

3. Consumer Protection (Amendment) Bill 2015 – First Reading approved

Mr Corkish to move:

That the Consumer Protection (Amendment) Bill 2015 be read a first time.

The President: We turn to Item 3, the Consumer Protection (Amendment) Bill 2015 for First Reading.

I call on the Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

I wish to move that the Consumer Protection (Amendment) Bill 2015 be read for the first time.

Whilst this Bill with 23 clauses may, at first sight, appear a fairly complicated piece of legislation, in reality it is actually very straightforward in terms of the policy aims it seeks to achieve.

The Consumer Protection Act 1991 is the principal piece of legislation protecting the rights and interests of consumers on the Island. This Bill seeks to modify the 1991 Act to achieve two policy aims.

The first policy aim is to ban cold-calling in the Isle of Man. This is not a new idea and prior to the last General Election, the Department of Home Affairs, at the request of the OFT, included such a provision in the Criminal Justice (Miscellaneous Provisions) Bill 2010. Whilst the provisions relating to cold-calling were welcomed, the Bill as whole was more complex and ran out of time before the dissolution of the House of Keys.

So what is cold-calling? Basically, there are three types of cold-calling. Firstly, there is doorstep cold-calling: a builder knocks on the door and offers to replace some missing tiles. That is cold-calling.

Doorstep cold-calling is a big concern because the targets often selected are the old, the frail and the vulnerable. This work often is unnecessary or ridiculously expensive – or both. The victims – and that is what we have termed them, they are ‘victims’ – are pressurised into making a quick decision. There are a small number of businesses, often builders, who operate using cold-calling and pressure-selling. They can, and do, have a devastating effect on their victims.

The OFT gets involved in these issues after the event, usually when a relative or friend has discovered what has happened. This Bill will make it illegal for a trader to enter into a contract as a result of doorstep cold-calling.

Secondly, there is telephone cold-calling. Our consultation shows that the Manx public are fed up of being pestered – and that the telephone preference service is ineffective. Whilst that annoyance is bad enough, the real problem is that consumers are persuaded to purchase unwanted, or expensive, goods and services. Again, the victims are often the more vulnerable members of our society.

It can of course be pointed out that most telephone cold-calling comes from off Island, so it will be impossible to pursue prosecutions; that is accepted. But the Bill has a sting in the tail. If a consumer enters into a contract as a result of cold-calling, that contract will be under Manx law and enforceable in Manx courts, so if the consumer breaks the contract the trader has a big problem. This Bill will make it illegal for a trader to enter into a contract as a result of telephone cold-calling.

Thirdly, there is excursion-based cold-calling. Here, the trader takes a group of consumers to a venue and gives them free refreshments and then starts the hard sell – it used to be the preferred technique of timeshare salesmen. And whilst that is not currently a problem in the Island it is likely to make a comeback at some time – especially as we close down other pressure-sales avenues; and for this reason the OFT have included it. This Bill will make it illegal for a trader to enter into a contract as a result of excursion-based cold-calling.

Overall, Madam President, what this Bill is seeking to do is put the control over the initiation of a sales conversation firmly in the hands of the consumer. That is what the OFT believes is fair; that is what, according to the consultation, the public wants.

The second policy aim is to enable the OFT to respond more quickly to emerging issues in relation to consumer protection. As I am sure Hon. Members will appreciate, a lot of local trade is with UK companies, which are operating to standards compliant with UK law. Equally, local consumers purchase goods and services online. Significant differences in legal protection can weaken the position of consumers when things go wrong.

The OFT recognises that it needs to keep the law on consumer protection up to date. It also recognises that with the key elements of that protection fixed in the 1991 Act, doing so would require a regular stream of Bills.

What this Bill seeks to do is to allow the OFT to import consumer protection provisions from UK legislation by way of an order. There *is* effective scrutiny because an order would require positive approval by Tynwald.

I must emphasise that there is absolutely no intention to import large chunks of complex UK consumer law, which is itself driven by even more complex European Union requirements which do not even apply to the Island. What we do need to be able to do is cherry-pick and import legislation that is relevant to local consumers. We also need to be able to modify that law and to tailor it to our own situation.

That, Madam President, is the essence of the Bill; the new substantive provisions are being fitted into the 1991 Act and there are a significant number of changes required to ensure that the amended Act actually works in practice. There are also a number of areas where we have taken the opportunity to update the 1991 Act, for example, extending the scope of 'document' to include electronic documents.

