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### **Timeshare Sales: Improving the protection of consumers, a response to the DTI**

#### **INTRODUCTION**

1. The CAB Service welcomes the opportunity to comment on the DTI's Consultation Paper on Timeshare Sales and, in particular, on whether UK legislation needs updating.
2. The CAB Service deals with around one million consumer and debt related queries or complaints each year. For many consumers, their local CAB is likely to be the first agency they contact if they have a consumer problem. For many years, CABx have reported problems concerning timeshare agreements. Although CABx do not keep separate statistics listing the exact number of timeshare problems dealt with, they do send NACAB case reports describing the types of complaints dealt with, particularly where those complaints suggest that consumers are not adequately protected by the current legislation. Problems are particularly reported in connection with the methods used to induce them to enter into timeshare agreements and the fact that, once entered into, many agreements are outside the provisions of the Timeshare Act and cannot be cancelled under the cooling –off rules contained in that Act.
3. The CAB Service understands that other agencies also report a large number of complaints about timeshares. The OFT's 1999 Annual Report includes figures to show that there were 6161 consumer complaints about timesharing in the 12 months to 30 September 1999 compared to 5,660 such complaints in the 12 months to 30 September 1998, an increase of 9%. This followed a 9% increase in the previous year. The European Commission has also reported that 24% of the complaints received by it in 1998 related to timeshares.
4. While timeshare holidays can, and do, bring benefits to many people, it is clear from the complaints received by CABx that some timeshare operators are acting to the detriment of consumers and are deliberately evading the current legislation. The CAB Service believes that, although raising consumer awareness may be of some benefit, the only effective method of tackling the current problems is through legislation.
5. In addition to retaining the present ban on taking deposits during the cooling off period the key changes needed in our view are:
  - Extending the legislation to cover holiday/vacation clubs, floating vessels and timeshares of less than 3 years duration and timeshares provided by share ownership or insurance policies;
  - Introducing legislative provisions to protect consumers from unscrupulous timeshare re-sales agents (who charge fees but fail to deliver a service);

□ To take action, either through amendments to the Timeshare Act or the Trade Descriptions Act, to tackle misleading sales practices which persist in this market;

## **PART 1: CURRENT MARKET DEVELOPMENTS AFFECTING TIMESHARE LEGISLATION AND PROPOSALS TO AMEND LEGISLATION**

### **New Timeshare Products**

5. Evidence provided by CABx shows that a number of companies are marketing products which, while not technically timeshares, are very similar in nature and are being sold using similar high pressure sales techniques. Not surprisingly, many consumers seen by CABx have been unclear about their legal rights in relation to these products and many have been distressed to learn that they are unable to cancel agreements entered into under pressure.

### **Holiday/ Vacation Clubs**

6. The CAB Service has received many reports of consumers being persuaded to buy membership of so-called holiday/vacation clubs. Undoubtedly, in most cases consumers do not fully understand the difference between buying membership of such a club and buying a conventional timeshare. The companies concerned are unlikely to explain the difference and there is little information available to consumers elsewhere. The CAB Service notes that 'The Timeshare Guide' makes no mention of such clubs, presumably because they were not in existence when the Guide was produced. Consumers who try to cancel their membership of these clubs have found that they are unable to do so under the Timeshare Act and, not surprisingly, the companies themselves do not include cancellation clauses in their contracts. CABx have received many reports of consumers who have tried to cancel these agreements but have been unable to do so.

A CAB in Cheshire reported the case of a client who attended a presentation (after receiving an offer of a free holiday) and signed up for indefinite membership of a holiday club, entitling him to book accommodation at various resorts. Membership cost nearly £5,000. Realizing that he could not afford this commitment, the client tried to cancel 4 days later. The company refused to let him cancel and told him that this was not a timeshare agreement.

7. The CAB Service believes that the use of these holiday 'clubs' is largely a device by companies to avoid the provisions of the Timeshare Act. In view of the pressures put on consumers to enter into such agreements, the Service believes that the Act should be extended to cover them.

## **Floating Vessels**

8. The CAB Service notes that there is a growing market for timeshares in boats of all descriptions. This may be partly as a result of the growing popularity of boating generally (particularly on canals) but some companies may be exploiting the fact that boats are currently outside the scope of the current legislation. In many cases, the cost of buying a timeshare in a boat may be similar to the cost of buying a timeshare in a property. Again, companies use high-pressure sales techniques to market timeshares in boats and CABx have received many complaints from clients who have been induced to enter into agreements, only to find that they are subsequently unable to cancel.

A CAB in Hampshire reported the case of a couple in receipt of benefits who attended a timeshare presentation. After five hours, they signed a contract and paid a £500 deposit. They tried to cancel two days later, only to find that, because the timeshare was in a boat, they had no right to do so.

