

Can you cancel it?

CAB/ECC clients' experience of cancellation rights in consumer contracts

Summary

Throughout the EU consumers have legal rights to cancel contracts for goods and services in situations where they may be subject to pressure selling or have purchased items at a distance. These rights are important because consumers should easily gain redress without the need to take expensive or lengthy court action. But consumer rights vary from Member State to Member State and many transactions which should have cancellation periods do not allow consumers time to reflect.

Evidence from Citizens Advice Bureaux and the UK European Consumer Centre (ECC) also shows that traders are not always giving consumers adequate cancellation rights. Gaps in legislation result in some consumers not being entitled to cancel, for example in solicited doorstep sales or credit agreements made where the consumer goes to the trader's premises. The cost to consumers can be high. A MORI survey commissioned by Citizens Advice in September 2005 suggests that over three million people in Great Britain (GB) wanted to or tried unsuccessfully to cancel or return purchases in the last year, to the value of between £300 and £500 million.

The current review of EU consumer protection legislation gives an opportunity to reassess how cancellation rights are being delivered in all Member States and to provide for greater consistency of approach to legislation. Citizens Advice welcomes this review because it is a major opportunity both to get greater consistency and a level playing field in consumer rights across the EU and to improve consumer protection. Both aspirations are good for business as well as consumers. This report shows that there is a continuing need for clear cancellation rights to provide easy redress for consumers, for more rights in some areas, greater consistency in law and action to improve business compliance with consumer law.



Inside

- | | |
|--|---------|
| <input type="checkbox"/> Introduction | Page 2 |
| <input type="checkbox"/> Cancellation rights in practice – the consumer experience | Page 4 |
| <input type="checkbox"/> Where cancellation rights go wrong | Page 9 |
| <input type="checkbox"/> The European experience of cancellation rights | Page 13 |

Introduction

Cancellation rights provide consumers across the EU with a quick and effective means of legal redress. In defined circumstances the consumer has a right to think again about the purchase, end the contract without liability and get their money back without having to take court action. These rights are needed because there may be circumstances where:

- the trader can unduly pressurise consumers to buy
- there is a lack of opportunity for consumers to compare what different traders offer, or to study the 'small print' on any contract
- the consumer cannot physically examine the purchase before they buy, because they are buying by mail order, telephone or internet.

Traders may also offer a no questions refund policy, sometimes by means of a trade association code of practice. Such policies are

welcome as they extend cancellation rights beyond the scope of legislative rights.

Bureaux regularly deal with enquiries about cancellation rights relating to a wide range of goods and services. Analysis of 9,156 enquiries about particular goods and services to 73 Citizens Advice Bureaux in England and Wales during the period 1 April to 30 June 2005 shows that of these enquiries 1,147 related to cancellation rights. The proportion of enquiries relating to cancellation rights ranged from 13 per cent for life insurance to 45 per cent for health club membership.

In addition, in 2004 15 per cent of UK ECC cross-border enquiries concerned cancellation rights.

Cancellation rights are unique in that they allow consumers to buy something, creating a contract, and then change their mind with no remaining obligations. To achieve this in legislation it has been necessary to create rules about timing, process and information; i.e.

Table 1: Proportion of CAB enquiries about goods and services which relate to cancellation rights

Product	Proportion of enquiries on this topic relating to cancellation rights
Life insurance	13%
Telephone landlines	13%
Unsecured loans	13%
Double glazing	14%
Furnishings and floor coverings	15%
Computers	15%
Mobile phones	16%
Disability aids and adaptations	20%
Package holidays	28%
Timeshare and holiday clubs	31%
HP and conditional sale	43%
Health clubs, gyms and sports	45%

during what period a right to cancel exists, how purchases can be cancelled and, vitally, the need for traders to inform the consumer.

The table below illustrates the range of current legal cancellation rights in the UK.

Table 2: UK legislative cancellation rights at a glance¹				
Subject	Statutory cancellation period	Cancellation period begins	Method of cancellation	What is not covered²
Doorstep selling	7 days	Day after purchase	In writing	Solicited sales
Timeshare	14 days	Day after purchase	By notice	Holiday clubs
Distance selling – goods and services except financial services	7 working days	On receipt of goods or from the day following purchase of the service	In writing or durable form	Where the transaction includes a face-to-face element
Distance selling – financial services including credit	14 days (30 days for life insurance)	From the day following purchase of the service	In writing or durable form (and orally where the trader permits)	Where the transaction includes a face-to-face element
Credit	5 days	The day after receiving the cancellation notice	In writing	Face-to-face transactions and transactions concluded on trade premises
Extended warranties on domestic electrical goods	45 days	Day of purchase	By notice orally or in writing	Other extended warranties and domestic electrical goods warranties that are distance sales
Fuel	14 days	The day after purchase	Any	Non-oral sales, e.g. internet
Telecoms	10 working days	The day the switch of supplier is processed	Any	New lines, second lines, internet, mobile, broadband

¹ In all these situations, there is a requirement for the trader to provide the consumer with information about their cancellation rights. Where this is not provided, the cancellation period can be extended.

