

# This document issued by the Office of Fair Trading (OFT) has been withdrawn.

This document did not take account of developments in case law, legislation, or practices since its original publication. It should not be relied on either as a statement of the law or CMA policy.

Current CMA Guidance on unfair contract terms can be found at [Unfair contract terms: CMA37](#), which replaced all previous OFT / CMA guidance on unfair contract terms when the Consumer Rights Act came into force on 1st October 2015. Other information on the CMA's consumer powers can be found in [Consumer protection enforcement guidance: CMA58](#).

# Explained

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## \*Guidance for businesses that issue consumer contracts

Please note: UTCCR's Explained was originally an OFT document. The following text is substantially taken from the OFT document, with for example references to the OFT changed where appropriate to the CMA. The majority of the consumer powers previously held by the OFT were transferred to the CMA, as of 1 April 2014, under the Enterprise and Regulatory Reform Act 2013.

# UNFAIR

## Introduction

The Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) protect **consumers** from unfair or one-sided contracts with **businesses**.

Broadly, they protect consumers against standard terms that could be used to give the business an unfair advantage. The UTCCRs highlight that standard consumer contracts should

- be fair
- use jargon free language that consumers can understand.

If some of your standard terms are unfair under the UTCCRs, you could face legal action and may find that terms you consider to be important in your agreements are not legally binding on consumers.

*UTCCRs explained* is written to provide businesses with an overview of the type of terms that the CMA considers are open to challenge under the UTCCRs, in an easy to digest format. It covers

- when the UTCCRs apply
- the test for fairness
- the consequences using unfair terms could have on your business
- examples of types of terms that the CMA might consider unfair
- some related consumer legislation.

*UTCCRs explained* provides an introduction to the CMA's views on terms which, are covered by the Regulations and the forms that unfairness can take (as set out in OFT publications which have been adopted by the CMA). The final decision on whether a term is unfair rests with the courts. *UTCCRs explained* cannot be a substitute for independent legal advice as to whether a court could consider a particular term is fair or unfair. Please read our *Using UTCCRs explained* section for more information.

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## Using UTCCRs explained

*UTCCRs explained* is a brief introduction to the CMA's view on terms that are covered by the Regulations, and the types of terms that it considers are open to challenge for unfairness. It was originally an OFT document. It is not a substitute for the Regulations or a full interpretation of them.

The Regulations should be read together with the EU Directive: *Council Directive 93/13/EEC April 1993* on unfair terms in consumer contracts (to which they give effect), as this contains additional explanatory material.

In addition, the OFT had produced comprehensive general guidance adopted by the CMA, as well as specific industry sectors guidance also adopted by the CMA, on types of terms that are unfair <sup>1</sup>.

Examples are included to help you understand the types of terms in business-to-consumer contracts that the CMA thinks have the potential for unfairness. However, the final decision on whether a term is unfair rests with the courts.

Words that are underlined are defined within the glossary. *UTCCRs explained* is not a substitute for independent legal advice.

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<sup>1</sup> The OFT's main guidance documents on the UTCCRs generally (OFT311 and OFT143) and as applicable to particular sectors have at this point been adopted by the CMA not reissued in updated form. They need to be read alongside **Consumer protection: guidance on the CMA's approach to use of its consumer powers** (CMA7), and subject to changes in the law and enforcement arrangements which have occurred since the date on which each was published, particularly resulting from the coming into force of the Enterprise and Regulatory Reform Act 2013 (see annex B of CMA7, March 2014).

Words  
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Glossary<sup>§</sup>

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<sup>§</sup> *UTCCRs explained* is not a substitute for independent legal advice.

# When the UTCCRs apply and who they apply to

The UTCCRs only apply to agreements between a **consumer** and a **seller or supplier**, we use the word 'business' to describe the seller or supplier throughout, to put it simply business-to-consumer contracts.

Consumer-to-consumer and business-to-business contracts are not covered by the UTCCRs. The Regulations also do not apply to terms in non-consumer contracts, such as employment contracts, agreements dealing with setting-up or running a business, succession rights and family law.

