

# OFT response to Doorstep selling discussion paper

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# 1 INTRODUCTION

## The Office of Fair Trading

- 1.1 The Office of Fair Trading (OFT) is the UK's competition and consumer authority. Our mission is to make markets work well for consumers. Our vision is for competitive, efficient, innovative markets where standards of consumer care are high, consumers are empowered and confident about making choices and where businesses comply with consumer and competition laws but are not overburdened by regulation.
- 1.2 We adopt a market-informed approach with a focus on outcomes that support productivity growth and consumer and business welfare. We believe this approach is in the best interests of both businesses and consumers as well as to the benefit of the UK economy.
- 1.3 We are grateful for the opportunity to provide input into the Commission's discussion paper on the review of directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises (Doorstep Selling Directive).

## Summary

- 1.4 In 2004 the OFT published a comprehensive report on doorstep selling<sup>1</sup> following a study on this selling method. Our response to the questions within the Commission's discussion paper on the review of the Doorstep Selling Directive are based primarily on this study and report.
- 1.5 The report highlighted a number of specific concerns, primarily where more expensive goods such as home improvements and assistive products were being sold in the home. In general we found that low value products, such as cosmetics, homeware products etc caused consumers fewer problems.

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<sup>1</sup> Doorstep Selling: *A report on the market study, May 2004*. OFT 716

- 1.6 Our primary concern with this type of selling mechanism is the differing protection provided to consumers depending on factors such as whether the visit is solicited or unsolicited or is above or below a monetary limit. For consumers to have confidence with this selling method we believe they should enjoy the same rights however the approach was initiated.

#### **OFT's report into Doorstep Selling 2004**

- 1.7 In 2004, doorstep selling complaints amounted to 1.9 per cent<sup>2</sup> of complaints received by Local Authority Trading Standards Services although the value of doorstep sales annually amounted to 0.4 per cent of domestic household expenditure.
- 1.8 The OFT's study of doorstep selling found that consumer awareness of their rights when buying through direct selling was in all circumstances very low. The majority were unaware they were entitled to a cooling off period if the visit was unsolicited and our survey showed that consumers had some difficulty in making the distinction between unsolicited and solicited visits in accordance with the legal definition, except for straightforward examples. From our consumer survey, only six per cent of consumers were aware they might have additional rights when buying via direct selling.
- 1.9 The OFT's 2004 report included findings from:
1. A report by a psychologist which considered the following:
    - whether the combination of home environment and face to face interaction with a salesperson creates a setting that is intrinsically different from other selling channels
    - what techniques salespeople employ

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<sup>2</sup> Figures are based on a snapshot survey carried out by Trading Standards Services in the absence of recorded data on this type of selling method. Following our report, Consumer Direct now has a category to record this selling channel. (Consumer Direct is a government funded service offering information and advice on consumer issues. It is funded by the OFT and delivered in partnership with Local Authority Trading Standards Services.)

- how consumers respond to these influencing techniques.

2. Two consumer surveys, one which provided a detailed assessment of the consumer's experience of purchasing goods and services and the other to examine consumers' knowledge of their rights when shopping at home or buying at the doorstep.

3. Research on enforcement activity with regard to doorstep and bogus trading.

4. Individual interviews with salespeople who have sold door to door and in the home.

1.10 The OFT's report concluded that most of the problems in this area related to mid and high value products<sup>3</sup>. High pressure selling was the biggest problem identified with the home improvement sector<sup>4</sup> being the most frequently complained about sector. The sale of assistive products<sup>5</sup> also featured highly in the complaints list.

1.11 The report made the following recommendations:

- To extend to solicited visits the cooling-off period and cancellation rights which currently apply to unsolicited visits **(recommendation accepted by UK government and being taken forward)**.
- To require cancellation notices to be more prominently and clearly displayed in the contract, providing a clear indication of the circumstances in which cancellation rights may be lost **(recommendation accepted by UK government and being taken forward)**.

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<sup>3</sup> Mid value is defined in the report as £35-£500 high value as £500 +

<sup>4</sup> The analysis included double glazing, kitchens, bathrooms, heating systems. Double glazing and conservatories were found to have the largest number of complaints.

<sup>5</sup> Assistive products include those targeted at the elderly or disabled such as stairlifts, mobility scooters and adjustable beds.

