

# Unfair Contract Terms Research

Competition & Markets Authority

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# 1 Executive Summary

## Introduction

- 1.1 This report presents findings from the 2016 study of businesses' behaviours regarding Unfair Contract Terms (UCTs) with consumers, in light of the Consumer Rights Act (CRA) 2015. The research was conducted by IFF Research on behalf of the Competition and Markets Authority (CMA).
- 1.2 The study was commissioned to build on existing qualitative research and develop robust, representative quantitative data that showed business practice around the use of potentially unfair contract terms in their dealings with consumers, and their awareness and understanding of the laws around the use of these terms.
- 1.3 The key objectives of the study included benchmarking:
  - the number of UK businesses who sell to consumers;
  - the value of transactions involved;
  - how businesses use and communicate their terms and conditions;
  - businesses' use of specific terms which have the potential to be unfair, and the types of businesses which use these terms;
  - how frequently businesses have disputes about their terms;
  - businesses' awareness of consumer law; and
  - the approach businesses take to reviewing contracts.
- 1.4 The findings of the research will be used to help inform policy and strategy developments around Unfair Contract Terms. It will also provide important intelligence for the CMA's future work, for example market studies, enforcement, and compliance activity, and to measure its success.

## Methodology

- 1.5 This study was a telephone-based survey of 1,250 businesses in the UK, conducted in Summer 2016. A spread of interviews was achieved across different sizes of businesses and regions of England, Northern Ireland, Scotland and Wales. Businesses operating in sectors which we anticipated would not sell to consumers were excluded from the survey: Agriculture, Mining & Quarrying, Manufacturing (except Repair companies), and Public Administration (this includes government departments and many public-funded organisations, but not those operating in Education or Health).
- 1.6 The sample was designed and weighted to be representative by size and region of the UK business population that sells to consumers. Such population figures are not publically available and thus these were modelled off businesses' answers during the screening section of the survey, which ascertained whether businesses sold to consumers.
- 1.7 Interviews were conducted at an organisational level, with a senior person in the company with day-to-day responsibility for handling relationships with customers and clients.

## Number of UK businesses that sell to consumers

- 1.8 The survey established that two-thirds (67%) of UK businesses sell directly to consumers. Nearly all (96%) of these businesses are micro organisations with fewer than 10 staff, although this is no different to the UK business population as a whole.
- 1.9 By sector, just over half of businesses who sell to consumers operate either in the Wholesale and Retail trade (34%) or Real Estate and Business (18%) sectors. This latter sector is a broad classification for companies predominantly offering professional services, such as accountants, solicitors, consultants and estate agencies.
- 1.10 Around one in eight operate in the Community sector (this includes hairdressers, sport and arts facilities), and one in nine operate in Hotels & Catering. The remaining quarter of the population that sells to consumers are split fairly evenly between those in Construction, Education and Health (which includes nursing homes, hospitals, schools and colleges) and Transport, Storage and Communications (including airline, rail and taxi companies, removals, and publishing companies).
- 1.11 The vast majority provide some form of service to their customers, around half sell a physical good or product while one in seven sell digital content. There is substantial variation by sector: businesses in the Wholesale and Retail trade, the largest sector, are much more likely to sell physical goods as opposed to providing services. In contrast, nearly all businesses in the Real Estate and Business sector provide some type of service.

## Value of contracts

- 1.12 The typical cost of a contract or transaction varies widely by business. Close to half report that an average transaction costs under £100, while three-quarters report that it is under £1,000.
- 1.13 Businesses in the Construction and Real Estate and Business sectors are more likely to have higher value transactions. This is worth considering when reflecting on the potential detriment that unfair contract terms could entail for the consumer: for example, where consumers might not be exposed to particularly high losses, this could impact their likelihood to complain or take a business to court.

## Use and communication of terms and conditions

- 1.14 Most businesses who sell to consumers have some form of terms and conditions in place, which they communicate to the customer in a variety of ways. There was a sizeable proportion though (20%) who said they did not communicate any terms to their customers, potentially because the businesses don't have any formal terms and conditions in place. These were predominantly in the Wholesale and Retail sector and had low average transaction values.
- 1.15 Only two-fifths provide their customer with a written, personal record of their terms (for example, via a physical document or receipt), with communication more commonly occurring through spoken channels. Two in five communicate their terms via email, their website, or an online portal.
- 1.16 At an overall level, businesses in the Education and Health sector were most likely to communicate their terms and conditions to customers and Wholesale and Retail businesses were the least likely. Meanwhile, businesses in the Community sector in particular were the

least likely to provide customers with a personal record of the contract, with spoken communication channels dominating.

- 1.17 A potential issue is in the way businesses communicate their terms and conditions, and, more specifically, how they communicate any changes to these terms and conditions, as such changes have the potential to antagonize customers. One in five businesses make changes to their contracts at least occasionally (rising to two in five Construction businesses). Typically they inform customers of changes by speaking to them in person. In contrast, when customers wish to make changes to existing contracts they are more likely to communicate via the phone.
- 1.18 There were notable sectoral differences in how changes to contracts were communicated – the Real Estate and Business and Education and Health sectors, for instance, are far more likely to communicate changes to customers by hard copy or paper document. Businesses in Construction are much more likely to let their customers know of any changes by speaking to them.

### Businesses' use of specific terms which have the potential to be unfair

- 1.19 The survey asked businesses if they engaged in certain behaviours where unfair terms could potentially be used. These behaviours were based on Schedule 2 of the CRA 2015 (more commonly known as the 'Grey List' of terms that may be regarded as unfair).
- 1.20 The most common behaviours were taking deposits or advance payments (practised by half of all businesses), limiting business liability (46%), and customers being asked to agree to privacy rules or data use (45%). Once again there was wide variety by sector: taking deposits and advance payments is more common in the Education and Health, and Wholesale and Retail sectors, while limiting liability is more common in the Transport, Storage and Communications, and Real Estate and Business sectors.
- 1.21 On average, one in seven businesses report practising at least five potentially unfair behaviours – this is most common in the Real Estate and Business sector, and those with a higher average transaction value. These businesses were also more likely to experience disputes, which could suggest that such practices are negatively impacting their customers.

### Disputes

- 1.22 Just over half of all businesses selling to consumers have had a dispute in the past over their terms, although only a small minority have had disputes occasionally or often, of whom three in ten were in the Real Estate and Business sector. This illustrates that perceived knowledge of the rules around Unfair Contract Terms should not be treated as a proxy for where compliance is highest – Real Estate and Business companies had the highest level of knowledge of UCTs.
- 1.23 A third of businesses who used cancellation charges reported that they had experienced a dispute about the payment of these charges, indicating that this is often an area of contention. Other behaviours which were more likely to create disputes were around businesses' attempts to limit business liability, or as a result of making changes to an agreement.
- 1.24 Businesses respond to disputes in a variety of ways. Two in five deal with disputes on a case-by-case basis, without making use of their terms and conditions, while five per cent always apply their terms and conditions, with no flexibility (rising to 11% among large businesses). These businesses are more likely to operate in the Real Estate and Business sector, and to sell digital content when compared to the general population of businesses that experienced disputes.

- 1.25 One in 10 businesses facing a dispute needed to go to court to resolve this, representing five per cent of all businesses. Once more, those in the Real Estate and Business sector were most likely to do this, with a higher proportion (23%) needing to resolve their dispute in court.
- 1.26 It is also worth re-emphasising the importance of using terms and conditions: businesses who do not share any contract terms with customers are much more likely to have been to court to resolve a dispute, highlighting the risk under which such businesses operate.

### Awareness of consumer law

- 1.27 Perceived awareness of the rules around Unfair Contract Terms is relatively low (54% did not know them well or had never heard of them), and familiarity with the Consumer Rights Act 2015 even lower (only 15% were familiar with it).
- 1.28 It is worth highlighting that a sizeable number of respondents considered themselves aware of the rules around UCTs without necessarily being familiar with the CRA 2015. A lack of knowledge of the CRA 2015 is in itself not necessarily cause for alarm: staff may be aware of their compliance obligations without knowing the exact law these stem from. However, the study found that higher levels of familiarity with the CRA 2015 are associated with more compliant behaviour such as sharing the terms and conditions of the business (and leaving a personal record of this with the customer), as well as reviewing contracts more frequently.
- 1.29 Employers in the Real Estate and Business sector are more likely than average to say they know the rules around UCTs well and in contrast those in the Community sector are the least likely. Perceived familiarity with the rules around UCTs also increased with the size of the business.

### Reviewing terms

- 1.30 Two in five businesses reviewed their contract in the last year, although most businesses do not review their contract terms regularly - the average time between reviews is typically between four and five years. The length of time between reviews could mean businesses are subjecting themselves to risk should new laws or regulations come into force that leave their terms and conditions outdated.
- 1.31 Businesses who had reviewed their contract terms in the last year are more likely than the rest of the population to be familiar with UCTs and the CRA 2015. They are also more likely to communicate their contract terms with customers (90% vs. 80% of UK population). However, they are also more likely to experience disputes with customers at least occasionally. The survey is unable to unpick causality here, i.e. whether a surfeit of disputes encouraged businesses to review their contract, or whether the review perhaps had unintended consequences in inviting more complaints about their products or services, potentially due to them being upset with any change that the review might have resulted in. What the survey does reveal however is that customer complaints are typically *not* the driving force behind companies' decision to review their contracts. While the reasons are varied, it is more likely to be a change in the law, or a change to the price or cost of a product that prompts a review.
- 1.32 With a general lack of familiarity with the CRA 2015 among staff who are responsible for day-to-day relationships with the consumer, it is important that any updates to contract terms are administered by those with a better understanding of the law. However, the survey findings suggest this may not always be the case. For the majority of businesses, an internal member of staff predominantly conducted their most recent review, but only one in five made use of a legal advisor or solicitor to help them; indeed, general 'business advisors' or accountants were just as common. Just six per cent said their last review was conducted by staff external to the business.

## Areas of interest

- 1.33 Businesses in Wholesale and Retail account for a third of all businesses who sell to consumers. Only three-quarters provide terms and conditions to their customers and most commonly these are communicated face-to-face. One reading of this could be because of the simple transactional nature of many businesses in this sector, and the generally low value of what they are selling. As per the rest of the population, disputes had been experienced by around half of these businesses, with faulty products or goods typically the subject of these disputes. While on average these businesses practised less than two potentially unfair behaviours, six in ten reported that they take deposits or advance payments.
- 1.34 Companies in the Real Estate, Renting and other Business activities sector, accounting for 18 per cent of all businesses who sell to consumers, appear more likely to place themselves and their customers at risk of using terms that could be unfair. Businesses in this sector (who tend to provide services as opposed to selling products) are more likely to claim to know the rules around UCTs well, but no more likely to be familiar with the CRA 2015. They are also most likely to experience disputes with customers (typically around changes to an agreement they have in place with a customer), to have to resolve these disputes in court, and engage in a number of potentially unfair practices, most commonly limiting liability, imposing privacy rules and asking customers to fill out paperwork when changing arrangements. On a positive note, around three-quarters provide customers with a personal record of the terms and conditions of the business.
- 1.35 Businesses in the Community sector are less familiar than average with the rules around UCTs, and generally less active in communicating and reviewing their terms and conditions. While on average they engaged in two to three potentially unfair practices (most commonly imposing privacy rules), their lack of knowledge does not appear to result in disputes: only one third had experienced a dispute compared to a UK average of around a half. Whilst this does not necessarily mean unfair terms are not being used, it could reflect the fact that many of these businesses will have low transaction costs.
- 1.36 Businesses in Hotel and Catering have a typically low transaction cost and – perhaps linked – they were relatively unlikely to have experienced disputes with customers. Thus their behaviour and general practices (half took deposits and advance payments, and over a third applied cancellation charges) do not appear to bear as much risk to the consumer to the same degree as seen in other sectors.
- 1.37 Construction firms exhibited different behaviours to their approach to sales and communicating terms and conditions compared with the rest of the UK economy. On average they practise at least two behaviours with the potential for unfair terms (taking deposits, making changes to agreements and limiting liability were all common behaviours), and they tend to communicate their terms and conditions via a hard copy or paper document. However, only a third professed to knowing the rules around UCTs well, and given that nearly half reported typical transaction costs greater than £1,000, this highlights the potential level of detriment for customers, should companies in this sector not act in a compliant fashion.
- 1.38 Less than half of the Education and Health sector sell to consumers. Those organisations which do sell to consumers, and thus are subject to consumer law, tended to show good practice by communicating their terms and conditions and regularly reviewing their contracts. We cannot

comment too broadly on the Transport, Storage and Communications, Financial Services and Primary sector businesses owing to a paucity of responses received from these businesses.

- 1.39 Another sector that merits focus are those businesses that sell digital or downloadable content. These businesses are more likely to experience disputes than businesses that do not sell digital content, and more likely to apply all their terms and conditions with no flexibility when seeking to resolve disputes. This indicates that they might not be set up to operate in a way that fully protects the customer, an area that the CRA 2015 sought to improve.
- 1.40 Businesses with higher transaction costs are typically more likely to practise behaviours with the potential for unfair terms and also to experience disputes. However, they are also more likely to communicate their terms and conditions to the customer, and through more obvious channels (eight in ten provide their customer with a personal record). The level of disputes is likely to be linked to the cost of the transaction for the customer: one would expect that customers might be more willing to complain about a high value transaction.

## Conclusions

- 1.41 This survey acts as a benchmark for the CMA to better understand the landscape of businesses who sell to consumers. While it cannot categorically determine where bad practice is occurring, it provides clues as to where this is more likely to happen.
- 1.42 It is important to caveat that this survey covers business behaviour; only half of the jigsaw. It should be considered in conjunction with the consumer perspective and the extent to which consumers are subjected to detriment caused by the behaviours covered here.
- 1.43 While the majority of businesses claim to communicate their terms and conditions to their customers, the channels used vary widely and often do not provide the customer with a clear record of the contract. The extent to which these terms and conditions reflect current regulations is also debatable, given businesses typically review their contracts only once every four or five years.
- 1.44 The survey does show though that there are certain types of companies – Real Estate and Business companies, those selling digital content and those with a typically high transaction value – where the potential for using unfair terms is higher due to the nature of their work: they engage in multiple potentially unfair behaviours, tend to change their contract terms regularly and experience a high level of disputes, despite being more likely than average to communicate their contract terms to their customers.
- 1.45 The survey also confirms that those with day-to-day responsibility for handling customer relationships are not particularly familiar with the CRA 2015. The CMA must therefore consider whether these are the relevant individuals with whom to target communication. The majority of businesses use internal staff to review their terms and conditions. But only one in five consult a solicitor or legal representative. The CMA could therefore consider increasing the level of communications directed through Trade Associations, intermediaries, or regulator guidance as around three in 10 made use of each of these, and they might act as a useful gateway by which to reach companies.
- 1.46 While there is a role to play in raising awareness of the CRA 2015, broadcasting the implications of using unfair terms is most likely to lead to action. In communicating with businesses, the CMA could highlight the extent to which certain potentially unfair practices can



lead to disputes. For example, a third of businesses operating cancellation charges experience a dispute pertaining to this behaviour. They could also focus on addressing behaviours that typically overlap (for example, those that operate cancellation charges commonly take deposits). Alternatively, they could point to the (albeit relatively small) proportion of businesses who find that keeping their contracts up to date brings various business benefits.

## 2 Background and objectives

### Background

- 2.1 The core aim of the Competition and Markets Authority (CMA) is to make markets work well for consumers, businesses and the economy. While the CMA plays a crucial role in enforcing regulatory compliance it also places a great deal of emphasis on education - ensuring businesses are equipped with the right tools and information to comply with the law.
- 2.2 In light of the Consumer Rights Act 2015, which brought together many different aspects of consumer law, including the legislation on unfair terms within consumer contracts, the CMA has a key role to play in providing guidance around Unfair Contract Terms (UCTs), as well as having enforcement powers under the Consumer Rights Act.
- 2.3 Previous qualitative research<sup>1</sup> among small and medium enterprises (SMEs) gave the CMA an understanding into how businesses think about their terms and conditions and how they apply their terms to real life scenarios but the sampling for this research was purposive and not representative.
- 2.4 This new study was therefore commissioned to build on this initial research and develop robust, representative quantitative data to better understand both businesses' use of potentially unfair contract terms in their dealings with consumers and their awareness and understanding of these terms.

### Survey objectives

- 2.5 The key objectives from this research were to provide a nationally representative quantitative benchmark on:
  - the number of UK businesses who sell to consumers;
  - the value of transactions involved;
  - how businesses use and communicate their terms and conditions;
  - businesses' use of specific terms which have the potential to be unfair, and the types of businesses which use these terms;
  - how frequently they have disputes about their terms;
  - businesses' awareness of consumer law; and
  - the approach businesses take to reviewing contracts.
- 2.6 The findings of this research will be used to help inform policy and strategy developments around Unfair Contract Terms. It will also provide important intelligence for the CMA's future

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<sup>1</sup> *SMEs and Unfair Contract Terms* – research prepared by BDRG Continental, January 2016.

work, for example market studies, enforcement, and compliance activity, and to measure its success.

## Methodology

### Survey sampling

- 2.7 The survey was designed to deliver findings that are representative of the whole UK economy. Nevertheless, there were certain subsectors of the economy which we could anticipate would not sell directly to consumers, and therefore these businesses were excluded from our sample frame. The following sectors were excluded:
- Agriculture (SIC 01-03);
  - Mining & Quarrying (SIC 05-09);
  - Manufacturing (SIC 10-33, except SIC 33110 - 33190 which were included); and
  - Public Administration (SIC 84).
- 2.8 Aside from these exclusions, the survey included businesses across the full geographical spectrum of the UK, and across all sizes. Sample was drawn from the Market Location database.
- 2.9 The UK business population is highly skewed towards smaller organisations, so medium (defined as those with 50 to 249 employees) and large (250 plus employees) businesses were over-sampled to enable statistically robust subgroup analysis.
- 2.10 Interview targets were set by size and region to a purposive design which tried to maximise the potential for subgroup analysis without straying too far from the actual distribution of different sized businesses. Industry sector was allowed to fall out naturally, as identifying those sectors selling to consumers was a key objective of the research.
- 2.11 When setting targets, the profile of the UK population was taken from the latest Business Population Estimates available at the time<sup>2</sup>. Sample was drawn in a 20:1 ratio from Market Location's business database. Therefore, a random sample of close to 25,000 businesses at an organisation level (i.e. head office or single site) was obtained.
- 2.12 The screening questions ensured that we spoke to a senior person within the company with day-to-day responsibility for handling relationships with customers and clients. For smaller businesses this was commonly the Managing Director or equivalent, while for larger businesses this tended to be Operations Managers, Customer Services Managers or Sales Managers. We deliberately chose not to interview staff in legal or financial roles, who might be expected to be more familiar with the Consumer Rights Act, as the CMA specifically wanted to assess the awareness of those individuals whose day-to-day role was to engage with customers and be responsible for applying their terms of business.

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<sup>2</sup> These are available through <https://www.gov.uk/government/collections/business-population-estimates>

## Survey questionnaire

- 2.13 A key objective for the survey was to determine what types of businesses sell to consumers. As such, a question was designed to ask whether businesses sold to consumers, businesses or both (see Chapter 3 for more detail). It was positioned in the screening section of the survey to enable those who answered that they did not sell to consumers to leave the survey at this point. In this way we were able to determine the incidence of businesses that sell to consumers, build up a profile of the types of businesses that sell to consumers, and capture the nature of interactions with consumers without burdening respondents with questions that were not relevant to their business.
- 2.14 Previous research<sup>3</sup> had identified that there was a wide discrepancy in the nature of contracts or terms and conditions that businesses use. A contract can exist in a variety of forms, ranging from the full terms and conditions of the business, to receipts given at the point of sale, down to 'spoken agreements' confirming the sale. Any means by which a business sets out their agreement with a customer can be considered a contract. Therefore, much care was taken in the design of the questionnaire to ensure the phraseology of these concepts were familiar to businesses.
- 2.15 It was also important during the development process to ensure employers spoke candidly about the subject, given its sensitive nature. Therefore, no reference was made to 'Unfair Contract Terms', or 'Consumer Rights Act' until near the end of the survey, where we gauged general awareness.
- 2.16 Once the questionnaire had been agreed with the CMA, IFF proceeded to a piloting stage, to test that the language used in the questionnaire was suitable for the typical respondent and that the questionnaire flowed smoothly and logically from a respondent perspective.
- 2.17 The final questionnaire covered the following areas, and is included in Appendix A:
- Whether the business sells to customers;
  - How businesses sell to customers;
  - Activities that could potentially be considered unfair for the customers;
  - The value of a typical contract;
  - The means by which the terms and conditions of the business are relayed to customers;
  - Extent of disputes arising with customers over the terms and conditions of the business;
  - Approach to reviewing contracts;
  - Awareness of Unfair Contract Terms and the 2015 Consumer Rights Act;
  - Firmographic information and re-contact.

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<sup>3</sup> *SMEs and Unfair Contract Terms* – research prepared by BDRRC Continental, January 2016.

## Survey fieldwork

- 2.18 Fieldwork for the survey was undertaken between 17<sup>th</sup> June and 20<sup>th</sup> July 2016, involving 1,250 telephone interviews using computer-assisted telephone interviewing (CATI) software. Interviews lasted around 17 minutes on average. There were an additional 1,129 businesses who did not complete the survey but for whom we were able to determine whether or not they sold to consumers by virtue of their responding to the relevant screening questions.
- 2.19 All interviewers were provided with a detailed face-to-face briefing on the questionnaire content, the aims of the research, and the background to the project. The survey process was monitored throughout fieldwork to ensure a high quality of interviewing.
- 2.20 The survey achieved an overall response rate of 27 per cent. Table 2.1 presents the fieldwork outcomes and response rates. The response rate was calculated as the number of achieved interviews as a proportion of 'total complete contacts', where a final outcome was reached with the establishment (this includes those respondents who completed the interview, refused to take part or quit during the interview). Because we did not know the proportion of businesses that would sell to consumers, we could not be certain of the amount of sample required for the project to reach 1,250 interviews. As sample was then loaded in batches, we achieved the total number of interviews required before loading the final batch.

**Table 2.1 Fieldwork outcomes**

Outcomes	n	% of all loaded	% of all complete contacts
Starting sample	24,595		
Sample loaded	22,217		
Unobtainable / invalid numbers	1,152	5%	
Over quota	66	0%	
Do not sell to consumers (ineligible)	872	4%	
Unavailable during fieldwork / ongoing contact	15,575	70%	
<b>Total complete contacts</b>	<b>4,552</b>	<b>20%</b>	
Refused	2,116	10%	46%
Company policy refusal	547	2%	12%
Quits during interview	354	2%	8%
Nobody at site to answer questions	285	1%	6%
<b>Complete</b>	<b>1,250</b>	<b>6%</b>	<b>27%</b>

## Profile of respondents

2.21 We contacted a broad range of businesses in the UK. Table 2.2 shows the breakdown by size, sector and region, alongside their associated (maximum) sampling error<sup>4</sup>.

**Table 2.2 Achieved interviews and (maximum) sampling error by size, sector and region**

Size, Sector	Achieved	Max sampling error	Region	Achieved	Max sampling error
Micro (0-9 staff)	662	3.8%	North East	100	9.8%
Small (10-49 staff)	315	5.5%	North West	98	9.9%
Medium (50-249 staff)	178	7.3%	Yorkshire & The Humber	103	9.7%
Large (250+ staff)	95	10.1%	East Midlands	102	9.7%
Primary, manufacturing and Utilities	24	20.0%	West Midlands	99	9.8%
Construction	84	10.7%	East of England	101	9.8%
Wholesale and Retail trade	344	5.3%	London	106	9.5%
Hotels and Catering	167	7.6%	South East	119	9.0%
Transport, Storage and Communications	59	12.8%	South West	110	9.3%
Financial Services	33	17.1%	Scotland	100	9.8%
Real estate, renting and Business activities	202	6.9%	Wales	103	9.7%
Education and Health	179	7.3%	Northern Ireland	109	9.4%
Community etc. <sup>5</sup>	158	7.8%	<b>TOTAL</b>	<b>1,250</b>	<b>2.8%</b>

2.22 To allow robust analysis, companies have been grouped into overarching 'broad sectors', which are referred to throughout the report. Table 2.3 shows the most common types of businesses that appear in each broad sector according to our survey data. Those businesses that make up the 'Real estate, renting and Business activities' sector are of particular interest given they represent a wide range of professional services. The most common businesses of those surveyed are accountants (these account for 14% of all businesses in this sector), architects (13%) and real estate agencies (11%).

<sup>4</sup> Figures have been based on a survey result of 50 per cent (the 'worst' case in terms of statistical reliability), and have used a 95 per cent confidence level. Where the table indicates that a survey result based on all respondents has a sampling error of +/- 2.8 per cent, this should be interpreted as follows: 'for a question asked of all respondents where the survey result is 50 per cent, we are 95 per cent confident that the true figure lies within the range 47.2 per cent to 52.8 per cent'.

