

Unfair terms – what do businesses need to know?

If you deal with consumers, then you need to know how consumer law applies to your terms and conditions and notices.

The Consumer Rights Act 2015 is due to come in to effect in October 2015. It aims to protect consumers against contract terms and notices which could be used to give businesses an unfair advantage.

It applies to wording that lays down the rights and responsibilities of consumers and businesses when entering into agreements with each other. It also applies to consumer notices that are often used, for instance, in shops, car parks as well as online.

What do businesses need to know about unfair contract terms?

A term may be in a contract document, a brochure, or (say) a poster but does not have to be written down. Terms can be agreed by word of mouth or appear in a recorded message.

Terms must be clear, informative and able to be understood by consumers – and not hidden away. If you spell out your terms clearly, you will save time in answering questions, and disputes are less likely to arise.

If a business uses an unfair term, consumers can challenge it, in court if necessary. Enforcers can also bring cases to stop their use.

What is an unfair term?

The law creates a ‘fairness test’ to stop consumers being put at unfair disadvantage. It says that a term is unfair if it tilts the rights and responsibilities between the consumer and the trader too much in favour of the trader.

The test is applied by looking at what words are used and how they could be used. It takes into consideration what is being sold, what the other terms of the contract say; and all the circumstances at the time the term was agreed.

There is an exemption for the essential obligations of contracts – setting the price and describing the main subject matter – provided the wording used is clear and prominent. There is also an exemption for wording that has to be used by law.

Top tips for setting out your terms and conditions

Here are some of the key things businesses need to consider to ensure that you communicate with consumers clearly to avoid unnecessary disputes:

- Respect consumers' interests when drafting your terms. Do not use terms you would not like to sign up to yourself.
- Deal openly and fairly with consumers – don't hide important terms away or use 'small print' that will surprise or deceive them. Terms that might disadvantage them should be drawn to their attention.
- Avoid using legal language or jargon. Use plain language that an ordinary person would understand – put yourself in the shoes of your consumer and make sure the language is at their level.
- Use clearly set out written contracts for complex transactions.
- Allow consumers time to read and understand the terms before the agreement is made, and explain terms that are difficult to understand.
- Take care with terms that (for instance): limit the extent of your liability, transfer risks on to the consumer that they can't control, allow you to make changes to the contract, impose penalties (eg by charging cancellation fees), keep prepayments, or automatically allow you to renew the contract.

More information on unfair terms can be found on the [CMA's webpages](#).

These materials do not constitute legal advice and should not be relied upon as such.

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