In some cases, there appears to be evidence of companies deliberately misleading consumers about their rights or about the nature of the product they are buying.

A CAB in Devon reported the case of a client who was persuaded to buy a timeshare in a boat. One of the inducements given was that it would be possible for her to cancel the agreement if she subsequently changed her mind. She did change her mind soon afterwards but then discovered that the company refused to allow her to cancel and she had no legal right to do so.

A CAB in Wiltshire reported the case of a couple who attended a timeshare presentation at which they were shown videos of apartments. They signed an agreement without reading it carefully, only to discover subsequently that it was for a timeshare in a boat.

9. The CAB Service believes that the mis-selling of timeshares in boats is a significant problem and would like to see the legislation amended at the earliest opportunity to cover all floating vessels. The Service does not believe that an information campaign informing consumers that boats are not covered by the legislation would be effective enough to protect consumers, most of whom do not seek advice or information until after they have signed an agreement.

## **Timeshares of less than three years duration**

10. The CAB Service has received many reports of consumers entering into agreements of 35 months duration. The use of this time period is clearly an attempt by timeshare companies to avoid the provisions of the timeshare legislation. In a number of cases, the use of the 35 month period goes hand in hand with the use of the 'holiday club', with consumers signing agreements for 35 months membership of a club. The consumer is thereby excluded from the right to cancel the agreement provided by the Timeshare Act on two separate grounds. In most cases where a 35 month period is used, there will be an option to extend this period once it comes to an end.

A CAB in Buckinghamshire reported the case of a client who received an unsolicited phone call from a timeshare company. She agreed to a home visit, which lasted until midnight, at the end of which she signed an agreement for 35 months, which could be extended at the end of this period to 50 years. Because the agreement was for only 35 months, she was unable to cancel.

11. The CAB Service notes that the European Commission is considering removing or reducing the three year minimum time period. The Service suggests that the Act should be amended at an early opportunity so that the minimum period be removed altogether, or that the Act should be amended to apply to contracts for a period of less than three years, if there is a provision in the contract for renewal.

#### Ownership of shares in a company

12. The CAB Service has received reports of a number of cases where consumers have been sold shares in a company, giving them timeshare rights. Several CABx have reported instances of a company based in Kent selling clients shares, which entitles them to points which can be reclaimed against holiday accommodation at various resorts. The sales practices adopted by this company appear to be similar to those used by other timeshare companies and clients have then found that they are unable to cancel.

A CAB in South East England reported the case of a client who, having attended a presentation agreed to sign a contract for £6,000 worth of 'shares', giving him 1,200 'points'. He paid a £1,200 deposit. He was told that there was no cooling off period because the company was not selling timeshares.

13. Although these agreements do not yet seem to be particularly common, they appear to be a further means of avoiding the current legislation. The CAB Service sees no reason why these types of agreements (which are clearly a form of timeshare) should not be covered by the timeshare legislation.

## **Areas of uncertainty under present legislation**

### **Timeshare re- sales**

14. To date, the CAB Service has not received a large number of complaints about timeshare re-sales, but the Service notes that, in those cases where problems have arisen, the absence of any legislative protection has left the consumer with little right to redress. The Service has received reports of cases of consumers who have paid fees of up to £300 to companies describing themselves as 'timeshare selling agencies' who promise to find buyers for timeshares. The agencies then fail to find a buyer and, in some cases, the consumer is unable to contact them again. Although the Service does not believe that this is a frequent occurrence, it is clearly distressing for the consumer when it does occur.

A bureau in North London reported the case of a client who paid £295 to a company in Essex who told him that they had a buyer for his timeshare. No buyer materialized and the company vanished with the client's money.

15. It appears that more needs to be done to protect consumers from the activities of such agencies, perhaps by making it an offence for them to take fees in advance. In the absence of legislation, more needs to be done to warn timeshare owners about the dangers of paying large fees to companies when there is no guarantee that a purchase will result.

16. The CAB Service notes that a recent development in the sector appears to be companies who offer a 'rescue' package to consumers wishing to resell their timeshares. In return for a 'membership' fee of £2,000 or more a firm offers a consumer a 'redemption' package after a long period (e.g., 54 months). However, consumers will only receive this if they send their redemption certificate, and other documents, to the company 28 days prior to the end of the redemption period. The onus is on the consumer to do this and those who fail to claim correctly will receive nothing. Although it is too soon to know if companies offering such rescue packages will honour their commitments, there are clearly dangers for any consumers who pay such large sums to a company that may not even exist in 54 months time. The Service suggests that consideration be given to regulating the activities of such companies or, at the very least, taking steps to warn consumers about the risks of entering into such agreements.

