



CONSUMER AFFAIRS

B E R M U D A

Promoting Confident Consumers and Responsible Traders

A N N U A L R E P O R T

January 1, 2019 – December 31, 2021

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March 31, 2022

The Hon. Kathy Lynn Simmons, JP, MP
Ministry of Legal Affairs and Constitutional Reform
Global House, 4th Floor
43 Church Street
Hamilton HM 12
Bermuda

Dear Minister,

On behalf of the Consumer Affairs Board, I am pleased to submit the Consumer Affairs Annual Report for the year ending December 31, 2021, for your approval to table.

This report provides a brief summary of the functions of the Consumer Affairs Board and a detailed review of our activities from 1 January 2019 to 31 December 2021.

I would like to take this opportunity to commend the Board and the staff of Consumer Affairs for their continued dedication and hard work.

I trust that you will find the information and analysis in this report comprehensive and useful.

Sincerely,

Wayne Swan

Board Chairman

1. CHAIRMAN'S REPORT

The Consumer Affairs Board (the "Board") remain committed to supporting the community of Bermuda through the effective and efficient education and enforcement of consumer protection obligations. To ensure consumers are aware of their legal rights, and that consumer interests are adequately protected, the Board provides regulatory oversight in order to improve the commercial activities adopted by commercial enterprises and debt collection agencies operating within Bermuda.

In addition, the Board continues to provide regulatory oversight of residential landlords and tenants of Bermuda for residential properties falling under the remit of Rent Control ("rent controlled properties"). The Board's regulatory activities ensure that: (i) residential tenants of rent controlled properties are aware of their legally enforceable rights and obligations; (ii) that landlords operate in accordance with their legislatively imposed obligations; and (iii) that landlords and tenants are provided adequate measures of legal recourse. Through the effective regulation and inspection of rent controlled properties the Board is able to ensure Bermudians have access to affordable rental units that are fit for purpose.

With respect the impact the Covid-19 global pandemic (the "Pandemic") has had on consumers, commercial enterprises, debt collection agencies and landlords ("industry stakeholders"), the Board appreciates that the Pandemic has resulted in numerous obstacles for industry stakeholders. As a result, the Board recognizes that pre-existing consumer protection concerns were exacerbated and that new consumer risks came to fruition which required immediate and effective regulatory intervention.

The Board appreciates the efforts undertaken by the Consumer Affairs staff (the "CA") to ensure that the Board would be able to continue to effectively respond to the needs and concerns of industry stakeholders, while circumventing its own technical and administrative hurdles faced during the Pandemic. Throughout the Pandemic the CA remained dedicated to achieving the mission of the Board by consistently exhibiting resiliency and proficiency in their subject matter expertise while remaining flexible in response to the uncertainty associated with the Pandemic.

As commercial enterprises continue to adapt their commercial activities to account for the lasting impact of the Pandemic, the Board and CA recognizes that Consumer Affairs will need to remain mindful of the types of risks that consumers may face in order to better accommodate and support a post pandemic Bermuda economy. By remaining mindful of industry developments, the CA will continue to possess the ability to respond to such industry developments and provide industry stakeholders with support in a timely and effective manner.

Appreciating that the Pandemic has significantly changed Bermuda's economic and commercial landscape, the Board is confident that the CA will continue to effectively modify and improve its administrative processes and continue to excel in providing support and advice to industry stakeholders.

In addition to remaining responsive to industry developments, the Board appreciates that the legislative scope and responsibilities of Consumer Affairs has consistently increased since the inception of Consumer Affairs. Consequently, the CA has had to respond in an effective and timely manner in order to implement specific administrative policies and procedures and enforcement activities.

The Board anticipates that as Bermuda's economic and commercial landscape continues to evolve the legal remit and administrative demands of the CA will continue to expand. Given the historic performance of the CA, the Board is confident that the CA has the infrastructure in place to continue to respond to its continuously expanding legal remit.

In response to industry developments observed, the Board and the CA conducted an internal assessment in order to identify opportunities to improve existing operational and administrative activities. Following the completion of its internal assessment, the Board has proposed that the CA's 2022 annual plan will need to consider:

- i. adapting its administrative processes to account for work-from-home initiatives;
- ii. replacing its existing case management system;
- iii. the identification of educational activities and updating historical educational publications;
- iv. amending its administrative processes and investigative and enforcement procedures to ensure the efficient use of limited government resources; and
- v. proposing legislative amendments to the CA's governing legislation.

This annual report (the "Report") highlights the industry developments the CA has observed following the onset of the Pandemic, the activities the CA has undertaken in response and outlines the operational initiatives the CA intends to pursue during the 2022 fiscal year. At this stage, as the Chairman of the Board, I would like to thank the members of the Board and the CA for their continued hard work, perseverance and dedication towards achieving the mission of the Board.

During the period of time covered in the Report the CA fell under the remit of the Ministry of Home Affairs. As of April 2022 the CA was relocated under the Ministry of Legal Affairs and Constitutional Reform and is now to be presented to the house by the Minister of Legal Affairs and Constitutional Reform.

2. WELCOME TO CONSUMER AFFAIRS

2.1 WHO WE ARE

Serving as an administrative arm of the Government of Bermuda, the Consumer Affairs Board (the “Board”) was established to: (i) promote fair business practices; (ii) establish and enforce consumer good product safety standards; and (iii) provide consumers, business entities, landlords, debt collection agencies and creditors with exemplary advice and support.

In support of the Board, the Consumer Affairs staff (the “CA”) is comprised of a small team of dedicated individuals that play a critical role in supporting the development of a dynamic and innovative Bermuda economy by building consumer trust and confidence.

Consumer Affairs Board:

2019-2020 Board Members	2021 Board Members
Wayne Swan (Chairman)	Wayne Swan (Chairman)
Rachel Cabot (Deputy Chairman)	Rachel Cabot (Deputy Chairman)
Vance Campbell	Vance Campbell
Audrey Gordon	Gail Correia
Tiffany Perry	Linda Trott
Brian Scott	Jocene Harmon
Raymond Seymour	Raymond Seymour
Susan Thompson	Susan Thompson
	Michele Khaldun
	John Hindness

Consumer Affairs Staff:

Karen Marshall (Executive Officer)
Rhonda Daniels (Enforcement Officer)
Paula Carlington (Enforcement Officer)
Thomas Matvey (Enforcement Officer)
Jordan Cutts (Business & Community Liason Officer)
Heather Marshall (Case Management Support Officer)
LaVonne Bean (Administrative Assistant)
Patrice Simmons (Administrative Assistant)

Through the active regulatory oversight of the commercial activities of business enterprises, debt collection agencies, and residential landlords, the Board and the CA are able to ensure fair and proper business practices are adopted and that consumer rights are actively protected and enforced.

2.2 OUR MISSION

The purpose the CA is to consistently deliver proficient and professional services that: (i) empowers consumers to make informed consumer decisions; (ii) protects consumer rights; and (iii) encourages compliance and self-regulation by commercial enterprises, debt collection agencies and residential landlords. In support of its purpose, the mission statement of Consumer Affairs reflects the values which drive its regulatory activities:

“To operate with integrity, transparency and efficiency in the fulfillment of its mandate and the protection of consumer interests.”

In order to consistently achieve the mission of Consumer Affairs, the CA remains committed to:

- providing a market that is fair, equitable, transparent and accountable thus providing an economy that works for businesses and consumers;
- providing the appropriate level of support and advice to consumers through active consumer engagement, education, empowerment and enforcement to build confidence and trust with all stakeholders within a given transaction;
- establishing and enforcing product safety standards
- providing the appropriate level of support and advice to commercial businesses, debt collection agencies and residential landlords through active oversight, education and assistance;
- providing timely responses to consumer complaints received;
- providing timely responses when receiving applications for and issuing debt collection licenses, vacation rental certificates, rent increase assessments and product safety recalls;
- ensuring the availability of affordable residential rental units, that residential tenants are protected from unlawful evictions and landlords are afforded a fair economic return;
- providing external stakeholders with the assistance and guidance needed to assist disadvantaged and vulnerable members of society;
- providing accurate information, advice and assistance with respect to the management of civil court proceedings;
- remaining mindful of international methods of best practice and industry developments that may impact consumer interest; and
- active collaboration and coordination with governmental departments.

2.3 OUR MANDATE

The CA has the authority to supervise, monitor and regulate businesses providing consumer goods and consumer services in or from within Bermuda, in accordance with the Consumer Protection Act 1999, industry specific legislation and any Ministerial Regulations or Directions made by the Minister of Legal Affairs and Constitutional Reform.