This is an important piece of consumer protection legislation and, as such, I commend this Bill to the Council.

Madam President, I beg to move that the Consumer Protection (Amendment) Bill 2015 be read for the first time.

The President: The Hon. Member, Mr Anderson.

Mr Anderson: Madam President, I am very happy to second this Bill and, in doing so, welcome the extra protection that it brings to consumers.

A Member: Hear, hear.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

A very interesting Bill, this, and one which I think will hopefully serve us well. But in raising some points in the debate at this point, I agree with the mover that door-to-door salesmen ... there can be nothing more irritating for people who maybe do not want that sort of thing, turning up, knocking on the door and trying to sell products and so forth.

The telephone is another one. I know from a few years ago, although this was in more of a business environment, I received a telephone call from somebody who was just checking that I had all the information and could I send payment for the police handbook that I had agreed to advertise in. And of course there was no police handbook and there was no agreement – it was a con, and they were doing the rounds. And at the time the Police themselves – I think it was a safety thing – confirmed that there were no such publications going on and that it was a scam. And even *firms* were falling foul of telephone cold-calling. They were *very* aggressive on the phone and you did begin to wonder if somebody else in the office had agreed to this – it was quite convincing.

So it is vitally important; but, as the mover acknowledges, you have got little or no chance of tracing those coming from off Island.

I do find it incredible that in the modern day of telecommunications there is not some onus on British Telecom, or whatever, to actually trace them ... they must know where these calls originate from and I cannot believe it is so difficult to actually track them down and shut them down. I really find that incredible. But *you* try opening up an investigation of that sort and finding out where these calls are originating from – it is a bit more difficult these days with the IP-based telephone calls because they can be routed all over the world. But back in the day it was very difficult.

I would like to know from the mover whether they have had any objections to this legislation, and if he could explain whether he has had any objections from industries – and, if so, where.

But also, one thing I have found useful is that when you are in business ... and presumably this is targeting the consumer, this is all about protecting the consumer, and I think we all agree with that. But I want assurance that the Bill is not going to prevent some legitimate business activities from taking place. I have had, in the past, cold calls from suppliers offering products that have turned out to be very useful contacts with businesses, because that is how business succeeds. So I would like some assurance that what we are not going to do is find that we have unwittingly outlawed legitimate business practices of business-to-business transactions, because I think that is very important.

One thing I would say with online protection and I have always found that ... and credit cards are not to everybody's taste, but there is quite an element of protection when you are purchasing goods online. And certainly if you are shopping and using a credit card, I know in the past that when people have been in the UK and they have actually had shopping stolen, they have had a level of cover because they have purchased those goods on credit cards. But credit cards do come with their own problems if the user is not using them properly.

So there is a variety of things here which I think the mover has raised. But I hope at this first stage debating the principle of this Bill, we can be assured that it is going to target the much-needed areas, the door-to-door cowboy builders, because we have all heard the stories – and it *is* happening in our community. So we need to make sure this legislation targets the right areas and does not outlaw the legitimate business practice of business-to-business contact.

The President: The Lord Bishop.

The Lord Bishop: Thank you, Madam President.

I *think* I welcome this Bill.

I would value some clarification about the electronic communication side of it because I think this is an area in which there can be very serious crime abuses. But at what point do you draw the line? For instance, I might be watching a television programme on commercial television and just at a critical moment in the plot an advert comes up! Now that is an unsolicited request for me to enter into a contract of some sort.

Does that apply? And in particular, for instance, the growing number of adverts for online gambling, in which a very specific contract is offered, such as, 'We will give you £80 worth of credit if you sign up to this thing' – this form of online gambling.

Is this included? Is advertising on commercial television – which is unsolicited – included? I would be very grateful if the mover could help us to clarify that.

A Member: Hear, hear.

The President: The Hon. Member, Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.

I am very supportive of this legislative initiative. During my time in OFT we had to suffer the problems that cold-calling caused in several formats. And I can see the limitations of this legislation because a lot of cold-calling is coming from outside of the Isle of Man – some of which we will never have any control over. But the limited control that this is offering internally here, I fully support.

And with special reference to building works, it is quite often the case where the elderly are targeted, or single folks living by themselves. They seem to form the highest proportion of this, so they have obviously been targeted specifically and nailed for tarmac for the drive, or ‘You’ve got a slate missing on the roof, Mrs ... we can put it right’.

