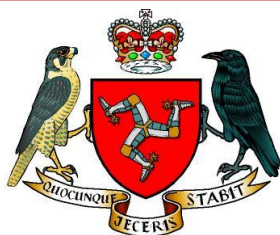




Isle of Man Office of Fair Trading

CONSULTATION ON THE PROPOSED CONSUMER PROTECTION (AMENDMENT) BILL 2015

SUMMARY OF RESPONSES



Isle of Man
Government

Reiltys Ellan Vannin

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1. Introduction

The consultation document was produced to invite comment on a proposed Consumer Protection (Amendment) Bill, which would address the issue of cold calling by making it an offence for a trader to enter into a contract, for the sale of goods and services, as a result of cold calling.

'Cold calling' is a sales tactic used by traders to try to persuade consumers to purchase goods or services during unsolicited visits to their homes or places of work, during excursions away from the traders' business premises or during unsolicited telephone calls. There is clear evidence that scammers and unscrupulous traders employ this sales tactic for criminal purposes and the Bill is intended to address this issue.

The Bill also intends to resolve a number of inconsistencies in the Consumer Protection Act 1991 and to bring it up to date.

The OFT would like to thank all respondents for the time and effort that has been put into replying to the consultation.

2. The Consultation Exercise

The consultation exercise ran from 10th August 2015 to 25th September 2015 and was distributed to the following:

- Tynwald Members
- Attorney General
- Local Authorities
- Chief Officers of Government Departments, Boards and Offices
- Isle of Man Chamber of Commerce
- Isle of Man Law Society
- Isle of Man Employer's Federation
- Isle of Man Trade Union Council
- Age Isle of Man
- Ballacurn House Trust
- C.I.R.C.A.
- Care In MANN
- Community Nursing Fund
- Corrin Memorial Home Governor's Accounts
- Endowments Committee of the Parish of Patrick
- Grest Trust
- Isle of Man Health & Care Association
- Isle of Man Live at Home Scheme
- Isle of Man Neighbourhood Watch Scheme
- Isle of Man Residential Homes
- Meals on Wheels IOM
- Praxis Care Limited

- Samaritans of the Isle of Man
- Southern Befrienders Limited
- Victim Support Isle of Man

The document was also made available in the 'Consultations' section of the Isle of Man Government and Office of Fair Trading websites.

3. The Responses

A total of 42 responses were received. A list of respondents is attached at **Appendix 1** and a summary of those responses, together with representative comments is attached at **Appendix 2**.

4. Conclusion

The activities of unscrupulous traders who operate through doorstep selling remain of serious concern in the Island. These traders tend to target the vulnerable, frail and elderly and although relatively few in number, the hardship and grief which they cause should not be underestimated.

Following the consultation exercise and further detailed consideration of the responses and opinions received, the OFT agreed it was appropriate to introduce the Bill to the Legislative Branches.

The proposed Bill will enter into the Branches in December 2015 with a view to the Bill becoming Law by January 2017.

APPENDIX 1

LIST OF RESPONDENTS

- Nicholas Hill
- Adrian Harrison
- Penelope Bielich
- Mr C Vickers
- John Motley
- Elli Sewell
- Helen Kinvig
- Tim Norton
- Victim Support Isle of Man
- Nigel Jones
- Paul Ginns
- Matthew Warren
- Isle of Man Creamery Ltd
- Meals on Wheels
- Everest Ltd
- Peter Verstage
- Jurby Parish Commissioners
- Ballaugh Parish Commissioners
- Andreas Parish Commissioners

23 further responses to the survey were received but marked anonymous and therefore have not been named in the above list; however the statistics and comments made have been included in **Appendix 2**.

