



Ministerial Statement

To The House of Assembly

By

The Hon. Kathy Lynn Simmons, JP, MP

Attorney-General and Minister of Legal Affairs
and Constitutional Reform

Consumer Affairs Annual Report 2019-2021

Date: 1st July, 2022

Mr. Speaker, Honourable Members of the House:

Consumer Affairs is the designated government department assigned with the responsibility and 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. Consumer Affairs

is mandated to protect consumers from unfair business practices, unconscionable consumer representations and unsafe consumer goods pursuant to formal delegation, Consumer Affairs' legal authority includes the responsibility to supervise, monitor and regulate landlord and tenant residential matters in accordance with 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, Consumer Affairs has also been appointed with the authority to supervise, monitor and regulate the commercial activities of registered debt collection agencies operating within Bermuda.

In accordance with section 10 of the Consumer Protection Act 1999, the Consumer Affairs Board (the "Board") has provided the Minister an annual report covering the regulatory and supervisory activities of Consumer Affairs for the 2019-2021 calendar years (the "Annual Report").

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

Mr. Speaker, the Annual Report presented today covers the many consumer issues that arose over the course of the Covid-19 global pandemic and highlights the regulatory and supervisory activities undertaken by the Board and the Consumer Affairs staff in response.

It has been noted that Consumer Affairs has worked diligently in response to the Covid-19 global pandemic and continue to address consumer issues in an efficient and effective manner. The accomplishments of Consumer Affairs from 2019-2021, as outlined in the Annual Report, include, but are not limited to:

- **E-Commerce and Bridging the Digital Divide**

- With the enactment of social distancing mandates, commercial entities that historically operated absent a pre-existing online presence, resulted in consumers being unable to contact a customer service representative and/or effectively purchase their consumer goods and services.
- In support, Consumer Affairs acted as a conduit to support effective communication between commercial enterprises and consumers. Consumer Affairs communicated the necessity for commercial enterprises to have the technical capability to facilitate the availability of a customer service representative that is working from home.

- **Hospitality**

- Consumers who made travel and entertainment arrangements prior to, and during the Covid-19 global pandemic, were often left bearing the financial impact of short-notice cancellations, as commercial entities began to

heavily rely upon contractual *force majeure* clauses in order to avoid having to provide consumers with reimbursement.

- Consumer Affairs advised those affected consumers to review their respective contractual terms and conditions in order to ascertain their rights with respect to cancellations, when *force majeure* clauses may be relied upon. They were further advised to contact their service provider to confirm whether the event would be rescheduled or they would receive reimbursement for advance payments made.
- Given the lasting impact Covid-19 has had on travel and hospitality, Consumer Affairs emphasised in communications with consumers, the value in procuring appropriate consumer protection insurance, where available, in order to mitigate any potential risk of unfair over reliance of *force majeure* clauses.
- **Educational Service Providers**
 - Consumer Affairs observed that a number of child day-care and nursery service providers elected to temporarily cease

operations until health and safety concerns were adequately addressed by the Government of Bermuda.

- Consequently, Consumer Affairs received a number of consumer complaints as a result of day-cares and nursery schools being unwilling to provide reimbursements for child placement deposits.
- Consumer Affairs advised affected consumers that: (i) their child placement deposits were not reimbursable as they were intended to secure a position for the consumer's child; (ii) their child would be entitled to a placement with their day-care or nursery once the operations resumed; and (iii) that 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 uptake of online shopping, following the onset of Covid-19, Consumer Affairs observed

that many consumers increased their reliance on: (i) overseas suppliers of consumer goods; and (ii) Bermuda based couriers.

- Consumer Affairs experienced an increase in the number of consumer complaints received with regards to: (i) undue delays in shipping; (ii) the shipping of incorrect consumer goods; (iii) delays in returning items; and (iv) difficulties experienced when attempting to contact Bermuda couriers.
- In order to address the issues faced by consumers, Consumer Affairs acted as an intermediary by contacting Bermuda couriers where it was discovered that many Bermuda couriers experienced operational issues due to being either understaffed and/or ill-equipped to handle consumer inquiries due to the “work from home” mandates.
- **Consumer SCAMs and Data Security**
 - The economic fallout from Covid-19 resulted in countless consumers facing financial uncertainty, which directly

contributed towards a heightened need for loans, aid, and supplemental income. Consequently, Consumer Affairs observed the onset of online scams being specifically tailored to take advantage of financially vulnerable consumers.

- In response Consumer Affairs worked in collaboration with the Bermuda Police Service's Financial Crime Unit. Consumer Affairs 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 responsible for making informed financial decisions.
- Recognizing the necessity to ensure consumers are equipped with the tools necessary to effectively identify consumer scams, and avoid undue harm, Consumer Affairs has employed a Business & Community Liason Officer in order

to improve upon Consumer Affairs' public educational activities.

