

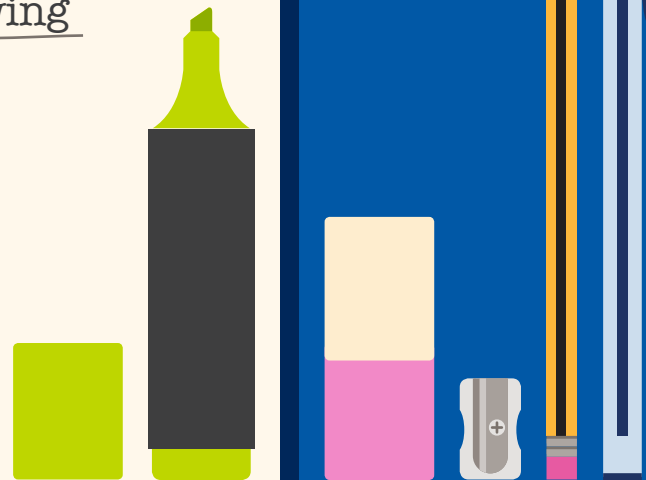
This document issued by the Office of Fair Trading (OFT) has been withdrawn.

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](#).

Ts & Cs

UTCCRs how to is a practical guide to provide businesses with a starting point when considering what they can do to comply with the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). It **highlights some key areas** to consider when drafting or reviewing terms in business-to-consumer agreements



How To?

Please note: 'How to' was originally an OFT document. The following text is largely taken from the OFT document; with for example references being made 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.

Step One

Check whether the UTCCRs apply to your business

The UTCCRs apply to standard terms (often known as 'small print') in business-to-consumer contracts. To check whether the Regulations apply to your business, visit *UTCCRs at a glance* – www.gov.uk/cma

More detail about when the UTCCRs apply and who they apply to is discussed in *UTCCRs explained* – www.gov.uk/cma

Step Two

Consider how your terms are communicated

If your business sells goods or services to consumers, you have a contractual agreement with them, although this may not necessarily be communicated in a formal written contract. Your terms and conditions could, for instance, be relayed to your customer verbally by your sales people, contained in a sales script, printed on promotional materials, or displayed online or within mobile phone apps.

When deciding or reviewing your terms, you should check that both written and verbal information is compliant with the UTCCRs. For more detail visit *UTCCRs explained* – www.gov.uk/cma

Step Three

Be aware of the test for fairness

When drafting or reviewing your terms, it is important to understand the types of terms that could be unfair.

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'.

UTCCRs explained provides more information about the test for fairness and certain types of terms that are exempt from it – www.gov.uk/cma

The full Regulations should be read together with the EU Directive (Council Directive 93/13/EEC April 1993) on unfair terms in consumer contracts, which contains additional explanatory material (the UTCCRs give effect to this Directive in the UK). These documents can be viewed online at

The Unfair Terms in Consumer Contracts Regulations 1999 – legislation.gov.uk/ukxi/1999/2083/contents/made

EU Directive – http://ec.europa.eu/consumers/policy/developments/unfa_cont_term/uct01_en.pdf

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Step Four

Check the terms you have drafted are fair

The following points may help you ensure your terms meet the requirements of the UTCCRs. These are also included in the *UTCCRs checklist*, which is designed to assist businesses when reviewing their terms – www.gov.uk/cma

Ensure that your terms are in plain, intelligible language

The use of plain, intelligible language is a requirement of the UTCCRs. Your customers should be able to understand not just the words used, but their effect. Using ordinary words and avoiding legal jargon or technical language as much as possible should help make your terms clear and easy for your customers to understand. Statutory references and elaborate definitions should be avoided.

Consider whether your terms are vague or ambiguous. Terms may be challenged if a possible interpretation or understanding of the term could be detrimental to your customer.

To help make sure terms are plain and intelligible, you should consider

- structure – are terms organised in a way that is easy to understand? (For example, short sentences and subheadings)
- legibility – is text easy to read? (For example, consider the font size, print quality and colour).

