

Response to the super-complaint made by the National Association of Citizens Advice Bureaux on 3 September 2002

11 November 2002

1 BACKGROUND

- 1.1 On 3 September 2002 the National Association of Citizens Advice Bureaux (NACAB) wrote to the Office of Fair Trading (OFT) asking it to consider a super-complaint about sales in the home, and enclosing a copy of report it had published on the same day. This was *Door to Door: CAB clients' experience of doorstep selling*. The report said that CABx regularly advised consumers who had bought a wide range of goods and services in their homes, following face-to-face contact with a seller, and had experienced problems. To illustrate the problems it focused on ten products or services, which it noted was not a complete list. NACAB said that it hoped the OFT would carry out a market investigation in response to its complaint.
- 1.2 The report addressed recommendations to the UK Government, to the European Union, to the OFT and other regulators, and to trade associations and companies who use doorstep selling. NACAB told us that it hoped we would consider the recommendations addressed at the OFT irrespective of any investigation we might decide to undertake. They concern the enforcement of existing consumer protection legislation and our policy on codes of practice; we are also urged to work with others in developing a strategy on regulating doorstep sales of multi-utility services and on the protection of vulnerable consumers.
- 1.3 The right to submit super-complaints to the OFT will be created by section 11 of the Enterprise Act. The OFT will then be obliged, within 90 days of receiving the super-complaint, to publish a response saying what action – if any – it proposes taking as a result of the super-complaint, and why. The Enterprise Act is expected to become law in April 2003.
- 1.4 For the time being OFT accepts super-complaints under a non-statutory procedure, with a 90-day deadline for a response as though the Enterprise Act timetable were already in force. Any investigation initiated as a result of a non-statutory super-complaint is carried out under section 2 of the Fair Trading Act 1973.

2 CONCLUSIONS FROM PRELIMINARY ENQUIRIES AND RESEARCH

2.1 When considering how to respond to a super-complaint we have a number of options, including:

- Launching a market investigation into the issue,
- Referring the issue for enforcement action by our consumer regulation or competition divisions,
- Making a reference to the Competition Commission, *or*
- Concluding that the complaint does not warrant any of the above.

When NACAB made its super-complaint, it said that it hoped we would carry out an investigation.

2.2 Our Consumer Regulation Enforcement Division is active in using its current powers against businesses in breach of existing legislation, some of which supply goods or services in the home. What we have need to consider is whether, while continuing our enforcement role, we should also be carrying out a full investigation. We recognise the many advantages which selling in the home brings, to consumers as well as to businesses, and we do not wish to do anything which places unnecessary limits on this. On the other hand, as we explain below, we think that the issues raised by NACAB are sufficiently serious to justify our carrying out an investigation.

Current measures intended to protect consumers

2.3 Consumers buying from traders in their own home, or otherwise off trade premises, have a certain level of protection which all consumers enjoy whenever and wherever they buy goods or services in the United Kingdom. This protection comes from the general law of contract and from legislation intended to deal with some specific problems which consumers are likely to face. There are also legal provisions which apply specifically to sales in the home, in some cases only where the sales visit was unsolicited, and others which apply to particular sectors such as credit. It is part of NACAB's argument that current legislation, taken as a whole, does not contain sufficient protection and that new legislation, and amendments to existing legislation, are needed, together with more effective enforcement.

2.4 Additionally, energy suppliers are subject to licence conditions enforced by Ofgem, one of which deals with marketing. Some trade associations whose members sell goods in the home have codes of practice which are aimed at protecting consumers.

- 2.5 Most commonly these statutory and voluntary provisions aim to protect consumers by giving them the right to cancel the contract without penalty during a specified period. Some require consumers to be given information, or deal with the conduct and training of sales agents.

Current proposals for change

- 2.6 Several reviews of consumer protection legislation are taking place, which may have a direct or indirect impact on the issues raised by NACAB in its super-complaint:
- *The Consumer Credit Act 1974* is being reviewed by the Department of Trade and Industry (DTI) but only in relation to certain matters designated by DTI as 'priority areas'. These do not currently include canvassing or cancellation rights, although there may be pressure to extend the review.
 - The European Commission has published proposals for a revised *Consumer Credit Directive*. They include a prohibition of unsolicited canvassing of credit in the consumer's home or workplace (regardless of the type of credit) and of credit linked to the supply of goods or services where the purpose of the visit was not made clear in advance. A universal right of withdrawal within 14 working days, which would apply to all credit agreements, is also proposed.
 - The European Commission has also published a Green Paper, and follow-up Communication, on consumer protection. Starting from the premise that a 'consumer internal market' has not matched development of the internal market in business-to-business transactions, it proposes harmonisation of fairness provisions for business-to-consumer transactions. This would be by means of a framework directive which would oblige all businesses not to trade unfairly with consumers. The initial draft proposals on categories of unfairness include, among others, a prohibition on force, harassment, coercion and undue influence by businesses on consumers.

THE CASE FOR AN INVESTIGATION

- 2.7 It is not easy to put a value on the sales of goods or services made face to face to consumers in their own homes. Estimates for 2000 vary from £1.67b¹ to £3.25b:² one reason for this very wide disparity is that there is no consensus on what products and services to include in the figure.³ But, taken at its broadest, the sums involved are very large, comprising everything from a pint of milk to

¹ The Direct Selling Association, based on survey data.

² *Home Shopping 2001 Market Report* Keynote

³ For example, the DSA figures exclude sales of home improvements

home improvements costing many thousands of pounds. Potentially we are all part of this market, and our lives as consumers might be very difficult indeed if we did not have the facility of entering into contracts in our own home. For those who are housebound, life could become almost impossible

- 2.8 It has long been recognised that any problems which may arise from sales in the home have a different character from sales on retail premises. Few consumers find it difficult to walk out of a shop if they are unhappy with the service. By contrast, some find it difficult – and perhaps distressing – to convince sales agents who have actually entered their home to leave.
- 2.9 As already indicated, there is some specific statutory and voluntary protection where goods and services are sold in the home. NACAB’s aim in publishing its report is to demonstrate that there is a need for more protection, and for initiatives such as information leaflets and a working party. It does this by summarising case studies involving its clients which it believes support its case.
- 2.10 Neither the case studies reported by NACAB nor our own complaint statistics are sufficient to tell us whether the problems which NACAB describes are confined to a relatively small number of businesses – which would mean that the remedy could be more effective enforcement action within the framework of existing legislation – or whether in addition more radical remedies are required. Equally, and despite NACAB’s focus on certain types of products and services, there is no solid statistical evidence linking the complaints to specific sectors. One exception to this is the supply of home improvements where, as NACAB notes in paragraph 2.25 of its report, there is a high incidence of complaints – more than 100,000 in 2001 – many of which concern sales techniques.⁴ Within home improvements there are some products which are often sold in the home (for example, double glazing, fitted kitchens, and burglar alarms).
- 2.11 But if the extent of any problems is unknown, there is one thing which stands out about the evidence presented by NACAB and, in a report published earlier this year on the selling of assistive products, by Age Concern.⁵ To the extent that consumers do experience problems with sales in the home, those most likely to be affected are those who are highly reliant on such a facility, such as the elderly, sick and disabled. This means that the issues raised by NACAB have a special claim on our attention, in particular given the emphasis which the OFT places on the needs of vulnerable consumers.

⁴ Returns made to the OFT by local authority trading standards departments and similar consumer protection organisations, and published in our Annual Report for 2001.

⁵ *Sharp Selling Practices in the sale of assistive products to older people*, Age Concern, March 2002

- 2.12 NACAB's evidence also suggests that the activity of selling in the home could have some of the other characteristics which we look for when deciding whether to carry out an investigation: for example pressure selling, unfair contract terms, and products which are infrequently purchased. In any event, we consider that the issues which NACAB has raised are important enough to require further investigation.
- 2.13 While considering NACAB's super-complaint, we have spoken to several organisations about the issues which it has raised and have found that there is general support for an investigation by the OFT. This encourages us to think that they will co-operate with our investigation, and help us acquire the evidence we need.
- 2.14 As noted above, consumer protection legislation is under review at present, arising from initiatives at domestic and European levels, and some measures being considered will have a direct impact on selling in the home. We think that this makes our investigation particularly timely, and hope that it will inform governments, and others involved in the law-making process, when formulating their views on what reforms are needed.

3 PROPOSED ACTION BY THE OFT

3.1 We propose using powers under section 2 of the Fair Trading Act 1973 to carry out an investigation. Our investigation will be carried out by an OFT-wide team led by the Markets and Policy Initiatives Division. We will aim to find answers to the following questions:

- What goods and service are commonly sold in the home, and how much do consumers spend on them?
- What problems do consumers experience when they buy in the home, and why are they associated with some products and services and not with others?
- Do these problems occur in other countries? If not, why is this?
- What lessons are to be learned from some in-depth case studies?
- If our investigation establishes the need for action, what remedies are appropriate, and why?

3.2 Decisions about which markets to use as case studies will be decided as the investigation advances. However, we think they are likely to include home improvements and assistive products for the elderly and disabled. The selling of credit is an important part of both markets.

3.3 During our investigation we will also consider those recommendations which NACAB has addressed directly to the OFT.