

Examiner's report

CTSI Professional Competency Framework

Stage 1: Unit 3 Trading Standards Law Part 1 Examiner's Report September 2022

General

3 Candidates sat the exam in Sept 2022, marks ranged from 25 to 67. There is a lot of material to study for this paper and candidates who have taken the exams during this cycle have still been facing some of the challenges brought about by the pandemic with the lack of hands-on experience and have had all of their study via remote learning.

Overall, most candidates showed a good understanding of the syllabus for Unit 3, but some students failed to demonstrate a detailed knowledge in the key areas of the syllabus in particular CPRs, ICACS, and Powers. Some general feedback that applies to all candidates is 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.

Another 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. 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

3 candidates answered question 1, marks ranges from 5 to 7.

All 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 first part of the question asks what is meant by the term "invitation to purchase" and for example. All candidates answered this part fairly well and explained the main components of an invitation to purchase as per Reg 6(4) and were able to provide one or two examples. However, none seemed to grasp the fact that in terms of "material information", there are specific requirements set out in Reg 6(4)(a-g) for invitations to purchase, instead, talking about the general meaning of "material information". This meant some of the available marks were not picked up but most of the answers did include relevant examples.

Q2

1 candidate answered question 2, mark 4.

Only one candidate attempted this question and unfortunately did not appear to fully understand the scope of the Business Protection from Misleading Marketing Regulations 2008. Candidates were expected to include the definition of “advertising” contained in Reg 2, and then to go on to describe what is meant by “misleading advertising” as per Reg 3 (2). It was important for candidates to understand that this relates to business-to-business advertising, contain deceptive information or could injure a competitor, and then outline some of the matters to be taken into account in Reg 3 (3) and (4). The candidate included some relevant points but much of the answer contained references to consumers, transactional decisions and some of the Sch1 practices from the Consumer Protection from Unfair Trading Regulations 2008 which did not enable the examiner to have confidence that the candidate had understood the question or the relevant legislation.

Q3

2 Candidates answered question 3, marks ranged from 4 to 5,

This question aimed to test candidates’ knowledge of the Criminal Procedures and Investigations Act 1996 and the duties it places on investigators. Firstly, candidates were expected to outline these main duties – to record, retain and reveal material obtained during an investigation. Then candidates were asked to give examples of the procedures they would follow during an investigation. These could have included recording of general information such as use of officers’ notebooks, case logs, records on databases/case management systems, recording of decisions and written notes of meetings, telephone calls and emails.

The procedure for collecting, recording and storing materials obtained from witnesses or seized from traders, such as use of search books, seizure records, evidence bags, tags and labels as well as secure storage and how this evidence continuity. Candidates could also have included how different types of materials are dealt with such as electronic records or photographs. Finally, candidates were expected to cover the disclosure test, used and unused material, sensitive and non-sensitive material. Marks were not awarded due to limited use of examples and not covering the disclosure element.

Q4

2 candidates answered question 4, marks ranged from 7 to 8.

This question was answered well by both candidates. The first part of the question was around the formal caution and ensuring candidates were able to explain this to suspects. Both candidates covered this part well and scored good marks. The second part of the question tested whether candidates knew how to deal with statements made by suspects who have not been given the caution, “significant statements” (E&W) or “statements made outside of interview” (S). This should have included making a record in the officer’s notebook, signed by the officer and the suspect if possible, and then to introduce this into evidence during interview once the suspect is under caution.

Q5

1 candidate answered question 5, mark 8.

This is the first question that has specifically focussed on identified case law, which students often struggle to remember. Both cases were discussed in depth during the training and the question asked for a summary of the facts and how the decisions had assisted in interpretation of definitions. The important points here included the behaviour in terms of transactional decisions and knowledge of average consumers – i.e., they don’t read the small print, leading to misleading actions in overall presentation or misleading omissions by effectively hiding information. Candidates could also have mentioned the

relevant Sch 1 practice for the OFT v Purely Creative case. The main points were covered well for this case but less so for BIS v PLT Anti-Marketing where candidate failed to fully understand the decision of the court in terms of why informing consumers that the TPS service was free lead to misleading omissions and discussing the concept of material information.

Q6

0 candidates answered question 6.

This question focussed on the requirements for conducting surveillance and things that officers must consider when doing so. Firstly, identification of the correct legislation – either The Regulation of Investigatory Powers Act 2000 (RIPA) or RIP(S)A, and why this exists – primarily to ensure that a person's right to a private life is not infringed. In terms of the process the first consideration should be whether the proposed activity is deemed to be directed surveillance as defined in the legislation, then including risk assessment, necessity and proportionality, collateral intrusion as further considerations. Finally, an understanding of the process of authorisation including internal authorisation, NAFN and judicial approval.

Section B

Q7

1 candidate answered Q7, mark 22.

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. In the first part of the question, candidates were asked to advise the business in relation to their pricing. When answering trader advice questions, candidates should be mindful of the language used and relate back to the scenario and practices of the business. One of the main points to cover here was that the advert included in the question does not contain a price, as required by both the CPRs (as deemed to be an invitation to purchase) and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 as well as the Price Marking Order 2004.

Answers should have then included general advice on how prices should be displayed and discussion of unit pricing. Then candidates should have covered price promotions, there were various aspects to this based on the advertisement provided, the use of the terms “free”, 25% off for subscriptions, lack of any reference pricing, time limits etc. all of which are covered in the CTSI Pricing Practices Guidance so candidates were expected to summarise this. There was also the issue of referencing a competitor, therefore comparative advertising should have been considered as well as how Value Vino can justify the claim. Potential offences, prohibited practices, misleading actions and omissions and professional diligence should have been covered.

