



Jersey

# **CONSUMER PROTECTION (UNFAIR PRACTICES) (JERSEY) LAW 2018**

## **Official Consolidated Version**

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Jersey

## CONSUMER PROTECTION (UNFAIR PRACTICES) (JERSEY) LAW 2018

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## CONSUMER PROTECTION (UNFAIR PRACTICES) (JERSEY) LAW 2018

A **LAW** to confer protection on consumers against unfair commercial practices; to create offences of contravening the prohibitions against such practices, and to impose penalties for those offences; to confer powers to investigate instances of alleged unfair commercial practices, and to require undertakings to restrict such practices; and for connected purposes

Commencement [[see endnotes](#)]

### 1 Interpretation

(1) In this Law –

“average consumer” is to be understood in accordance with paragraphs (2) to (4);

“authorized officer” means an inspector within the meaning of the [Weights and Measures \(Jersey\) Law 1967](#);

“business” includes a trade, craft or profession and the activities of any public administration;

“Chief Inspector” has the meaning given by Article 2 of the [Weights and Measures \(Jersey\) Law 1967](#);

“commercial practice” means any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a trader, which is directly connected with the promotion, sale or supply of a product to or from consumers, whether occurring before, during or after a commercial transaction (if any) in relation to a product;

“goods” includes –

(a) corporeal movables –

(i) except money, and

(ii) including water, gas and electricity only if they are put up for sale in a limited volume or set quantity;

(b) industrial growing crops, and things attached to or forming part of land that are agreed to be severed before sale or under a contract of sale; and

(c) an undivided share in goods;

“inducement” means an act which causes or is likely to cause the average consumer to take a transactional decision the consumer would not have taken otherwise;

“invitation to purchase” means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of that commercial communication and thereby enables the consumer to make a purchase;

“Minister” means the Minister for Sustainable Economic Development;

“premises” includes any place and any stall, vehicle, aircraft, ship or boat (and any other description of vessel used in navigation);

“product” means any goods or services, and may include –

- (a) digital content (that is, data produced and supplied in digital form);
- (b) immovable property;
- (c) rights and obligations; and
- (d) a product of the kind described in paragraph (5);

“professional diligence” means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate either with –

- (a) honest market practice in the trader’s field of activity; or
- (b) the general principle of good faith in the trader’s field of activity;

“public administration” means –

- (a) any of the 12 parishes;
- (b) an administration of the States (including a department of the States); and
- (c) a body having functions under any enactment;

“trader” means a person acting for purposes relating to that person’s business, whether acting in person or through another person acting in the trader’s name or on the trader’s behalf;

“transactional decision” means any decision taken by a consumer (whether to act, or to refrain from acting) concerning –

- (a) whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product; or
- (b) whether, how and on what terms to exercise a contractual right in relation to a product;

“unfair commercial practice” has the meaning given by Article 3.<sup>1</sup>

- (2) In determining the effect of a commercial practice on the average consumer where the practice reaches or is addressed to a consumer, account shall be taken of the material characteristics of such an average consumer, including the consumer’s being reasonably well informed, reasonably observant and circumspect.
- (3) In determining the effect of a commercial practice on the average consumer –
  - (a) where a commercial practice is specifically aimed at a particular group of consumers (such as children); or
  - (b) where –
    - (i) certain characteristics such as age, physical or mental infirmity or credulity make a group of consumers particularly susceptible to a commercial practice or to the underlying product, and
    - (ii) the economic behaviour only of that group of consumers is likely to be distorted by the practice in a way that the trader can reasonably foresee,

the impact of the commercial practice is to be assessed from the perspective of the average member of that group.

- (4) In applying paragraph (3)(b), no regard is to be had to the common and legitimate advertising practice of making exaggerated statements which are not meant to be taken literally.
- (5) Where a trader demands payment from a consumer in full or partial settlement of the consumer's liabilities or purported liabilities to the trader, the product which the trader offers to supply is the full or partial settlement of those liabilities.