APPENDIX 2

SUMMARY OF RESPONSES

General Comments made regarding the Bill

- **Anonymous** - Even cold calling by charities and religious groups should be illegal. Also, the mass circulation through mail of unsolicited marketing leaflets should be illegal.
OFT Response: Whilst the sentiment is understood, the proposal in relation to charities and religious groups is so far beyond the scope of the proposals contained in the consultation that it would be necessary to consult further. There is no evidence that the activities of charities and religious groups are more than potentially an annoyance for some and in particular, that vulnerable people are being targeted for financial gain. In relation to unsolicited marketing via the mail, prohibition is not really a practicable response – at least with mail (unlike cold calling) the consumer has a choice whether or not to respond.
- **Anonymous** - I think a ban and prosecution for people preying on the weak is the only way forward in regards to cold calling. If people need a service they will look for it themselves.
OFT Response: The OFT agrees with this response.
- **Anonymous** - I have signed-up to the TPS blocking service but still get cold calls. Most of the cold calls I receive have fake calling numbers. Manx Telecom could block these at source; if it's not a valid calling number then it shouldn't be allowed through. Telecom suppliers should be required to do more. This should be included to the bill - if requested, then the telecom supplier should block calls with fake phone numbers.
OFT Response: The OFT has dealt with some heart breaking phone based scams and would be happy to support action to disrupt the scammers. The solution is not, however, as simple as suggested because the scammers are able to defeat the technology. The OFT will discuss with the Communications Commission what action might be possible.
- **Anonymous** - Cold callers should be reported and companies fined if caught.
OFT Response: That is the purpose of the Bill.
- **Victim Support Isle of Man** - The vulnerable need to be protected and people should feel safe in their own homes. So the bill is a good move but it needs to be robust without hindering genuine hardworking legitimate good businesses.
OFT Response: We believe that the proposals strike the right balance.
- **Nigel Jones** - It is important that definitions of 'cold calling' are sufficiently well defined so as to prevent bad practice but not stifle trade or maybe an alternative would be to create a code of conduct and ensure that the public is aware of how traders must behave to comply with any such code. It may prove less costly and actually more effective than legislation.
OFT Response: The problem with Codes of Conduct is that whilst responsible traders will happily comply, the minority of unscrupulous traders will ignore them. The OFT believes that the criminal offence is a necessary deterrent.
- **Paul Ginns** - This Bill must be enforceable; the Telephone Preference Service is ineffectual in England, and this Bill must be easily enforceable.
OFT Response: In terms of local doorstep cold calling, effective enforcement is achievable. It will be much more difficult to enforce the provisions relating to telephone cold calling; which generally emanates from outside the EU.

- **Everest Ltd** - Everest has an excellent reputation and supports activity to remove unscrupulous traders. We are concerned that the drafting of the amendments may penalise companies such as ourselves who operate to the highest standards. In this regard, we believe these amendments may curtail the activity of professional companies without necessarily reducing the activity of rogue traders and we do not believe that is the intention or outcome sought by the amendment. We would propose an alternative solution to this issue introducing a programme of licensing for traders who use cold canvassing techniques. It is a suggestion that it should be an offence to trade without such a license therefore making contracts void. We would be happy to contribute to a process of drawing up such a framework with the O.F.T. We would seek clarification as to whether our sales process would be affected by the amendment, if it were to go through in its current format, specifically in regard to questions 1, 2, 3. We have significant concerns that if the bill is passed in its current format and the Everest process falls within its scope it may lead to Everest being unable to trade cost effectively on the Island with the possibility that it would endanger the employment of our staff on the isle of Man.

OFT Response: Whilst the concerns are noted, the OFT does not accept that cold calling is a valid sales technique. The Bill, if enacted, would require some companies to modify their sales methodologies. The public needs and deserves to be protected from being pressured into purchasing goods and services. The aim is to put the power to initiate the sales conversation with the customer not the trader, because that is the fairest way. Whilst the OFT notes the comments about employment, the reality is that the proposals will not change the underlying market demand for products such as double glazing and conservatories.

- **Isle of Man Creamery Ltd** - I would like to have some further information or advice on the implication of the Proposed Consumer Protection (Amendment) Bill 2015. Our concern is that we have found over the years that our most productive method of obtaining new milk rounds customers for our milk rounds service has been dropping a leaflet through potential customers' doors or directly approaching them with a telephone call or personal call. As a responsible trader we need to understand the implication for these activities of the Proposed Consumer Protection (Amendment) Bill 2015.

OFT Response: The proposals as drafted do not apply to contracts for the supply of food, drink and other goods for current consumption by use in the consumer's household. This means that the Bill will not prohibit anyone soliciting for milk rounds by leaflets, personal calls or telephone calls.