<sup>5</sup> This includes organisations such as libraries and theatres, sports facilities and hairdressers.

**Table 2.3 Types of businesses included in each broad sector, according to survey response**

Broad sector	SIC 2007 code (2-digit)	Most common business in survey
Primary, manufacturing and Utilities	01-39	<ul style="list-style-type: none"> <li>• Sewerage companies (19%)</li> <li>• Waste collection companies (17%)</li> <li>• Patio maintenance (15%)</li> </ul>
Construction	41-43	<ul style="list-style-type: none"> <li>• Construction companies (46%)</li> <li>• Plumbers (20%)</li> <li>• Electrical installation companies (16%)</li> <li>• Painters and glazers (10%)</li> </ul>
Wholesale and Retail trade	45-47	<ul style="list-style-type: none"> <li>• Repair of motor vehicles (14%)</li> <li>• Retailers of specialist items, such as eyewear, gardening equipment etc. (8%)</li> <li>• Clothing stores (6%)</li> <li>• Furniture stores (6%)</li> <li>• Hardware stores (6%)</li> </ul>
Hotels and Catering	55-56	<ul style="list-style-type: none"> <li>• Hotels (33%)</li> <li>• Restaurants and cafes (30%)</li> <li>• Camping and other accommodation (19%)</li> <li>• Bars (16%)</li> </ul>
Transport, Storage and Communications	49-53; 58-63	<ul style="list-style-type: none"> <li>• Software/computer installation companies (17%)</li> <li>• Taxi firms (16%)</li> <li>• Internet providers, Satellite companies (11%)</li> <li>• Publishers (10%)</li> <li>• Freight and shipping companies (7%)</li> </ul>
Financial Services	64-66	<ul style="list-style-type: none"> <li>• Mortgage advisors, financial advisors (37%)</li> <li>• Credit or money lending companies (34%)</li> <li>• Insurance companies (12%)</li> <li>• Stockbrokers (8%)</li> </ul>
Real estate, renting and Business activities	68-82	<ul style="list-style-type: none"> <li>• Accountants (14%)</li> <li>• Architects (13%)</li> <li>• Real estate agencies (11%)</li> <li>• Engineering and related consultancies (9%)</li> <li>• Designers (8%)</li> <li>• Landlords (7%)</li> <li>• Photographers (4%)</li> <li>• Solicitors (4%)</li> </ul>
Education and Health	84-88	<ul style="list-style-type: none"> <li>• Nurseries, schools and colleges (47%)</li> <li>• Health clinics and facilities (20%)</li> <li>• Residential care homes (8%)</li> </ul>
Community etc.	90-98	<ul style="list-style-type: none"> <li>• Hairdressers (30%)</li> <li>• Sports facilities (12%)</li> <li>• Companies offering personal service activities, e.g. pet care services, tattoo parlours (12%)</li> </ul>

## Data preparation and Analysis

### Coding

2.23 Open ended responses to the survey were coded by IFF Research's internal coding team. To ensure consistency, a formal codeframe was developed and regularly reviewed during development by the research team, in collaboration with the CMA.

2.24 Where respondents did not agree with the sector classification of their establishment, they were asked to give a description of the organisation's activities, using an approach developed by IFF over multiple surveys. This data was coded to 4-digit Standard Industrial Classification (SIC) 2007, and subsequently grouped into the sector categories used for weighting, analysis and reporting.

### Weighting

2.25 The core survey data were weighted to represent the population of UK businesses that sell to consumers.

2.26 However, at the time of surveying, there was no publically available population database that profiled these businesses. Hence, we devised our own population figures by extrapolating responses from the screener questions where respondents were asked whether they sold to consumers.

2.27 This followed a three-step process:

- Those who completed the survey were split by an interlocking grid of region and size. These figures were divided by the sum of those completing and those who during the screener stated that they did not sell to consumers;
- These proportions were then multiplied by the total UK population (where statistics *are* available), producing an estimated total population for businesses that sell to consumers, again split by region and size;
- Data were then weighted to this derived population in an interlocking region and size grid. In this way, we accounted for the disproportionate sampling that skewed region and size.

### Reporting structure and conventions

2.28 Following the Executive Summary and Introduction, this report contains six broad chapters:

- Chapter 3: The profile of businesses who sell to consumers;
- Chapter 4: Potential for unfair practices;
- Chapter 5: Disputes with customers;
- Chapter 6: General awareness of Unfair Contract Terms;
- Chapter 7: Use of terms and conditions in sales;
- Chapter 8: Reviewing contracts;



- 2.29 All differences noted are significant to a 95 per cent confidence level from the rest of the sample. Statistical differences are affected by both the unweighted base and the percentage figure. In charts and tables such differences, whether higher or lower than remaining businesses, are marked with an asterisk '\*'. Findings marked with '#' denote indicative sub-group findings due to small or very small base sizes, while red dots are used to show where these low base sizes occur.
- 2.30 The terms 'business', 'organisation', 'company' and 'firm' are used interchangeably throughout the report to avoid excessive repetition.
- 2.31 Throughout the report unweighted base findings are shown on tables and charts to give an indication of the statistical reliability of figures. All other figures reported are weighted to the UK private sector business population, unless when explicitly stated.
- 2.32 In some cases, charts or tables may not always add to 100 per cent (i.e. 99 per cent or 101 per cent) and where this is the case it is due to rounding. Furthermore, in a number of charts and tables, 'don't know' answers have not been included.

### 3 The profile of businesses who sell to consumers

- 3.1 A critical objective of the study was to determine incidence of businesses which sell to consumers (and therefore have consumer contracts), and the nature of these businesses. This will allow the CMA to focus future communications, research and initiatives on these businesses rather than the UK economy as a whole.

#### Methodology: identifying businesses who sell to consumers

- 3.2 As a first step, we were aware of certain sectors of the economy that were very unlikely to sell to consumers: Agriculture (SIC 01-03), Mining & Quarrying (SIC 05-09), Manufacturing (SIC 10-33, except SIC 33110 - 33190) and Public Administration (SIC 84). As discussed in Chapter 2, businesses in these sectors were excluded from the survey.
- 3.3 Businesses included in the survey were all asked the following question in the screening section of the survey, with those answering the 1<sup>st</sup> or 3<sup>rd</sup> option deemed as 'selling to consumers'. If businesses at any point prior to this spontaneously mentioned that they did not sell to consumers, this was coded accordingly and they were screened out of the survey.

**Does your business deal directly with / sell goods, services or downloadable digital content to consumers or businesses, or both? By consumers I mean customers who are not other businesses, that is the general public.**

*DO NOT READ OUT. SINGLE CODE.*

Consumers only	1
Businesses only	2
Businesses and consumers	3
We do not sell anything	4
Don't know	5

- 3.4 The following steps were then taken to determine the proportion of UK businesses that sell to consumers:
- UK-wide population figures, split by size of businesses, were produced for those businesses whom we sampled and those that we did not (i.e. Agriculture, Mining and Quarrying, Manufacturing and Public Administration);
  - The 2,379 businesses whom we could determine whether or not they sold to consumers were also split by sizeband and target weights were applied to account for the disproportionate sampling by size, using the population profile of sampled businesses as noted above;

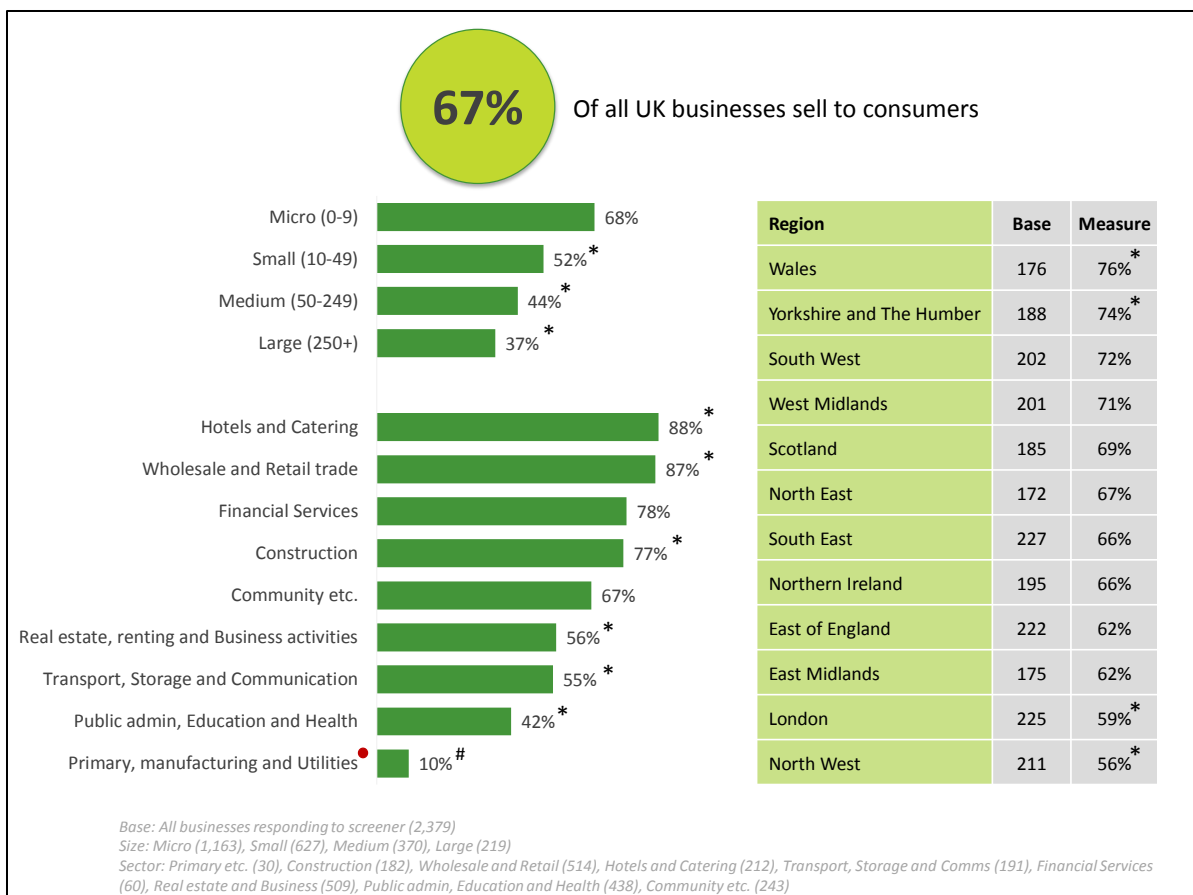
- A further step was then required to account for the sectors that had been excluded from the research. Thus the weighted measure for those selling to consumers was then re-based on all UK businesses within a particular sizeband as opposed to the population whom we sampled.

Core measure

3.5 As a result, we determined that **67 per cent of all UK businesses sell to consumers**. There was much variation by sizeband, sector and region, as Figure 3.1 illustrates. Micro businesses drive this figure upwards, with less than half of medium and large businesses selling to consumers.

3.6 As anticipated there were very few businesses operating in the Primary, manufacturing and Utilities sector which sold to consumers (10% - n.b. all of these businesses are involved in the ‘Repair’ trade). Consumer-facing operations were also less likely among organisations typically operating in the public sphere, with 42 per cent of Public Administration, Education and Health organisations reporting that they sell to consumers. There was less variation by region, with businesses in Wales and Yorkshire and The Humber most likely to sell to consumers.

Figure 3.1 Proportion of businesses that sell to consumers, by size, sector and region



## Profile of business that sell to consumers

- 3.7 Using the derived population, we can build up a profile of businesses who sell to consumers. This is important to consider to better understand the context within which businesses are using their terms and conditions when making sales.
- 3.8 Micro businesses dominated: 96 per cent of businesses who sell to consumers have less than 10 staff; indeed, close to a quarter (23%) are a sole trader<sup>6</sup>. By sector, just over half of businesses who sell to consumers operate either in the Wholesale and Retail trade (34%) or Real Estate and Business sector (18%), as Table 3.1 shows.

**Table 3.1 Profile of businesses who sell to consumers, by size and sector**

Subgroup	Sell to consumers
<i>Unweighted base</i>	1,250
Micro (1-9)	96%
Small (10-49)	3%
Medium (50-249)	<1%
Large (250+)	<1%
Wholesale and Retail trade	34%
Real estate, renting and Business activities	18%
Community etc.	13%
Hotels and Catering	11%
Construction	8%
Education and Health	7%
Transport, Storage and Communications	5%
Financial Services	3%
Primary, manufacturing and Utilities	1%

- 3.9 While these businesses all sold to consumers, three-fifths (61%) also sold to businesses, rising to four-fifths (77%) among large businesses.
- 3.10 The majority (63%) had been operating for less than 20 years, with 17 per cent in operation for under five years. Most were private limited companies (43%) or sole proprietorships (33%), indicating the extent of micro companies contained within this group of businesses. Accordingly, the majority of businesses selling to consumers had an annual turnover of less than £1,000,000 (74%; 37% had a turnover less than £100,000).
- 3.11 Businesses were asked what type of product they sold to consumers. The vast majority (84%) provided some form of service, while 56 per cent sold a physical good or product and 14 per cent sold digital content. As one might expect, there were substantial variations by sector. Businesses in the Wholesale and Retail trade, the largest sector, were much more likely to sell physical goods (89%) as opposed to providing services (67%). The reverse occurs in the Real

<sup>6</sup> This is very similar to the profile of **all** UK businesses, where micro businesses account for 95 per cent of the population.

Estate and Business sector, where nearly all (97%) businesses provided a service and only 29 per cent sold physical goods.

- 3.12 The majority of businesses sell their goods and services through multiple channels, with four channels common across all businesses: over the phone (cited by 54% of businesses who sell to consumers), face-to-face meetings or events (51%), via a retail store (45%) or over the internet (37%).
- 3.13 The use of multiple channels to make sales was most common among companies in the Transport, Storage and Communications sector (77% vs. 64% average), and least common among Community businesses (50%). Once again, there was much variety by sector. Focussing on the two most common sectors, Wholesale and Retail businesses naturally tended to use retail stores (74%) as opposed to any other channel, while businesses in the Real Estate and Business sector typically sold their goods and services by phone (56%) or in face-to-face meetings and events (60%).
- 3.14 Around one in eight (12%) businesses sold the goods and services of other businesses, rising to 25 per cent among large businesses.

### Cost of transactions

- 3.15 The typical cost of a contract or transaction varies widely by business. Close to half (45%) reported an average transaction cost of under £100, 29 per cent reported an average transaction cost of between £100 and £999, while 16 per cent reported an average transaction cost greater than £1,000 (10% did not provide an answer).
- 3.16 Businesses in the Construction and Real Estate and Business sectors are more likely to have higher value transactions: 45 per cent of Construction companies and 36 per cent of companies in Real Estate and Business reported an average transaction cost greater than £1,000. Those selling digital or downloadable content also reported slightly higher average transaction costs than average (20% reported an average transaction cost greater than £1,000). In contrast, employers in the Community and Hotels and Catering sectors were much more likely to have an average transaction cost less than £100 (77% and 75% respectively compared with 45% across the UK).
- 3.17 As this report goes on to show, businesses with high average transaction costs of greater than £1,000 were more likely to exhibit positive behaviours such as communicating their terms and conditions to the customer and reviewing their contracts, but also more likely to practise five or more potentially unfair behaviours and experience disputes with their customers.

## 4 Potential for unfair practices

4.1 Businesses were asked whether they engaged in the following set of practices<sup>7</sup>:

- Taking deposits or advance payments;
- Customers paying cancellation charges;
- Applying other charges or sanctions;
- Limiting business liability;
- Making changes to agreements once the business has already started dealing with a customer;
- Having rolling contracts in place with customers which automatically renew;
- Customers having to fill out paperwork when they want to change anything about an agreement; and
- The use of privacy rules which customers are asked to agree to.

4.2 While engaging in these practices does not necessarily make businesses non-compliant with the legislation around Unfair Contract Terms, those reporting these practices may be at a higher risk of using unfair terms and therefore are of particular interest for this study. This chapter explores the incidence of businesses engaged with potentially unfair practices as well as the composition of these businesses, in order to give indications as to where non-compliance is most likely to occur.

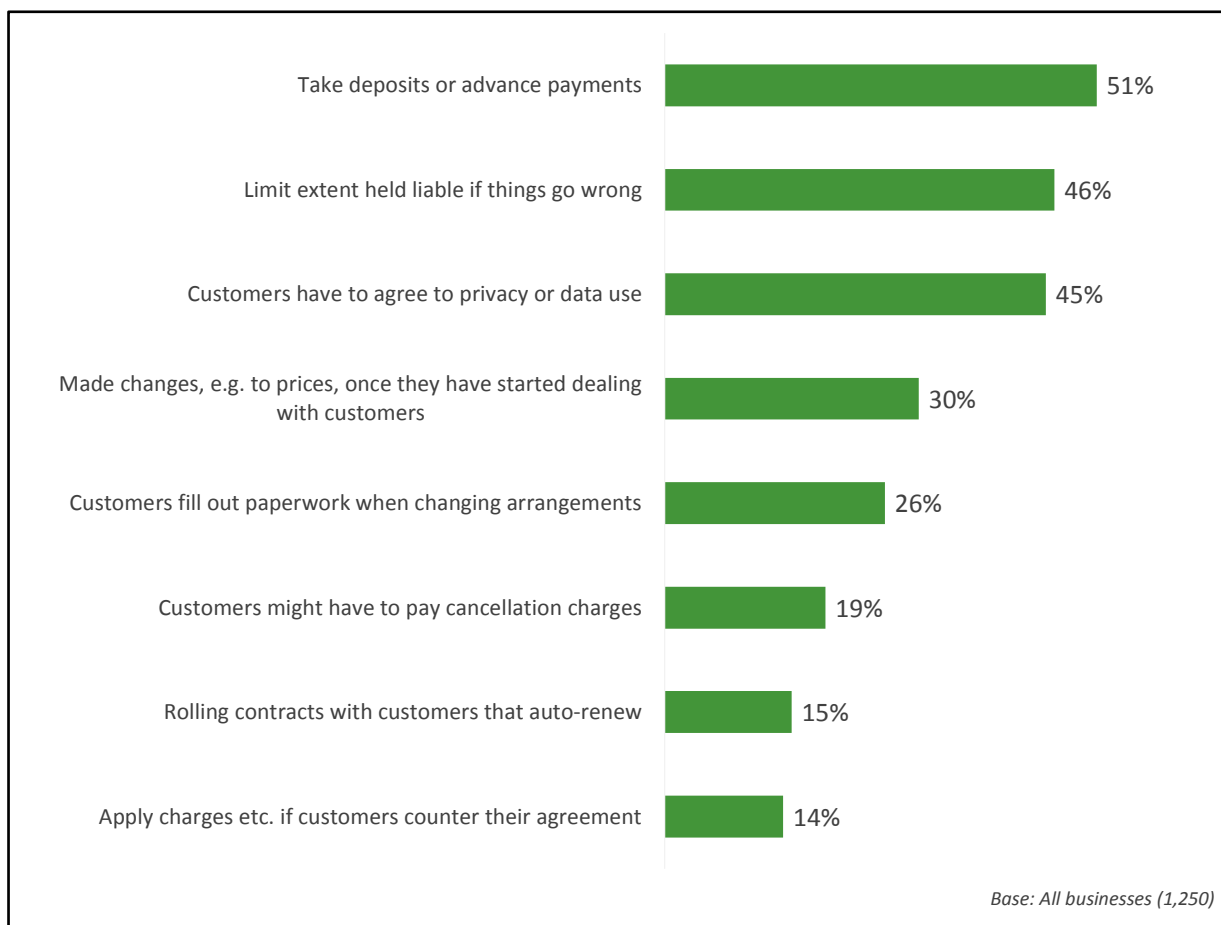
### Incidence of potentially unfair practices

4.3 The majority (88%) of businesses selling to consumers engaged in at least one practice that has the potential for unfair terms to be used. As shown in Figure 4.1, the most common behaviour was taking deposits or advance payments from customers, mentioned by around half (51%) of businesses. Approaching half (46%) mentioned limiting the extent that they could be held liable if things went wrong when selling to a customer, while around the same proportion (45%) reported having privacy rules that they ask customers to agree to.

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<sup>7</sup> These behaviours were based on Schedule 2 of the CRA 2015 (more commonly known as the 'Grey List' of terms that may be regarded as unfair): <http://www.legislation.gov.uk/ukpga/2015/15/schedule/2/enacted>

**Figure 4.1 Incidence of potentially unfair practices amongst UK businesses selling to consumers**



4.4 Incidence of each behaviour varied greatly by the size of the business, as shown in Table 4.1. Larger businesses, for instance, were more likely to report these behaviours, with the exception of taking deposits and advance payments, which was most common amongst small businesses (59%) and limiting liability, which was equally common amongst small and medium-sized businesses (both 54%). Medium-sized firms were also most likely to apply cancellation charges (36%) and other charges and sanctions (29%).

**Table 4.1 Incidence of potentially unfair practices, by size**

	All UK businesses selling to consumers	Micro (0-9 employees)	Small (10-49 employees)	Medium (50-249 employees)	Large (250+ employees)
<i>Base</i>	1,250	662	315	178	95
Take deposits or advance payments	51%	51%*	59%*	57%	50%
Limit liability	46%	46%*	54%*	54%*	38%
Have privacy rules	45%	44%*	68%*	79%*	91%*
Changes to contracts	30%	29%*	35%	30%	40%*
Customers must fill out paperwork when changing arrangements	26%	25%*	46%*	56%*	58%*
Cancellation charges	19%	19%*	31%*	36%*	31%*
Rolling contracts	15%	14%*	27%*	30%*	38%*
Other charges / sanctions	14%	13%*	23%*	29%*	24%*

4.5 Business sector had a considerable influence on what types of potentially unfair practices businesses were likely to engage with. The incidence of potentially unfair practices by sector are shown and differences compared with the UK average are shown in Table 4.2. Taking deposits and advance payments was more likely within the Education and Health and Wholesale and Retail sectors, limiting liability amongst the Transport, Storage and Communications and Real Estate and Business sectors, while having privacy rules was more common amongst the Education and Health and Real Estate and Business sectors.



**Table 4.2 Incidence of potentially unfair practices, by sector**

	All businesses	Wholesale and Retail	Real Estate and Business	Education and Health	Hotels and Catering	Community etc.	Construction	Transport, Storage and Comms	Financial Services	Primary etc.
<i>Base</i>	1,250	344	202	179	167	158	84	59	33	24
Take deposits or advance payments	51%	58%*	45%	60%*	53%	47%	44%	57%	19%	23%#
Limit liability	46%	39%*	62%*	50%	42%	41%	41%	64%*	43%	20%#
Have privacy rules	45%	33%*	59%*	85%*	36%*	54%*	20%*	45%	91%#	24%#
Changes to contracts	30%	23%*	40%*	43%*	17%*	25%	43%*	46%*	12%#	27%
Customers must fill out paperwork when changing arrangements	26%	10%*	51%*	41%*	12%*	28%	25%	19%	92%#	26%
Cancellation charges	19%	8%*	24%	41%*	37%*	19%	4%*	32%*	19%	9%
Rolling contracts	15%	8%*	30%*	19%	4%	14%	11%	28%*	5%	26%
Other charges / sanctions	14%	5%*	23%*	14%	17%	11%	13%	35%*	13%	8%

- 4.6 Looking at the incidence of each potentially unfair practice as a proportion of the total incidence of potentially unfair practices indicates where these practices most commonly occur, as shown in Table 4.3. Potentially, the CMA could provide tailored guidance, which targets the most common areas of risk amongst each sector.
- 4.7 The results indicate that close to half of all the potentially unfair behaviours tested in this survey occur in the Wholesale and Retail, and Real Estate and Business sectors. This is not surprising, given these sectors comprise around half of the total UK population that sells to consumers.
- 4.8 The greatest prevalence of potentially unfair behaviour occurs in the Wholesale and Retail sector: around eight per cent of behaviours relate to companies taking deposits or advance payments. Within this sector, limiting liability and privacy rules account for five and four per cent respectively of all potentially unfair behaviours. These two behaviours were also prevalent in the Real Estate and Business sector (both 4%).

