



Code of conduct: Retailers of Goods

This Code has been issued by the Minister with responsibility for consumer and commercial affairs in accordance with the provisions of Section 91(3) of the Fair Trading Act 2015 for businesses who are required to hold an appropriate business licence for the trade of goods by retail in accordance with the provisions of Part 9 of the Fair Trading Act 2015.

This Code is designed to promote best practices in this sector. While parts of the Code cover legal obligations owed by retailers to consumers under Gibraltar law, it should not be regarded as the definitive authority on their legal responsibilities. Businesses should become separately acquainted with these legal obligations which are not prejudiced by this Code.

The Office of Fair Trading (OFT) is committed to preventing business practices which cause harm to consumer interests. It will therefore consider any unreasonable departure by a retailer from the best practice guidance set out in this Code as a practice which significantly harms consumer interests for the purposes of the Fair Trading Act 2015.

Content:

- | | |
|---------------------------------------|--|
| 1. Interpretation & Scope | 13. Guarantees |
| 2. The Code | 14. Advertising |
| 3. Your service | 15. Documents |
| 4. Pricing | 16. Anti-money laundering requirements |
| 5. Shop Notices | 17. Confidentiality and data protection |
| 6. Dealing with Faulty goods | 18. Complaints handling |
| 7. Credit Notes & Vouchers | 19. The OFT's role |
| 8. Toys | 20. Business licence |
| 9. Goods on Sale / Promotions | Schedule 1 – Redress for faulty goods flow chart |
| 10. Delivery of Goods | Schedule 2 – Template deposits form |
| 11. Distance / Off Premises Contracts | |
| 12. Deposits | |

Issued: March 2022
Version: 1.0

1. Interpretation & Scope

- a) This Code is addressed to all businesses selling goods by retail to consumers in Gibraltar.
- b) All references in this Code to 'you' and 'your' should be interpreted as such.
- c) For the purposes of this Code, a consumer is an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.
- d) Unless otherwise indicated within the specific section, this Code will also apply to the sale of second hand goods. Regard must be given however, to the age of the goods and the price that was paid for them.
- e) Unless otherwise indicated within the specific section, this Code will also apply to goods on sale.

2. The Code

- a) It is recommended that you have available a copy of this Code at your premises and on your website.
- b) You should ensure that all your staff are fully conversant with all aspects of this Code and that these are observed in all their dealings with consumers.
- c) You may use and display material promoting this Code. Any promotion involving the use of the OFT's logo should be approved by the OFT in advance.

3. Your service

- a) You should provide a service to clients and consumers consistent with fairness, integrity and best practice and in keeping with the legal obligations owed by you to consumers.
- b) You should treat all consumers with courtesy.
- c) You should not seek business by methods that are oppressive or involve dishonesty, deceit or misrepresentation.
- d) You should ensure that your staff are sufficiently proficient in the English language to avoid risk of misunderstandings with consumers that may lead to problems with their purchases.

4. Pricing

- a) All goods on display, whether inside your shop, in display cabinets or shop windows, should have their prices clearly displayed in Pounds Sterling in a manner which would allow a consumer with normal sight to view such prices.

- b) If you accept foreign currencies, such as Euros, you are required to either also price your goods in those currencies, or to display the exchange rate against the Pound Sterling at which these currencies are accepted.
- c) Any charges or commissions to be charged in addition to prices must be clearly indicated.

5. Shop Notices

- a) Your retail policies should be communicated to consumers prior to the point of sale and in any event be clearly and prominently displayed in your premises.
- b) 'No refunds' notices are not allowed unless they are accompanied with a prominent explanation that they shall not affect consumers' statutory rights.

6. Dealing with Faulty Goods

Faulty goods

- a) Any goods sold must conform with the contract of sale and must therefore be:
 - i. as described;
 - ii. fit for the purpose sold; and
 - iii. of satisfactory quality.

For the purposes of this Code, if goods are not in conformity with the contract they shall be regarded as "faulty".

Burden of proof

- b) If goods are faulty within six months from purchase or delivery, then there is a presumption that the goods were faulty at delivery and it is for you to prove otherwise.
- c) If goods are faulty six months after the purchase or delivery, the onus is on the consumer to show that the goods were faulty when purchased or delivered.

