

CONSUMER PROTECTION POLICY

Ministry of Finance, Health and Economic Development

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Introduction

Currently, no comprehensive policy or legal framework exists that addresses consumer rights and protections. As such, consumers have little available recourse for addressing concerns when they believe they are being disadvantaged in transactions involving the provision of goods and services. Few consumers seek redress from the courts when they have the financial means to do so. There is an urgent appeal for Government to take action to protect consumers.

This policy provides the basis for developing legislation for the protection of consumers of goods and services in furtherance of Government's goal of reducing income inequality. The policy seeks to outline the rights and protections afforded to consumers to ensure consumer dollars are not wasted. It is intended that the rights and protections set out in this policy will later be enshrined in legislation.

The policy will outline the:

1. administrative framework for consumer protection;
2. rights of consumers;
3. duties of suppliers; and
4. available remedies for consumers when rights are infringed or suppliers' responsibilities are not fulfilled.

Administrative Framework

The following mechanisms will be established to provide for the promotion and protection of consumer rights in relation to the supply of goods and the provision of services.

Director of Consumer Affairs

There will be Consumer Protection Unit headed by a Director of Consumer Affairs who will be a public officer and will carry out the following duties:

- receive and attempt to settle consumer complaints;
- conduct investigations on his initiative or in response to a complaint in relation to the sale of goods or the provision of services as will enable him to determine

whether the goods were sold or the services were provided in contravention of this policy;

- conduct other investigations in relation to the availability of goods of any class or description as he thinks fit and make such report and recommendations as he thinks fit to the Minister;
- provide information to consumers on their rights and undertake other forms of consumer and supplier education;
- resolve disputes between consumers and suppliers;
- formulate and implement standards in relation to the consumer protection policy;
- advise the Minister of Trade, Commerce and Industry in relation to the imposition of price control measures;
- serve as Supply Officer and an authorized officer under the Distribution and Price of Goods Act; and
- advise the Minister generally in relation to consumer issues.

Consumer Complaints

A consumer may make a complaint on one of the following grounds:

- an unfair trade practice, transaction or term has been adopted by a supplier;
- goods or services acquired or agreed to be acquired are defective;
- a supplier is offering to the public prohibited goods, or goods or services which are hazardous to life and safety of the public when used;
- the supplier has charged a price for the goods in excess of the price:
 - fixed by law
 - displayed by the local supplier on the goods
 - displayed on the price list exhibited by the supplier
 - agreed between the consumer and the supplier;
- the supplier has infringed any of the consumer rights or failed to fulfil any of the supplier's duties and obligations outlined in this policy.

Complaints may be made orally or in writing to the Director of Consumer Affairs. To support the complaint, the consumer must provide proof of the supply of the goods or

the provision of the service. Where an oral complaint is made, it must be reduced to writing by the Director and agreed by the complainant.

Complaints will be investigated by the Director unless the Director is of the view that:

- the complaint is trivial, frivolous or vexatious;
- the complainant does not have sufficient interest in the subject matter of the complaint;
- the complaint was raised more than two years after the alleged infraction;
- further investigation is unnecessary.

In conducting the investigation, the Director has the power to summon witnesses to give evidence and provide documents. Non-compliance with a summons will be an offence. The remedies that can be given by the Director will be outlined in the section on Remedies.

Inspectors

Assisting the Director of Consumer Affairs will be Inspectors who will also be public officers. They will be responsible for field work related to enforcement of the legislation that will follow this policy. For the purposes of ensuring compliance with the legislation and any safety obligations, inspectors may make test purchases of goods from suppliers. However, where reasonable grounds exist for believing that there has been infringement, inspectors may enter business premises (other than a home) to:

- carry out inspections to ensure compliance with the terms of the legislation that will follow this policy;
- inspect any goods found;
- require any person carrying on a business on the premises or employed in or connected with the business to produce books or documents relating to the business and to permit the inspector to take copies of or any entry in such books or documents;
- examine any procedure (including any arrangements for carrying out a test connected with the production of goods);
- seize and detain goods for testing (such goods to be held in a secure location as determined by the Director and where practicable returned to the supplier);

- seize and detain goods or documents believed to be required as evidence in an investigation.

