

Consultation on whether to remove the distance selling rules from the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing

Question:

Do you agree with CAP's proposal to remove its distance selling rules which relate to pre-contractual information? If you do not, please indicate why not.

	Respondent making points in favour of the proposal:	Summary of significant points:	CAP's evaluation:
1.1	<p>Greys Regulatory Services</p>	<p>The communication elements related to distance selling are very largely not <i>marketing</i> communications as defined in your remit, and arguably not communication elements either; the issues are not generally handled by marketers and certainly not by their agencies</p> <p>The majority of CAP users are unfamiliar with distance selling</p> <p>Dealing with distance selling is resource-heavy for CAP</p> <p>Whatever the outcome, It would seem appropriate to ensure that other SROs in Europe are in line with CAP on this issue.</p>	<p>CAP notes these comments. CAP will share the outcome of its consultation with SROs.</p>
1.2	<p>Trading Standards Institute</p>	<p>TSI agrees with the proposals to remove its distance selling rules which relate to pre- contractual information and post contractual matters; however, it stresses the importance of CAP taking account of guidance produced by the EC, BIS and TSI when offering any guidance or taking any decisions with regard to compliance with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.</p>	<p>CAP notes these comments but does not intend to take any decisions or offer guidance on this legislation.</p>

<p>1.3 National Trading Standards Board / Association of Chief Trading Standards Officers</p>	<p>NTSB and ACTSO are supportive of the amendments as proposed, and consider they are necessary to reflect the change in legislation (namely the requirements of the Consumer Protection (Distance Selling) Regulations 2000 have been replaced by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013) and move from a minimum harmonisation to a maximum harmonisation measure.</p>	<p>CAP notes the support for the proposal. The current rules go beyond the maximum harmonisation standards set by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (2013 Regulations). If the distance selling rules were to be retained, they would have to be amended to reflect the provisions of these Regulations.</p>
<p>1.4 British Retail Consortium</p>	<p>The BRC welcomes CAP's proposal to remove distance selling rules relating to pre-contractual information on the basis that the rules may breach the maximum harmonisation requirement of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.</p> <p>The BRC recognises that the primary responsibility for enforcing those regulations (and also the Consumer Protection from Unfair Trading Regulations 2008) lies with the Trading Standards Service so it has no concerns that the removal of these rules from the CAP Code will have any detrimental impact on consumer protection.</p>	<p>CAP notes the support for the proposal. The current rules go beyond the maximum harmonisation standards set by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (2013 Regulations). If the distance selling rules were to be retained, they would have to be amended to reflect the provisions of these Regulations.</p>
<p>1.5 Direct Marketing Association</p>	<p>The DMA agrees with the proposal and with CAP's rationale.</p>	<p>CAP agrees.</p>

1.6 E.On E. On agrees with CAP's proposal and rationale. CAP agrees.

Question:

Do you agree with CAP's proposal to remove its distance selling rules which relate to post-contractual matters? If you do not, please indicate why not.

	Respondent making points <u>in favour</u> of the proposal:	Summary of significant points:	CAP's evaluation:
1.1	Greys Regulatory Services	<p>The majority of CAP users are unfamiliar with distance selling</p> <p>Dealing with distance selling is resource-heavy for CAP</p> <p>Whatever the outcome, It would seem appropriate to ensure that other SROs in Europe are in line with CAP on this issue.</p>	<p>CAP notes these comments.</p>
1.2	Trading Standards Institute	<p>TSI agrees with the proposals to remove its distance selling rules which relate to pre- contractual information and post contractual matters; however, it stresses the importance of CAP taking account of guidance produced by the EC, BIS and TSI when offering any guidance or taking any decisions with regard to compliance with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.</p>	<p>CAP notes these comments but does not intend to take any decisions or offer guidance on this legislation.</p>

1.3	National Trading Standards Board / Association of Chief Trading Standards Officers	NTSB and ACTSO are supportive of the amendments as proposed, and consider they are necessary to reflect the change in legislation (namely the requirements of the Consumer Protection (Distance Selling) Regulations 2000 have been replaced by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013) and move from a minimum harmonisation to a maximum harmonisation measure.	CAP notes the support for the proposal. The current rules go beyond the maximum harmonisation standards set by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (2013 Regulations). If the distance selling rules were to be retained, they would have to be amended to reflect the provisions of these Regulations.
1.4	British Retail Consortium	The BRC supports the proposal to remove the distance selling rules relating to post contractual matters. It is agreed that these rules generally relate to traders' post-contractual behaviour rather than to the advertising itself, notwithstanding the exceptions referred to. The BRC notes that, in any event, such matters fall under the enforcement responsibility of the Trading Standards Service and that this Service, because of its range of statutory powers, is better equipped to deal with them.	CAP agrees.
1.5	Direct Marketing Association	The DMA agrees with the proposal and with CAP's rationale.	CAP agrees.
1.6	E.On	E.On agrees with CAP's proposal and rationale, and adds that other legislation provides protection for post-contractual matters.	CAP agrees.

