services on the same occasion. The principle is not in doubt. If the services are sold or offered for sale as components of a combination, there is a package; if they are sold or offered for sale separately but at the same time, there is no package. The question whether they are sold as components of a combination - or separately but at the same time - is a question of fact. That question may not be easy to resolve in the particular case".

The full copy of the Court of Appeal judgement can be viewed at this link - http://www.abtamembers.org/download/finaljudgement.pdf

However, if the industry follows the new generation companies and budget airlines, the fear is that they will also follow the court's comments on what constitutes a package.

In an article in the Travel Trade Gazette (21/7/06), David Moesli director of the CAA's consumer protection group stated,

"I think the Wild West, if it is not here, is on the way—and the cavalry is not coming".[8]

The state of the package holiday was addressed by travel journalist Jeremy Skidmore in the Western Mail (20/9/06), he stated,

"It's no exaggeration to say that the travel industry is unravelling before our eyes. The package holiday, once a desirable goal, is now something that millions of people are turning their backs on".[9]

In TravelMole (20/10/06), Peter Rothwell from TUI said,

"We have been nervous about selling flights and accommodation together, because of being liable if something goes wrong...on dynamic packages, we would no longer be liable, for example, for the behaviour of Pedro the waiter or a dodgy car hire fire in resort".[10]

The debate of the effect of this decision continues. We reported in the recent edition of our electronic magazine, 'Get'Away', holidaymakers experiences in the brave new world of the unregulated market.[11]

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[8] Travel Trade Gazette – 21 July 2006
[9] Western Mail – 20 September 2006
[10] TravelMole – 20 October 2006
[11] HTW – 'Get'Away' – Issue 3 – 9 February 2007

Mrs A recently reported that she had complaints about her hotel. She had purchased her holiday online, which included the flight, hotel and transportation. She was unable to resolve her complaint in resort and so attempted to deal with the tour operator when she came home. When she tried to make contact, she discovered that the 'tour operator' did not have a contact telephone number.

Mr B tried to resolve his holiday complaint upon his return to the UK. His tour operator (a major travel provider) advised that he did not have a 'package holiday'; he had to complain to the hotelier. The hotelier advised him that the problem was not something they could deal with; he had to contact the tour operator.

Mrs C advised us that her Mother, when booking her holiday by telephone, was advised by a major tour operator of the nature of her booking. She did not understand the issue, but later discovered when she returned to the UK, that she had not booked a package holiday.

In Travel Weekly (5/1/07), we witnessed an evolving view of how the 'package holiday market is changing. Stephen Mason (Solicitor) stated,

"If as an agent, you say you are not selling packages, just separate components not sold at the same time, you are taking a risk". [12]

Andrew Morton (Solicitor) commented,

"It is only a matter of time before the courts decide the provider of a dynamic package is liable for the services sold to the consumer". [13]

Peter Stewart (Solicitor) stated,

"Some have suggested the need for a further court decision. But the decision is binding. A change in the definition (of a package) would depend on Government legislation". [14]

[12] Travel Weekly (5/1/07)
[13] Travel Weekly (5/1/07)

Finally, Richard Jackson (CAA - Consumer Protection) said,

"The difficulty will be to establish in practice whether components were sold in combination".[15]

The purpose of this section is to demonstrate the real threat to the travel consumer, from an unregulated and unprotected travel market. If that threat materialises, we suggest that it will unleash a holiday misery not seen since prior to the inception of the Package Travel Regulations in 1992. Amongst those potential problems, lay the thorny issue of a travel industry selling holiday insurances that may not be appropriate to consumer needs or protection.

[14] Travel Weekly (5/1/07)
[15] Travel Weekly (5/1/07)

PROBLEMS AND SOLUTIONS WITH TRAVEL INSURANCE

In determining the issue of travel insurance and the travel industry, a number of important considerations arise.

The ABTA Position:

The position of travel agents/tour operators and travel insurance is governed by the ABTA Code of Conduct. The Code was amended in September 2006. The old Rule 1.7 is replaced by Rules 2j, 2k, 2l, 2m & 2n. These codes are also supported by ABTA's guidance notes. These are summarised thus:

- Members shall draw the client's attention to the availability of 'insurance cover to suit their client's requirements';
- Where a policy is issued, it 'is appropriate for the client's requirements';
- 'Members shall ensure that client's are aware of the need to comply with the insurance company's requirements and of their duty to disclose to the insurance company all relevant information, e.g. pre-existing illness';
- Members have to act promptly with an insurance company's terms of business and make prompt provision of financial returns;
- Insurance which is not arranged by the Principal must be provided within 48 hours, this will satisfy the requirement to carry this out 'without delay'.[16]

We have already discovered, through the holidaymaker's experiences in this report, the perilous state of cover, understanding or operation of travel insurance. It is clear that the majority of holidays do not require the activation of the travel insurance policy, and therefore there will be the argument that the sale of insurance policies works, that it does not require regulation. However, it is also clear from the case studies produced, that there is an element of the travel industry that does not comply with the rule as stated above.