Redress for consumers

- d) If goods are faulty within 30 days from a consumer taking possession of the goods, the consumer can reject the goods and claim for a full refund of the total cost of the goods. Rejection would not apply to perishable goods that are not expected to last more than 30 days.
- e) Without prejudice to the consumer's rights under Code 6 d), if goods are faulty within a year after a consumer takes possession of the goods, you should offer the consumer:
 - i. a free repair; or

- ii. a free replacement for the goods.
- f) If goods are faulty within six months from the purchase or delivery, and the goods are unrepairable, you should offer the consumer:
 - i. a free replacement; or
 - ii. a full refund of the total cost of the goods.

If goods are faulty after six months from purchase or delivery, and the goods are unrepairable, a refund or replacement must still be offered but a reasonable deduction may be made in accordance with Code 6 k).

- g) In the case of motor vehicles, any refund pursuant to this Code may reflect the depreciated value of the vehicle at the time the vehicle was handed in for repairs.

Repairing and replacing goods

- h) Following a repair or replacement, if the repaired or replaced goods are faulty within a period of 30 days after the consumer takes possession of the goods, unless the consumer agrees to another repair or replacement, the consumer shall:
 - i. have a final right to reject the goods in the same manner as set out in Code 6 d) (following the first repair or replacement only); or
 - ii. have the right to receive a reduction on the price of the goods.

Timing of redress

- i) Any refunds due must be effected within a period of 14 days and in the same form as the original payment unless the consumer agrees otherwise.
- j) If you have agreed to repair goods and the repair:
 - i. takes more than 50 days to be returned to a consumer; or
 - ii. the delay in repairing is causing significant inconvenience to the consumer,

unless the consumer agrees otherwise, the consumer should receive a replacement (temporary or otherwise). If this option is not available then the consumer may choose a reduction on the price of the goods being repaired or to reject the goods and receive a refund or part refund of the goods.

Reduction in redress offered

- k) Subject to any applicable guarantees or warranties, if goods are faulty after six months of purchase or delivery, you may reduce any refund or replacement offered to a consumer:

- i. to take into account any enjoyment that the consumer may have already had of the faulty goods;
- ii. to take into account the depreciated value of the faulty goods; or
- iii. where there are reasonable grounds to do so.

Where any full refund or free replacement is not provided you must communicate the reduction made and the reason for the reduction to the consumer promptly.

Handling goods for testing and repairs

- l) At the time of taking goods from a consumer for testing or repairs, the following information must be recorded in writing.
 - i. The name and contact details of the consumer;
 - ii. Any physical defects found on the goods when handed in;
 - iii. The fault that has been reported by the consumer;
 - iv. The person that will be carrying out the test or the repair;
 - v. Details about the type of testing or repair to be carried out;
 - vi. Where the goods will be sent;
 - vii. An indication of any costs that may be applied to the consumer and the circumstances under which these may be applied;
 - viii. An indication as to the time the process may take; and
 - ix. The process that will follow if the consumer fails to collect the goods within agreed time frames (Part X of the Contract and Tort Act should be considered in this regard).

The document recording the above information should be signed by both you and the consumer and a copy should be kept by both parties.

7. Credit Notes & Vouchers

- a) Where a refund is due to a consumer as per code 6, a credit note or voucher should not be offered to the consumer in lieu of a refund. A credit note or voucher may only be offered in place of a refund if the consumer confirms that they prefer a credit note or voucher.
- b) A credit note or voucher's terms and conditions, including their expiry date, must be:
 - i. communicated to consumers before they are issued; and
 - ii. prominently displayed on the credit notes and vouchers.

- c) Where there is doubt about the meaning of any terms and conditions of a credit note or voucher, including their expiry date, the reasonable interpretation that is most favourable to the consumer shall prevail.

8. Toys

- a) Toys shall have the following information affixed to them or to their packaging or in an accompanying leaflet:
 - i. the CE marking;
 - ii. details of the manufacturer or importer; and
 - iii. the warning or indications of precautions appropriate to the toy

9. Goods on Sale / Promotions

- a) Any information relating to sales or promotions should not mislead, deceive or take advantage of consumers.
- b) When claiming that items are on sale you:
 - i. must indicate the previous price of the goods; and
 - ii. must have been selling the goods at the original price for a reasonable period of time.
- c) When claiming that goods are being sold at an introductory price, you must not continue to sell these at this price indefinitely, or stop selling the product after the introductory period.
- d) Prices used as a basis for comparison should generally have been the most recent price available.
- e) Do not falsely claim that a product will be available at a particular price or terms for a very limited amount of time in order to persuade the consumer to make an immediate decision about purchasing.
- f) Do not advertise products at a specific price if you have reason to believe that they will not be available in reasonable quantities at that price for a reasonable period without making this clear in the promotion.
- g) Do not claim you are about to cease trading or move premises if you are not.