Pursuant to formal delegation by the Minister of Home Affairs, the CA has been afforded the authority to supervise, monitor and regulate landlord and tenant residential matters in accordance with the Landlord and Tenant Act 1978, the Rent Increases (Domestic Premises) Control Act 1978, sectoral legislation and any Ministerial Regulations or Directions.

Following the enactment of the Debt Collection Act 2018 in October 2020, sectoral legislation and Ministerial Regulations, the CA has been appointed with the authority to supervise, monitor and regulate the commercial activities of registered debt collection agencies operating within Bermuda.

3. CONSUMER GOODS AND SERVICES

With regards to the supervision, monitoring and regulation of Bermudian businesses providing consumer goods and services there are four primary pieces of governing legislation; the Consumer Protection Act 1999 (the “CPA”), the Sale of Goods Act 1978 (the “SGA”), the Supply of Services (Implied Terms) Act 2003 (the “SSIT”), the Copyright and Design Act 2004 (the “CDA”) and the Purchase of Goods by Instalments Act 1943 (the “POGI”).

With respect to the legislative obligations imposed on Consumer Affairs, the role of the CA is to ensure that commercial entities providing consumer goods and services do not subject their prospective consumers to “unfair business practices”, “unconscionable acts” or products unsafe for consumer consumption or use. Under the CPA, the definition of a “consumer good” excludes the following:

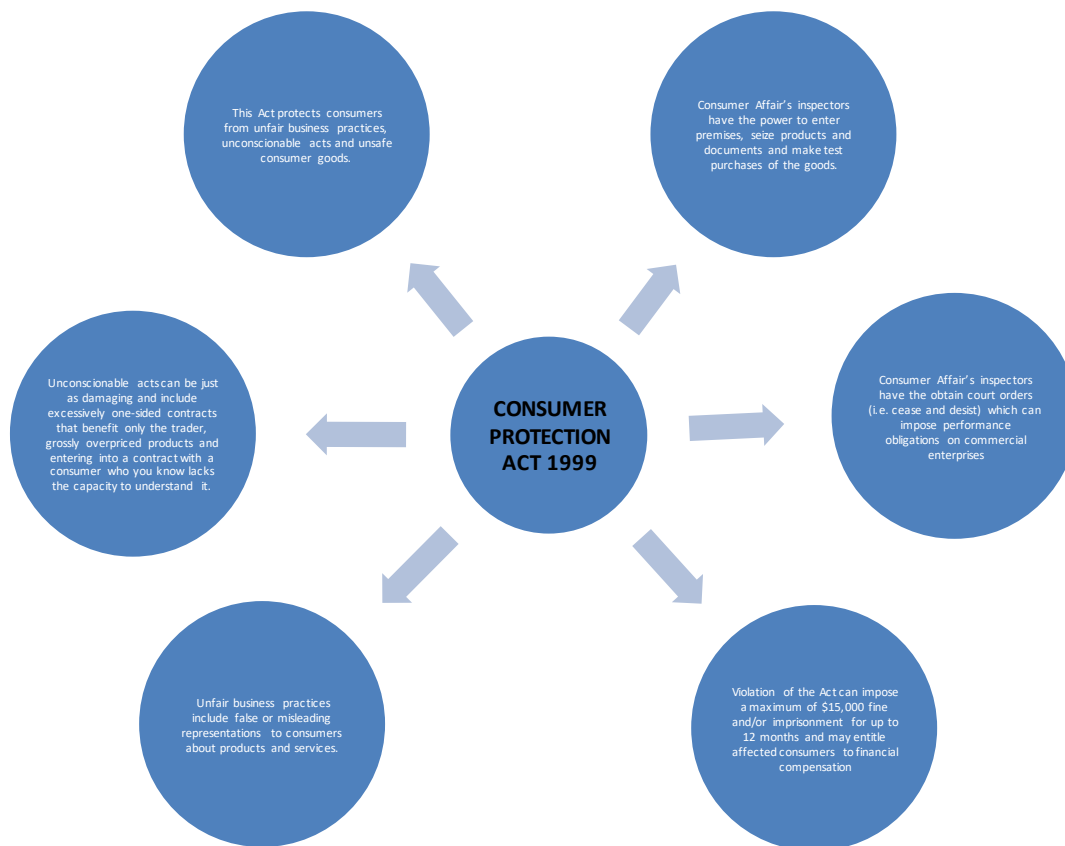
- Water;
- Food;
- Controlled drugs as defined under the Misuse of Drugs Act 1972;
- Tobacco or tobacco products;
- Pharmaceutical or medicinal products available pursuant to a prescription; and
- Financial service providers

Consumer Affairs' governing consumer protection legislative framework is beneficial for promoting fair competition as it serves to dissuade disreputable businesses practices. Businesses found operating in contravention of the Bermuda's governing consumer protection legislative framework may be subject to directions, financial penalties, punitive damages and/or imprisonment.

Although Consumer Affairs has the authority to conduct mediation, investigations and enforcement proceedings, Consumer Affairs does not have the legal authority to:

- Demand apologies from businesses on behalf of consumers;
- Pursue an unmeritorious complaint;
- Provide formal legal advice or legal representation on behalf of consumers;
- Act in response to receipt of anonymous complaints filed by consumers.

In addition to protecting consumers from “unfair business practices” and “unconscionable acts”, the CA is responsible for informing the general public of: (i) product recalls; (ii) conducting consumer market research; (iii) the mediation of disputes between parties upon request; (iv) the undertaking of investigation and enforcement proceedings; and (v) all other tasks assigned to the CA by the Board and the Rent Advisory Panel.

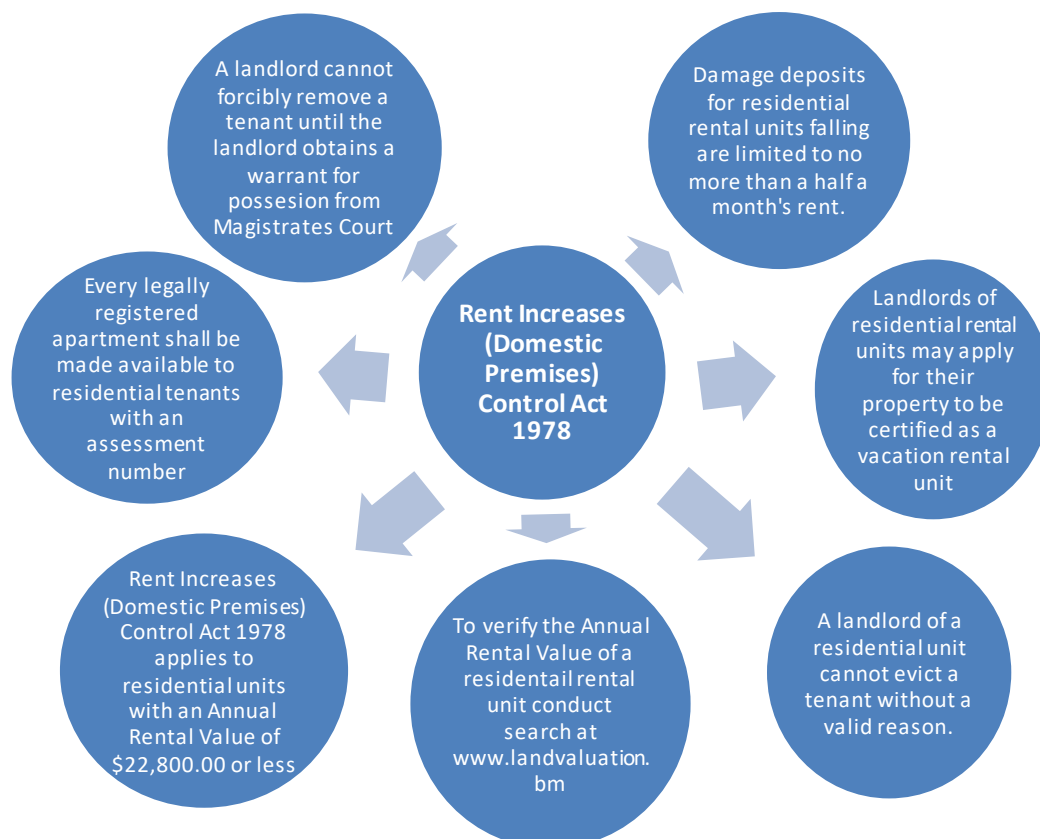


4. LANDLORD AND TENANT RENT CONTROL

With regards to the supervision, monitoring and regulation of Bermudian landlords providing residential accommodation to residents of Bermuda, there are three primary pieces of governing legislation; the Landlord and Tenant Act 1978 (the “LTA”), the Rent Increases (Domestic Premises) Control Act 1978 (the “RIC”), the Rent Increases (Scientific Research Institutions) Order 1975 (the “RIO”), the Rent Control Rules 1972 (the “RCR”) and the Rent Apportionment Act 1880.

