

Communicating new unfair contract terms to businesses and consumers

Background

1. The responsibility for protecting consumers falls to several organisations which coordinate work within the Consumer Protection Partnership (CPP). The CPP is chaired by the Department for Business, Innovation and Skills and includes the Trading Standards Institute, the Citizens Advice Service and the Citizens Advice Service Scotland, the National Trading Standards Board, Trading Standards Scotland, the Department for Enterprise, Trade and Investment Northern Ireland, the Financial Conduct Authority, the Consumer Council for Northern Ireland, and the Competition and Markets Authority (CMA).

The role of the CMA

2. The CMA works to promote competition for the benefit of consumers, both within and outside the UK, to make markets work well for consumers, businesses and the economy and has powers to enforce consumer protection law. It has specific responsibility for guidance about unfair terms in contracts that consumers make with traders and, along with other bodies, has the power to take legal action to prevent the use of unfair terms in consumer contracts.
3. The Office of Fair Trading (OFT) developed resources for business guidance and education on the Unfair Terms in Consumer Contracts Regulations (UTCCRs) which were launched in June 2013. These were based upon research into businesses' needs and implemented in partnership with businesses and TSI through the [UTCCRs hub](#).
4. These resources were positively received by businesses. Prior to the hub closing, as part of the transition to the CMA, it had 170 registered users. Between July and October 2013, the advice pages received more than 6,400 unique page views and nearly 650 visits were made to the document download pages. Its launch also attracted positive support and promotion more broadly from the legal profession.
5. The Consumer Rights Bill consolidates existing unfair terms legislation which applies to consumers when dealing with traders, currently found in the Unfair

Contract Terms Act 1977 (UCTA) and the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRS). The CMA will start to promote guidance concerning the unfair contract terms to businesses and consumers, working with the CPP, in preparation for when the new Consumer Rights Bill becomes law in October 2015.

Unfair terms – overall compliance objectives

6. To get businesses to start updating their customer contracts and notices from April 2015, when the CMA publishes new guidance.
7. To encourage businesses in updating their contracts and notices from October 2015, when the CMA's new support materials are available.
8. To work with partners to empower consumers to hold businesses to account if their terms are not in line with the law.

Promoting unfair contract terms

9. In communicating to businesses, the CMA will draw upon businesses' needs and insights which the OFT's previous research highlighted. It will update relevant material created for the OFT's UTCCR hub and develop new material where necessary.
10. The CMA will work closely with its consumer protection partners, including the Trading Standards Institute and Citizens Advice, sectoral regulators and representative bodies, to promote the new terms effectively and efficiently to businesses and consumers. Previous OFT research, [Consumer Law and Business Practice: Drivers of Compliance and Non-Compliance \(June 2010\)](#), found that empowered consumers who understand their consumer rights play a strong role in ensuring that businesses meet their legal obligations and comply with consumer law. The OFT and the CMA have both used this insight effectively to align consumer education with business education in markets to maximise the impact. Businesses are more likely to improve their compliance if they perceive consumers will be more empowered. The CMA will work to align its business education and guidance on unfair terms with any partner initiatives to educate consumers.
11. All communication will be conducted in line with current Government Communication Service guidance: it will be no cost/low cost, delivered in partnership with other organisations who are relevant in terms of reach and credibility to the target audience, and all communication will be evaluated to understand its effectiveness and to inform future planning.

Communicating to businesses

Targeting

12. The CMA recognises that the majority of businesses want to comply with legal requirements. It seeks to help businesses comply with consumer law by raising awareness and understanding of the law and what businesses need to do to ensure compliance.
13. Different businesses have different needs for guidance regarding unfair terms in a consumer contract and consumer notices (as described in the Consumer Rights Bill Part 2 – Unfair terms). They have different levels of awareness and understanding; other needs which are specific to their business type and size; and the roles of users in businesses and the needs which have driven them to seek guidance or help also vary.
14. The OFT conducted research into businesses' awareness and understanding of, and their engagement with, UTCCRs when creating the [UTCCR hub](#). This generated a target audience segmentation based upon need which is demonstrated in the table in [Appendix 1](#).

Messaging

15. The CMA will inform businesses that:
 - the Consumer Rights Act (the Act) will come into force in October 2015;
 - the Act consolidates the existing unfair terms legislation which applies to consumers when dealing with traders, currently found in the UTCCRs and UCTA;
 - the CMA, Trading Standards and sector regulators will all have powers to enforce the unfair terms provisions in the Act from that point onwards; and
 - there will be communication to educate consumers, who will therefore expect traders to comply.
16. Information will highlight how previous existing unfair terms legislation has changed, to enable businesses to understand the new requirements and the dates from which they will be in place, so that they can update their customer contracts and notices where necessary.
17. In relation to the existing unfair terms legislation, the Act includes the following broad changes:

- In line with provisions in the UCTA, the new legislation covers both contract terms and notices (ie information given verbally or in writing that relates to rights or obligations between a trader and a consumer).
- The Act applies to all kinds of sales to consumers, including goods and services. It also introduces a new category of product, known as digital content. This includes the sale of physical products, such as CDs and DVDs, as well as downloaded or streamed content onto a computer, mobile phone or tablet.
- The law applies a test of fairness to contract terms and notices used by traders in transactions with consumers. The UTCCRs illustrated the meaning of unfairness by listing the types of terms which may be regarded as unfair, and this list has been slightly expanded.
- Certain terms in consumer contracts or consumer notices are exempt from this 'fairness test'. The new requirement is that, not only should the term be able to be understood by consumers, but should also be brought to the consumer's attention so that an average consumer would be aware of it and therefore be able to make an informed decision.
- Certain terms are 'blacklisted', which means that they are unenforceable.