Where an inspector has been impeded or reasonably believes that he will be impeded in carrying out his duties, he can apply to the Magistrate for a warrant empowering him to do so (forcibly if necessary).

Inspectors will also carry out the duties of authorized officers under the Distribution and Price of Goods Act.

Consumer Affairs Appeals Tribunal

Where a person is aggrieved by a decision of the Director of Consumer Affairs, he/she may appeal that decision to the Consumer Affairs Appeals Tribunal. The Tribunal will consist of three persons: an attorney at law who will be the Chairperson; one person representing the Anguilla Chamber of Commerce and Industry and one person representing the public interest. All members will be appointed by the Minister of Trade, Industry and Commerce and will be remunerated as agreed by Executive Council.

The Court

The mechanisms set out in this policy do not preclude persons from seeking redress from the Court. The Director of Consumer Affairs will not investigate any matter that is already before the court or for which the court has already made a determination. Where court action is instituted while a matter is before the Director, the Director will immediately cease his investigation or any action in relation to the matter.

Consumer Rights

Under this policy, the following rights will be afforded to consumers:

1. **The right to the most favourable interpretation of terms where ambiguity allows for more than one reasonable interpretation.** This right applies to any

provision outlined in this policy, any document produced by a supplier or any consumer agreement¹ entered into between the supplier and the consumer.

2. **The right not to pay for unsolicited goods and services;** unless the consumer consents to payment before the goods or services are supplied, either expressly or implicitly by tendering payment or conduct which would reasonably lead a supplier to believe that consent is being given. Goods and services will also be considered unsolicited where they purport to be provided pursuant to the terms of an agreement between the supplier and the consumer but are materially different to what was originally agreed.
3. **The right not to be compelled, as a condition of an agreement with a supplier, to obtain additional goods and services** from the same supplier or to enter an additional agreement or transaction with that supplier or another supplier. For the avoidance of doubt, this does not preclude the consumer from entering such an agreement of their own free will.
4. **In relation to repair and maintenance services, the right to authorise services.** This means that the consumer is entitled to an estimate of the cost of the work and to authorise that work. A supplier cannot demand payment from a consumer for goods or services provided unless an estimate was provided and the work was authorized by the consumer or the consumer provided a written waiver of the right to an estimate. A supplier also cannot charge a consumer for an estimate or for any diagnostic work that is necessary to prepare the estimate, without the consumer's prior agreement to pay.
5. **The right to choose and examine goods.** Where goods are sold in open stock, consumers have the right to select or reject any of those goods. Where consumers select goods based on a particular description or sample, they have a right to goods matching that description or sample and those goods must be free from defects that cannot be reasonably detected from the description or examination of sample.
6. **The right to delivery of goods and performance of services by the date and time agreed.** In the case of goods, where a consumer requests delivery outside the supplier's normal place of business, the supplier may charge the consumer

¹ A consumer agreement refers to an agreement between a consumer and a supplier in relation to the supply of goods or services for payment. It may be oral, written or implied from the conduct of the parties.

the cost of delivery. At all times, the consumer is entitled to delivery of goods and services within a reasonable time. Goods remain at the supplier's risk until the consumer has accepted delivery. A consumer is deemed to have accepted goods and services where the consumer expresses acceptance; there is lapse of a reasonable time in which goods and services are retained without rejection; or the consumer's actions demonstrate that the supplier is no longer responsible for the delivery of the good or service.