The CA serves as a source of information and support for both landlords and consumers prior to entering into, or during the term of, tenancy agreements. Such advice and support may include, but is not limited to: (i) providing guidance and regulatory support in response landlord and tenant breaches of contract; (ii) undertaking investigations pursuant to rent increase requests for premises falling under the RIC; (iii) all other tasks assigned to the Landlord and Tenant Unit by the Board and the Rent Advisory Panel; and (iv) vacation rental certification and licensing.

In addition to its primary legislative obligations, the CA is responsible for: (i) regulating how much and how often rent can be charged for premises falling under the RIC; (ii) the imposition of limits on the quantification of rental unit damage deposits; (iii) conducting inspections and property appraisals of residential rental dwellings in response to rent increase applications; and (iv) the education of landlords and tenants of their rights and responsibilities under the LTA, the RIC and RIO.



It is worth noting that Bermuda's residential landlord and tenant legislative framework is fragmented into two primary pieces of legislation (i.e. the LTC and the RIC) to ensure that Bermudian residents are provided access to affordable residential housing. Consequently, as part of its regulatory obligations, the Landlord and Tenant Unit must consider the following when managing a landlord and tenant matter:

- Whether the premises under consideration has an annual rental value higher than \$22,800;
- Whether the premises under consideration is subject to a tenancy agreement where the tenant is an employee of the landlord and the rental unit forms part of the employment contract;
- Whether the premises under consideration are certified as a vacation rental unit;
- Whether the premises under consideration are normally occupied by a landlord who wishes to rent his residential unit, during a temporary absence from Bermuda, for less than one year; and
- Whether there is an individual in occupation of the premises under consideration who enjoys the benefit of a life tenancy.

The determination of the applicable landlord and tenancy legislation is critical to ensuring the administrative effectiveness of the Consumer Affairs Landlord and Tenant Unit as landlords holding premises falling under the remit of the RIC are subject to a more exhaustive list of legislative obligations not otherwise reflected in the LTC.

5. DEBT COLLECTION

With regards to the supervision, monitoring and regulation of debt collections agencies, that have been appointed by creditors seeking assistance in obtaining outstanding monies from their debtors, the CA has been assigned supervisory and regulatory obligations pursuant to the Debt Collection Act 2018 ("DCA")

Although the Board and the CA have been afforded legal authority to oversee the commercial activities of debt collection agencies and ensure that debt collection agencies are not partaking in "unfair debt collection practices", the legal remit of the Board and the CA is restricted with regards to the oversight of creditors who personally seek repayment for monies outstanding from their debtors.

Given the CA's legislative limitations, the CA has placed an emphasis on informing consumers, which may become potential debtors, as to what is considered an "unfair debt collection practices". Furthermore, the CA has informed consumers that the legislative obligations to not undertake "unfair debt collection" practices is not applicable to creditors, whether they are personal creditors or business creditors, and that they should remain mindful as to how the applicability of "unfair debt collection practices" may differ in each circumstance.

6. PUBLIC COMMUNICATIONS

In support of the regulatory activities of the CA, and to foster consumer trust, the CA has an obligation to develop and publish educational materials (i.e. physical and digital) on the CA's official website and social media platforms (i.e., Facebook, Instagram). Additionally, CA is responsible for facilitating in-person public speaking events (i.e., radio and television broadcasting, townhall meetings) and conducting one-on-one meetings to further consumer education.

The CA places a heavy emphasis on undertaking effective public communications as effective communication has the dual effect of: (i) raising the profile of the CA; and (ii) educating the general public. Through increased visibility and access to effective educational material and support, the CA's public communications efforts ensure that commercial activities remain compliant with Bermuda's consumer protection legislative framework and enables the CA to respond to and address observed consumer behavior trends that may result in increased consumer risks.

7. CONSUMER PROTECTION AND COVID-19

Consumer behavior changed significantly as commercial activities were dramatically impacted, and in some instances completely halted, in response to government imposed mandates. With the imposition of lockdowns and health fears, consumer spending dropped approximately 11 to 26 percent worldwide.¹

With the onset of the Pandemic, the CA observed that the health and economic welfare of consumers was negatively impacted due to market disruption and Pandemic related regulations and mandates. With the enactment of Pandemic related regulations and restrictions, physical access to essential goods and services was restricted and detrimentally impacted consumers. Consequently, the CA observed that consumers became increasingly reliant on digital e-commerce to facilitate the acquisition of goods and services.

The increased uptake of e-commerce subsequently resulted in a reliance on residential internet and mobile data, which further compounded prior existing consumer issues concerning access to affordable and reliable residential internet and mobile data. Those consumers considered vulnerable, disadvantaged, and/or reliant on financial assistance, were particularly impacted as many did not have reliable access to the internet or lacked the technical skills necessary to facilitate the acquisition of goods and services via e-commerce platforms. In response the CA worked in conjunction with the Regulatory Authority of Bermuda to help ensure that consumers were afforded an effective resolution to their experienced issues.

¹¹ <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/the-consumer-demand-recovery-and-lasting-effects-of-covid-19>

In addition to consumer issues concerning access to reliable residential internet, the CA appreciates that the Pandemic has disproportionately impacted consumer classes; particularly middle-income and low-income consumers. Consumers able to work from home, in accordance with governmental mandates, were able to maintain employment and income, while accumulating more savings and cutting back on spending. While those consumers who were unable to work from home either faced temporary unemployment, or their lost jobs, and became reliant on governmental Covid-19 financial relief, their personal savings and charitable donations.

While many higher income households have emerged largely unscathed financially, the CA has observed that many low-income and middle-income households, who lost jobs and/or faced reductions in available work hours were disproportionately affected. While there is reason to be optimistic for economic recovery in a post Pandemic economy, the CA is concerned that the consumer protection landscape of Bermuda has experienced a seismic change.

With respect to Bermuda's increasing average cost of living, decreasing purchasing power, rising inflation and Bermuda's continued economic uncertainty, the CA faces the daunting task addressing new consumer trends and commercial practices while continuing to strike a balance between advising the commercial activities of businesses, protecting consumers subjected to unfair trade practices and ensuring that an equitable and proportionate approach to regulation and enforcement is adopted.

7.1 CONSUMER GOODS

Increased Reliance on E-Commerce and Responsive Technical Support

With the enactment of physical distancing mandates and restrictions on mobility, the CA observed an increased demand amongst consumers for e-commerce and online shopping. During the Pandemic commercial enterprises were confronted with having to fundamentally transform historically successful business models, seemingly overnight, and expediently adopt functional e-commerce platforms.

The CA observed that those commercial enterprises with pre-existing functional online platforms (i.e., social media, official website, online shopping and delivery services) were able to effectively respond to the operating restrictions imposed by the Pandemic as consumers were able to effectively browse and purchase their available goods and services. In contrast, businesses operating absent an online presence prior to the onset of the Pandemic were severely disadvantaged as they found themselves having implement temporary stop-gap measures, which would enable them to continue to interact with consumers, while they adopted an e-commerce platform. Consequently, the CA observed that those commercial enterprises with fully functional e-commerce platforms were highly influential in determining the choices consumers had following the onset of the Pandemic.

In addition to the increased reliance of online shopping, consumer behavior and spending habits shifted away from luxury items, travel and hospitality, and towards “nesting” as consumers began spending on items such as home gyms, backyard gardens, gaming equipment and home renovations. Consumer Affairs observed that long-standing consumer habits, such as physically browsing store locations, have been dramatically interrupted and continue to be negatively impacted.

In order to bridge the gap observed between commercial enterprises, operating absent an online e-commerce platform, and consumers experiencing difficulties in contacting commercial enterprises, the CA worked in conjunction with these commercial enterprises to adopt stopgap measures to ensure that residential consumers continued to have access to essential consumer goods, the CA acted as a conduit to support effective communication.