Timing

18. Business representatives have indicated that traders need six months' notice to make changes to their processes and customer information. Guidance will be available from April 2015 to businesses, and consumer education will start in October 2015 when the Act comes into force.
19. Additional communication activity will help businesses to understand the changes to the regulations and to implement changes to their terms and conditions, in order to comply with the new legislation before consumers are educated about what the changes mean for them.

Channels

20. Guidance on unfair contract terms will be available on the [CMA's webpages](#), alongside a short guide to unfair contract terms: *Unfair terms – what do businesses need to know?* This information will also be made accessible to businesses via trade associations, professional organisations, the legal community and the CPP. Information on unfair contract terms will also be promoted through the Trading Standards Institute's (TSI's) [Business Companion website](#) and social media.

Communicating to consumers

Targeting

21. We want consumers to recognise unfair terms in contracts and notices (notices include any communication, in writing or not, that expresses the rights or obligations of the consumer or trader). The CMA welcomes information from consumers, but does not provide individual advice or respond in detail to complaints. Consumers can get advice about unfair terms from the Citizens Advice consumer service and if they wish to complain about a consumer contract term or notice, they should contact Citizens Advice in the first instance, which can report the trader to an enforcement organisation.

Timing

22. The Government intends the Consumer Rights Act to come into force on 1 October 2015, subject to Parliament's approval. Therefore the CMA will work with partners, such as Citizens Advice and Citizens Advice Scotland, to make information for consumers concerning their rights available in October, with a particular focus during National Consumer Week in November.

Channels

23. Citizens Advice has responsibility for educating consumers on consumer law, and the CMA will work with it.

Evaluation

24. To gauge the effectiveness of the communications activity, the CMA will engage in communication activities in line with Government Communications Service best practice.

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Needs-based segmentation of businesses for UTCCRs

<i>Business type</i>	<i>Triggers to finding information</i>	<i>Need</i>	<i>Solution</i>
New business owners	Starting a new business	Need to know where to find information on contracts.	<ul style="list-style-type: none"> • Signpost where to find the information to get it right first time. • Partnerships/channels used by start-ups.
Small, or owner-managed businesses	<ul style="list-style-type: none"> • Change in the law/new guidance.* • Customer query or complaint. • Trade association prompt. • Trading Standards visit/advice. 	<ul style="list-style-type: none"> • Simple information about terms and conditions that affect their business. • Specific issues can be quickly and directly accessed. 	<ul style="list-style-type: none"> • Top line information by issue and sector. • Practical help, including checklists. • Explanation of technical terms. • Information that can be downloaded.
Medium-sized business, with no in-house specialist legal advice – but has a professional responsible for advising senior management	<ul style="list-style-type: none"> • Change in the law, new guidance.* • Review of company terms and conditions. • A complaint, enquiry or internal request for advice. • Changes in legislation/news about enforcement activity. • News/updates in trade press. 	Detailed information about specific areas' regulations: <ul style="list-style-type: none"> • Sector and issue specific. 	Accessible guides and support – non-technical. Key areas explained: <ul style="list-style-type: none"> • 'How to' practical support. • Principles of good and bad.
Medium to large businesses that have in-house legal/compliance professionals	Change in law; new guidance.* Review of business process/Ts & Cs prompted by: <ul style="list-style-type: none"> • professional network; • enforcement activity, especially in sector; • customer query or complaint; and • advising colleagues. 	Access to expert guidance on unfair terms in contracts – overall, sectoral and wider information.	<ul style="list-style-type: none"> • Access to CMA guidance materials with up to date news on changes. • Links to enforcement (downloadable and shareable). • Sectoral information. • Detailed and technical for 'experts'.
Intermediaries – external counsel, trading standards professional or trade associations	<ul style="list-style-type: none"> • Change in the law/new guidance.* • Checking contracts including accuracy of terms and conditions. • Advising individual businesses on specific issues. • Providing advice and guidance to members. • Liaison activity - encouraging businesses to 'self-help'. 	Need easy access to a broad range of materials for different areas, and official guidance on unfair terms – overall and sectoral – and support for members or businesses.	<ul style="list-style-type: none"> • Access to official guidance and short summaries. • Links to cases and practical examples. • Access to a broad range information for business of different size, sector, level of awareness and understanding. • Materials to download and share.

*All guidance/education material will include a simple explanation of how the new regulations differ from the previous versions to enable businesses with a good understanding of the old regulations to implement changes efficiently.