10. Delivery of Goods

- a) Unless otherwise agreed, goods must only be delivered to the consumer at your premises or at another agreed location.

- b) If a delivery time frame is not agreed with the consumer, then goods must be supplied without undue delay and within 30 days from the day after the contract was made.
- c) The delivery of goods takes effect when the consumer takes possession of the same and not when goods are dispatched as the case may be.
- d) If goods are not delivered within the time frames stipulated the consumer may:
 - i. agree to another agreed time frame. Where the goods are not delivered within a second agreed time frame the consumer may treat the contract as at an end and receive a refund.; or
 - ii. rescind the contract and receive a refund of any monies paid for the goods and their delivery if it was either clear under the circumstances that time was of the essence or the consumer had made you aware that time was of the essence.
- e) Where a consumer's goods have only been partly delivered within the stipulated time frames the consumer may reject the whole order if the goods delivered were an intrinsic component of the rest of the goods still to be delivered.
- f) Any monies due to the consumer under this part will be refunded without undue delay and in any event within 14 days from the date of cancelation. The refund must be in the same form as the original payment unless the consumer agrees otherwise.
- g) Where goods have been delivered to the consumer in a location away from your shop it is your responsibility to collect from this same location.

11. Distance / Off Premises Sales

- a) If you enter into distance (e.g.: on-line) or off-premises contracts, you have to inform the consumer that they have a 14 calendar day period (starting from the day after the goods are in the physical possession of the consumer) during which they can change their mind about the goods purchased and cancel the contract. The following is a non-exhaustive list of goods exempted from this Code:
 - i. Bespoke and customised goods;
 - ii. Goods which will deteriorate or expire rapidly;
 - iii. Newspapers and magazines (but not subscriptions for such);
 - iv. Contracts concluded at public auction;
 - v. Contracts where the consumer has contacted the trader to effect urgent household repairs;
 - vi. Goods received sealed for health protection or hygiene reasons, once they are unsealed;

- vii. Sealed audio, video and software products, once they are unsealed; and
- viii. Goods once they have been inseparably mixed with something after delivery.
- b) Following cancellation, you should refund all monies received including those relating to the delivery of the goods to the consumer within 14 days starting from the day after you receive the goods back and in the same format as the payment was made.
- c) If the consumer provides proof of return before you receive the goods back, you should refund without undue delay and no later than 14 days starting the day after you receive that proof.
- d) You do not have to pay the cost of returning the goods to you, provided you told the consumer before the contract was made that they would be liable for such costs.
- e) If the value of the goods is diminished by any amount as a result of handling of the goods by the consumer beyond what is necessary to establish the nature, characteristics and functioning of the goods, the trader may recover that amount from the consumer, up to the contract price

12. Deposits

- a) If you take a deposit from a consumer, you must issue them with a deposit receipt that includes the written terms and conditions in relation to the deposit which must include the following information:
 - i. The name and contact details of your business;
 - ii. The name and contact details of the consumer;
 - iii. The date the deposit was paid;
 - iv. What the deposit is for;
 - v. The amount paid;
 - vi. The amount outstanding;
 - vii. When the balance is due;
 - viii. Where applicable, how long the deposit / product will be set aside for the consumer;
 - ix. What will happen if the consumer does not comply with the terms and conditions of the deposit.
- b) The deposit receipt must be signed by both you and the consumer.

- c) A copy of the deposit receipt must be kept by you and updated as necessary along with that of the consumer's.
- d) Any contract terms must be balanced equally between both parties and written in consideration of the provisions of the Unfair Terms in Consumer Contracts Act.
- e) If you are unable to keep to the terms of the deposit, the consumer must be refunded their money if they so wish. The payment must be in the same form as the original payment unless otherwise agreed. The refund must take place without undue delay and not later than fourteen days from when it becomes due.
- f) Non-refundable deposits should only be a small percentage of the total price.
- g) In the event that the consumer cancels the contract:
 - i. businesses must take reasonable steps to mitigate any losses (e.g. selling the goods) and refund the consumer any amount of the deposit that they have been able to recover; and
 - ii. a cancellation fee may be charged by the business but must be a genuine estimate of the business' direct loss.