² Only the major gaps in cover or areas of particular concern are shown.

This table shows the variation in scope, periods and methods for cancelling and means there is potential for consumers to be confused about their cancellation rights, and for unscrupulous traders to take advantage of that confusion. These rights have been developed in a piecemeal way in response to problems, and do not integrate with each other. For example, a consumer buying double glazing at home would only get seven days to cancel it if it was an unsolicited sale. However if the double glazing was bought with a linked credit agreement, the consumer would have five days to cancel whether the sale was solicited or not.

Bureaux regularly report the problems that consumers experience in exercising cancellation rights. These include situations where consumers want to cancel their purchases, but have had difficulties in doing so. This report looks at CAB evidence on how cancellation rights work in practice and common problems which emerge.

Finally we look at how this is working across the EU and make recommendations for improving legislation.

Cancellation rights in practice – the consumer experience

A MORI survey commissioned by Citizens Advice in September 2005 showed that whilst most consumers think they know their rights in relation to cancellation, the value of purchases they actually cancelled was small.³ For two thirds (66 per cent) it was under £100. Only two per cent of those surveyed had cancelled or tried to cancel purchases worth more than £1,000. Seven per cent of people wanted to cancel their purchases or tried unsuccessfully to cancel their purchases. The average approximate value of these purchases was £126. This suggests that over

three million people in GB wanted to or tried unsuccessfully to cancel or return purchases in the last year, to the value of between £300 and £500 million.

CAB evidence shows that clients often experience problems with cancelling larger value purchases. Nearly 80 per cent of the cases bureaux reported to Citizens Advice experienced problems cancelling purchases of more than £100, and a third involved purchases of more than £1,000.⁴ With one exception, these purchases either related to products marketed at disabled people or were payments for training courses. As CAB clients are generally poorer and more vulnerable than the population as a whole, they can ill-afford not to be able to use cancellation rights successfully.

To understand why some consumers are finding it difficult to use their cancellation rights, we look at the experience of CAB clients across:

- timeshare
- doorstep sales
- credit
- distance sales
- utilities
- and in the voluntary provision of cancellation rights, through a trade association codes of practice.

The following cases show the impact on the clients, particularly on their finances. Many of these consumers are on low incomes and are vulnerable in some way. The MORI survey showed that a greater proportion of people in social classes DE found it difficult to exercise their cancellation rights.⁵

³ *Consumers' experience of cancellation rights*, MORI, September 2005. MORI interviewed a nationally representative sample of 1,979 adults (aged 15 and over) across Great Britain. All interviews were conducted face-to-face between 22-26 September 2005.

⁴ Cases reported to Citizens Advice about cancellation rights between August - September 2005.

⁵ Eighteen per cent of social class DE found it difficult or fairly difficult to cancel a purchase, compared to 14 per cent of social class AB.

Timeshare

The timeshare market in the UK is worth over £108 million per year.⁶ The EU Timeshare Directive⁷ resulted from the spread of rogue trading in this market. However the result was that the rogue traders simply developed a new product – the holiday club – to avoid the impact of the legislation.⁸ The net result has been that consumers are still open to abuse in this market and find they cannot claim the cancellation rights designed to redress the problem. Thirty-one per cent of CAB enquiries about timeshare and holiday clubs from April to June 2005 are related to cancellation and withdrawal. Evidence from CAB evidence shows the impact:

CAB clients from Sussex signed a holiday club contract in Tenerife and immediately regretted it. They had assumed a cooling off period applied but when they tried to cancel the company refused, leaving them worried about their finances.

A Gloucestershire client ended up signing a holiday club contract despite repeatedly explaining he would need to check his finances first and may not be able to afford it. The pressure selling worked and as the holiday club is not included in the legal definition of timeshare there were no cancellation rights.

Citizens Advice has been lobbying for changes to timeshare legislation and published a report, *Paradise lost*, in November 2003. We recommended that amendments be made to widen the timeshare definition across the EU and, in the interim, in the UK. We are disappointed that the UK government has not widened the scope of UK law to deal with

domestic purchases not covered by the Timeshare Act 1992.

Doorstep sales

Cancellation rights for doorstep sales are important because high pressure selling is a common feature. Research for the Office of Fair Trading (OFT) confirms that, for many consumers, buying goods and services in the home involves more pressure than buying in other settings.⁹

The value of such purchases can be high. The OFT estimates that the value of doorstep sales is at least £2.4 billion.¹⁰ Data from Consumer Direct, the UK national telephone helpline for advice on consumer problems, shows that the average value of sales where consumers sought advice about cancellation was nearly £4,000 for doorstep solicited sales and nearly £1,800 for unsolicited sales.¹¹ Citizens Advice Bureaux regularly report that clients have often been persuaded to sign up to purchases they did not want and could not afford, following several hours of pressure selling from sales people who have come to their home.

However the current EU Directive on doorstep sales allows Member States to choose not to apply cancellation rights where the doorstep sale is deemed to have been solicited by the consumer. In the UK solicited doorstep sales do not attract statutory cancellation rights. From our survey of ECCs, whilst many Member States have given their consumers better protection, it would appear that Ireland, Greece, Poland, Germany, Denmark and Finland have also chosen not to apply cancellation rights to solicited sales.