**Table 4.3 Incidence of potentially unfair practices, as a proportion of the total incidence of potentially unfair practices, by sector**

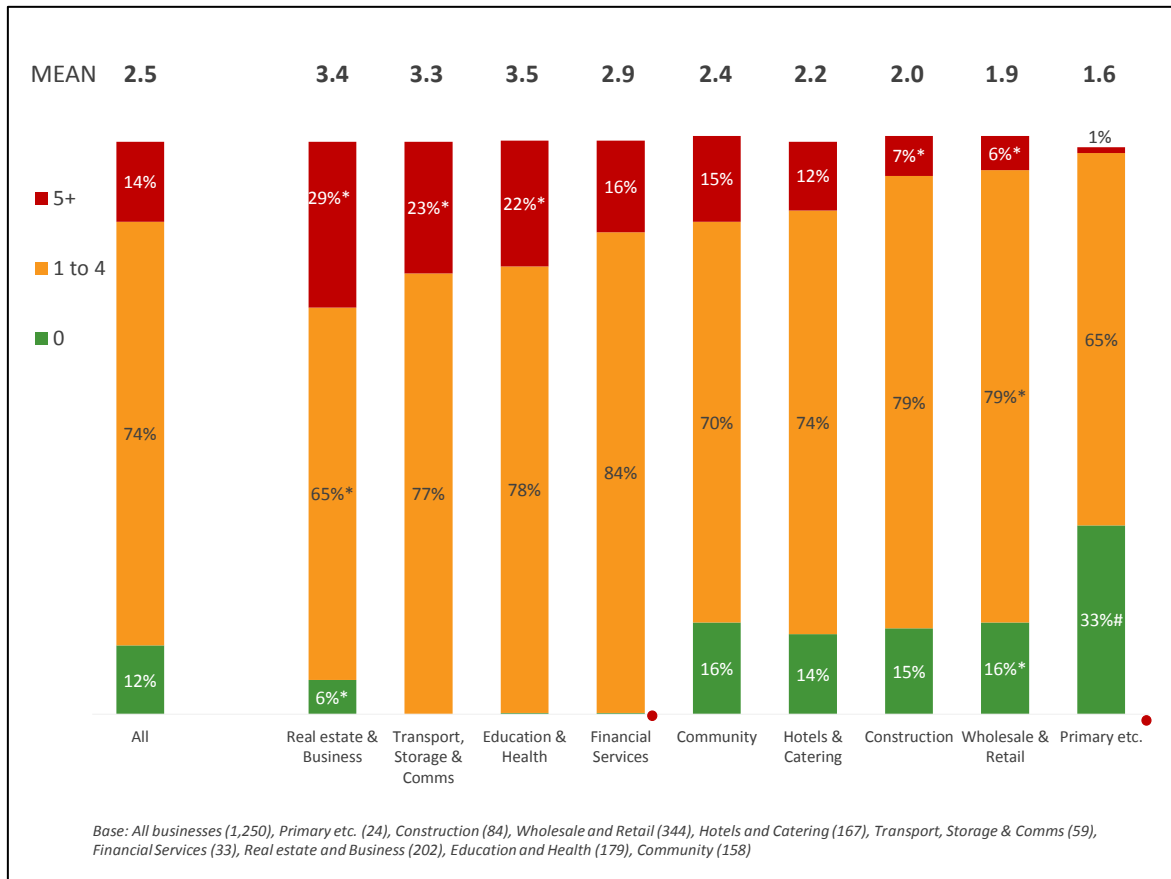
	All businesses	Wholesale and Retail	Real Estate and Business	Education and Health	Hotels and Catering	Community etc.	Construction	Transport, Storage and Comms	Financial Services	Primary etc.
<i>Base</i>	<b>1,250</b>	<b>344</b>	<b>202</b>	<b>179</b>	<b>167</b>	<b>158</b>	<b>84</b>	<b>59</b>	<b>33</b>	<b>24</b>
Take deposits or advance payments	<b>20%</b>	7.7%	3.1%	1.6%	2.2%	2.3%	1.4%	1.2%	0.2%	0.1%
Limit liability	<b>18%</b>	5.2%	4.3%	1.4%	1.8%	2.0%	1.3%	1.4%	0.4%	0.1%
Have privacy rules	<b>18%</b>	4.4%	4.1%	2.3%	1.5%	2.6%	0.6%	1.0%	1.0%	0.1%
Changes to contracts	<b>11%</b>	3.0%	2.8%	1.2%	0.7%	1.2%	1.4%	1.0%	0.1%	0.2%
Customers must fill out paperwork when changing arrangements	<b>10%</b>	1.3%	3.6%	1.1%	0.5%	1.4%	0.8%	0.4%	1.0%	0.2%
Cancellation charges	<b>7%</b>	1.1%	1.7%	1.1%	1.6%	0.9%	0.1%	0.7%	0.2%	0.1%
Rolling contracts	<b>6%</b>	1.0%	2.1%	0.5%	0.2%	0.7%	0.3%	0.6%	0.1%	0.2%
Other charges / sanctions	<b>5%</b>	0.7%	1.6%	0.4%	0.7%	0.5%	0.4%	0.7%	0.1%	0.1%
None / not sure if any apply	<b>5%</b>	2.1%	0.4%	0.0%	0.6%	0.8%	0.5%	0.0%	0.0%	0.2%
<b>Total</b>	<b>100%</b>	<b>26.5%</b>	<b>23.7%</b>	<b>9.7%</b>	<b>9.8%</b>	<b>12.5%</b>	<b>6.8%</b>	<b>6.9%</b>	<b>3.0%</b>	<b>1.1%</b>

### Incidence of multiple potentially unfair practices

4.9 Around one in seven businesses (14%) reported engaging in five or more of these prompted behaviours, making these businesses of particular interest due to their potential risk of non-compliance. Small (31%), medium (35%) and large (31%) businesses were all more likely to report this number of practices than micro-businesses (13%).

4.10 In terms of sector, Real Estate and Business (29%), Transport, Storage and Communications (23%) and the Education and Health (22%) sectors were all more likely to report five or more potentially unfair practices, as show in Figure 4.2.

Figure 4.2 Number of potentially unfair practices reported by business, by sector



### Profile of businesses reporting five or more potentially unfair practices

4.11 Table 4.3 shows how the profile of those reporting five or more potentially unfair practices compares against the overall UK population. Of course, micro-businesses still make up the vast majority of these businesses (92%), yet this proportion is significantly lower than amongst the wider UK population (96%). In contrast, there is a higher proportion of small businesses amongst those reporting five or more of these practices than amongst the general population (7% vs. 3%).

**Table 4.4 Profile of businesses that reported engaging in five or more potentially unfair practices, compared against profile of overall UK business population**

	All UK businesses selling to consumers	Report 5+ potentially unfair practices
<i>Base</i>	1,250	175
<b>Size</b>		
Micro (0-9 employees)	96%	92%*
Small (10-49 employees)	3%	7%*
Medium (50-249 employees)	<1%	1%
Large (250+ employees)	<1%	<1%
<b>Sector</b>		
Wholesale and Retail Trade	34%	14%*
Real Estate & Business	18%	36%*
Community etc.	13%	13%
Hotels and Catering	11%	9%
Construction	8%	4%*
Education and Health	7%	11%*
Transport, Storage and Comms	5%	9%*
Financial Services	3%	3%
Primary etc.	1%	<1%

- 4.12 In terms of sector, there is considerable variation between the make-up of those reporting five or more unfair practices and the wider UK business profile. Wholesale and Retail businesses make up a third (34%) of all UK businesses selling to consumers but only one in seven (14%) of businesses reporting five or more unfair practices. Construction businesses are also less represented amongst these businesses (4%) than amongst the wider UK business population (8%).
- 4.13 Conversely, Real Estate and Business sector businesses are more common amongst those reporting five or more potentially unfair practices (36%) than the wider UK business population (18%). This is also the case for Education and Health (11% vs. 7% of UK businesses) and Transport, Storage and Communications businesses (9% vs. 5%).
- 4.14 Despite these businesses being more likely to engage in behaviours that have the potential to be unfair, they perceive themselves to be more familiar with the rules around UCTs. Around two-thirds (64%) said they knew them well. Additionally, these businesses are more likely to say they communicated their contract terms to customers (92%), while 16 per cent review their contracts on a frequent basis. These figures are all higher than those cited by UK businesses as a whole. Those reporting five or more potentially unfair practices were also more likely to use more formal channels when communicating with customers; seven in ten (70%) use online

channels, despite this being the least common way of communicating contract terms amongst the wider UK business population 42%).<sup>8</sup>

4.15 While these businesses appear to be more closely engaged with formally communicating their contract terms, they are also more likely to have disputes; 17 per cent do so at least occasionally, compared with a UK average of just 8%.

### Multiple incidences of potentially unfair practices

4.16 As Table 4.4 shows, certain types of potentially unfair practices were often far more common if the business engaged in another potentially unfair practice. For instance, businesses who applied sanctions and charges other than those for cancellation were much more likely than average to apply cancellation charges (59%) and vice versa (42%). Customers who applied cancellation charges were also more likely to take deposits (80%) and have privacy rules in place (73%).

**Table 4.5 Proportion engaged in potentially unfair practices, by alternative types of potentially unfair practice**

	All UK businesses	Takes deposits	Limit liability	Have privacy rules	Make changes to contracts	Customers must fill out paperwork to change agreements	Cancellation charges	Rolling contracts	Other charges / sanctions
Base	1,250	672	611	739	400	460	294	274	230
Take deposits	51%		55%*	55%*	55%	59%*	80%*	59%*	77%*
Limit liability	46%	49%*		56%*	52%*	61%*	63%*	57%*	67%*
Have privacy rules	45%	49%*	55%*		49%	72%*	73%*	68%*	64%*
Make changes to contracts	30%	32%*	34%*	32%		40%*	38%*	50%*	53%*
Customers must fill out paperwork	26%	30%*	35%*	42%*	35%*		46%*	52%*	52%*
Cancellation charges	19%	30%*	26%*	31%*	25%*	34%*		26%*	59%*
Rolling contracts	15%	17%*	18%*	22%*	25%*	29%*	20%*		34%*
Other charges / sanctions	14%	20%*	20%*	19%*	25%*	27%*	42%*	32%*	

*Orange cells represent difference from UK average of 20 percentage points or more*

4.17 We can explore further the types of disputes (see Chapter 5 for full list of disputes) that businesses reporting these multiple potentially unfair practices were likely to face. For instance:

<sup>8</sup> Written channels include those who communicated contract terms through a hard copy or paper document, or via point of sale or in store notices.

- Those who apply cancellation charges and other charges and sanctions were more likely to have disputes in relation to all of the prompted reasons, with the exception of disputes over faulty products or goods;
- Those who applied cancellation charges and took deposits were more likely than average to face disputes about payment of cancellation charges (33% vs. 9%); changes to agreements (23% vs. 18%); recovering deposits or advance payments (16% vs. 6%); a customer's failure to comply with a procedural requirement (15% vs. 10%); payments of other fines and penalties (12% vs. 4%); and over the business's use of personal data and privacy rules (5% vs. 2%);
- Those who applied cancellation charges and privacy rules were more likely than average to face disputes about payment of cancellation charges (37% vs. 9%); recovering deposits or advance payments (15% vs. 6%); a customer's failure to comply with a procedural requirement (14% vs. 10%); payment of other fines or penalties (13% vs. 4%); and over the business's use of personal data and privacy rules (5% vs. 2%). This group were however, far less likely than average to have disputes about a faulty product or good (13% vs. 20%).

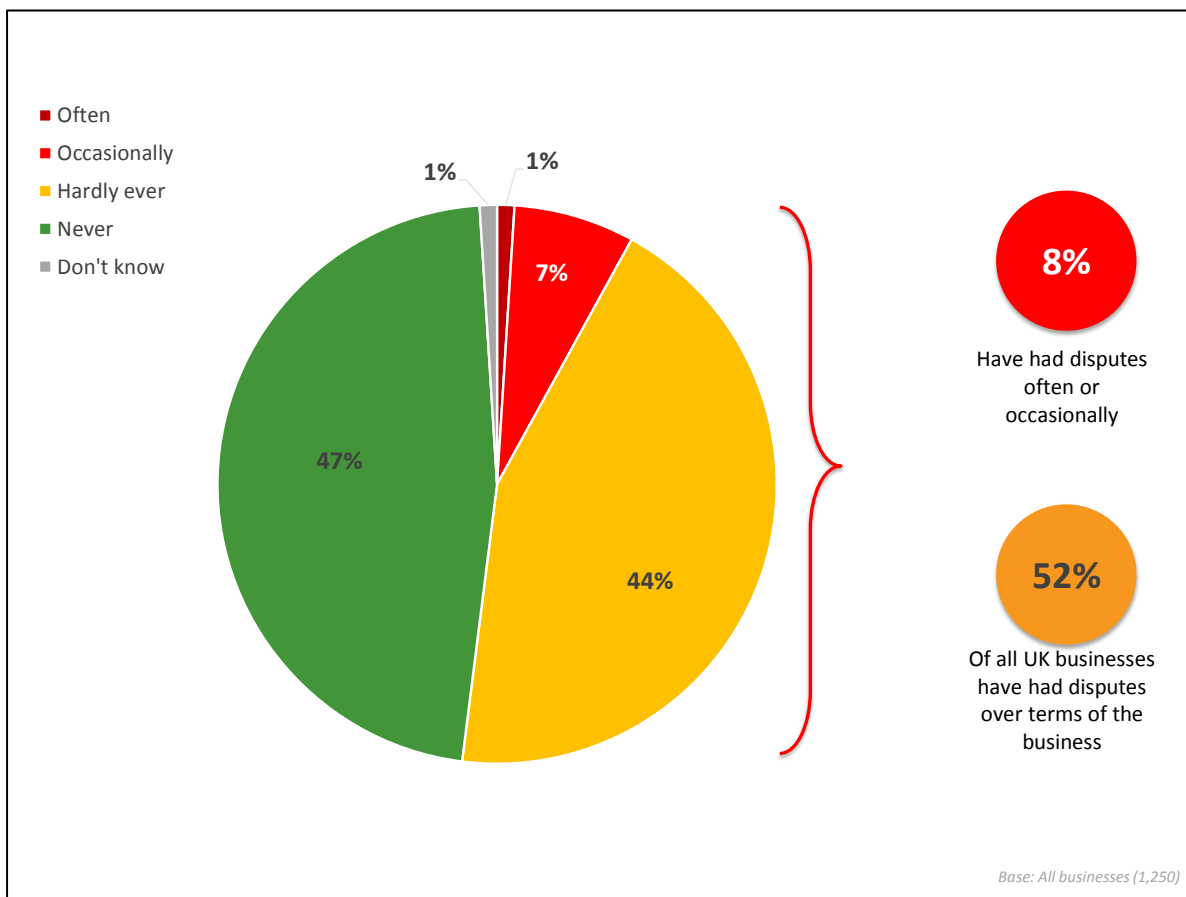
## 5 Disputes with customers

5.1 Previous qualitative research commissioned by CMA found that one of the main reasons why SMEs had contract terms in place was to avoid disputes with customers.<sup>9</sup> This chapter explores the incidence of disputes amongst businesses who sell to consumers, the main reasons for these disputes, and delves into the relationship between contract terms and customer disputes.

### Incidence of disputes with customers

5.2 Just over half (52%) of businesses selling to consumers reported ever having had a dispute with a customer over their terms of business. Overall however, disputes amongst businesses were infrequent. As Figure 5.1 demonstrates, nearly all businesses said they hardly ever (44%) or never (47%) had disputes. The remaining eight per cent of businesses reported that they had disputes with customers at least occasionally, though only one per cent of businesses had disputes often or very often.

**Figure 5.1 Frequency of disputes with customers over terms of business**



<sup>9</sup> SMEs and Unfair Contract Terms – research prepared by BDRG Continental, January 2016.

## Profile of those reporting disputes at least occasionally

- 5.3 Most commonly, disputes occur in the Real Estate and Business sector; in total these businesses account for three in ten (30%) businesses who said they had disputes occasionally or often, while only making up 18 per cent of the total UK business population that sells to consumers.

**Table 5.1 Sector profile of businesses that report having had disputes with customers over terms of business occasionally or often, compared against profile of overall UK business population**

	All UK businesses selling to consumers	Have had disputes occasionally or often
<i>Base</i>	1,250	145
Wholesale and Retail Trade	34%	26%
Real Estate & Business	18%	30%*
Community etc.	13%	11%
Hotels and Catering	11%	13%
Construction	8%	7%
Education and Health	7%	6%
Transport, Storage and Comms	5%	5%
Financial Services	3%	1%
Primary etc.	1%	2%

- 5.4 Businesses that have disputes at least occasionally are more likely to demonstrate practices that indicate a high level of engagement with contract terms. In comparison with the wider UK population, these businesses are more likely to communicate their terms and conditions to the customer (87% vs. 80%), with this most commonly being done via written channels (63% vs. 49%), and online (54% vs. 42%). Furthermore, these businesses are also more likely to report reviewing their contract terms frequently (17%) than the wider UK population (11%).
- 5.5 In addition, those who had disputes at least occasionally claim to know more about the rules around UCTs; three-fifths (60%) of these businesses claim to know the rules well, compared with less than half (46%) of all UK businesses.
- 5.6 While these findings seem counter-intuitive, it may be the case that these businesses are more diligent in their business practices in relation to contract terms precisely because the nature of their work is more likely to leave them at risk of provoking disputes with customers. Businesses who often or occasionally had disputes were also more likely than average to report engaging in five or more potentially unfair practices (30% vs. 14%). Compared with the UK average, both these businesses, and their customers, were also much more likely to try to make changes to their contracts once they had been agreed. As covered below, this was the second highest reason given for the cause of disputes.
- 5.7 Businesses that had disputes at least occasionally are also more likely than average to sell digital content (26% vs. 14% of all UK businesses). In comparison, although a higher proportion

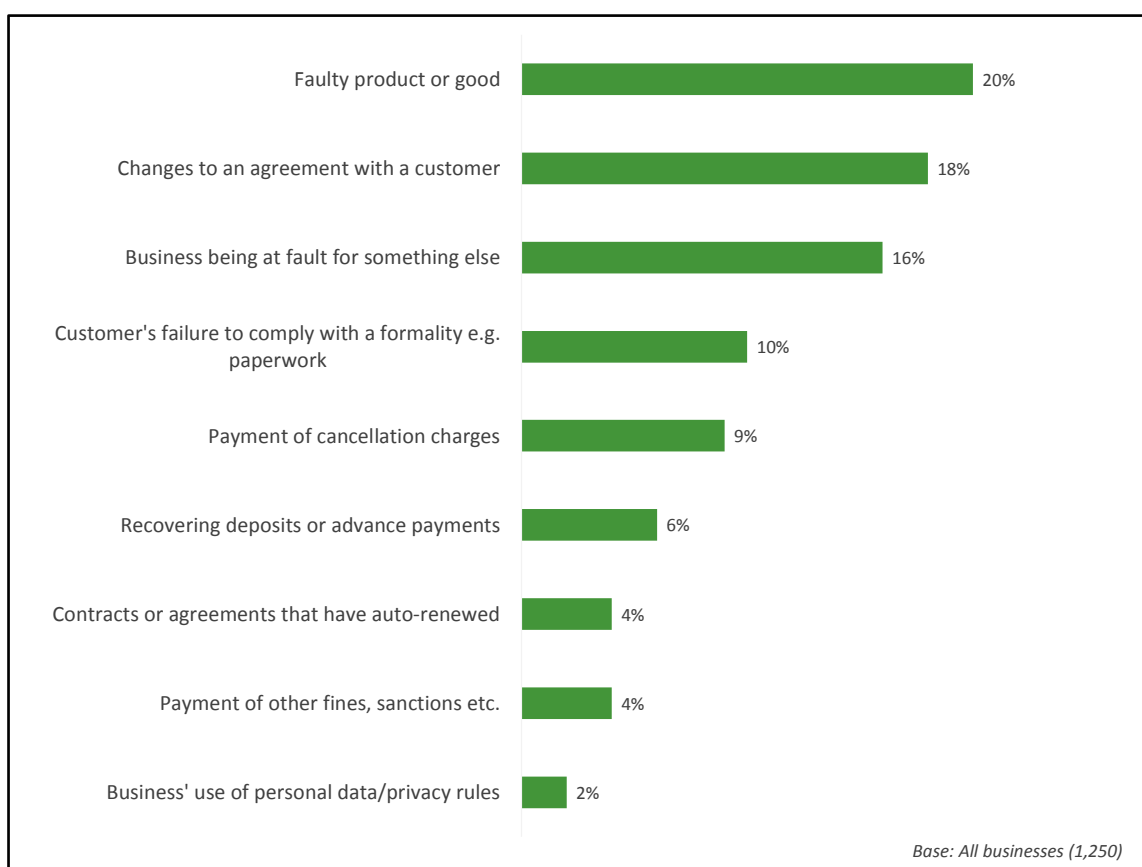


of these businesses sold a service (84%) or a physical good (49%), these figures were in line with the corresponding UK-wide averages (84% and 49% respectively). The resulting burden of disputes, which has the potential to take up a business' time and resources, might be resolved by clearer and better communicated guidance around UCTs.

### Reasons for disputes

5.8 As Figure 5.2 shows, there were various reasons why businesses had disputes with customers over contract terms. Most commonly, businesses mentioned having had disputes about a faulty product or good (20%), with this most likely amongst Wholesale and Retail businesses (29%). This was followed by disputes over changes to an agreement made with a customer (18%), which was most likely to be mentioned by businesses in the Construction (34%) and Real Estate and Business (30%) sectors.

**Figure 5.2 Reasons for disputes with customers over contract terms (all UK businesses)**



5.9 There were other notable sectoral differences across the remainder of the responses, as shown in Table 5.2. Wholesale and Retail businesses were most likely to have had disputes with customers about a faulty product or good, while the Construction and Real Estate and Businesses sectors were most likely to have experience disputes in relation to changes they had made to an agreement they had in place with a customer. Real Estate businesses were also more likely than average to have had disputes about the business being at fault for something other than a faulty product or good, and about customers failing to comply with a formality or procedural requirement (for example, not filling out specific paperwork).

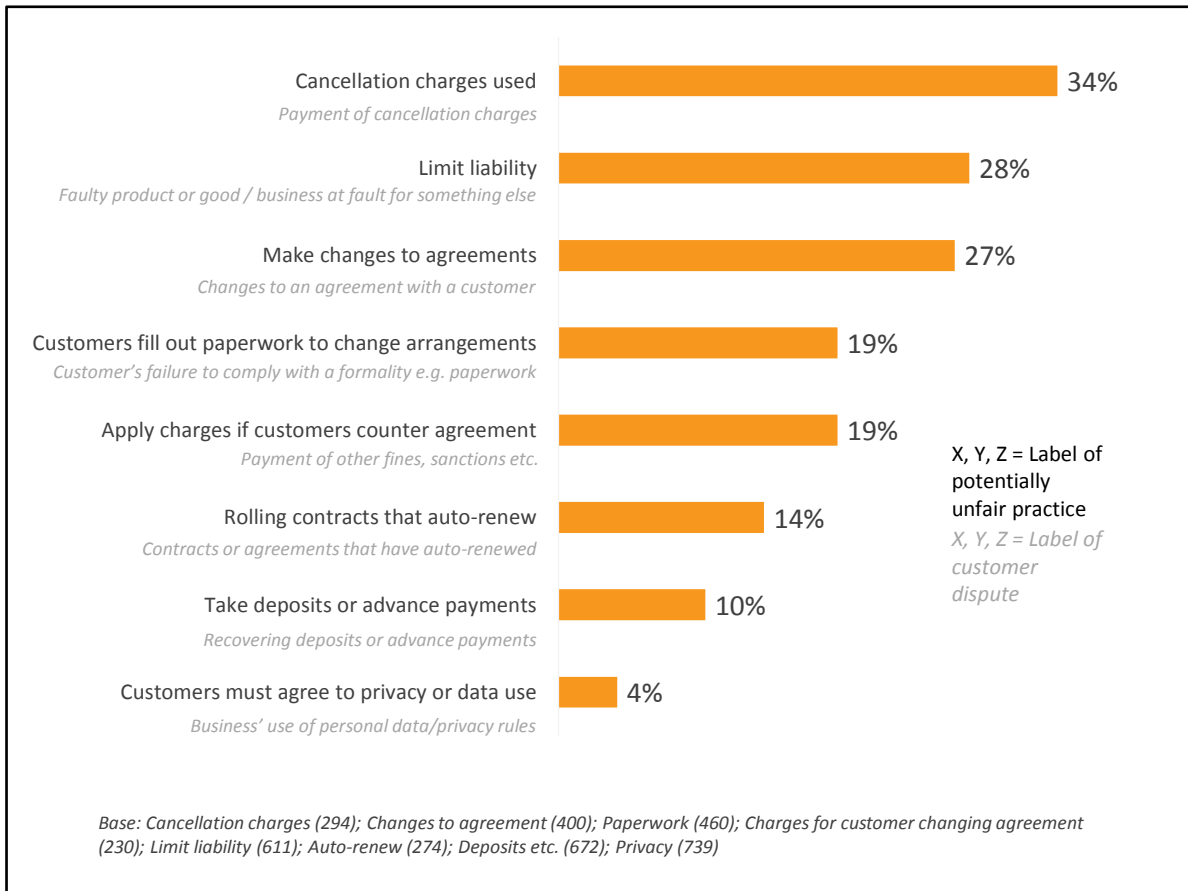
Table 5.2 Reasons for having disputes with customers relating to terms of business, by sector

	All businesses	Wholesale and Retail	Real Estate and Business	Education and Health	Hotels and Catering	Community etc.	Construction	Transport / Storage / Comms	Financial Services	Primary etc.
Base	1,250	344	202	179	167	158	84	59	33	24
A faulty product / good	20%	29%*	11%*	13%*	18%	7%*	27%	26%	4%#	24%
Changes to an agreement you have in place with a customer	18%	15%	30%*	11%*	9%*	11%*	34%*	21%	8%	18%
The business being at fault for something else	16%	16%	22%*	13%	11%	6%*	24%*	25%*	1%#	<1%
Customer's failure to comply with a formality / procedural requirement	10%	7%*	23%*	8%	4%*	5%*	10%	12%	23%#	18%
Payment of cancellation charges	9%	6%*	8%	25%*	15%*	4%*	2%*	15%	15%	0%
Recovering deposits or advance payments	6%	4%*	5%	14%*	15%*	5%	5%	11%	<1%	1%
Payment of other penalties / sanctions	4%	3%	9%*	4%	2%	4%	3%	7%	9%	<1%
Auto-renewal of contracts	4%	3%	4%	6%	2%	2%	8%*	3%	2%	8%
Business' use of customers' personal data / privacy rules	2%	2%	4%*	6%*	<1%*	<1%	<1%	4%	0%	0%

5.10 Figure 5.3 shows which potentially unfair practices were most likely to result in disputes relating to that practice.