The query I want to ask here is: say somebody does enter into a contract with such a cold-caller for some sort of roofing repairs or paintwork, they have the job done and pay the money – will this legislation then cause that to be an offence? So if a cold-caller has actually come and solicited money from somebody for doing repair work or whatever, is it right or wrong? It is probably going to be wrong.

I just want that clarified. Is the actual act of doing it then ... so that person may well be found guilty of an offence by OFT inspectors, for instance, *prior* to the person contacting the OFT to say, ‘We have had some bad work done ... blah, blah, blah’. Are we now saying that these people who are offering tarmac for drives and so on, and banging on doors – the actual *act* of doing it is illegal as well?

The exemptions issue is quite interesting, because what happens to the old-style ‘Avon calling’ or ‘Betterware’ and so on, and those kind of legitimate businesses which are well known to the community – and one or two others? Yes, it is cold-calling, but it is what I would call ‘friendly cold-calling’.

The other issue I want to ask about is cold-calling via the mail. I know again this is usually an off-Island issue, sent from people elsewhere, but even so we might get solicited by a letter through our postal system from on-Island operatives. I am just wondering where that is covered – if it is – within this legislation.

And I say that, due to examples that were presented to me as constituency issues – especially where people are informed they are the only surviving relative of an inheritance that is left, and can they ‘please get in touch with us ... blah, blah’. And I actually stopped one constituent from signing a cheque and posting it – luckily for her.

So I just wonder is there any cover, as far as you are able, with the Isle of Man Post involved here?

Thank you, Eaghtyrane.

The President: The Hon. Member, Mr Crookall.

Mr Crookall: Thank you, Madam President.

I am very supportive of this. I think this is an essential piece of legislation. It is probably long-awaited on the Island and anything that gives support and protection to the Island consumers ...

Many of the three examples that the hon. mover has brought – whether they be builders cold-calling on the doorstep, or telephone calls, or the excursion-based – is to be supported, if it means that we can deal with it here in the Manx courts.

And just to pick up on the point that the Lord Bishop brought forward about unsolicited with regard to watching commercial TV – I think if you are watching commercial TV you expect adverts to try and sell you things there and then. And watch the other side if you do not want it!

Two Members: The BBC.

The Lord Bishop: Stick to the BBC, yes.

The President: The mover to reply.

Mr Corkish: Thank you, Madam President.

I thank my hon. colleagues for their comments. It is obvious from the comments that have been offered today that this Bill *is* an important Bill and it is one that affects so many people in the Isle of Man. And in hardened, straitened times, it does amplify that there are more people doing this type of action. Again, it is often the old and vulnerable who are the losers on this.

Mr Turner mentioned about the origination of the phone calls. It is very difficult because they move about – as I am sure he knows – and once they have seen somebody is on their track they move about. So tracing is difficult because the calls originating from, say, India and other places, are disguised to look like local calls. So it is a very difficult issue.

The other point that Mr Turner made was whether there have been any objections from industry. There has been one objection – from a double glazing firm. (*Interjections*) And it does not affect business-to-business, of course. But I thank Mr Turner for his favourable comments in the main.

My Lord Bishop: the Bill does not affect television advertising – it is up to the consumer to decide ... or keep to BBC1 or BBC2, perhaps.

The Lord Bishop: That is interesting.

Mr Corkish: But if you need any more information, Lord Bishop, I am only too happy to provide more.

Mr Henderson: cold-calling is the offence. Now Mr Henderson, from his time as a Member of the Keys and dealing with constituents, is well aware of the problems that this can bring. Cold-calling is the offence – strictly, entering into the contract or *attempting* to enter a contract. Again, Mr Henderson acknowledges the pressures that are on the old and the vulnerable and people who are caught on the hop, should we say.

And mail *is* advertising, it is not prevented. Again, it is the consumer who has to take an action.

Mr Henderson also mentioned about the well-known doorstep traders – Avon and Betterware. But Avon and Betterware have been in the business for a long time and usually leave an advertising flyer beforehand, so it is not cold-calling when they call back because the person who has received that (**A Member:** Warm calling?) (*Laughter and interjections*) is aware of it. Well, it is a little bit warmer, and in the case of Avon and Betterware a lot *cleaner*, I would imagine, too! So the Bill protects that, as well.

And I thank Mr Crookall, too, for his support of the Bill.

Madam President, I beg to move.

The President: The motion is that the Consumer Protection (Amendment) Bill 2015 be read a first time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.