



# NCAC NEWS

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*— Inside of this issue—*

- *Outlines of housing renovation issues resulting from door-to-door sales and countermeasures to tackle them*
- *'Health food' that contains aloe arborescens*
- *Consumer issues relating to private pension insurance sales taking place at bank counters; especially involving the elderly.*
- *Consumer issues concerning duty of disclosure when taking out life insurance*
- *Consumer issues involving cancellation fees when selling a second hand car*
- *Consumer counseling information as well as safety hazard/risk related information collected via PIO-NET in the Fiscal 2004*

◇ *Consumer Affairs Climate*

*Outlines of housing renovation issues  
resulting from door-to-door sales and countermeasures to tackle them*

An increasing number of consumers renovate their houses in order to have a more comfortable life. On the other hand, there have been a growing number of problems involving housing renovations. In particular, consumer damages caused by malicious 'house renovation work resulting from door-to-door sales' have become a social issue in recent years.

An infamous incident reported in May 2005 was particularly malicious, creating an outrage in our society. In this case, sisters of 80 years and 78 years concluded unnecessary contracts with housing renovation operators one after another. In the end, they could not afford the bills and their house was put up for auction. No less than 16 operators concluded housing renovation work contracts with these sisters. One operator among them concluded at least five contracts with them. Both sisters have been diagnosed with a cognitive impairment. An architect who checked their house afterwards pointed out that the majority of the renovation work was unnecessary.

PIO-NET (Practical living Information Online NETWORK), which is run by NCAC, handles approximately 9,000 cases of consumer counseling involving housing renovations resulting from door-to-door sales every year. The number of cases has been increasing. Housing renovation work resulting from door-to-door sales has the following characteristics:

- A contract was concluded with a person with impaired judgment.
- The number of cases has been increasing whereby malicious business methods are used to force an elderly person to conclude one contract after another.

Given these problems involving malicious housing renovations resulting from door-to-door sales, the government started to examine countermeasures to tackle these problems. A meeting attended by the responsible section chiefs of ministries and agencies that handle consumer problems caused by housing renovation issues was held twice in July 2005. As a result of these meetings, it was decided to take the following countermeasures immediately:

- Holding seminars throughout the country targeting elderly social clubs, social workers and carers to develop their awareness concerning malicious business methods and providing countermeasures to tackle them (Cabinet Office)
- Establishing counseling counters accepting complaints related to housing renovation problem in each prefecture and government-designated cities (Ministry of Land, Infrastructure and Transport)
- Establishing a committee that examines countermeasures to tackle malicious housing renovations (Ministry of Land, Infrastructure and Transport)
- Imposing stricter penalties on shady operators (Ministry of Economy, Trade and Industry)
- Disclosing all names of operators that have been penalized under the Specified Commercial Transactions Law in the past in each prefecture (Ministry of Economy, Trade and Industry)
- Holding case study seminars from July 2005 to January 2006 in various locations focusing on counseling cases involving "inspection sales(\*)" (Ministry of Economy, Trade and Industry)

(\*) "Inspection sales" is one of the malicious sales method used in Japan. A typical case is that salespersons visit a consumer and say "I came to hear to check your house for free of charge". After the inspection, the salesperson say "your house is needed to be fixed immediately! Otherwise it would be collapsed!" and force to conclude a contract for repair work.

- Providing active support to local consumer centers (NCAC)
- Enhancing the information which is contained on the home page related to malicious housing renovation work resulting from door-to-door sales (NCAC)
- Holding a press briefing to introduce the current situation of consumer issues involving housing renovation work resulting from door-to-door sales (NCAC)
- Providing information through TV programs and a monthly publication (NCAC)

In particular, the following countermeasures were taken into account to protect and support the elderly with impaired judgment:

- Making the Adult Guardian System known to the public by distributing leaflets and enhancing the information contained on the home page (Ministry of Justice)
- Reviewing the procedures when using the Adult Guardian System in order to promote further utilization of the system (Ministry of Health, Labor and Welfare)
- Exchanging information concerning consumer problem cases and countermeasures between departments and agencies that are responsible for the elderly and departments and agencies that are responsible for consumers in order to tackle the issue in collaboration.