## 2 Application

- (1) This Law applies to any unfair commercial practice which takes place before, during or after a transaction in which one person deals as a consumer in relation to any product.
- (2) This Law applies without derogation from, and in addition to –
  - (a) the [Consumer Safety \(Jersey\) Law 2006](#);
  - (b) the [Distance Selling \(Jersey\) Law 2007](#); and
  - (c) the [Supply of Goods and Services \(Jersey\) Law 2009](#).
- (3) This Law –
  - (a) applies (subject to paragraph (4)) to a Minister of the States and any public administration; and
  - (b) binds the Crown (subject to paragraph (5)), but does not apply to Her Majesty in her private capacity.
- (4) A contravention by a Minister or by a public administration of any provision of this Law shall not impose criminal liability on the Minister or public administration, but –
  - (a) the Royal Court may, on the application of the Attorney General, declare unlawful any act or omission of a Minister or public administration that contravenes a provision of this Law; and
  - (b) this Law applies to States' employees (as defined by Article 2 of the [Employment of States of Jersey Employees \(Jersey\) Law 2005](#)) as it applies to other persons.
- (5) A contravention by the Crown of any provision of this Law shall not impose criminal liability on the Crown.
- (6) For the purposes of paragraph (1), one party to a contract of sale of goods or for the supply of services, or to a hire-purchase agreement, deals as a consumer in relation to another party to the contract or agreement if –
  - (a) the other party enters the contract or agreement in the course of a business; and
  - (b) the one party neither enters the contract or agreement in the course of a business nor holds himself or herself out as doing so,and the goods or services under the contract or agreement are of a type ordinarily supplied for private use or consumption.
- (7) However, on a sale by auction or by competitive tender the buyer is not in any circumstances to be regarded as dealing as a consumer for the purposes of this Law.

- (8) Except in the case referred to in paragraph (7), it is for those claiming that a party does not deal as a consumer to show that that party does not so deal.

### **3 Prohibition of unfair commercial practices**

- (1) Unfair commercial practices, as further defined by paragraphs (2) to (4), are prohibited.
- (2) A commercial practice listed in the Schedule is always unfair.
- (3) A commercial practice is unfair if –
- (a) it is contrary to the requirements of professional diligence; and
  - (b) it materially distorts or is likely to materially distort the economic behaviour, with regard to the product, of –
    - (i) the average consumer whom it reaches or to whom it is addressed, or
    - (ii) the average member of the group of consumers, where the commercial practice is directed to a particular group.
- (4) In particular, and without derogation from paragraph (3), a commercial practice is unfair if –
- (a) it is misleading as described in Article 4 or 5; or
  - (b) it is to be regarded as aggressive under Article 6.

### **4 Commercial practices which are actively misleading**

- (1) A commercial practice, other than an omission, is misleading if it falls within paragraph (2) or paragraph (4).
- (2) A commercial practice falls within this paragraph if –
- (a) it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer in relation to one or more of the elements listed in paragraph (3); and
  - (b) it is an inducement.
- (3) The elements mentioned in paragraph (2) are –
- (a) the existence or nature of the product;
  - (b) the main characteristics of the product, such as –
    - (i) availability,
    - (ii) benefits,
    - (iii) risks,
    - (iv) execution,
    - (v) composition,
    - (vi) accessories,
    - (vii) after-sale customer assistance and complaint handling,
    - (viii) method and date of manufacture or provision,
    - (ix) delivery,
    - (x) fitness for purpose,

- (xi) usage,
  - (xii) quantity,
  - (xiii) specification,
  - (xiv) geographical or commercial origin,
  - (xv) results to be expected from use,
  - (xvi) results and material features of tests and checks carried out on the product;
- (c) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process;
  - (d) any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;
  - (e) the price or the manner in which the price is calculated, or the existence of a specific price advantage;
  - (f) the need for a service, part, replacement or repair;
  - (g) the nature, attributes or rights of the trader or his agent, such as –
    - (i) identity and assets,
    - (ii) qualifications, status, approval, affiliation or connection,
    - (iii) ownership of industrial, commercial or intellectual property rights, or
    - (iv) awards and distinctions;
  - (h) the consumer's rights, including (but not limited to) any rights the consumer may have under the [Supply of Goods and Services \(Jersey\) Law 2009](#);
  - (i) any risks the consumer may face.
- (4) A commercial practice falls within this paragraph if, in its factual context, taking account of all its features and circumstances, it is an inducement and involves –
- (a) any marketing of a product, including comparative advertising, which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor; or
  - (b) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where –
    - (i) the commitment is not aspirational but firm and capable of being verified, and
    - (ii) the trader indicates in a commercial practice that the trader is bound by the code.