7. **The right to cancel a booking or reservation for goods or services to be provided.** However the supplier can charge cancellation fees that are reasonable having regard to the nature of the good or service to be supplied, the length of notice of cancellation given by the consumer and the opportunity to find an alternative to fill the available slot. Cancellation fees cannot be charged to an estate if the consumer is unable to fulfil the reservation due to their own death.
8. **The right to receive any documentation or information from the supplier or provided pursuant to this policy in the English language.** Additionally consumers have the right to receive information in plain language. A document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance, and import of the document without undue effort.²
9. **Where a consumer has entered an agreement with a supplier but dies before the goods or services are supplied, the personal representative of the consumer's estate may terminate the agreement or require supply of the goods or services.** Where the terminated agreement related to special order goods, the supplier is entitled to reimbursement for any costs incurred up to the date of termination in accordance with the terms of the agreement.

Infringements of these rights are actionable by the consumer.

² Virgin Islands Consumer Protection Act 2019

Suppliers' Duties and Obligations

There are several duties and obligations imposed on suppliers under this policy. The supplier's negligence or failure to fulfil any of these duties and obligations may make them liable for penalties under the legislation that will follow this policy. However, the non-fulfilment of these duties is still actionable by the consumer. The duties and obligations are as follows:

- 1. Before a consumer pays for goods, the supplier must provide to the consumer information in relation to the goods in the English language, unless the supplier and the consumer agree otherwise.** Information must include the name, description, weight, size, proper use, hazards and where applicable, the origin, care, terms, components and instructions for assembly and installation of the goods.
- 2. The supplier must display the price of goods and services offered.** In the case of goods, the price must be displayed by either appending it to the goods or to the shelf or other fixture on which the goods are displayed in a manner that makes it clear to which good the price relates. Where more than one price is displayed on a good, or where one price is advertised and a different price is being charged, the consumer is entitled to pay the lowest price for that good. Where a supplier provides an estimate for goods or services, the price requested from the consumer must not exceed the estimate. Suppliers are entitled to include validity period in estimates and to provide new estimates after the period has lapsed.
- 3. A supplier must carry on business, promotion and conduct transactions in his own name (in the case of an individual) or in the name of the registered business.** All documentation or paraphernalia issued by the business should bear its name, location and contact information.
- 4. Goods displayed or offered by a supplier must contain a trade description.** The trade description must be affixed to the good or to packaging that contains the good or outlined in any document on which the consumer will rely before ordering the good. In this policy, "trade description" means (a) any description, standard, statement or other direct or indirect indication, except a trade mark, as to (i) the size, number, quantity, measure, weight or gauge of any goods; (ii) the name of the producer or producers of any goods; (iii) the ingredients of any goods, or material of which any goods are made; (iv) the place or country of origin of any goods; (v) the mode of manufacturing or producing any goods; (vi)

in the case of perishable goods, the expiration date or (vi) any goods being the subject of any patent, privilege or copyright.³ A supplier must not negligently or knowingly mislead consumers by applying a trade description to a product of a different description or altering, removing or obscuring the trade description on a product.

5. **A supplier must warn consumers of dangerous ingredients in goods.** Where a supplier offers for sale any good that contains ingredients that present a chemical or biological hazard to humans if used in a particular concentration or any good in relation to which personal or public health and safety considerations require special methods of handling or waste disposal, the supplier must place a conspicuous warning notice to consumers on the goods or in the place in which the goods are offered for sale.
6. **A supplier of goods that are used, reconditioned, re-made etc, must place a conspicuous notice to this effect on or near the goods being sold.** The notice must also provide information on the any warranty or absence of warranty in relation to the goods being sold.
7. **A supplier must, upon request by the consumer, provide the consumer with a written record or receipt of each transaction in which goods or services are supplied.** The record or receipt must contain (a) the supplier's name, or registered business name; (b) the address of the premises at which or from which the goods or services were supplied; (c) the date on which the transaction occurred; (d) a name or description of the goods or services supplied (e) the unit price for each of the goods or services supplied; (f) the quantity of each of the goods or services supplied; (g) the total price of the transaction.
8. **Facilities must be provided for the consumer to check the weight, volume or other measurement of the goods he intends to purchase where that measurement materially affects the price of the goods.** Suppliers must deliver to the consumer the quantity purported to be provided for the price charged.
9. **Suppliers should provide warranties in relation to the goods and services they provide. There is an implied warranty by all suppliers that goods and services supplied are of a reasonably acceptable quality.** Where a manufacturer's

