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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](#).

Consumer Contracts – What you need to know

As a business, entering into contracts with consumers is central to what you do. Since your contracts convey a message about your business, it's just like any other marketing opportunity. Your contracts can be used to inspire confidence in your customers and long term success through repeat business.

When dealing with any reputable business, customers trust that contracts will be fair, so they often focus on upfront information like the price and the key things you tell them about your product or service. By thinking about what your customers reasonably expect, for example, no hidden surprises in the small print or features not properly explained, you can create clear and fair contracts that meet their expectations as well as the needs of your business.

Here are some top tips to help you establish clear and fair contract terms.

Consider customer expectations

As we all know, most customers have limited appetite for details. They just want to know what they will be getting and what it will cost. That's why, when developing your contract terms, it is important to carefully choose what to highlight upfront and what to include in the small print.

This is best done by determining what type of information your customer expects in order to avoid things coming as a surprise later:

- **See it from your customers' point of view.** Draw on your own experience as a customer and think about the level of information that you would like to know when entering a contract.
- **Be realistic.** The truth is that some customers tend to be overly optimistic at the point of sale so consider what elements of the contract they may not foresee.
- **Pay attention to complaints and feedback.** Look at comments you have received in the past, or websites that showcase what has put customers off.

Leave no surprises in the small print

If your contract contains small print terms that could surprise your customers, do one of the following:

- Ensure your customers understand what they're getting into. Consider:
 - adding a clear and prominent summary box at the start of your contract
 - highlighting elements of the contract that could be overlooked or misunderstood within marketing materials and websites
 - ensuring staff understand, highlight and explain key terms.

- Change terms in the small print to bring them in line with customer expectations. For instance, make certain that additional charges only cover costs to which they relate.

Remember, it's not all in the small print. When developing or reviewing your contract terms:

- **Think about how to make the term simpler.** This does not only mean the way it is described but, more fundamentally, the way it works.
- **Remember your customers have limited ability to process information** or calculate prices. If possible, avoid charges that are complex, deferred, or of an uncertain likelihood or amount. If you can't avoid them, make sure customers understand them, for example, by using illustrative examples.
- **Give customers clear information in good time.** Present key information as soon as possible so customers can make calm and effective use of it - not at the last minute before purchase. The most important information should be in marketing materials, on websites, and reiterated face to face where possible.

Pay close attention to these terms

There are key contract terms that, if misrepresented, have higher potential to harm consumers. Avoid problematic terms within your contracts by applying the tips listed above to the following contract terms:

- Terms setting the scope of contract subject matter: the nature and detail of what's being delivered, for example restrictions of service or quality that consumers may not expect or understand.
- Terms covering risks to contract performance, such as traders' liabilities for failure or external disruption.
- Remote charges: any additional costs for consumers that they may not expect or take on board, such as charges that only arise in certain circumstances, are hard to understand or that only appear in small print.
- Terms covering cancellation and switching to other providers, such as notice periods, cancellation fees, renewals and automatic continuation terms.

What you should avoid

Contracts should **not**:

- Include terms that are easy to miss or misunderstand which create a significant mismatch between what customers expect and what the deal delivers. For example, higher than expected charges for basic services customers would assume were included in the main price, such as accepting payment by card.

Avoid surprising your customers with terms whose significance may be missed, by asking:

- Do any such terms make the purchase significantly less attractive?
- Do any additional charges significantly increase the overall price of the deal? If so, do these reflect your costs to provide the deal?

- Over-complicate the deal rather than explaining it. For example, terms that refer to unnecessarily numerous options or to circumstances that the customer is unlikely to foresee.

Ensure your contractual information is clear and fair, by asking:

- Are the main terms clear or is there room for ambiguity?
- Do the main terms cover the key issues of concern to my customers?
- Can customers easily understand the implications of the terms?
- Do customers have enough time to accurately interpret the terms?

More information

The [OFT Consumer Contracts Market Study](#) describes the framework it will use to assess whether contract terms are harmful. The same reasoning can help you to review your contracts, and make sure that your customers aren't harmed.