*UTCCRs at a glance* can help you check whether the UTCCRs apply to your business – [www.gov.uk/cma](http://www.gov.uk/cma)

## Is your 'small print' fair?

The UTCCRs are relevant to your **standard terms**, rather than any terms that have been specifically negotiated with a consumer. Standard terms are pre-set business terms, often referred to as your 'small print'. However, they don't necessarily need to be in writing – see *What you say and what you print* section for more details.

The UTCCRs **test for fairness** can be applied in full to the majority of your standard terms, although there are a few exceptions, which we detail in *Which terms can be assessed?*

THE UTCCR'S  
APPLY TO  
AGREEMENTS  
BETWEEN

CONSUMER  
AND A SELLER  
OR SUPPLIER

# Which terms can be assessed?

The majority of terms in business-to-consumer contracts are subject to the UTCCRs, although some are exempt. The two main types of exemptions are those that reflect the law and individually negotiated terms.

Also, terms that describe the main subject matter of the contract and the price to be paid, sometimes known as 'core terms', where they meet the requirements of plain, intelligible language, may only be assessed for fairness in a limited way.

## Terms reflecting the law

These are terms that must be included in a contract by law, or that the law explicitly says are allowed.

Terms must reflect the law clearly, not in a misleading way, and might be considered unfair if they give an advantage to the business beyond the minimum that the law allows.

## Individually negotiated terms

The test for fairness is not applied to a term that is individually negotiated with the consumer.

A term will not be seen as individually negotiated if it has been drafted in advance; meaning that the consumer has not been able to influence it. However, if you claim that a term has been specially negotiated with the consumer, it will be your responsibility to show that it was.

Even if some terms are proved to be individually negotiated, any pre-set standard terms within that same contract would still be subject to the UTCCRs' test for fairness.

## Price and main subject matter

Provided they are in plain and intelligible language, the assessment of these terms, sometimes known as 'core terms', is limited.

Where the plain and intelligibility requirement is met, an assessment of fairness cannot relate to the definition of the main subject matter of the contract or the adequacy of the price. A term is not unfair simply because it sets a price that is higher than other businesses charge, or describes a product that the consumer considers represents poor value for money. However, these terms may still be assessed on other grounds that do not relate to issues at the core of the contract (for example, the timing of payment or whether it can be varied).

Where the requirement of plain, intelligible language is not met, this exemption does not apply and these terms are subject to a full assessment for fairness. These terms may also be open to challenge as unfair if they are hidden away in small print, as if unimportant, when in fact they are potentially burdensome.

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In<sup>§</sup> tell<sup>†</sup> igi<sup>\*</sup> ble?

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1. Businesses should not take advantage of the consumer's weaker bargaining power or lack of experience in deciding what their rights and obligations should be.

## What is an unfair term?

A standard term is unfair if it creates a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer and contrary to the requirement of 'good faith'.

Good faith is based on the general principle of 'fair and open dealing', where terms are expressed fully, clearly and legibly, and with respect for the consumer's interests. Terms that might disadvantage the consumer should be given appropriate prominence. In addition, businesses should not take advantage of the consumer's weaker bargaining power or lack of experience in deciding what their rights and obligations should be.

In assessing fairness, the CMA notes how a term could be used. A term is open to challenge if it is drafted so that it could cause consumer detriment.

By listing some types of terms that may be unfair, Schedule 2 ([legislation.gov.uk/ukxi/1999/2083/schedule/2/made](https://legislation.gov.uk/ukxi/1999/2083/schedule/2/made)) to the UTCCRs provides examples of what 'unfairness' means. This is not an exhaustive list and terms like these are not necessarily unfair in all circumstances. However, terms are under suspicion of unfairness, if they have the same purpose, or can produce the same result as terms in the list.

All of the potentially unfair terms in Schedule 2 have the aim or effect of reducing the consumer's rights under the ordinary rules of contract or general law. Broadly, they either

- limit the rights of consumers and stop them making certain legal claims against the business, which they could otherwise have made, or
- give the business rights against the consumer, which it would not otherwise have had.