## 5 Misleading omissions

- (1) A commercial practice is misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the medium used to communicate it –
- (a) the commercial practice omits material information; or
  - (b) the trader –
    - (i) hides material information, or provides it in an unclear, unintelligible, ambiguous or untimely manner, or

- (ii) fails to identify the commercial intent of the commercial practice (if not already apparent from the context),  
and the commercial practice is thereby an inducement.
- (2) For the purposes of paragraph (1)(a), where the medium used to communicate the commercial practice imposes limitations of space or time, such limitations and any measures taken by the trader to make material information available to consumers by other means shall be taken into account in deciding whether information has been omitted.
- (3) In this Article, “material information” –
- (a) means information that the average consumer needs, according to the context, to take an informed transactional decision;
  - (b) includes information required to be given under Articles 5 and 6 of the [Distance Selling \(Jersey\) Law 2007](#) and such other required information as the Minister may prescribe by Order; and
  - (c) where the commercial practice is an invitation to purchase, includes the matters listed in paragraph (4).
- (4) In the case of an invitation to purchase, the following information is to be regarded as material, if not already apparent from the context –
- (a) the main characteristics of the product, to the extent appropriate to the medium used to communicate the invitation to purchase and to the product;
  - (b) the identity of the trader, such as a trading name, and of any other trader on whose behalf the trader is acting;
  - (c) the geographical address of the trader and of any other trader on whose behalf the trader is acting;
  - (d) the price of the product, inclusive of taxes or (where the nature of the product means that the price cannot reasonably be calculated in advance) the manner in which the price is calculated;
  - (e) where appropriate, all additional freight, delivery or postal charges or (where such charges cannot reasonably be calculated in advance) the fact that such charges may be payable;
  - (f) arrangements for payment, delivery, performance, and complaint handling policy, where these depart from the requirements of professional diligence;
  - (g) the existence of a right of withdrawal or cancellation, for products and transactions involving such a right.

## 6 Aggressive commercial practices

- (1) A commercial practice is to be regarded as aggressive if, in its factual context, taking account of all its features and circumstances –
- (a) by harassment, coercion, or undue influence it significantly impairs, or is likely to significantly impair, the average consumer’s freedom of choice or conduct with regard to the product; and
  - (b) it is thereby an inducement.
- (2) In determining whether a commercial practice uses harassment, coercion or undue influence, account shall be taken of –
- (a) the timing, location, nature or persistence of the practice;

- (b) the use of threatening language or behaviour;
  - (c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product;
  - (d) any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate the contract or to switch to another product or another trader;
  - (e) any threat to take any action which cannot legally be taken.
- (3) For the purposes of this Article –
- (a) “coercion” includes the use of physical force; and
  - (b) using “undue influence” means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer's ability to make an informed transactional decision.

## 7 Offences and penalties

- (1) A trader is guilty of an offence if –
- (a) the trader engages in a commercial practice knowing, or being reckless as to whether, the commercial practice is unfair in the sense given by Article 3(3); or
  - (b) the trader engages in an unfair commercial practice which is –
    - (i) a commercial practice listed in the Schedule,
    - (ii) misleading as described in Article 4 (other than a commercial practice falling within Article 4(4)(b)),
    - (iii) a misleading omission under Article 5, or
    - (iv) to be regarded as aggressive under Article 6.
- (2) A person who is guilty of an offence under paragraph (1) is liable to a fine of level 3 on the standard scale.
- (3) For the purposes of paragraph (1)(a), a trader who engages in a commercial practice without due regard to whether the practice contravenes the requirements of professional diligence is deemed to do so recklessly, whether or not the trader has reason for believing that the practice might contravene those requirements.
- (4) The States may by Regulations amend paragraph (1) and the Schedule.