6 DTI, Consultation on the proposal to amend the Timeshare Act 1992 in relation to provision of information about the right to cancel: CCP 007/02, November 2002.

7 Directive 94/47/EC.

8 The Timeshare Directive defines a timeshare as lasting at least 36 months and using accommodation in a building. Holiday clubs are commonly for less than 36 months, some are in boats and the consumer does not have a share in a specific property.

9 *Doorstep selling*, OFT, May 2004.

10 *Ibid.*

11 Source: Consumer Direct Central Database, 9,049 enquiries about cancellation rights on doorstep solicited sales and 2,205 enquiries about cancellation rights on doorstep unsolicited sales for the period 1 June to 1 November 2005.

This means, for example, that cancellation rights do not apply where the consumer has asked a company for further information about the product but instead receives a sales visit. The cases below illustrate where doorstep selling legislation in the UK continues to fail consumers, particularly those who are most vulnerable.

An Essex CAB client rang a company to ask for a rough idea of the cost of a walk-in bath. A brochure arrived the next morning; she was also phoned by a salesman who visited that afternoon. After a lengthy sales pitch she was pressured to let him have her credit card details for a £1,150 deposit on a £5,599 bath she could not afford.

A company selling assistive products denied an elderly CAB client from Gloucestershire cancellation rights. She had attended a sales presentation held at the sheltered accommodation where she lives and was persuaded to buy a device for £255. She suffers from arthritis and Parkinson's disease, wears a neck collar, uses a Zimmer frame to walk and is awaiting a double hip operation. The following day she recalled that her doctor had said this product would not help with her condition but when she wanted to cancel the company said that, as the warden at the accommodation had invited them, they were not required to give cancellation rights. This, they claimed, was a solicited doorstep sale.

The difference between solicited and unsolicited sales is not well understood and the levels of pressure selling are exactly the same. In September 2002 Citizens Advice published a report, *Door to door*, which was submitted as a super-complaint to the OFT. We argued for detailed changes to the legislation to reflect consumer experience, including that solicited doorstep sales should also attract cancellation rights. Despite the

subsequent OFT market study; published in May 2004, which included wide ranging research, action is only now being considered. This is difficult to justify since most respondents to a DTI consultation in 2004 clearly supported change.¹² **Citizens Advice recommends that in its review of consumer protection legislation the EU should alter the Doorstep Selling Directive to ensure that all Member States give cancellation rights to both solicited and unsolicited sales.**

Credit

Cancellation rights in the UK apply to credit that is sold off trade premises and where the consumer is face-to-face with the lender or the trader offering the credit. Cancellation rights also apply to distance sales of credit. These rights were designed to help tackle the issue of pressure selling. Nevertheless it is CAB experience that sales on trade premises can also involve high pressure sales techniques, but consumers have no means of getting out of the credit contract:

A CAB in Gloucestershire reported that a woman in part-time employment was phoned by a lender with whom she already had a loan to ask her to visit the bank to discuss it. At the meeting, the bank official encouraged her to take out another loan by asking her what she would most like in her house. When the client said she would like a conservatory, the bank suggested that she signed a new credit agreement for £8,000. The client asked for time to think whether she could afford the new loan, but the bank was unwilling to let her. The client left the bank having signed the credit agreement, and sought advice from the CAB two days later as she realised she could not afford the repayments. The CAB had to tell her that she had no cancellation rights as she had signed the agreement on trade premises.

A CAB client from Lancashire was unable to cancel a hire purchase agreement for a car he had signed at a car dealer's showroom. After being subjected to five hours of pressure selling, he signed a credit agreement which included payment protection insurance and a warranty costing over £1,000 which the salesman had previously described as "free". When the client had had time to reflect, he realised that payments were unaffordable and phoned the car dealer to cancel the purchase and the linked credit agreement. The dealer told him that he could not cancel the agreement and would be trespassing if he tried to return the car.

Across the EU, this problem has been recognised in the current drafting of a new EU-wide Consumer Credit Directive. Article 13 provides for withdrawal from credit agreements wherever they are signed and allows a 14-day cooling off period. Citizens Advice warmly welcomes this development.

UK consumers have cancellation rights for doorstep sales of credit linked to purchase of consumer goods. These credit cancellation rights are in addition to those under doorstep selling rules and apply equally whether the home visit was solicited or unsolicited.

A CAB client from East Yorkshire sought advice because she had been unable to get through to the company whose salesman had stayed for four hours selling her an orthopaedic bed for £2,300 with a credit agreement to pay for it. She had agreed to the visit so that the bed could be demonstrated and only agreed to buy when he was still there at 10 pm. Under doorstep selling rules this was deemed to be a solicited visit so she was only entitled to cancel because she had also signed up to the credit agreement.

