

SECTION 8: DISTANCE SELLING

Question 38: Given BCAP's policy consideration, do you agree that rule 8.3.4 (Consumers must be told if the advertiser intends to supply substitute products or services if the advertised product becomes unavailable) should be included in the Code? If your answer is no, please explain why.

<i>Responses received in favour of BCAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
Office of Fair Trading	Code should make clear that it applies to services as well as goods	<p>The rule has been amended to make that clear:</p> <p>8.3 Broadcasters must be satisfied that the advertisers:</p> <p>8.3.4 tell consumers if they intend to supply substitute products <u>or services</u> if the advertised product <u>or service</u> becomes unavailable;</p>
<i>Responses received against BCAP's proposal:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
Home Retail Group	The respondent argued that the rule exceeds the requirements of the CPRs and DSRs	The Distance Selling Regulations explicitly require that traders inform consumers, before the contract is formed, if they intend to supply substitute products if the advertised product becomes unavailable (paragraph 7(b)). BCAP disagrees with the respondent's view that the rule

		exceeds the DSRs.
<p>Question 39: Given BCAP's policy consideration, do you agree that rule 8.3.6a (consumers must receive a refund within 30 days if they cancel, for any reason, within seven days) should be included in the Code? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>ELSPA British Telecom ELSPA Home Retail Group Office of Fair Trading</p>	<p><i>Summaries of significant points:</i></p> <p>Respondents pointed out that traders are not, under the DSRs, obliged to provide refunds in all circumstances.</p>	<p><i>BCAP's evaluation of those points and action points</i></p> <p>BCAP has amended the rule to bring it into line with the Distance Selling Regulations::</p> <p>8.3 Broadcasters must ensure that advertisers</p> <p>8.3.6 Give refunds in accordance with rule 8.4</p> <p>8.4 Advertisers must give refunds within 30 days if the consumer cancels, for any reason, within seven days or receiving goods or seven clear days from the conclusion of a contract for services, <u>unless</u></p> <p><u>a. performance of the service has already begun, with the consumer's agreement</u></p> <p><u>b. the price of the product or service is dependent on fluctuations in the financial market beyond the control of the advertiser</u></p> <p><u>c. the product is perishable, personalised or</u></p>

		<u>made-to-measure</u> <u>d. the product is an audio or video recording or computer software unsealed by the consumer</u> <u>e. the product is a newspaper, periodical or magazine</u> <u>f. the service is a betting, gaming or lottery service</u>
<i>Responses received against BCAP's proposal:</i> ELSPA	<i>Summaries of significant points:</i> The rule makes sense for teleshopping but does not make sense for spot advertising	<i>BCAP's evaluation of those points and action points:</i> The DSRs apply equally to goods or services promoted in teleshopping and spot advertising.
Question 40: Given BCAP's policy consideration, do you agree it is reasonable to extend the period within which orders must be fulfilled from 28 to 30 days? If your answer is no, please explain why.		
<i>Responses received in favour of BCAP's proposal from:</i>	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
Office of Fair Trading	Code should make clear that it applies to services as well as goods	<i>BCAP has amended the rule to</i> [Broadcasters must be satisfied that the advertisers:]
Office of Fair	Noted that 30 days applies in the absence of any	

Trading	other agreement on performance schedule.	Fulfil orders within 30 days unless <ul style="list-style-type: none"> a. the nature of the product or service makes it reasonable to specify a longer period in the advertisement, for example, advertisements for made-to-measure products, plants that are out of season, or products that are supplied on an instalment basis, or b. a longer performance period has been agreed with the consumer.
Responses received against BCAP's proposal: None	Summaries of significant points:	BCAP's evaluation of those points and action points:
<p>Question 41: Given BCAP's policy consideration, do you agree that present radio rule 21.1 f) of section 2 (licensees must be satisfied that fulfilment arrangements are in operation whereby monies sent by consumers are only released to the advertiser on receipt of evidence of despatch (unless licensees are satisfied that adequate alternative safeguards exist) is unnecessarily prescriptive in the light of BCAP's proposed rule 8.3.1? If your answer is no, please explain why.</p>		
Responses received in favour of BCAP's proposal from: Office of Fair Trading	Summaries of significant points: The OFT agreed with BCAP's proposal.	BCAP's evaluation of those points and action points: BCAP welcomes the OFT's comments.

