

██████████
Competition & Markets Authority
Victoria House,
Southampton Row,
London,
WC1 4AD

26 August 2016

Reference No: HTW/LCH/CMA/FB

Dear ██████████

Response to your Letter – Consumers & Low Cost Holidays

Introduction:

Thank you for your letter dated 12 August 2016.

I think that it is important for you to understand that this Organisation has been helping Consumers with their Travel Problems for the last 21 years.

Part of our work demonstrates that we advocate on behalf of Consumers on a political level, arguing for improved Consumer Rights or their enforcement.

Initial observations about your comments:

The situation with Low Cost Holidays (LCH) has proven to be very costly for UK Consumers and we suspect, European Consumers.

I have noted your objection to the standard letter we drafted for Consumers to use; you will have noted that we drafted a similar letter for Consumers to the European Commission.

You state that you do not deal with Consumers and have asked us to remove our template letter from our website.

You also offer 2 links as a means to assist Consumers:

<https://www.gov.uk/consumer-protection-rights> - This link simply reflects a list of sources, which may be of some assistance to Consumers; such sources could be obtained by Consumers via a google search.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380243/How_the_CMA_handles_information.pdf - This interesting document sets out what you will and will not do.

For the reasons I shall set out below, I cannot accede at this time for the removal of the template letter for Consumers from our site. However, in the spirit of compromise, I will place a 'freeze' notice next to the said letter, asking Consumers not to use it until such time as I receive clarification on the issues I shall raise.

I shall re-produce your letter (with your personal details redacted) along with this letter, so that Consumers can understand the course of dealings between this Organisation and any government body. This is a practice we have maintained for many years.

Understanding Consumer Financial Protection in Holidays:

I will say that the CMA perhaps assumes in error, that we have not also read your documentation, prior to any article that we have published; I shall address that point in due course.

The situation with LCH, is one of the most serious financial failures visited upon Consumers; it is as serious as the Clarksons Holidays collapse of 1975 and yet, no politician, no government department and indeed very few journalists appear to think that the loss of monies by 40,000 Consumers is worthy of public discussion?

However, into this mix is the brave world of the digital and single markets.

As you know, many UK companies base themselves in Member States and LCH completed this transfer to Spain in November 2013.

At the time, there was a chorus of criticism and warnings given to Consumers about the level of Consumer Financial Protection that may or may not be available, notably from the CAA.

We are no strangers to this debate and have written extensively on this matter via our website,

We have also provided extensive commentary via The Travel Law Quarterly Review, through UK & EU Consultations and presented to the 27 Member States in Brussels, our view on the future of Consumer Financial Protection in holidays.

On this issue, we have consistently called for a pan-European Consumer Financial Protection Scheme, fit for purpose for the Single Market.

No such scheme has been delivered as is demonstrated by the new Package Travel Directive due to be implemented in 2018.

The simple point is this; whatever happens during this 'brexit' scenario, UK Consumers will continue to do business across borders and if we want access to the Single Market, we must ensure that as a Member of that Single Market, there exists robust enforcement and harmonised rules on this important issue; if we do not so engage, you and other government departments will be dogged in future years by the consequences of travel company failures!

What is the basis of Consumer Financial Protection in Holidays?

On the specific issue of Consumer Financial Protection, Article 7 of the current Package Travel Directive deals with such protection in Package Holidays; it states:

"The organizer and/or retailer party to the contract shall provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency".

The key phrase here states 'security for the refund of money paid over'.

By any measure, Consumers will naturally assume that this means all of their money, not part or even a pittance as is suggested by the LCH scheme.

The purpose of our template letter:

The template letter offered by us, for use by Consumers, suggests 2 potential courses of action for the CMA:

1. An investigation into potential offences under the Unfair Trading Regulations (you assert that this is not your responsibility), and
2. A further investigation, because of the international nature of this problem, with the Spanish Jurisdiction and by implication within the EU itself (I note that you remained silent on that issue within your letter to us)

You will have noted that our template letter sets out very clear evidence as to what many thousands of Consumers saw at the time they booked their holidays with LCH.

It is clear that many holidaymakers believed or were led to believe that their money was safe.

I cannot emphasise the importance of this collapse both on the illusion of Consumer Financial Protection schemes in the Holiday Market and the effect of the size of this collapse on Consumers; it is a matter of huge Public Interest.

It is therefore not unreasonable for any Consumer to assume that such an interest falls within the remit of the CMA; again, I will demonstrate why this surely has to be the case.

The reality of Consumer help:

Like many commentators, you have fallen into the trap of assuming that Consumers have a set route to resolution; they do not!

Some will bemoan the fact that Consumers should have taken out supplier failure insurance; this we suggest is a red herring – Consumer Financial Protection schemes exist to import responsibility on Companies, not the Consumer, with oversight by pan-European means.

Like previous collapses in the UK, Trading Standards, CAB (for whom we have the very greatest of respect), Travel Insurance Companies and even the CAA, have sent Consumers on a merry-go-round in the search for their money.

Many UK Consumers, in UK collapses, have waited for many months before their claims were settled, if at all.

In the present LCH case, the same merry-go-round is visited upon Consumers, without it seems any proper analysis of the real issues at stake and indeed presenting the best opportunity to call those responsible to account.