5.11 Most commonly, businesses who used cancellation charges were most likely to report having disputes about this as a result; a third (34%) of businesses engaged in this practice had a dispute over the payment of a cancellation fee. Just over a quarter (28%) of businesses that had reported limiting liability, another practice with the potential for unfair terms to be used, mentioned having related disputes about faulty products or goods or the business being at fault for something else, while a similar proportion (27%) of businesses that reported making changes to agreements reported having disputes with customers about these changes.

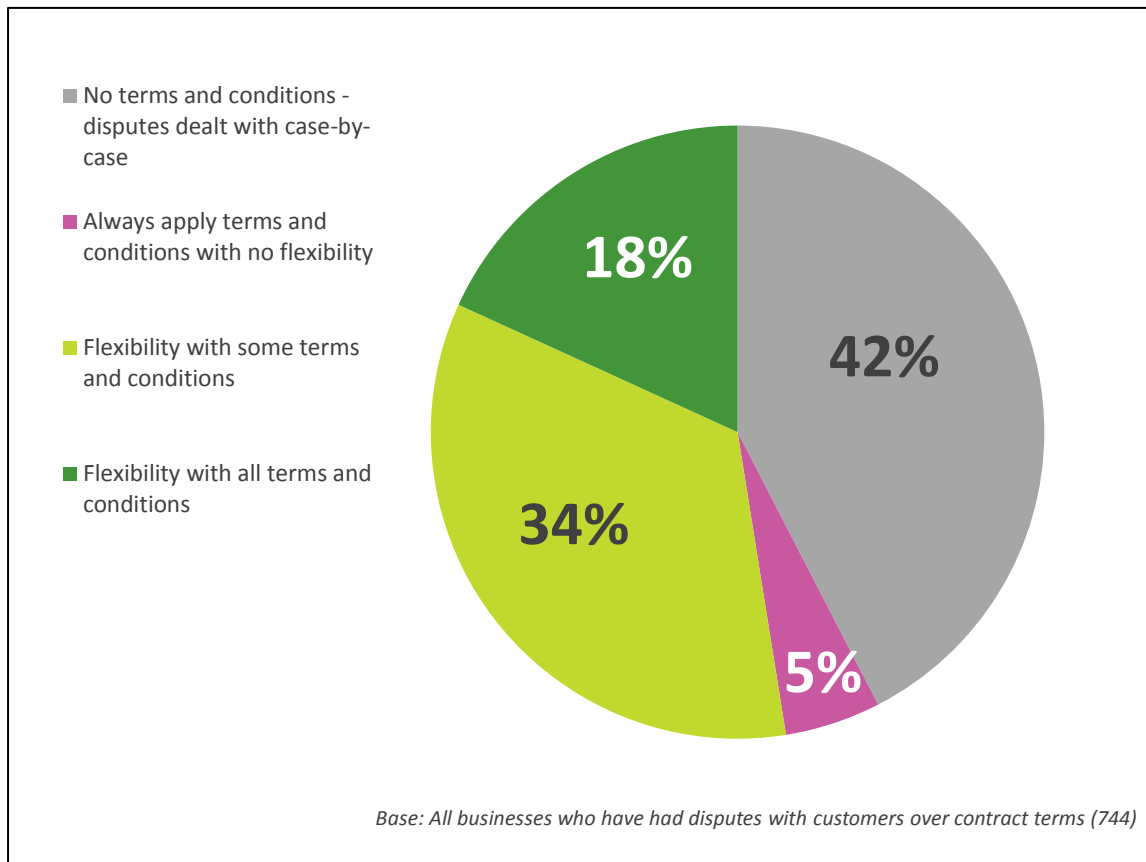
**Figure 5.3 Proportion of businesses engaged in a potentially unfair practice who have experienced disputes related to that unfair practice**



### Flexibility of contract terms when trying to resolve disputes

5.12 Businesses that had experienced disputes with customers over contract terms were asked which of a prompted set of statements best described their use of terms and conditions when dealing with customer disputes. Results are shown in Figure 5.4. Many indicated they did not resort to their terms and conditions when attempting to resolve disputes and overall, half (52%) said they applied at least some flexibility with their terms and conditions, though only 18 per cent applied flexibility to all of their terms and conditions.

**Figure 5.4 Flexibility applied to contract terms when trying to resolve disputes**



5.13 Of particular interest to this study are those businesses who always apply terms and conditions with no flexibility, although this was only reported by five per cent of these businesses (or 3% of all businesses selling to consumers).

5.14 Considering the profile of these businesses, around three in ten (31%) operated in the Real Estate and Business sector, compared with just under a quarter (24%) of all businesses who had disputes with customers over contract terms. They also included more businesses selling digital content (30%) than the general population of businesses that had disputes (16%). These differences should only be treated indicatively due to a low base of 49 respondents who reported applying terms and conditions with no flexibility.

## Going to court to resolve disputes

- 5.16 Overall, one in ten (10%) of businesses that had faced disputes had to go to court to resolve them (equivalent to 5% of all businesses selling to consumers), though for the majority of businesses (79%), the last time they went to court over a dispute was more than a year ago.
- 5.17 As one might expect, higher transaction costs appeared a key factor in businesses going to court to resolve disputes. Of those businesses that had faced disputes a third (32%) of businesses with an average transaction cost of more than £1,000 needed to resolve this in court, compared to only five per cent of businesses with lower average transaction costs. There was however little difference by business size.
- 5.18 There were notable differences by sector, with almost a quarter (23%) of those facing disputes in the Real Estate and Business sector and 16 per cent of Construction businesses having been to court to resolve a dispute. In contrast, those in the Hotels and Catering (1%) and Education and Health (3%) sectors were least likely to do so. In terms of region, businesses in the East Midlands were by far and away the most likely to have had to go to court to resolve a dispute (25%).
- 5.19 Businesses that did not share their contract terms with customers were more likely to have been to court to resolve a dispute (18%). Nevertheless, the types of product sold and the way they communicate terms also impacted on the likelihood of having need to go to court. For instance, those who sell digital content (18%) or a service (11%) were more likely to have been to court, as were those who communicate their terms via written channels (12%).
- 5.20 Certain types of disputes were more likely to be reported amongst those who had gone to court to resolve disputes. The two most likely related to cases where the customer was deemed to be at fault; these were customers failing to comply with a formality or procedural requirement, or the payment of fines and penalties (excluding cancellation charges), each mentioned by one in six (17%) businesses. Disputes around changes to an agreement were also more likely to have led to court proceedings (15%).

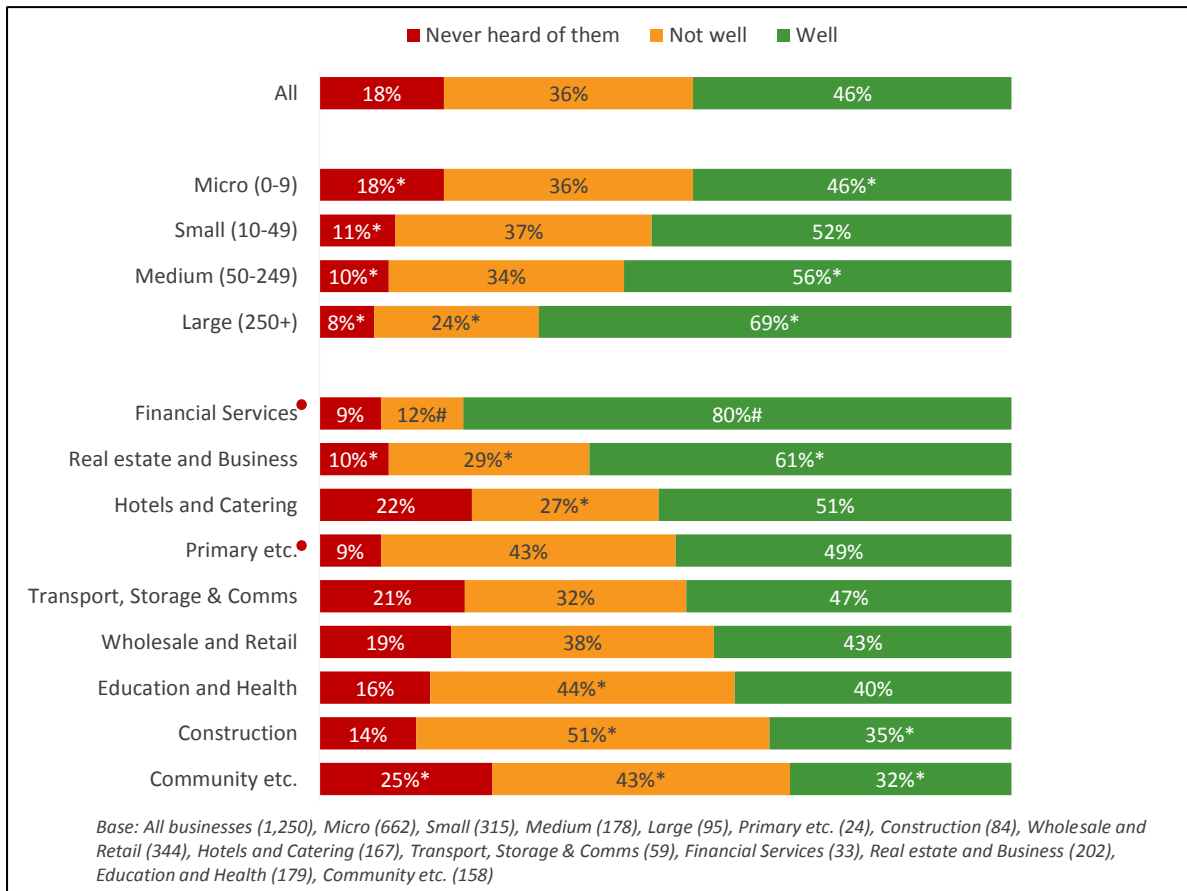
## 6 General awareness of Unfair Contract Terms

6.1 The CMA is responsible for engaging with businesses and providing guidance to ensure these businesses are compliant with the rules around UCTs, set out in the Consumer Rights Act (CRA) 2015. In order to target their guidance appropriately, the research aimed to explore the current levels of familiarity with the rules around UCTs and the CRA 2015. This chapter explores responses to both of these questions, considering which subgroups may need to be targeted in order to reduce the risk of non-compliance.

### Familiarity with the rules around Unfair Contract Terms

- 6.2 Businesses were asked, based on their own perceptions, how well they felt they knew the rules around UCTs. Overall, approaching half (46%) of businesses said they knew the rules ‘very’ (10%) or ‘fairly’ well (37%). Over half (54%) did not know them well, with over a third ‘not very’ (27%) or ‘not at all’ well (9%), and 18 per cent of businesses saying they had never heard of them. For the purpose of further analysis, we group together those who claimed to know UCTs well (very or fairly well), not well (not very or not at all well) and those who had never heard of them whatsoever.
- 6.3 As Figure 6.1 shows, perceived knowledge about the rules around UCTs increased with size of the business; approaching half (46%) of micro-businesses reported knowing the rules well, compared with just over half of small (52%) and medium-sized businesses (56%) and close to seven in ten (69%) large businesses.
- 6.4 There was also variation by sector; Financial Services businesses were most likely to claim they knew UCTs well (80%), though this finding should be treated as indicative only due to a low base of 33 respondents. Businesses in the Real Estate and Business sector were also more likely than average to report this (61%). In contrast, businesses operating in the Community (32%) and Construction (35%) sectors were less likely to know UCTs well; indeed, a quarter (25%) of businesses in the Community sector said they had never heard of UCTs.

**Figure 6.1 Extent to which businesses selling to consumers felt they knew the rules around the use of Unfair Contracts Terms, by size and sector**



6.5 Businesses' general engagement with contract terms, whether this be administering, reviewing or changing them, appeared to strengthen confidence in their knowledge around the rules of UCTs. Businesses were more likely to claim to know the rules around UCTs well if they:

- Communicated contract terms to customers (49% vs. 46% average);
- Reviewed contract terms in the last year (57%, rising to 61% amongst those that perceived themselves to review contract terms on a frequent basis);
- Change terms of business occasionally or often (55%);
- Had disputes with customers over terms of business occasionally or often (60%).

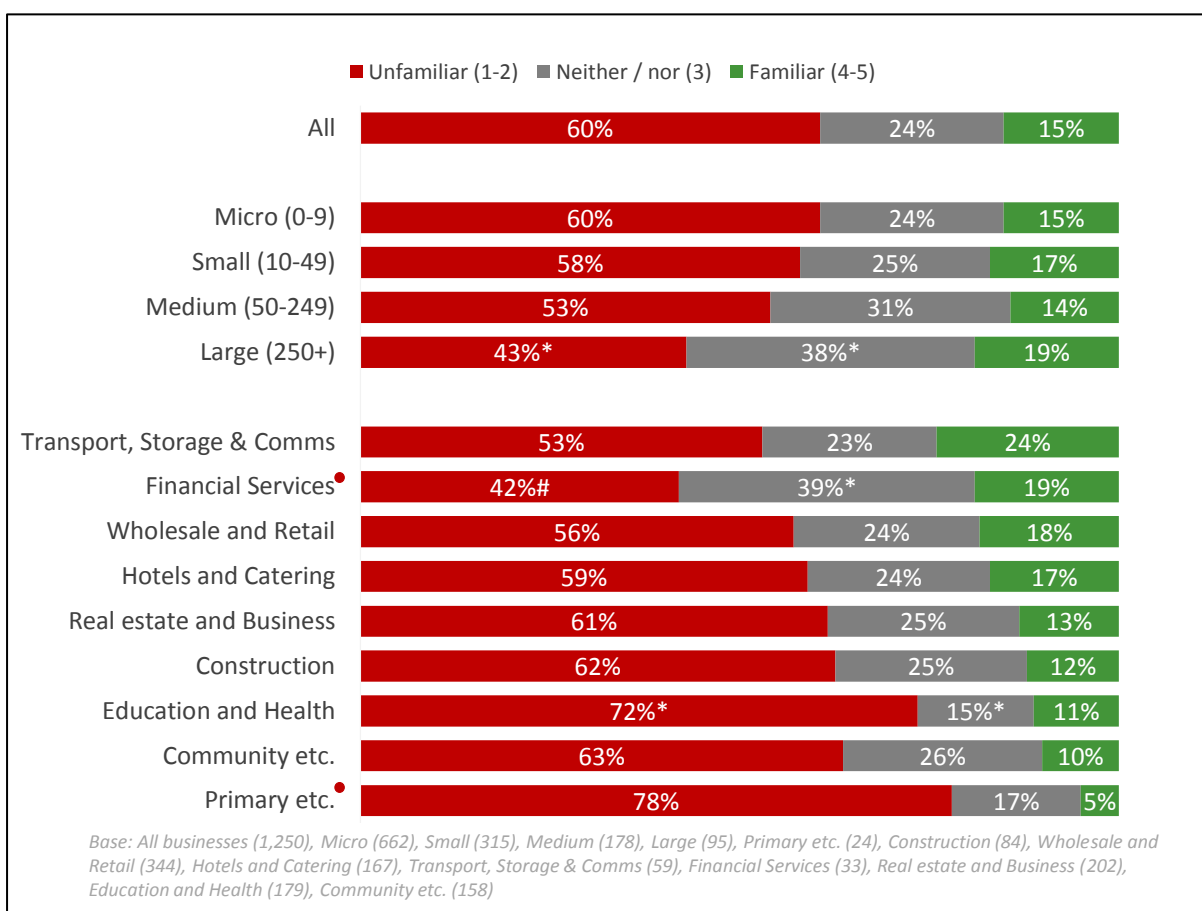
6.6 Further to this, there were marked differences based on businesses' engagement with specific contract terms or behaviours which have the potential to be unfair. For instance, two-thirds (64%) of businesses reporting five or more of these practices said they knew the rules around UCTs well, compared with 43 per cent of those who mentioned 1-4 practices and a similar proportion (42%) reporting none. In terms of specific potentially unfair contract terms, those who apply charges and sanctions (excluding those for cancellation) were most likely to feel they knew the rules around UCTs well (63%).

### Familiarity with the Consumer Rights Act 2015

6.7 Respondents were asked to rate, on a scale of 1 to 5, where 1 means 'very unfamiliar' and 5 means 'very familiar', how familiar they were personally with CRA 2015. For analysis purposes, those who gave a score of 1 or 2 are considered to be 'unfamiliar' with CRA 2015 and those who gave a score of 4 or 5 are 'familiar', while those who gave a score of 3 are treated as a neutral 'neither / nor' response.

6.8 Overall, familiarity with CRA 2015 amongst businesses was low; only 15 per cent of businesses said they were familiar with CRA 2015, while three in five (60%) businesses were unfamiliar. Figure 6.2 shows that there was little variation by size, although large businesses were far less likely to be unfamiliar with CRA 2015 than average. There were also few difference by sector, with those operating in Education and Health were more likely to be unfamiliar with CRA 2015 (72%).

**Figure 6.2 Familiarity with the Consumer Rights Act 2015**





- 6.9 Considering region, businesses in the North West were most likely to be familiar with CRA 2015 (26%), while unfamiliarity was most common in Yorkshire and The Humber (72%).
- 6.10 Businesses were more likely to say they were familiar with CRA 2015 if they reviewed contract terms in the last year (19%) or if they perceived themselves to review their terms frequently (25%).
- 6.11 Nevertheless, business engagement with contract terms did not always correlate with a good understanding of CRA 2015. For instance, there was no conclusive evidence that having disputes with customers over contract terms increased knowledge of the legislation, while, in contrast with the patterns seen around knowledge of the rules around UCTs, those who rarely or never change their terms of business were, in fact, more likely to be familiar (17%) than those who change them occasionally or often (8%).
- 6.12 Furthermore, there was some disparity between perceived knowledge about the rules around UCTs and familiarity with CRA 2015. Two-fifths (40%) of those who knew the rules around UCTs well said they were unfamiliar with CRA 2015, suggesting that their perceived knowledge is not necessarily linked to a broader understanding of consumer law.
- 6.13 Considering those practices where there is a potential for unfair terms, businesses who reported applying charges or sanctions (excluding cancellation charges) where customers break an agreement (20%) and those who take deposits or advance payments (17%) were more likely than average to be familiar with CRA 2015, however there was little evidence to suggest that those who reported five or more potentially unfair practices in relation to agreements with customers were any more likely to be familiar with CRA 2015 than those who did not.
- 6.14 Positively, businesses that had accessed CMA guidance when conducting internal reviews of their contract terms reported the highest levels of knowledge across these two measures; three-quarters (76%) who had done so felt they knew the rules around UCTs well (including a quarter (27%) 'very well'), while a third (33%) of these businesses said they were familiar with CRA 2015. The findings suggest that targeted CMA guidance could be a means to increasing understanding of UCTs and consumer rights in general amongst UK businesses.

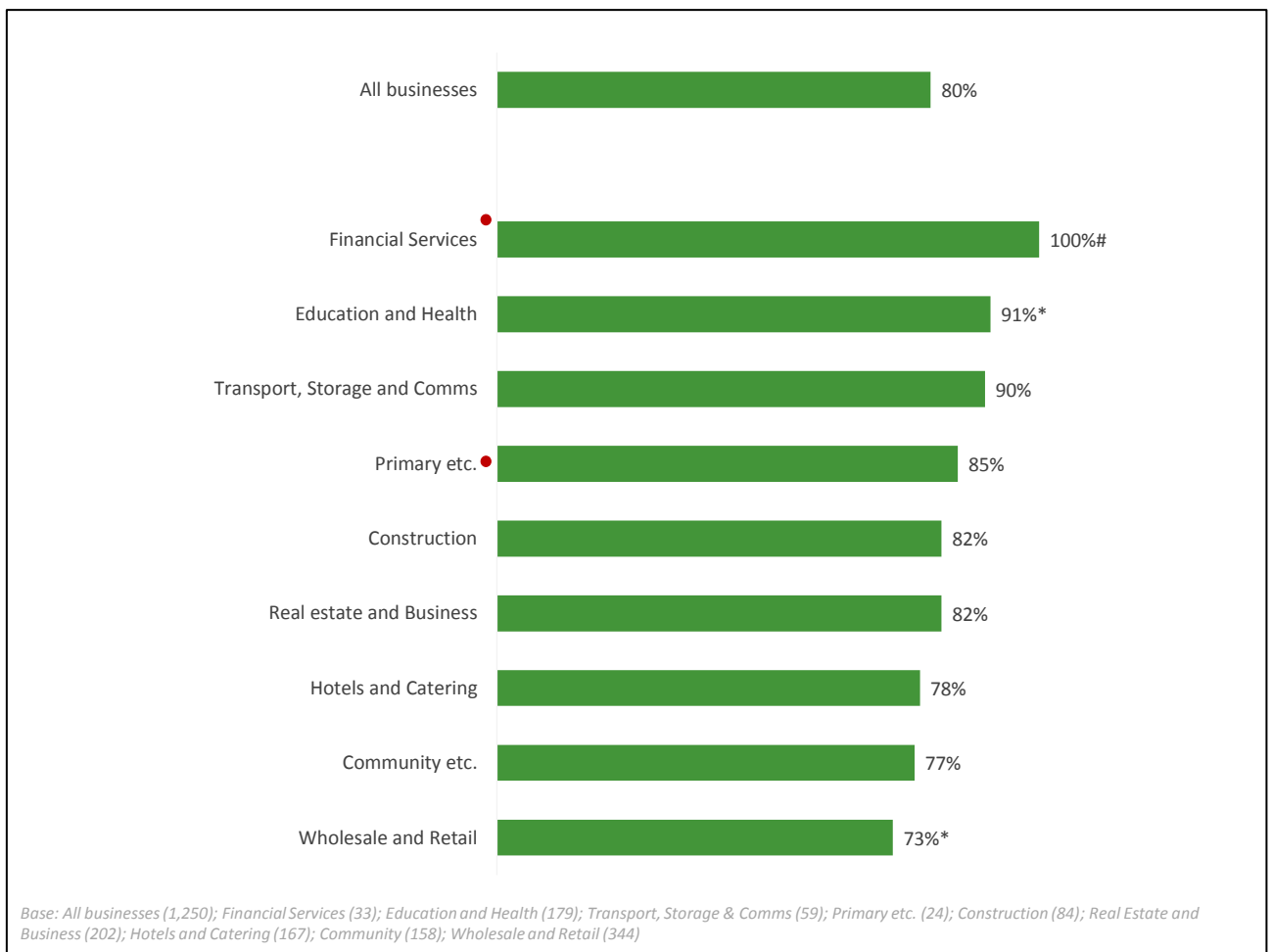
## 7 Use of terms and conditions in sales

7.1 This chapter explores the types of businesses who have terms and conditions, alongside their rationale for doing so and the extent to which they communicate them to their customers. Previous work has identified that contracts can exist in a variety of forms, and can be communicated in a variety of ways. This chapter will therefore clarify how contract terms are commonly shared with customers, and will also establish how businesses and customers communicate with each other should they wish to make changes to them.