In general, all kinds of terms are more likely to be considered fair when transparency has been achieved 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.

Consider how you present price and main subject matter terms

Consumers particularly need to be able to understand the main terms of the agreement (such as the description and price of the goods or service you are supplying). You should consider ensuring they are highlighted, as well as intelligible to your customer.

If these 'core terms' meet the requirement of plain, intelligible language, then they may only be assessed for fairness in a limited way. They may be open to challenge as unfair if they are hidden away in small print, as if unimportant, when in fact they are potentially burdensome. For more detail see *UTCCRs explained* – www.gov.uk/cma

Check whether your terms do not give your business an unfair advantage

When setting your terms, consider whether the rights and obligations are unduly weighted in favour of your business. A term may be considered unfair if it could be capable of causing detriment to consumers, even if it is not being used unfairly in practice.

Think about what the customer's position would be if a specific term was not included (for example, consider what standard legal rules would apply if the contract said nothing on a particular issue). If the term changes the normal position seen by the law as striking a fair balance, it may be considered unfair.

Check whether you are using specific types of potentially unfair terms

Schedule 2 to the UTCCRs provides a list of types of terms that could be considered unfair. Examples of these are considered in *UTCCRs explained* – www.gov.uk/cma

Schedule 2 does not list every kind of term that can be unfair, and terms like the ones listed may be unfair in some circumstances, but not in others. However, being aware of these types of terms that may be considered unfair can be very useful.

Terms are under suspicion of unfairness if they either have the same

Make written terms legible

(for example, consider whether font size and print quality is ...)

purpose, or can produce the same result as terms listed in Schedule 2. They do not have to have the same mechanism or form.

Respect your customers' legal rights

Terms are open to challenge if they limit or exclude your customers' legal rights. For example, make sure that your terms do not require your customers to forgo their statutory rights when they buy goods from you. These terms are liable to be considered unfair under the UTCCRs and are void and unenforceable under other legislation. Also, terms that contradict a customer's general legal rights outside of contract law, are open to objection as unfair (for example, rights relating to the confidentiality of personal information).

Depending on your business sector, certain terms may need to be included by law. These terms may be exempt from the UTCCRs' test for fairness, but must reflect the law clearly and not in a misleading way. For more detail see *UTCCRs explained* – www.gov.uk/cma

Consider whether your terms are hidden away

Consumers should have the opportunity to be acquainted with and understand your terms before they are bound by them. In some circumstances (for instance, where it is not possible to communicate all terms and conditions before agreeing a sale), providing a cooling-off period allows the customer to read the full terms and conditions and in some cases is required by law. For example, see the *Distance Selling Regulations* ¹ – dshub.tradingstandards.gov.uk

Step Five

Take a look at sector specific guidance

Certain types of terms may be more problematic in specific business sectors. The OFT's UTCCRs sector-specific guidance, which has been adopted by the CMA, is available in the collection of CMA consumer enforcement guidance on gov.uk – www.gov.uk/government/collections/cma-consumer-enforcement-guidance

Specific OFT sectoral guidance on unfair terms (along with the OFT's main guidance on UTCCRs, OFT 311) have at this point been adopted by the CMA not reissued in updated form. They need to be read alongside the **Consumer protection: Guidance on the CMA's approach to use of its consumer powers** (CMA7), and subject to changes in 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).

Step Six

Seek advice

UTCCRs how to is not a substitute for independent legal advice. Consider seeking advice from a legal professional when drafting your terms or, when reviewing your existing terms.

This is not a comprehensive guide or a substitute for the Regulations or a full interpretation of them. The final decision on whether a term is unfair rests with the courts. *UTCCRs how to* cannot be a substitute for independent legal advice as to whether a court could consider a particular term fair or unfair.

¹ *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. Amongst other things, these Regulations supersede the Distance Selling Regulations 2000.*

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