When assessing a term for unfairness, considerations have normally included

- how a term could be used - it may be considered unfair if it could be capable of causing detriment to consumers, even if it is not at present being used unfairly in practice
- whether the term changes the normal position seen by the law as striking a fair balance
- whether a term is weighted in favour of the business
- all other terms of the contract
- the nature of the goods or services for which the contract was concluded
- any relevant circumstances when the contract was concluded.

## Plain, intelligible language

The UTCCRs require standard terms to be expressed in plain, intelligible language <sup>2</sup>. This means that consumers, not just lawyers, can understand not just the words used, but their effect.

Unclear or ambiguous terms and those with uncertain application, especially those that could be detrimental to the consumer, may be challenged.

Where the meaning of a term is ambiguous, the UTCCRs state that the interpretation that is most favourable to the consumer shall prevail. This rule is intended to benefit consumers in private disputes not to give businesses a defence against regulatory action.

The following can help you improve the transparency of your consumer contracts. Terms and conditions should be

- jargon free – ordinary words should be used as far as possible and in their normal sense
- unambiguous – clear in their meaning and not open to a number of interpretations
- reader-friendly – terms are organised and understood (for example, short sentences and subheadings)
- legible – for example in a suitable font size and of appropriate print quality.

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<sup>2</sup> Regulation 7 of the UTCCRs states 'a seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language'.



In general, all kinds of terms are more likely to be considered fair when they are transparent and consumers are able to understand what they are agreeing to. However, transparency alone does not mean your terms will be fair, as the substance of the term, as well as the way it is presented, is important.

Our *terms that may be considered unfair* section provides examples of types of terms that could be unfair.

*UTCCRs how to* provides a practical guide to help you comply with the UTCCRs – [www.gov.uk/cma](http://www.gov.uk/cma)

# FAIR?\*\*\*

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**\*\* TERMS ARE  
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*TRANSPARENT***

# Terms that may be considered unfair

The following examples provide an insight into the types of terms that could be unfair. These are based on terms listed in Schedule 2 to the UTCCRs and also include additional terms that the CMA considers may be unfair. This is not an exhaustive list, and terms like these may be unfair in some circumstances, but not in others. Any term, including a price or subject matter term, can be unfair if it is unclear or hidden away.

## Terms excluding or limiting liability

Unfairness is likely to arise when a business includes a term that limits or excludes its liability in relation to the agreement when it is in breach, also known as disclaimers or exemption clauses. If a term could be used to reduce or remove the consumer's power to seek redress, particularly for negligence, it is likely to be considered unfair, even if that was not the intention.

For example, a term that states customers use facilities 'at their own risk', covers liability for death or personal injury, even if the main concern of the business may be something else.

No contract term can legally have the effect of excluding liability for death or personal injury caused by negligence in the course of business, and such terms should not appear in consumer contracts <sup>3</sup>. As well as being unfair, use of such a term is liable to be misleading and may give rise to enforcement action as an unfair commercial practice.

Contract terms that deny consumers the right to full compensation where their statutory rights are not met by the business, are likely to be considered unfair. Terms that exclude or restrict liability if goods prove to be defective are also prohibited by other legislation.

There are many other kinds of disclaimers, which may also be considered unfair when used in standard terms of business-to-consumer contracts, including those that may have the effect of

- excluding the business's liability for its delay
- excluding the business's liability for failing to perform its obligations, for example, 'management reserves the right to suspend services without liability'
- reducing the amount or availability of consumer redress, for example, 'liability accepted up to the value of the goods only'
- placing unreasonable time limitations on consumer claims
- excluding the consumer's right of set-off, for instance, where the consumer is required to pay in full, even if they have a legitimate complaint about the goods or services
- disclaiming liability by conferring unsatisfactory guarantee rights, for example, 'we will repair or replace, at our option, any item found faulty within three months'.

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<sup>3</sup> The Unfair Contract Terms Act 1977 provides that a business cannot, by reference to contract term, exclude liability for death or personal injury resulting from negligence. The Act does not apply to all types of contract, although any such standard terms of the kind described appearing in consumer to business contracts would very likely to be considered unfair under the UTCCRs.