### Who communicates Terms and Conditions?

7.2 As shown in Figure 7.1 below, the majority (80%) of businesses communicate their terms and conditions in some way to their customers. Whilst this was particularly common amongst businesses in the Education and Health sector (91%), businesses in the Wholesale and Retail sector were least likely to supply their customers with terms and conditions (73%). This is of particular interest, given that businesses in the Wholesale and Retail sector account for a third of all businesses who sell to customers.

**Figure 7.1 Incidence of businesses who communicate Terms and Conditions, by sector**



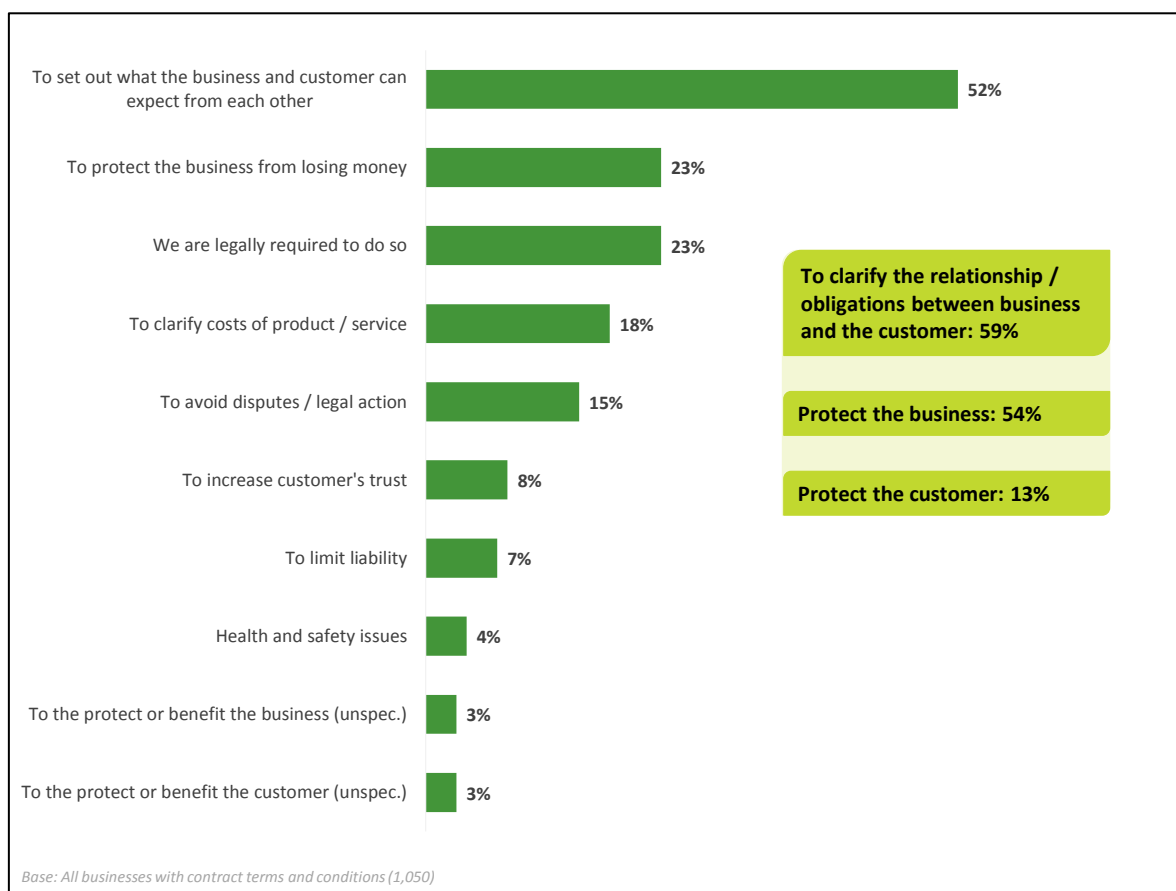
7.3 Businesses that are familiar with Unfair Contract Terms (UCTs) were more likely to supply their customers with terms and conditions (85%), as were those who sell the products of other businesses (90%) and those who sell digital content (91%).

- 7.4 Furthermore, the likelihood of businesses communicating terms and conditions to their customers increases with the size of the organisation. Larger businesses (i.e. those with 250 or more employees) were significantly more likely to communicate terms and conditions to customers (91%). This difference becomes particularly apparent when comparing to the proportion of micro businesses who communicate terms and conditions to their customers (79%).
- 7.5 Positively, businesses who reported that they carry out five or more practices with the potential for unfair terms to be used were more likely to communicate terms and conditions to their customers (92%). Likewise, those with a higher average transaction cost were generally more likely to supply customers with terms and conditions; the proportion who reported doing this increased from as low as two-thirds (68%) amongst businesses with an average transaction cost of less than £10, to around four in five (79%) businesses with an average transaction cost of £10-£99. Nearly all (93%) businesses with an average transaction cost of £5,000 or more supplied terms and conditions to their customers.

### Business rationale for having contracts

- 7.6 Most commonly, businesses regarded contracts as a means of clarifying the relationship between the business and the customer. As Figure 7.2 shows, around half (52%) used contracts to set out what the business and customer can expect from each other. Combined with the proportion citing that they used contracts to clarify costs, this accounted for around six in ten businesses which used contracts to establish the obligations between a business and customer.
- 7.7 At least half also used contracts to protect the business in some way: for example, 23 per cent of businesses said they used contracts to protect themselves from losing money. This was less common among large businesses (13%) but far more prevalent amongst businesses in the Transport, Storage and Communications sector, where approaching half (45%) mentioned this as a reason for having contracts in place. Perhaps unsurprisingly, those who exhibited other indications that they were concerned about their business losing money, for example, making customers pay cancellation charges and other penalties, were also more likely to mention having contracts in place for this reason (35% and 36% respectively).
- 7.8 Another common reason for having contracts in place, also related to protecting the business, was to meet a legal requirement (23%). This was more prevalent amongst small (31%) and medium-sized (31%) businesses, and within the Real Estate and Business (34%) and Education and Health sectors (30%). In addition, businesses that reported reviewing their contracts on a frequent basis were also more likely to have contracts in place because it is a legal requirement to do so (30%).
- 7.9 Only a minority gave reasons from the perspective of the customer, with eight per cent saying they used contracts to build customer trust. This indicates that most businesses have a primary focus on how best to operate their business, and may not consider consumer rights and needs ahead of other more pressing concerns.

**Figure 7.2 Reasons for having contracts in place**



7.10 The likelihood of having contracts in place to clarify the relationship between businesses and their customers increased significantly with business size. Seven in ten (71%) large companies had contracts in place for this reason, compared to 59 per cent of micro organisations and 58 per cent of small organisations.

7.11 Businesses experiencing disputes at least occasionally were less likely to have contracts in place both to clarify the business relationship (49% compared with 59% average) and to protect the customer (7% compared with 13% average), highlighting that the intention behind a contract could be a factor in the frequency of disputes businesses experience.

7.12 Additionally, those who report that they undertake five or more practices with the potential for unfair terms to be used were also more likely to have contracts in place to protect the business (63%, in comparison to 39% of businesses who did not report any potentially unfair practices). Furthermore, businesses who frequently (i.e. occasionally or very often) change the terms of their contracts with customers were also more likely to have contracts in place to protect their organisation (60%).

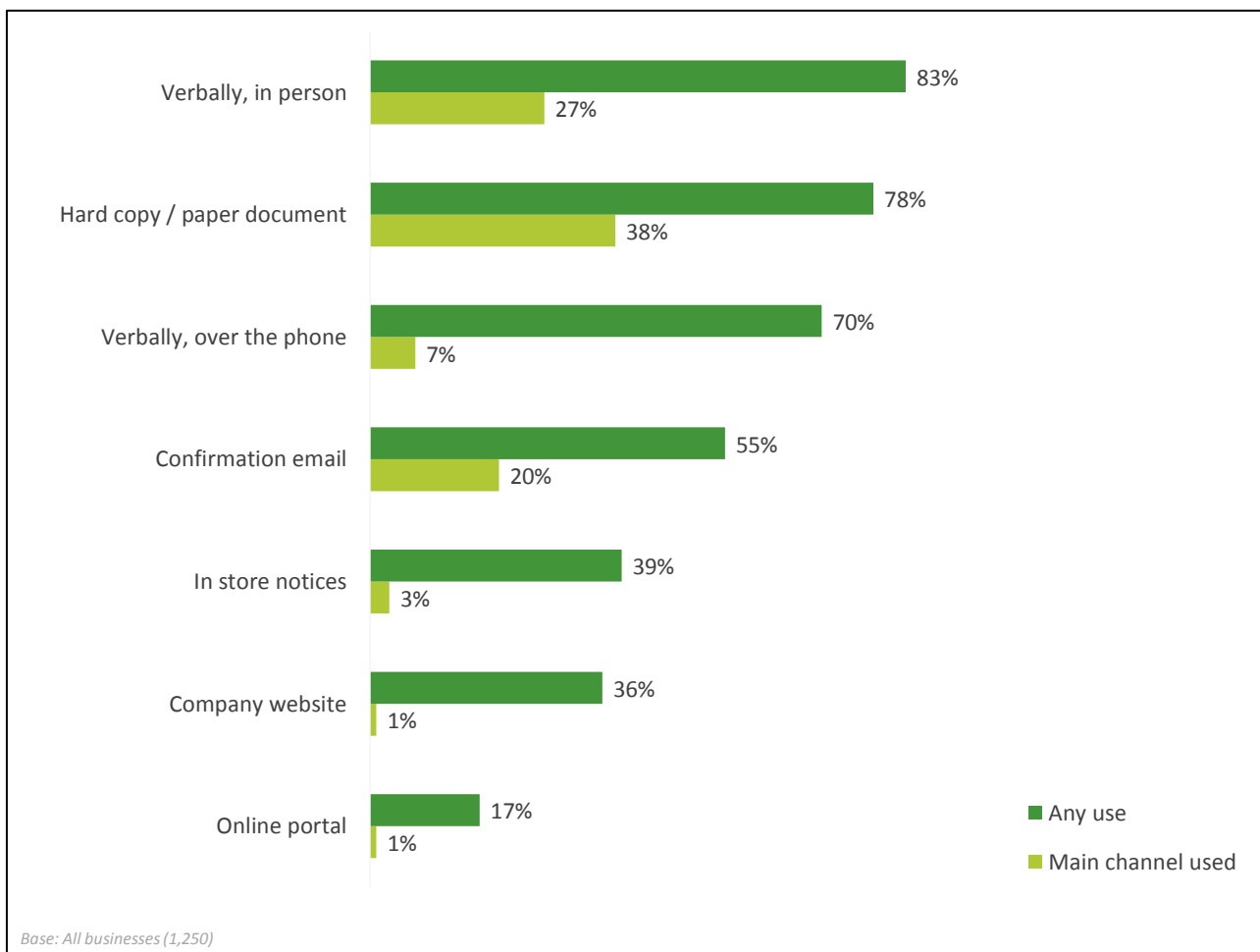
7.13 Understanding of the legalities behind unfair contract terms appears to have a slight bearing on businesses' approach to contracts. Those familiar with the Consumer Rights Act 2015 were more likely to have contracts in place to protect the customer (18%, in comparison to 10% of those who were unfamiliar with the Act), although this correlation did not extend to those who claimed familiarity with Unfair Contract Terms.

### Channels used to confirm sales

7.14 As shown in Figure 7.3 below, businesses tended to use a range of channels when communicating with customers to confirm a sale. Verbal, spoken forms of communication were the most common, be this face-to-face (83%) or over the phone (70%).

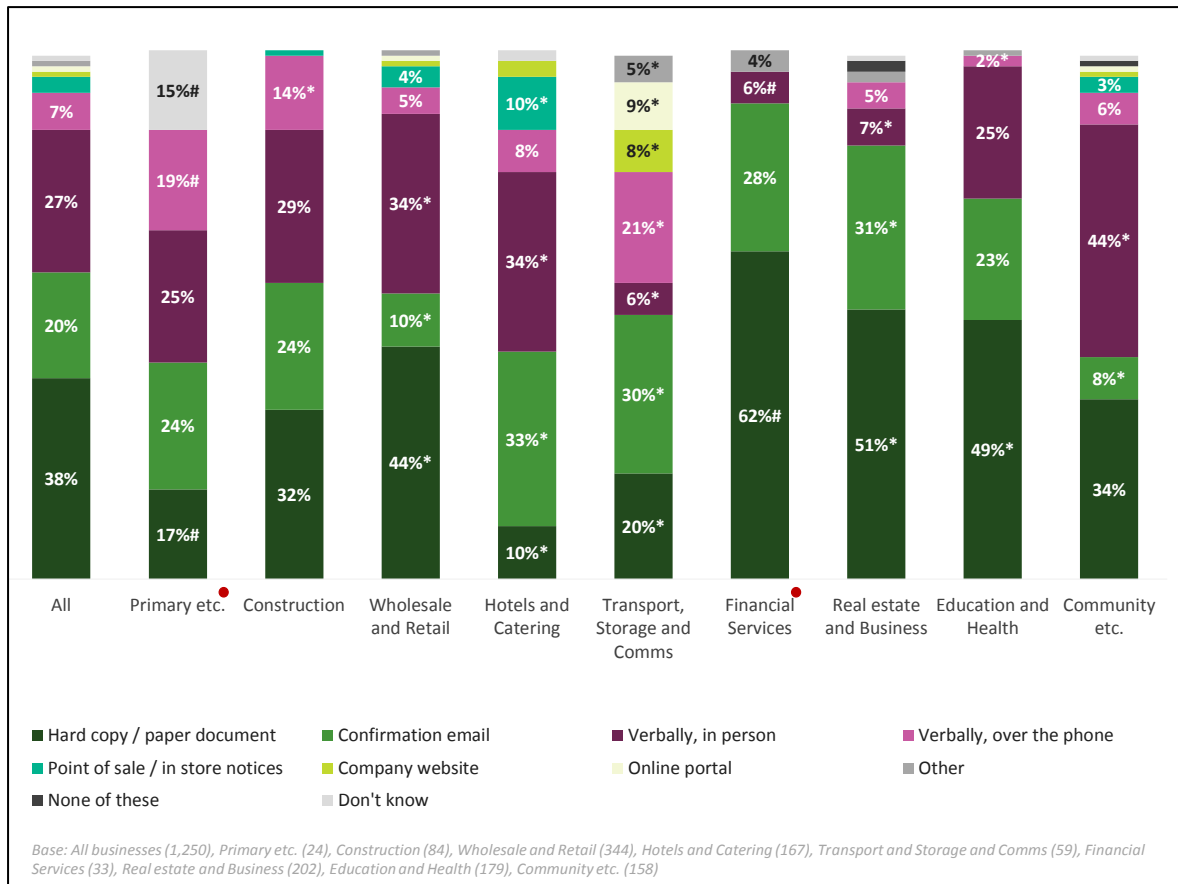
7.15 Whilst written forms of communication were less frequently used, most businesses regarded hard copies or paper documents as the main channel that they use to confirm sales (38%). In contrast, few businesses regarded verbal communication over the phone as a main channel through which to confirm sales (7%).

**Figure 7.3 Channels used to confirm sales**



7.16 Reflecting the different types of products sold at a sectoral level, there was much variation in the types of channels used to confirm sales. Businesses from the Real Estate and Business (51%), and Education and Health (49%) sectors were much more likely to rely on hard copies or paper documents to confirm sales, whereas those from the Community sector were most likely to rely on verbal, in-person confirmation of sales (44%). Figure 7.4 illustrates these differences by sector.

Figure 7.4 Main channels used to confirm sales, by sector



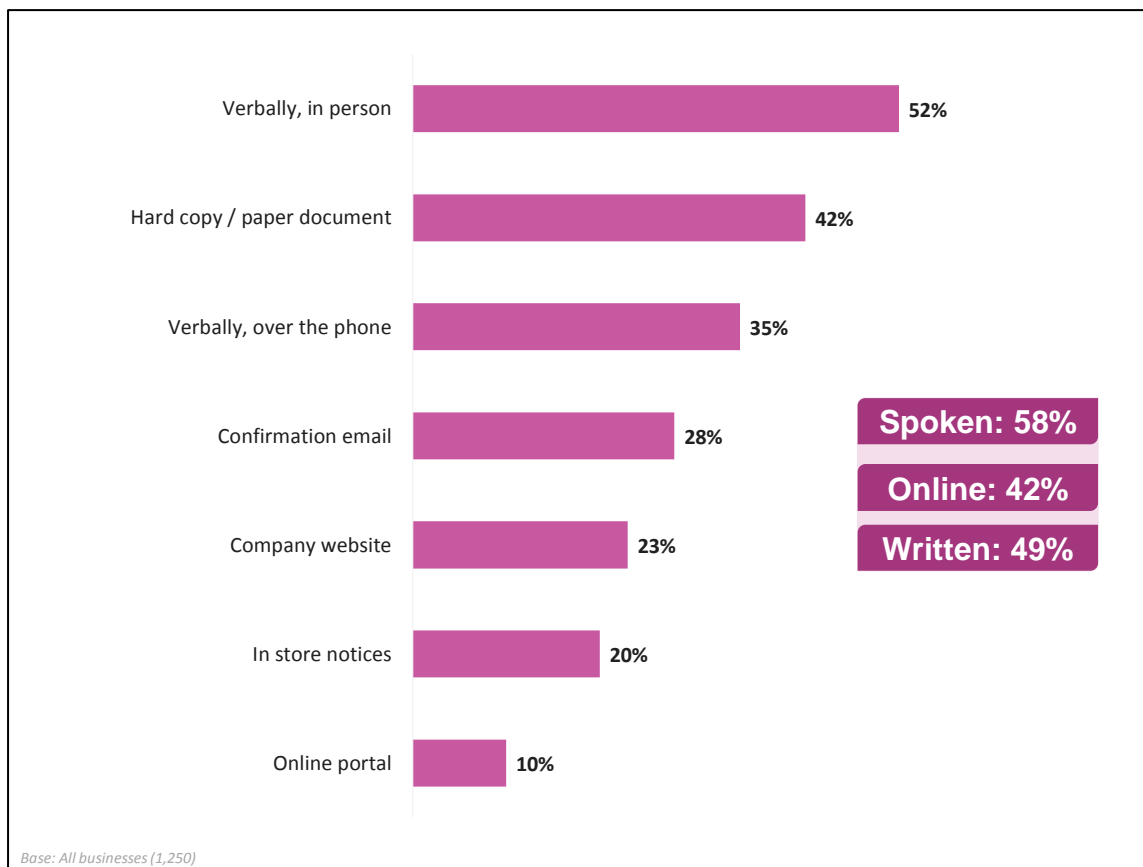
7.17 In terms of differences by business size, large organisations (54%) were particularly likely to consider hard copies or paper documents as their main channel to confirm sales (compared to an average of 38%).

7.18 Predictably, businesses who sell digital content were more likely to use email as their main channel for confirming sales (33%) than a hard copy or paper document (28%).

### Channels used to communicate contract terms

7.19 As with the channels used to confirm sales, businesses most commonly communicated their contract terms to customers verbally by speaking to them. Figure 7.5 shows the channels businesses mostly commonly used to communicate their terms and conditions.

**Figure 7.5 Channels used to confirm terms and conditions**



7.20 Over half (52%) of businesses communicated their contract terms verbally by speaking with customers in person, with this, again, being particularly likely amongst businesses in the Education and Health sector (69%). Over a third (35%) of businesses communicated their contract terms over the phone, with this being most common amongst businesses in Transport, Storage and Communications sector (54%).

7.21 Nearly half (49%) of businesses communicated contract terms via written forms of communication, with four in ten (42%) using hard copy or paper documents.

7.22 Communication via hard copy or paper documents was especially prevalent amongst medium (65%) and large businesses (70%), and those in the Construction (62%) and Real Estate and Business (64%) sectors. Those with an average transaction cost greater than £1,000 were also more likely to communicate in this way (73%).

7.23 Furthermore, around four in ten businesses communicated contract terms through online methods (42%, rising to 62% of large businesses). This was particularly common in the Transport, Storage and Communications sector (71%).

7.24 Three in ten (28%) communicated contract terms via a confirmation email, with those who sell digital content (43%) particularly likely to do so.

- 7.25 Ultimately, three quarters (74%) of businesses are proactive<sup>10</sup> in communicating the terms and conditions of the business to the customer. Indeed, the most proactive businesses were those in the Education and Health and those with an average transaction cost or more than £1,000 (both 85%). In contrast, the least proactive businesses included those in the Wholesale and Retail sector (66%), and those who do not know Unfair Contract Terms very well (or who have never heard of them (67%)).
- 7.26 Reflecting the relationship between business size and the incidence of businesses who communicate their terms and conditions, the extent to which an organisation was proactive in communicating their terms and conditions also increased with business size. Three quarters of micro and small businesses (74% and 76% respectively) were proactive in their approach towards communicating their terms and conditions, in contrast to nine out of ten medium and large businesses (90% and 86% respectively).
- 7.27 Half (54%) of all businesses provided their customers with a personal<sup>11</sup> record of their terms and conditions, with medium and large businesses, again, more likely to do so (83% and 78% respectively). Whilst this was particularly common amongst businesses in the Real Estate and Business sector (75%), those in the Community (30%), Hotels and Catering (44%) and Wholesale and Retail (46%) sectors were especially likely not to do so.
- 7.28 Businesses who were unfamiliar with the Consumer Rights Act 2015 or who had never heard of Unfair Contract Terms were more likely not to provide customers with a personal record of their terms and conditions (47% and 35% respectively). This may be due to the quick and low-value nature of many of these businesses' transactions (for example, in the Wholesale and Retail sector) but it may also suggest that a greater awareness of consumer rights legislation could encourage more businesses to provide their customer with a record of their terms and conditions either before, or at the point of sale.
- 7.29 Only a small minority (6%) of businesses placed the onus on the customer to seek out their terms and conditions. This was particularly apparent amongst businesses who sell products over the internet or digital television (10%), and amongst those who sell products via mail order (16%).

### When are contract terms communicated?

- 7.30 Six in ten (60%) businesses communicated their contract terms before the point of sale, whilst half (52%) communicate contract terms at the point of sale, and 38 per cent communicated them after the point of sale.
- 7.31 Only an extremely small minority (2%) of businesses confirmed their contract terms only after the sale of their product or service, as Table 7.1 shows.

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<sup>10</sup> i.e. There is no onus on the customer to source the terms of the business: businesses actively communicate this at the point of sale through hard copies or paper documents, confirmation emails, or verbally.

<sup>11</sup> This is in the form of a physical, hard copy document, confirmation email or online portal through which customers can access the terms and conditions.



**Table 7.1 Point at which contract terms are communicated, by sector**

	<i>Base</i>	Before the point of sale	At the point of sale	After the point of sale	Prior to / at the point of sale only	After the point of sale only
<b>All</b>	<b>1,250</b>	<b>60%</b>	<b>52%</b>	<b>38%</b>	<b>37%</b>	<b>2%</b>
Primary etc.	24	40%#	50%	25%	51%	10%#
Construction	84	65%	40%*	35%	42%	4%
Wholesale & Retail	344	47%*	55%	42%	27%*	3%
Hotels & Catering	167	64%	50%	34%	39%	1%
Transport, Storage & Communications	59	76%*	64%	55%*	33%	<1%
Financial Services	33	98%#	19%#	21%#	79%*	<1%
Real Estate & Business	202	74%*	52%	44%	38%	1%
Education & Health	179	68%*	59%	36%	45%*	<1%
Community etc.	158	54%	50%	26%	45%*	2%

7.32 Businesses with an average transaction cost of more than £1,000 were more likely to communicate their contract terms before the point of sale (78% compared to an average of 60%).