13. Guarantees

- a) If you or the manufacturer offers a guarantee for goods sold, the guarantee terms should be written in English and be issued or made available to the consumer at the time of purchase or shortly thereafter.
- b) Guarantees should:
 - i. include the name and address of the guarantor;
 - ii. state that the consumer has statutory rights regarding the goods, and that these rights are not affected by the guarantee;
 - iii. state the duration and territorial scope of the guarantee; and
 - iv. state the full terms and conditions of the guarantee
- c) If a manufacturer's guarantee is not applicable in Gibraltar in full or in part, the consumer must be advised of this prior to the conclusion of the sale.
- d) If a consumer is required to exercise their rights under the guarantee directly with the manufacturer, they must be advised of this prior to the conclusion of the sale.
- e) Where the consumer agrees guarantees may be provided in any other language that the consumer understands.

14. Advertising

- a) All your adverts should be legal and decent, and shall not be misleading.
- b) You should be able to objectively substantiate your statements.
- c) Advertised products should be available at the time of advertising or indicate when they will be available for order or purchase.

15. Documents

- a) Where applicable, retailers should ensure that instruction manuals, handbooks and other related document are in English, particularly where these are necessary to:
 - i. allow the consumer to enjoy the full extent of the goods, e.g. to be able to use all the functions of the goods;
 - ii. allow the consumer to maintain the goods as recommended by the manufacturer, especially where failure to do so may result in the goods suffering damage or the loss of any guarantees; and
 - iii. allow the consumer to heed the manufacturer's health and safety guidance to avoid injury.
- b) Where the consumer agrees instruction manuals, handbooks and other related document may be provided in any other language that the consumer understands.

16. Anti-money laundering requirements

- a) If you accept cash payments of 10,000 Euros or higher for any one transaction or for multiple transactions from the same customer, you must comply with your legal obligations as set out in the Proceeds of Crime Act (POCA), to be aware of and comply with the OFT's AML/CFT Guidance Notes for High Value Dealers and to report annually to the OFT.
- b) You shall conduct an appropriate risk assessment of your business to determine the risk of it being used for the laundering of money and the financing of terrorism. Based on that risk you shall develop appropriate policies and procedures to mitigate and monitor that risk and to prevent the laundering of money and the financing of terrorism through your business.
- c) You shall appoint a Money Laundering Reporting Officer and shall report any suspicious activity to the Gibraltar Financial Intelligence Unit as soon as possible.
- d) You shall provide adequate training to your employees to ensure they are aware of:
 - i. their legal obligations as set out in the POCA and in the OFT's AML/CFT Guidance Notes for High Value Dealers.
 - ii. your anti-money laundering policies and procedures;

- iii. how to identify suspicious activity; and
- iv. how to report such activity.

17. Confidentiality and data protection

- a) You shall respect your client's right to privacy and follow the data protection principles set out in the Data Protection Act or other relevant legislation.

18. Complaints handling

- a) You should maintain and operate a complaints procedure. Your staff should be aware of this procedure and be able to explain to your clients how to make a complaint against your business.
- b) All verbal and written complaints should be recorded by you. All written complaints should be acknowledged in writing within 14 calendar days of receipt and an investigation promptly undertaken. A senior member of staff not directly involved in the transaction should deal with the complaint.
- c) Make every reasonable effort to reach a speedy solution in the event of a dispute with a client. You should also deal with a client's formally appointed representative in the same way.
- d) Following the conclusion of your investigation into the complaint, a written statement of your final view, and including any offer made (where relevant), should be issued to the complainant. This letter should also tell the complainant how the matter can be referred to the Office of Fair Trading if they remain dissatisfied.