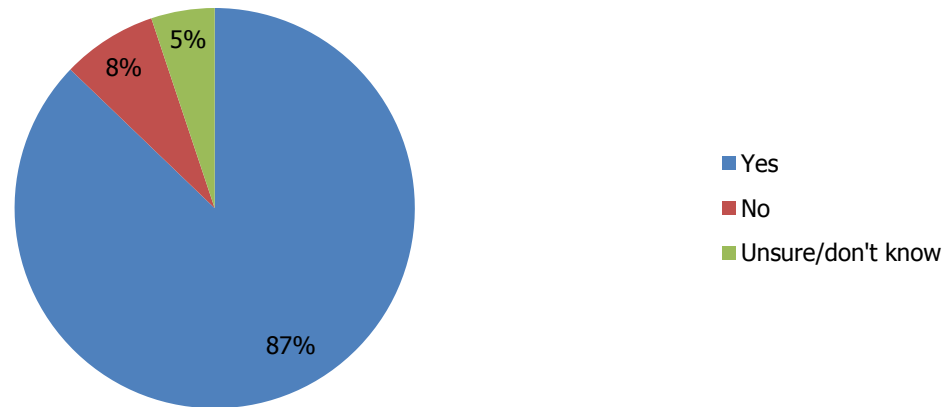
- **Meals on Wheels** - Does the draft include unsolicited e-mails, whilst it may be covered in telecommunications does this need to have its own heading. As you will be aware a lot of elderly people are now using computers, which will rise in the years to come, once you have signed up for an e-mail you receive lots of spam mail. This could be a way of targeting the vulnerable. Have spoken to OFT and have offered our services once new legislation is in place. We could as a one off deliver a fact finding sheet to our service users, we have a number of vulnerable service users and I believe this could assist them in potential issues in the future with unwarranted cold calling.

OFT Response: The OFT appreciates the help and support which it receives from Meals on Wheels who access, on a regular basis, some of the most vulnerable in society. Whilst the sentiment behind the idea of banning unsolicited emails is understood, it is not a practicable option. The key difference between cold calling and unsolicited emails is that with cold calling, the consumer is effectively denied the choice whether to enter into dialogue with the seller.

- **Peter Verstage** - I have read through the consultation documents on your website and would like to comment on the proposals. Whilst the aims and general content of the proposed legislation is commendable, it is not altogether justified to assume that all cold callers are rogues and cheats who should not be allowed to sell their services in this manner. For example, I move into a new house and the local window-cleaner knocks on my door and says "good morning. I'm the local window cleaner and I do this street on the first Thursday of the month. I clean Mrs. Smith's windows at No.38 and Mr. Jones's at number 45 and they would vouch for me". I would welcome this approach and do not think this particular cold caller should be prosecuted. Or: "I saw the removals van here this morning and you must be the new owners. I cut the grass once a week for five of the houses in this street, and I'd be delighted to cut your lawn as well. If you speak to the lady opposite, Mrs Plumb, I'm sure she will recommend my services." Or: "Mr. Hurley at No.6 told me you'd just moved in. I do housework and general cleaning for four of the apartments in this block, and I charge £10 per hour. I'd be delighted to come and clean for you on a weekly basis if need me." Perhaps the answer would be to include gardeners, window cleaners, house cleaners etc. in an extension to the clause allowing "deliveries by roundsmen", or perhaps a system of registration for gardeners, window cleaners, plumbers etc? Happy to expand on this if you wish.

OFT Response: The Bill proposes to exempt low value contracts (suggested value of £100 at present) which may cover window cleaners, gardeners etc. and therefore they could 'cold-call' for their particular business without breaching the law. For those traders which offer services higher than the stipulated contract amount, there is nothing to prevent the trader issuing flyers etc. through the consumer's door, which therefore allows the consumer to choose whether they want to employ their services or not. The main purpose of this Bill is to prevent unscrupulous traders who prey on the most vulnerable in society by using cold calling techniques to sell goods and services that are not needed, or to sell goods and services at prices that are exorbitant.

