

Unfair contracts – what do businesses need to know?

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

The Consumer Rights Act 2015, in force from 1 October 2015, aims to protect consumers against unfair contract terms and notices.

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 (often used, for instance, in shops and car parks as well as online).

Key points that businesses need to know

A term may be in a contract document, or in other materials such as brochures or posters, but does not have to be written down. Terms can be agreed by word of mouth or appear in a recorded message. What notices say about rights and liabilities also needs to be fair.

Wording used 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.

Unfair terms and notices are not binding on consumers. If a business uses unfair wording, consumers can challenge it – including in court if necessary. Enforcers (such as the CMA and Trading Standards) can also bring cases to stop its use.

What is unfair?

The law uses a ‘fairness test’ to stop consumers being put at unfair disadvantage. It says that wording 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 the words, and how they could be used. It takes into consideration what is being sold, how a term relates to other terms in the contract, and all the circumstances at the time the term was agreed.

There is an exemption for the essential obligations of contracts – namely terms describing the main subject matter and setting the price, provided that they are clear and prominent. There is also an exemption for wording covered by law or rules, for instance words that legally have to be used.

Certain terms and notices giving rise to particular concerns are 'blacklisted' by legislation as unsuitable for use with consumers in any circumstances. They can be challenged on that basis, without needing to prove that they fail the fairness test.

Top tips for setting out your terms and notices

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 choosing terms and notices. Don't use terms you wouldn't like to sign up to yourself.
- Deal openly and fairly with consumers – don't hide important wording away or use 'small print' that might surprise or mislead them. Wording that has a significant impact for consumers should be particularly 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 wording that is important and may be difficult to understand.
- Take particular care with wording that, for instance, limits the extent of your liability, transfers risks on to the consumer that they can't control, allows you to make changes to the contract, imposes financial sanctions (for instance by charging cancellation fees) or allows you to keep prepayments or automatically renew the contract.

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

This short guide aims to provide a simplified overview, which may be assisted by the CMA's [flowchart](#). For a full understanding of the law on unfair terms, readers should consult the CMA's [main guidance document](#). Readers may also find the shorter summary document '[Unfair contract terms explained](#)' is useful as an introduction.

These materials are not a substitute for legal advice, and should not be relied upon as such.