- **Landlord and Tenant – Vacation Rental Certificate Uptake**

- Although the number of tourists visiting Bermuda has fallen, following the Covid-19 global pandemic, Consumer Affairs has observed a continuous uptake of residential landlords seeking to have their residential units certified as vacation rental units;
- Following discussions with various landlords, Consumer Affairs is of the understanding that the increase in landlords seeking vacation rental certification is a direct result of landlords seeking greater control over their property. Many landlords have communicated a lack of confidence in their ability to obtain adequate legal recourse when faced with a tenant acting in contravention of their signed tenancy agreement.

- Consumer Affairs intends to closely monitor and regulate the issuance of vacation rental certificates to ensure that the residents of Bermuda continue to have access to affordable housing and that the vocational rental market does not undermine the commercial efforts of Bermuda's hotel industry.
- **Landlord and Tenant - Illegal Subletting and Overcrowding**
 - During Covid-19 it was observed that a number of residential tenants, in an attempt to pool together limited financial resources, entered into unauthorized subletting arrangements which resulted the illegal overcrowding of residential accommodations.
 - Landlords found themselves left uninformed of such arrangements and unable to pursue legal proceedings against sub-tenants that either failed to pay rent to the primary tenant and/or caused damage to the property.

- Consumer Affairs advised landlords to review the terms and conditions of their tenancy agreement template and consider the inclusion of a contractual term that: (i) restricts their tenants from sub-letting their residential unit without the prior consent of the landlord; and (ii) places obligations on the primary tenant and the sub-tenant.
- **Landlord and Tenant – Hospitality Work Permit Holders**
 - Consumer Affairs observed that Covid-19 negatively impacted work permit holders who maintain tenancy agreements with their landlord, while they return home during the tourism off-season, in order to secure their home upon their return to Bermuda.
 - As work permit holders attempted to return to Bermuda they were often subjected to significant delays in their travel arrangements or would be informed by their employer that they were made redundant.

- In these circumstances, landlords were: (i) forced to incur unrecoverable costs in order to remove their tenant's assets; (ii) subjected to unrecoverable outstanding rent; and (iii) faced with undue delays in obtaining legal authorization in order to legally dispose of their tenant's assets and procure a new tenant.
- In support Consumer Affairs provided 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.
- **Landlord and Tenant - Covid-19 Relief and Amendments to Tenancy Agreements**
 - Appreciating the financial uncertainty faced by many tenants during Covid-19, Consumer Affairs assisted with the negotiation of temporary amendments to existing tenancy agreements, which would allow tenants to either: (i) make partial payments towards their monthly rent for a specified

period of time; or (ii) temporarily withhold rent for a specified period of time.

- **Debt Collection - Licensing**

- As part of the enactment of the Debt Collection Act 2018, Consumer Affairs provided administrative oversight of the licensing application process and provided applicants with administrative support to ensure an effective and efficient license application process.

- **Public Communications - Financial Relief from Covid-19**

- With the onset of “work from home” mandates, many employees faced difficulties contacting their employers in order to obtain the employer signatures needed to file a valid Covid-19 financial relief request. Consumer Affairs helped employees correspond with their employers to ensure that they would be able to obtain their employer’s signature.

- Consumer Affairs worked in collaboration with the Ministry of Workforce Development to ensure that the effective administration of Covid-19 financial relief and worked with debt collection agencies to persuade them to exhibit leniency when pursuing debtors.
- **Public Communications - Covid-19 Financial Relief and Support**
 - During Covid-19, Consumer Affairs observed that many consumers did not have readily available access to the internet (i.e. residential internet and smart phones with mobile data plans), and/or lacked the technical capabilities needed to navigate the Government of Bermuda's official Covid-19 website.
 - Consumer Affairs assisted consumers with: (i) the scheduling of vaccine appointments; (ii) registration with the Government of Bermuda's SafeKey; and (iii) the circulation of face masks and hand sanitizers to the homeless.

- **Public Communications - Entrepreneur Education and Support**

- Based on conversations held with new entrepreneurs, Consumer Affairs identified that many required guidance on how to manage a successful commercial enterprise.
- To ensure that these entrepreneurs were adequately equipped and educated on how to effectively and efficiently manage a business, Consumer Affairs provided entrepreneurs with guidance on how to: (i) draft a standard consumer service contract; (ii) draft a standard itemized bill of sale; and (iii) pursue debt collection proceedings in Magistrates' Court.

- **Electronic Communications**

- With the adoption of online education, Consumer Affairs 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 observed harm was particularly evident in residential units falling under the remit of the Rent Increases (Domestic Premises) Act 1978. 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 in place; or (ii) were not actively utilizing residential internet services prior to Covid-19.
- In support Consumer Affairs worked in conjunction with the Regulatory Authority of Bermuda to ensure that affected consumers were afforded timely and effective regulatory support.

In closing **Mr. Speaker**, I am pleased to lay this Annual Report before both Houses of the Legislature.