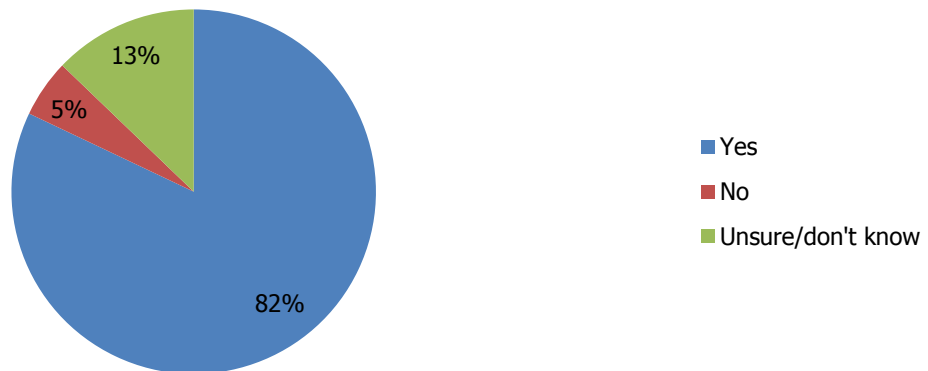
**1)DO YOU AGREE THAT IT SHOULD BE A CRIMINAL OFFENCE FOR
A TRADER TO ENTER INTO A CONTRACT WITH A CONSUMER
THROUGH DOORSTEP COLD CALLING?**



Summary of Comments to Question 1

- **Mr C Vickers** - Yes and it should also extend to people selling religion such as the Jehovah's Witnesses and Mormons.
OFT Response: Please see earlier comment regarding religious groups.
- **Victim Support Isle of Man** - I have mixed views. Yes there needs to be protection to the vulnerable and there are unscrupulous callers, but there could be very genuine callers too conducting legitimate hardworking business.
OFT Response: Whilst it is agreed that not all cold calling is undertaken by rogues; even if undertaken by a reputable trader is it a sales technique that is fair on the typical consumer? The OFT does not believe that it is fair.
- **Everest Ltd** - Everest use neighbourhood canvassing as part of its sales process to see if they need any home improvements carrying out. At this canvass stage Everest only make an appointment. There is an opportunity for the customer to cancel this appointment by ringing our call centre. A home visit then takes place to discuss the customer's needs, give a demonstration and provide a relevant quotation in writing. We adhere to the F.E.N.S.A guidelines (*appendix 1 provided to OFT*) and adhere to the F.C.A guidelines (*appendix 2 provided to OFT*). We believe following these codes, plus our internal processes ensure we are treating customers fairly and are at the forefront of ethical trading in this market. We believe that responsible companies acting in this way should be able to cold call on customers.
OFT Response: Whilst the procedures adopted may to some extent mitigate the unfairness of cold calling, the OFT believes that the technique itself is inherently unfair on consumers and is likely to lead to consumers buying goods and services which they do not need.

2)DO YOU AGREE THAT IT SHOULD BE A CRIMINAL OFFENCE FOR A TRADER TO ENTER INTO A CONTRACT WITH A CONSUMER THROUGH EXCURSION-BASED SELLING?



Summary of Comments to Question 2

- **Victim Support Isle of Man** - This could exclude say a trip to see the Apple Orphanage and persons agreeing to have a regular supply of bottles sent to them. So I can see there could be legitimate business affected. Therefore I am not entirely in agreement.
OFT Response: We thank the respondent for their comment however; the example given is not what we would class as excursion based selling. An example would be where a trader takes prospective customers on a coach trip round the Island, i.e. away from the trader's business premises, with the intention of persuading them to agree to purchase goods or services by entering into contracts at some stage during the coach trip.
- **Everest Ltd**- We would seek clarification as to what constitutes excursion based selling? As part of the Everest sales process, we would take or meet a prospective customer at a previous customers address. This would provide the customer with additional reassurance in regard to product and installation quality. It also gives the customer a third party reference to support their decision. This visit would happen sometimes after a contract was signed and sometimes before. It would never be the case that a contract would be signed at a third parties premise. We believe this process adds real value to the customer experience and when conducted in this way, it should not be an offence.
OFT Response: If a contract is made during an excursion organised by the trader away from the trader's permanent or temporary business then the trader will have committed an offence. The key term here is "during an excursion". If a contract is not made during the visit the trader will not have committed an offence.

3)DO YOU AGREE THAT IT SHOULD BE A CRIMINAL OFFENCE FOR A TRADER TO ENTER INTO A CONTRACT WITH A CONSUMER THROUGH TELEPHONE COLD CALLING?