³ Virgin Islands Consumer Protection Act 2019

warranty is attached to goods sold by a supplier or provided in the course of a service, regardless of geographical limitations, the supplier is deemed to have issued to the consumer the manufacturer's warranty as if it was his own and is liable to the consumer as if he was the manufacturer. Where a service is being provided there is an implied warranty that it will be carried out in a reasonable time. Where within a warranty period a good becomes defective (not due to negligence or abuse by the consumer) it will be repaired or replaced and returned to the consumer at no expense to him.

10. **Where a consumer returns goods to a supplier that are defective or found to be materially different from what the supplier described as being offered for sale, the supplier must either replace the goods or refund the consumer the cost of the goods.** A supplier is not obligated to accept returned goods where the goods are damaged or the consumer has simply changed his/ her mind.
11. **A supplier must only provide services approved by a consumer and not require payment for additional services that the supplier believes are necessary, without the consumer's prior consent.**
12. **A supplier who offers repair services must provide the consumer a written record of the following before commencing work:** (a) the name, address and telephone number of the consumer; (b) an accurate description of the goods to be repaired, including any identification number or mark; (c) an estimate of the replacement value of the goods in its present state as agreed with the consumer; (d) an estimate of the labour and other costs to be paid by the consumer in respect of the repairs to be effected; and (e) the date on which the goods (i) are received for repair; and (ii) will be ready for delivery.⁴
13. **A supplier must comply with an advertised delivery date.** Where a supplier advertises a delivery date for the provision of a good or service and a consumer enters an agreement with that supplier and pays a deposit, that advertised delivery date becomes a part of the agreement. Unless due to force majeure or acts of God, where a supplier fails to deliver on that date, he must, at the consumer's option, refund the consumer or agree a new delivery date.
14. **A supplier must not demand or accept payment for goods or services if at the time of demand or acceptance he knows he cannot deliver goods or services**

⁴ Virgin Islands Consumer Protection Act 2019

at all, that he is only able to deliver materially different goods or services, or he cannot meet the timeline for delivery. This principle also applies to situations in which the supplier accepts payment and accepts a booking or reservation to supply goods or services for a particular date. If on that date the supplier fails to deliver, due to unavailability or insufficiency of stock or incapacity to provide service, the consumer must be refunded and the consumer can claim additional compensation for loss suffered.

15. **A supplier must observe certain standards in the promotion of goods and services** and must not promote goods and services:
 - a. in a manner that is misleading, fraudulent or deceptive;
 - b. where their supply or possession is unlawful;
 - c. in a manner degrading to the dignity of the person; or
 - d. in a manner that is discriminatory unless it is in relation to a specialty item used only by a particular group of consumers.

16. **A supplier must not make any representation about goods and services (either by words, conduct or failure to disclose a material fact) that is misleading, fraudulent, deceptive or untrue.** A consumer agreement made on the basis of such representation is not enforceable against the consumer.

17. **A supplier must not supply or agree to supply any goods or services where he knows or ought to have known that they are not suited for the purpose for which the consumer intends** and based on the particular characteristics of the consumer (eg. age, education, level of expertise or familiarity with the goods or services offered) the consumer cannot make an independent determination of suitability and is relying solely on his recommendation. Such a transaction is not enforceable against the consumer.

18. **Suppliers must not seek to enter transactions that are unfair, unjust or unconscionable.** For example, the terms of an agreement ought not to be so adverse to a consumer as to be inequitable. Further, a supplier must not take advantage of the fact that a potential consumer was substantially unable to protect his or her own interests because of a disability, illiteracy, ignorance, inability to understand the language of a consumer agreement, or any other similar factor.⁵ Transactions that are unfair, unjust or unconscionable are not enforceable against the consumer.

