

## DIRECT SELLING ASSOCIATION CODE OF PRACTICE FOR CONSUMERS

### METHODS OF SELLING

- 1.1 In selling/supplying goods or services, members (and their direct sellers) will comply with all law relevant to that sale/supply.
- 1.2 A member engaging in direct selling activities in a country outside the U.K. is encouraged to become a member of that country's DSA. If not a member of that country's DSA, it will conduct those activities in compliance with the WFDSA World Codes of Conduct for direct selling.
- 1.3 Members (and their direct sellers) will comply with this Code and, in relation to distance or remote sales, with the Annex to this Code.
- 1.4 Members shall satisfy the Association:
  - (a) that adequate initial training and information is given to all direct sellers with particular regard to their responsibilities to the public; and that continuing training is made available throughout a direct seller's contract;
  - (b) that they have adequate cover against all claims for death, personal injury and damage to property arising out of the demonstration of goods or their use after sale; this cover may either be an insurance policy with a properly authorised insurance company or by the member carrying the risk itself, subject to the approval of that arrangement by the Association;
  - (c) that direct sellers are encouraged to take out adequate public liability cover where appropriate.

### NOTES

Paragraph 1.1 requires compliance with the law. It does not distinguish between different selling methods. DSA Members will wish to, and should, comply with the spirit as well as the letter of the law.

The Code applies to all sales and supplies by Members which are delivered through or via its direct selling operations. The Annex to the Code applies to remote and distance sales. In such cases Members are expected to comply with the Annex. In such cases, apart from where the requirements of the Annex are different, Members are expected also to observe the requirements of the main body of the Code.

Paragraph 1.2 applies only to activities outside the UK. It requires Members to comply with WFDSA World Codes of Conduct for direct selling, whenever the Member engages in direct selling activity in a country where the Member is not a member of the local DSA of the country in question.

"adequate initial training and information" means training and informing all newly recruited direct sellers where appropriate so that they understand:

- (a) what it means to be self-employed;
- (b) that they make provision for income tax and VAT;
- (c) that they must have proper insurance cover for:
  - (i) the use of motor vehicles for business purposes;
  - (ii) personal liability for damage etc;
- (d) that, as sellers of goods to the public, they have legal responsibility under the Sale of Goods Act 1979 for the quality and fitness of what they sell.

"Insurance" by members raises several issues. As direct sellers are self-employed they may not be included in the block insurance policies which Members have to cover themselves and their employees.

For example, a direct seller demonstrating a product which is spilled into a television set which catches fire and damages furnishings, may believe that the Member's insurer will deal with the situation. Unless

the Member has made previous arrangements with its insurance company this may not be the case; direct sellers will be personally liable unless they have taken out business liability cover.

Some Members provide direct sellers with insurance cover against loss of or damage to stock as well as for damage caused to the public or their property. Such extended cover is often provided at a very competitive rate likely to be attractive to direct sellers.

Likewise with motor insurance. All direct sellers driving cars for any reason connected with direct selling are using them for "business purposes". Many direct sellers may deliver goods while picking children up from school or on a domestic shopping trip and not realise that they are actually "on business". Unless they have extended the normal "social, domestic and pleasure" cover, they will be driving uninsured. This is an added worry when they are driving someone else's car (such as their spouse's or a firm's car).

"Personal injury or damage to property" extends to:

- (a) problems caused by a product being defective - eg: a foreign body in a cosmetic;
- (b) damage caused by a product - eg: staining a carpet;
- (c) damage caused by the direct seller - eg: knocking over a breakable ornament;
- (d) consequential loss - eg: loss of wages, rebuilding or repair costs.

Finally, direct sellers are (in most cases) retailers as far as the customer is concerned. This means that they have legal duties under the Consumer Rights Act 2015 and are directly liable to the customer if goods fail to correspond with any description, are not of satisfactory quality or fit for their intended use, or do not correspond with any sample. In relation to goods which do not conform to these legal requirements, e.g. because they are defective, see further the notes to paragraph 12 of this Code.

Although direct sellers have legal remedies along the chain of distribution against the supplier (normally the Member) if all those behind them have gone out of business, the liability remains with the direct seller. Many direct sellers do not realise that fact.

2 Members whose sales and/or recruiting methods include inviting would-be direct sellers and consumers to meetings shall ensure that all invitations:

- (a) specify the purpose of the meeting;
- (b) explain that those invited are under no obligation to purchase anything.

Invitees shall be given details of a named contact person and telephone/fax number or E-mail address.

## NOTES

"Invitation" must contain the name of the Member company and the name of any local organiser and a contact telephone number and/or address.

"Specify the purpose of the meeting" - some participants may gather would-be customers to an informal meeting (such as a dinner party) during which they may be intending to sell goods. It is a basic tenet of the Association's ethical position that all customers should know in advance why they are being asked to attend the meeting. It would therefore be a breach for anyone to use an otherwise innocuous gathering for a sales pitch unless the true purpose was made clear beforehand.

3 Members shall satisfy the Association by production of written guidance that they have taken all reasonable steps to see that direct sellers act with integrity; and in particular:

- (a) do not use misleading, deceptive or unfair sales practices;
- (b) make personal or telephone contact with consumers only in a reasonable manner and during reasonable hours;
- (c) respect the customers' right to privacy and their right to bring any contact to an end;

- (d) describe the goods or products truthfully and accurately;
- (e) answer customers' questions honestly and clearly;
- (f) make only such verbal or written product claims with respect to product efficacy as are authorized by the member;
- (g) give clear and legally accurate information about price and all aspects of after-sales service;
- (h) abide by all current guidelines covering the promoting and selling of goods;
- (i) refrain from in any way exploiting the customer, especially anyone who is particularly vulnerable;
- (j) offer maximum co-operation to trading standards officers and other individuals or bodies (such as Citizens Advice Bureaux) representing consumers.

## NOTES

"misleading or deceptive practices" would also cover making claims about goods which are not authorised by the Member or which are inaccurate and which might influence the consumer to place an order.

"the right to privacy" means that a person being approached has a complete right at any time, whether he is being reasonable or not, to ask a direct seller to bring any sales pitch to an end and to leave his property. A direct seller should be alert to notice any *implied* request from the customer to terminate the encounter. Where, for example, the customer becomes clearly uncomfortable, agitated, repeatedly saying something like "I really don't know" or "I would rather not" or "I need to ask my family" the direct seller should immediately offer to end the visit. An "I don't know" response may indicate indecision over purchase rather than a wish to end the visit. If it is repeated, it may indicate a wish to end the visit. The direct seller should be alert to what the customer is indicating. A direct seller who persists when the customer wishes to end the visit could be considered guilty of an aggressive commercial practice.