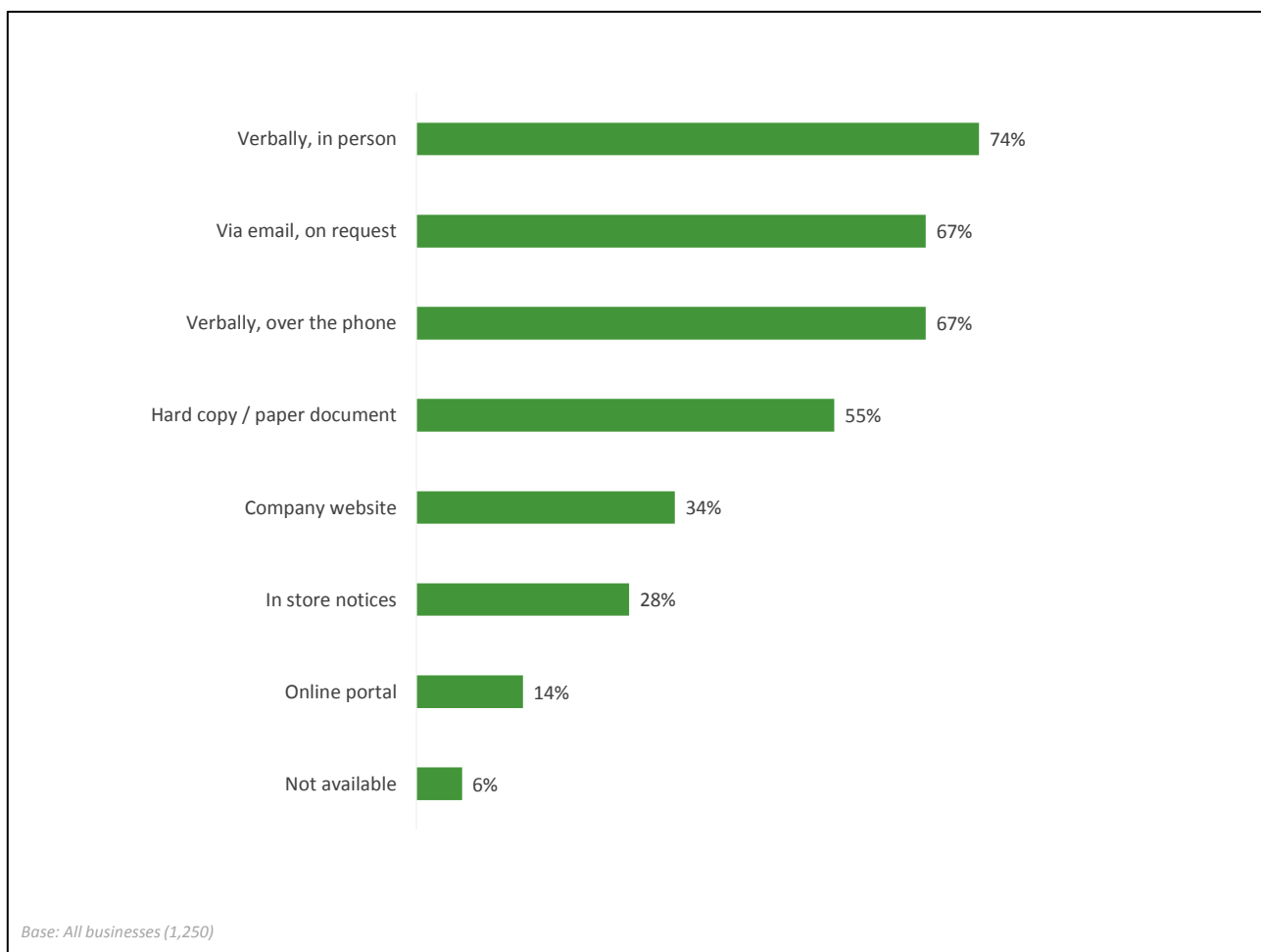
7.33 The point at which businesses communicated their contract terms also varied significantly across sectors. Nearly all (98%) of businesses in the Financial Services sector communicated their contract terms before the point of sale in contrast to only 40% of Primary sector businesses. These findings should, however, be treated only as indicative, due to a small number of businesses interviewed in these sectors (33 Financial sector, 24 Primary sector).

7.34 In addition to this, those who sell the products of other businesses were slightly more likely than average to communicate their contract terms only after the point of sale (5%).

### How customers access terms and conditions after purchase

7.35 As with the channels used to confirm sales and communicate contract terms, customers most commonly accessed terms and conditions after purchase verbally, by speaking to the business in person (74%), as Figure 7.6 illustrates.

**Figure 7.6 How customers can access terms and conditions after the point of sale**



7.36 Whilst only three in ten (28%) businesses communicated their terms and conditions via email, a large proportion (67%) of businesses reported that their customers requested access to their terms and conditions via email. This raises the question as to whether businesses have the systems in place to respond to such queries if they do not normally communicate with customers in this way.

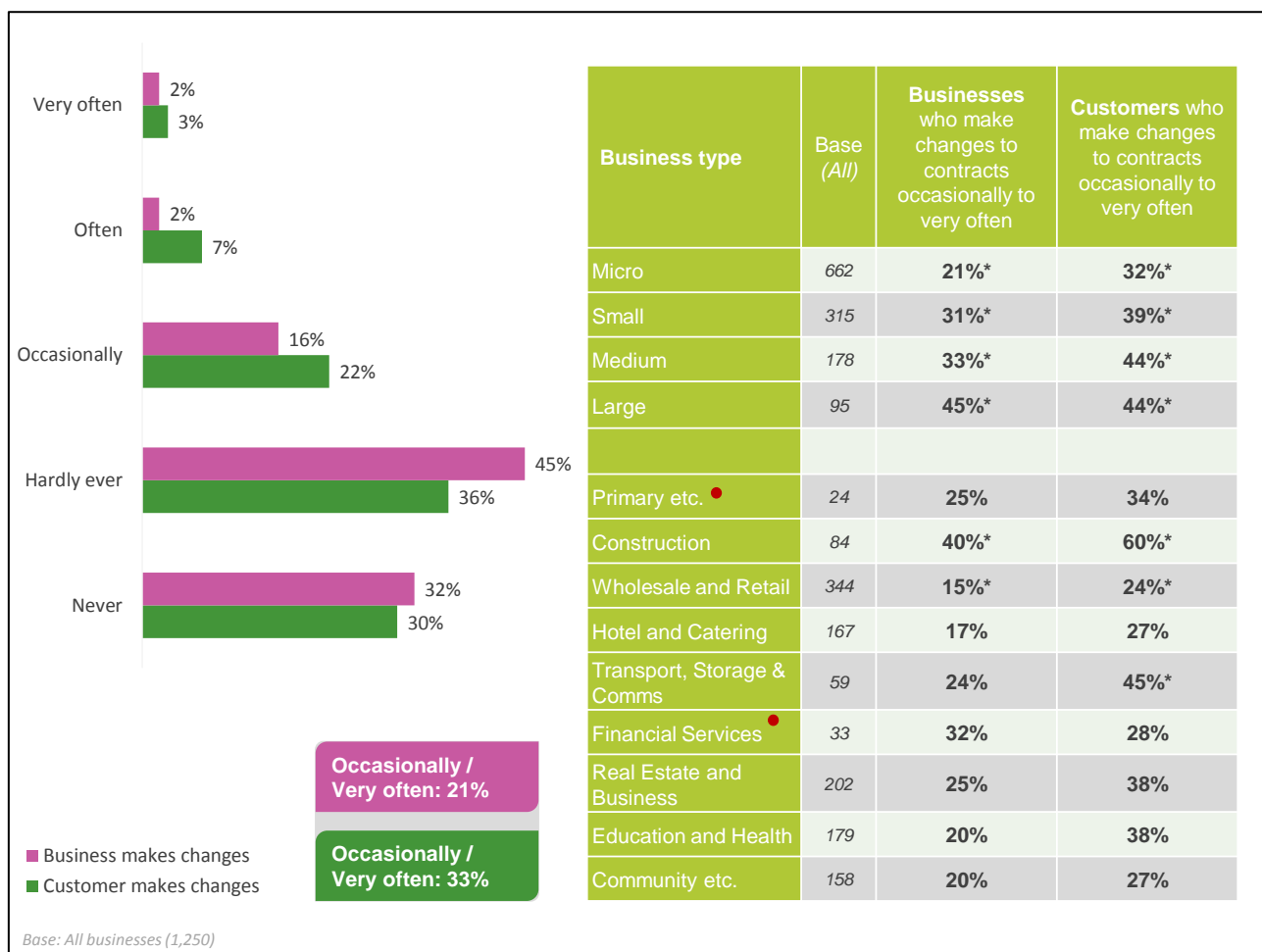
7.37 Medium and large businesses were most likely to allow customers to access terms and conditions via email (both 81%), alongside those in the Transport, Storage and Communications sector (90%). Echoing earlier patterns seen amongst businesses who communicate through email, those who sell digital content were more likely to allow customers to access terms conditions via email (86%).

7.38 A small minority (6%) of businesses did not make information about contract terms available to their customers after the point of sale. Whilst the likelihood of this decreased with business size, the prevalence of this behaviour varied across sectors. Indeed, businesses in the Community sector were significantly more likely not to make information about contract terms available to their customers (12%), although this is linked to the higher than average proportion of businesses in this sector that do not have any formal terms in place.

## Changes to contracts

7.39 The incidence of businesses and customers making changes to contracts was relatively low. Only one in five (21%) of all businesses reported that they make changes to contracts at least occasionally. Indeed, a third (32%) said that they never do so. In contrast, a slightly larger proportion (33%) of businesses reported that their customers try to make changes to contracts at least occasionally, as Figure 7.7 shows.

**Figure 7.7 Frequency with which businesses and customers make changes to contracts**



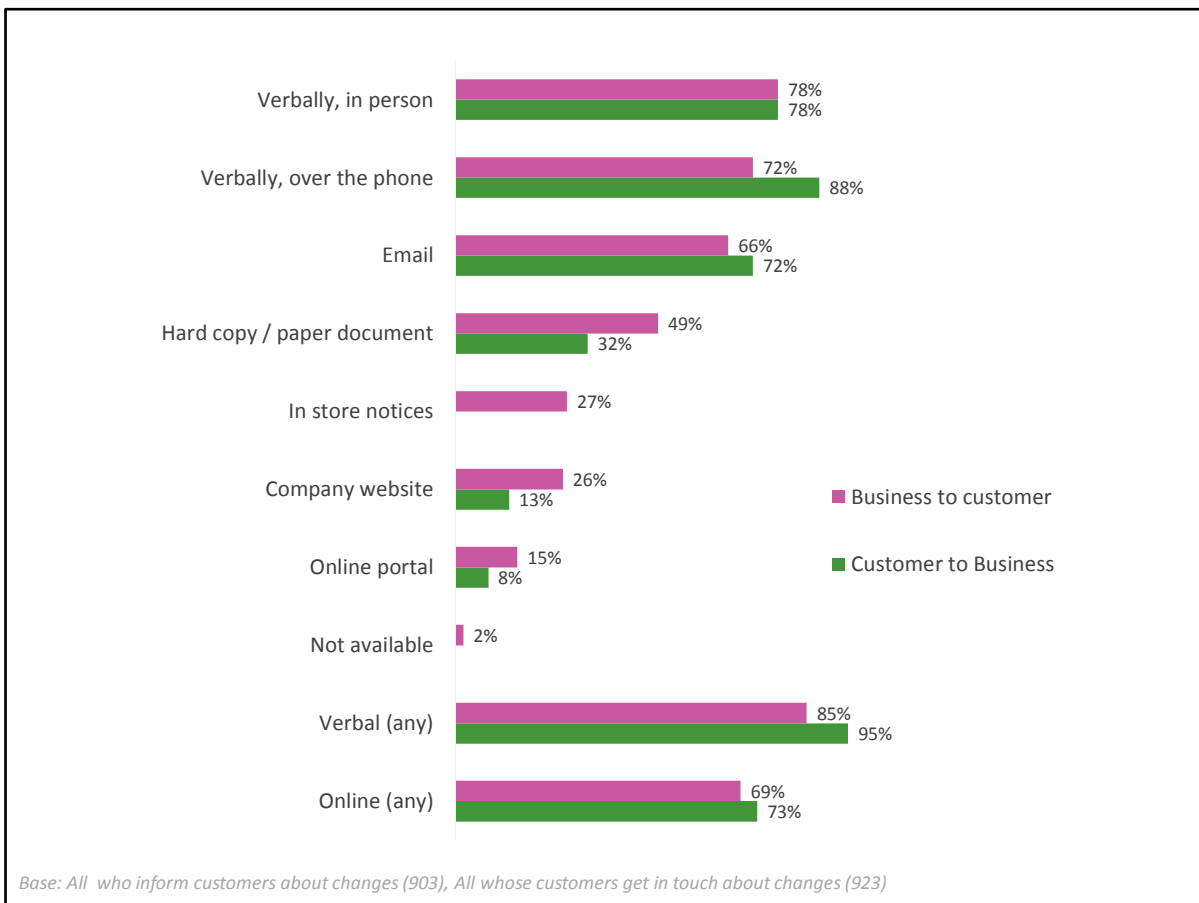
7.40 Businesses in the Construction sector were most likely to experience changes to contracts, both actioned by the business (40%), and by the customer (60%). In contrast, businesses in Wholesale and Retail reported few changes, with only 15 per cent of businesses themselves making changes at least occasionally, followed by 24 per cent of customers. Large businesses made changes to contracts with customers more often than any other type of business (45%).

7.41 Additionally, the likelihood of making changes to an agreement increased with transaction cost. Just under a fifth (17%) of businesses with an average transaction cost of less than £1,000 at least occasionally tried to make changes to their agreements with customers (compared to 35% of those with an average transaction cost of more than £1,000). This pattern also holds true in cases where customers tried to change what has been agreed (29% and 45% respectively).

**Channels used to communicate changes to contracts**

7.42 As with channels used to communicate details of terms and conditions and confirmation of sales, spoken verbal communication was the most common way businesses and customers would communicate with each other regarding changes to contracts. Whilst businesses most typically informed customers about changes to contracts verbally by speaking in person (78%), customers most commonly informed businesses about changes over the phone (88%). Generally, customers were more likely to communicate their desire to change a contract via spoken means than businesses were (95%, compared with 85%).

**Figure 7.8 Channels of communication used to inform businesses and customers of changes to contracts**



7.43 Positively, where businesses used more passive approaches to communicating changes in terms and conditions, they also used other more proactive ways as well of communicating this information. For example, the vast majority of businesses that communicated a change in terms through instore notices or via their website also provided customers with a personal record of the changes (76% and 94% respectively). The survey cannot unpick however whether companies used multiple approaches for each transaction and customer, or whether they varied their approach depending on the particular sale / contract.

7.44 There were notable sectoral differences in how businesses communicated changes to their customers:

- Companies in Real Estate and Business (73%) and Education and Health (62%) were far more likely to communicate changes by hard copy or paper document;
- Construction businesses were particularly likely to use verbal face-to-face communication (94%); and,
- The Transport, Storage and Communications sector was more likely to communicate changes by email (97%)<sup>12</sup>. Notably this was also more common amongst businesses that sold digital content to customers (80%).

7.45 Patterns remain consistent between business-customer and customer-business communication. The vast majority (88%) of customers prefer to communicate with businesses via phone, followed by face-to-face contact (78%), highlighting how important it is for businesses to ensure that they have suitable systems in place to receive calls and respond to queries about changes to contracts appropriately.

7.46 Customers also express a strong preference to communicate via email (72%), with larger businesses being most likely to receive email contact from customers (81% of medium organisations and 84% of large organisations).

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<sup>12</sup> This figure should be used indicatively due to a low base size of 45 respondents.

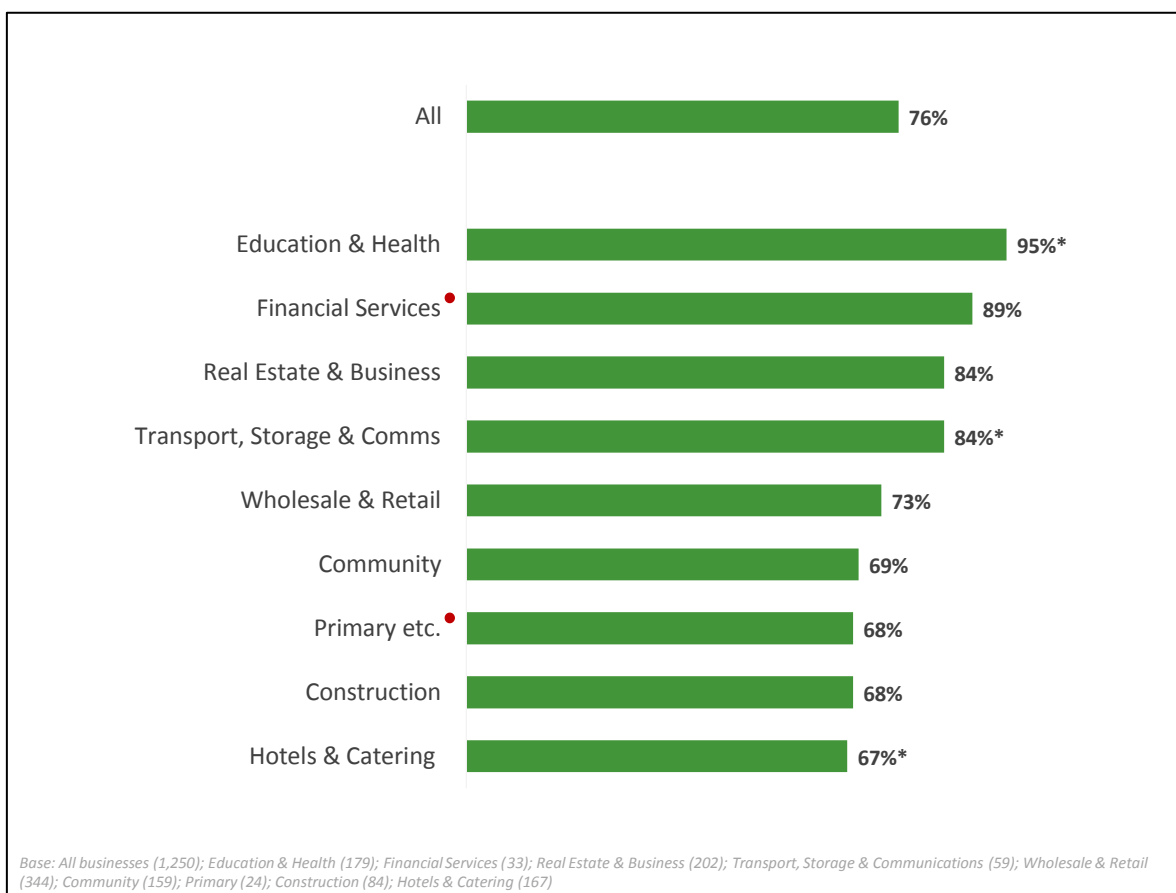
## 8 Reviewing contracts

- 8.1 While the majority of businesses operate with terms and conditions, changes to the law mean that these can quickly become outdated. The 2015 Consumer Rights Act for instance sought to provide better protection for consumers in their dealings with businesses. It is important, therefore, for businesses to keep up to date with legislation and review their contracts to ensure they remain fit for purpose.
- 8.2 This chapter explores the frequency with which businesses conduct reviews, their motivations for doing so and where the responsibility lies for conducting reviews.

### Incidence of reviews

- 8.3 Over three quarters (76%) of businesses have reviewed their contracts at some point in the past.
- 8.4 Businesses in the Education and Health sector were particularly likely to have reviewed their terms and conditions in the past, with nearly all (95%) having done so, as Figure 8.1 illustrates. Those who sold digital products were also more likely to have reviewed their terms and conditions (86%). Reviewing contracts was least common in the Hotels and Catering sector, where just two-thirds (67%) had reviewed their contracts in the past.

**Figure 8.1 Proportion of businesses who have reviewed their contract terms in the past**



- 8.5 Reassuringly, the likelihood of having reviewed contract terms in the past increases with the number of behaviours with the potential for unfair terms that a business reports. Indeed, the

vast majority (93%) of businesses who reported five or more potentially unfair behaviours have reviewed their terms and conditions in the past (in comparison to 50% of those who reported no incidences of potentially unfair practices, and 77% of those who reported between one and four behaviours).

- 8.6 Likewise, the likelihood of having reviewed contract terms also increases with the proportion of businesses who have had disputes with their customers: 83 per cent of those who have had disputes with their customers have reviewed their terms and conditions, compared to 69 per cent of those who have not had any disputes. It is worth noting however, that a small proportion of businesses only reviewed their contracts once they had received a complaint (see Figure 8.3).
- 8.7 Those familiar with CRA 2015 and UCTs were both more likely to have reviewed their terms and conditions, suggesting that improving businesses' understanding of consumer rights legislation could encourage businesses to review their terms.
- 8.8 In contrast, smaller businesses were least likely to have reviewed their terms and conditions: more than one in five (22%) micro businesses and 10 per cent of small businesses have never reviewed their contract terms, compared to only eight per cent of medium organisations and less than one per cent of large businesses.
- 8.9 Likewise, businesses with an average transaction cost of less than £1,000 were significantly more likely to have never reviewed their terms and conditions, with a quarter (24%) having never done so (in comparison to only 12% of those with an average transaction cost of more than £1,000).

### Frequency of reviews

- 8.10 Two-fifths (41%) of all businesses have conducted a review in the past year and around two-thirds (65%) in the last five years. Only one in nine businesses (11%) reviewed their terms and conditions more than five years ago.
- 8.11 On average, businesses review their terms and conditions every 4.5 years. Continuing earlier trends, this ranges from an average of 4.6 years between reviews for micro businesses to an average of 2.6 years for larger ones. Meanwhile, businesses in the Construction sector have a particularly long gap between reviews (averaging 5.6 years) along with those in the Real Estate and Business sector (5 years).
- 8.12 Around one in six businesses (16%) have never, and say they will never, conduct a review of their terms and conditions. This is most likely amongst micro businesses (16%), those in the Construction and Community sectors (21%), and those who sell to customers via face-to-face methods (17%, compared to 12% who do not).
- 8.13 Businesses unfamiliar with CRA 2015, and those who do not know Unfair Contract Terms well (or at all) are particularly likely to have never reviewed their terms and conditions and have no plans to do so in future (21% for both). Again, this implies that improving awareness of consumer rights legislation encourages businesses to carry these practices through to their everyday activities.

8.14 There is sizeable risk therefore that a number of businesses' terms and conditions might be outdated following recent changes in legislation and the introduction of the CRA 2015. In the next sub section, we profile those businesses who *have* conducted a review in the last year.

### Profile of those conducting reviews in the last year

8.15 Half of all reviews in the last year occurred either in the Wholesale and Retail sector (28%) or Real Estate and Business (22%), as Table 8.1 shows. Education and Health (10%) businesses and those in Financial Services (6%) represented a higher proportion of the total compared to the total population of businesses selling to consumers.

**Table 8.1 Profile of businesses that report having had disputes with customers over terms of business occasionally or often, compared against profile of overall UK business population**

	All UK businesses selling to consumers	Reviewed contract in last year
<i>Base</i>	1,250	617
<b>Size</b>		
Micro (0-9 employees)	96%	95%*
Small (10-49 employees)	3%	4%*
Medium (50-249 employees)	<1%	1%
Large (250+ employees)	<1%	<1%
<b>Sector</b>		
Wholesale and Retail Trade	34%	28%*
Real Estate & Business	18%	22%*
Community etc.	13%	10%*
Hotels and Catering	11%	12%
Construction	8%	5%*
Education and Health	7%	10%*
Transport, Storage and Comms	5%	7%
Financial Services	3%	6%*
Primary etc.	1%	1%

8.16 As one might expect, businesses reviewing contracts in the last year displayed greater perceived awareness of UCTs (57% compared with 46% of all UK businesses) and CRA 2015 (19%). Still, the fact that only one in five reported familiarity with CRA 2015 having conducted a review in the last year suggests that these businesses remain at risk of overlooking new legislation.

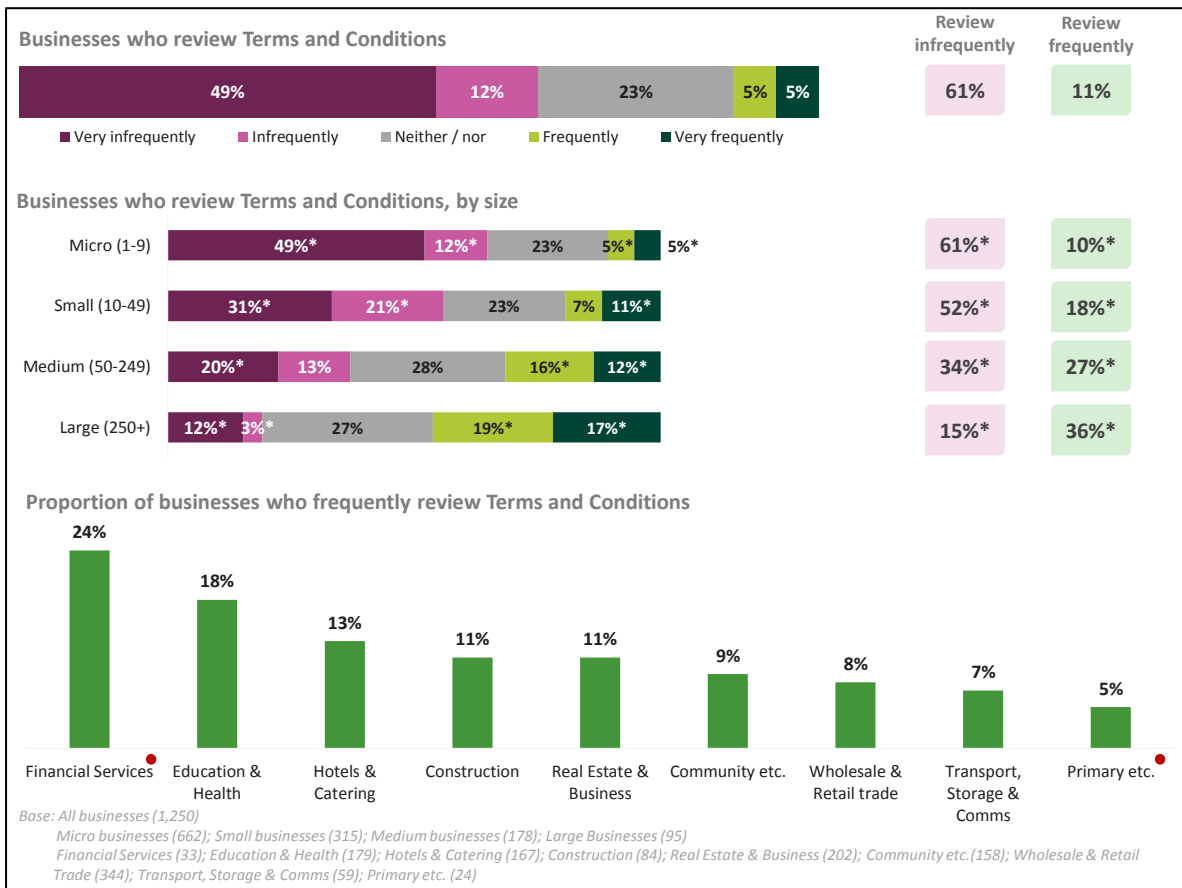
8.17 These businesses are also more likely to communicate their contract terms with customers (90% vs. 80% of all UK businesses). However, they are also more likely to experience disputes with customers occasionally to very often (13% vs. 8%).