On the basis of the above mentioned countermeasures, related organizations have prepared leaflets and posters in collaboration and distributed them to the elderly and the people surrounding them. Furthermore, each prefecture has been actively involved in promoting public awareness towards this issue and providing information on its home page as well as in its public relations paper.

On Thursday, the 20th of July, NCAC held a press briefing to introduce the 'current situation of consumer issues concerning housing renovation work resulting from door-to-door sales' to promote public awareness towards these serious problems.

On the other hand, as the elderly have been suffering from a spate of housing renovation related damages, the Japan Direct Selling Association has revised its code of conduct.

The code sets forth the following points:

- For consumers with insufficient judgment, the consent or the presence of a family member is required when concluding sales contracts or in the event of solicitation.
- For consumers with insufficient judgment, credit cards shall not be used for the payment without the consent or the presence of a family member.

Moreover, the code sets forth the following points that require special attention:

- A contract that involves an unreasonable sum of payment that would consequently cause a harmful disadvantage to the consumer's life shall not be solicited.
- A contract that involves a large sum of payment shall not be solicited to pensioners.

Besides NCAC and local consumer centers throughout the country, other organizations including the Center for Housing Renovation and Dispute Settlement Support also provide information and handle consumer counseling involving housing renovations.

Nevertheless, as housing renovations involve large sums of payment and may cause serious damages to consumers, it is important to avoid concluding contracts via door-to-door sales as much as possible and also to examine the contract fully in minute detail over an extended period of time. It is also necessary to consider utilizing the Adult Guardian System if the elderly or those with impaired judgment are involved in this issue.

#### ◇Activities of the NCAC

#### —Product Testing—

##### *'Health food' that contains aloe arborescens*

Aloe arborescens (hereinafter "aloe") is a plant which originated in Africa. In Japan, it has been used for its medicinal properties as well in foods since ancient times. In recent years, 'health food (hereinafter "health food")' that contains aloe has been widely sold in Japan. It can be therefore considered that a large amount of barbaloin, which is a purgative element contained in aloe, is likely to be consumed by people.

Among the safety hazard related information that PIO-NET has been collecting, there are a number of consumer damage reports and cases concerning health food that contains aloe. Give this, NCAC examined health food that

contains aloe in terms of the amount of barbaloin consumed in normal intake, the difference in the content of barbaloin in each brand and other matters concerning normal use. The following points describe the major findings of the examination and contain advice for consumers:

●Test results

- Concerning the amount of barbaloin, the content of barbaloin in the product varied depending on each brand. For the amount of barbaloin consumed per day, beverage types were more popular than tablet types and this may cause a purgative reaction.
- 30% of brands did not display warnings stating that the product may cause a stomach upset.
- The amount of aloe powder displayed on products did not indicate the content of the aloe origin element as it did not correspond with the concentration of the aloe origin element per unit.
- By verifying with the Japanese Agriculture Standard, language used in product names provided by some brands was found to be confusing.

●Advice for Consumers

- As health food that contains aloe contains barbaloin, it is recommended to start using it in small amounts and monitor progress.
  - The amount of aloe powder displayed on a product is not necessarily in proportion with the amount of aloe element; therefore it should not be a decisive factor in selecting a product.
  - As naturally originating materials are used in these products, without regard to before or after unsealing a product, it is recommended to avoid storing products in locations subject to high temperatures and high humidity from a hygienic point of view as well as to prevent pheophorbide (\*) being generated.
- (\*) A photosensitive causative agent that is generated when chlorophyll decomposes.

NCAC passed on the information obtained from these product tests to related departments such as the Ministry of Health, Labor and Welfare as well as industry groups. It also made requests in order to ensure that appropriate displays are found on products and that a standard needs to be set up to regulate the amount of barbaloin intake.