17. The 'buy – sell' con, mentioned in the Consultation Paper, in which the operator verbally undertakes to buy and dispose of the consumer's existing timeshare property but in fact does not do so, is a problem that the CAB Service is aware of. However, the evidence received to date does not, again, suggest that this is as common a problem for consumers as other timeshare problems.

18. One method of addressing this problem might be to make it a requirement that the contract make it clear that the operator does not guarantee that he will be able to sell the consumer's existing property but is only promising to use his best endeavours to do so. In this context, the CAB Service notes that such protection already exists in Luxembourg and Belgium.

19. The CAB Service notes that the Government is aware of cases where resale agents, acting on behalf of individuals, have misled buyers in order to achieve sales. Although the CAB Service has not so far received evidence of this practice, it agrees that it is an activity that needs to be monitored.

20. The CAB Service would welcome any action by the Government to raise consumer awareness about timeshare resale problems. Information directed at existing timeshare owners is more likely to be effective than information directed at those who have yet to enter into timeshare agreements.

### **Timeshare rights held by virtue of an insurance policy**

21. The CAB Service has not received any reports from CABx about such policies but sees no obvious reason why such policies should not also be covered by timeshare legislation.

### **Post contractual problems**

22. The CAB Service has not received many reports from CABx about post-contractual problems experienced by consumers, although some bureaus have reported cases of clients faced with sharp increases in annual maintenance charges. The Service has not received recent evidence about problems with points based timeshares or other similar schemes.

A CAB in Mid-Wales reported the case of a couple who purchased a timeshare in 1982. In 1998, the annual maintenance charge was increased by 100%, without any prior consultation.

A CAB in Warwickshire reported the case of a client whose annual maintenance charge for her Isle of Wight timeshare had increased by 35%.

23. The Service agrees that at the very least, timeshare operators should be required to provide more information about the assessment and collection of maintenance charges and similar matters and the operation of any points system.

## **Suggestions of the European Commission**

### **Security of prepayments**

24. The CAB Service notes that the Commission has suggested securing prepayments against insolvency and agrees that some form of bonding or insurance scheme would provide extra protection for consumers.

Exceptions to the ban on taking deposits during the cooling off period

25. The CAB Service notes that the Commission has proposed making an exception to the ban on seeking or taking deposits during the cooling –off period, where pressure selling is not involved (e.g., where the consumer contacted the vendor) and where deposits are lodged with a third party. However, as the DTI has noted in the Consultation Paper, a consumer may make an initial approach but still be subjected to high pressure selling at a subsequent presentation. There would also be difficulties in establishing when a consumer had initiated contact. For example, if a timeshare operator telephones a consumer and invites him to attend a presentation, then contact has clearly been initiated by the operator but the position is less clear if a consumer decides to attend a presentation after seeing an advertisement. In both cases, however, the consumer may be subjected to the same sales techniques once they attend the presentation.

A bureau in the Midlands reported the case of a client who attended a presentation after seeing an advertisement offering 'free holidays'. The presentation lasted four hours, at the end of which the client was pressurised into signing a timeshare agreement.

26. The Service takes the view that, if the current ban on taking deposits during the cooling off period were lifted, consumers could be at risk. The lifting of the ban would lead to uncertainty and any relaxation in the rules would undoubtedly be taken advantage of by unscrupulous operators. Consumers could well find themselves paying deposits for a product which, on reflection, they realise they do not in fact want and the fact that the deposit has been paid to a third party would not guarantee that it could be recovered with ease. Any difficulty or delay in recovering a deposit could well lead to anxiety or distress on the part of the consumer. The Service therefore recommends that the ban should stay.

### **Inducements to buy**

27. Much of the evidence received by the CAB Service from bureaus is concerned with inducements to attend timeshare presentations and the pressures placed on consumers attending such presentations to sign timeshare contracts. The Service notes that over 70 per cent of the complaints about timeshares reported by the OFT in 1999 related to selling techniques and misleading claims. It seems clear that many consumers are being persuaded to attend presentations on the promise of receiving a free prize – usually a holiday – if they attend. The initial contact is usually made by telephone or letter.

28. Undoubtedly, some consumers do attend presentations solely to claim their prize, but without any real interest in buying a timeshare. They are normally told that they will be able to claim the prize even if they do not buy a timeshare. However, once at the presentation, consumers find themselves subjected to heavy selling techniques (often lasting several hours) which may make it difficult for them to leave without signing a contract. Some will sign a contract just 'to get away'. Others will resist the temptation to sign, but will instead be persuaded to pay an 'administration fee' for the promised free holiday, only to find that the holiday never materializes.

A bureau in Northumberland reported the case of a client who signed a timeshare agreement after being offered vouchers for a free holiday. He was asked to pay an 'arrangement fee' of £75. Nearly a year later, he had heard nothing more about his free holiday.