Cancellation rights provided through the sale of credit have proved extremely valuable. They also serve to illustrate the need for the right to cancel to be extended to solicited doorstep sales. However, under current proposals for a new EU Consumer Credit Directive, it is not clear whether cancellation rights for credit agreements will provide for the automatic cancellation of the linked purchase.¹³ Citizens Advice considers that this could cause more problems for consumers who may find that they cannot get out of a purchase contract which they cannot afford. **Citizens Advice recommends that the proposed EU Consumer Credit Directive is amended to ensure that linked purchases are cancelled when the right to cancel credit is exercised.**

Distance sales

Over the past few years distance selling via television, internet and telephone has grown significantly in popularity. For example, access to the internet at home has increased in recent years from 33 per cent of households in 2000 to 44 per cent in 2002, and the value of internet sales to UK households rose from £10.8 billion in 2003 to £18.1 billion in 2004, an increase of 67.6 per cent. More households now have access to cable and satellite TV services, which may include access to home shopping channels: up from 18 per cent of UK households in 1996 to 44 per cent in 2002.¹⁴

Nevertheless traders must provide information about cancellation rights in "durable form". This creates a particular problem for products sold and provided direct to mobile phones, such as ring tones. There is no easy way to provide information in durable form. The most convenient way would be by text message, but the message length would be limited and may not be saved. It also opens the doors to scams because mobile phones can be billed for messages they receive, whether the person being phoned wants them or not.

¹³ Modified proposal for a Directive on Credit Agreement for Consumers amending Directive 93/13/EC, October 2005.

¹⁴ Source for all statistics - Office for National Statistics.

A CAB in South East Wales reported a client and her family had a contract for three mobile phones. They paid £1.50 for a new ringtone for one of the phones. On the monthly bill this appeared as “third party services” and the client paid it. The next month a further £8.50 was billed for third party services. On querying this with the mobile phone company, the client was told she had agreed to have new ringtones sent to her each month. She was given a number to contact to stop further ringtones, which she used. However she then received another bill for £9.50 for third party services. When she contacted the company again, she was told that the ring tone company must have passed her details onto a third party whom they could not trace.

An Eire ECC client sought advice from the UK ECC about changing their satellite TV package to include one particular TV programme, after seeing a TV advert. The advert required the client to telephone to make the purchase and provide credit card details for payment. They later found that money was being deducted from their credit card on a monthly basis for all TV programmes on this particular satellite TV channel. The client had never received any terms and conditions or their cancellation rights. The UK ECC was able to successfully cancel the contract and gain a refund for the client.

During a recent review of the UK transposition of the Distance Selling Regulations, Citizens Advice argued that consumers should be able to cancel using the same medium as they used to make the purchase. But the UK government decided not to make provision for consumers to cancel contracts entered into by telephone over the phone. The consumer has to cancel in writing regardless of how the contract was created initially. Citizens Advice

believes this change is essential and reflects consumers’ expectations. And for those who cannot trace the sender of a mobile phone contract it could resolve the current difficulty in using cancellation rights.

Utilities

Due to the liberalisation of the telecoms and energy markets, in the UK consumers are able to switch suppliers and shop around for the best deal. Contracts are frequently sold to consumers through unsolicited doorstep and telephone sales calls. Cancellation rights apply in these situations. In addition, domestic fuel providers and telecoms providers who use these selling mechanisms are obliged to make contact with consumers, after the sale, providing an opportunity for the consumer to change their mind.¹⁵ This is part of the sector-specific rules and recognises the potential for mis-selling.

A Worcestershire CAB reported that following an unsolicited phone call from a fuel supplier, a client agreed to receive a quote from them. However, she was subsequently informed that she had in fact consented to transfer her fuel supplies to this company.

A CAB in Buckinghamshire reported that an elderly Pakistani man who spoke no English was cold called by a telecoms company sales person who spoke Punjabi. The client was under the impression that the sales person was calling from his existing telephone landline provider and so gave all the information they requested. Unknowingly the client had in fact arranged a contract with this new supplier who billed him for calls.

Cancellation rights relating to utility supplies, however, need to be changed to fit the actual process of switching suppliers. In order for the transfer from one supplier to another to be effective there needs to be a smooth

transition, with no break in service provision and a clear end to the old contract, which coincides with the start of the new contract. Without this there is the potential for billing problems, such as double bills or no bills, and confusion about the rights and obligations of suppliers and their customers, as illustrated by this recent CAB evidence:

A CAB client from Sussex was assured, during an unsolicited sale for fuel supply, that her bills would be 10 per cent cheaper if she switched. But when the bill arrived it was double that of her old suppliers.

An elderly CAB client in North West Wales had been stopped outside a supermarket and persuaded to switch fuel suppliers. She was so unhappy about the decision she immediately returned and was assured the contract would be destroyed. She had been using a pre-payment meter. She then received a letter from the old supplier to say sorry she was leaving and an unexpected £91 bill from the 'new' supplier.

In these situations, existing cancellation rights do not help because bills are not received until sometime after the end of the cancellation period. Citizens Advice recommends that OFCOM and OFGEM should amend conditions for trading to ensure that cancellation rights are extended in these circumstances, so that consumers can be returned to the cheaper supply tariff as if they had not switched.

