CTSI Professional Competency Framework

Stage 1: Unit 3 Trading Standards Law Part 1
          Examiner's Report May 2023

General

73 Candidates sat the exam in May 2023, marks ranged from 5 to 80. There is a lot of material to study for this paper and candidates should be commended for their hard work.

Overall, although there were more candidates that unfortunately failed, most candidates showed a good understanding of the syllabus for Unit 3. Some students failed to demonstrate a detailed knowledge in the key areas of the syllabus in particular CPRs, ICACS, and Powers. It is also clear which candidates have applied the knowledge in their day-to-day duties, which is essential to cement learning and apply the legislation to different situations. Firstly, some general feedback that applies to all candidates and in every exam cycle, time management. It's important to enable sufficient time to be spent on each question. It was clear by some of the answers that the candidate had run out of time on some questions having spent far too much time writing detailed answers for Section A questions. One candidate only answered Section A questions, missing out on a potential 70 marks, candidates should understand how the exam is structured and answer three from Section A and two from Section B. Another recurring, important piece of feedback is not only to read the question, but also to understand what the question is looking for.

Candidates have a limited time so it is essential that they stick to the relevant points, if the questions ask for an explanation this should be in your own words not reciting definitions, if it asks for case law or examples remember to include them. You can only be awarded marks for including points that relate to the question. Some candidates strayed way off topic or gave answers which did not relate to the question at all. Whilst it can be tempting to fill the page with the things you can remember, this is very unlikely to gain marks and candidates should focus that time on other questions. On the other end of the scale, some candidates write far too little, one or two sentences is very unlikely to contain sufficient points for a 10-mark question. Finally, try to formulate a structured answer and deal with points in order rather than mixing all together, unless otherwise indicated by the question, write in sentences and paragraphs not bullet points (unless you're running out of time and you may then pick up basic marks).

Section A

Q1 57 candidates answered question 1
    Marks ranges from 1 to 9

    The majority of candidates answered this question, understandably as it is one of the important concepts covered by the Consumer Protection from Unfair Trading Regulations, which is a key part of the syllabus and candidates are required to have a detailed knowledge. The question asks what is meant by the term "misleading omission" using case law and examples to illustrate. Only 17 candidates scored above half marks, which shows they have a good understanding of the term. Candidates were expected to refer to Reg 6 and the terms "material information" and "transactional decision", the better candidates also noted that pre-contractual information required by law such as

the Consumer Contracts Regs was included. In terms of case law, there were a few candidates confused with which case law is relevant where, but here they could have referred to OFT v Purely Creative, BIS v PLT or Cumbria CC v Lewis Thomas Gilbertson. There were some good examples of misleading omissions given by candidates, but some candidates failed to show they could apply this to a practical situation. The weaker candidates either did not write sufficient or failed to include the key points.

Q2   28 candidates answered question 2
Marks ranged from 2 to 8

Only 5 candidates scored over half marks for this question, mainly due to not going into sufficient detail, or by missing the point of the second part of the question. Candidates were expected to identify that the criminal offence in Reg 19 only applies where it is a business to consumer, off-premises contract and the cancellation information has not been provided, as well as what the penalty is. The second part of the question was where candidates went wrong in general. This question was about the consequences for traders who breach provisions other than Reg 19. There were a variety of themes in the wrong answers, some candidates listed advice or enforcement options, some gave examples of other provisions such as delivering within 30 days, refunding consumers etc. To get full marks, candidates were expected to refer to the extension of the cancellation period, liability for payments, and the effects on the contract and provisions that all business to consumer contracts have an implied term that the Consumer Contract Regs will be complied with, therefore failure to comply could result in some or all of the contract being unenforceable.

Q3   48 Candidates answered question 3
Marks ranged from 0 to 9

Another popular question, and a wide range of marks but far more candidates, 35, achieved above half marks. The question aimed to test candidates' knowledge of the Regulation of Investigatory Powers Act 2000 (or RIP(S)A). Firstly, candidates were expected to outline the key points from the definition of a CHIS in the legislation, i.e., establishing or maintaining a relationship, for a covert purpose either to collect, provide access to, and share information. Most gave a reasonable answer to the first part, some answers did not have sufficient detail. Most candidates were able to come up with examples of when it might be used in a TS case, such as some test purchasing activities, consumers, employees or other businesses.