There are numerous cases that could have been referenced, OFT v Officers Club (2005), Birmingham City Council v Tesco Stores Ltd (2013) for example. The second part of the question covered the requirements of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations, candidates should have discussed the application of these to the business, i.e. to distance contracts and the relevant information requirements particularly in relation to the subscription element. As cancellation rights would apply, candidates were expected to explain the reason for this and the relevant cancellation periods and obligations for the trader including those relating to postage costs and refunds

Q8

Question 8 was attempted by 3 candidates, marks ranged from 8 to 23

The most popular section B question, with 2 candidates scoring over 20 marks which is respectable. A good knowledge of the scope and definitions in the legislation was required to achieve good marks, as

with most scenario questions, initial marks are available for outlining how the legislation applies and any definitions that are relevant, in this case, commercial practice, transactional decision, distance contracts were important to include. The weaker candidates, or those running out of time omitted these and failed to pick up the marks available. This was a typical scenario with numerous potential offences, the best way to approach these is by looking at the sequence of events and highlighting the potential offences in order.

There were potential banned practices – bait and switch and the limited time offer, misleading actions in the statements made by the salesperson – the original item was not in stock, but the Pro100 was basically the same when it was not. There were also misleading omissions in that the salesman did not point out the differences in operation and that it was a discontinued product, nor did he inform the consumer that fitting would be subcontracted. There could also be misleading omissions and/or aggressive practices in relation to the consumer being informed that he could not cancel. In terms of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, candidates should have covered the distance contract requirements for information and also cancellation. The weaker answers missed some of these. The question also asks candidates to think about evidence required and what powers would be used, thinking about the elements of the offence is key here, which some candidates failed to consider.

The key points expected were to take a statement from Mr Jones exhibiting any documentation and covering the discussions with the salesperson and his subsequent transactional decisions, discussions with Flashfit. A statement could also have been obtained from Flashfit in relation to their knowledge of the fact that the door was discontinued and Roller4u had been trying to get rid of the stock. Photographic evidence and expert evidence could also have been considered. In terms of powers, candidates should have included use of CRA Sch 5 para 23, 25 and 29 to visit Roller4u, request and seize documents. The weaker answers did not think about the evidence required and exactly how this would be gathered and in one case the methods suggested were not appropriate and there was confusion between powers and enforcement options.

Q9

Question 9 was attempted by 1 candidate, mark 10.

The first part of this question asks candidates to apply the Consumer Protection from Unfair Trading Regulations 2008, as with other questions candidates should start by thinking about the scope of the legislation and how it applies to this scenario and any definitions that should be explained, here commercial practice and transactional decision would have been relevant. The charges, duration and fine information should have been clearly visible before a consumer enters the car park so that they can make an informed decision, as this is material information.

Candidates should have discussed the fact the sign was at the rear of the car park and did not contain all of the material information necessary for the consumer, this could amount to a misleading omission and the trader has also engaged in aggressive practices, shouting at the consumer and telling her the fine will double if not paid today. When including reference to offences, candidates should be able to recall the wording within the regulations for example, with aggressive practices mention harassment, coercion or undue influence, significant impairment and consumers freedom of choice. The second part of the question requires consideration of different enforcement options – informal, criminal or civil. The main consideration is whether the infringement justifies formal action such as a prosecution under the CPRs or civil action under the Enterprise Act, neither of these were covered in any detail by the candidate therefore marks were poor for this part.

With these type of questions candidates should think about the burden of proof, the seriousness or scale of the offence, any previous advice that has been given to the trader, difficulties in obtaining evidence etc. and then look at all of the options including advice and warnings, and the pros and cons of each. Finally, candidates were asked how their choice of option would affect how powers were used and evidence was gathered. This did not require candidates to list the powers but they should have referred to the fact that the powers in the CRA cover both criminal and civil evidence gathering, the difference in court procedures and adherence to PACE an CPIA, and whether any powers or evidence would be needed for informal action.

Q10

Question 10 was attempted by 1 candidate, mark 3.

This question was essentially asking candidates to consider how a project would be conducted including preparation, application of the legislation to the traders and powers to be used. The candidate that answered this question scored poorly as they had not understood the meaning of the question and had therefore not covered many relevant points.

In preparation for any such projects or visits, officers should be considering the history of the trader and any complaints received, the applicable legislation and developing a plan of what to cover, which premises they will visit and their powers particularly whether advance notice of the visit required if routine. In this question they could also have looked at information from National report to identify areas of potential non-compliance, what action will be taken if non-compliance found, conducted some open-source checks on agents' websites, prepare guidance for team and brief on the legislation and requirements such as the CPRs, Consumer Rights Act 2015 – Chapter 3 (S.83 & S.85 relevant fees), Client Money Protection Schemes, Consumer Redress schemes and Tenants Fees.

The second part of the question asks candidates to outline what areas they will discuss with the trader during the visit, this required some more detail in terms of the provisions covered, for example in relation to the CPRs, candidates should have been able to show how these apply to estate and letting agents in terms of misleading actions descriptions applied, omissions – material information not included i.e. flood risks or other issues with property, Sch 1 practices applicable such as stating approval or endorsements, false statements about market conditions, professional diligence and checking of vendor information. Candidates could also have included commercial sales/letting and the Business Protection from Misleading Marketing Regulations 2008, fees, redress schemes and energy efficiency requirements and EPCs.

Finally, candidates were asked to identify the powers they would use, this is in the detailed knowledge for this syllabus so when answering such questions candidates must be able to give sufficient information e.g. para.23 gives TS the power to enter business premises at reasonable time, subject to the notice requirement for routine inspections, then identify other powers such as para 25, 27 and 29 in this case.