In light of the scenarios produced, we must ask, what steps does ABTA or the Insurance Industry take to monitor the sale of travel insurance?

[16] Holiday Law – 3rd Edition – Grant & Mason (Pgs – 563 & 564)

How many travel agents or tour operators have been disciplined under the said Code of Conduct for breaching its professional obligations?

How many travel agents/tour operators have been reported by the insurance industry to the Regulator or ABTA for any failures determined?

How many holidaymakers have been compensated under the Financial Services Compensation Scheme?

Is it right that some parts of the travel insurance industry clearly state their Regulatory responsibilities under the Financial Services Authority, whereas the bulk of the travel industry is not required to be so regulated?

What real protection is afforded to the consumer by the 'unregulated' part of the industry?

Is it time to provide a safety net 'premium' for those holidaymaker's caught either through ignorance, or mistake, as identified in the cases of Mrs A & Mrs E above?

Is the complaint's process of ABTA or the Regulator rigorous enough, or consumer focussed to deal with the similar problems as identified in the cases of Mr B & Mr C above?

"It is time to import a greater corporate ethic into complex consumer contracts, the age of the 'laissez-faire' approach to consumer relations, must surely be past its sell by date?"

Does the sale of a complex financial consumer contract, now require the additional protection of regulation, in a real and growing unregulated market?

We consider that these questions now form the basis of a long overdue enquiry, for the benefit of the ordinary consumer, against an industry which has vast resources. This same industry will argue that Regulation will make them uncompetitive and unattractive. We disagree. We consider that the failures to address the problems identified by the case studies above, is more widespread than we know. It is time to import a greater corporate ethic into complex consumer contracts, the age of the 'laissez-faire' approach to consumer relations, must surely be past its sell by date?

Is the Consumer Really Protected?

The theme from our 'shopping experience' confirms a long held view of this organisation, the view that contracts of holiday insurance do not support the real protection of the holidaymaker.

The principal concern is the operation of the legal expenses clause. Can it be right, that a consumer, who enjoys the protections of the PTR, is then prevented from using that insurance policy to pursue legal action against the travel provider?

Indeed, what does that say about the relationship between the insurance industry and those travel providers?

"Is it time for the Office of Fair Trading (OFT) to investigate these issues?"

If the product sold is a safe product, following all the established practices and principles to protect the consumer, then why should a consumer be prevented from challenging the service provided through want of funds?

Additional issues arise as to choice of a legal advisor. Many holidaymakers discover that they cannot use a recommended solicitor; they are required to use the in house solicitor of the insurance company. It raises the question, what experience does the insurance company have in assessing or handling travel claims?

The legal expense clause exclusion suggests an incestuous relationship between the travel industry and the insurance market, it raises further questions:

- Where is the consumer choice?
- Does this not suggest the operation of a cartel?
- Is it time for the Office of Fair Trading (OFT) to investigate these issues?

The examination of insurance contracts, through our 'shopping experience', reveals a fairly standard approach by the insurance industry, in drafting their term & conditions. If the conditions are generally standard, then why can the consumer not expect a standard travel insurance contract? Surely this would import more certainty into travel insurance contracts, and raise consumer awareness as to the type of product they would be buying? Arguments will be raised that this cuts into a company's competitive edge. We are not convinced. There are already moves to standardise the operations of the courts in the UK, harmonise laws within the EU, why not the terms & conditions of a contract of insurance?

STANDARD CONTRACTS FOR TRAVEL INSURANCE

During the course of his evidence to The Treasury Select Committee, Frank Brehany highlighted the range and scope of documentation supplied to holidaymakers. He suggested that it may be appropriate to introduce a uniform contract or standard wording for the travel insurance product.

In reviewing the report from HTW, and the evidence of Frank Brehany, it seems logical therefore, that if holidaymakers are to avoid confusion or lack of understanding, in so far as the purchase of travel insurance is concerned, then the promotion of a standard worded document would seem to be a fair proposal.

In the course of his evidence, David Monks from the Association of British Travel agents (ABTA) considered this proposal to be "somewhat bizarre" (question 65).

HTW considered that its proposal to promote a standard form contract is in fact in line with many issues that we take for granted. For example, when we purchase a house in the United Kingdom, a standard form contract is utilised by both the vendor and purchaser of the property. This standard form of contract provides certainty for both parties, and provides for a uniform method of handling the transaction by either the conveyancer or solicitor.