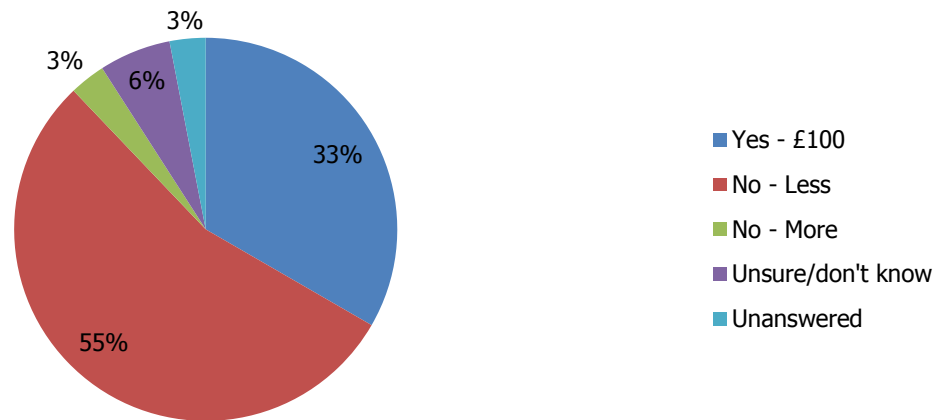


Summary of Comments to Question 3

- **Matthew Warren** - Yes, but I don't know how you can regulate this, as the calls from UK/India are vast.
- **Tim Norton** - Yes, but I don't know how it is enforceable when the caller is off-Island.
- **Everest Ltd** - Everest Home Improvements do not enter into contracts via telephone cold calling and would therefore support this amendment if it is believed it will offer more consumer protection. We would seek clarification on the following point. Everest will call customers both existing and prospective in order to make an appointment, or to follow up on an outstanding quotation. In either case, this call would result in a company representative visiting the home. If any contract were to be signed it would be face to face. We believe this process to be outside the scope of this amendment but would seek clarification from the O.F.T.

OFT Response: Enforcement will be difficult because many of the calls originate from outside the EU however, the contract which is created between the trader and the consumer will be automatically made under Manx law, which will make it very difficult for the trader to enforce the resultant contract. Thus if the consumer changes their mind, the trader will need to expose itself to the risk of prosecution to enforce the contract. This strengthens the consumer position but cannot provide total protection.

4)DO YOU AGREE THAT CONTRACTS WITH A TOTAL VALUE OF £100 OR LESS SHOULD BE EXCLUDED FROM THE PROVISIONS? IF NOT, WHAT SHOULD THE LIMIT BE AND WHY?



Summary of Comments to Question 4

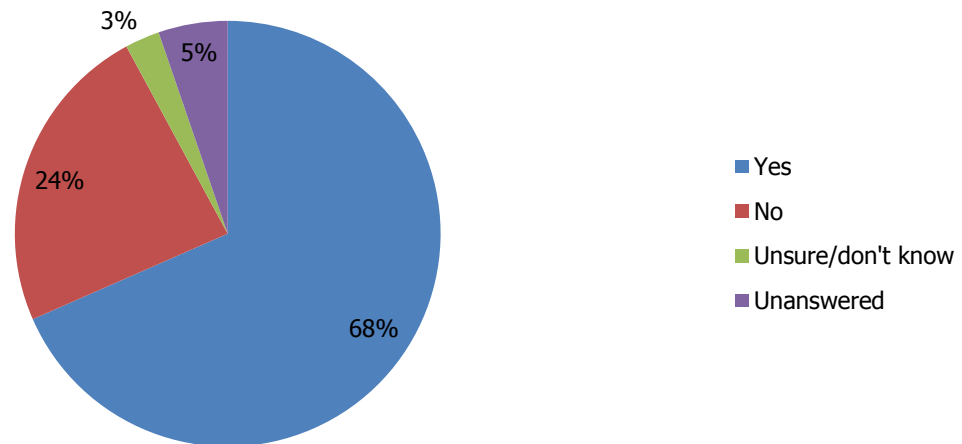
- **Anonymous** - No, it should be £50 maximum.
- **Nicholas Hill** - I do not agree to the exemption because the cold callers will find some way around the restriction by either selling multiple products or billing monthly over a long period.
- **Anonymous** - No limit, even cold calling by charities and religious groups should be illegal.
- **Anonymous** - No. Vulnerable people can't afford to lose £100 or even £10.
- **Mr C Vickers** - I do not think that there should be any fixed value. The bill should cover not only financial transactions but the "selling" of or attempted conversion to religious doctrines and cults.
- **Anonymous** - Should be no more than what a window cleaner would charge, as at £100 the contract could be used as a gateway to offer more work once the initial contract is complete, thus offering a get around for those who are on the take.
- **Anonymous** - No. We need to ban the whole pestering industry that has been built around cold-calling - charities included.
- **Anonymous** - Not necessarily it would depend on the repercussions if they were trying to gain access to bank details to scam more.
- **Anonymous** - No - £50.
- **Anonymous** - No I am thinking of vulnerable elderly and other people - should be £0 (zero). Pensioners and those on benefits can't afford to part with even £5 through persuasion or perceived coercion for goods/services that they do not need, and had never occurred to them they might want. I guess it's OK for companies like KleenEasy (spelling?) to post a catalogue through a letterbox and collect orders personally if these are requested,