By directly contacting the owners of commercial enterprises, the CA coordinated with and assisted in the development of “call in and collect” customer service practices and provided commercial enterprises with guidance on how to navigate health and safety protocols imposed by the Government of Bermuda. Additionally, the CA communicated that, although the stop-gap measures adopted may serve as a temporary solution, in a post Pandemic market a functional online presence is integral to continued success and emphasized the necessity for commercial enterprises to consider the development and adoption of an e-commerce platform.

Although the CA expects some of the consumer behaviors adopted in response to Pandemic will fall away and revert back to closer to pre-pandemic patterns (i.e., remote learning, declining leisure air travel and commercial cruise lines, and decreased demand live entertainment), the CA anticipates that some consumer behaviors are likely to continue to influence the commercial landscape of Bermuda (i.e., online shopping, increased “nesting”).

Whether it be through the adoption of an official website, or the utilization of a social media platform, the CA appreciates that the Pandemic has resulted in a fundamental shift in the way in which consumers seek to procure goods and services. Failure to adapt to observed shifts in consumer behavior, and modify historically successfully business models to incorporate e-commerce, will compromise the continued success of commercial enterprises that are unwilling or unable to do so.

In addition to the increased adoption of a fully comprehensive e-commerce platform, the CA has also communicated the necessity for commercial enterprises to have the technical support infrastructure in place to ensure that a customer service representative is consistently available to answer customer calls and respond to customer information requests and complaints in a timely manner.

Based on the types of complaints received, the CA has observed that the imposition of “work from home” mandates has significantly impacted the quality of customer service care. During the Pandemic many customers were left unable to contact a customer care representative directly via telephone and e-mails would be subject to undue delays prior to receiving a response, if at all.

In support of commercial enterprises experiencing administrative difficulties in providing readily available and reliable customer support during the Pandemic, the CA contacted commercial entities, on behalf of consumers, to ensure that consumers were afforded adequate administrative support. In particular, the CA placed an increased emphasis on supporting consumers that faced difficulties contacting commercial entities which provide essential consumer goods and services.

In order to ensure that the commercial activities of businesses providing consumer goods and services do not fall under the definition of “unfair trade practices”, the global pandemic has highlighted the need for commercial enterprises to adapt commercial practices that mitigate the technical and administrative hurdles commonly associated with “work from home”. In addition to ensuring employees are adequately equipped to work remotely, commercial enterprises must implement commercial practices that enable customer service care representatives continue to actively manage consumer complaints in a timely manner; regardless of physical location.

The CA is of the view that it cannot be understated how integral Bermuda’s retail industry is to the continued success of Bermuda’s economy. Were the retail industry fail to rebound, the CA anticipates an increase in unemployment will likely result in a ripple effect in other Bermuda industries. The CA appreciates that Bermuda’s retail industry is integral in supporting other industries, as consumers employed by retailers directly contribute to Bermuda’s economy through: (i) the purchase of goods and services; (ii) the payment of rent and mortgages; and (iii) annual tax contributions.

Hospitality

International travel bans and restrictions have and continue to impact Bermuda’s economy as most airports and cruise lines continue to remain subject to imposition of travel restrictions following the Pandemic.

During the first wave of the Pandemic the vast majority of flights and cruise ships, that historically visited Bermuda during the summer tourist season, were cancelled. Consumers who had made travel arrangements prior to the onset of Pandemic were left wondering who will shoulder the financial impact of such cancellations; especially in light of bookings and payments made in advance.

As we continue to move past the Pandemic, the CA has observed that consumers continue to remain subject to, and negatively impacted by, travel restrictions. Consequently, the CA continues to face a number of consumer complaints regarding entitlements to refunds and reimbursements from airlines, cruise lines, hotels and guest house accommodations.

In addition to overseas travel, the CA observed that during the Pandemic organized entertainment events were subject to closure orders which directly contributed towards unsettling confusion for consumers. The CA acknowledges that consumers who would typically be entitled refunds for advance payments were refused such recourse as event organizers began to heavily rely upon contractual *force majeure* clauses.

Whilst situational context is integral to effectively rely upon on a *force majeure* clause (i.e., exceptional nature and predictability of the onset of the Pandemic) one would reasonably expect that the notions of good faith and equity are and should be prioritized during an unprecedented crisis.

Recognizing the potential for abuse and the negative impact of over reliance on *force majeure* clauses may have on consumers, the CA advised those affected consumers to review their respective contractual terms and conditions in order to ascertain their rights with respect to cancellations.

In addition to recommending consumers review the agreed terms and conditions, the CA advised affected consumers to contact the service provider (i.e. the event organizer, airline, cruise lines, hotel, etc.) to verify whether the event would be rescheduled or whether they would be provided a refunded for services not rendered.

Additionally, the CA has placed an emphasis on communicating to consumers the desirability to procure appropriate consumer protection insurance, where available, in order to mitigate any potential unfair reliance on *force majeure* clauses. In conjunction with advising consumers to procure appropriate consumer insurance, the CA advised consumers that consumer protection insurance policies should explicitly consider:

- i. the impact of commercial enterprises seeking to cancel and reschedule services on the basis of the existence of a *force majeure* event (i.e. Pandemic related cancellations, poor weather, etc.);
- ii. potential compensation or measures of recourse that may be available in such an event; and
- iii. express consideration as to which *force majeure* events fall outside the limits of the policy

In consideration of Bermuda's long-term sustainability of its hospitality industry, the CA expects consumer demand in the hospitality industry will revert to pre-Pandemic levels, although with operational and administrative modifications. The CA appreciates that the continued success of Bermuda's hospitality industry will be dependent on how well worldwide health and safety risks associated with the Pandemic are identified and mitigated by commercial enterprises and consumers.

Electronic Communications and Educational Service Providers

During the Pandemic many educational service providers and employers were reliant on their students and staff having reliable access to the internet. The CA has found that access to reliable residential internet access played a major role in determining whether consumers had a good or bad experience with remote learning or working from home.

With the adoption of social distancing mandates, the CA received a number of consumer complaints against electronic communications service providers on the basis that they were providing unreliable residential internet services and that customer service representatives were unresponsive. The CA recognizes that those consumers that were impacted by inconsistent residential internet and unreliable customer service agents were unjustly harmed.

The observed harm was particularly evident in residential units falling under the remit of the Rent Increases (Domestic Premises) Act 1978 (“rent controlled properties”). Many tenants of rent controlled properties either: (i) did not have existing residential broadband internet access as their residential unit did not have the necessary infrastructure; or (ii) were not actively utilizing residential internet services prior to the Pandemic. Consequently, many consumers found themselves reliant on using mobile data as a substitute for internet access until they were able to have a customer service representative visit their home and physically install residential internet to their home.

In support the CA worked in conjunction with the Regulatory Authority of Bermuda (the “RA”) to ensure that affected consumers were afforded timely and effective regulatory support. Through its collaboration with the RA, the CA was able to support consumers during the early stages of the Pandemic.

With the uptake of online education the CA observed that many educational service providers were incapable of, or unwilling to, effectively implement online educational programs. In particular, many child day-care and nursery service providers did not have the resources to adopt such measures on such short notice, or the nature of their services did not directly translate to digital platforms.

Consequently, the CA observed that a number of child day-care and nursery service providers elected to temporarily cease operations until health and safety concerns were addressed by the Government of Bermuda. In response the CA received a number of consumer complaints as day-cares and nursery schools were unwilling to provide reimbursements for child placement deposits.

The CA advised consumers that, although such educational service providers were unable or unwilling to provide childcare services during the Pandemic, their child placement deposits were not reimbursable as these deposits were not intended to act as a source of revenue for these day-cares and nursery schools. That the purpose of the child placement deposits was intended to secure and hold a position for the consumer’s child.

Consumers were advised that once physical distancing mandates were lifted, and the operations of educational service providers resumed normal commercial activities, their child would be entitled to a placement with their day-care or nursery or a full reimbursement their child placement deposit. Consumer Affairs advised that the refusal to recognize a child’s placement or provide a full refund for the child placement deposit, would amount to an “unfair trade” practice.

Shipping and Freight

In conjunction with the increased reliance of online shopping and e-commerce, the CA has observed that many Bermudian consumers have increased their reliance on utilizing overseas suppliers of consumer goods and Bermuda based couriers. In response to this shift in consumer behavior, the CA observed that many consumer packages were shipped to incorrect jurisdictions, that incorrect goods were shipped in error and that Bermuda based couriers experienced issues with getting items cleared with Bermuda Customs.