## Non-returnable consumer prepayments

When a contract is cancelled, consumers should not generally end up paying for a product or service that they have not received. This is especially true where the contract is ended by the business. A term that states no refund is available in this circumstance is likely to be considered unfair.

Even if the consumer causes the cancellation, the business should only keep an amount of the prepayments that covers any losses and costs they have incurred due to the cancelled order and cannot reasonably be reduced (for instance, by selling to someone else).

Terms should not interfere with other rights that the consumer may have regarding cancellation, for example, when a contract is entered at a distance (by post, telephone or online) or on the doorstep. See *Exclusions and reservations of special rights*.

## Penalties

Terms that permit excessive or disproportionately high penalties for breach of contract, are likely to be unfair and may also be unenforceable under general law. Consumers should not have to pay more compensation than is really needed to cover the damage they have caused.

A term imposing unreasonable interest rates on outstanding payments, for example, at a rate excessively above a bank's base rate, is likely to be regarded as an unfair penalty.

Other instances where penalty terms could be unfair include those that might

- mislead the consumer into thinking they are required to pay more compensation than is really the case
- allow the business to make a charge at a level it determines itself.

Over-severe sanctions of other kinds are also likely to be considered unfair, for instance, enforcement methods that involve violation of rights of privacy and property.



Contract.

# Both parties should enjoy rights of... †

## Unfair cancellation clauses

Both parties should enjoy rights of equal extent and value when it comes to cancelling the contract.

The law generally makes each party continue with a contract unless the other is in serious breach <sup>4</sup>. Terms that give businesses excessive cancellation rights can leave the consumer seriously inconvenienced, facing costs or other problems. If this is the case, then a term stating that a business can cancel for any reason, as long as it refunds the consumer's prepayments, is likely to be considered unfair. There is also potential for unfairness if the business can cancel without notice, except on serious grounds <sup>5</sup>.

Over-restricting a consumer's ability to cancel might be unfair too, such as denying them any right to cancel, or making it difficult to end the agreement, even when the business commits a serious breach of contract. Termination charges and over-lengthy notice periods can have this effect, tending to force consumers to continue with contracts, or renew them, when they have no wish to do so.

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<sup>4</sup> This assumes there are no special statutory provisions governing cancellation rights, such as apply under legislation relating to distance selling, doorstep selling and other particular areas.

<sup>5</sup> In contracts for financial services, the UTCCRs indicate that there may be a need only for the business to have a 'valid reason' for cancellation without notice, and to inform the consumer of the decision to cancel as soon as possible.

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### Binding consumers to hidden terms

Consumers should always have an opportunity to become acquainted with and understand contractual terms, before they are bound by them. If a term itself serves to make consumers accept contractual conditions, which they have no knowledge of beforehand, it could be challenged as unfair.

In some situations it might not be feasible to provide consumers with all details, before making the agreement. If this is the case, a cooling-off period would allow the consumer to read the full contract. Certain circumstances legally require a cooling-off period, for instance, when a contract is entered at a distance, such as by post, telephone or online. For example, see the Distance Selling Regulations and The Doorstep Selling Regulations, which are detailed in *Other relevant laws* <sup>6</sup>.

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<sup>6</sup> These Regulations will be superseded by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which come into force on 13th June 2014.

## 15.1.[b]

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‡ If a business gives itself the right to make changes to the agreed terms to its own advantage, it is unlikely to be fair.

### Variation clauses

A term that gives a business the right to change a previously agreed term of the agreement is known as a variation clause. If a business gives itself the right to make changes to the agreed terms to its own advantage, it is unlikely to be fair.

Variation clauses are likely to be unfair if they could be used to force the consumer to accept increased costs, new requirements or reduced benefits. This may include terms that give the business the right to change elements of the agreement at its discretion, such as the description or price of the product.

For example, a term stating that all materials used may vary in colour and finish, has potential for unfairness and contradicts the consumer's statutory right to receive something that, in all significant respects, is what he or she agreed to buy.