## 8 Defences of due diligence and innocent publication

- (1) In any proceedings against a trader for an offence under Article 7, it is a defence for the trader to prove –
- (a) that the commission of the offence was due to one of the following matters, namely –
    - (i) a mistake,
    - (ii) reliance on information supplied to the trader by another person,
    - (iii) the act or default of another person, not being a person under the trader's direction or control,

- (iv) an accident, or
    - (v) another cause beyond the trader's control; and
  - (b) that the trader took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence, including by any person under the trader's direction or control.
- (2) A trader may not seek to rely on the defence provided by paragraph (1) by reason of a matter in either sub-paragraph (a)(ii) or (iii) without leave of the court to do so, unless –
  - (a) the trader has served on the Attorney General a notice in writing giving all such information identifying the other person concerned or assisting in the identification as was in the trader's possession; and
  - (b) that notice is served no later than 7 clear days before the date of the hearing.
- (3) In any proceedings against a trader for an offence under Article 7 committed by way of publication of an advertisement, it shall be a defence for the trader to prove that –
  - (a) the trader is a person whose business it is to publish or arrange for the publication of advertisements;
  - (b) the trader received the advertisement for publication in the ordinary course of business; and
  - (c) the trader did not know and had no reason to suspect that publication of the advertisement would amount to an offence under the provision to which the proceedings relate.
- (4) In paragraph (3) "advertisement" includes a catalogue, a circular and a price list.

## 9 Liability of officers etc.

- (1) Where an offence committed by an entity listed in paragraph (2) is proved to have been committed with the consent or connivance of any person specified in the case of that entity in paragraph (3), the person shall also be guilty of the offence and liable in the same manner as the entity to the penalty provided for that offence.
- (2) The entities mentioned in paragraph (1) are –
  - (a) a limited liability partnership;
  - (b) a separate limited partnership;
  - (c) an incorporated limited partnership or other body corporate.
- (3) The persons to whom liability for an offence may attach in accordance with paragraph (1) are –
  - (a) in the case of a limited liability partnership, a person who is a partner of the partnership;
  - (b) in the case of a separate limited partnership or an incorporated limited partnership –
    - (i) a general partner, or
    - (ii) a limited partner who is participating in the management of the partnership;
  - (c) in the case of a body corporate other than an incorporated limited partnership, a director, manager, secretary or other similar officer of the body corporate; or

- (d) any person purporting to act in any capacity described in sub-paragraphs (a) to (c).
- (4) Where the affairs of a body corporate are managed by its members, paragraphs (1) to (3) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

## **10 Power of authorized officers to make test purchases**

An authorized officer may –

- (a) enter into an agreement to secure the provision of a product; or
- (b) make a purchase of any goods,

for the purpose of ascertaining whether or not an offence under this Law is being or has been committed.

## **11 Power of authorized officers to enter premises without warrant**

- (1) An authorized officer may enter any premises, other than premises used only as a private dwelling, at all reasonable hours, for the purpose of ascertaining whether or not an offence under this Law is being or has been committed.
- (2) If required to do so, an authorized officer exercising the power conferred by paragraph (1) must produce evidence of his or her authority.
- (3) The power conferred by paragraph (1) includes –
  - (a) power to inspect any product; and
  - (b) the same powers of seizure, access and copying, and retention, as are conferred on a police officer by Articles 21 to 24 (except Article 24(3)) of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#), and in the application of those provisions for the purposes of this Law –
    - (i) for any reference to a police officer there shall be substituted reference to an authorized officer,
    - (ii) for the references in Article 23(3) to the Force or the Honorary Police there shall be substituted reference to the Chief Inspector, and
    - (iii) for the reference in Article 24(5) to the police there shall be substituted reference to the Chief Inspector.
- (4) Where goods are seized from a vending machine, the person to be informed of such seizure shall be the person whose name and address are stated on the machine as being those of the proprietor of the vending machine or, if there is no such name and address, the occupier of the premises on which the machine stands or to which it is affixed.

## **12 Warrant to enter premises**

- (1) If the Bailiff is satisfied that there are reasonable grounds for an authorized officer to believe that there are on any premises goods or documents inspection of which is necessary for the purpose mentioned in Article 11(1), and that –
  - (a) entry to the premises has been or will be refused;

- (b) the premises are unoccupied or the occupier is temporarily absent, and the case is one of urgency; or
  - (c) an application for admission would defeat the purpose of the proposed entry, the Bailiff may grant a warrant permitting an authorized officer to enter the premises.
- (2) A power of entry by virtue of a warrant granted under paragraph (1) shall include the same powers as mentioned in Article 11(3).
- (3) A warrant granted under paragraph (1) shall continue in force for 30 days.