Any member of the public has the right not to be telephoned persistently. The Association and Code Administrator will regard complaints about any persistent conduct as a breach of the right to privacy.

Although an Englishman's home is his castle, and it is actionable trespass to enter his land without express permission, the law takes a more realistic approach. It was held by the High Court in 1967 that when a householder lives in a dwelling house to which there is a garden in front and does not lock the garden gate, there is an implied licence to any member of the public (including a policeman) who has a lawful reason for doing so to proceed from the gate to the front or back door and to enquire whether he may be admitted and to conduct his lawful business.

Thus, any direct seller may go to a would-be customer's house and leave a catalogue or other material or knock and ask whether he may approach the customer. The householder may ask him to leave; or not to leave catalogues etc in future. The direct seller must leave there and then. If he returns he will be a trespasser - because the implied licence was withdrawn by the householder.

If a person contacts a Member to say that direct sellers must not come to his house for any reason, the Member must acknowledge that request in writing and do everything possible to notify all their direct sellers in the area to avoid the person's house. The person may argue that by giving notice in writing to the member he has withdrawn his licence and that anyone who then enters does so without consent and is a trespasser. The court might take the view that it is impossible for a large organisation to control the actions of every single person connected with it and that if the Member could show that it had circulated everyone with the person's address and told them not to go there on pain of sanctions, it had done its best. The direct seller would still be at risk of a claim for damages for trespass, but the Member would almost certainly be discharged from liability.

These two matters may be summarised that a direct seller should go when asked and not carry on trying to sell a product.

To be able to "describe goods truthfully and accurately" Members must give direct sellers the most up-to-date information about all aspects of goods bearing in mind that ss. 9 & 10 of the Consumer Rights Act 2015 says that goods must be of satisfactory quality and fit for their intended use. Because direct sellers are self-employed, they will usually be sellers of goods and, as such, will have all the legal liabilities of a seller under the Consumer Rights Act 2015 and will be assumed to have specialised product knowledge.

"Exploitation" includes not only taking advantage of customers who are socially or intellectually unsophisticated or who are for any other reason particularly vulnerable. It extends to applying pressure during sales pitches, coercing customers to sign orders or continuing to try to sell when a customer has made it clear that he does not want to buy.

### AN EXAMPLE OF WRITTEN GUIDANCE

Of course, a new direct seller should be given training as to how to set up and carry out a sales pitch. Paragraph 3 requires the member to give **Written Guidance** to the Member's direct sellers. This should be given to all the Members' direct sellers and should normally appear in the Member's Business Manual (or equivalent document)

The following written guidance from the fictional company *Wondergoods*, complies with paras 3 & 4 of the DSA Consumer Code.

#### VISITING A CONSUMER'S HOME

*Wondergoods* distributors should always remember two fundamentals:

- (i) It is a privilege to be invited or allowed into a consumer's home.
- (ii) Any consumer will react better if treated with the greatest respect.

From these two fundamentals, the following rules become obvious.

#### Making an appointment

*When making an appointment to visit a consumer's home follow these guidelines.*

- (i) If phoning to ask for an appointment, do so between 8am and 9pm.
- (ii) Be unfailingly courteous; do not interrupt the consumer and always acknowledge any comments made.
- (iii) Be sensitive to any indication that the consumer might be vulnerable, e.g. apparent poor understanding or wandering responses. [See notes below about vulnerable consumers.]
- (iv) Do not make any appointment for later than 8.20pm, since it is unreasonable to expect to be in the consumer's home after 9pm.
- (v) Inform the consumer that:
  - The purpose of the visit is to enable you to demonstrate the product and give the customer the opportunity to place an order;
  - There will no obligation to make a purchase – [You may say that you feel sure that the consumer will be very interested in the product, even perhaps bowled over by it but even so you must emphasise that there is no obligation to place an order];
  - The visit is likely to last about 30 minutes;
  - The visit will start with a DVD demonstration on your laptop lasting about 5 minutes.
  - The consumer will have the opportunity to examine samples of some *Wondergoods* products and to ask any questions
- (vi) Having made the appointment, give the consumer the opportunity to ask any questions. Finally, thank the consumer for making the appointment and confirm the date and time of the appointment before politely ending the phone call.

#### The visit itself

*When making a visit, follow these guidelines.*

- (i) Introduce yourself. Remind the consumer of your name and that you are a *Wondergoods* distributor. Give him/her a copy of your card. Give the consumer the opportunity to introduce or re-introduce herself/himself and anyone else who is there.
- (ii) Be sure to thank the consumer for agreeing to your visit.
- (iii) Always describe the products accurately and truthfully.
- (iv) Answer the consumer's questions honestly and truthfully. If you do not know the answer to a question, say so. Do not invent an answer! If appropriate, you can offer to find out and get back to the consumer.
- (v) Ensure that you give only product information which is authorised by *Wondergoods*.
- (vi) Be painstaking in giving price information. It must be clear and accurate. Ensure that you state the price inclusive of VAT and delivery costs – and explain that it includes those items.

- (vii) Explain the *Wondergoods* after sales service.
- (viii) Be sensitive to any indication that the consumer might be vulnerable, e.g. apparent poor understanding or wandering responses. [See notes below about vulnerable consumers.]
- (ix) Do not overstay your welcome. Try to keep your visit within the 30 minutes stated when you made the appointment and in any case do your utmost to ensure that it does not exceed 45 minutes. Remember that the consumer has the right to terminate your visit at any time. If the consumer expresses the wish to terminate the visit, you must leave immediately – and with courtesy at all times.
- (x) If the consumer places an order, ensure that you complete the *Wondergoods* customer order form and leave a copy with the consumer.

#### **Vulnerable consumers**

Extra care is needed if you think the consumer might be vulnerable. It is not always easy to determine if a consumer is vulnerable, e.g. is of poor understanding or unusually timid or uncertain. Being elderly does not necessarily make someone vulnerable; on other hand it does increase the chances. It may be appropriate politely to avoid making a sale to a consumer who appears vulnerable and/or to offer to make an appointment (or another appointment) at a time when a relative or friend will be with the consumer.

#### **Consumer bodies representing consumers**

It is very unlikely that you will find yourself contacted by a body representing a consumer with a complaint. If, however, that should happen, then be sure to offer co-operation, avoid being confrontational and also please contact *Wondergoods* promptly for any advice that *Wondergoods* can offer.