Fairness is more likely to be achieved if

- it is narrowed in effect, so it cannot be used to change the balance of advantage under the contract. For example, allowing variations to reflect changes in the law or allow technical product modifications, that have no significance to the consumer
- it is precisely specified, so the consumer knows the potential changes they are agreeing to
- it provides no real discretion. For example, where a business only has the right to raise prices in line with a published price index
- the consumer is to be given the option to exit the agreement with adequate advance notice of the variation and without suffering any loss or significant inconvenience by cancelling

## Right of final decision

The consumer could be at a disadvantage when a term gives the business the right to decide how the contract is interpreted or whether any breach has occurred.

If the business itself is able to decide whether it has met its own contractual obligations, then it can deny the consumer redress. Similarly, if a business reserves the right to decide what a term of the contract means, then it is effectively in a position to alter the way it works, to suit itself.

Similar objections arise to terms that allow the business too much freedom to ignore the convenience of the consumer in performing the contract, or to penalise consumers for what it considers to be their breaches.

## Denying liability for statements made by agents or employees

Terms are likely to be unfair if they seek to exclude verbal statements that have been made on behalf of the business by its employees or sales agents.

There is obvious scope for abuse if a business includes a term in the written contract, which has the effect of excluding liability for oral promises made on its behalf. For example, a term may be unfair if it states that 'employees do not have authority to make statements that are inconsistent with this contract' or that 'all terms of the contract are contained in this document'.

## Unbalanced assignment clauses

It may be unfair for a business to transfer the agreement to a third party, without the consent of the consumer – particularly when the newly assigned business could provide a poorer quality of service.

For example, a term stating that a business 'may at any time assign this agreement to a third party' may be unfair.

Terms restricting the consumer's freedom to assign raise similar concerns. There are usually fairer and less restrictive ways of protecting the business's interests.

## Hindering or preventing consumers from going to court

A term is likely to be unfair if it removes or hinders the consumer's right to take legal action.

For instance, a clause stating that disputes must be heard in remote or inappropriate courts could unfairly limit the consumer's ability to initiate legal proceedings.

Compulsory arbitration clauses are automatically unfair <sup>7</sup> for the purposes of most consumer disputes.

## Allowing excessive burdens or requirements to be imposed on the consumer

Terms may be unfair when they allow excessive and unexpected financial burdens to be imposed on the consumer. They have a similar effect as a price variation clause.

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<sup>7</sup> Under section 91 of the Arbitration Act 1996.

For example, an explicit right to demand payment of unspecified amounts at the business's discretion (such as a security deposit).

However, unfairness is much less likely if, for instance

- the consumer has agreed to pay a specific amount, in specific circumstances
- the consumer is given the right to cancel, without any penalty or otherwise being left worse off.

#### Requiring the consumer to bear inappropriate risks

It may be unfair for a business to include a term that passes risks onto the consumer, which the business is better able to bear.

Indemnity clauses that protect a business in this way from its own negligence, or terms that transfer a risk onto the consumer when the business can insure against it more cheaply than the consumer, may be particularly problematic.

#### Requiring the consumer to make disadvantageous declarations

If a declaration is written into a contract, in practice consumers are forced to make it even if it is not true. They may think it is just a formality, but could later be told that they have 'signed away their right' to argue that the facts were not as the declaration indicates.

For example, it may be unfair for a consumer to be required to sign a declaration that states they have 'read and understood the terms and conditions', even when they have no real awareness or understanding of the terms.

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# What you say and what you print

## Exclusions and reservations of special rights

Terms that contradict a consumer's general legal rights, outside of contract law, are open to objection as unfair. Examples of a consumer's general legal rights include

- the confidentiality of personal information
- the rights of consumers entering contracts 'at a distance', see the Distance Selling Regulations and the Doorstep Selling Regulations in our *Other relevant laws* section [8](#).

A contract term, which makes the consumer abandon these kinds of rights, is open to objection as unfair, whether or not it is legally effective.