Codes of practice

In the UK the Enterprise Act 2002 makes provision for business-to-consumer codes of practice to be given approval by the OFT. Guidance on the content of codes submitted for approval state the code must go beyond what is already required by law.

The need for cancellation rights that are better than those offered under consumer protection legislation has been recognised in a number of voluntary codes. For example, members of the Direct Selling Association offer a 14-day cancellation period, whether the doorstep visit is solicited or unsolicited, giving consumers the protection they really need.

Where cancellation rights go wrong

In order to look at how cancellation rights might need to develop in the future we have looked at the common problems reported by consumers and their advisers:

- failure to provide information on cancellation rights
- misleading information on cancellation rights
- traders avoiding cancellation rights
- failure to action cancellations
- delivery and returns problems
- unsolicited goods and services
- breach of contract
- consumer perceptions about their rights to cancel.

Failure to provide information on cancellation rights

All legislation that makes provision for cancellation rights requires that certain information must be provided to consumers when they buy. This includes the right to cancel and how long this right is available, how to cancel and who to inform. In some legislation there is also a requirement to supply a form that the consumer can use. But bureaux report that some traders avoid these obligations. Citizens Advice believes that this causes consumers to be less aware of and less confident to use available cancellation rights, as in these cases:

A CAB client from Hampshire found her daughters, aged 13 and 11, were being charged £2 per text message by a company from whom they had downloaded a ring tone. The children had no information about the terms and conditions and only realised there was something wrong when all the credit on their mobile phone had been used up.

A CAB client from North London found their written cancellation for a doorstep-sold training course was refused. The agreement said they could cancel within 'a reasonable time' but no specific time limits were given. They were also entitled to cancel under UK consumer credit legislation but had never been sent either a copy of the credit agreement or the associated notice of cancellation rights.

A 73 year old CAB client from Lancashire sought advice when a double glazing company wanted to take £10 a week from her pension to pay a £500 cancellation fee. The company failed to inform her of her seven day cancellation period, following their unsolicited doorstep sale, and she had only cancelled on day 13. She had paid £289 in cash on a £1,289 contract so their cancellation fee would have given them over 25 per cent of the price for nothing. If she had been able to cancel the purchase within the seven day period, she would not have had to pay any fee.

Misleading information on cancellation rights

As consumers we often fail to read the small print or to ask sales people for evidence that what they are saying is true. For example:

An Essex CAB found a local gym was misleading clients about their cancellation rights. The client and her daughter had been assured they could

cancel after 12 months membership but when they tried to do this they found that failure to give a month's prior notice, at month 11, left them tied in for a further year.

A Swedish client of the UK ECC who had been living temporarily in the UK checked on her cancellation rights when she was sold a mobile phone and was told she would incur no costs if she cancelled within 14 days. As soon as she received the phone she contacted the company for an address to return it and sent it recorded delivery on the third day. The company denied receiving the phone and billed her for £12.50 a month. They relied on a contract term stating goods had to be sent back via an insured postal service but only sent her these terms when she disputed the bill. As the client did not receive the information required under distance selling rules she did not know that the trader was required to provide information which included their address and the terms for cancelling.

Cancellation rights avoidance

When Directives have been transposed into UK law, unscrupulous traders have nevertheless been able to trade unfairly whilst remaining within the law because they have developed new practices and products outside the scope of the Directive. As we have highlighted earlier in the report, this is a feature of timeshare-like and holiday club sales, and doorstep sales which are deemed to be solicited.

A Merseyside CAB in their role as UK ECC reported that a couple had signed up to a holiday club whilst on holiday in Portugal. They were told verbally that they had a right to a 14 day cooling off period, although the agreement they signed made no mention of this. During the "cooling off period", the couple decided to cancel. However the

company responded that the Timeshare Directive was not applicable because it was a holiday club. The clients were now £4,700 out of pocket.

CAB clients from Hertfordshire sought advice about some confusing information. They had responded to a leaflet through their door saying: 'Hundreds of free wills to be given away absolutely free...' And including scare tactics such as: 'your home is at risk...' They noted the usual price for a will was £55 on this advertisement but were actually charged over £580. The brochure the salesman left when he came said their cheque could not be cancelled but also said that they could cancel within seven days but might incur costs. When the adviser spoke to the company they claimed the cost was due to the time they had spent in the clients' home and the complexity of the will. But the salesman had been in a hurry, saying he had three other clients to see and the will seemed very straightforward. The company claimed the cancellation fee was 50 per cent of the cost.

Citizens Advice has lobbied in the UK for changes to the UK transposition of Directives on both timeshare and doorstep selling to close these loopholes but, no changes have yet been made.

Failure to action cancellations

Some Directives also specify a time limit for the return of any monies already paid by consumers who have cancelled their purchases, for example, the Distance Selling Directive gives a 30 day deadline. This is beneficial for consumers as it creates a clear deadline, after which action can be taken to secure the refund. Where cancellations are not actioned promptly consumers are understandably confused:

A CAB client from West Yorkshire sought advice when the company she had returned a mobile phone to, using the cancellation rights, continued to bill her. The cancellation was made one day after receipt of the goods but it took 10 months to stop the billing process.