## **FAIR DIRECT SELLING**

- 4.1 A phone call to make an appointment to visit a consumer should normally be made between 8am and 9pm.
- 4.2 When making an appointment to visit a consumer with a view to effecting a sale or soliciting or confirming (or interesting the consumer in placing) an order, the member or direct seller should not misrepresent the sales process and should:
  - (i) make the appointment for a reasonable time of day, normally not to start before 8 am and planned to finish by 9pm, unless:
    - (a) it is a party plan appointment with a later finish time acceptable to the host/hostess; or
    - (b) the consumer gives his/her specific express consent to a later stated agreed planned finish time which is no later than 10pm (and the visit must not continue after 10pm).
  - (ii) inform the consumer that the consumer will be under no obligation to place an order;
  - (iii) inform the consumer as to all other purposes of the visit, e.g. to demonstrate/preview products;
  - (iv) if the visit is not a party plan sales event, inform the consumer as to the likely length of the visit, i.e. the total time which the direct seller is likely to spend in the consumer's home, including any breaks that the direct seller may take;
  - (v) inform the consumer as to the different stages, if any, involved in the visit (including the likely length of any demonstration, or DVD presentation);
  - (vi) where products are targeted at the elderly or infirm, check for any vulnerability (lack of understanding etc) that the consumer might have. In such cases, the member should provide, and require its direct sellers to use, an effective screening system able to identify vulnerable consumers.
  - (vii) where a consumer is identified as vulnerable, take all reasonable steps to ensure that the vulnerability is not exploited, even unintentionally.
- 4.3 The following will normally be considered as examples of unfair direct selling practices:
  - (i) failing to comply with paragraph 4.1 and 4.2 above,

- (ii) failing to leave when the consumer requests a termination of a visit;
- (iii) an unreasonably long visit to the consumer's home;
- (iv) falsely creating the impression that a consumer has won or will win a prize;
- (v) offering a discounted price unless the undiscounted price quoted is a genuine price at which retail sales of a significant number of goods could reasonably have been expected to have been made;
- (vi) offering a "there and then" discount except where the discounted price is £500 or less.

4.4 A discount offered during a visit to a consumer's home or place of work is a "there and then" discount unless, at the time it is offered, the consumer is informed that the discount will be available for at least a week thereafter.

4.5 A visit is unreasonably long if it exceeds the period reasonably necessary to carry out the purposes of the visit: e.g. demonstration of the product; taking measurements (e.g. for home furnishings); writing out a quotation; ascertaining whether the consumer wishes to buy. In the case of a straightforward product easily demonstrated, a visit of reasonable length might not exceed 30 minutes. Party plan visits might well be much longer. Apart from party plan visits, a visit exceeding three hours would normally be too long.

## NOTES

Members must make sure that their direct sellers are versed in the requirements of this paragraph 4 on Fair Direct Selling. That is a matter both of ensuring that it is covered in the training of new direct sellers and also that written guidance is given on it. For an example of written guidance, see the Notes to paragraph 3 above.

"Finish time" for an appointment. Normally any visit should be planned to finish by 9pm. Thus, if the normal time for a visit is one hour, no appointment should be made for later than 8pm. Subject to one important proviso, a later planned finish time (up to 10pm) may be allowed. Ideally such a later planned finish time should not be agreed unless such a late visit has been expressly requested by the consumer. In any event, a later planned finish time (up to 10pm) is not allowed unless, when the appointment is made, the consumer gives "specific express consent" to that later planned finish time. This means that when the appointment is made (whether via the internet by phone or even in the person) the consumer must be asked to answer a specific question, containing only one element, i.e. the fact that the likely finish time is a stated time (between 9pm and 10pm). Members and their direct sellers are strongly advised to have a prepared script to use when asking this question. The question could be one of the following or something to the same effect:

"So the likely time for my visit to end is ten to ten. Is that all right?"

"So the visit could last until as late as ten to ten. Is that all right?"

"It is possible that my visit might not finish until ten to ten. I hope that that is not too late for you. Is that all right?"

The specific question must direct the consumer's attention to just one element, namely the likely finish time. It should not include any other element. It must not for example be worded as follows:

"The presentation may take up to one and a half hours, includes a DVD presentation and could well last until ten to ten. Is that all right?"

"Purposes", "different stages" and duration of the visit. One aim of this paragraph 4 is to ensure that the consumer, when he/she agrees to a visit, knows what he/she is in for. It is only right – and surely also obvious – that the consumer should know how long the visit is likely to last and what it will involve. The consumer should, for example, know that he/she will be asked to watch a DVD – and for how long.

The consumer should surely also know, when agreeing to the appointment, that it is going to involve (if it is), for example:

- having the bonnet of his/her car up and device attached to the engine for demonstration purposes;
- having a heatpad put on the back of the consumer's armchair and the consumer try it out;
- having a product demonstration which involves the salesperson demonstrating it in the consumer's bathroom or bedroom;
- having a device attached to or placed on the consumer's bed and the consumer try it out.

Para 4.2(vi) – “Targeted at the elderly or infirm”. For the purposes of paragraph 4.2(vi) of the Code, goods will be regarded as targeted in this way if either (i) there is something in the way that they are marketed which indicates that they are so targeted, or (ii) they are by their nature commonly used mainly by the elderly or infirm. Thus, although lipsticks may be used by people of all ages including the elderly, they will not be regarded as targeted at the elderly or infirm unless there is something indicative of that in the way the particular lipsticks are marketed. Zimmer frames and incontinence pads, on the other hand, might well be regarded as targeted at the elderly or infirm. Even these products, however, would not normally be regarded as targeted at the elderly or infirm if they were in a catalogue along with a lot of other products which were not especially relevant to the elderly or infirm. These comments just made relate to para 4.2(vi) of the Code, i.e. whether a screening system is required. Irrespective of whether a screening system is required, special care is required in the marketing and selling of any products directed at or likely to appeal particularly to a vulnerable group of people, such as the elderly. For the application of the Consumer Protection from Unfair Trading Regulations 2008 to such products, see below.

“Vulnerable” consumers. When an appointment is made, the person making it (e.g. on the telephone) should be alert to notice if a consumer is showing signs of being vulnerable, e.g. vagueness or slowness in responding, answers that contradict earlier ones, responses unrelated to the preceding conversation. Where it appears that consumer might be vulnerable, either no appointment should be made or one should be made only after checking that another adult (friend or relative of the consumer) will also be present. Equally, direct sellers should also be alert during a sales visit to spot signs of possible vulnerability and, when it appears that the consumer might be vulnerable, should politely terminate the visit and/or offer to return at a time when a friend or relative of the consumer can be present.