Q4   20 candidates answered question 4
Marks ranged from 1 to 8

This question was answered well by a couple of the candidates but the majority did not do so well. The question required knowledge of the Conditions (A-E) set out in para 32 of Schedule 5 of the Consumer Rights Act. There are a couple of important points in each condition, those candidates that correctly identified that they needed to refer to these conditions got some, but not all of the points. Quite a number of the candidates did not refer to Conditions A-E at all, and instead included in their answers some other relevant points regarding obtaining and exercising warrants, such as the need to ensure check and corroborate any intelligence received, complete background and other checks on the occupants, consider the presence of juveniles as well as practical aspects like taking the police and providing a copy of the warrant to the occupier. Despite being correct, unfortunately this did not address what the question was asking for.

Q5   52 candidates answered question 5
Marks ranged from 1 to 9

This question was popular with candidates, and there were some reasonable answers but many candidates again, did not fully understand what the question was asking for. 36 candidates scored half marks or less. Firstly, there were a few candidates who appeared to be confused between due diligence defences and the professional diligence concept under the CPRs. Both of these topics are in the detailed knowledge of the syllabus so it is expected that candidates fully understand the difference between these two similar terms. There have been previous exam questions about the due diligence defence, but this question asked candidates to explain what is meant by the terms "reasonable precautions" and "due diligence".

There were marks for some general explanation including that the defence applies to strict liability offences to protect against injustice but the majority of the marks were focussed on explanation of these terms. Candidates should have distinguished that reasonable precautions relate to the processes and systems in place, and due diligence means checking that these are working. By using examples, such as procedures, testing, training and audits, and case law such as Tesco Supermarkets Ltd v Nattrass, Sherratt v Geralds the American Jewellers, Sutton London Borough v Perry Sanger, Garrett v Boots Chemists, candidates should have explained how the concepts has been interpreted by the courts. This means recognising that what is reasonable depends on the circumstances, the product and the size of the business.

Q6 11 candidates answered question 6
Marks ranged from 1 to 7

This question was not so popular, and this reflects the use of the Enterprise Act in the profession. The question firstly asked candidates to differentiate between the two types of infringements, domestic and Schedule 13. Most candidates were able to give the basic distinction that domestic infringements relate to breaches of UK legislation and Schedule 13 to retained EU law, some also added that these infringements must cause harm to the collective interests of consumers, for full marks candidates should have also referred to the Orders made under the Act which specify the breaches/legislation covered. The second part of the question asked about Enhanced Consumer Measures, this was less well answered generally. Candidates should have been able to identify the 3 types of measures available to enforcers consumer redress, compliance and choice and briefly explain these. A couple of candidates gave a good answer to this part, but many include general information about the process, undertaking and enforcement orders or the benefits versus criminal prosecutions.

Section B

Q7 40 candidates answered Q7
Marks ranged from 4 to 25

This question explored knowledge of a range of pricing provisions from the basic requirement to provide a price of goods for sale to consumers under the Price Marking Order 2004 to misleading price indications and promotions under the Consumer Protection from Unfair Trading Regulations 2008 as well as comparative advertising under the Business Protection from Misleading Marketing Regulations 2008.

The scenario detailed a number of complaints that had been made about practices and candidates were asked to apply the relevant legislation and identify potential offences. In general, this question was answered well. The weaker candidates seemed to have some confusion about the legislation and where the offences sit, they should have identified the need for a selling price and unit price under the PMO and the corresponding offences under the Prices Act 1974, and then looked at the other issues under the CPRs. These included Sch 1 practices with the "Closing Down Sale" (para 15), some candidates also referred to para 7 (limited time, limited price) which whilst this could be argued, para 15 specifically deals with these situations. There were then other potential misleading actions and omissions in relation to consumer being charged higher prices at the till, the 50% off claims, reference to RRPs and reference pricing.

Some candidates failed to cover all of the offences or gave generic answers about offences in the CPRs without specifying the issues they were referring to from the list of complaints. Finally for part a), comparing prices to other retailers is comparative advertising under the BPRs and is only permitted where products are like for like. Part b) of the question related to powers and conducting an inspection. Most candidates gave good answers here and correctly referred to the CRA Sch 5 and identified all of the relevant powers they would use. There were some candidates whose answers included reference to checking databases, history, PA relationships etc., whilst correct, the question specifically asked about powers and the process for gathering evidence. Candidates should have focussed on the requirements around providing notices, recording and bagging evidence and referred to CPIA and PACE (where relevant). The third part of the question asked candidates to cover the advice they would give Rock Bottom about action to rectify the breaches, records and due diligence, some candidates answered this well, but many gave very generic answers and failed to acknowledge the actions needed i.e., to remove the signs and make sure all goods had a price. General comments like advice to read the CTSI Guidance for Traders on Pricing Practices or to take reasonable precautions was not specific enough.