<p><i>Responses received against BCAP's proposal:</i></p> <p>None</p>	<p><i>Summaries of significant points:</i></p>	<p><i>BCAP's evaluation of those points and action points:</i></p>
<p>Question 42: Given BCAP's policy consideration, do you agree that present TV rule 11.2.3 (a) and (b) (advertisements must make clear if the advertiser intends to send a sales representative to visit respondents) and present Radio rule 21.1 j) (i)-(ii) of section 2 (ditto) should not be included in the Code? If your answer is no, please explain why.</p>		
<p><i>Responses received in favour of BCAP's proposal from:</i></p> <p>None</p>	<p><i>Summaries of significant points:</i></p>	<p><i>BCAP's evaluation of those points and action points:</i></p>
<p><i>Responses received against BCAP's proposal:</i></p> <p>Office of Fair Trading Which?</p>	<p><i>Summaries of significant points:</i></p> <p>The respondents felt it could be helpful to consumers to know whether a sales representative is likely to visit, and considered that data protection law does not require this. They favoured retaining the present rules.</p>	<p><i>BCAP's evaluation of those points and action points:</i></p> <p>BCAP considers that the present rules have little bearing on consumer's perception of distance selling advertisements. The ASA has received no complaints about personal calls from sales representatives since it has been regulating broadcast advertisements, which suggests that consumers do not look to the ASA to ensure they are protected from unexpected calls from sales representatives.</p>

Question 43: i) Given BCAP's policy consideration, do you agree that present TV rule 11.2.2(g) (advertisers must not send advertised or additional goods with the authority of the recipient) should not be included in the Code? If your answer is no, please explain why. ii) Given BCAP's policy consideration, do you agree that 8.3.7 (advertisers must not seek payment for goods sent without the recipient's authority) should be included in the Code? If your answer is no, please explain why.		
<i>Responses received in favour of BCAP's proposal from:</i> Office of Fair Trading	<i>Summaries of significant points:</i> The OFT agreed with BCAP's proposal.	<i>BCAP's evaluation of those points and action points:</i> BCAP welcomes the OFT's comments.
<i>Responses received against BCAP's proposal:</i> None	<i>Summaries of significant points:</i>	<i>BCAP's evaluation of those points and action points:</i>
Question 44: i) Taking into account BCAP's policy consideration, do you agree that BCAP's rules on Distance Selling are necessary and easily understandable? If your answer is no, please explain why. ii) On consideration of the mapping document in Annex 2, can you identify any changes from the present to the proposed rules that are likely to amount to a significant change in advertising policy and practice and are not reflected here and that should be retained or otherwise be given dedicated consideration? iii) Do you have other comments on this section?		
Three organisations	The respondents listed in the left hand column	BCAP welcomes the respondents' comments.

<p>requesting confidentiality E.ON An individual</p>	<p>agreed with BCAP's proposal.</p>	
<p>Alliance Boots</p>	<p>Considered that the rules (except those relating to children) merely repeat law and are therefore unnecessary</p>	<p>BCAP considers that the Code should reflect the most relevant legal provisions. The ASA investigations process provides an alternative to legal action: from consumers' point of view, this is advantageous because it allows them to pursue their concerns without the prohibitive cost of mounting legal challenges and means that complaints are resolved more quickly; from the advertiser's point of view, it provides a cost-effective alternative to pursuing or defending legal challenges and promotes the resolution of complaints through simple changes to advertisements, rather than punitive measures. The inclusion of relevant legal requirements simplifies the compliance process for those marketers who do not employ full-time legal advisors.</p>
<p>Consumer Focus</p>	<p>Considered that the Code should better reflect the requirement for advertisers to tell consumers the purposes for which their personal data will be used; especially if it is likely to be useful for behavioural targeting</p>	<p>BCAP considers that that legal obligation does not translate into an obligation on broadcasters.</p>
<p>Consumer Focus</p>	<p>Suggested that search engines and comparison sites should state that results are not necessarily in order of relevance but that commercial</p>	<p>BCAP notes that the Code includes a requirement for advertising to be recognisable as such; sponsored links should be clearly labelled. BCAP</p>

	relationships may determine the prominence of results.	considers it is not within its remit to determine how search engines organise their listings results.
Consumer Focus	Called for the Code to cover online auctions where consumers presently have no redress for misleading claims, delivery or safety.	BCAP considers that this issue is not within its remit.
Consumer Focus	Considered that the Code should require mobile ads to fully describe the services offered in initial ad, placing particular emphasis on vulnerable people and children. The respondent suggested that the Code should prohibit the use of data for purposes to which the consumer has not explicitly agreed or that unfairly disadvantage them.	BCAP considers that rules on misleadingness and children, as well as database practice (in the CAP code) cover the respondent's concerns.
Office of Fair Trading	Considered that the principle in this section should refer to CPRs and BPRs	BCAP considers that the section headings in the Code do not constitute an exhaustive list of relevant legislation; they are intended to highlight only the most significant pieces of relevant legislation.
Office of Fair Trading	Suggested that the principle in this section should make it explicit that broadcasters who are subject to Distance Selling Regulations must comply with them	BCAP considers that the Code's general statement that broadcasters and advertisers must comply with the law covers the respondent's concerns
Office of Fair Trading	Considered that the definition of this section should make clear that these rules apply when exclusive use of distance communication leads to contract	BCAP considers that the proposed wording makes this clear:

		<p>“The rules in this Section apply to advertisements that promote specific products and invite consumers to buy those products, without meeting the supplier face-to-face, by means of direct response mechanisms...” [emphasis added]</p>
Office of Fair Trading	Suggested that the definition of this section should make clear that the rules apply to services as well as goods	BCAP agrees and has amended the wording in line with this suggestion (see above)
Office of Fair Trading	Suggested that the definition of this section should exempt those contracts to which the Distance Selling Regulations do not apply	<p>The DSRs do not apply to:</p> <ul style="list-style-type: none"> (a) for the sale or other disposition of an interest in land except for a rental agreement; (b) for the construction of a building where the contract also provides for a sale or other disposition of an interest in land on which the building is constructed, except for a rental agreement; (c) relating to financial services, a non-exhaustive list of which is contained in Schedule 2; (d) concluded by means of an automated vending machine or automated commercial premises; (e) concluded with a telecommunications

		<p>operator through the use of a public pay-phone;</p> <p>(f) concluded at an auction.</p> <p>BCAP considers the rules should exempt (a), (b), (c) (which is covered elsewhere in the Code), (d) and (e). (d) and (e) exempt payments to vending machines or public payphones, but, since televisions cannot operate as vending machines or public payphones, need not be explicitly reflected in the BCAP Code. BCAP considers that the rules should continue to apply to (f), despite the fact that they are not, in that case, legal requirements. Several teleshopping channels operate as auctions and the potential for consumer harm is as great for auctions as for other forms of sale. (NB auctions are exempt from the CPRs, so maintaining the rules would not breach the maximum harmonisation principle.)</p> <p>BCAP has changed the wording to:</p> <p>“The rules in the Section apply to advertisements that promote specific products and services and invite consumers to buy those products, without meeting the supplier face-to-face, by means of direct response mechanisms, except advertisements for</p> <ul style="list-style-type: none">a. The sale of landb. The construction of a building, if that includes the sale of land
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		c. Financial services, which are covered by section 14
Office of Fair Trading	Rules should state that information is required (under section 7 of DSRs) "in good time prior to conclusion of contract"	The present BCAP TV and Radio Codes do not reflect all the information provision requirements of the DSRs. BCAP considers that it is disproportionate to expect broadcasters to ensure the advertisers comply with all requirements of the DSRs and considers that this is one requirement that might be left to the law, without additional protection in the Code.
Office of Fair Trading	Broadcasters should have responsibility for ensuring that advertisers give consumers adequate info about their cancellation rights.	BCAP has amended the wording to: [Broadcasters must be satisfied that the advertisers ...] Inform consumers about their cancellation rights
Office of Fair Trading	Should more closely reflect DSRs: advertisers must inform consumers before contact if they are likely to asked to pay the cost of returning goods and advertisers must bear cost of return of faulty goods.	BCAP has amended the wording to: Except for substitute goods supplied in place of the goods that the consumer ordered, <u>and faulty goods,</u> advertisers may require consumers to pay the direct cost of returning goods ordered through a distance selling mechanism, <u>if the consumers were informed before the contract was concluded that they would be liable for the cost of returning unwanted goods.</u>
Office of Fair Trading	code should reflect 19 (8) re cancellation and outdoor leisure events	The Code does not reflect the requirement for advertisers to provide refunds on products that become unavailable, to which this is an

		exemption.
RadioCentre	Is concerned that placing responsibility on broadcasters for the advertisers' compliance is additional burden on radio broadcasters; is particularly concerned that rules stem from legislation and Auctionworld concerns, not problems on Radio.	Very similar rules exist in the present Radio Code, so the new rules should not constitute an additional burden on radio advertisements.
Tesco	Sees no role for ASA in matters beyond advertising. Does not object to content of rules, since they merely reflect existing legal requirements.	The ASA offers an additional degree of consumer protection that allows complaints to be resolved more quickly and cost-effectively than would be possible through legal action. The high volume of complaints received by the ASA suggests that consumers regard the fulfilment of distance selling contracts that originated in advertising as part of the advertising process itself. BCAP has specific responsibilities for regulating teleshopping, including off-screen activity, under the terms of its agreement with Ofcom.