A couple from Kent sought advice when they found that, despite cancelling a doorstep sale their cheque for £2,195 had still been cashed. The salesman had phoned and asked if they would be prepared to give an opinion on a massage bed. As the wife has severe arthritis they agreed and, during the visit, were persuaded to hand over a cheque. When the salesman had left they thought about it and cancelled but when the cheque was cashed they found the call centre the company used as a point of contact did not know anything about it. The CAB arranged for written cancellation and secured a refund.

In other cases reported by bureaux, traders avoiding the provision of cancellation rights to consumers have refused to accept the cancellation as being valid, for example:

A Sussex CAB client bought a hearing aid after seeing an advertisement. The advert had also recommended purchasing special batteries for the hearing aid, so the client ordered both products at the same time. However the batteries arrived a month earlier than the hearing aid. Within seven days of receipt of the hearing aid, the client returned both products to the company to cancel the purchase. However the company returned the batteries to the client saying that as the batteries had been returned outside the cancellation period, they would be charging the client £5.

Bureaux in Northern Ireland and the West Midlands have reported a spate of cases where a well known mail order company have refused to accept unused cancelled goods, claiming they were dirty. In one case the goods were furniture ordered for a specific date, the date of a wedding, which had arrived four weeks late. As it was too late, the suite had been returned immediately, unopened.

Whilst living in the UK, a Norwegian client of the UK ECC purchased an internet contract by phone. He explained to the UK provider that he would be returning to Norway in six months' time, and agreed the contract would end at that point. On returning to Norway, he continued to be billed. On challenging this, he was told that the minimum period was a standard 12 months.

Delivery and returns problems

The EU Distance Sales Directive allows the consumer time to reconsider the purchase once they have received and examined the goods. For this right to work the Directive requires delivery within 30 days, unless otherwise agreed, or a prompt refund of the money (with a 30 day limit).¹⁶ Failure to comply with these requirements effectively voids the contract. But CAB clients have found that traders are not always complying, indicating the need for more effort to be made to help businesses understand their obligations:

A CAB client from Merseyside sought advice when he discovered that a mail order company had debited his credit card twice and still had not supplied the goods.

A CAB in South London was given three different reasons for a mail order company's failure to collect faulty goods, as they were passed around various

sections of the customer service department. It had been three months since their original promise to collect the item and the client was afraid they would demand payment.

Unsolicited goods and services

In other cases the traders have claimed that consumers have bought something when they have not. This is a feature frequently reported by CAB in relation to utility suppliers. In some cases the consumer is not necessarily required to sign a contract for ongoing services. The product is delivered and the consumer is left to 'cancel', despite the fact they have never made a purchase. In the case of telecom services the cost just appears on the bill.

A North London CAB client in receipt of jobseekers allowance found his mobile phone was cut off and potential employers could not contact him. He started to receive various subscription services, ring tones, wallpaper and games through his mobile. As he had not bought these services he tried to cancel. Despite two calls, a letter and a text, which he sent on the advice of the company itself, the service continued. But because the charges formed part of his phone bill, when he refused to pay that part of the bill he was disconnected.

An elderly CAB client from North East Wales, living in sheltered accommodation, received an unsolicited parcel of books from a book club. She wrote to cancel but felt she should still pay for the books she had received, despite their print being too small for her to read. She has now received a further parcel of books and has discovered that other residents have too.

The Distance Selling Directive has amended inertia selling rules to ensure that consumers are under no obligation to pay for or take care of the product and traders are prohibited from

demanding payment. But for these provisions to be effective there is a need for consumers to understand their rights and for enforcement to be properly funded.

Breach of contract and consumer perceptions

CAB evidence shows that the term 'cancellation' is often misunderstood. Even where goods are not covered by a right to cancel the term is commonly used. Consumers are often under the misapprehension that returning and getting a refund on faulty goods is cancellation rather than a breach of contract. It is CAB experience that some traders encourage this misapprehension, to avoid having to pay compensation. Instead their "policy" sets time limits on the return of faulty products or compensation for the loss of that purchase:

When a CAB client from Buckinghamshire tried to return a faulty phone, the trader told him they could not help, under what they described as the 28 day rule.

A CAB in Hampshire sent in a copy of a high street trader's leaflet; 'Our commitment to you', which included the frequently asked question; 'My product has been untouched, but I did open the box – am I entitled to a refund?' with the answer; 'Unfortunately not as we have to reduce the price for re-sale once the box has been opened.' Under the leaflet's terms and conditions section it states; 'A full refund or an exchange of equal value, if preferred, is guaranteed for customers returning unopened products within 28 days of purchase or delivery.' Refunds are then offered only if the product cannot be repaired in the manufacturer's guarantee period. Interestingly this was followed with the reassurance: 'This does not affect your statutory rights'.

Clearly there is an element of confusion and both traders and consumers need to improve their knowledge if cancellation rights are to deliver the best levels of consumer protection.