### Perception of frequency of reviews

8.18 As shown in Figure 8.2 below however, only a minority (11%) of businesses considered that they reviewed their terms and conditions frequently. In contrast, nearly two-thirds of businesses (61%) considered that they reviewed their terms and conditions infrequently. Subgroup patterns were very similar to those seen with the regards to conducting any review at all.

**Figure 8.2 Frequency of contract reviews**



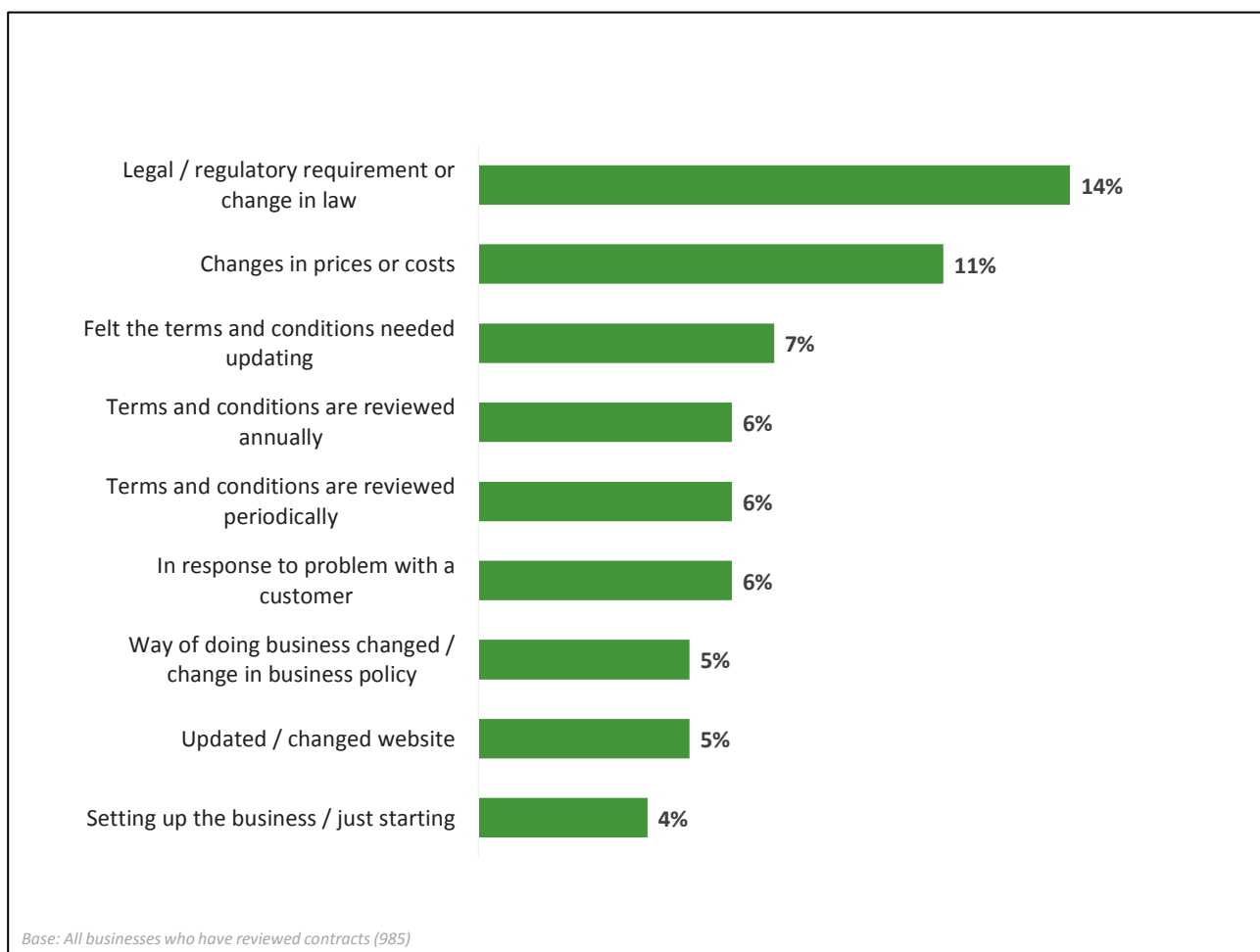
### Motivations & expectations for reviewing contract terms

8.19 Businesses who review contract terms cited a range of motivating factors for doing so. These were mixed between those responding to a particular change in circumstance and those who simply tend to update their terms and conditions on a regular basis.

8.20 While there was no one clear motivating factor, businesses most commonly reviewed contract terms to meet a legal or regulatory requirement or change in the law (14% of those who review contract terms). A need to reflect changes in the prices or costs of products (11%) was also relatively common.

8.21 Around one in eight businesses reviewed their terms and conditions according to a regular schedule, either on an annual basis or less frequent basis (each 6%). Figure 8.3 displays the nine most common motivations for reviewing contracts, though there were various other disparate reasons for reviewing contract terms mentioned by fewer than four per cent of businesses that are not shown here.

**Figure 8.3 Motivations for reviewing contract terms**



8.22 Reflecting the relationship between the awareness of consumer rights legislation and the likelihood of conducting a review of terms and conditions, businesses who knew the rules around Unfair Contract Terms well were more likely to quote compliance with a legal or regulatory requirement as a reason for reviewing their contract (20%). Likewise, those who were familiar with the CRA 2015 were also more likely to give this answer (17%).

8.23 Similarly, those who report five or more instances of potentially unfair behaviours were also more likely to undertake reviews of their contract terms in order to comply with legal or regulatory requirements (22%, compared to 6% of those who do not carry out any potentially unfair behaviours). This suggests that businesses practising potentially unfair behaviours are aware that they need to comply with consumer rights legislation, and that this needs to be addressed via a review of their contract terms.

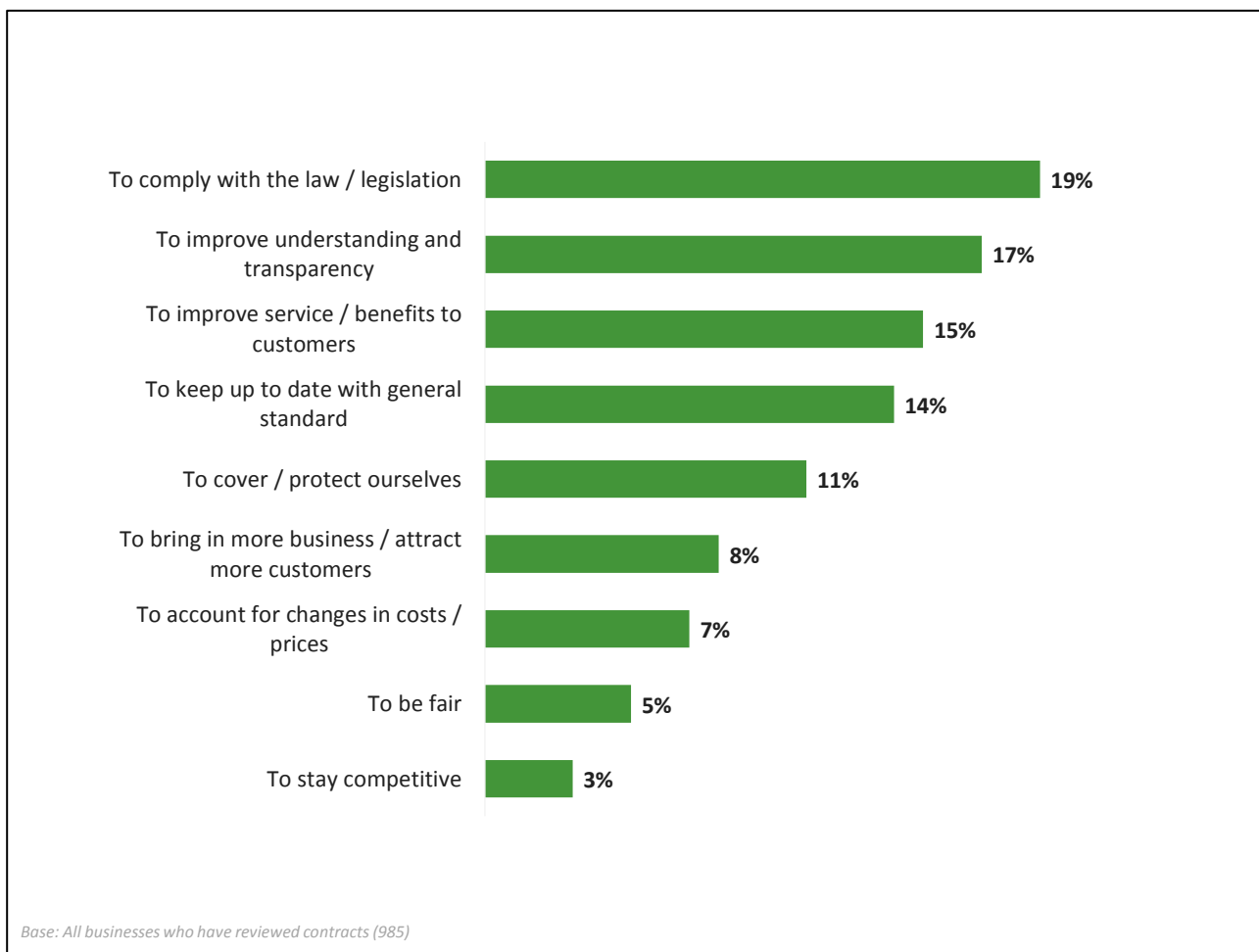
8.24 The outcomes that businesses sought to achieve by reviewing their terms and conditions were generally split between those that benefitted the business and those that benefitted the customer. Most commonly businesses reported that reviewing their contract helped them better comply with the law (19%), while one in seven (14%) felt that it helped them keep up to date with general standards. A further 11 per cent felt better protected as a result of the review.

8.25 From a customer perspective, close to one in six (17%) businesses thought that reviewing their contracts led to an improved understanding and transparency of the terms of the business, while 15 per cent cited direct benefits to customers as a result.

8.26 It is also worth pausing to note the one in 12 (8%) businesses who said that by reviewing their terms and conditions they hoped to attract more customers and bring in business. This was less common among medium (2%) and large businesses (1%), but of greater relevance for those in the Community sector (17%).

8.27 Figure 8.4 presents the most common outcomes businesses anticipated from reviewing their terms and conditions.

**Figure 8.4 Expected outcomes from reviews of terms and conditions**



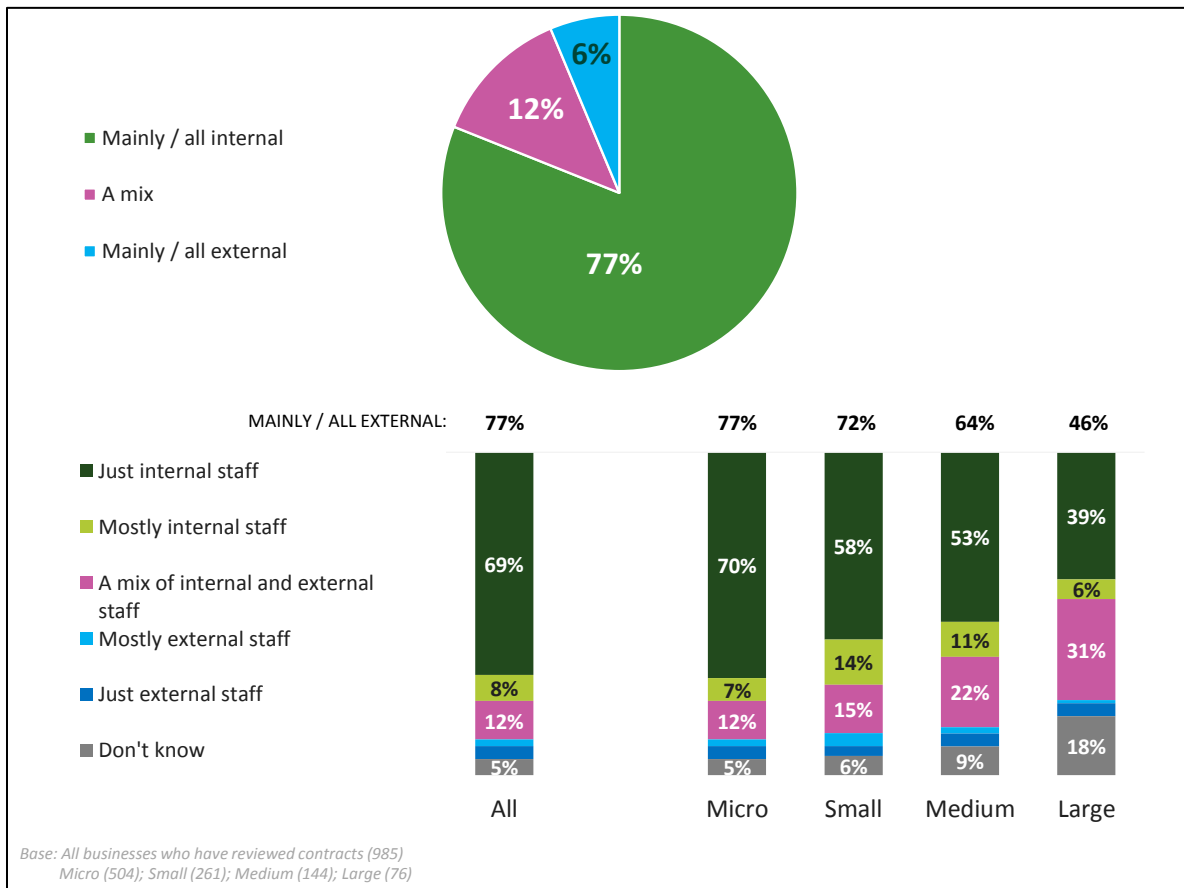
8.28 Whilst there was generally little difference in expected outcomes between business size, those from the Education and Health sector were particularly likely to undertake reviews in order to comply with legal requirements and legislation (28%), followed by those in the Real Estate and Business sector (23%). Those with an average transaction cost of more than £1,000 were also more likely to conduct reviews in order to comply with legal requirements (23%, compared to 16% of those with an average transaction cost of less than £1,000), as were, again, those who know the rules surrounding UCTs well (24%) and those familiar with the CRA 2015 (23%).

## Approach to conducting reviews of contracts

### Agency for review

- 8.29 The majority of businesses predominantly rely on staff internal to the organisation to conduct a review of the terms and conditions of the business: 77 per cent mainly used internal staff to conduct their last review, with 69 per cent *exclusively* using internal staff.
- 8.30 In contrast, only a very small minority (6%) of businesses outsourced the reviewing process. Businesses who contracted external staff to conduct their most recent review were most likely to consult legal advisors (40%), business advisors (39%) or accountants (29%).
- 8.31 By sector, businesses in the Transport, Storage and Communications sector were particularly likely to be mostly reliant on internal staff (90%), as were those in Hotels and Catering (86%).
- 8.32 The picture among large businesses is a little less clear cut. While ostensibly the proportion mainly using internal staff to conduct reviews was lower than average (46% compared with 77%), it is not simply the case that large organisations are more likely to outsource this work. Instead there is a lot more crossover, with three in ten (31%) large organisations harnessing the expertise of external staff as well as the organisational knowledge of internal staff. Meanwhile, reflecting the structural complexities of these organisations, close to one in five (18%) simply were not sure who conducted the last review of the businesses' terms and conditions. Figure 8.5 below illustrates these figures at the overall level, and by size.

**Figure 8.5 Whether the last contract review was conducted internally or externally**



## Sources of information and guidance

- 8.33 Amongst organisations who conducted their last review internally, businesses most commonly used staff feedback (51%) to inform these. This was followed by customer feedback (45%) and comparisons with competitor contracts (39%).
- 8.34 Businesses in the Education and Health sector were particularly likely to rely on staff feedback during internal reviews (76%). In contrast, the use of customer feedback was particularly common amongst businesses in the Hotels and Catering sector (59%). Six in ten businesses (59%) which frequently have disputes with customer also used customer feedback to inform their review. While this is relatively high, this also leaves two-fifths of businesses subject to frequent disputes who do not make use of customer feedback to update their terms and conditions accordingly.
- 8.35 Businesses who used mainly internal staff to conduct their last review also took advantage of external sources to inform their review. Three in ten (30%) sought advice from external advisors, with 19 per cent specifically citing a legally qualified individual such as a solicitor. A similar proportion (29%) used guidance from a regulator, with five per cent explicitly citing the CMA. A further 29 per cent made use of their Trade Association to help inform their review.
- 8.36 Larger businesses were considerably more likely to use regulator guidance and other external sources of advice. Using regulator guidance was also common in the Education and Health, and Real Estate and Business sectors.
- 8.37 At an overall level, legal advisors or solicitors were used by one in five (22%) of all businesses when conducting their most recent review, either outsourcing the review to such individuals, or through individual internal staff seeking guidance from them during the review process. Just under a third (32%) of businesses conducted their review completely in-house, making no use of any external guidance or assistance, legal or otherwise.

## Members of staff responsible for signing off reviews

- 8.38 The person responsible for signing off reviews varied by business size. In larger companies, reviews were more likely to be signed off by senior management rather than at director level. Among smaller companies, the owner tended to have responsibility for signing off reviews, as Table 8.2 shows.

**Table 8.2 Members of staff responsible for signing off contract reviews, by business size**

	All	Micro	Small	Medium	Large
<b>Base</b>	1,250	662	315	178	95
<b>The owner</b>	<b>66%</b>	67%*	42%*	21%*	11%*
<b>Managing Directors</b>	<b>19%</b>	19%*	26%*	31%*	32%*
<b>Finance Directors</b>	<b>&lt;1%</b>	<1%*	2%*	4%*	5%*
<b>Legal Directors</b>	<b>&lt;1%</b>	<1%*	1%	0%	9%*
<b>Other Directors</b>	<b>3%</b>	3%*	8%*	11%*	9%*
<b>Senior Management</b>	<b>4%</b>	4%*	16%*	25%*	16%*

## Appendix A: Survey Questionnaire

Contract Terms Research

J5650

Date

20/10/16

Questionnaire

Telephone

### S Screener

ASK TELEPHONIST

S1 **Good morning / afternoon. My name is NAME and I'm calling from IFF Research.**

[IF SAMPLE NAMED: **Please can I speak to <NAME>.**]

[IF NO NAME ON SAMPLE: **Please can I speak to the most senior person in the organisation/business who has day-to-day responsibility for handling relationships with your customers, clients or people who buy from you?**

**ADD IF NECESSARY: This could be the Operations Manager, Customer Services Manager, Sales Manager or a Director [IF SIZE= <50 employees: or owner] of the business/organisation.**

Transferred	1	CONTINUE
Hard appointment	2	MAKE APPOINTMENT
Soft Appointment	3	
Engaged	4	CALL BACK
Refusal	5	CLOSE
Refusal – company has no customers or clients	6	
Refusal – company policy	7	
Refusal – Taken part in recent survey	8	
Nobody at site able to answer questions	9	
Not available in deadline	10	
Fax Line	11	

No reply / Answer phone	12	
Residential Number	13	
Dead line	14	
Company closed	15	
Request reassurance email	16	COLLECT EMAIL ADDRESS THEN CONTINUE OR MAKE APPOINTMENT  (SEE APPENDIX FOR EMAIL TEXT)

ASK ALL

- S2 **Good morning / afternoon, my name is NAME, calling from IFF Research, an independent market research company. We're conducting an important study on behalf of the Competition and Markets Authority (CMA) about how businesses/organisations deal with their customers/people who buy from them.**

**The findings from this research will help the CMA to better understand how businesses/organisations interact with their customers and clients (i.e. the people who use your services), and will help them to better target their policies and communications with organisations like yours in the future.**

**ADD IF NECESSARY: Depending on your answers the interview will take around 10 to 15 minutes to complete, but we can always begin now, see how far we get, and if you need to go at any point, we can easily set an appointment to call back.**

**ADD IF NECESSARY: This is not a sales call. Your company has been selected at random from a commercially available sample provider, the Market Location business database. We are trying to speak with businesses/organisations of varying sizes and from different industries across the UK, so that our results are representative of the broad UK business population.**

**ADD IF NECESSARY ABOUT CMA IF ASKED: The CMA is the UK's primary competition and consumer authority. It's responsible for making sure markets work well for consumers, businesses and the economy. It took over from the Office of Fair Trading (OFT) and Competition Commission in 2014.**

**ALL:**

**Please note that all data will be reported anonymously and your answers will not be reported to our client in any way that would allow you to be identified.**

**Would it be OK to continue with this now?**

Continue	1	CONTINUE
Referred to someone else at establishment NAME_____	2	TRANSFER AND RE-INTRODUCE
JOB TITLE_____		
Hard appointment	3	MAKE APPOINTMENT
Soft appointment	4	
Refusal	5	THANK AND CLOSE
Refusal – company has no customers or clients	6	
Refusal – company policy	7	
Refusal – taken part in recent survey	8	
Not available in deadline	9	
Show reassurances	10	GO TO REASSURANCE PAGE
Request reassurance email	11	COLLECT EMAIL ADDRESS THEN CONTINUE OR MAKE APPOINTMENT  (SEE APPENDIX FOR EMAIL TEXT)

S3 **This call may be recorded for quality and training purposes only.**

ASK ALL

S4 **To begin with we just have a few questions about your business/organisation. Is your business/organisation...?**

*READ OUT. SINGLE CODE.*

<b>Profit making, e.g. private sector</b>	1	
<b>Non-profit making, e.g. charity or government body</b>	2	
DO NOT READ OUT: None of the above	3	



ASK ALL

S5 [IF PROFIT MAKING (S4=1): **Does your business deal directly with consumers or businesses, or both? By consumers I mean customers who are not other businesses, that is the general public.**

*ADD IF NECESSARY: This might be through selling goods, services or digital content that customers download online.]*

[IF NON-PROFIT (S4=2/3): **Does your organisation sell any goods, services or downloadable digital content directly to consumers, directly to businesses, or to both consumers and businesses? By consumers I mean people who are not other businesses, that is the general public.]**

*DO NOT READ OUT. SINGLE CODE.*

Consumers only	1
Businesses only	2
Businesses and consumers	3
We do not sell anything	5
Don't know	4

**IF S5=3 From now on we will focus just on your dealings with customers, i.e. the general public.**

IF DON'T KNOW WHO SELL TO (S5=4)

S5a **Is there anybody else who has overall responsibility for handling relationships with customers and/or deciding or communicating the terms and conditions of how you do business, who would be able to answer this?**

*DO NOT READ OUT. SINGLE CODE.*

Yes	1	TRANSFER AND RE-INTRODUCE AT S2
No	2	CONTINUE
Don't know	3	

ASK ALL

S6 **I have [READ OUT SECTOR DESCRIPTION FROM SAMPLE] as a general description of what your business/organisation does. Bearing in mind this is a general description only, does this sound correct?**

Yes	1	
No	2	GO TO S7
Don't know	3	

IF DISAGREE WITH SAMPLE SECTOR (S6=2/3)

S7 **What is the main business activity of your business/organisation?**

*INTERVIEWER PROBE FOR THE FOLLOWING - START WITH FIRST PROBE AND ONLY USE THE OTHERS IF NECESSARY TO GET CLEAR INFORMATION*

What is the main product or service that you sell?

What exactly is made or done by your business?