—Surveys and Studies—

*Consumer issues relating to private pension insurance sales  
taking place at bank counters; especially involving the elderly*

Private pension insurance is the major financial product of private pensions. Its system is identical with public pension, which is paying the designated premium and receiving the pension after reaching the set age. From October 2002, private pension insurance sales have been made available at bank counters (including door-to-door sales by bank clerks in addition to sales at branch teller counters). Nevertheless, the number of consumer counseling cases that relate to 'private pension insurance sales taking place at bank counters' that were handled by NCAC and local consumer centers has demonstrated an upward trend year after year.

The major cause of this issue is that banks inadequately explained the risks concerning an insurance product and failed to fully comply with the suitability rules governing the insurance. Moreover, there is a remarkable trend seen with people aged 70 and above who have suffered damages caused by insurance or concluded an insurance contract involving a large sum of payment.

Given this, NCAC released the most typical consumer counseling cases and their associated issues relating to private pension insurance sales taking place at bank counters and provided advice for consumers when concluding contracts. The outline of these cases and advice is as follows:

●Outline of consumer counseling cases

- 264 cases of consumer counseling took place from October 2002 to March 2005. This number shows an upward trend.
- 41.3% of people who concluded an insurance contract are in their seventies which is the highest percentage in this survey. Almost half (49%) of the respondents was dominated by people aged 70 and above.

●The issues in these consumer counseling cases

- Banks performed inadequately when identifying consumer's needs, complying with suitability rules and explaining risks.
- Banks used consumer's personal information in insurance soliciting without obtaining consent.
- The cooling off system was not applicable.
- Banks performed inadequately when explaining that the contract was in actuality concluded between the consumer and the insurance company and failed to properly explain the after-sales services.

●Advice for consumers

- Signing a contract on the spot will cause problems.
- Make sure to fully comprehend what kind of financial product private pension insurance is.
- Research the prospective insurance company
- Consult the nearest consumer center if you have any problems

#### ●Requests to the government

In order to prevent difficulties occurring in private pension insurance sales taking place at bank counters as well preventing problems from worsening, NCAC has made the following requests to the Financial Services Agency:

- To consider putting a cooling off system into practice.
- To enhance its support from the point of view of consumer protection in preparation for when the overall lifting of the ban on private pension insurance sales at bank counters comes into effect.

#### ●Requests to related industry groups

NCAC also made the following requests to the Life Insurance Association of Japan and the Japanese Bankers Association:

- To fulfill the accountability by taking into account consumer's needs and their suitability.
- To obtain the full confirmation and consent of consumers.

### *Consumer issues concerning duty of disclosure when taking out life insurance*

On the 25th of May 2005, the Financial Service Agency imposed a penalty on Meiji Yasuda Life Insurance Company. This promoted public awareness towards issues related to the consumer's 'duty of disclosure' when taking out life insurance. The number of consumer counseling cases that have been handled by PIO-NET relating to private life insurance has shown a downward trend. On the other hand, the number of consumer counseling cases relating to consumer's 'duty of disclosure' when taking out life insurance has been on the rise. This does not necessarily imply that only specific life insurance companies have caused issues relating to consumer's 'duty of disclosure'. It is necessary therefore that each life insurance company ensures that they follow appropriate insurance soliciting procedures and maintain a strict business management arrangement.

