

An introduction to the new Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023

UPDATE

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The Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023 creates a new statutory framework for consumer protection and fair trading in Guernsey.

Introduction

The Trading Standards (Enabling Provisions) (Guernsey) Law, 2009 (the **TS Law**), which enables the States of Guernsey (the **States**) to make provision by ordinance for trading standards, has been on the statute book since 2011. In 2015 the Commerce and Employment Department consulted with the public and interested parties on proposals for an ambitious set of new trading standards legislation for Guernsey. Since then, little has been said regarding the introduction of trading standards in Guernsey until now.

At their meeting last month, the States approved the first ordinance made under the TS Law, the Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023 (the **TS Ordinance**). The TS Ordinance is expected to come into force in late 2023. The TS Ordinance will only have effect in Guernsey; Alderney and Sark would have to make their own arrangements in the future if they wished to have similar trading standards legislation.

Purpose, Approach and Application

The TS Ordinance introduces a statutory framework to protect consumers and ensure fair trading. It applies to traders whether they supply goods, services or digital content (such as via apps and online) and includes requirements as to consumer contracts and product safety, prohibitions against unfair commercial practices, unfair contract terms and rights to cancel, as well as giving enforcement powers to the Trading Standards Service (the **TSS**).

The provisions of the TS Ordinance are broadly similar, subject to necessary modifications, to those in force in the UK (in particular under 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). It is hoped that the compatibility of Guernsey's trading standards legislation with these other jurisdictions will both assist the operation of Guernsey businesses in these markets and provide consistency for Guernsey consumers when dealing with businesses not based in Guernsey.

The TS Ordinance will apply to a 'trader' (a person acting for purposes related to that person's trade, business, craft or profession, whether the person is acting personally or through another person acting on the trader's behalf or in the trader's name), in respect of their relationship with a 'consumer' (an individual acting for purposes that are wholly or mainly outside of the individual's trade, business, craft or profession).

To reflect the modern marketplace, where more and more transactions are completed at a distance, the TS Ordinance includes requirements as to digital content, which are similar to the requirements for physical goods, for example, they must be as described, fit for purpose and of satisfactory quality.

Trading Standards Service

The TS Ordinance gives statutory recognition to the TSS which currently operates on an extra-statutory basis. In addition to providing consumer advice and business guidance, the TSS will have a duty to deal with complaints in relation to contract terms and notices and the information requirements imposed on traders (including about the right to cancel) and, in some circumstances, will have the power to apply to the court for an injunction to prevent breaches.

The TSS will also have enforcement powers, including powers of entry, inspection, and the seizure of documents, goods and other evidence, and issuing guidance/notices to encourage and promote voluntary action. It will have the power to apply for an enforcement order in relation to infringements of the requirements of the TS Ordinance.

The TSS will also have powers to deal with the supply of unsafe or dangerous products in a manner appropriate to the seriousness of the relevant risk. This includes being able to issue safety notices in certain circumstances, for example to prevent the supply of unsafe consumer goods, by issuing suspension, marking, warning, withdrawal of product and recall notices. It will also have the power to apply to the court for an order for the forfeiture of a dangerous product.

Application to Financial Services Businesses

The TS Ordinance does apply (in large part) to financial services provided to consumers; and will impact those financial institutions who deal directly with individuals, for example, providing personal bank accounts, mortgages, personal loans, pensions, insurance policies, discretionary investment management and investment advisory services.

The provisions that relate to contracts for services are expressly subject to any enactment that imposes a stricter duty in any particular case. Other requirements, such as under the regulatory laws, will therefore continue to apply alongside the TS Ordinance.

Helpfully, the definition of unfair contract terms in the TS Ordinance is the same as in the recent Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (**LCF Law**) and the terms identified as 'automatically' unfair and 'deemed' unfair are the same, except for a few sector-specific examples (see our briefing ([here](#))). In addition, under the TS Ordinance contractual terms and terms in consumer notices should be both transparent (meaning, expressed in plain and intelligible language and legible) and prominent (that is, brought to the consumer's attention in such a way that an average consumer would be aware of the term).

Certain implied terms are imposed by statute, and anything said or written to the consumer, by or on behalf of the financial institution, about the business or the service and which the consumer takes into account in its decision making, is an implied term of the contract.

What next?

Prior to the TS Ordinance coming into force later this year, the TSS will be publishing guidance for traders, on their duties and obligations, as well as for consumers, on their rights and remedies. It is hoped that the introduction of the TS Ordinance will help traders as much as consumers, by providing clarity on what they are/are not required to do and by creating a level playing field, where all traders are held to the same standards.

The TS Ordinance will sit alongside other laws regulating contractual terms and consumer protection, including the LCF Law, the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 and the Competition (Guernsey) Ordinance, 2012. The TSS will work in partnership with the Guernsey Financial Services Commission, the Guernsey Regulatory and Competition Authority and the Channel Islands Financial Ombudsman to ensure that any investigatory and/or enforcement action is co-ordinated between the different agencies.

In advance of the TS Ordinance coming into effect, impacted financial Institutions should consider the following actions:

- review contract terms and customer notices, marketing materials, telephone scripts and enquiry/complaint handling procedures to ensure compliance with the new requirements;
- implement training for customer facing employees and agents, in particular to avoid becoming unintentionally bound by statements made to customers; and

- consider TS Ordinance requirements relating to digital content, which may apply in the context of online services and mobile apps to the extent that such 'digital content' is supplied free with services for which the customer pays a price and is not generally available to consumers unless they have paid for services.

If you have any questions or queries, please get in touch with your usual Mourant contact.

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