Consequently, the CA experienced a dramatic increase in the number of consumer complaints received with regards to undue delays in shipping, the shipping of incorrect consumer goods and delays in returning items. In addition to the increase in consumer complaints, the CA found itself having to regularly intervene on behalf of consumers, as many consumers experienced difficulties with contacting Bermuda couriers. Based on its conversations with Bermuda couriers, the CA is of the understanding that many Bermuda couriers were either understaffed and/or ill-equipped to handle consumer inquiries due to “work from home” mandates.

The CA further observed that the onset of the Pandemic resulted in global supply chain and labor shortages. As the global economy began to reopen, the demand for consumer goods recovered faster than the available supply of certain commodities. Consequently, many commercial enterprises experienced difficulties in acquiring raw materials (i.e. steel, lumber, ancillary parts for motor vehicles and home appliance and consumer goods).

In conjunction with the observed supply shortages, it was brought to the attention of the CA that many local grocery stores were subjected to food supply shortages as many international manufacturers of goods either, in response to the Pandemic, elected to:

- temporarily cease their operations;
- reduce their operational capacity; or
- chose to close their operations permanently.

Consequently, many local grocers were faced with the challenge of having to source alternative manufacturers of goods in order to satisfy local demand for food. Unfortunately, the supply shortages issues experienced by local grocers were further compounded by their reduced negotiating and purchasing power and “supply shortage” based inflation which significantly impacted their ability to take advantage of economies of scale typically experienced with bulk purchasing of consumer goods. These industry factors have ultimately lead to higher costs of operation which have since been, and continue to be, passed onto Bermuda consumers through increased consumer good prices.

As Pandemic related global health risks continue to be identified and effectively mitigated, and global manufacturers begin to operate at full capacity, the CA is optimistic that the supply shortages experienced by local grocers will subside and that the price of food and consumer goods will fall back to levels observed prior to the Pandemic.

Consumer Scams and Data Security Concerns

The economic fallout from the Pandemic has resulted in countless consumers now facing financial uncertainty, which has directly contributed towards a heightened need for loans, aid, and supplemental income. Recognizing the increase in consumer financial vulnerability, the CA has observed the onset of online scams being specifically designed to take advantage of these consumer vulnerabilities.

Online scams have been catered to coerce vulnerable consumers into provide various personal details on the basis that doing so would render them eligible for Covid-19 financial relief. This change in consumer scams have directly contributed towards an observed increase in the number of consumers reporting that they have been made the victim of a scam. In 2020, the FTC reported that the number of consumer complaints regarding fraud and identity theft increased more than 45% in 2020 when compared against the number of consumer complaints received in 2019 numbers.²

In response to the increased fraudulent activity observed and the number of consumer complaints received, the CA worked in collaboration with the Bermuda Police Service's Commercial Crime Unit (the "BPS"). Upon referral of a consumer complaint, the BPS were tasked with: (i) managing the reported fraud; (ii) ensuring that the affected consumer was afforded an adequate measure of legal recourse and guidance; and (iii) making genuine attempts to reverse the financial damage incurred.

Through its collaborative efforts with the BPS, the CA observed that the process of rectifying the financial damages incurred is a lengthy and arduous process that is often fruitless as the burden of liability for the damages incurred often fell on the affected consumer due to their willingness to participate in a consumer scam; whether or not they were aware of the fact that were participating in a consumer scam.

With consumers often being found responsible for the financial damages incurred, in support the CA would act on behalf of the affected consumers and contact their financial service providers to solicit their willingness to reverse any financial transactions that are associated with a consumer scam. Unfortunately, the CA found the reversal of financial transactions directly attributable to a consumer scam to be difficult due to: (i) the financial service provider being unable to trace the recipient of the transferred funds; and (ii) the affected consumer being ultimately responsible for making informed financial decisions.

Recognizing the necessity to ensure that consumers are equipped with the tools necessary to make informed purchases of consumer goods and services, the CA has since hired a Business & Community Liason Officer in order to improve upon the CA's public educational activities and ensure consumers are better equipped to identify a scam.

² https://www.ftc.gov/system/files/documents/reports/protecting-consumers-during-covid-19-pandemic-year-review/covid_staff_report_final_419_0.pdf

Product Recalls

During the Pandemic the CA found that many international manufacturers were either: (i) closed entirely; (ii) were short staffed; and/or (iii) were unable to provide readily available consumer support due to the adoption of “work from home” commercial practices. In addition to typical product recalls, the CA observed a number of Pandemic specific product recalls, including, but not limited to hand sanitizers, face shields and face mask coverings.

Due to product manufacturers facing limited operational capacity, the CA found itself unable to consistently contact local vendors and international manufacturers when attempting to confirm the existence of product recalls and the amount of financial compensation affected consumers would be entitled to following the announcement of product recalls. Additionally, the CA experienced difficulties when trying to obtain manufacturer guidance regarding the risks that consumers may face following product recalls.

Due to the lack of available manufacturer guidance, the CA experienced substantial difficulties when attempting to: (i) produce and publish educational material which accurately outlined the risks that consumers would likely face due in response to product recall announcements; and (ii) communicate the mitigatory steps that consumers should take in response.

Fortunately, with the rollout of global vaccination programs, and the mitigation of safety and health risks, once international manufacturers re-commenced commercial activities the CA found itself once again able to obtain product recall guidance.

Enforcements

Appreciating that many commercial enterprises were experiencing “growing pains” following the onset of the Pandemic, to ensure that commercial enterprises were afforded a fair opportunity to respond to the impact of the Pandemic.

Additionally, given the administrative and physical limitations experienced by the CA as a result of the imposition of Pandemic related mandates, the CA elected to adopt an empathetic approach to regulation and supervision. The CA concluded that the commencement of investigatory activities (e.g., physical inspection of premises, in person meetings) were not practically feasible and therefore enforcement proceedings could not be justified.

In response to the administrative and technical hurdles faces by both commercial enterprises and the CA, the CA elected to advise commercial enterprises and consumers to enter into negotiations following a dispute. That in the event that the parties to a consumer contract dispute were unable to arrive at a mutually agreeable arrangement, the CA conducted virtual mitigation at the request of parties.

It is at this stage that the CA would like to extend its sincerest gratitude for those commercial enterprises that were willing to go to extraordinary lengths to communicate with and accommodate their customers that were facing difficult personal circumstances due to the Pandemic.

7.2 LANDLORD AND TENANT RENT CONTROL

Property Valuations and Rental Assessments

Given the widespread impact of the Pandemic, the CA was forced to adopt changes to its administrative approach when handling rent increase requests for residential units falling under the Rent Increases (Domestic Premises) Control Act 1978. Appreciating that the administrative process for approving a rental increase requires a physical inspection of the property in question, the CA was unable to physically inspect residences that had residing tenants due to physical distancing requirements.

Landlords seeking to file a request for an increase in rent for premises that currently held residential tenants were unable to do so through the submission of an RC8 Form. Consequently, the administrative scope of the CA in processing requests for rent increases were restricted to circumstances where the residential unit was vacant (i.e. submission of a RC7 Form) as the physical inspection of the property would not conflict with “physical distancing” mandates.

Increase in Vacation Rental Registration

In an attempt to stimulate the economy, the Government of Bermuda enacted a “work-from-Bermuda” initiative during the Pandemic. Pursuant to the “work-from-Bermuda” initiative, foreign workers would be granted permission to work from within Bermuda as a “digital nomad”. The Government of Bermuda was the view that the “digital nomad” initiative would serve to promote Bermuda’s economy through the increased patronization of local businesses while aiding residential landlords in possession of certified vacation rental units.

On 17th March 2021 the Minister of Home Affairs enacted the Rent Increases (Domestic Premises) Control Temporary Amendment Act 2021 (the “Temporary Amendment”). Under the Temporary Amendment, landlords of property falling under the remit of the Rent Increases (Domestic Premises) Act 1978 were granted extended powers when operating as a vacation rental unit. That upon receipt of Ministerial approval and certification, landlords were entitled to rent their vacation rental unit for up to twelve months in a fiscal year and that such certification would remain valid for up to two years.

Prior to the enactment of the Temporary Amendment, landlords of property falling under the remit of the Rent Increases (Domestic Premises) Act 1978, could apply to the CA for a vacation rental certificate that would afford them the ability to rent their residential unit to Bermudian resident for up to six consecutive months in a fiscal year and that such certification would remain valid for up to one year.