A client in Devon attended a timeshare presentation and paid a £58 'administration fee' for a 'free' holiday. After 18 months the client had heard nothing more about the holiday. The bureau contacted the timeshare company who told the client that she could take the holiday only if she telephoned a particular 'acceptance line' between 2pm and 4pm on two specific days. The client tried to do this on both days only to find the line constantly engaged. The company refused to let her claim her holiday on their general office line and told her and told her that if she could not get through she would lose her holiday and her administration fee would not be refunded.

29. Even where a holiday is offered by a timeshare company, consumers often find that the prize is less attractive than they first imagined. A 'free' holiday normally does not include air fares, food or other expenses.

A CAB in the East Midlands bureau reported the case of a client who attended a timeshare presentation and was offered a 'free' holiday for three people. She paid an administration fee of £97. Although she was offered a holiday in Tenerife, the client soon realised that, with airfares and other expenses, the holiday would cost more than most package holidays.

30. The CAB Service notes that the Trade Descriptions Act could be amended to make it a criminal offence to make misleading statements about the chances of receiving a prize or gift as an inducement to purchase goods, services, facilities or accommodation. An alternative approach would be to use the proposed amendments to the Fair Trading Act (although it is not clear when the necessary amendments to this Act will actually be made). An amendment to the Trade Descriptions Act would appear to be the most effective option at present. Consideration could be given to prohibiting operators from charging administration and similar fees for holidays offered as prizes until, at the very least, firm arrangements for the holiday have been agreed between the operator and the consumer.

31. The CAB Service also agrees that, in their promotional material, operators should be obliged to issue certain warnings to consumers. As well as a statement to the effect that timeshare is not an investment, there should also be a warning that the resale value of the property may go down. There could also be a general statement to the effect that entering into a timeshare agreement is a major financial commitment and consumers should give careful considerations to all the implications before signing any agreement and seek advice about any matters that they do not fully understand.

### **Options for change**

32. The DTI has identified three possible options: Option 1 – continue to rely on the present controls; Option 2 – increase publicity relating to timeshare issues; and Option 3 – amend the current legislation.

33. The CAB Service does not believe that Option 1 is satisfactory. Clearly, the present system of controls is not sufficient to prevent certain timeshare operators from acting to the detriment of consumers and some steps need to be taken to give consumers more protection.

34. Similarly, the CAB Service does not believe that combining Options 1 and 2 would be particularly effective. Most consumers do not seek information or advice before attending a timeshare presentation and are unlikely ever to have seen any literature on the subject. Even if a consumer had read 'The Timeshare Guide' in advance (unlikely unless they had visited a CAB or trading standards office) the present booklet is out of date and does not cover all the forms of timeshare now available. The Service agrees that it would

be helpful to update to current Timeshare Guide. But even if a new booklet were readily available, many consumers would undoubtedly still become confused when faced with high pressure sales techniques and may still find themselves signing agreements that they do not fully understand and that they may not have thought about in depth. An information campaign telling consumers which forms of timeshare are regulated and therefore covered by the cooling – off provisions is unlikely to be very effective, given the capacity of timeshare operators to blur the distinction between different types of agreement. An annual publicity campaign warning consumers about the pitfalls of buying timeshares on holiday would be helpful but in the UK timeshare presentations take place throughout the year and it would be difficult and presumably costly to sustain the necessary level of publicity. Even the most effective campaign would still fail to reach many consumers.

35. For the above reasons, the CAB Service believes that Option 3, combined with increased publicity, is the preferred option.

## **PART 2: PROPOSED AMENDMENTS TO THE TIMESHARE (CANCELLATION) ORDER 1992**

36. The CAB Service welcomes the proposal that the Timeshare (Cancellation Notices) Order should be amended to provide clearer information to consumers about their cancellation rights. The Service agrees that it is helpful to consumers to provide separate cancellation notices. However, some consumers may still find some of the proposed notice difficult to follow. The Service welcomes the fact that there will be a reference to seeking advice from a CAB or trading standards department. The Service notes that there will be a reference to consulting a solicitor specializing in timeshare matters. In practice, it may be difficult for consumers to find such a solicitor in their local area and, in view of the need for consumers to seek advice quickly; it would be helpful if some guidance could be offered as to how a consumer could find such a solicitor. In this context, the Service also suggests that the reference in Part 2, paragraph 4, to seeking ‘legal advice’ be replaced with a suggestion to simply seek advice.

## **PART 3: PROPOSED AMENDMENTS TO THE TIMESHARE (REPAYMENT OF CREDIT ON CANCELLATION) ORDER 1992**

37. The CAB Service agrees that there is a need to update the present Order. The changing of the structure of the Order from a list of requirements to a form is helpful to consumers.

NACAB  
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