The need for improved enforcement of cancellation rights

The evidence outlined above shows the need for better enforcement of cancellation rights. The recently enacted Unfair Commercial Practices Directive, which requires businesses to trade fairly and allows for enforcement bodies to take injunctive action where they do not, will increase the need for enforcement action. In the UK, the proposed Consumer and Trading Standards Authority will need to be adequately funded to deliver better enforcement in the future.

In the next section we look at cancellation rights in other EU states.

The European experience of cancellation rights

In order to allow EU Member States to reflect the needs of their local markets and consumers, it is common for consumer protection Directives to have a minimum harmonisation clause. Each Member State can improve on the basic provisions of the Directive, to reflect local experience, practices and existing legislation that has worked well. This recognises that some Member States may have more developed markets than others and that custom and practice differs.

To illustrate how Member States have used this facility we asked colleagues in the ECC network for information about the transposition of cancellation rights within the Doorstep Selling, Distance Selling and Timeshare Directives. We received responses from 15 out of a potential 20 ECCs. The tables overleaf show their responses in relation to the length of the cancellation period, when the cancellation period starts and the method of cancellation.

Table 3: Cooling off periods			
Country	Distance selling	Doorstep selling	Timeshare
Belgium	7 working days	At least 7 working days	At least 15 working days
Cyprus	14 calendar days	14 calendar days	15 calendar days
Denmark	14 days (+1 if the last day is a public holiday)	14 days (+1 if the last day is a public holiday)	10 days (+1 if period includes a public holiday)
Estonia	At least 14 days	At least 14 days	At least 10 days
Finland	14 calendar days	At least 14 days	At least 10 days
France	7 days	At least 7 days	7 days
Germany	14 days	14 days	At least 14 days
Greece	10 days	10 working days	10 days (+1 if period includes a public holiday)
Iceland	14 days	14 days	—
Ireland	7 working days	At least 7 days	Within 10 days
Italy	10 working days	7 days	10 days
Lithuania	7 business days	7 business days	10 calendar days
Poland	10 days	10 calendar days	10 days
Sweden	14 days	14 days	10 days
UK	7 days	7 days	14 days

Some Member States have been more “generous” than others, for example Belgium allows a minimum of 15 working days for cancellation of a timeshare. Some Member States appear to have gone for consistency

e.g. France, Greece, Germany, Denmark and Poland, whilst others differ according to the legislation e.g. Finland, UK and Belgium. Some states specify working days and others do not.

Table 4: When the cancellation period starts			
Country	Distance selling	Doorstep selling	Timeshare
Belgium	Goods – day after receipt Services – day after contracting for the contract	Day after signing the contract	Day after signing contract
Cyprus	The conclusion of the contract or performance	The day after the conclusion of the contract or performance	On signing the contract
Estonia	The day the consumer receives the goods or date of entry into contract	At the point that the contract is being entered into	On receipt of the contract

continued

Country	Distance selling	Doorstep selling	Timeshare
Denmark	From receipt of goods or from date of contract for services and bespoke goods	Goods – when they are delivered, services or bespoke goods – when the contract is made	On signing the agreement
Finland	The day after the provision of the notice of information	The day after the provision of the dated document	The day after the contract is signed
France	Day of delivery or acceptance of the offer	Day of the order or commitment to buy	Sending the accepted offer back to the consumer
Germany	For services after information on rights is provided. For goods after receipt of first partial delivery	After the contract is signed and cancellation rights given	After the contract is signed and the information notice provided
Greece	On receipt of the product	From delivery date or acquisition of contract	From receipt of the contract
Iceland	Receipt of goods or contract date for services	Receipt of goods or contract date for services	—
Ireland	Day of receipt by consumer	Provision of cancellation form by trader	Both parties signing a contract
Italy	No information	No information	From the conclusion of the contract
Lithuania	The day after receipt of goods or for services, the day after concluding the contract	Provision of a written, dated notice	Signing the contract
Poland	Goods – day of delivery Services – from conclusion of contract	No information	Delivery of contract
Sweden	Goods – day received Services – the day the contract is concluded	Goods – day received Services – the day the contract is concluded	Day after the day on which the contract was good
UK	On receipt of goods or from the day following purchase of the service	Day after purchase	Day of purchase

The most common trigger for the cancellation period is receipt of the information, which would appear to be realistic for both consumer and trader. However, in the case of distance selling, where goods need to be received and seen, it is sensible for the

cancellation rights to start upon the date of receipt. It is therefore worrying to note that consumers in Cyprus and Finland might not get the goods before the cancellation period starts.