At this stage it is worthwhile noting that since the enactment of section 6 of the Rent Increases (Domestic Premises) Control Act 1978, and the Temporary Amendment, the CA has observed a continuous uptake of residential landlords seeking to have their residential

units certified as vacation rental units; 2019 – 283 certificates issued, 2020 – 307 certificates issued, and 2021 – 337 certificates issued.

Although the number of tourists visiting Bermuda has fallen following the onset of the Pandemic, the CA is of the view that the continued increase in certification of residential units as vacation rentals is a direct result of landlords seeking to obtain greater control over their property and mitigate the commercial risks commonly experienced when renting their residential units to permanent Bermudian residents.

Following discussions with various landlords, the CA is of the understanding that landlords are not confident in their ability to obtain adequate legal recourse through Bermuda's courts in the event they are faced with a tenant acting in contravention of their signed tenancy agreements (i.e., timely payment of overdue rent, damage to property, ability to pursue eviction and possession of the residential unit).

Given the difficulties experienced by landlords when trying to evict tenants, rather than rent their residential units to Bermudian residents, landlords are incentivized to obtain a vacation rental unit certification and make their residential unit publicly available to rent on a short-term basis. By making their residential unit temporary available to visitors or Bermudian residents, landlords of rent controlled properties are able to: (i) limit their exposure to the risk of pro-longed periods of overdue rent; and (ii) expediently evict tenants acting in contravention of any tenancy agreement.

The CA is concerned that the increased uptake of vacation rental certification may negatively impact the hotel industry of Bermuda as tourists will seek to obtain cheaper accommodation options, while limiting the number of affordable residential units available to residents of Bermuda. Consequently, the CA intends to closely monitor and regulate the issuance of vacation rental certificates to ensure that residents of Bermuda continue to have access to affordable housing and that the issuance of vacation rental certificates does not undermine the commercial efforts of Bermuda's hotel industry.

Mutually Agreed Landlord & Tenant Covid-19 Relief Arrangements

Appreciating the financial impact of the Pandemic has had on consumers, the CA has observed that a number of landlords have been willing to enter into financial relief arrangements with their tenants. In such circumstances, where their tenants found themselves facing financial turmoil, the CA has observed that some landlords were willing to enter into temporary agreements whereby their tenants would be able to temporarily defer either a portion, or the entirety, of the agreed monthly rental payment to a later date.

In support of the landlords expressing their willingness to enter into financial arrangements with the tenants, the CA collaborated with the Chamber of Commerce Real Estate Division to develop a standard landlord and tenant addendum agreement and rental relief guidelines.

At this stage the CA would like to thank the Chamber of Commerce Real Estate Division for its assistance and would like to applaud those landlords that willingly entered into such agreements. Without the willingness of landlords to adopt an empathetic approach to their commercial activities and act at their own detriment in support of their tenants, the economic and social impact of the Pandemic would have likely been far more detrimental.

Illegal Subletting by Tenants and Overcrowding of Apartments

In response to the financial uncertainty created by the Pandemic, residential tenants were found inviting unapproved tenants (i.e. sub-tenants) to share their residential premises in an attempt to pool together limited financial resources. Such consumer behavior has led to the illegal overcrowding of residential accommodations at the detriment of their landlord.

In such circumstances landlords have found themselves uniformed of such arrangements and left unable to pursue legal proceedings against sub-tenants that either: (i) fail to pay rent to the primary tenant; and/or (ii) cause damage to the property. These types of illegal arrangements have also resulted in landlords having to overcome numerous administrative and legal hurdles to obtain the necessary legal authority to evict their tenant and the associated sub-tenants.

In support, the CA has advised landlords that they conduct a review of the terms and conditions in their tenancy agreement template and consider the inclusion of a contractual term that specifically restricts their tenants from sub-letting their residential unit without the prior consent of the landlord. That in the event landlord consent is provided the tenant shall be held responsible for rent to be paid by the sub-tenant and any damages caused by the sub-tenant and the sub-tenant's guests.

Landlord Absenteeism

Over the course of the Pandemic the CA observed an increase in tenant complaints specifically related to landlord absenteeism and the failure of landlords to address property maintenance issues. The reason for such landlord absenteeism was found to be directly attributable to landlords residing overseas being unable to return to Bermuda, or unwilling to appoint a property manager, to address the property maintenance issues experienced by their tenants.

Appreciating the costs associated with appointing a property manager to oversee their property while abroad, the CA understands that many landlords residing overseas, in an attempt to reduce operational expenses, elect to deal with the administration of their properties while abroad (i.e. receipt of rental payments) and elect to address maintenance issues upon their return.

Consequently, many tenants acting in compliance with their agreed tenancy agreement found themselves unjustly disadvantaged due to the negligence of their landlords and their unwillingness to incur the costs associated with appointing a property manager to oversee the active management of their property and respond to tenancy requests.

Hospitality Work Permit Holders

As Bermuda's tourism industry would enter its off-season it was historically common practice for hospitality work permit holders to return to their homeland until the start of the next tourism season. Work permit holders intending to return to Bermuda for the following tourism season would often enter into agreements with their landlords where it would be agreed that their residential unit and assets would be reserved until their return.

However, with the onset of global travel restrictions and the economic downturn in Bermuda's hospitality industry, the CA has observed that the Pandemic has negatively impacted landlords subject to such types of housing arrangements. As work permit holders would seek to return to Bermuda, they were often subjected to significant delays in their travel arrangements or would be informed that they no longer held positions of employment due to employment redundancies and businesses closures.

In these circumstances, landlords would be faced with the risk of experiencing delays in receiving outstanding rent while they waited for the tenant to return to Bermuda and commence employment. In the case of tenants who were made redundant and no longer employed in Bermuda, such landlords were faced with the difficulty of having to obtain outstanding rent monies and facilitate the disposal of their tenant's possessions.

Given that upon the discovery of the termination of their employment status many work permit holders would elect to remain in their homeland, many landlords found themselves in a disadvantageous position. In order for a landlord to legally dispose of their tenant's belongings, landlords would have to undertake the administrative process of obtaining permission from the Courts to enter their tenant's residential unit and dispose of their assets.

The CA empathizes with landlords in these circumstances as they were often left: (i) having to incur unrecoverable costs; (ii) subjected to unrecoverable outstanding rent; and (iii) face undue delays in obtaining legal authorization to dispose of their tenant's assets. In support the CA found itself providing landlords with guidance on how to navigate Bermuda's landlord and tenant legal framework, and in certain circumstances communicate with the Courts on behalf of vulnerable landlords.

Wills and Estate Mismanagement

With respect to the number of lives lost during and as a result of the Pandemic, the CA has observed a number of issues associated with landlords passing away absent adequate property and estate management instructions. Issues arose in circumstances where tenants did not receive proper instructions from the executors of the landlord's will and the lawyers managing the probate of the landlord's estate.

The CA would discover family members of the deceased trying to collect rent monies due from the deceased landlord's tenants; when in fact any monies collected from the tenant should have been paid directly into the landlord's estate and distributed in accordance with the landlord's will following probate.

Additionally, the CA also noted that there were a number of disputes amongst family members in their attempt to evict tenants so they could move into the rental unit prior to the completion of the probate of the deceased landlord's estate.

7.3 DEBT COLLECTION

License Application Process

The Debt Collection Act 2018 was enacted and became fully operational as of 31 January 2020, with subsequent Ministerial Regulations and supporting legislation enacted in November 2020. As part of the enactment of the Debt Collection Act 2018, existing and new debt collection agencies were obligated to file for debt collection licenses.

In support of the debt collection license application process the CA provided applicants with administrative support to ensure an effective and efficient license application process and avoid applicants having to face unnecessary commercial interruptions. Appreciating the administrative hurdles faced by debt collection agencies during the Pandemic, the Minister of Home Affairs enacted the Debt Collection Amendment Act 2021 (the "Amendment") which extended the debt collection license application deadline from the 30 April 2020 to 31 September 2020.

On 1 October 2020 the CA issued debt collection licenses that were due to expire on the 31 December 2020. Additionally, the Amendment extended the effective period of the initial debt collection licenses (i.e. expiry date of 31 March 2021) and exempted licensed debt collection agencies from having to file with the CA audited financial statements for the 2020 fiscal year.