At the same time, consumers should fully understand the importance of their 'duty of disclosure' when taking out life insurance. It is important for consumers to acquire the necessary knowledge in order to avoid difficulties arising. Given these circumstances, NCAC released information concerning consumer's 'duty of disclosure' when taking out life insurance for consumers as well as for various organizations such as the Life Insurance Association of Japan, the Japan Institute of Life Insurance and the Financial Service Agency. The outline of the above mentioned information is described below:

#### ●Changes in the number of consumer counseling cases

- The number of consumer counseling cases has been declining in recent years since it reached the peak of 10,036 cases in the Fiscal 2000.
- The number of consumer counseling cases concerning 'duty of disclosure' has been on the rise as below:
 

Fiscal 2000 : 153 cases	Fiscal 2003 : 246 cases
Fiscal 2001 : 186 cases	Fiscal 2004 : 291 cases
Fiscal 2002 : 207 cases	

#### ●Issues in these consumer counseling cases

- A large number of consumer counseling cases were related to insurance sales representatives who accepted a consumer's nondisclosure as well as with insurance solicitation methods.
- Some of these consumer counseling cases were related to insurance solicitation methods that made consumers believe that, even if they did not fulfill their duty of disclosure, the insurance coverage would still be paid two years after the nondisclosure without conditions.
- Some of these consumer counseling cases were related to declaration forms that were difficult to comprehend and contained questions that were difficult to answer.
- Consumer's understanding concerning the importance of duty of disclosure seemed inadequate in some consumer counseling cases due to the inadequate explanation provided by a life insurance company.
- Many consumer counseling cases were related to the one-sided judgment and interpretation of an insurance company that lead them to overlook nondisclosure.

#### ●Advice for consumers

- Provide accurate answers to questions that are contained in a declaration form.
- When you do not understand questions or are stuck for an answer, do not attempt to interpret them in your own way.
- Verbal disclosure to sales representatives is not considered an actual disclosure.
- There is no guarantee that insurance benefits will be paid two years after the nondisclosure without conditions.

- Consult a local consumer center if you receive notification sent by an insurance company stating a nondisclosure and are not convinced by it.
- Special attention needs to be paid to insurance products that do not require any disclosure or medical examinations when taking out life insurance.

### *Consumer issues involving cancellation fees when selling a second hand car*

NCAC has established a Special Committee for Handling Consumer Complaints in order to deal with consumer complaints in an appropriate, effective way.

On the 14th of March 2005, the President of NCAC suggested the committee to examine a complaint handling plan concerning 'consumer issues involving cancellation fees when selling a second hand car'.

After receiving this plan, the subcommittee examined the following three points from a legal point of view and provided advice for consumers on the 20th of July 2005:

1. Whether or not this issue meets the provisions provided in "Cancellation" (Paragraph 1, Article 9, the Consumer Contract Law)
2. Meaning of "average damages" defined in the Consumer Contract Law
3. Burden of proof for "average damages" defined in the Consumer Contract Law

The outline of the advice provided for consumers is as below:

#### ●Outline of a complaint

A consumer concluded a contract with a second hand car buyer to sell his second hand car at 250,000 yen. After consulting with his family, however, he changed his mind and decided not to sell it. Although he requested the contract to be canceled three days after the conclusion of the contract, he was asked to pay 100,000 yen as a cancellation fee. The general contractual conditions provided by the buyer specifies the cancellation fee stating that if a seller requests a cancellation, the set cancellation fee of 100,000 yen is payable in cases whereby the purchase sum is 1,000,000 and below. Nevertheless, he did not receive any explanations to this effect when concluding the contract. He did not wish to pay the cancellation fee as he felt 100,000 yen sum was too high.

#### ●Decision made by the subcommittee

Pertaining to the provision set forth in the general contractual conditions provided by the buyer of concern, which stated that "if a seller requests a cancellation, the set cancellation fee of 100,000 yen is payable in cases whereby the purchase sum is 1,000,000 and below", the subcommittee looked into whether or not it falls under the clause abusive which is regulated by Paragraph 1 of Article 9 set forth in the Consumer Contract Law and consequently should be made invalid. The decision made by the subcommittee is as below:

##### ☆Average damages

It is considered that a car buyer handles paperwork in the below described occasions:

1. When the car buyer concludes the purchase contract with the seller
2. When the car buyer makes a booking to put up the purchased car for an auction
3. When the purchased car is transported to the auction venue by land
4. When the winning bidder arrives to collect the car

The amount of average damages suffered by the buyer of concern may vary depending on each occasion from when the car buyer firstly handled paperwork until the seller asked for the contract cancellation. For this reason, it can be considered that average damages did not occur on the occasion when the buyer and the seller concluded the purchase contract. In general, if a seller asks for a contract cancellation, a buyer will be able to receive reparations if they can prove the amount of average damages taking into account the above described occasions. It must be noted that, even under the terms of surrender charges or cancellation fees, the buyer cannot receive reparations in excess of the amount of average damages.