- Firms trading via the doorstep to provide consumers with greater transparency on prices for their products and demonstrate greater willingness to provide written quotes **(accepted and being taken forward via self regulation)**.
- To avoid the undermining of cooling off periods DTI (now BERR) should consult on the removal of the right to recover payment in regulation 7(2)(iv) of the Doorstep Selling Regulations which enables a trader to recover costs of fitting or installing goods if a contract is cancelled or a possible ban on work/payment within seven days for contracts concluded following at least an unsolicited visit, subject to limited exceptions **(recommendation not taken forward following consultation exercise)**.
- To consult on the option of a ban on cold calling to offer property services with possible necessary exemptions **(recommendation not taken forward following consultation exercise)**.

### **Unfair Commercial Practices Directive (UCPD)**

- 1.12 We note that the discussion paper suggests that the problems resulting from rogue traders, such as pressure selling to consumers who are caught unaware or on vulnerable consumers will be caught by the provisions under the UCPD together with the Doorstep Selling Directive. We welcome the provisions within the UCPD and agree that it is likely to have a deterrent effect when enforcement powers are used.
- 1.13 We are conscious that the definition of what constitutes an aggressive practice under the UCPD may as yet be unclear and at present we are not certain that all such practices within this sector will be caught. This together with resource issues when taking cases and problems with obtaining evidence would also suggest that there is still a need for additional safeguards for consumers who buy using direct selling.

- 1.14 Under the Doorstep Selling Directive consumers who are aware of their cancellation rights are able to exercise them and provide a remedy for themselves. This may also have a deterrent effect on traders who should find it less beneficial to adopt high pressure sales tactics.
- 1.15 We do consider that the UCPD could help to restrict the 'unfair commercial practice' element of doorstep selling, for example by dealing with persistent and unwanted callers.<sup>6</sup>
- 1.16 The UCPD also requires that where an invitation to purchase is made, traders need to provide consumers with information about any cancellation rights, among other requirements.<sup>7</sup> This should also help with some aspects of doorstep sales where rights are not made clear to the consumer.

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<sup>6</sup> The UCPD prohibited practice of 'conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation'

<sup>7</sup> Article 7 (4) (e)

## **2 RESPONSE TO THE QUESTIONS FOR PUBLIC CONSULTATION IN THE DISCUSSION PAPER ON THE REVIEW OF DIRECTIVE 85/577/EEC**

**Question 1: Do you think that specific issues should be addressed in relation to the current definitions of 'consumer' and 'trader' in the field regulated by Directive 85/577/EEC?**

**Question 2: Are any other notions in need of definition?**

- 2.1 We are not aware of any specific problems arising from the definition of consumer and trader in relation to the doorstep selling sector. In our response on the review of the consumer acquis we said that a way to provide greater clarity for consumers and businesses on their rights would be to rationalise the definitions of such recurring terms unless a different meaning is required by the particular context. In the case of the direct selling sector, those who also act in the name or on behalf of the trader are also included within the definition of trader. We think this distinction should remain as salespeople in this sector may not be always be direct employees of the trader, but acting as 'direct sellers/agents'.

**Question 3: Are the doorstep situations which are listed at Article 1 of the Directive still up to date? Do they need to be amended, expanded, repealed and/or harmonised in any way to reflect new market realities? Please explain how and on which aspects.**

**Question 4: Have you encountered any problems with the application of Article 1? If so, which problems have you encountered and how do you feel these could be solved?**

- 2.2 We consider that one important point regarding why consumer protection is important in regard to doorstep sales is made in the preamble to the directive in recital five, where one aim of the directive is clearly to give consumers cancellation rights when they are unprepared for entering into a contractual negotiation. Therefore we believe that there is a clear requirement for all contracts which are initiated away

from business premises to be covered by the directive regardless of whether they are concluded on business premises or not.