7.4 PUBLIC COMMUNICATIONS

Covid-19 Financial Relief Assistance

With the onset of “work from home” mandates, many employees faced difficulties in contacting their employers in order to obtain the physical signatures needed to file a valid Covid-19 financial relief request with the Government of Bermuda. In support the CA helped communicate and correspond with employers to ensure that they would be able to sign and validate any employee requests for Covid-19 financial relief.

Additionally, the CA worked in collaboration with the Ministry of Workforce Development to ensure that the administrative process in obtaining Covid-19 financial relief was as efficient as possible to ensure consumers were not subjected to undue delays in obtaining financial support. Recognizing the financial impact and cash flow issues faced by many consumers, the CA further worked in collaboration with licensed debt collection agencies to persuade them to exhibit empathy and leniency when pursuing monies owed from debtors.

At this stage the CA would like to express its gratitude and appreciation for those debt collection agencies that were willing to enter into favorable payment plans as the CA recognizes that each debt collection agency must strike a balance between pursuing the interests of its clients and operating in a conscionable and equitable manner.

Vaccine Administrative Support

Appreciating that many Bermudian consumers did not have readily available access to the internet (i.e. residential internet and smart phones with mobile data plans), and/or did not have the technical capabilities needed to navigate the Government of Bermuda’s official Covid-19 website, the CA assisted disadvantaged consumers with the administration of scheduling vaccine appointments.

In addition to assisting consumers with vaccine scheduling, the CA further assisted by: (i) aiding vulnerable consumers with registration for the Government of Bermuda’s SafeKey mobile phone application; and (ii) the circulation of face masks and hand sanitizers to the homeless. The CA further appreciates that the expenses associated with providing the homeless with Pandemic related supplies were born by the CA’s staff.

Entrepreneur Education and Support

The CA has observed that a number of Bermudian residents have elected to pursue entrepreneurial aspirations. Unfortunately, based on conversations held with new entrepreneurs the CA identified that many new entrepreneurs required guidance on how to manage a successful commercial enterprise; particularly with regards to consumer service contracts, bills of sale and invoicing, account management and debt collection.

To ensure that these entrepreneurs were adequately equipped and educated on how to effectively and efficiently manage a business and its customers, the CA provided entrepreneurs with guidance on how to draft: (i) a standard consumer service contract; (ii) a standard itemized bill of sale; and (iii) how to pursue debt collection proceedings in Magistrates' Court.

Publications and Technical Support

In light of the technical and administrative hurdles faced, the CA experienced capacity shortfalls which negatively impacted the CA's ability to actively publish consumer protection articles and educational material. The CA's previously existing technical hurdles and resource limitations were compounded by the Pandemic related mandates.

With respect to the consumer risk faced during the Pandemic, the CA is of the view that an increased emphasis on public communication and consumer education of consumers is essential in a post Pandemic consumer landscape. In recognition of the necessity for an increased emphasis on public communication and consumer education, the CA employed a Business & Community Liason Officer.

8. CONSUMER PROTECTION INITIATIVES FOR 2022

8.1 CONSUMER GOODS AND SERVICES

Legislative Analysis and Amendments of the Consumer Protection Landscape of Bermuda

Following the completion of a consumer protection report, where the CA analyzed the current consumer protection landscape and governing legislation, the CA concluded that it does not have the legal authority nor the administrative capacity to continue to assist consumers with complaints against financial service providers operating in or from within Bermuda.

That upon receipt of any consumer complaints received from consumers, against financial service providers, the CA has been directed by the Minister of Home Affairs to refer all such complaints to the Bermuda Monetary Authority.

With respect to the electronic communications and electricity sectors of Bermuda, although the CA is deemed to have legal authority to respond to consumer complaints, the Minister of Home Affairs has advised the CA to refer all such consumer complaints to the Regulatory Authority of Bermuda.

The grounds for this administrative decision are based on achieving the efficient utilization of limited governmental resources. That were the CA to continue to field consumer complaints against electronic communications and electricity providers, this would effectively amount to the duplication of the regulatory efforts currently being undertaken by the Regulatory Authority of Bermuda.

In addition to narrowing the scope of the regulatory activities currently being undertaken by the CA, in compliance with its existing governing legislative framework, the CA is of the view that Bermuda's consumer protection legislative framework requires legislative amendments that will impose greater responsibility on the directors of commercial enterprises who arguably hold the power and influence to dictate the commercial activities of commercial enterprises.

In the UK the Consumer Market Authority ("CMA"), as part of the ongoing development of its consumer protection legislative framework, has requested greater enforcement powers, including the imposition of personal liability on directors for breaches of consumer protection law (e.g., director disqualification) and a requirement for companies to appoint a Board Director with the responsibility for assessing and reporting on risks to competition and consumer law compliance. Additionally, the CMA has proposed that any fines imposed as a result of its breach of consumer protection legislative framework should be based on a percentage of sales turnover.

The CA is of the view that similar amendments should be adopted in the CPA. Considering the intention of the CPA to promote fairness in commercial transactions with consumers, in addition to the imposition of personal liability on directors of company's found continuously in breach of the CPA, and the imposition of financial penalties based on a percentage of annual sales turnover, the CA is of the view that the CPA should be further supplemented to account for "unfair contract terms" and "misleading marketing materials".

As presently constructed, the CPA explicitly imposes obligations on commercial enterprises to not undertake "unfair trade practices" when providing consumer goods and services. The CA is of the view that the CPA requires further amendments to ensure that the CPA is fully comprehensive accounts for the full scope of abuses that consumers may face when dealing with unscrupulous commercial enterprises.

Additionally, the CA is of the view that its enforcement powers should be amended to afford the CA authority to impose either civil penalties and/or criminal penalties as the CA recognizes that the imposition of criminal penalties may not be warranted in all circumstances. That depending on the nature and the extent of the harm incurred by the afflicted consumer, and the frequency within which a company is found to be operating in breach of the CPA, it may be argued that the imposition of a criminal penalty may be inequitable, unjust and disproportionate.

To ensure that the CA is operates as a regulatory entity that is fair and equitable, the CA should be afforded the discretionary power and legislative flexibility to determine when the imposition of a criminal and/or civil penalty is situationally appropriate and the authority to impose penalties that are proportionate to the consumer harm incurred.

Upgrades to Case Management System

Each complaint received by the CA is actively managed through the use of the CA's Case Management System ("CMS"). The CMS captures the consumer complaints handling administrative process undertaken by the CA, including: the nature of the complaint, product manufacturer and local supplier, advice and guidance provided by the CA to the consumer and whether an investigation and/or enforcement proceedings has been or needs to be undertaken by the CA.

Based on its communication with the Government of Bermuda's IT Department (the "IDT") the CA is of the understanding that the CMS platform has reached maturity (i.e. the CMS is 21 years old) and that a more robust case management system must be adopted. The IDT has communicated to the CA that it is no longer able to provide technical support and that upgrading the existing CMS is not practically feasible.

If a more updated CMA platform is not adopted, the CA is of the view that failure to have adequate technical resources available will prejudice its ability to actively manage the anticipated increase in consumer complaints.

8.2 LANDLORD AND TENANT RENT CONTROL

Legislative Amendments Landlord & Tenant Legislative Framework

To achieve greater consumer clarity the CA has proposed the review and amalgamation of the LTA, the RIC and the RIO to ensure that consumers and residential landlords are afforded a more fully comprehensive and robust legislative framework. It is the belief of the CA that the number of consumer complaints received would decline if the existing landlord and tenant legislative framework were updated to be more reflective of current industry practices and communicated tenant and landlord concerns.

For example, the CA recognizes that rental properties are subject to regularly falling in and out of the remit of the RIC as their annual rental values increase or decrease (i.e. home renovations have increased the value of the property, or lack of maintenance lowers the value of the property) and the annual rental value requirement outlined under the RIC is subject to periodic amendments. Under the RIC, when a property's annual rental value falls under \$22,800.00 per annum, as per www.landvaluation.bm, the RIC dictates that the monthly rent charged by the landlord premises must first be approved by the Rent Commission.

However, the RIC fails to explicitly consider the approved rent a landlord may charge in the event a property, which previously fell under the remit of the RIC and had a rental certificate issued and rent approved, falls out scope of the RIC, and later returns under the scope of the RIC.

That following an updated land appraisal, should the annual rental value exceed \$22,800.00, the residential unit is deemed to no longer fall under the remit of RIC. Unfortunately, the RIC fails to explicitly consider instances where, due to an updated land appraisal rendering the annual rental value below \$22,800.00, falls back under the remit of the RIC. The CA appreciates that this can result in administrative issues for the CA when approving rent for properties falling in and out of the remit of the RIC and has contributed towards landlord and tenant confusion as to the rent that may be applied.