so long as there is no bullying involved. I guess in such cases legislation re a cooling off and cancellation period does apply, and the client should be notified of this in writing. I have not experienced doorstep cold selling myself, perhaps? I don't have a doorbell, and registering with the telephone preference service has made a difference to telephone calls.

- **Anonymous** - No, there should be no limit.
- **Tim Norton** - No. I don't think there should be minimum limit.
- **Anonymous** - I do not agree, I think £100 is too high, what if a pensioner with no money lost this? The lower limit should be roughly £25 and above.
- **Victim Support Isle of Man** - No the initial contract could be at £50 but the pressure can be put on for ongoing payments or hidden renewal clauses. Is there a need for a limit to be stated in the bill?
- **Nigel Jones** - £250.
- **Anonymous** - No - this would provide a 'foot in the door' for the unscrupulous traders who would simply utilise the exemption to their own ends. The ban should be total with no exemption.
- **Paul Ginns** - NO. Clever contractors could easily overcome this provision with an initial value of less than £100.00 and extending later to a greater amount.
- **Matthew Warren** - There should be a limit of £25 only to be pegged to inflation. This would save having to review on regular basis.
- **Anonymous** - No, limit should be Zero.
- **Anonymous** - No. As little as practicable. A vulnerable person could end up liable for lots of small sums.
- **Everest Ltd** - Everest would agree with this exclusion on the grounds of pragmatism.
- **Jurby Parish Commissioners** - Value should be nil.
- **Ballaugh Parish Commissioners** - Value should be zero.
- **Andreas Parish Commissioners** - No limit should be set, because a sum under £100 could be a lot for some elderly and vulnerable persons.

OFT Response: It is not proposed to include the sum in the Bill itself; rather to enable it to be fixed from time to time by Order. Whilst the OFT notes the various comments it is minded to set the initial exemption at £100 and then assess the impact.

5)DO YOU AGREE THAT THE PROPOSED CANCELLATION PERIOD OF 14 DAYS IS APPROPRIATE? IF NOT, WHAT PERIOD IS APPROPRIATE AND WHY?



Summary of Comments to Question 5

- **Nicholas Hill** - I suggest a period of 30 days to ensure that family members or health professionals are more likely to discover the event.
- **Anonymous** - It would be a step in the right direction but vulnerable people shouldn't be put into that position.
- **John Motley** - Yes, or longer.
- **Anonymous** - 30 days. To cover holidays, illness etc.
- **Anonymous** - It's too small a step. A cancellation period of 28 days would allow more time for consideration.
- **Anonymous** - it would depend on the circumstances, product and the service.
- **Anonymous** - 30 days to allow for holidays and true length of reconsideration. We should seek to extend current provisions.
- **Anonymous** - 14 days is still quite short. 21 days would be better.
- **Paul Ginns** - YES. I would prefer 30 days particularly for the elderly and vulnerable to allow more time for discovery by relatives/friends.
- **Matthew Warren** - 30 days.
- **Everest Ltd** - Everest believes that the current seven day cooling off period is adequate. Our experience is that the majority of cancellations happen in the first 2 to 3 days. This is because we take a refundable deposit. Extending the period is unlikely to offer greater protection in our opinion. It is also the case, that with a bespoke built product such as ours, it will delay the survey and installation process causing customer inconvenience. This is because no company would want to suffer additional costs without being certain the

customer is going ahead.

- **Ballaugh Parish Commissioners** - Cooling-off period should be 28 days.

OFT Response: The OFT certainly believes that the proposed increase is justified and gives the families etc. of vulnerable consumers more time to discover problems. The risk in increasing the period still further, is that we are starting to impinge on the rights of consumers to spend their money as they feel appropriate. Sensible traders will not start work before the cooling off period has expired. Overall we believe that 14 days strikes the correct balance and is proportionate to the risk.