Table 5: Method of cancellation

Country	Distance selling	Doorstep selling	Timeshare
Belgium	Method of cancellation must be indicated in the contract	By recorded letter before 7 days	Recorded letter
Cyprus	By written notice	By written notice	A written notice
Denmark	Any notification to the trader	Any	Any
Estonia	Done within the cancellation period – using information the trader must provide	By notice sent before the cancellation period ends	Submitted before cancellation period ends
Finland	The consumer bears the burden of proof that a cancellation has been made	No specific form is expressly mentioned	In writing
France	Dispatched within the cancellation period	By registered mail	In writing
Germany	In written form or by return of goods	In written form or by return of goods	In written form
Greece	Should be notified in writing or by other means which is available to the receiver	Registered letter	Registered letter
Iceland	—	—	—
Ireland	Within the 7 working day cancellation period	In writing	In writing
Italy	By registered letter	By registered letter which must be confirmed within 48 hours	By registered letter within the following 48 hours
Lithuania	Written notice	By notice	In writing
Poland	By written notice	By written notice	In writing
Sweden	The consumer bears the burden of proof that a cancellation has been made	The consumer bears the burden of proof that a cancellation has been made	In writing
UK	In writing or durable form (orally if the trader permits)	In writing	By notice

It is important for consumers to be able to prove that they have exercised their right to cancel, so it is not surprising that most Member States stipulate that cancellation should be in writing or in durable form, with the exception of Finland in relation to doorstep sales and Denmark in all cases. Some states appear to require notice for some types of contract to be sent by registered or recorded post, e.g. Italy, Greece and France.

To summarise, these tables illustrate the need for more consistency across EU states in cancellation rights. This will help ensure that consumers feel confident about purchasing goods and services across the EU, and is in line with EU objectives for a common market.

The review of EU consumer protection Directives provides an opportunity to reform cancellation rights. However, Citizens Advice is concerned that the transposition of the new Unfair Commercial Practices Directive could be regarded as replacing the need for sector-specific legislation on cancellation rights.

The EUs aim in enacting this important Directive was to fill the gaps and block the loopholes in EU-wide consumer protection legislation. It requires traders not to trade unfairly, allows enforcement bodies to seek undertakings and injunctions for unfair practices to cease and allows the possibility of consumer redress. Although consumer redress is not defined in the Directive, in the UK this is likely to mean civil court action, if the UK decides to provide for this. Citizens Advice believes that civil redress is important in tackling unfair business practices. However, relying on this is a step back from the existing simple and direct redress available via cancellation rights where they have been acknowledged in current legislation. And for timeshare sales, it could put consumers in a worse position because current cooling off rights in specific legislation on timeshare ensure that no deposits need be paid.

Citizens Advice recommends that cancellation rights must be retained in the forthcoming review of EU consumer protection legislation.

Citizens Advice considers that it would not be sufficient for the EU to simply retain cancellation rights in their current form. As the UK European Consumer Centre, Citizens Advice is concerned that the wide variation in rights in different EU states makes it difficult to advise consumers needing help following cross-border purchases. **Citizens Advice recommends that the EU should legislate to make cancellation rights across all Member States and across legislation more consistent. Citizens Advice considers that this should include:**

- **a minimum 14 day cancellation period**, clarifying whether these should be working or calendar days
- **a common time for the cancellation clock to start ticking**, taking into account the problems across different markets, and
- **a variety of methods for consumers to exercise their cancellation rights**. For example, most consumers purchasing goods and services by telephone would expect to be able to cancel the contract by phone.

We also feel that businesses trading across a number of EU states would benefit from simpler and more consistent legislation on cancellation rights. However, it is important that businesses are made aware of their obligations under the legislation. **Citizens Advice therefore considers that any legislative changes to cancellation rights resulting from the review should require Member States to undertake an information campaign aimed at businesses to ensure that they know what their obligations are.**

It is important that legislative change comes quickly. Consumers cannot wait for years for better protection. Citizens Advice is concerned at the slow progress of the review, which was first suggested in a Green Paper in 2001.¹⁷ In the recently published progress report on the review, there appears to be no firm date for change.¹⁸ The new EU Health and Consumer Strategy for 2007-2013 includes this work. This suggests that a long time could elapse before any change occurs to remedy shortcomings in specific Directives and the manner in which Directives have been transposed in domestic legislation. Furthermore, the annual report on the progress of the review states that the current focus is on checking transposition of the existing Directives, rather than drafting new law. There appears to be no active and dynamic process for consumer groups to raise evidence of problems occurring in markets and to get a prompt and dynamic response on how the EU should or could respond to these. **Citizens Advice recommends that the European Commission's Consumer Consultative Group should consider developing a new more dynamic and responsive approach to policy dialogue between the Commission, consumer groups and businesses.** We feel that this will help ensure a quicker review process in the future and one which better reflects consumers' experience.

For the current review, despite the long wait for change, there may now be a danger that when consultations do begin they may all come in a short period. This seems likely to mean that consumer organisations will not have the resources to feed into them all. The risk then is that the process becomes less thorough. To help prevent this, the Commission should start now by bringing together national experts from consumer organisations, in the various fields addressed by the consumer protection Directives. In this way consumers' experience could begin to feed into the consultation process early. **Citizens Advice recommends that the Commission should ensure a thorough process for the review and adequate time for consumer groups to feed in by establishing cross EU consumer group experts, in each field covered by those Directives being reviewed now.**

¹⁷ Green Paper on European Union consumer protection, COM(2001) 531 final, 2001.

¹⁸ *First Annual Progress report on EU contract law and the acquis review*, European Union, November 2005.

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