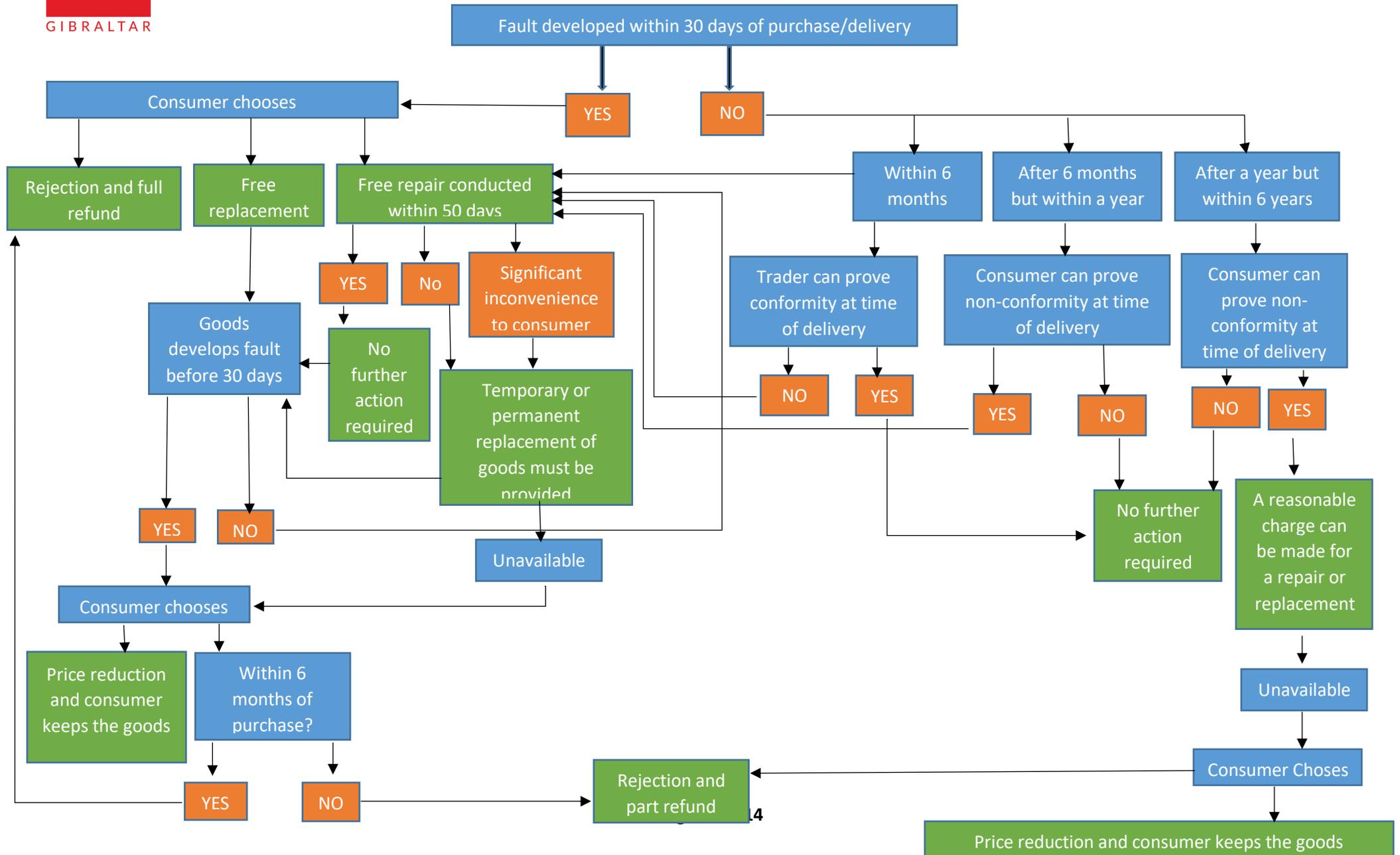
19. The OFT's role

- a) The OFT may investigate your business practices following the receipt of a complaint against you. In conducting their investigation, the OFT will consider any departure by you from this code.
- b) If, following its investigation and appropriate consultation with you, the OFT is of the view that your practices are harmful to consumers, the OFT may invite you to provide an undertaking that you will refrain from that conduct in the future. Failure to provide such undertaking shall result in the OFT referring you to the OFT's Commission for enforcement action.
- c) If you fail to comply with your undertaking once given the OFT shall refer you to the OFT Commission for enforcement action.
- d) Following a referral by the OFT regarding your matter, the OFT Commission may, in its discretion issue an appropriate enforcement order against your business in accordance with the Fair Trading Act 2015.

20. Business licence

- a) Your Business Licence should be displayed in your premises.
- b) Your business licence should be renewed yearly. Once lapsed your licence will be inactive until you have paid your renewal fee. During this time the OFT will consider your business as unlicensed and may take appropriate action against you.
- c) Your business licence should reflect the full extent of the business activities you are conducting from your premises.

Schedule 1 - Redress for faulty goods flow chart





Schedule 2 – Template Deposits Form

Business Name:

Address:

Tel:

Email:

Consumer's Name:

Address:

Tel:

Email:

Product Name:

Product Description:

Date Deposit Paid:

Amount Paid:

Amount Outstanding:

Date Balance Due:

[Insert your terms and conditions here. Include information on what happens if the consumer does not comply with the terms and conditions of the deposit. Ensure that your terms and conditions are fair and compliant with the Unfair Terms in Consumer Contracts Act.]

Consumer's Signature:

Business Representative's Signature:
