

# Draft guidance on unfair contract terms

Consultation document

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This publication is also available from the CMA's webpages at [www.gov.uk/cma](http://www.gov.uk/cma).

# 1. About the consultation

## Introduction

- 1.1 The Competition and Markets Authority (CMA) is consulting on draft guidance on Unfair Contract Terms. This Guidance will replace the unfair contract terms guidance originally issued by the Office of Fair Trading (OFT), [OFT311](#), in 2001 (and reissued in 2008) which was adopted by the CMA in 2014. Annex A to the original OFT Guidance can be found at: [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/332719/oft311-annexes.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332719/oft311-annexes.pdf).
- 1.2 The purpose of the guidance is to set out the CMA's understanding of the Consumer Rights Act, (currently the Consumer Rights Bill, subject to Parliamentary debate) so far as it deals with unfair contract terms and notices. The references to the Bill in these documents refers to the House of Lords Bill amended on report, as of 27 November 2014.<sup>1</sup>
- 1.3 The CMA is a non-ministerial department formed on 1 April 2014. It is a unified competition and consumer authority which took over a number of the functions formerly performed by the OFT and the Competition Commission.
- 1.4 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. The CMA has powers to enforce consumer protection law.
- 1.5 The CMA has lead responsibility for providing guidance to businesses in relation to unfair contract terms legislation. It also leads on enforcement of this legislation, although it shares the power to enforce this and other consumer protection legislation with Trading Standards services and certain other co-enforcers.
- 1.6 Advice about unfair terms and other consumer issues can be sought from the Citizen's Advice consumer service, or by obtaining private legal advice. The CMA cannot provide individual advice or assistance or respond in detail to complaints.

## Scope of this consultation

- 1.7 This consultation covers a suite of draft guidance on unfair contract terms:

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<sup>1</sup> Available from <http://services.parliament.uk/bills/2014-15/consumerrights/documents.html>.

- *Unfair contract terms guidance*. This is a detailed guidance document which replaces OFT311.
- *Unfair contract terms explained*. This is a short (20-page) guide which gives a brief introduction to the unfair terms provisions, and an overview of their practical effect, aimed at businesses in particular.
- *Unfair contract terms short guide*. This is a very short (2-page) document which gives a very brief high-level summary of the main provisions.
- *What's new in unfair contract terms?* This is an interim detailed guide to the changes in unfair terms law that are expected to be introduced under the Consumer Rights Act.
- *Communication strategy on unfair contract terms*. This is a short document explaining our intended approach to communicating on this area of the law.

1.8 We are not consulting on the law, but on how clearly we have presented our interpretation of it. Whilst we are not specifically seeking comment on our legal interpretation, if you believe that any element it is wrong then we would suggest you mention this in your response.

## Background

- 1.9 If the Consumer Rights Act<sup>2</sup> comes into force it will, to the extent that it deals with unfair contract terms and notices, consolidate and replace the provisions of the Unfair Terms in Consumer Contracts Regulations 1999 (the UTCCRs), and of the Unfair Contract Terms Act 1977 (so far as the latter is applicable to terms and notices used in dealings between businesses and consumers). In doing so it will continue to give effect in the UK to the Unfair Contract Terms Directive.
- 1.10 In certain respects the new provisions will introduce some changes to the previously existing law on unfair terms. These changes necessitate the introduction of new guidance to replace the current guidance. The key changes are summarised in the *What's new?* document, which is one of the documents covered by this consultation.

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<sup>2</sup> The Consumer Rights Bill, which would become the Consumer Rights Act once it has received Royal Assent, will introduce a wide range of measures not limited to those concerning Unfair Contract Terms. More information can be found on [GOV.UK](https://www.gov.uk).

- 1.11 As part of its lead role in relation to unfair contract terms legislation, the CMA adopted various pieces of guidance previously published by the OFT, including its detailed unfair contract terms guidance document, OFT311. These guidance documents will stay in place until the new law being introduced by the Consumer Rights Act comes into force. The existing guidance documents can be accessed on the [CMA's webpages](#).

## **Consultation process**

- 1.12 We are publishing this consultation on the CMA website and sending it to a range of interested parties to invite comments. We would welcome your comments on the content of the draft advice document. We want to ensure that the advice is clear, comprehensive and useful for its intended users.

### ***How to respond***

- 1.13 We are seeking interested parties' views on the questions set out in [Section 2](#) of this document. Please respond to as many of the questions as you are able and, if you can, please support your answers with any evidence you may have.
- 1.14 When responding to this consultation please state whether you are responding as an individual or are representing the views of a group or organisation. If the latter, please make clear who you are representing and their role or interest.
- 1.15 We also plan to host one or two stakeholder events in early March. If you would be interested in attending please email [andrew.hadley@cma.gsi.gov.uk](mailto:andrew.hadley@cma.gsi.gov.uk) so we can gauge demand.

### ***Duration***

- 1.16 The consultation will run for nine weeks, from 26 January to 30 March 2015. Responses should be submitted by post or email, by no later than **30 March 2015** and should be sent to:

Andrew Hadley  
Competition and Markets Authority  
6th floor  
Victoria House  
37 Southampton Row  
London WC1B 4AD

Email: [andrew.hadley@cma.gsi.gov.uk](mailto:andrew.hadley@cma.gsi.gov.uk)

## ***Compliance with the government consultation principles***

- 1.17 In consulting, the CMA has taken into account the government consultation principles, which sets out the principles that government departments and other public bodies should adopt when consulting with stakeholders. Full details can be found on [GOV.UK](https://gov.uk).

## ***Data use statement for responses***

- 1.18 Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. Our use of all information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may wish to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.
- 1.19 Please note that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.
- 1.20 If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

## ***After the consultation***

- 1.21 After the consultation we will publish a final version of the documents and a summary of the responses received that fall within the scope of the consultation. These documents will be available on our webpages and respondents will be notified when they are available.

## 2. Questions for consideration

### ***Unfair contract terms guidance (detailed document to replace OFT311)***

- Q1. Is the draft guidance sufficiently clear? If there are particular parts of the guidance where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- Q2. Is the format and presentation of the draft guidance helpful? Are there any changes to the format or presentation that you feel would improve it?
- Q3. Are the tables in the guidance helpful? Are there any improvements to them that you can suggest that you feel would increase their clarity and/or usefulness?
- Q4. Is the level of detail helpful? Are there any parts of the draft guidance which you feel would be improved by being either more, or less, detailed?
- Q5. Is the draft guidance sufficiently comprehensive? Does it have any significant omissions? Do you have any suggestions for additional content that you would find helpful?
- Q6. Are the sections on overlapping legislation helpful? Does their position in the document work well? Do you have any suggestions as to how they might be improved?

### ***Unfair contract terms explained (guide aimed at business audiences, in particular)***

- Q7. Is the draft guide sufficiently clear? If there are particular parts of the guide where you feel greater clarity is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- Q8. Is the format and presentation of the draft guide helpful? Are there any changes to the format or presentation that you feel would improve it?
- Q9. Is the level of detail helpful? Are there any parts of the draft guidance which you feel would be improved by being either more, or less, detailed?
- Q10. Bearing in mind the target audience and the nature of the document, is the draft guide sufficiently comprehensive, and does it have any significant omissions? Do you have any suggestions for additional content that you would find helpful?

## ***Unfair contract terms short guide (2-page guide)***

- Q11. Is this summary document sufficiently clear? If there are particular parts of it where you feel greater clarity, or detail, is necessary, please be specific about the sections concerned and the changes that you feel would improve them.
- Q12. Is the format and presentation of the summary helpful? Are there any changes to the format or presentation that you feel would improve it?

## ***What's new in unfair contract terms? (a guide to the anticipated changes in unfair terms law)***

Note: As a result of the Consumer Rights Bill not having received Royal Assent as of 26 January 2015, we are republishing as an interim document. This document is intended as a factual update on the changes to the law on unfair terms, reflecting the position at publication. Therefore we are not looking for detailed input. However, please let us know:

- Q13. Do you consider that we have made any factual errors or significant omissions?
- Q14. Is the document sufficiently clear?

## ***Communication strategy on unfair contract terms***

- Q15. Do you agree with our communications approach? Are there any important elements missing? What else would you find useful?

## ***Additional general questions***

- Q16. Do you feel that the first three documents, between them, provide appropriately tailored alternatives to meet the varied demands of different audiences across the spectrum of interest in unfair contract terms issues?
- Q17. The CMA adopted various historical sector-specific pieces of guidance that can be found on GOV.UK: [www.gov.uk/government/collections/cma-consumer-enforcement-guidance](http://www.gov.uk/government/collections/cma-consumer-enforcement-guidance). How often, if at all, have you used these documents? If you have used them, how user friendly do you find them?
- Q18. Do you have any other comments about the suite of guidance documents covered by this consultation?