It can also be seen that a standard form of information is required where a consumer is involved in the purchase of a product through distance selling. The Consumer Protection (Distance Selling) Regulation SI 2000/2334 implemented the Directive dealing with Internet sales. There are a number of exemptions concerning Internet sales, but it is clear that Regulation 7 provides for a standard form of contract, which provides important consumer information as to the type of goods that they are purchasing, the means and method of delivery, issues of payment, and matters concerning their consumer rights. In fact the regulations go further, in that they state the following:

"The supplier shall ensure that the information required by paragraph (1) is provided in a

clear and comprehensible manner appropriate to the means of distance communication used, with due regard in particular to the principles of good faith in commercial transactions and the principles governing the protection of those who are unable to give their consent…"[17]

Another example of a standard contract can be found in the model provided by the Association of British Travel Agents. They suggest that travel agents and tour operators can utilise their own model booking conditions, as a means of creating a contract with a holidaymaker wishing to purchase a package holiday. In fact, most tour operators have employed those very model conditions suggested by ABTA, and in fact the travel industry closely monitors each other's conditions, adapting their own to meet with their competition[18].

We ask the question; what is "bizarre" about the suggestion of a standard form contract?

It is clear that there are now many walks of life that seek standardisation, and it was our oral presentation that presented the move is towards greater harmonisation of practices and laws.

There are those in industry or business commentators that suggest that anything that impedes the flow of contractual relations is somehow uncompetitive. Can this really be true? Are those involved in the sales/purchase of property, or those involved in Internet sales, or for that matter those involved in the sales of package holidays to holidaymakers, experiencing a reduction in their ability to trade simply because of a standard form contract?

In the oral presentations to the Select Committee, ABTA rejected the view that travel insurance contracts should be somehow standardised, implying that it would make the travel insurance product less attractive to the consumer, is this not somewhat at odds with the general practice. We would certainly encourage

[17] The Sale of Goods 11th Edition – Atiyah, Adams & McQueen – Pgs 58 & 59
[18] Holiday Law 3rd Edition – Grant & Mason – Appendix Three, Pgs 578 to 593

the Treasury Department to consider the standardisation of travel insurance contracts, as an appropriate and relatively inexpensive means or method to assist at the travel consumer to understand, what is after all, a complex product.

NATURAL OR MAN MADE DISASTERS

This organisation has written openly and extensively on the issue of "force majeure" situations, experienced by growing number of holidaymakers. We are concerned on the heavy reliance on this clause practised by travel providers and the insurance product.

In our view, there is a difference between what we call a genuine "force majeure" situation, and a "force majeure" situation "with notice". The example of a true "force majeure" situation would be the unexpected arrival of a Tsunami or Tornado. The example of a force majeure situation "with notice", would be the arrival of a hurricane tracked by satellite, or a series of reasonably expected terrorist attacks in an area with heightened tension and activity.

We remain concerned that tour operators or travel companies provide holiday contracts, or travel arrangements to what we describe as "at risk" destinations.

For holidaymakers who are either trapped or are introduced into such a risk area, their first port of call is not for the terms and conditions of their travel insurance, but rather the assistance of their travel provider. We consider that in the context of the present debate, it is necessary to illustrate the position of the travel consumer, both from a consumer protection standpoint and from the position of travel insurance.

The effect of the 2004 Tsunami and the Bali bombings brought great criticism upon the Government, in what was seen as their failure to provide assistance to Britons abroad. As a result of this criticism, the Foreign & Commonwealth Office revamped and extended its Consular Assistance service for British holidaymakers or travellers.

It is important to highlight this fact, as we consider that it directly relates to issue on the holidaymaker's ability to keep themselves safe, and perhaps how industry are benefiting from a contractual 'loophole'.

It can be seen from the section above, the growing threat to the traditional package holiday, following the recent decision in the Court of Appeal against the Civil Aviation Authority.

We have already seen tour companies downsizing their support staff in holiday resorts since the 2005 holiday season. In their place they have provided either contact numbers or helplines, based in the United Kingdom. It is not appropriate to widen the discussion on these issues within the confines of this report, but it is clear that the ever-increasing demand for Consular Services, demonstrates the real need for assistance, particularly where a situation arises which poses a real threat to life and property.

"We suggest that the increased assistance provided by the Foreign & Commonwealth Office, is leading the British Taxpayer toward becoming the guarantor for British holidaymakers, who find themselves exposed to an extreme event. Is this a failure of consumer regulation or a failure of insurance?"

We suggest that the increased assistance provided by the Foreign & Commonwealth Office, is leading the British Taxpayer toward becoming the guarantor for British holidaymakers, who find themselves exposed to an extreme event. Is this a failure of consumer regulation or a failure of insurance?

It is the experience of HolidayTravelWatch, that holidaymakers finding themselves in this situation, very rarely find true assistance from their tour companies, many are

not repatriated back to the United Kingdom in the aftermath of an extreme event. They are often 'required' to complete their holidays in extreme conditions; some holidaymakers find that they are flown into at an 'at risk' area, with tour companies often hiding behind their own 'force majeure' clauses.

The 'force majeure' argument imposed upon holidaymakers, provides a further burden on the holidaymaker; the burden of responsibility.

To understand that burden we consider that it is necessary to re-produce a section of our earlier report, commenting on the future development of the Package Travel Regulations.

By doing so, we can demonstrate clearly how a holidaymaker is exposed to a lack of protection and assistance when faced with a so called 'force majeure' event. To begin this examination, we summarise the three principal protections under the Package Travel Regulations:

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.

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"[19]

'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'

[19] 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”.[20]

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

[20] HTW - 3599

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.[21]

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[22].

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.[23]

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

[21] HTW - Sharm
[22] HTW - 3504
[23] HTW - 113

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 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"[24].

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 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.

In recognition of the failure of these Consumer Protections, it seems the holidaymaker must look elsewhere for his protection.

Following the Court of Appeal decision, there has been pressure on a holidaymaker to agree to a £1 levy to protect themselves against an insolvent holiday company, but it is widely suggested that the holidaymaker seeks a much wider protection against all events through the purchase of insurance. Is such protection possible through insurance? An example can be seen through ABTA's proposals in the 'ABTA

[24] HTW – Press Release - 2005

Protection Plan'. We were advised by International Passenger Protection Ltd that,

"You may be aware of the protection provided by ABTA through its members which they announced in the later part of 2006 and January this year. Anyone buying a holiday through an ABTA member can be fully protected for all parts of the travel itinerary against insolvency. ABTA currently offer an online system for their members called the ABTA Protection Plan so a simple insurance policy can be issued to consumers. ABTA have also launched a new Travel Insurance policy which includes cover for supplier failure up to £5000 per person".

They added,

"ABTA is amongst many organisations we work with from providing financial protection cover on Travel Insurance policies to stand alone protection for consumers through the travel trade".

Interestingly, this long established company, states at the bottom of its letter, that,

"International Passenger Protection Limited are authorised and regulated to sell insurance by the Financial Services Authority".[25]

The proposition currently being raised by the Travel Industry is that Regulation would bring financial hardship to its members. This position appears to contradict a working relationship with an FSA regulated organisation, who clearly supply a wide range of products to the Industry; does this not suggest that Regulation does work, and perhaps inspires consumer confidence more than the Industry is prepared to admit?

There is now a growing recognition amongst holidaymakers that the so-called cheap holiday, is in fact bolstered by additional charges and liabilities following their exposure to an extreme event.

[25] Letter to HTW – 5 February 2007

Even with the benefit of travel insurance, how protected is the average holidaymaker if they become stranded, suffer damage, made ill, or injured as a result of that extreme event?

The answer can be found in an examination of the policies found and described in the first report of HTW to the Select Committee.

To illustrate the issue, let us assume that our holidaymaker has suffered a double calamity, in that he has been exposed to terrorist incidents which have caused damage to his personal property, and he has been further exposed to injury.

Now let us examine the table below to see what "benefits" he would receive from various policies:

Name of Insurance Company/Tour Operator	Potential Property Damage Benefit	Potential Injury Benefit	General Exclusions and Exclusions for Force Majeure Event
Thomas Cook/AXA Insurance Plc[26]	Up to £1,600, Valuables limit £400 in all, single article limit £325, delayed luggage up to £250, Passport up to £500	Death £15,000, Permanent disablement £30,000, Under 16 – death £2000 Medical Expenses of up to £10,000,000, Funeral Expenses abroad £2,500, Continuation of Treatment £250	Pregnancy within 8 weeks from the start or the end of the trip. Losses will not be paid for Medical Expenses and Personal Accident where there is - War, invasion, acts of terrorism, foreign enemies, hostilities or warlike operations, civil war, rebellion, revolution… civil commotion assuming the proportions or amounting to an uprising… any persons or group of persons… committed for political religious, ideological or similar purposes including the intention to influence any government and/or to put

[26] Thomas Cook – Travel Insurance 6th Edition

			the public… in fear. Such expenses will be paid where there is a nuclear, chemical or biological attack or where disturbances are already taking place at the beginning of a trip. Legal expenses… cannot be used where there are no reasonable prospects for success… claims against a carrier or the travel or holiday agent or tour operator.
Ryanair[27]	Personal Effects, Baggage, Travel Documents, Delayed Baggage up to £1000. Single item £250, Valuables £250, Travel documents £250, Delayed baggage £150	Personal Accident Max £15,000, Loss of Limbs/sight under 70 £15,000, Permanent total disablement £15,000, Death benefit (18-70) £5,000, Death benefit (under 18) £2,500, All benefits over 71 £2,500 Medical Treatment up to £5,000,000	Within the Ryanair policy there is a very extensive exclusion for terrorist acts. Much of the wording is similar to the Thomas Cook Policy; however, it excludes damage to property caused by ionising radiation. No claims will be paid for injury as a result of this extensive clause. It is also clear that medical treatment would become payable under the European Health Insurance Card, not the policy of insurance. Legal expense insurance is not available for claims against Ryanair, the insurer or for use in group actions.
Easyjet[28]	**Personal possessions (optional)** **You are covered for up to £1,750** if your personal possessions are damaged lost or stolen on your	**"Medical emergency, repatriation & associated expenses** **We will pay up to £10 million** if you are taken into hospital or you need to come	**Cover is not provided for Medical Expenses:** - Medical conditions that you knew about before travelling, unless you told us about the medical condition and we offered cover for it - Travelling on a motorcycle over 125cc unless the rider has a valid driving licence - Pregnancy or birth where

[27] Ryanair – Travel Insurance (10.12.06)
[28] Easyjet Insurance – 10.12.06

journey. **£200** is the most you can claim for a single article. **£300** is the total amount that you can claim for all your valuables. A deduction may be made for wear, tear and loss of value.

home early or extend your journey because of illness or accident"

Personal accident

We will pay **up to £15,000** if, following an accident, your injuries lead to death or permanent disability. An accident must be caused by something external and visible.

the due date is less than 8 weeks after your return
- Medical expenses in the UK

Cover is not provided for Personal Possessions:
- Any claim not supported by a police report
- Any items left unattended unless they are locked in your accommodation or the luggage compartment of a motor vehicle
- Anything which you cannot provide a receipt or proof of ownership for
- Valuables carried in suitcases or left in a motor vehicle
- Damaged items if you do not keep the items for repair or inspection

Cover is not provided for Personal Accident:
- Anything caused by an illness
- Suicide
- Any more than **£1,000** for death if you are 15 and under or 71 and over at the time of the accident
- Any claim for permanent physical disability if you are 15 and under or 71 and over at the time of the accident

Cover is not provided for Legal Expenses:
- Defending you if legal action is taken against you
- Any costs not agreed by us
- Any claim against a travel agent, tour operator or carrier, or us
- Any claim not notified to us within 90 days

We will not cover **you** for any claim arising from, or consisting of, the following:
1 A relevant fact that **you** knew about before **you** travelled, unless **we** agreed to it in writing.
2 War, invasion, act of foreign enemy, hostilities (whether war is declared or not) civil war, civil commotion, rebellion, revolution,

			insurrection, military force, coup d'etat, terrorism, weapons of mass destruction. **3** Any epidemic or pandemic. **4 You** not following any suggestions or recommendations made by any government or other official authority including the Foreign and Commonwealth Office during the **period of insurance**. **5 Your** property being held, taken, destroyed or damaged under the order of any government or customs officials. **6** Ionising radiation or radioactive contamination from nuclear fuel or nuclear waste or any risk from nuclear equipment.
Insureandgo.com[29]	Baggage delay £50 for every 24 hours Personal money Cash limit £200 Cash limit (aged under 18) £50 Passport and travel documents £100	Medical and other expenses £5,000,000 Personal accident: Loss of limbs or sight (aged under 66) £20,000 Permanent total disablement (aged under 66) £20,000 Death benefit (aged 18 to 65) £5,000 Death benefit (aged under 18) £2,500 All benefits (aged 66 and over) £2,500	**We will not cover the following.** Any claim arising out of war, civil war, invasion, revolution or any similar event. Loss or damage directly or indirectly caused by any government, public or local authority legally taking or damaging your property. Any claim arising from civil riots or strikes or industrial action of any kind (except for strikes or industrial action which were not public knowledge when you booked your trip). Loss of or damage to any property, or any loss, expense or liability arising from: a ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from burning nuclear fuel; or b the radioactive, toxic, explosive or other dangerous properties of any explosive nuclear equipment or any part of it. Legal expense cover will not be provided for claims against the insurance company, their agents or representatives, tour operator, provider of accommodation, carrier or any person that you have travelled with or arranged to

[29] Insureandgo.com Travel Insurance – 10.12.06

In conclusion, the holidaymaker is stripped of any real protection. The failure of Consumer Protections, and the rush to push further responsibility upon the holidaymaker surely requires a balance in the insurance contract, or at the very least, a clear notification to the intending purchaser of how limiting the travel insurance policy is?

It also suggests that the purchase of protective cover is just as important as the contract for the holiday itself. When the consumer purchases the holiday, they are attended to, and advised by a travel expert. The holidaymaker's needs are identified and the holiday is matched to the customer. The consumer will meet the same attention whenever they try to buy a mortgage or life policy, their requirements carefully assessed by regulated personnel. What then is the difference with travel insurance? It is a product which has potentially important benefits and protects the holidaymaker from financial disaster. However, if lack of care, or lack of knowledge or skill promotes the sale of that product, the failure to match the product to the holidaymakers needs will produce that feared financial disaster. That danger alone should persuade observers of the need to provide a proper oversight of the sale of such products.

In addition, the selling of policies with expertly worded exclusions will prevent the travel consumer from a just recovery. We consider that without a simplified contract, promoting open disclosure, leads to the conclusion that the 'force majeure' clauses lends themselves toward the accusation of mis-selling. After all, what benefit would our imaginary holidaymaker receive under any of these policies? Consumer protection policies are failing him, insurance policies are failing him, is it right that multi-million pound industries should continue to enjoy this monopoly at the expense of the consumer, government or taxpayers?

A FAMILY FAILED

During the course of our oral evidence to the Select Committee, we cited the recent example of a holiday experience of one client in Turkey.

For that family, their holiday sadly ended in disaster. Their son became seriously injured whilst using an ill-supervised hotel swimming pool. Their son suffered a head injury, and was treated at a local hospital. Upon their return to the United Kingdom, he underwent further treatment at hospital, and has been found to have suffered permanent brain injury[30].

This and other similar tragic events, often leads holidaymakers to seek ways in which they can investigate the event that led to serious injury/illness, and when that enquiry leads to a frustrating conclusion, they will then try to promote their complaint through legal action.

When lawyers are faced with that initial complaint, they are required to make extensive investigations as to insurance cover to help pay for legal bills, before they can make an offer to pursue a claim under a 'no win no fee' arrangement.

If we refer to the previous section, we can see through the 4 insurance summaries, that each prevent the 'insured' from promoting their claim against the tour company or the carrier, in one case, Ryanair, you are prevented from using the policy in a group action scenario.

Instantly, our family are disadvantaged from pursuing a legal claim, with the benefit of legal insurance to pay their legal bills. This is important if the lawyer believes that he could not share the risk on funding a claim – it effectively means that unless they are willing to pay for their legal bills, their choice on legal representation is limited. This is not an unusual concern; it is well known that many claims in Turkey can take many years to resolve, and whilst our family could potentially bring a claim against their tour operator under the Package Travel Regulations, they would be faced with the

[30] HTW - LG

prospect of high legal bills to pursue their claim.

It raises the very serious question; why sell an important benefit if so few people can take advantage of it? Is this not mis-selling? Do the exclusions, presumably written and agreed between the insurer and the tour operator/carrier suggest collusion; does this not suggest an industry wide agreement, a cartel? Even if the benefit were available, many companies will not allow solicitors outside their own 'back office' to handle the claim, what does that say about the state of freedom to choose your solicitor?

In our enquiry, we were alarmed to discover the limitation on young and old to recover a sufficient or reasonable payout for serious or permanent injury. Most serious payouts are limited up to £20,000. In the Easyjet summary above, we can see that payout is excluded for permanent physical injury for those of 15 years or under or over 71 years, why?

If our family had purchased the Easyjet policy, not only would they have been prevented from obtaining a payout for their son (who is under 15), money which could be used for paying expenses, nursing or respite care, but they would have been prevented from using the legal expenses insurance against the tour operator.

We ask the question again, is this responsible selling? If this family hold a similar policy, did their travel agent make sufficient enquiries of their needs before any policy was sold? Did the policy they purchased provide sufficient information; was it easily readable or understandable to prompt them to consider any limitations of benefit?

It was stated by ABTA that the Code of Conduct was a robust product, ensuring a high professional standard from their members. Consider this. We receive many complaints from holidaymakers about the lack of response from their tour companies. The ABTA Code of Conduct requires that its members respond within a certain timeframe. Sadly many do not. If the Code is not able to guarantee or enforce a simple acknowledgement, or response to a travel complaint, what then is

the real position of the operation of Rules 2j, 2k, 2l, 2m & 2n (Previously Rule 1.7)? The truth in this family's case, whatever policy they bought, they are very likely to experience a failure of that policy, in one aspect or another. How many times will that failure be repeated in all travel policies sold?