### **13 Assistance and equipment of authorized officers**

An authorized officer entering premises by virtue of Article 11 or 12 may take with him or her such other persons and equipment as he or she may consider necessary.

### **14 Offences of obstructing etc. investigation by authorized officers**

- (1) A person who intentionally obstructs an authorized officer acting in execution of powers conferred by Article 11 or 12 is guilty of an offence and liable to a fine of level 3 on the standard scale.
- (2) A person who –
- (a) fails to give such an officer any assistance which that officer may reasonably require; or
  - (b) when required to produce any document or give any other information, produces a document or gives information which is false in a material particular, knowing the document or information to be false in that particular,
- is guilty of an offence and liable to a fine of level 3 on the standard scale.

### **15 Duty to inform as to results of tests, etc.**

- (1) This Article applies where any goods –
- (a) purchased by an authorized officer under Article 10; or
  - (b) seized and detained by an authorized officer under Article 11 or 12,
- are submitted to a test, and the test leads to the institution of any proceedings under this Law.
- (2) Where this Article applies –
- (a) the officer shall inform –
    - (i) the person from whom the goods were purchased, or
    - (ii) where the goods were purchased by way of a vending machine, the person mentioned in Article 11(4),of the result of the test; and
  - (b) if it is reasonably practicable to do so, persons against whom proceedings are instituted shall be given the opportunity to have the goods tested on their own behalf.

## 16 Compensation where no fault

- (1) Where an authorized officer exercises any power to seize and detain goods under Article 11 or 12, the Minister shall be liable to pay compensation to any person having an interest in the goods in respect of any loss or damage caused to that person by reason of that seizure and detention, provided that –
  - (a) either –
    - (i) there has been no contravention, in relation to the goods, of any provision of this Law, or
    - (ii) the exercise of the power is otherwise unreasonable in the circumstances or carried out in bad faith; and
  - (b) the loss or damage is not attributable to any neglect or default by the person having an interest in the goods.
- (2) Any dispute as to the right to, or amount of, any compensation payable under paragraph (1) shall be determined by a single arbitrator appointed by the parties.
- (3) If the parties cannot agree on the appointment of an arbitrator within a reasonable period, any party may apply to the Judicial Greffier who shall appoint an arbiter.
- (4) The decision of an arbitrator appointed under this Article shall be binding upon the parties to the arbitration.

## 17 Orders to enforce this Law

- (1) The Attorney General may apply to the Royal Court for an injunction (including an interim injunction) or other order, against any person who appears to the Attorney General to be responsible for a contravention of a provision of this Law.
- (2) The Royal Court, on an application under this Article, may grant an injunction or other order, on such terms as it thinks fit, to secure compliance with a provision of this Law.

## 18 Undertakings

- (1) This Article applies where it appears to the Chief Inspector that a person has engaged, is engaging or is likely to engage in conduct which would, if proved, constitute an offence under Article 7.
- (2) Where this Article applies, the Chief Inspector may accept an undertaking from the person that the person will not, as the case may require –
  - (a) continue or repeat the conduct;
  - (b) engage in such conduct in the course of the person's business or another business; or
  - (c) consent to or connive in the carrying out of such conduct by a body corporate with which the person is connected.
- (3) Having accepted an undertaking under this Article, the Chief Inspector –
  - (a) may notify the Attorney General of the terms of the undertaking and the identity of the person who gave it; and
  - (b) may accept a further undertaking from the person to publish the undertaking, or may arrange for publication in accordance with Article 19.

- (4) A person is “connected” with a body corporate for the purposes of paragraph (2) if the person is –
- (a) a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in such a capacity; or
  - (b) a person who is an associate of the body corporate or has a controlling interest in the body corporate.

## **19 Publication of undertakings, etc.**

- (1) The Chief Inspector may arrange for the publication, in such form and manner as he or she considers appropriate, of details of –
- (a) an undertaking given to that officer by or on behalf of any person as to compliance with this Law;
  - (b) an application made by the Attorney General for an injunction or other order for the purposes of enforcing this Law; and
  - (c) an undertaking given to, or injunction or other order made by, the Royal Court in proceedings on such an application.
- (2) The Chief Inspector may arrange for the dissemination, in such form and manner as he or she thinks fit, of information and advice concerning the operation of this Law.

