

This document issued by the Office of Fair Trading (OFT) has been withdrawn.

This document did not take account of developments in case law, legislation, or practices since its original publication. It should not be relied on either as a statement of the law or CMA policy.

Current CMA Guidance on unfair contract terms can be found at [Unfair contract terms: CMA37](#), which replaced all previous OFT / CMA guidance on unfair contract terms when the Consumer Rights Act came into force on 1st October 2015. Other information on the CMA's consumer powers can be found in [Consumer protection enforcement guidance: CMA58](#).

Check¹ list²

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UTCCRs checklist is designed to provide businesses with a starting point when considering what they can do to comply with the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs)

Please note: UTCCR's Checklist was originally an OFT document. The majority of the consumer powers previously held by the OFT were transferred to the CMA, as of 1 April 2014, under the Enterprise and Regulatory Reform Act 2013. The text of the UTCCR's Checklist is substantially taken from the OFT document, with an additional footnote to accommodate the transfer of OFT's unfair term powers to the CMA.

What do I need to check?

Do the UTCCRs apply to my business?

The UTCCRs apply to standard terms (often known as the ‘small print’) in business-to-consumer agreements. *UTCCRs at a glance* can help you establish whether the Regulations are applicable to your business – www.gov.uk/cma

Both written and verbal information you provide to consumers needs to be considered when checking your compliance with the UTCCRs. Standard terms might be included in the small print on sales documents, terms and conditions on your website, on promotional materials and in statements made by your salespeople.

Which terms should I check?

The UTCCRs generally apply to standard terms (or small print), although certain terms are exempt. See *UTCCRs explained* for more information – www.gov.uk/cma

How do I check my terms are fair?

A standard term is unfair if it creates a significant imbalance in the parties’ rights and obligations under the contract, to the detriment of the consumer and contrary to the requirement of ‘good faith’.

This means your standard terms should be fair and balanced, not weighted against the consumer, with the rights and obligations of both parties made clear.

For more detail, see *UTCCRs explained*. You can also check the types of terms likely to be considered unfair at www.gov.uk/cma

The following list provides some areas to consider when reviewing your terms. If you are unsure whether the terms you are using are fair, you should seek guidance from a legal professional.

General tips when reviewing terms



Use ordinary words and avoid legal or technical language as much as possible.	
Consider whether the meaning of your terms are clear and not open to a number of interpretations.	
Make written terms legible (for example, consider whether font size and print quality is easily readable).	
Consider whether your written contract is reader-friendly (for example, are short sentences and subheadings used?).	
Check terms do not have the potential to be misleading.	
Consider whether the price and main subject matter terms are highlighted as well as intelligible.	
Ensure your customers are aware of your terms and give them the opportunity to understand them before the agreement is made.	
Ensure your terms do not give your business an unfair advantage.	

Make written terms legible

(for example, consider whether font size and print quality is easily ...)

Checking for specific types of potentially unfair terms

It is also useful to check whether any of your terms have the same purpose or effect as the types of potentially unfair terms listed in the UTCCRs (Schedule 2). The OFT had also identified additional commonly used terms which have the potential to be unfair ¹. These lists do not cover every kind of term that can be unfair and terms may be unfair in some circumstances but not in others. The categories of terms covered include the following

	<p><u>Disclaimers</u> of liability for death or injury caused by the business.</p> <p>For example 'Equipment is used entirely at customers' own risk'.</p>
	<p>Disclaimers relating to faulty or misdescribed goods, unsatisfactory services.</p> <p>For example 'Goods are sold as seen - we accept no liability for faults discovered after purchase'.</p> <p>'Claims will not be entertained for 'sale' goods'.</p> <p>'No liability is accepted for damage to decor caused during installation'.</p>
	<p>Disclaimers of liability for delay by the business.</p> <p>For example 'The company will make all reasonable endeavours to start and complete the works by the dates given, but will not accept liability for delays'.</p>
	<p>Disclaimers of liability for failure to do what was agreed.</p> <p>For example 'Management reserves the right to suspend services without liability'.</p> <p>'Non-delivery of an instalment does not give the customer a right to cancel the contract'.</p>

	<p>Disclaimers reducing the amount or availability of redress.</p> <p>For example 'Liability accepted up to the value of the goods only'.</p> <p>'If goods are returned, customers must pay for carriage and packaging'.</p> <p>'No liability is accepted for consequential loss or indirect loss'.</p>
	<p>Terms creating barriers to seeking redress.</p> <p>For example 'Complaints cannot be accepted unless notified in writing within three days of delivery'.</p> <p>'Notice of cancellation must be sent by recorded delivery'.</p>
	<p>Terms excluding the consumer's right of <u>set-off</u>.</p> <p>For example 'Payment may not be withheld because of any alleged defect'.</p> <p>'Payment must be received in full before installation can commence'.</p> <p>'Benefit of the guarantees is lost if payment in full is not received on due date'.</p>
	<p>Terms disclaiming liability by conferring unsatisfactory guarantee rights.</p> <p>For example 'We will repair or replace (at our option) any item found faulty within three months'.</p>
	<p>Non-returnable consumer <u>prepayments</u> terms.</p> <p>For example 'In the event of an order being cancelled, no refunds can be given'.</p>