- 2.3 In the area of holiday club sales, traders may circumvent the directive's intentions by approaching consumers away from business premises and inviting them to attend an event at premises which may be classified as 'business premises' for the purposes of the directive. In such circumstances the consumer has no right to a cooling off period but is still unprepared for the sales approach and is unable to compare price and quality.
- 2.4 We are also aware of the tactics used by traders wanting to recruit consumers into becoming property investors. Such traders tend to hire hotel conferencing suites, invite individuals to presentations at which the doors are closed once they are inside and position people working for the trader within the audience, all of which create an intimidating and persuasive atmosphere. In such circumstances a cooling off time is essential to allow consumers to make an informed choice.
- 2.5 Whilst it is possible to argue that such sales are concluded in the circumstances described in the first bullet of Article 1, express provision for such circumstances would be advantageous to consumers.

**Question 5: Should the regulatory option at Article 3(1) which allows member states to exclude contracts of a value of less than 60 euros be modified and/or harmonised further? Please explain why and how.**

**Question 6: Is the current threshold adequate taking into account the present reality of the direct selling market?**

- 2.6 Our 2004 study indicated that low value purchases (those under the UK's limit of £35) caused very few problems for consumers. However, our evidence suggests that most consumers have a limited understanding of their rights when purchasing at the doorstep and we would suggest that in order to simplify the message and increase consumer confidence the threshold should be removed.

- 2.7 Existing self regulatory codes of practice in the UK generally do not differentiate on monetary thresholds so we do not feel that removing such a requirement would place a significant burden on business – it could have the opposite effect and reduce administrative costs as traders only need to provide one set of paperwork/stationery for all transactions, whatever their value.
- 2.8 We are also aware that there is no monetary limit for goods bought at a distance where goods are similarly purchased in most cases without the opportunity of prior inspection and we are unclear about the need to maintain this provision only for doorstep selling.
- 2.9 If the limit is to remain we would see difficulties if the amount was harmonised to a set figure across all member states because of the varying buying power of a specific sum within each member state. In addition, those states which do not have the euro as its national currency would find that the monetary limit fluctuated on a daily basis if the limit were fixed in euros.

**Question 7: Should the regulatory option at Article 3(3) which allows member states to derogate from the provisions on solicited visits at Article 1(2) be modified and/or harmonised further across the EU? Please explain why and how.**

**Question 8: What is your practical experience of the application of the exclusion (or where applicable the inclusion) of solicited visits from the scope of the directive and in order to improve legal certainty and consumer protection should the directive be extended to all solicited visits?**

- 2.10 The findings from our 2004 report showed that 'more complaints are made about the doorstep sale of high value products than of any other, usually involving pressure selling, and the majority of these are made during solicited visits'. We therefore would strongly support the expansion of the directive to cover all types of doorstep sales, whether solicited or unsolicited in order to increase consumer confidence in this selling method. We consider that there is no difference between

unsolicited and solicited visits in terms of the need for cooling off periods as it is the 'in home' situation that affects the psychology of the consumer.

- 2.11 Our study by an academic psychologist showed that there can be intense pressure put on consumers buying in the home – both in solicited and unsolicited sales. The study identified a range of sales tactics and influencing techniques that in the home environment are highly effective in securing sales but can also lead the consumer to make inappropriate decisions.
- 2.12 The study found that the combination of the home environment and face to face interaction with a sales person creates a setting that is intrinsically different to other selling situations .The findings from our surveys also showed that consumers are often as likely to regret a purchase made from a solicited visit as from an unsolicited visit.
- 2.13 Data from the OFT's Consumer Direct complaints database showed that between February 2007 and October 2007 there were 6800 complaints relating to unsolicited doorstep selling transactions, and 32,000 complaints relating to solicited visits. These figures suggest that solicited visits do result in a large degree of consumer dissatisfaction possibly because of the lack of cancellation rights for consumers.
- 2.14 The conclusions of our psychological study strongly suggest that consumers are often as susceptible to the influencing techniques of a skilled salesperson whether they have invited him or her into their home or whether they have been cold-called.
- 2.15 The consumer survey also showed that consumers had some difficulty in making the distinction between solicited and unsolicited visits in accordance with the legal definition and are therefore reliant on the salesperson to correctly inform them of their cancellation rights.
- 2.16 Having the same rights for both solicited and unsolicited visits would also address the situation where a trader once in the home, also sells other services/products which the consumer may not have been expecting. For example an invited double-glazing salesman who then

sells another product. Both transactions should have the same cooling off period in order to provide the greatest clarity and confidence for the consumer.

**Question 9: Do the current exemptions need to be modified in the light of the new market developments or interpretation problems? Please explain.**

**Question 10: Does the interaction of this directive with the timeshare directive need to be clarified further?**

- 2.17 In relation to the exemption for immovable property we have noted that this could lead to anomalies. For instance, double glazing could be installed by a company and would be covered by the doorstep selling regulations, but a conservatory fitted by the same company would be considered to be an extension and thus construction rather than a supply of goods or repair to the property. We consider that sales of both of these types of products raise similar issues, and thus should be included within the scope of the directive.

**Question 11: Can Article 4 be improved, in particular with respect to the modalities for providing notice? If so, how?**

- 2.18 Notification to the consumer of their right to withdrawal is crucial if they are to be able to exercise their rights effectively. Our 2004 consumer survey highlighted that in general consumers are unaware of their rights when buying on the doorstep and we consider that this needs to be brought to their attention as clearly as possible. The notice of cancellation from the trader should have much greater prominence within the contract. Cancellation information could be provided in a box type format, or as a tear off slip to be given to the consumer which could also be used to exercise their right of cancellation by return to the trader, although there may be other mechanisms for ensuring that this information is prominently displayed so that consumers are aware.
- 2.19 We consider that the notice should continue to be required to be provided in writing, reflecting the face to face nature of the transaction. Notice via other mediums such as emails etc is unlikely to be appropriate.

**Question 12: Do the rules concerning the exercise of the right of withdrawal and its consequences need to be clarified in the field of doorstep selling: if so, which aspect(s) should be treated differently from the field of distance selling and why?**

- 2.20 We note that the cooling off periods are different to those under the distance selling directive, which offers consumers a seven day cooling off period from the receipt of goods whereas those purchasing on the doorstep have seven days from the conclusion of the contract. We are unclear why such a distinction should exist and suggest that this is an area which could be usefully harmonised to provide greater consumer protection and clarity.

**Question 13: Does the interaction of this directive with the distance selling directive need to be clarified further?**

**Question 14: Is there scope for further harmonisation of this directive with the distance selling directive?**

- 2.21 We are not aware of any problems regarding the interaction of the two directives, but consider that one directive to cover both distance and doorstep selling would reduce consumer confusion and provide increased clarity about their rights when purchasing from home.

**Question 15: Do you feel it necessary to introduce at European level restrictions on the hours during which direct sellers can make visits to a consumer's home?**

- 2.22 We would have some concerns that it may be difficult to translate specific times across member states given the differing lifestyle preferences. Difficulties could also arise where traders turn up just before the deadline and then stay on afterwards. Conversely, if a restriction was in place, legitimate traders invited to demonstrate their product would be restricted to having to leave by the deadline which may not be in the consumer's interests. If there is a problem with persistent late callers and those who stay for an unreasonable time we think this might be regarded as an unfair commercial practice and be dealt with under the provisions of the UCPD.

**Question 16: Do you think that the introduction in Belgium and France of restrictions or bans on payments (and other types of consideration) during the cooling off period was necessary for consumer protection and has been workable for traders? Do you think that similar restrictions or bans on advance payments should be or should not be introduced at European level? Why?**

- 2.23 Our 2004 study concluded that a ban on work and/or payment during the cooling off period would be helpful in tackling abuses by traders of the cooling off period, for example when traders deliberately start work quickly so as to circumvent the cancellation rights, and might also assist in dealing with rogue traders. We also consider that taking a payment, including a deposit, within the cooling off period is likely to place the consumer under a psychological pressure not to cancel as the transfer of money to the trader places him in a position of power over the consumer and can make it difficult for the consumer to get their deposit or prepayment returned. However a ban on all work or delivery of goods would not necessarily always be in the interests of consumers. There are likely to be circumstances where a consumer requires the work to be started immediately and a ban would be impractical or harmful. Exemptions might then be required.

**Question 17: Is/are there any other issue(s) or area(s) that requires to be explored further or addressed at EU level in the context of the doorstep selling directive?**

- 2.24 We are currently unaware of any research which has been undertaken into the effectiveness of cooling off periods although they are frequently used as a mechanism for consumer protection. We would suggest that the Commission may wish to consider a study on their usefulness, particularly in the context of shopping from home.

### 3 CONTACT DETAILS

If you have any queries regarding this response, please contact:

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