STATISTICS, STATISTICS AND YET MORE STATISTICS!

Since the various 'stakeholders' provided their views to the Select Committee, we have witnessed various public comments and surveys, each promoting the 'reality' or 'benefit' of a Travel Industry selling an important financial product, outside of any regulatory responsibility. We shall endeavour to analyse this from the consumer perspective.

In an article on www.thisistravel.co.uk (17/11/04), a survey of 1000 people by Sainsbury's Bank found that:

- 6% were told by travel agents that they could not book their holidays with them unless they bought insurance offered by that agent;
- 15% advised that they were not asked about pre-existing conditions by the agent;
- It was also found that a similar number did not have the benefits of the policy explained to them.

The spokesman from Sainsbury's, Michael Liddell apparently stated,

"Our research findings are disturbing because it shows that some travel agents are either intentionally or unintentionally misleading customers when selling insurance, and in some cases using pressure tactics to help close the deal".

He predicted,

"By January 2005, the Financial Services Authority will start regulating the sale of travel insurance, which will provide consumers with greater protection…consumers should be aware however that it could be at least a further two years before travel agents are regulated in this way".

In the same article, ABTA responded by stating,

"ABTA travel agents will be required to pass an examination on travel insurance by September 2005. We have very few complaints about the sale of travel insurance but when we do we take them very seriously".[31]

As we can see, the debate on regulating the sale of travel insurance is not new. Following the enquiry by the Treasury Select Committee, ABTA sought to demonstrate the validity of their claims, that travel insurance bought and sold through a travel agent was operated in an appropriate manner, a manner that protected the consumer. In an article by Tom Williams, 'ABTA: Customers are happy with policies', the Industry Association hired their insurance broker, Citybond, to carry out a survey of travel consumers. Citybond wrote to 500 consumers, 100 of which responded. We shall summarise their findings, and offer an alternative view on how the figures could be read:

THE ABTA FINDINGS:	THE HTW ALTERNATIVE VIEW:
80 of the respondees bought their policy from a travel agent	Up to 20 bought their policies from internet based companies or traditional financial bodies
66 considered that the cover in their policy was sufficient	Up to 34 people considered that their policies did not provide sufficient cover
58 advised that the agent has asked them about pre-existing medical conditions	Up to 42 were not asked by the agent about whether they had any pre-existing medical conditions
69 reported that that they had been given documentation that proved that they had paid for their insurance	Up to 31 advised that they were not provided with evidence of payment

Within the same article, it was reported that Which? had found that two thirds of their consumer sample were not asked about their pre-existing conditions.[32]

On 13 February 2007, BBC's Watchdog carried out a survey on 12 ABTA travel Agents. They found the following:

[31] This is Travel – 'Travellers 'bullied' into buying insurance' – 17 November 2004
[32] 'ABTA Customers are happy with policies' – Tom Williams – 1 February 2007

- 2 out of 12 failed to ask the 'consumer' about any pre-existing medical conditions;
- 0 out of 12 made the 'consumer' aware of the exclusions contained within the travel insurance product;
- 6 out of 12 told the 'consumer' what the travel policy covered, but they only did so after being prompted by the 'consumer'.

'Watchdog' advised of the fact that this survey dealt with 'regulated' ABTA members, but they also issued a timely warning, they stated:

"The Association of British Travel Agents (ABTA) has a code of conduct governing the way policies should be sold. But less than 50 per cent of travel agents are ABTA members, so there are millions of policies being sold with no regulation at all".[33]

The Watchdog comment is revealing. It cuts to the heart of how insurance is sold, and supports our argument that the de-regulation of the 'package holiday', will lead to the widespread sale of an unregulated financial product. It is simple. If the Travel Industry is tempted to join the component holiday market, what temptation exists, ABTA member or not, to treat the travel insurance product as yet another component, an unregulated component?

The Industry is clearly worried about the potential for Regulation on the travel insurance product. The Co-operative Travel Trading Group (CTTG) has produced a dire warning, believing that Regulation would 'hit insurance margins, leading to higher prices and a decline in customers taking out cover'.[34] Really? Where is the statistical proof that holidaymakers would not buy the insurance product? How does the statement fit in with our findings from our own 'shopping experience' that a consumer cannot book a mainstream holiday, without producing evidence of travel insurance?

In the same article, the CTTG suggested that the best route would be for:

[33] www.bbc.co.uk/consumer - 'Travel Insurance' - 13 February 2007
[34] TravelMole – 'CTTG calls for insurance selling self regulation' – 20 February 2007

"a formally agreed sales procedure taking customers through a set of decisions based on eligibility, policy benefits and exclusions. Alongside this would run a self regulated code of practice on travel insurance for agents overseen by ABTA and possibly modelled on practical guides produced by the Association of British Insurers".[35]

ABTA have responded to the fear of Regulation for its members by stating,

"There remains little evidence of mis-selling of insurance policies or of consumer detriment".[36]

"Increased regulation of the sale of travel insurance by the travel trade is likely to, increase the number of consumers travelling without insurance, reduce competition and choice,".[37]

"Extending regulation is against current Government policy".[38]

In truth, the statistics reflect consumer unease in the way the travel insurance is sold. The Industry has produced comment about the perils of Regulation, without it seems, any supporting statistics. We have already expressed our concerns to The Treasury Select Committee that the ABTA Code of Conduct, and its enforcement processes are a 'toothless tiger'. The only real statistic worth considering, is the statistic of holidaymakers saddled with a product that fails them. The financial consequences for them are dire, and has the potential to be devastating for them and their families. Which is more important, margins or the ruination of an individual's or family finances?

[35] TravelMole – 'CTTG calls for insurance selling self regulation' – 20 February 2007
[36] ABTA Press Release – 'ABTA's response to Treasury Review of FSA Regulation' – 16 February 2007
[37] ABTA Press Release – 'ABTA's response to Treasury Review of FSA Regulation' – 16 February 2007
[38] ABTA Press Release – 'FSA Regulation for Travel Trade Unnecessary, says ABTA' – 20 February 2007

CONCLUDING TOWARD REGULATION?

We consider that in order to determine the merits of whether to regulate the travel insurance product or not, it is necessary to recognise several key areas of consumer concern. We would suggest the following:

1. That Insurance Contracts are produced in an industry wide standard format, with clear explanations of the benefits, alongside clear explanations of exclusions;

2. An urgent enquiry be carried out into the operation of the ABTA Code of Conduct insofar as the sales of travel insurance products are concerned;

3. An urgent enquiry is carried out into the mis-selling of the travel insurance product insofar as it relates to the legal expense insurance element. We consider that such an enquiry should be implemented by the Office of Fair Trading;

4. That the issue of 'force majeure' or the operation of other restrictive clauses, are urgently considered as to providing any 'detriment' that may be caused to, or suffered by any consumer purchasing the travel insurance product;

5. Consideration be given to incorporating the sales of all travel insurance products to regulatory control;

6. In considering Regulation we should understand its primary goal. It is about ensuring that an individual or company is a fit and proper person or organisation to sell a very essential financial product. That person or company should operate to high ethical standards, willing to promote that product, not just as a commodity but as an important safety net for the intending purchaser. Regulation introduces a financial commitment from

that individual or company, the commitment of registration and training costs, with the added benefit of a confident repeat customer;

7. We would suggest that the Travel Insurance product is akin to purchasing a life insurance policy, an endowment policy or a mortgage. In those circumstances, the consumer receives protections through recognised FSA regulated 'experts'. The Travel Insurance product should receive no less a protection. We offer two alternatives;

8. The sale of the Travel Insurance product by all ABTA and non ABTA members be subject to the full regulatory control of the FSA;

9. The sale of the Travel Insurance product by all ABTA and non ABTA members to be subject to a strengthened 'industry-wide' Code of Conduct, with oversight provided by the regulatory control of an external body. We take as our precedent the Regulation of Claims Management Companies by Trading Standards.

Our concerns and conclusions are not only grounded in experience, but it is also now within the real potential for de-packaging or de-regulation in the package travel industry. We refer to the small and as yet isolated clause within the insureandgo product. We have demonstrated that this prevents the travel consumer from using the legal expense portion of the product, against 'providers of accommodation'.

How many other companies will now follow suit? Will the agents or tour operators comply with their obligations under the ABTA Code of Conduct? How will the consumer be able to see beyond the simple document detailing the 'benefits'?

This is the beginning of deconstruction; a deconstruction we suggest which will lead to a greater detriment to the ordinary travelling consumer, and in some cases the British taxpayer.

We have already launched our own campaign against the de-regulation of the

'Package Holiday', and have introduced a petition on these issues onto the No 10 Downing Street website. It expresses a concern that many millions of holidaymakers will suffer a major fall in the standard of their holiday contracts, where they are component based. It also expresses a concern that hard fought consumer rights will be made irrelevant, and that the rush for 'gold' by the Travel Industry, will see the Travel Insurance product suffering the same 'commodity' fate. We must not allow the purchase of such an important product to be passed off as another item in the 'shopping basket'. This is too important an issue to allow the continuation of sales to be governed by self regulation. The Government may well have a policy of not extending regulation generally, but there is a greater audience to consider, the vulnerability of the travel consumer! Will the Government speak for them!

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