¹ These are set out in the OFT's main guidance on the UTCCRs, OFT311, under the classification Group 18. OFT311 (and specific OFT sectoral guidance on unfair terms) have at this point been adopted by the CMA not reissued in updated form. They need to be read alongside **Consumer protection: guidance on the CMA's approach to use of its consumer powers (CMA7)** and subject to changes in the law and enforcement arrangements which have occurred since the date on which each was published, particularly resulting from the coming into force of the Enterprise and Regulatory Reform Act 2013 (see annex B of CMA7, March 2014).

<p>!</p>	<p>Terms imposing disproportionate penalties (financial or over-severe and misleading enforcement powers).</p> <p>For example 'Interest will be charged at ten percent per month on any payment outstanding'.</p>
<p>!</p>	<p>Unfair cancellation clauses.</p> <p>For example 'We reserve the right to cancel any order at any time by refunding all monies paid'.</p> <p>'This contract is not subject to cancellation by the customer'.</p> <p>'After expiry of the initial term, three months notice of cancellation is required'.</p>
<p>!</p>	<p>Binding consumers to <u>hidden terms</u>.</p> <p>For example 'All orders are subject to our standard terms, which will be supplied with the goods'.</p>
<p>!</p>	<p>Variation clauses.</p> <p>For example 'The company may at any time vary or add to these conditions as it deems necessary'.</p> <p>'All materials used may vary in colour and finish'.</p> <p>'The price may be adjusted if costs relating to the order increase prior to delivery'.</p>
<p>!</p>	<p>Terms giving the business the right of final decision.</p> <p>For example 'The company will repair or replace any part as it deems necessary'.</p> <p>'The customer agrees to work being carried out at a time convenient to the company'.</p>

<p>!</p>	<p>Terms denying liability for statements made by agents or employees.</p> <p>For example 'All terms of the contract are contained in this document'.</p> <p>'No employee has authority to make statements inconsistent with these terms'.</p> <p>'Any variation to these terms must be in writing and signed by a director'.</p>
<p>!</p>	<p>Unbalanced assignment clauses.</p> <p>For example 'The company may at any time assign the agreement to any third party'.</p> <p>'This guarantee is personal to the customer and may not be transferred to anyone else'.</p>
<p>!</p>	<p>Terms hindering or preventing the consumer from going to court.</p> <p>For example 'Any dispute that cannot be resolved will be referred to <u>arbitration</u>'.</p> <p>'This contract is subject to the exclusive jurisdiction of the courts of the Isle of Man'.</p>
<p>!</p>	<p>Terms allowing excessive burdens or requirements to be imposed on the consumer.</p> <p>For example 'We may at any time require payment of such security deposit as is deemed necessary'.</p> <p>'The college will, at its discretion, make an additional charge for cleaning rooms'.</p>

<p>!</p>	<p>Terms requiring the consumer to bear inappropriate risks.</p> <p>For example ‘The customer indemnifies the company against all third party claims’.</p> <p>‘The customer will pay for damage caused to the company’s equipment by adverse weather conditions’</p>
<p>!</p>	<p>Terms requiring the consumer to make disadvantageous declarations.</p> <p>For example ‘I have read and understood the conditions of sale overleaf’.</p> <p>‘No oral representation was made to me as to the vehicle’s condition or mileage’.</p>
<p>!</p>	<p>Terms excluding non-contractual rights.</p> <p>For example ‘This contract is deemed to have been signed on the company’s business premises’.</p> <p>‘The consumer agrees to allow any personal data to be communicated to third parties’.</p>
<p>!</p>	<p>Terms stating unreasonable obligations and restrictions.</p> <p>For example ‘The tenant shall not keep any inflammable materials on the property’.</p>

This is not a comprehensive list or a substitute for the Regulations or a full interpretation of them. The final decision on whether a term is unfair rests with the courts. *UTCCRs checklist* cannot be a substitute for independent legal advice as to whether a court could consider a particular term fair or unfair.

Words that are underlined are defined within the *Glossary* – please see link below.

Further information and guidance

More information on reviewing your T&Cs, detailed guidance on the UTCCRs and sector specific guidance is available in the collection of CMA consumer enforcement guidance at www.gov.uk/government/collections/cma-consumer-enforcement-guidance

A glossary of terms can be found at the back of *UTCCR's explained*.

In addition to the UTCCRs, there are further regulations that protect consumers from unfair contractual terms, such as the *Consumer Protection from Unfair Trading Regulations 2008 (CPRs)*.

Check list¹²

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