#### *Unfair commercial practices affecting vulnerable consumers.*

Quite apart from the provisions of the Code, the Consumer Protection from Unfair Trading Regulations 2008 contain provisions designed to protect vulnerable consumers. The regulations ban “unfair” practices. 31 specific listed practices are banned outright. Also banned are practices which are aggressive or misleading (including being misleading by omission) or which are otherwise “unfair”. In each of these cases, a practice is potentially within the ban if it causes or is likely to cause the “average consumer” to take a transactional decision (e.g. a decision to buy or not to exercise his right of cancellation) which he would otherwise not have taken. Where, however, a clearly identifiable group of consumers is particularly vulnerable to the practice because of their “mental or physical infirmity, age or credulity” and the commercial practice is likely to impact only on that group, the question turns into one of whether the average member of that group would be likely to take a transactional decision on the basis of it. Consider a telephone advertised as “hearing aid compatible”. Suppose that the telephone is not compatible with most hearing aids. The misleading label is perhaps not likely to cause the “average consumer” to buy the phone but it is certainly likely to cause the “average consumer who is hard of hearing” to buy it. It is thus an unfair commercial practice within the meaning of the regulations. Products which are clearly likely to appeal to a group of vulnerable consumers (irrespective of whether those products are advertised within a more general catalogue) must be viewed in that light.

#### *Direct selling to vulnerable consumers – unfair practices*

The Consumer Protection from Unfair Trading Regulations 2008 were mentioned in the preceding paragraph. They implemented in the UK the European Directive on Unfair Commercial Practices. All

those who sell in people's homes should be alert to the possibility that their selling methods might impact in an adverse way upon consumers who are vulnerable because of their "mental or physical infirmity, age or credulity". In December 2009 the European Commission published guidance on the Directive. That Guidance includes the following passage:

Consumers who may be more vulnerable to certain practices because of their age are elderly people. Aggressive door-to-door selling methods is an example of a practice which may not affect the average consumer but which is likely to intimidate a certain group of consumers, in particular the elderly, who may be vulnerable to pressure selling. ... The elderly might also be particularly vulnerable to practices connected to certain products, such as burglar alarms.

#### *Who are "vulnerable" consumers?*

The 2008 Regulations just mentioned make it clear that consumers can be vulnerable because of their "mental or physical infirmity, age or credulity". It is clear that vulnerability is not just a matter of the level of the consumer's understanding. Another passage from the European Commission Guidance on the Unfair Commercial Practices Directive reads:

(a) *infirmity* (mental or physical): this includes sensory impairment, limited mobility and other disabilities. For example, consumers who need to use wheelchairs might be a vulnerable group in relation to advertising claims about ease of access to a holiday destination or entertainment venue, or those with a hearing impairment may be a particularly vulnerable group in relation to advertising claims about 'hearing aid compatibility' in a telephone advertisement.

(b) *age*: it may be appropriate to consider a practice from the perspective of an older or younger consumer.

The Code Administrator's view in relation to the elderly in particular is as follows:

- An elderly person is not vulnerable simply because of his/her age, but the older he/she is, the more likely he/she is to be vulnerable.
- An elderly person can be vulnerable due to a lack understanding (or of memory) but can also be vulnerable due to a lack of confidence. Vulnerability due to lack of understanding (or memory) can stem from one or more mental or physical disabilities, including inability to hear or see properly. Vulnerability due to lack of confidence can stem from all of those things as well from the general frailty which can accompany old age.

#### **Requirement To Disclose Right of Cancellation**

At some stage during a product demonstration or sales pitch, the consumer should be informed that there is a right to cancel any order placed. That is clearly best practice. The following notes set out what the law requires.

Where there exists a legal right of cancellation, there is a legal obligation to indicate the existence of this right when making an "invitation to purchase" (regulation 6(4)(g)). What is meant here by "legal obligation" is explained a little further on. The definition of an "invitation to purchase" (in regulation 2(1)) is as follows:

"invitation to purchase" means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of that commercial communication and thereby enables the consumer to make a purchase.

This definition of an invitation to purchase clearly includes a product catalogue which describes the goods and gives prices. Thus that catalogue must include a statement of the existence of the right of cancellation. The definition also includes an oral communication face-to-face with the consumer, provided that the oral communication indicates characteristics of the product (as in a product demonstration) and also indicates the price, thereby enabling the consumer to make a purchase. There is nothing in the regulations to state that the trader must indicate the existence of the right of cancellation *at the start* of the invitation to purchase. Also, where the product demonstration is not a stand alone thing and where it includes (perhaps at the end) the production to the consumer of a document to complete or read or sign in order to make the purchase, then it seems clear that the demonstration together with the written document is a single "invitation to purchase". To qualify as an "invitation to purchase", it has to be something which "enables the consumer to make a purchase" (see the definition above). If the consumer can make the purchase only by signing or completing a form, then that form is surely part of the invitation to purchase. The right to cancel must be indicated on that form.

Having said all the above, best practice would require that the trader informs the consumer of the right of cancellation orally as well as in writing. Best practice, is not, however, the same thing as a legal requirement. Even if the regulations are properly to be read as requiring that the information must be given orally, there is nothing in the regulations which says that this information (as to the existence of the right of cancellation) must be given *at the start* of the encounter or *the start* of the demonstration.

### ***Legal Obligation?***

It was stated above that there was a “legal obligation” to disclose the existence of the right of cancellation. Actually, regulation 10 makes it a criminal offence to engage in a commercial practice which is a misleading omission under regulation 6. However, failing to indicate the existence of the right of cancellation is not in itself enough to amount to a “misleading omission” under regulation 6. Under that regulation, a failure to disclose the existence of a right of cancellation is not a misleading omission unless “it causes or is likely to cause the average consumer to take a transactional decision he would not otherwise have taken”. In other words, it would be a misleading omission if it caused the consumer to buy (or was likely to cause him to buy) when, if he had been informed of the existence of the right of cancellation, he would not have bought. That seems a pretty difficult thing for a prosecutor to prove, *i.e.* that the consumer would not have bought if he had been told that there was a right of cancellation. The prosecution might allege that the omission was likely to lead to the consumer making a later (and different kind of) transactional decision, namely that it was likely to lead the consumer to decide (*i.e.* after making the purchase) not to cancel the purchase – *i.e.* because the consumer had not been informed that he could cancel. The prosecution would surely find that argument a difficult one to make in circumstances where the consumer has been given a customer order form which contains, with a reasonable degree of prominence, a printed notice of his right to cancel.

- 5 Members must be able to satisfy the Association that:
- (a) appropriate steps are taken to protect private information given by consumers or potential consumers;
  - (b) they are familiar with current legislation on trade and consumer protection and Data Protection;
  - (c) where appropriate they inform direct sellers of their relevant legal obligations and keep them up to date with all changes as and when appropriate.

### **NOTES**

Because the ultimate responsibility lies with Members, because direct sellers will have legal remedies back along the chain of distribution, it is imperative that Members ensure that, where appropriate, all direct sellers receive continuously updated information about all aspects of consumer law.

There are civil responsibilities under:

- Consumer Rights Act 2015.
- Consumer Protection Act 1987 (Part I - product liability);
- Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013.
- Consumer Protection from Unfair Trading Regulations 2008;

There are criminal liabilities arising under:

- Fair Trading Act 1973;
- Trading Schemes Act 1996;
- Trading Schemes Regulations 1997;
- Consumer Protection from Unfair Trading Regulations 2008;
- Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013.

There are also many regulations dealing with specific product types.

*Private information.* There are two aspects to this. First a DSA Member may itself have private data relating to end-consumers (and also relating to its direct sellers) and should have procedures in place to keep this secure. The company should have a data protection policy which it publishes to its customers and direct sellers, on its website and in its catalogues. Secondly, direct sellers are also very

likely to have private information relating to end-consumers. Members should give written guidance to their direct sellers on protection of such data. That guidance should sensibly be within the Business Manual supplied to direct sellers. The following sample guidance could form the basis of such guidance.

#### **Private information of your consumers and downline**

You are likely to find yourself in possession of personal private information relating to your customers and also relating to those whom you sponsor into the business. This information (data) will perhaps include in relation to any one of them: (i) name and address; (ii) phone number; (iii) mobile phone number; (iv) email address and, even possibly, (v) their credit/debit card number. It is very important that you take all reasonable steps to protect all such data. The following guidelines are suggested:

- (a) Do not take out of your house/office any hard copy of such data, except such data as you may need that day or on that excursion, e.g. data relating to someone you are going out to visit.
- (b) Within your own house, keep private data in a safe place, removed from locations to which visitors to your house (e.g. brought home by your children) might have easy access.
- (c) Never transfer such data to a memory stick or similar small device (as these are easily mislaid, can easily fall out of pockets and handbags and can easily be stolen by pickpockets and the like).
- (d) Make sure that a password is required for access to any computer on which you keep such data.
- (e) If you have a desktop computer, keep such data on that computer rather than on any laptop which you take out and about with you.
- (f) Never leave a laptop (whether or not it contains such data) on open view in a vehicle.
- (g) Be particularly careful with any financial data (e.g. credit/debit card details). Do not keep such details for use with future transactions. Rather, destroy it immediately after the transaction in relation to which it was given to you. For later transactions, you can ask for the details again. That goes also for any copy of a customer order form containing such details and of which you have a copy. Do not keep these financial details for longer than may be necessary in relation to this particular transaction (normally no longer than a few days). If the customer order form contains other information which you need to keep longer term (e.g. for your own financial/tax records), then destroy or remove all financial data relating to the customer.
- (h) As soon as you cease to have a connection with someone (e.g. they cease to be a customer), destroy all records of their data.
- (i) Institute a practice of regularly (e.g. once a month) checking your databases (whether electronic or hard copy) and removing any obsolete entries (including all those relating to people who have ceased to be customers).

## **ADVERTISEMENTS**

- 6(a) Members' advertisements shall be truthful and accurate and, as a general rule, shall incorporate a reference to their membership of the Association. Members' sales and promotional literature shall also be truthful and accurate and shall always contain a reference to their membership of the Association.
- (b) Members must be able to satisfy the Association that they comply with the British Codes of Advertising Practice and Sales Promotion where relevant.
- (c) Where members use direct mail or telephone selling they will make use of the Mailing Preference Service and Telephone Preference Service.

## **NOTES**

Members should make it a term of the contract with direct sellers that all advertising copy referring to the Member and using its name or logo must either follow what the Member prepares or must be submitted to the member for vetting.

The requirement to use the Telephone Preference Service only applies to members who themselves use telephone marketing.

## **IDENTIFICATION**

- 7 All direct sellers should immediately:
  - (a) identify themselves to prospective customers;
  - (b) explain the purpose of their approach;
  - (c) identify the member or third party supplier and the products.

- 8 Members will supply copies of this Code of Practice to all direct sellers. It must be available for any customer.

## NOTES

Customers need to have confidence in direct sellers and in the companies whose products they supply. It is therefore a basic courtesy that catalogues and other material which may be given to a customer or left at his house should contain the name and address of the Member and of the direct seller.

"purpose of the approach" - in order that a customer is not misled, Members must explain to direct sellers that an open, honest initial contact is more likely to result in a satisfied customer placing an order.

"Copies of the Code" means either the code as published by the Association or its text reprinted in easily legible type by a member as part of its training or business packs. The copies to be given are copies of the unannotated code, not this annotated code which is produced for the guidance of Members.

## ORDER FORMS

- 9.1 Subject to Rule 9.3 below, customers' order forms must be approved by the Association and Code Administrator before they are used. They must:
- (a) be clear and legible;
  - (b) contain the member's full name and address;
  - (c) set out any guarantee referred to in Rule 10;
  - (d) set out the consumer's right of cancellation referred to in Rule 12;
  - (e) show that the member belongs to the Association and contain the Association's logo;
  - (f) give contact details of the direct seller and indicate the direct seller's contractual relationship with the consumer;
  - (g) indicate that the DSA has a dispute resolution procedure.
- 9.2 A copy of an order must be given to the customer when it is placed. Either the order form, or some other document given to the customer at or before the time of the order, must contain clear information as to the terms and conditions of supply and must include information as to delivery/completion dates. Unless otherwise agreed, delivery/completion shall be within 30 days of the order.
- 9.3 The customer contract/order form of a third party supplier is not subject to the approval of the Code Administrator and may not contain all the information listed at 9.1 above. In such circumstances the consumer will be given an additional piece of paper, a notice, which must be approved by the Code Administrator and which gives the following information.
- (a) The identity and address and other contact details of the member.
  - (b) A statement (together with the DSA logo) that the member is a member of the Direct Selling Association.
  - (c) A statement that the member is committed to having its direct sellers comply with the DSA Consumer Code, together with information about how to access that code.
  - (d) Information about the DSA dispute resolution procedure, and how to access it.

## NOTES

Members are strongly advised to consult the Code Administrator's Guidance Sheet, whenever designing a customer order form or checking their existing one for compliance. That Guidance

- (i) contains a checklist for required contents of the customer order form;
- (ii) sets out how to comply with legal requirements as well as the requirements of this Code;
- (iii) includes a worked example of a compliant customer order form.

It is essential that the name and address of the Member appears on the customer's order form, and that the customer has a copy to retain at all times. This enables him to know where the goods he is ordering will be coming from which is particularly important as Members have such different systems for processing orders and delivering the goods.

Membership of the Association must be shown in order to reinforce the confidence which the customer should expect. However, it is important not to give the impression that the direct seller is a member of the DSA. Thus it is recommended that next to the DSA logo, the following text appears:

[The Company] is a Member of the Direct Selling Association and requires its [distributors/consultants/direct sellers] to comply with the DSA Codes of Practice.

As direct sellers are (usually) retailers, as far as the customer is concerned, their names and addresses are essential so that customers know with whom they are dealing.

It is imperative that the order form includes information about the customer's right of cancellation.

It is imperative the customer is informed as to the contractual terms upon which the goods or services are supplied and that the customer is given information about delivery/completion dates. Terms and conditions must be in clear straightforward language; small print would not be appropriate.

#### *Remote or distance sales*

In the case of remote sales or distance sales it may not be possible to provide a copy of the order at the time it is placed (*e.g.* by mail or over the telephone or via the internet). Different requirements for such sales are therefore set out in the Annex to this Code. Members are required to comply with the terms of the Annex.

#### *Time of delivery or performance*

Members are free to agree with the customer as to when delivery or performance will be completed. If, however, no such agreement is made, delivery or performance must occur within 30 days of the order. This requirement is in line both with the SELDIA Code and also the requirements of the Annex to this Code relating to remote or distance contracts.

#### *Complaints and dispute resolution*

The appropriate person to deal with any consumer complaint is the direct seller or, failing that, the DSA Member company. If, however, a complaint is not able to be resolved to the consumer's satisfaction, the DSA under the terms of paragraph 16 this Code offers the consumer a route to getting that dispute resolved under paragraph 16. Paragraph 9(g) does not lay down any particular form of words to be used on the customer order form. It simply requires that the existence of the DSA's complaints-handling service be mentioned. The notice could be on the front or on the reverse of the customer order form. Paragraph 14(b) requires that the customer be given the name and address (i.e. at the Member company) where a complaint may be sent. A possible wording which complies with both paragraph 9(g) and paragraph 14(b) is as follows:

"We are confident that you will be delighted with your purchase. The Company and its direct sellers are committed to ensuring total satisfaction. If for any reason you are not totally satisfied please make contact with your direct seller immediately. If still not satisfied, please contact: Customer Relations, [insert company name and address]. To back up our total commitment to consumer satisfaction, the Direct Selling Association operates a dispute resolution service for any consumer who is still not satisfied."

## **GUARANTEES**

10.1 Any guarantee of goods shall be clear and easy to understand. It must exceed the customer's existing legal rights, and not affect his statutory rights. The terms of all

guarantees provided by members must be approved by the Association and the Code Administrator before they are used.

10.2 The member will check for compliance any guarantee provided by its third party supplier.

#### NOTES

There is a wide range of guarantees offered by Members and Members must ensure that care is taken not to limit or exclude the customer's inalienable rights under the Sale of Goods Act.

Should there be any wording which might be interpreted as restricting the consumer's rights under the Consumer Rights Act 2015, members must make sure that the words "This does not affect your statutory rights" or "This guarantee is in addition to your statutory rights" or some words to a similar effect appear. Any guarantee should be included in the customer order form (see paragraph 9 of the Code, above).

The Association regards a guarantee as an added sales benefit.

#### AFTER SALES SERVICE

11 When an after sales service is offered, details and limitations must be clearly stated in writing. Where a customer would normally expect an after sales service but none is offered, this must be stated in writing and given to the customer.

#### NOTES

It is in the interest of Members to provide after-sales service. It enhances the value of the products and gives confidence to customers that they are dealing with a reputable supplier.

#### RIGHTS OF CANCELLATION & REFUND

12.1 Members must ensure that customers are given at least the cancellation rights required to be given by law.

12.2 Where the member is unable to supply goods or services, the member must make a full refund of any price or deposit, unless the customer agrees to accept substitute goods or services.

12.3 Where a third party supplier is unable to supply goods or services, the member will use its best endeavours to ensure that the third party supplier makes a full refund of any price or deposit, unless the customer agrees to accept substitute goods or services.

#### NOTES

This paragraph confirms that the consumer must be allowed the right of cancellation which the law provides. With respect to direct selling and distance selling the law is, with effect from 13 June 2014, set out in the *Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013*. Those regulations implemented in the UK the requirements of the *Consumer Rights Directive*. The regulations, subject to some limited exceptions, provide for a cancellation period which lasts until 14 days after the date the goods are delivered to the consumer (or, if the contract is for the provision of services, until 14 days after the date of the contract).

The regulations also set out information-giving requirements, requiring the consumer to be given information.

Guidance Sheets, written by the DSA Code Administrator are available on four aspects of the law as it is from 13<sup>th</sup> June 2014. They deal with:

- Customer Order Forms (including a specimen "Wondergoods" order form).
- The Online ordering process (including a specimen email confirmation of order).

- A Specimen Returns Policy (including commentary/explanation).
- Direct Selling making a purchase as consumer.

These Guidance Sheets are available in the members' area of the DSA website or from the Code Administrator.

Members can of course give, if they wish to, a longer cancellation period than the law requires.

The form in which the Notice of the Right to Cancel must appear is laid down by law in the *Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013*. Full information on this is given in the Code Administrator's Guidance Sheet on Customer Order Forms.

The right to cancel the agreement is in addition to any other legal rights which the customer has.

### Exceptions to the right to cancel

The *Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013* which set out the consumer's legal right to cancel, also provide for some exceptions. There are only limited exceptions where the consumer is not given the right to cancel. One of the exceptions is in the case of an off-premises contract where the order value does not exceed £42. [This £42 exception does not apply to distance sales, e.g. online orders.] The other main exceptions are:

- Certain service contracts begun with the consumer's express written consent and which have been completed by the trader.
- Goods which are supplied to the consumer's specifications or are clearly personalised.
- Goods liable to deteriorate or expire rapidly.
- Sealed goods which have been unsealed after delivery and which are not suitable for return due to health protection or hygiene reasons (*e.g.* earrings for pierced ears?).
- Goods which are after delivery, by their nature, inseparably mixed with others (*e.g.* home heating oil).
- Urgent repairs or maintenance carried out during a trader's visit specifically requested by the consumer.
- Sealed audio or video recordings or sealed computer software which is unsealed after delivery.
- Certain contracts for digital content not on a tangible medium.

Where a trader seeks to rely on one of these exceptions, the customer order form should state that there is no right of withdrawal or state the circumstances where the right of cancellation will be lost.

### Related rules of law

The right to cancel must be distinguished from the general law about the way contracts are made and specific areas where there are particular rules.

**[A]** Most credit agreements, although signed by the customer, are merely "offers" to enter into a contract and do not have any legal effect until the applications have been vetted by the Member or the creditor and have been "accepted" by being signed on their behalf. In these cases, the customer has complete freedom to withdraw his offer at any time up to the moment when the Member/creditor "accepts". Thereafter, the cooling off rules under the Consumer Credit Act 1974 come into force. In either case, all money paid in advance must be refunded (and any goods actually supplied handed back).

**[B]** Secondly, after the cancellation period has elapsed, the customer is in the same position as anyone else who buys unseen and has to rely on the rights (and obligations) in the Consumer Rights Act 2015.

Under the Consumer Rights Act 2015 a buyer may reject goods and treat the contract as cancelled if - *and only if* - there is something wrong with the goods, i.e. if the goods: (i) are not of satisfactory quality, or (ii) do not correspond with their description, or (iii) do not match a sample by reference to which they were sold, or (iv) are not reasonably fit for a particular purpose for which the buyer informed the seller that he wanted them. In these four situations the goods do NOT conform, and the buyer may reject them and recover the price. Even if the buyer does not reject the goods (*e.g.* because he chooses to keep them despite their non-conformity), the buyer is entitled to damages (money compensation).

Goods will be of a "satisfactory quality" if they meet the standard expected by a reasonable person to be "satisfactory" taking account of any description, price and other relevant circumstances. There is a non-exhaustive list of factors to be taken into consideration when measuring whether goods are of satisfactory quality, which include: their state or condition, fitness for purpose, appearance and finish, freedom from minor defects, safety and durability. A trader who fails to indicate that the goods are not fit for all their common purposes may be in breach if he sells something commonly supplied for two purposes but which is in fact only fit for one. Where a request for repair or replacement is made, goods which are shown not to be of satisfactory quality at any time up to six months after delivery are assumed to have been of unsatisfactory quality when they were delivered unless the opposite is proved (subject to some obvious exceptions, such as perishable goods which cannot be expected to last six months).

So long as the goods do not breach any of the conditions in the Act, the buyer has no right to reject. He certainly is not allowed to reject simply because he has changed his mind or regrets his buying decision. The only provisos to this statement are where: (i) the buyer is still within the cancellation period, or (ii) the seller has given a wider right to a refund.

**[C]** Finally, the ingredients of a valid contract are an "offer" and an "acceptance" which meet the expectations of both parties. The vast majority of offers are offers to buy made by consumers. It is important to realise that the person making an offer has an absolute right to withdraw it *at any time* before acceptance by the trader.

## PRE-PAYMENTS

13. Where a consumer makes a pre-payment (or pays a deposit) under a contract to buy goods from a direct seller who is acting as principal (as retailer), the direct seller shall refund that pre-payment in the event that delivery of the goods is not possible. If the direct seller is unable to (or fails to) deliver the goods and also is unable to (or fails to) refund the consumer's pre-payment, the member will either deliver the goods or else will itself make the refund.

## NOTES

Paragraph 13 applies in the situation where the consumer makes a pre-payment (or deposit) and the consumer's contract is with the direct seller – i.e. where the direct seller acts as principal in buying from the member and reselling to the consumer. It requires the member to stand behind the direct seller so that if the direct seller fails to deliver, the company undertakes to do so or to refund the pre-payment (or deposit).

## SELF REGULATION & COMPLAINTS HANDLING

- 14 Members must:
- (a) make regular audits of systems, procedures and documentation to prove compliance with this code of practice;
  - (b) inform customers in writing of to whom (name & postal address) they may address any complaint;
  - (c) have effective procedures for dealing with consumers' complaints and responding within a reasonable time (normally within ten working days);
  - (d) keep records of customers' complaints and of the action taken in response.

## NOTES

The object of 14(a) is to ensure that members understand that belonging to the Association means adherence to this Code in spirit as well as its letter.

In aiming to achieve total customer satisfaction, it is important that customers are informed of to

whom they may complain. Members are therefore expected:

- to supply in writing the name (of a person or department) and its address where complaints can be sent;
- to supply that information ideally when an order is placed, but in any event no later than the time of delivery or performance.

There is no required form of words in which the information must be given. It could simply be: "In the case of complaint, please contact [name, or dept, and address]". More imaginatively it could be: "Our aim is to meet the highest aspirations of our customers. If, however, you are not entirely satisfied, please contact [name, or dept, and address]". The information should be given on the customer order form given to the customer at the time the order is placed (and ideally repeated on any subsequent invoice or despatch note). In any event, it must be given by the time the products (goods or services) are delivered/supplied. Whilst a contact telephone number, fax number and/or email address could also be given, it is essential that a postal address be given. Note also the requirement (in paragraph 9 of this Code) for the customer order form to state that the DSA operates a dispute resolution procedure.

## CODE ADMINISTRATION

15.1 DSA Codes are supervised and administered by an independent, legally qualified Administrator appointed by the Council on behalf of the Association.

15.2 The Code Administrator shall:

- (a) satisfy himself that members' trading practices and documentation comply with the Codes;
- (b) report any breach of the Codes to the member's Chief Executive and recommend appropriate remedial action;
- (c) investigate any failure by a member to act upon any recommendation;
- (d) report any failure by a member to remedy any breach to the Council of the Association;
- (e) publish an annual report which includes any suggestions the Administrator has for the improvement of the Code in the light of experience.

## BREACHES OF THE CONSUMER CODE

16 Any complaint about a breach of the Consumer Code (or its Annex) shall be treated in the following way.

- (a) The complainant may refer it:
  - (i) to the Chief Executive of the member; or
  - (ii) the Director of the Association.
- (b) If the complainant is dissatisfied with any solution proposed by the member, or it is referred initially to the Director, the following procedure will be used:
  - (i) The complainant will be asked to set out details of the complaint in writing;
  - (ii) The Director will send a copy of the written complaint to the member requesting prompt remedial action; the complainant will be kept informed at all times;
  - (iii) If the Director is not notified within 21 days that the matter has been resolved, he shall refer it to the Code Administrator and may notify the Council of the Association;
- (c) If the complainant is dissatisfied with the recommended action, or if the member fails to act as required by the Director, the Director shall refer the complaint to the Code Administrator.

## INVESTIGATIONS BY THE CODE ADMINISTRATOR

- 17.1 The Code Administrator will investigate any complaint referred to him, obtain evidence from the complainant, from the member and any other relevant person and make a written adjudication as quickly as possible.
- 17.2 The adjudication is binding on the member and any direct seller; the complainant is not bound by the adjudication.

## NOTES

In handling complaints referred to him, the Code Administrator operates in accordance with a standard Complaints Procedure copies of which are sent to the parties as soon as the complaint is referred to him.

## SANCTIONS

- 18.1 Where a member is found to be in breach of the Consumer Code (including the Annex), the Code Administrator may require the member:
- (a) to repay all money paid by the complainant;
  - (b) to replace or repair any product without charge;
  - (c) to pay any costs incurred by the Code Administrator for technical advice or testing;
  - (d) to take all reasonable steps, including any specified steps, to prevent a recurrence of the breach;
  - (e) to pay compensation (not exceeding £5000) to the complainant.
- 18.2 The Code Administrator may recommend that the member appear before the Disciplinary Committee and may make recommendations as to the action it should take.

## DISCIPLINARY COMMITTEE

- 19.1 The Disciplinary Committee shall consist of two Council Members and three Independent Members nominated by the Council. The Disciplinary Committee shall consider all the evidence and may call for written or oral evidence from any person. The Disciplinary Committee's decision will formally be a recommendation to the Council of the Association of any one or more of the following:
- (i) no action be taken;
  - (ii) the member be required to undertake a specified course of remedial action;
  - (iii) issue by the Council of a formal warning;
  - (iv) suspension of the member from the DSA for a stated period;
  - (v) expulsion of the member from the DSA.
- Suspension and expulsion can be "suspended", i.e. not to take effect if one or more conditions are met.
- 19.2 The Disciplinary Committee shall send its report to the complainant and the member and the Council of the Association. The member is bound by the adjudication.
- 19.3 The Council may not reverse or overturn the decision of the Disciplinary Committee. Upon application by the member, however, or on its own initiative, the Council may refer the decision back to the Disciplinary Committee for re-consideration

## DEFINITIONS

- 20.1 "the Association" and "DSA" means the Direct Selling Association;
- 20.2 "direct seller" means any person involved in direct selling in any capacity;
- 20.3 "direct selling" means the direct selling of consumer products either in the home or away from normal retail premises by which a salesperson either: demonstrates the

- product or presents a product catalogue; or, collects an order; or arranges for the delivery of the products; or collects payment for the product or arranges for credit;
- 20.4 "member" means a member of the Association and includes its employees;
- 20.5 "product" means any goods or services.
- 20.6 "Third party supplier" is a person or organisation which is not a DSA member and which, as a result of direct selling activity by a DSA member (or a direct seller acting for the member), enters a contract with a consumer to supply products (goods or services) to the consumer. Typically, this occurs where the DSA member is a field marketing organisation commissioned by the third party supplier to market the latter's products.

## DIRECT SELLING ASSOCIATION

### Annex to

## Code of Practice for Consumers

*This Annex gives additional protection to consumers who buy goods or services by remote or distance sales contracts*

### REMOTE OR DISTANCE SELLING

1. This Annex supplements the DSA's Code of Practice for Consumers. It applies where goods or services are sold to consumers by sales which are remote sales or distance sales, for example where a consumer places an order over the telephone, by mail or over the internet. In those cases Members (and their direct sellers) will comply with:
  - (a) the terms of this Annex;
  - (b) the requirements of the Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013.

### NOTES

With a direct selling company, "remote sales" often arise more or less as follows. A direct seller makes a contact with a customer and makes a sale to that customer; the customer is thereafter able to make contact directly with the Member and to place an order directly with the Member (i.e. by telephone or by mail or even over the internet); the resulting sale contract is made directly between Member and customer (although the original direct seller may nevertheless be given a commission on the value of such "remote" sales). Such a remote sale is very likely to be a "distance contract" within the meaning of the *Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013*, which apply to both off-premises sales and distance sales. Whether it is or not, Members are expected to comply with the requirements of this Annex, including the requirements of the Regulations relating to "distance contracts". The requirements of this Annex follow closely those of the Regulations.

### CONSUMER INFORMATION

- 2.1 Members will ensure that consumers are given full information, clear and comprehensible, both before the contract is concluded and also in writing (or other durable form) before or at the time of performance of the contract or delivery of the goods.
- 2.2 The information must include details of the consumer's right of cancellation under paragraph 3 below.

- 2.3 The information must also include: the seller's/supplier's name and address, a description of the main characteristics of the goods or services, the price (including for how long it is valid and whether it is inclusive of VAT and delivery), arrangements for delivery/performance and payment, charges for delivery (where the price does not include them).
- 2.4 The information given in durable form must also include: the conditions and procedures for exercise of the consumer's right of cancellation, a geographical address where any complaints can be sent; information as to any guarantees or after-sales services.
- 2.5 Members will observe the information-giving requirements of the Consumer Contracts (Information, Cancellation and Additional Payments) Regulations 2013.

## NOTES

The requirements of the Regulations mentioned in clause 2.5 are dealt with in the Code Administrator's Guidance Sheet relating to the *Online Ordering Process* – see the notes to clause 12 of this Code, above.

### *Some cautions*

Paragraph 2 does not set out in full all the detailed requirements as to information-giving which are set out in the Regulations mentioned in this paragraph.

Also make sure that the following is adhered to:

- When pre-contract information is given, the supplier's commercial purpose must be made clear.
- In the case of a telephone call, the supplier's identity and the commercial purpose of the call must be made clear at the start of the conversation.
- Where goods or services are to be supplied/performed recurrently or permanently, the minimum duration of the contract must be stated.

## RIGHTS OF CANCELLATION

- 3.1 Members must ensure that customers are given at least the cancellation rights required to be given by law.
- 3.2 Where the member is unable to supply goods or services, the member must make a full refund of any price or deposit, unless the customer agrees to accept substitute goods or services.

## NOTES

See the Notes to clause 12 of this Code, above.

## PERFORMANCE

4. Unless otherwise agreed, delivery/completion shall be within 30 days of the order.

## FRAUDULENT USE OF PAYMENT CARD

5. Where, in relation to a remote or distance sale, fraudulent use is made of a consumer's payment card by someone else not acting as his agent, the consumer is entitled to cancel the payment and to have his account re-credited. Members will co-operate with card issuers in ensuring this right of consumers is honoured.