Q8 2 candidates answered Question 8
Marks ranged from 18 to 19

The least popular section B question, with both candidates scoring just over half marks which is reasonable. The main thing for candidates to pick up on here is the different way to deliver information to a business audience. Whilst the legislation provides a good framework, a business workshop shouldn't go through all the definitions, make it relevant, what common things apply to all businesses and what are the risks. The question listed the legislation to be referenced so all candidates had to do for a good mark was extract the key points and give some relevant examples. The question clearly stated that the businesses wanted to use environmental claims in their marketing, and referenced the new CMA code, neither candidate focussed on this so this is where they lost marks. The plan should have included some examples of common claims, general principles from the code, evidence of claims and records, reference to the ASA and other penalties.

Q9   63 candidates answered Question 9
Marks ranged from 10 to 32

The most popular question and well answered by the majority, 51 candidates scored over half marks. This was a typical doorstep crime scenario question, broken down into 3 parts. Part a) asked candidates to apply the Consumer Protection from Unfair Trading Regulations 2008 and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

The most common mistake candidates make when answering these types of questions is to jump straight into the offences, without first explaining why the legislation applies and some of the main concepts or definitions – there are always marked to be picked up here. For example, the CPRs prohibit unfair practices aimed at consumers which affect their transactional decisions, they apply to this scenario because there are commercial practices by a trader, then explain what is meant by a commercial practice and a transactional decision, and any other definitions that need to be explained. Candidates should be careful not to go into too much detail or cover ALL of the definitions, but use it as a general introduction paragraph. The same applies to the application of the Consumer Contracts Regs in this question – scope, purpose and definition of an off-premises contract.

Once this has been done candidates were expected to identify that Kwame was a vulnerable consumer, and again explain why. It is the good practice to go through the sequence of events and clearly identify any practices which breach the various prohibitions. Candidates must ensure that they are relating this specifically to the scenario, for example saying that the trader stating that the trees are diseased is a potential misleading action, not just saying there are some misleading actions and some omissions – they must identify why. There were a lot of possible offences here, most candidates picked up the majority although there was some confusion around which ones constituted a Sch 1 practice, but on the whole, this was answered pretty well. The second part of the question asked candidates what actions they would take and how they would gather the evidence needed. The easiest way for candidates to approach this is to think about the offences they identified in part a), what evidence would be needed to prove this and how they would obtain it.

This was answered well generally, with candidates identifying that they would take statements from Kwame, the carer and neighbours, use a expert witness, take photographs and take the empty white vinegar carton, as well as other enquiries with the bank, possible VRM etc. and other ways to identify the trader. Only a handful of candidates said they would attend when the traders were due to return. Some candidates included reference to intelligence, tasking processes and enforcement policies here, whilst relevant in practice, for exam purposes this generally will not obtain marks as it is not part of the Unit 3 syllabus.

The final part of the question asked candidates to consider that Kwame was vulnerable and intimidated, and what could be put in place. This was only 5 marks but generated a wide range of different answers. Some candidates correctly identified what this question was about – Special Measures, and gave some examples such as ABE interview, evidence by video link, use of screen in court etc. other candidates overlooked this and talked about reassuring Kwame, telling him to call the police, referrals to social services and other organisations etc. Again, candidates should be thinking about what is on the syllabus when they answer the questions.

Q10 36 candidates answered Question 10
Marks ranged from 8 to 32

On the whole another well answered question, 23 candidates scored over half marks. The question was a typical used car scenario with plenty of information suggesting offences were being committed, the first part was to identify these. There were plenty to go at, but some candidates struggled to pick some out. There was a potential Sch 1 practice, various misleading actions in relation to descriptions, omissions and failure to comply with the CCRs, as well as aggressive practices and professional diligence. The second part of the question covered the options for

further action with the trader, candidates should have looked at all options, many often forget the basics like offering advice, training etc, issuing a warning or caution, and focus on prosecution. Most candidates mentioned the civil Enterprise Act 2002 route and gave some of the considerations when making enforcement decisions.