##### ☆Whether or not falling under the clause abusive

This issue should be considered to fall under the clause abuse if the car buyer establishes the set cancellation fee with disregard to average damages. In this case, the seller will be advised not to accept the set cancellation fee and, by taking into account the average damages suffered by the buyer of concern on each occasion described above, the seller will be given advice on how to work out the sum of the necessary cancellation fee that is payable to the buyer.

NAC released the outline of consumer counseling information collected by PIO-NET from all over the country in the Fiscal 2004 (from April 2004 to March 2005) as well as the outline of information concerning safety hazards (\*1) and risks (\*2) that was obtained from 20 cooperating hospitals throughout the country. The details of this information will be found in the article – “The Annual Report on Consumer 2005” (Japanese version only) which will be issued in October 2005.

(\*1) Safety hazard related information: Information detailing cases where consumers suffered life-threatening or physical hazards from products or services.

(\*2) Risk related information: Information detailing cases where consumers were subjected to risks that may have caused a safety hazard from products or services.

●The number of consumer counseling cases and major characteristics found in them

- The total number of consumer counseling cases was 1,830,000 which was 320,000 cases more than the previous fiscal year and about a 6.6 times increase from a decade ago.

- The number of consumer counseling cases concerning “information providing service by telephone line (\*)” was 810,000 which showed the largest increase compared to any other case and was 280,000 cases more than the previous fiscal year.

(\*) Information providing services via mobile phones, telephones and facsimiles.

- The number of consumer counseling cases concerning “fictitious billing” was 640,000 which showed a sharp increase comparative with the previous year.

- In the total number of consumer counseling cases, the largest proportion was “transport/communication services” which dominated 60%.

- Looking at the content of the consumer counseling cases, the proportion of “issues in contracts and cancellations” increased further to nearly 90%.

- By sorting the age group of contracting parties, the largest proportion was people in their thirties followed by people in their twenties.

●The outline of safety hazard related information

- The total number of safety hazard related information cases was 5,575 which showed a decline of 1,000 cases from the previous fiscal year.

- The top three safety hazardous products were “health food”, “cosmetics” and “beauty salon services”. Although there have been some variations in the rankings, these three products have been dominating the top three since 1986.

- Looking at the content of safety hazard related information, “skin problems” caused by “cosmetics, beauty salon services and health food” was the largest proportion which was approximately 30%.

- In the safety hazard related information obtained by the cooperating hospitals, “stairs”, “bicycles” and “play equipment” were the top three causes of safety hazards for four years in a row.

●The outline of risk related information

- The total number of risk related information cases was 2,319, about 180 cases more than the previous fiscal year.

- When sorting the information by products, the number of risk related information cases concerning “vehicles” including automobiles, motorcycles and bicycles was approximately 1,000 or 44.7%, which by far dominated the total number of cases and was about 200 cases more than the previous fiscal year.

- When sorting the information by product services, the number of risk related information cases concerning “automobiles” was 37%, again dominating the total number of cases. The major contributing cause was that a large number of incidents that took place and were reported in the Fiscal 2004 resulted from an automobile company failing to announce recalls. Another contributing cause was the record high number of car recalls reported in the Fiscal 2004.

The National Consumer Affairs Center of Japan is an independent administrative agency for consumer protection affiliated to the Cabinet Office. The main activities are consumer education, consumer consultation, research and product testing.

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