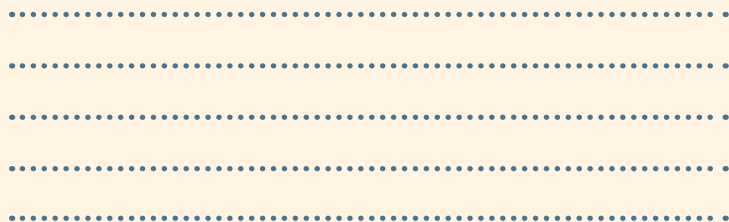
Standard terms might be delivered to your customers by

- formal written contracts
- the 'small print' on the back of your order forms
- a promotional leaflet or advertisement
- the terms and conditions listed on your website
- the terms and conditions you supply with a mobile phone app
- your call centre team
- a recorded message at the end of a sales call
- an agreed or required approach to one-to-one selling or negotiation – for instance, in a sales script.

Consumers should be able to rely on the accuracy of information about an agreement, which they receive both written and verbally. For instance, a term that limits the obligations of the business for verbal statements made by its employees or agents may be considered unfair.

Legal jargon should be avoided, in favour of plain and clear language that is easy for a consumer to understand. If there is any doubt about the meaning of a written term, then a court will rely upon the interpretation that is most favourable to the consumer. However, the UTCCRs also make it clear that this 'most favourable interpretation' rule is intended to benefit consumers in private disputes and does not give the business a defence against regulatory action.

# Exclusions<sup>1</sup>



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<sup>8</sup> These Regulations will be superseded by the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which come into force on 13th June 2014.

# What happens when terms are unfair?

Using unfair contractual terms can have a number of consequences for your business. For instance

- unfair terms are not legally binding on consumers
- you could be asked to stop using it
- a court injunction might be sought
- your reputation could be damaged.

## Power of the enforcers

The CMA and other relevant bodies (including those called qualifying bodies under the UTCCRs) have the power to pursue legal action to stop you using unfair standard terms in consumer contracts.

If you appear to be using or recommending the use of a standard term that the CMA considers is unfair under the UTCCRs, it can seek an injunction (or interdict in Scotland) from a court against your business.

Under the UTCCRs, the CMA and qualifying bodies can request copies of your contracts and other information necessary to identify whether unfair terms are being used.

If a business gives a satisfactory undertaking to stop using a term, or to revise it, court proceedings will not be necessary, provided that the agreed course of action is fulfilled

Details of all undertakings and injunctions obtained by the CMA will be made public. Undertakings and injunctions which were obtained by the OFT are available at [oft.gov.uk/OFTwork/consumer-enforcement](https://www.offt.gov.uk/OFTwork/consumer-enforcement)

† A court might order you to stop using unfair terms.

Although the CMA seeks to protect consumers in general by taking action to stop unfair terms from being used, it cannot seek redress or take action on behalf of individual consumers. However, consumers have certain legal rights under the UTCCRs and may therefore choose to instigate legal proceedings themselves, if they have been subject to an unfair term.

In addition to the UTCCRs, the Enterprise Act 2002 gives the CMA and certain other enforcers additional investigation powers and means to tackle businesses that breach the UTCCRs. The CMA and other enforcers can seek enforcement orders against businesses that breach the Regulations (and other consumer protection laws) where there is a threat of harm to the collective interests of consumers. See the definition of qualifying bodies in the *Glossary* for details of who can take action for infringements of the UTCCRs under the Enterprise Act 2002.

*UTCCRs checklist* can help you check whether your terms comply with the UTCCRs – [www.gov.uk/cma](http://www.gov.uk/cma)

the

UTCCRs

checklist

can

help

you

# Other relevant laws

The UTCCRs are not the only legal provision that protect consumers from unfair contractual terms. In some cases, other relevant legislation might be used to prevent your business from using an unfair term – and sometimes in conjunction with the UTCCRs.

## The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)

Generally, the CPRs give broad protection for consumers against unfair business practices, which can apply to the use of unfair contract terms. For instance, under these regulations the use of certain kinds of contract terms could be prohibited. For example, those that mislead consumers and thereby distort their decisions. In some situations, an unfair term might be subject to enforcement action under the CPRs <sup>9</sup> instead of, or as well as, the UTCCRs.