Where a property is continuously shifting in and out of the legal remit of the Rent Commission, the RIC is silent as to whether a landlord's previously approved monthly rent may be applied. The CA is of the view that the RIC and the landlord and tenant legislative framework needs to be reviewed and amended to expressly account for whether the landlord needs to reapply to the CA for an approved monthly rental limit and updated rental certificate.

Additionally, the CA has identified the need for Bermuda's landlord and tenant legislative framework to explicitly account for Boarding houses, the types of tenancy agreements that may be entered into between a landlord and tenant of a Boarding house and the acceptable terms and conditions that may be imposed on each party.

Lastly, the CA is of the view that its enforcement powers under the RIC are insufficient and should afford the CA the same authority to conduct investigations and enforcement proceedings as currently reflected under the CPA and DCA. Presently, Magistrates' Court is afforded sole authority to undertake such regulatory activities. By restricting the CA from pursuing investigations and enforcement proceedings, consumers and landlords are subjected to undue delays as a result of having to pursue legal proceedings, and in some instances may be an inefficient and inappropriate use of limited court resources.

Administration of Rent Increase Requests and Potential for Abuse

The CA has observed the potential for abuse by landlords seeking permission to increase rent for residential units falling under the legal remit of the RIC. An RC2 Form is intended to be utilized in circumstances where a landlord and tenant mutually agree to increase the monthly rent. The filing of an RC2 Form allows landlords to bypass the CA's administrative obligation to conduct a physical inspection of the property and circumvent any approval issues that may otherwise be faced when submitting an RC 7 Form or RC 8 Form.

However, the CA has concerns that the use of an RC2 Form may be subject to abuse and tacit collusion between the landlord and the tenant; particularly in circumstances where the landlord and tenant are family members, and the proposed new monthly rent is not being paid to the landlord at the time the RC2 Form is submitted. In these circumstances any mutual agreement made between a landlord and tenant to increase the monthly rent is likely to be unmeritorious and a strategic move by the landlord to secure permission from the CA to charge unjustifiable and disproportionately high rent against future tenants. Therefore, the CA proposes that the RIC be amended and the RC-2 Form be repealed.

8.3 DEBT COLLECTION

Consumer Intelligence and Data Collection Activities

As economic uncertainty continues into 2022, the CA recognizes that businesses and consumers are likely bracing for an economic recession. Although the CA cannot predict with any precision the severity or duration of the recession, the CA is of the view that debt collection agencies and creditors should take steps now to review the completeness and accuracy of their consumer data on file.

Since the enactment of the Debt Collection Act 2018 the CA has received complaints regarding some debt collection agencies not acting in compliance with their regulatory obligations to procure debt in a fair and ethical manner. Many of the complaints received were related to sections 4, 17 and 18 and section 19 of the DCA. Furthermore, the CA has observed that some debt collection agencies were operating absent formal legal authorization (i.e. a debt collection licence issued pursuant to the DCA).

With regards to sections 17, 18 and 19 of the DCA, the CA observed that some debt collections agencies were found to exhibiting unfair debt collection practices by failing to verify the amount of debt owed by debtors and overcharging debtors as a result of applying administrative fees that exceed the statutory limits outlined in the DCA.

The CA further observed that debt collection agencies were non-compliant with section 4 of the DCA with regards to verifying the documentation and debtor information provided to them from creditors. It was observed that debt collection agencies were not following proper procedures for when a client disputed a debt and were unable to verify the debtor's amount of outstanding or whether the debt belonged to them.

Until Bermuda's economy has fully recovered and consumers have greater certainty with regards to employment and income, the CA anticipates that many consumers will likely default on their credit cards, mortgages and their on-going monthly expenses (i.e., utilities, rent, daycare, etc.) While some consumer payment defaults are inevitable, the CA appreciates that debt collection agencies can help mitigate their risk of participating in "unfair debt collection practices" by contacting financially troubled customers in advance and adjusting their payment terms in response.

However, the effectiveness of debt recovery efforts is determined by whether the customer information (i.e. (phone numbers, email, physical addresses) on file is out-of-date. In addition to placing an emphasis on obtaining up-to-date debtor data, international methods of best practice indicate that prioritizing an understanding of effective phone etiquette is essential to effectively communicating with debtors.³ Studies indicate that exhibiting a higher degree of consumer intelligence paves the way for a more positive customer relationship, with less friction and frustration experienced by all parties involved.

³ <https://www.forbes.com/sites/forbestechcouncil/2020/08/26/debt-collection-in-the-face-of-a-covid-19-fueled-recession/?sh=7a9175f9549c>

8.4 PUBLIC COMMUNICATIONS

Revising the Consumer Affairs Website and Increased Adoption of Social Media Platforms.

Understanding that consumer protection agencies play a central role in ensuring the welfare of consumers, the CA has observed that many international consumer protection agencies are placing a greater emphasis on harnessing digital platforms to increase the dissemination of information to consumers. In addition to the increased uptake of digital means to educate consumers, consumer protection agencies have started to revise and update their online portals and other digital tools to support consumers and facilitate the filing of consumer complaints online.

With the acquisition of a Business & Community Liason Officer the CA has positioned itself to increase its utilization of social media platforms and develop an improved official CA website which will result in greater reach with the general public. As part of its 2022 planned initiatives, the CA plans to complete a fully comprehensive review of its official website and social media platforms to ensure all educational material is up-to-date and reflective of today's commercial landscape and identify and address consumer information gaps.

Education of Unfair Contract Terms

Contract legalese and small print has always created opportunities for “unfair trade practices” because it produces “information asymmetries”, where commercial enterprises know far more than their consumers. In such circumstances it is not uncommon for commercial enterprises to incorporate unfair trade terms and conditions where customers won't find them or understand them until it's too late.

With the increased adoption of e-commerce and digital platforms used to acquire goods and service, the CA appreciates that commercial enterprises may incorporate “unfair terms and conditions” into their online contracts through the inclusion of hard to read “fine print” and “take it or leave” conditions.

Absent the willingness by the consumer to take the consumer contract home, obtain formal legal counsel and subject the terms and conditions to meticulous scrutiny, the CA is of the view that many consumers acquiring consumer goods and services do so absent possessing informed consent.

With regards to “take it or leave it” terms, consumers are rarely given the option to change or modify the terms and conditions of the consumer contract. Considering the level of competition exhibited in Bermuda and the existence of a number of monopolies, duopolies and commercial entities with significant market power (i.e., BELCO, OneComm, Digicel, HSBC, Bank of N.T. Butterfield) there often isn't an acceptable or practical alternative service if the consumer doesn't like the terms and conditions upon which the provision of goods or services are contingent upon.

Appreciating these limitations, the CA proposes, as part of its 2022 public communications initiatives, to undertake the education of consumers so that they may be able to understand standard key terms and conditions typically found in consumer contracts and to identify unfair terms and conditions. The CA is of the view that such an educational tool will allow consumers to make better-informed choices quickly and easily.

9. PATI INFORMATION STATEMENT

Pursuant to the legislative framework governing the regulatory and supervisory activities of the CA, the CA is responsible for:

- ensuring that all consumer goods or services made available to the consumers of Bermuda are free from unfair commercial trade practices;
- the timely dissemination of product recall information;
- remaining mindful of industry developments by conducting continuous consumer market research;
- the assessment of landlord applications for rent increases and vacation rental applications for properties falling under the Rent Increases (Domestic Premises) Control Act 1978
- providing advice to landlords and tenants on tenancy issues and all other tasks assigned to the CA by the statutory Consumer Affairs Board and the Rent Advisory Panel.
- the mediation of disputes between parties upon request; and
- conducting investigative and enforcement proceeds where necessary.

Appreciating the legal remit of the CA, the legal definition of “consumer goods and services” outlined in the CPA, its obligation to oversee landlord and tenant matters, and monitor and supervise the commercial activities of registered debt collection agencies, the CA has also historically provided advisory services for matters that fall outside the legal remit of the CA but may still negatively impact consumer interests.

In light of the economic strain that the Covid-19 global pandemic has imposed on the government of Bermuda and the CA, to ensure that the CA’s limited expertise and resources are utilized effectively and as legislatively intended, the CA has been instructed by the Minister of Home Affairs to limit its advisory and regulatory services to industries falling under its legal remit.



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