## **20 Validity of agreements**

An agreement shall not be void or unenforceable by reason only of a contravention of, or an offence under, this Law.

## **21 Citation**

This Law may be cited as the Consumer Protection (Unfair Practices) (Jersey) Law 2018.

## SCHEDULE

(Article 3(2))

### COMMERCIAL PRACTICES WHICH ARE ALWAYS UNFAIR

#### 1 Misleading commercial practices

The following misleading commercial practices are in all circumstances considered unfair –

- (a) claiming to be a signatory to a code of conduct when the trader is not;
- (b) displaying a trust mark, quality mark or equivalent without having obtained the necessary authorization;
- (c) claiming that a code of conduct has an endorsement from a public or other body which it does not have;
- (d) claiming that a trader (including the trader's commercial practices) or a product has been approved, endorsed or authorized by a public or private body when that is not the case, or making such a claim without complying with the terms of the approval, endorsement or authorization;
- (e) making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that the trader will not be able to offer to supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered ("bait advertising");
- (f) making an invitation to purchase products at a specified price and then –
  - (i) refusing to show the advertised item to consumers,
  - (ii) refusing to take orders for it or deliver it within a reasonable time, or
  - (iii) demonstrating a defective sample of it,with the intention of promoting a different product ("bait and switch");
- (g) falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity of time to make an informed choice;
- (h) undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the country where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction;
- (i) stating or otherwise creating the impression that a product can legally be sold when it cannot;
- (j) presenting rights given to consumers in law as a distinctive feature of the trader's offer;
- (k) using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer;

- (l) making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or the consumer's family if the consumer does not purchase the product;
- (m) promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer, when it is not;
- (n) establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products;
- (o) claiming that the trader is about to cease trading or move premises, when the trader is not;
- (p) claiming that products are able to facilitate winning in games of chance;
- (q) falsely claiming that a product is able to cure illnesses, dysfunction or malformations;
- (r) passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions;
- (s) claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent;
- (t) describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item;
- (u) including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that the consumer has already ordered the marketed product, when that is not the case;
- (v) falsely claiming or creating the impression that the trader is not acting for purposes relating to the trader's trade, business, craft or profession, or falsely representing oneself as a consumer;
- (w) creating the false impression that after-sales service in relation to a product is available in a place other than the one in which the product is sold.

## **2 Aggressive commercial practices**

The following aggressive commercial practices are in all circumstances considered unfair –

- (a) creating the impression that the consumer cannot leave the premises until a contract is formed;
- (b) conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under Jersey law, to enforce a contractual obligation;
- (c) making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified, to enforce a commercial obligation;
- (d) requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant to whether the claim

was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a customer from exercising the customer's contractual rights;

- (e) including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them;
- (f) demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer ("inertia selling"), except where a product is a substitute supplied –
  - (i) in accordance with information given to the consumer before a contract was concluded, as provided by Article 5(2) of the [Distance Selling \(Jersey\) Law 2007](#), or
  - (ii) in performance of a contract, where the conditions in Article 17(7) of that Law are satisfied,

and this sub-paragraph shall apply in addition, and without prejudice, to the operation of Article 20 of that Law;

- (g) explicitly informing a consumer that if the consumer does not buy the product or service, the trader's job or livelihood will be in jeopardy;
- (h) creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact –
  - (i) there is no prize or other equivalent benefit, or
  - (ii) taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement	°Projet No (where applicable)
Consumer Protection (Unfair Practices) (Jersey) Law 2018	<a href="#">L.16/2018</a>	8 June 2018	<a href="#">P.130/2017</a>
States of Jersey (Ministerial Offices – Minister for Sustainable Economic Development) Order 2023	<a href="#">R&amp;O.102/2023</a>	24 November 2023	

°Projets available at [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

### Table of Renumbered Provisions

Original	Current
None	

### Table of Endnote References

<sup>1</sup> Article 1(1) *amended by R&O.102/2023*