For more information, visit –  
[www.legislation.gov.uk/ukdsi/2008/9780110811574/contents](http://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents)

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<sup>9</sup> Both civil and criminal enforcement action is possible under the CPRs.

## The Consumer Protection (Distance Selling) Regulations 2000 (DSRs)<sup>10</sup>

The DSRs apply to businesses that sell goods or services to consumers through an organised distance selling scheme, such as mail order, over the phone or via the internet. They can give additional rights to consumers who have purchased without having had face-to-face contact – for example, a right to receive certain information and the opportunity to cancel their order within a cooling-off period.

A business could therefore face enforcement action under the DSRs or UTCCRs by using a term that attempted to take these rights away from a consumer.

Please visit the *Distance selling hub* for more information –  
[dshub.tradingstandards.gov.uk](http://dshub.tradingstandards.gov.uk)

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<sup>10</sup> The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 come into force on 13th June 2014 and apply to contracts entered into on or after that date. These Regulations supersede the Consumer Protection (Distance Selling) Regulations 2000.

## The Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008 (The Doorstep Selling Regulations)<sup>11</sup>

The Doorstep Selling Regulations give consumers extended rights of cooling-off, cancellation and reimbursement when they contract with a trader away from that trader's own business premises.

## The Unfair Contract Terms Act 1977

The Unfair Contract Terms Act 1977 has a narrower scope than the UTCCRs. It deals with exemption clauses and does not cover a number of contracts (such as insurance contracts) which do fall into the UTCCRs' remit.

However, where applicable, the Unfair Contract Terms Act 1977, when used in conjunction with the Sale of Goods Act 1979, can provide stronger consumer protection than the UTCCRs. It makes some forms of exemption clause not binding in all circumstances.

For further information about this Act, visit - [legislation.gov.uk/ukpga/1977/50/contents](https://legislation.gov.uk/ukpga/1977/50/contents)

## The Sale of Goods Act 1979 (SOGA)

The Sale of Goods Act 1979 provides consumers with certain legal rights when they buy goods from you. Customers have statutory rights that you must honour in order to stay on the right side of the law. Visit the *SOGA hub* for more information - [sogahub.tradingstandards.gov.uk](https://sogahub.tradingstandards.gov.uk)

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<sup>11</sup> *The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 come into force on 13th June 2014 and apply to contracts entered into on or after that date. These Regulations supersede the Cancellation of Contracts made in a Consumer's Home or Place of Work Regulations 2008.*

# Glossary

These definitions are intended to help you understand *UTCCRs explained*. They should not be treated as a substitute for dictionary definitions, or as stating the CM's view on the meaning of technical terms for legal purposes.

## Arbitration

The determination of a dispute by one or more independent third parties (the arbitrators), rather than by a court.

## Breach of contract

A situation when either party (in this case the business or consumer) fails to meet the obligations which, as a matter of law, it is considered to have agreed to by entering the contract.

## Consumer

For the purpose of the UTCCRs, a consumer is an individual acting for purposes that are outside his or her trade, business or profession.

## Cooling-off period

This gives a consumer a set period of time after entering a contract in which they can decide to terminate it, without penalty or loss of prepayments.

## Core terms

For the purpose of the UTCCRs, the main terms within a contract that are essential to the agreement, are sometimes informally called core

terms (the definition of the main subject matter of the contract or the price).

## Declaration

For the purposes of *UTCCRs explained*, a declaration is an explicit statement written into a contract document by which the consumer states or accepts something as a matter of fact.

## Disclaimers

A contractual term or statement that seeks to exclude or limit obligations under the contract or the general law.

## Exemption clauses

See disclaimers.

## Good faith

For the purpose of the UTCCRs, 'good faith' is based on the general principle of 'fair and open dealing', where terms are expressed fully, clearly and legibly, and with respect for the consumer's interests. Terms that might disadvantage the consumer should be given appropriate prominence. In addition, businesses should not take advantage of the consumer's weaker bargaining power or lack of experience in deciding what their rights and obligations should be.

## Hidden term

A term the consumer has no knowledge of or has not been given appropriate opportunity to read and understand before agreeing to the contract.