By calling to account I of course suggest where it is appropriate to do so, that the former Directors of LCH, The Balearic Islands Government and indeed the Spanish government should all feel the heat of Article 7 and the Unfair Commercial Practices Directive.

It is incorrect to assume that Consumers will benefit from these sources, as suggested by your first link, because all will point to the Consumer Financial Protection scheme in place; as we now know, that scheme is unfit for purpose!

Turning to your 2nd suggested link, it is clear that you consider that various bodies are equipped to deal with such complaints.

We have referred many thousands of Consumers to Trading Standards to deal with Unfair Trading Regulation scenarios. In every single case we have suggested a Consumer speaks with Trading Standards, they are often told that they cannot deal with the complaint because of lack of resource, or it is not within their jurisdiction or it is not within their remit. Apart from 2 Hajj Pilgrimage prosecutions under the Regulations, I cannot see that there has been any other prosecution for such offences against any travel company, unless you can correct my understanding?

As regards to the rest of the bodies, they tend not to go beyond the usual Consumer treadmill to suggest resolution of complaints; we are the only Consumer body to suggest those routes **and extra legal and political routes.**

In this scenario, we believe that there are fundamental questions at stake, which could potentially lead Consumers to a more realistic opportunity to recapture their money in the event that it is discovered that the law was not implemented correctly.

To clarify; if the law states that a scheme must be created to refund the money paid over, and the construction of the scheme fails to facilitate such a delivery, then it raises questions about the way the law was implemented both at a National and EU Level; in our view, this is a pan-European question and those failing to implement the law correctly should be held to account for those monies to Consumers.

Equally, if representations were made to Consumers by the owners of the Company and the reality was something different, then those Directors should also be held to account to Consumers under Law because they caused these Consumers to make economic decisions that they would not have made otherwise.

The present 'merry-go-round' does not, with respect, allow for such broad thinking and application; I stress again, the collapse of LCH is a matter of major Public Interest and you and others must rise to the occasion on behalf of 40,000 Consumers and indeed future Consumers!

Your Powers; Your Discretion:

I would suggest that you are not without power to either kick-start or control the direction of this debate and actions on behalf of Consumers. Within your second link, at paragraph 4 you state:

"The role of the CMA is to make significant interventions in markets in cases where it can make a difference for consumers generally. To do so, it aims to focus its resources on a limited number of cases and projects".

Therefore, it does appear that in important cases, the CMA can intervene.

You may argue of course that the LCH is not one of your stated annual projects, but can that be the correct way for a government body to react to the serious detriment suffered by Consumers – it is clear that you could 'make a difference for consumers generally', all it needs is for the CMA to apply its discretion and acknowledge the wide public interest in this issue?

I was also interested in another document that you have published - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288624/CMA7_Consumer_Protection_guidance.pdf

Within paragraph 2.5, you state very clearly what the responsibilities of the CMA are and how the enforcers are to report to you whenever they take action.

In particular, is your obligation at para 2.5, third bullet point, where it is clear that you have EU-wide responsibilities and obligations and will no doubt feed into the EU system of reporting and monitoring of the law and its enforcement.

At the 4th bullet point it states your role as:

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“having an international role on consumer law and policy liaison, for example representing the UK in the International Consumer Enforcement Protection Network (ICPEN) and the Organisation for Economic Cooperation and Development (OECD) Committee on Consumer Policy”.

I note with interest the following: Schedule 4 of the Enterprise and Regulatory Reform Act 2013 – this provides you with a greater discretion than is currently presented to Consumers.

At Section’s 19 & 20 it states:

“The CMA may—

19.

- (a) if so requested by the Secretary of State, represent the government of the United Kingdom in matters relating to international relations in any field connected to its functions, and
- (b) promote good practice outside the United Kingdom in the carrying on of activities which may affect the economic interests of consumers in the United Kingdom.**

20.

- 1) **The CMA may do anything that is calculated to facilitate, or is conducive or incidental to, the performance of its functions;**
- 2) The power in sub-paragraph (1) is subject to any restrictions imposed by or under any enactment”.

Given the provisions in your documentation and within ERRA, Consumers could very clearly conclude that very great care must be exercised by the CMA when receiving correspondence from Consumers, along with recognising that:

- 1. If Consumers have suffered with a wide scale potential offence under the Unfair Trading Regulations, then it must surely be of great Public Interest to the CMA;
- 2. In light of the scale of any potential detriment, the CMA should use its very wide discretion to **‘make a difference for Consumers generally’**;
- 3. As the LCH case clearly raises important issues of the operation of the Single Market, the CMA should be using that discretion further to coordinate between its partners and/or report or make a super-complaint to the EU Commission about how Article 7 of the Package Travel Regulations has not been implemented correctly;
- 4. In addition, the discretion applied by the CMA on behalf of Consumers at an European or inter-governmental level could lead to Consumer losses being addressed by those who have failed to implement the law correctly – that surely is in the Public Interest?
- 5. This flow of discretion and action surely satisfies your legal obligations under ERRA 2013 and within your own documentation?

Conclusion:

These are important issues for Consumers and not ones that can be dismissed lightly.

We have heard anecdotally about how other Member States are also offering less than satisfactory Consumer Financial Protection schemes; must Consumers wait before their own government or its bodies speak out?

I would be very interested to hear your views/clarification and how you propose to advance the cause and indeed justice for the 40,000 LCH holidaymakers.

I look forward to hearing from you in due course.

Yours Sincerely

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