WRITE IN. TO BE CODED TO 4 DIGIT SIC 2007.
--

ASK ALL

S8 **How many employees does your business/organisation currently employ across all sites in the UK, excluding owners and partners?**

- PLEASE DO NOT INCLUDE TEMPORARIES/CASUALS OR AGENCY STAFF
- INCLUDE FULL AND PART TIME EMPLOYEES
- EXCLUDE SELF-EMPLOYED
- EXCLUDE OWNERS/PARTNERS, BUT OTHER DIRECTORS COUNT AS EMPLOYEES

WRITE IN [DS AUTOMATICALLY FORCE TO S8RAN RANGE]		
Don't know	1	PROMPT WITH RANGES AT S8RAN

IF DON'T KNOW EXACT NUMBER AT S8 PROMPT WITH RANGES. OTHERWISE INTERVIEWER TO CODE TO RANGE

S8RAN **Is it approximately...?**

None – sole trader	1	Micro (0-9)	
1	2		
2-4	3		
5-9	4		
10-24	5	Small (10-49)	
25-49	6		
50-99	7	Medium (50-249)	
100-249	8		
250+	9	Large (250+)	
Don't know	10		

IF DO NOT SELL TO CONSUMERS (S5=2 OR 4 OR 5)

S9 **Thank you for your time today, however we are only looking to speak to businesses/organisations who sell products such as goods, services or digital content to consumers for this study.**

THANK AND CLOSE.

#### REASSURANCES TO USE IF NECESSARY

The interview will take around 15 minutes to complete.

Please note that all data will be reported in aggregate form and your answers will not be reported to our client in any way that would allow you to be identified.

It is important that we are able to talk to companies of varying sizes and from different industries across the UK, so that our results are representative of the broad UK business population.

If respondent wishes to confirm validity of survey or get more information about aims and objectives, they can call:

- **MRS: Market Research Society on 0500396999**
- **IFF: HELEN WRATHALL OR SAM SELNER: 0207 250 3035**
- **CMA: MAX MALAGONI: 020 3738 6690**

## A Use of contracts

ASK ALL

- A1 [IF PROFIT MAKING (S4=1): **We'd like to start by understanding your relationship with your customers. Throughout the survey, if I refer to customers, I am only talking about customers who are not businesses.**]

[IF NON-PROFIT (S4=2/3): **We'd like to start by understanding your relationship with your customers. By customers, I am talking about people who purchase from you any goods, services or downloadable content, and who are not businesses.**]

**Can I ask whether you sell or provide...**

*READ OUT. MULTICODE.*

<b>A physical good (i.e. a product)</b>	1
<b>A service</b>	2
<b>Digital content that customers download online</b>	3
DO NOT READ OUT: Other (Please specify)	4
DO NOT READ OUT: Don't know	5

ASK ALL

- A2 **In which of the following ways do your customers buy from you?**

*ADD IF NECESSARY: or make a booking or reservation, if providing a service?*

*READ OUT. MULTICODE.*

DS: RANDOMISE ORDER OF CODES 1-6

ALL WHO GAVE MORE THAN ONE ANSWER AT A2

- A3 **And which of these would you regard as the main way your customers buy from you?**

*ADD IF NECESSARY: Which one is responsible for most of your sales?*

*READ OUT IF NECESSARY. SINGLE CODE.*

DS: ONLY SHOW ANSWERS SELECTED AT A2

	A2	A3
<b>Via a retail store or showroom, such as on the high street</b>	1	1
<b>Over the Internet or digital TV</b>	2	2

<b>By mail order</b>	3	3
<b>By phone or fax</b>	4	4
<b>Presentations, meetings or events (i.e. taking place face-to-face)</b>	5	5
<b>Selling directly to people in their homes</b>	6	6
(1) <b>Any other channel</b> (PLEASE SPECIFY)	7	7
(2) <b>Any other channel</b> (PLEASE SPECIFY)	8	8
(3) <b>Any other channel</b> (PLEASE SPECIFY)	9	9
DO NOT READ OUT: Don't know	10	10

ASK ALL

A4 **In the last 12 months, have you sold the goods, services or digital content of other businesses to customers?**

*ADD IF NECESSARY: This might for example, include 3<sup>rd</sup> party insurance.*

Yes	1	
No	2	
Don't know	3	

IF SELL OTHER BUSINESSES' PRODUCTS (A4=1)

A5 **Do these businesses provide written, online or verbal terms and conditions for their goods, services or digital content, which you then pass on to the customer?**

Yes	1	
No	2	
Don't know	3	

## B Incidence of contract terms

ASK ALL

B1 Do you do any of the following when dealing with customers?

READ OUT. SINGLE CODE.

DS: PLEASE RANDOMISE

	YES	NO	Don't Know
_1 Do you take deposits, or advance payments?	1	2	3
_2 Do customers ever have to pay cancellation charges?	1	2	3
_3 Do you apply charges or other kinds of sanctions if customers go against your agreement?	1	2	3
_4 Do you limit how far you can be held liable if things go wrong?	1	2	3
_5 Do you sometimes make changes, for example to the price of the products or details of the service you provide, once you've already started dealing with a customer?	1	2	3
_6 Do you have rolling contracts with customers that automatically renew?	1	2	3
_7 Do customers have to fill out paperwork when they want to change anything about your arrangement?	1	2	3
_8 Do you have rules on privacy or how you use customer data that you ask customers to agree to?	1	2	3

ASK ALL

B2 What is the average cost, in pounds sterling (£), of an individual sale or contract with a customer?

WRITE IN [DS AUTOMATICALLY FORCE TO B2RAN RANGE]		
Don't know	1	PROMPT WITH RANGES AT B2RAN

IF DK CONTRACT COST (B2=DK)  
 B2RAN **Is it approximately...?**

*READ OUT. SINGLE CODE.*

Less than £10	1
£10-£49	2
£50-£99	3
£100-£249	4
£250-£499	5
£500-£999	6
£1,000-£4999	7
£5,000-£9,999	8
£10,000-£49,999	9
£50,000+	10
Don't know	11
Refused	12



ASK ALL

B3 **How do you confirm what the customer is buying from you?**

*READ OUT. MULTICODE*

ASK IF MULTIPLE ANSWERS GIVEN AT B3

B4 **And which of these is the most common way of confirming what they have bought?**

*PROMPT IF NECESSARY. SINGLE CODE.*

ASK ALL WHO CONFIRM WITH CUSTOMER (B3=1-8)

B5 **Are your business'/organisation's terms and conditions [B3= 1-5/8: included in the <B3 CODE>; B3=6-7: covered when communicating to the customer <B3 CODE>]?**

*DO NOT READ OUT. SINGLE CODE.*

DS: For code 1 at B5, relabel to: **hard copy or paper document, including receipts, customers receive**

	B3	B4	B5		
			Yes	No	Don't know
<b>Through a hard copy or paper document (including receipts)</b>	1	1	1	2	3
<b>Point of sale or in store notices</b>	2	2	1	2	3
<b>Company website</b>	3	3	1	2	3
<b>Online portal</b>	4	4	1	2	3
<b>Confirmation email</b>	5	5	1	2	3
<b>Verbally in person, i.e. face-to-face</b>	6	6	1	2	3
<b>Verbally, over the phone</b>	7	7	1	2	3
<b>By any other means (Please specify)</b>	8	8	1	2	3
<b>SINGLE CODE ONLY: None of these</b>	9	9			
<b>DO NOT READ OUT: Don't know</b>	10	10			

B5Dum **DUMMY VARIABLE, DO NOT ASK**

Terms and conditions are communicated to the customer in some format	1	Any B5=1
There are no terms and conditions supplied to the customer	2	All B5=2/3 OR B3=9
Don't know	3	B3=10

IF HAVE CONTRACTS OR TERMS AND CONDITIONS (B5DUM=1)

**B6 At what point are customers made aware of, or able to see your terms and conditions?**

**ADD IF NECESSARY:** These terms and conditions might be available on receipts you provide, stated in verbal agreements or available online for example.

*READ OUT. MULTICODE.*

<b>Prior to purchasing the product, service or digital content</b>	1	
<b>At the point of sale</b>	2	
<b>After purchasing the product, service or digital content</b>	3	
DO NOT READ OUT: Other (Please specify)	4	
DO NOT READ OUT: Don't know	5	

ASK ALL

**B7 And how can customers access your terms of business at a later date? Do you...?**

*READ OUT. MULTICODE.*

<b>Provide hard copies or paper documents</b>	1	
<b>Have point of sale or instore notices</b>	2	
<b>Make them available to customers on your website</b>	3	
<b>Make them available to customers through your online portal</b>	4	
<b>Communicate this information via email, on request</b>	5	
<b>Provide this information verbally face-to-face</b>	6	
<b>Provide this information in person, over the phone</b>	7	
<b>Provide this information by any other means (Please specify)</b>	8	
<b>SINGLE CODE: This information is not made available to customers</b>	9	
DO NOT READ OUT: Don't know	10	

ASK ALL

B8 **How often do you need to make changes to what you've agreed, such as the details of a contract or specific terms and conditions of business? Does this happen...?**

READ OUT. SINGLE CODE.

<b>Very often</b>	1	
<b>Often</b>	2	
<b>Occasionally</b>	3	
<b>Hardly ever</b>	4	
<b>Never</b>	5	
DO NOT READ OUT: Don't know	6	

ASK ALL

B9 **And how often do your customers try to make changes to what's been agreed?**

READ OUT. SINGLE CODE.

<b>Very often</b>	1	
<b>Often</b>	2	
<b>Occasionally</b>	3	
<b>Hardly ever</b>	4	
<b>Never</b>	5	
DO NOT READ OUT: Don't know	6	

ALL WHO INFORM CUSTOMERS OF CHANGES (B8=1-4)

B10 **How do you inform customers when you need to make a change to the details of a contract, or specific terms and conditions of business? Do you...?**

READ OUT. MULTICODE.

<b>Provide hard copies or paper documents, e.g. letters</b>	1	
<b>Have point of sale or instore notices</b>	2	
<b>Display information on your website</b>	3	
<b>Inform customers through your online portal</b>	4	

<b>Communicate this information via email</b>	5	
<b>Provide this information verbally face-to-face</b>	6	
<b>Provide this information in person, over the phone</b>	7	
<b>Provide this information by any other means (Please specify)</b>	8	
<b>SINGLE CODE: This information is not made available to customers</b>	9	
<b>DO NOT READ OUT: Don't know</b>	10	

ALL WHOSE CUSTOMERS GET IN TOUCH ABOUT CHANGES (B9=1-4)

B11 **And how do customers typically let you know when they need to make a change?**

*READ OUT. MULTICODE.*

<b>They provide hard copies or paper documents, e.g. letters</b>	1	
<b>Via your website</b>	2	
<b>Via your online portal</b>	3	
<b>By email</b>	4	
<b>Verbally in person, i.e. face-to-face</b>	5	
<b>Verbally, over the phone</b>	6	
<b>Provide this information by any other means (Please specify)</b>	7	
<b>DO NOT READ OUT: Don't know</b>	8	

ASK ALL

B12 **How often do you have disputes with customers over your terms of business, or what you've set out in a contract?**

*READ OUT. SINGLE CODE.*

<b>Very often</b>	1	
<b>Often</b>	2	
<b>Occasionally</b>	3	
<b>Hardly ever</b>	4	

<b>Never</b>	5	
DO NOT READ OUT: Don't know	6	

IF HAVE HAD DISPUTES (B12=1-4)

B13 **And what are these disputes most often about?**

*READ OUT. MULTICODE.*

<b>Recovering deposits or advance payments</b>	1
<b>Payment of cancellation charges</b>	2
<b>Payment of other fines or penalties, or any other sanctions</b>	3
<b>A faulty product or good</b>	4
<b>The business being at fault for something else that's gone wrong</b>	5
<b>Changes to an agreement you have in place with a customer, such as the price of the product or details of the service provided</b>	6
<b>Contracts or agreements that have automatically renewed</b>	7
<b>A customer's failure to comply with a formality or procedural requirement (such as filling out specific paperwork)</b>	8
<b>The business' use of the customer's personal data and rules on privacy</b>	9
<b>Anything else? (Please specify)</b>	10
DO NOT READ OUT: Don't know	11

IF HAVE HAD DISPUTES (B12=1-4)

B14 Which of the following best describes your use of terms and conditions when dealing with disputes?

READ OUT. SINGLE CODE.

We <b>always</b> apply our stated terms and conditions with <b>no</b> flexibility	1	
We have flexibility with <b>some</b> of our terms and conditions	2	
We have flexibility with <b>all</b> of our stated terms and conditions	3	
We don't have any terms or conditions – we deal with disputes on a case by case basis	4	
DO NOT READ OUT: Don't know	5	

IF HAVE HAD DISPUTES (B12=1-4)

B15 Have you ever had to go to court to resolve a contractual dispute you've had with a customer?

Yes	1
No	2
Don't know	3

IF HAVE HAD TO GO TO COURT (B15=1)

B16 How long ago was the last time you had to go to court to resolve a contractual dispute with a customer?

PROMPT IF NECESSARY. SINGLE CODE.

In the last few months	1	
Four to six months ago	2	
Between seven months and a year ago	3	
In the last 1 - 2 years	4	
In the last 3 - 5 years	5	
In the last 6 – 10 years	6	
Over 10 years ago	7	
DO NOT PROMPT: Never	8	DS TO BACKCODE IF SELECTED TO B13=2
Don't know	9	

## C Reviewing contracts or terms

IF HAVE CONTRACTS OR TERMS AND CONDITIONS (B5DUM=1)

**We've been talking about the ways in which businesses/organisations might deal with customers, and where they might use contracts or terms and conditions as part of this. I'd now like to ask some questions about how you decide what your terms should be, and how you go about reviewing these.**

**C1 Why do you have contracts or terms and conditions in place when you sell to customers?**

*ADD IF NECESSARY: Terms and conditions might be available on receipts you provide, stated in verbal agreements or available online for example.*

*DO NOT READ OUT. MULTICODE.*

To clarify the costs of what is being provided	1	
To set out what the business and customer can expect from each other	2	
To protect the business from losing money	3	
To avoid disputes with customers or legal action	4	
To limit or define the business's liability for theft, loss or damage	5	
We are legally required to do so	6	
To increase customer's trust that they're dealing with a fair and reputable business	7	
Health and safety issues	8	
Other (Specify)	9	
Don't know	10	

ASK ALL

C2 **On a scale of 1 to 5 where 1 means very infrequently and 5 means very frequently, how frequently does your business/organisation review its [IF B5DUM=2/3: use of] terms and conditions?**

PROMPT IF NECESSARY. SINGLE CODE.

1 - Very infrequently	1	
2	2	
3	3	
4	4	
5 - Very frequently	5	
Don't know	6	

ASK ALL

C3 **And how many years is it since your business/organisation last reviewed its [IF B5DUM=2/3: use of] terms and conditions?**

WRITE IN (0-999) [DS AUTOMATICALLY FORCE TO C3RAN RANGE]		
Don't know	1	PROMPT WITH RANGES AT C3RAN
Never conducted a review of terms and conditions	2	

IF DK TIME SINCE LAST REVIEW (C3=DK)

C3RAN **Is it approximately...?**

READ OUT. SINGLE CODE.

<b>Around a year ago</b>	1	
<b>Around 2 years ago</b>	2	
<b>Around 3 to 5 years ago</b>	3	
<b>Around 6 to 10 years ago</b>	4	
<b>More than 10 years ago</b>	5	
Never had a review of these	6	
Don't know	7	



**C3Dum DUMMY VARIABLE, DO NOT ASK**

Reviewed terms and conditions in past	1	C3≥0 OR C3RAN=1-5
Never reviewed terms and conditions	2	C3='code 2' OR C3RAN=6
Don't know	3	C3RAN=7

IF REVIEWED CONTRACTS IN PAST (C3DUM=1)  
**C4 And what prompted your last review or update of your terms and conditions regarding how you sell to customers?**

*ADD IF NECESSARY: What made you think about reviewing them?*

WRITE IN		
Don't know	1	

IF REVIEWED CONTRACTS IN PAST (C3DUM=1)  
**C5 What were you looking to achieve from the most recent review of your terms and conditions?**

WRITE IN		
Don't know	1	

IF REVIEWED CONTRACTS IN PAST (C3DUM=1)  
**C6 When you last reviewed your terms and conditions regarding how you sell to your customers, who conducted this review? Was it...**

*READ OUT. SINGLE CODE.*

<b>Just conducted by internal staff</b>	1	
<b>Mostly internal staff, but some external advisors or consultants</b>	2	
<b>A mix of internal staff and external advisors</b>	3	
<b>Mostly external advisors, but some internal staff too</b>	4	
<b>Just external advisors or consultants</b>	5	
<b>DO NOT READ OUT: Don't know</b>	6	

IF REVIEW INTERNALLY (C6=1-4)

C7 **Just thinking about the last time your internal staff reviewed your terms and conditions, which of the following did they use to inform their review?**

READ OUT. MULTICODE.

<b>Customer feedback</b>	1	
<b>Staff feedback</b>	2	
<b>Discussions with solicitors or legal advisors</b>	3	
<b>Trade Associations</b>	4	
<b>CMA (Competition and Markets Authority) guidance</b>	5	
<b>Requirements or guidance from a regulator</b>	6	
<b>Comparisons with competitor contracts</b>	7	
<b>Advice from or discussions with other external advisors</b>	8	
<b>Any other source</b> (Please specify)	9	
DO NOT READ OUT: None of these	10	
DO NOT READ OUT: Don't know	11	

IF REVIEW EXTERNALLY (C6=2-5)

C8 **You mentioned that the last review of your terms and conditions was conducted by external advisors [C6=2-4:, as well as internal staff]. What types of external advisors or consultants conducted this review?**

READ OUT. MULTICODE.

<b>Solicitors or legal advisors</b>	1	
<b>Accountants</b>	2	
<b>Business advisors</b>	3	
<b>Any other advisors</b> (Please specify)	4	
DO NOT READ OUT: Don't know	5	

ASK ALL

C9 **Whose responsibility is it to sign off the terms and conditions you use for your business/organisation? Is it the responsibility of...?**

READ OUT. SINGLE CODE.

<b>The owner</b>	1	
<b>Managing director(s)</b>	2	
<b>Finance Directors</b>	3	
<b>Legal Directors</b>	4	
<b>Other directors</b>	5	
<b>Senior management</b>	6	
Other (please specify)	7	
DO NOT READ OUT: Don't know	8	

ASK ALL

C10 **Thinking ahead to the future, in how many years do you expect to conduct a review of your terms and conditions?**

WRITE IN (0-999) [DS AUTOMATICALLY FORCE TO C3RAN RANGE]		
Don't know	1	PROMPT WITH RANGES AT C10RAN
Not intending to conduct a review of terms and conditions in future	2	

IF DK TIME WHEN NEXT REVIEW WILL BE (C10=DK)  
 C10RAN **Will it be approximately be...?**

READ OUT. SINGLE CODE.

<b>In a year or so</b>	1	
<b>In the next 2 years</b>	2	
<b>In the next 3 to 5 years</b>	3	
<b>In the next 6 to 10 years</b>	4	
<b>More than 10 years away</b>	5	
Not intending to conduct a review of terms and conditions in future	6	
Don't know	7	

<b>C10Dum DUMMY VARIABLE, DO NOT ASK</b>		
Will review terms and conditions in future	1	C10>0 OR C10RAN=1-5
Not intending to conduct a review of terms and conditions in future	2	C10='code 2' OR C10RAN=6
Don't know	3	C10RAN=7

## D General attitudes and awareness

ASK ALL

**We've been talking about the ways in which businesses/organisations might use contracts or terms and conditions in their agreements with customers. I'd like now to ask some general questions about the rules and regulations that apply in this area.**

ASK ALL

**D1 How well would you say you know the rules around the use of 'Unfair Contract Terms'?**

*READ OUT. SINGLE CODE.*

<b>Very well</b>	1
<b>Fairly well</b>	2
<b>Not very well</b>	3
<b>Not at all well</b>	4
<b>Never heard of them</b>	5

ASK ALL

**D2 And on a scale of 1 to 5 where 1 means 'Very unfamiliar' and 5 'Very familiar', how familiar are you personally with the 2015 Consumer Rights Act?**

*DO READ OUT. SINGLE CODE.*

1 - Very unfamiliar	1
2	2
3	3
4	4
5 - Very familiar	5
Don't know	6

## E Firmographics

ASK ALL

**Thanks for your time so far today. Before we finish I'd just like to collect some information about the nature of your business/organisation.**

**E1 How many years has your business/organisation been operating?**

WRITE IN (0-999) [DS AUTOMATICALLY FORCE TO E1RAN RANGE]		
Don't know	1	PROMPT WITH RANGES AT E1RAN

IF DK CONTRACT COST (E1=DK)  
E1RAN **Is it approximately...?**

*READ OUT. SINGLE CODE.*

<b>1-2 years</b>	1	
<b>3-5 years</b>	2	
<b>6-10 years</b>	3	
<b>11-20 years</b>	4	
<b>21-50 years</b>	5	
<b>Over 50 years</b>	6	
Don't know	7	

ASK ALL

**E2 What is the legal status of your business/organisation?**  
*PROMPT AS NECESSARY. SINGLE CODE.*

Sole proprietorship	1	
Private limited company, limited by shares (LTD.)	2	
Public Ltd Company (PLC)	3	
Partnership	4	
Limited liability partnership	5	
Private company limited by guarantee	6	
Community Interest Company (CIC, limited by guarantee or shares)	7	
A Co-operative	8	
Industrial and Provident Society	9	
Private Unlimited Company	10	
Foreign Company	11	
An unincorporated association	12	
Other (SPECIFY)	13	
Don't know	14	



ASK ALL

E3 **And what was the approximate total annual turnover of your business/organisation in your last financial year?**

*READ OUT AND CODE TO SINGLE RANGE.*

<b>Up to £50,000</b>	1
<b>£50,001 to £100,000</b>	2
<b>£100,001 to £250,000</b>	3
<b>£250,001 to £500,000</b>	4
<b>£500,001 to £1,000,000</b>	5
<b>£1,000,001 to £2,000,000</b>	6
<b>£2,000,001 to £5,000,000</b>	7
<b>£5,000,001 to £10,000,000</b>	8
<b>£10,000,001 to £25,000,000</b>	9
<b>Over £25,000,000</b>	10
DO NOT READ OUT: Don't know	11
DO NOT READ OUT: Refused	12

ASK ALL

E4 **Was your annual turnover for the last complete financial year...?**

*READ OUT. SINGLE CODE.*

<b>Significantly higher than the year preceding it</b>	1
<b>Slightly higher</b>	2
<b>About the same level</b>	3
<b>Slightly lower</b>	4
<b>Significantly lower than the year preceding it</b>	5
DO NOT READ OUT: Haven't been operating long enough to compare two financial years	6
DO NOT READ OUT: Don't know	7

## F Re-contact

ASK ALL

- F1 **Thank you very much for taking the time to speak to us today. We may be conducting further research relating to this topic. Would you be willing to be re-contacted by any of the following about this research if it were necessary?**

READ OUT. MULTICODE

<b>The CMA</b>	1
<b>IFF Research, on behalf of the CMA</b>	2
<b>Another market research agency on behalf of the CMA</b>	3
(SINGLE CODE) DO NOT READ OUT: None of these	4

IF CONSENT TO RECONTACT (F1=1-3)

- F2 **And could I just check, is [NUMBER] the best number to call you on?**

Yes	1	
No - write in number	2	

ASK ALL

- F3 **And is there anything more you would like to say regarding the issues we've talked about today?**

WRITE IN		
Nothing to add	1	

ASK ALL

Collect respondent name (RNAME), job title (RJOB) and Email (REMAIL).

THANK RESPONDENT AND CLOSE INTERVIEW
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Finally I would just like to confirm that this survey has been carried out under IFF instructions and within the rules of the MRS Code of Conduct. Thank you very much for your help today.

“

IFF Research illuminates the world for organisations businesses and individuals helping them to make better-informed decisions.”

Our Values:

### 1. Impartiality and independence:

IFF is a research-led organisation which believes in letting the evidence do the talking. We don't undertake projects with a preconception of what “the answer” is, and we don't hide from the truths that research reveals. We are independent, in the research we conduct, of political flavour or dogma. We are open-minded, imaginative and intellectually rigorous.

### 2. Being human first:

Whether employer or employee, client or collaborator, we are all humans first and foremost. Recognising this essential humanity is central to how we conduct our business, and how we lead our lives. We respect and accommodate each individual's way of thinking, working and communicating, mindful of the fact that each has their own story and means of telling it.

### 3. Making a difference:

At IFF, we want to make a difference to the clients we work with, and we work with clients who share our ambition for positive change. We expect all IFF staff to take personal responsibility for everything they do at work, which should always be the best they can deliver.



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