# Glossary

## Indemnity clauses

Contract terms that oblige one party to the contract to pay for the loss or damage that is incurred by another in specified circumstance (whether or not the party giving the indemnity is at fault).

## Individually negotiated term

A term that has been individually negotiated with a consumer and is not devised by a business in advance or part of the business's standard contract.

## Injunction

An order issued by a court to a party to an action to do something or refrain from some act or acts.

## Interdict

An order in Scotland having the effect of an injunction.

## Plain, intelligible language

Jargon free language that is clear and not open to misinterpretation, the effects of which are understandable to consumers (not just lawyers).

## Prepayments

A payment in advance of receiving a product or service, or before any significant benefit is received

## Qualifying bodies

Qualifying bodies are listed in Schedule 1 of the UTCCRs, as having power to enforce the UTCCRs alongside the CMA. They have power under the Regulations to take action against a business that does not comply with the UTCCRs. They also have power to take action against unfair terms under Part 8 of the Enterprise Act 2002, as do certain other authorities who are not qualifying bodies. They currently include

- local authorities that provide a trading standards service
- the Information Commissioner
- the Office of Gas and Electricity Markets (OFGEM)
- OFGEM Scotland
- the Northern Ireland Authority for Utility Regulation
- the Office of Communications (OFCOM)
- the Water Services Regulation Authority (OFWAT)
- the Office of Rail Regulation (ORR)
- the Department of Enterprise, Trade and Investment in Northern Ireland
- Financial Conduct Authority
- Which?

# Glossary

The following are currently enforcers under the Enterprise Act 2002, but are not qualifying bodies under the UTCCRs (they can only enforce the UTCCRs by means of the Enterprise Act 2002)

- the Civil Aviation Authority (CAA)
- PhonepayPlus
- the Secretary of State for Health
- the Department of Health, Social Services and Public Safety in Northern Ireland.

## Seller or supplier

For the purpose of the UTCCRs, this means those acting for purposes relating to their trade, business or profession, including publicly or privately owned businesses. We use the word business to describe the seller or supplier throughout the *UTCCRs Explained*.

## Set-off

The deduction that may be allowable from payments due under a contract, where one party (for example, the consumer) has an arguable claim under the contract against another (for example, the business).

## Standard terms

Terms that have not been individually negotiated with the consumer. The standard terms of a contract might also be referred to as your 'small print', if there is a written contract. The Regulations also apply to standard terms that are not written down.

## Statutory rights

The basic legal rights consumers have when purchasing goods or services from a business. For example, services must be provided with reasonable skill and care and goods must

- match the description
- be of satisfactory quality
- be fit for purpose



# Glossary

## Test for fairness

Under the UTCCRs, a standard term is unfair if it creates a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer and contrary to the requirement of 'good faith'.

When assessing a term for unfairness, considerations normally include

- how a term could be used - it may be considered unfair if it could be capable of causing detriment to consumers, even if it is not at present being used unfairly in practice
- whether the term changes the normal position seen by the law as striking a fair balance
- whether a term is weighted in favour of the business
- all other terms of the contract
- the nature of the goods or services for which the contract was concluded
- any relevant circumstances when the contract was concluded.

## Unfair commercial practice

Commercial practices that are unfair under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). The CPRs contain a general prohibition of unfair commercial practices, as well as prohibitions of misleading and aggressive practices. They also prohibit 31 specific commercial practices

[www.legislation.gov.uk/ukdsi/2008/9780110811574/contents](http://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents)

# Sources of information

The Unfair Terms in Consumer Contracts Regulations 1999 can be viewed in full and downloaded here –

[legislation.gov.uk/uksi/1999/2083/contents/made](http://legislation.gov.uk/uksi/1999/2083/contents/made)

The EU Directive, which the Regulations implement, is available here

[http://europa.eu/legislation\\_summaries/consumers/protection\\_of\\_consumers/l32017\\_en.htm](http://europa.eu/legislation_summaries/consumers/protection_of_consumers/l32017_en.htm)

Other useful sources of information can be found at [www.gov.uk/cma](http://www.gov.uk/cma)

**Explained\***

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