

## Trading Standards in Guernsey - protecting consumer rights

Insights - 07/12/2023

After a number of years in the pipeline, Guernsey finally has a new statutory framework for consumer protection and fair trading.

The Trading Standards (Fair Trading) (Guernsey) Ordinance 2023 (Ordinance) came into force on 2 October 2023 providing consumers with statutory rights when purchasing products, services and digital content and prohibiting unfair trading practices. The provisions of the Ordinance bear similarity to equivalent UK legislation, in particular the Consumer Rights Act 2015. Its provisions are also similar to Jersey's consumer protection legislation including the Supply of Goods and Services (Jersey) Law 2009 and the Consumer Protection (Unfair Practices) (Jersey) Law 2018.

### Who is it relevant to?

The Ordinance applies to numerous entities including businesses selling goods or providing services, including financial services, to consumers. Consumers are defined as individuals receiving services and digital content or buying goods for themselves wholly or mainly outside their trade, craft or profession.

### What rights does it provide?

Different rights are granted depending on whether the consumer is supplied with services, goods or digital content.

In respect of goods, they must be of satisfactory quality, be fit for purpose and be as described. Where sold by sample or model provided in advance, they must match the sample or model. If a business installs the goods they must be installed correctly.

Services must be performed with reasonable care and skill within a reasonable time and for a

reasonable price (in the absence of any agreement as to timeframe or price).

Digital content must be of satisfactory quality, be fit for purpose and be as described, as must any updates to digital content.

In addition to the above, businesses must provide the consumer with certain information in advance of entering into a contract, such as price. This pre-contractual information will be considered an implied term of the contract if the consumer relies on it in making their decision to purchase.

## **Unfair contract terms**

These provisions apply in contracts between traders and consumers, called consumer contracts. They also apply to consumer notices which relate to rights and obligations between a trader and consumer. These do not need to be in writing – they can be announcements or other methods of communication. There are also exclusions, both in terms of contracts to which these provisions do not apply and liability which cannot be excluded.

The Ordinance stipulates that contractual terms and terms in consumer notices should be transparent (expressed in plain intelligible language and be legible) and prominent (brought to the attention of the consumer such that an average consumer would be aware of the term). Further, contract terms that are unfair to a consumer cannot be relied upon or enforced by the business.

A Schedule to the Ordinance contains a "grey list" of indicative, non-exhaustive list of terms that might be unfair, which are modified in some instances for financial services. If a term is on that list, it is a good indication that it might be unfair.

Terms and notices are subject to the fairness test. If it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer, it will be unfair.

## **Cancellation rights / cooling off period**

Apart from face-to-face contracts, as in the UK, consumers now typically have a 14-day cooling off period to terminate the contract without reason or liability. However, there are various exceptions to this, for example goods bought at auction. It also does not apply to contracts for certain financial products such as lending, credit, banking or personal pensions.

## **What remedies are available when things go wrong?**

This will depend on the circumstances but include the right to repeat performance within a

reasonable time, the right to reject goods, the right to a repair or replacement, the right to a price reduction and the right to claim damages or recover money paid.

## How it affects financial services businesses?

Financial institutions who deal with individuals will be affected, for example, those providing personal loans, mortgages, bank accounts, insurance policies, pensions, investment manager services and investment advisory services. The provisions relating to contracts for services are expressly subject to any other enactment which imposes a stricter duty.

The Ordinance should also be viewed alongside the Lending, Credit and Finance (Bailiwick of Guernsey) Law 2022 that came into force on 1 July 2023, which provided protection for consumer credit, including provisions relating to unfair contract terms. Happily, the definition of unfair contract terms is the same in both pieces of legislation, and the terms identified as "automatically" unfair and "deemed" unfair are the same, bar a small number of sector-specific examples.

## Product Safety

The Ordinance also introduces a requirement for products to be safe when used by consumer, including second-hand products in certain circumstances. Products that conform to voluntary UK standards or standards adopted by the international standardising body are presumed to be safe unless there is reason to believe otherwise.

Detailed obligations are now placed upon producers (which includes an importer) and distributors. Producers can be liable for death, personal injury or loss of or damage to property caused by an unsafe product. Suppliers can be liable for damage caused by a product defect if they fail to identify the producer within a reasonable time.

## Trading Standards Service (TSS)

The TSS has been given statutory recognition. Its mandate is to ensure that the safety and economic interest of consumers are not compromised by unfair or illegal trading practices by providing consumer advice and business guidance and also has a duty to deal with complaints.

The TSS has also been granted enforcement powers, including powers of entry, inspection and seizure and can apply for injunctions and enforcement orders in respect of infringements.

As regards product safety, amongst other things, the TSS can enforce through the issuing of a number of different safety notices, including suspension and withdrawal notices and can prosecute offences.

## Next steps for businesses

- Assess their pre-agreement steps ensuring they provide the information required under the Ordinance prior to entering into an agreement with a consumer
- Review and update as necessary their terms of business and policies to deal with the new requirements under the law
- Review their contracts, telephone scripts, marketing materials, websites, consumer notices and complaint handling procedures to ensure compliance with the new requirements
- Ensure that any point of sale material and literature sales staff work from are up to date and accurate
- Consider implementing training for employees and agents to ensure they understand the new requirements
- Consider the requirements relating to digital content in the context of online services and apps to ensure compliance
- Ensure that they are aware of and comply with their obligations as regards product safety, including having a process in place for quickly identifying the producer if necessary

For more information on trading standards in Guernsey, feel free to get in touch with Sandie.

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