⁵ Virgin Islands Consumer Protection Act 2019

19. **Where a supplier agrees to supply goods or services over a period of time and the consumer agrees to make periodic payments for those goods or services, the supplier can only claim payment in an amount equivalent to value the goods or services provided at the time of the claim.** Where a consumer fails to pay the claim within a reasonable or the agreed time, the supplier has the right to terminate the agreement.

20. **Where a consumer is making a purchase on lay-away (ie where the consumer pays over a period of time and the supplier retains the goods until the consumer has finished paying); the supplier must supply the goods once the final payment is made.** If the supplier is unable to do so, he must refund the consumer or if the consumer agrees, provide goods of equivalent or superior quality to the goods paid for by the consumer. Goods remain at the supplier's risk until the consumer takes possession.

Remedies

Based on the framework established for the administration of this policy, there are several avenues available for consumers to seek redress:

1. **Complaint to the Director of Consumer Affairs.** Where the Director finds that a complaint made is proven, the Director will issue to the consumer and the supplier a statement of his findings and may make Orders for the:
 - a. Refund of monies expended by the consumer and where applicable acceptance of returned goods by the supplier;
 - b. Repair or replacement of goods by the supplier;
 - c. Discontinuation of specified actions or prohibition of specified conduct by the supplier.

2. **A consumer or supplier may appeal a decision of the Director to the Consumer Affairs Appeal Tribunal.** The Tribunal may:
 - a. Set aside the decision of the Director;
 - b. Confirm or amend the decision of the Director;
 - c. Order a new investigation by an independent investigator; or
 - d. Dismiss the appeal.

- 3. A consumer or supplier may seek redress from the court.** Redress may be sought for enforcement of a final decision made by the Director where the other party has failed to comply with that decision. Additionally, instead of using the mechanisms outlined in this policy, a party may go directly to the court for redress. In addition to making the orders outlined above, the court may also award damages for loss suffered and appropriate costs to either party.

The Director of Consumer Affairs may also lodge a criminal complaint against a supplier where investigations emanating from a consumer complaint or his own independent investigations indicate that the supplier has committed an offence. Where a court finds a supplier guilty of a criminal offence, the court may (in addition to any criminal penalty imposed), make any other order as the justice of the case may require.

Recall of goods

Where the Minister is advised by the Director of Consumer Affairs that goods being supplied are likely to cause injury, loss or damage to persons and the supplier has not taken reasonable steps to prevent same, the Minister may consider making an order to recall the goods. Where the Minister is of the view that goods should be recalled, he will inform the suppliers by notice in the local media of the intention to recall and give them an opportunity to be heard regarding why the goods should not be recalled or to set out steps that they will take to rectify the situation.

If the Minister is not satisfied with the reasons put forward or remediation proposed by the suppliers the Minister will issue a notice for the recall of the goods. The notice will be published in the gazette and the local media and will outline the name and nature of the goods, the reason for the recall and the recommended method of disposal. The recall notice must be displayed by suppliers on their premises and distributed to their customers via their usual communication channels.

Where the Minister is advised by the Director that goods being supplied pose an imminent danger to life or that there is a global recall of particular goods, the Minister will issue a notice for recall of the goods with immediate effect.

Suppliers may also voluntarily recall goods on the same basis as the Minister. In those instances, the suppliers must inform the Director of Consumer Affairs and must issue a public notice using all available media. The notice must outline the name and nature of the goods, the reason for the recall and the recommended method of disposal.

Recalled goods must be removed from shelves or storage and disposed of as instructed. A consumer in possession of recalled goods must return those goods to the supplier for

proper disposal (if required) and is entitled to receive a refund upon providing proof of purchase.

Conclusion

If approved, this policy will form the basis for the development of consumer protection legislation. It is anticipated that the proposed consumer protection legislation will be considered alongside the existing Distribution and Price of Goods Act and the latter may be amended or repealed and incorporated into the new legislation as deemed fit.

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