

Online Dating Services Industry – consumer law compliance summary

June 2018

Introduction:

The Competition and Markets Authority's (CMA) work in the online dating services industry is part of its ongoing programme of consumer enforcement work in online and digital markets.

The CMA has reviewed the practices of the online dating industry for compliance with relevant UK consumer protection law:

- Consumer Protection from Unfair Trading Regulations 2008 (CPRs)
- Consumer Contract (Information, Cancellation & Additional Charges) Regulations 2013 (CCRs)
- Consumer Rights Act 2015 (CRA)

The review identified some common terms and conditions and practices that are likely to be unfair, and which could cause consumer detriment. If you are a company which provides dating services, the checklist below includes some common areas where you should review your terms and practices to make sure they comply with consumer protection law. These are the particular areas of concern that we have identified, but they are not an exhaustive checklist of consumer law.

Why has the CMA produced this document?

The CMA wants to ensure that the online dating services industry works well for consumers and that online dating service providers are aware of and comply with consumer protection law.

This document is intended to help you understand and comply with UK consumer protection law, particularly in relation to the terms that you use in your contracts with consumers.

The CMA has produced this document in conjunction with the Information Commissioner's Office (ICO).

What do you need to do, if you supply dating services?

Some of the terms and conditions that are common in the industry are likely to be unfair. We strongly recommend you carefully review this document and consider, in consultation with legal advisers as necessary, whether you need to make changes to your terms and conditions and practices to comply with consumer protection law.

You should also keep your terms and practices under regular review to ensure that they remain fair and compliant.

What happens if you do not comply with consumer protection law?

Non-compliance with UK consumer protection law could result in enforcement action being taken by the CMA, local authority Trading Standards services or the Department for the Economy in Northern Ireland. All of them have powers to enforce the consumer protection legislation referred to in this document and can bring civil proceedings or criminal prosecutions against certain breaches, as appropriate.

You should also be aware that consumers have private rights to challenge unfair terms in court.

Checklist - what to look out for when reviewing your terms and practices:

UNFAIR CONTRACT TERMS

Automatic renewal of subscriptions

Consumers need to know how long their subscription for online dating services is due to run, and how to cancel if they do not want it to renew.

Less likely to be fair

Examples of membership terms that the CMA considers are *less likely to be fair*, include terms that allow dating service providers to:

- automatically renew membership subscriptions at the end of a fixed term contract without giving consumers reasonable notice, especially where the automatic renewal is not made clear at the time the contract was entered into.
- continue to charge consumers for their membership subscriptions indefinitely until the contract is cancelled.
- convert free trials into paid services without further notice and unless the consumer has opted out.

Consumers can be harmed where they are required to make payment for a service that they no longer want or need. This can arise where they have not been reminded shortly before renewal. Automatic renewal can be particularly harmful to consumers in longer term contracts.

More likely to be fair

The CMA considers that automatic renewal terms are *more likely to be fair* if dating service providers:

- are clear with consumers from the outset about how and when membership subscriptions renew and the way to cancel a subscription
- ensure that consumers can opt out of automatic renewal of their membership subscriptions at any time
- notify consumers about renewal a reasonable time before it occurs and before payment is taken
- ensure that notice of renewal includes information about changes to the price or service and explain the steps that consumers need to take to stop the renewal, should they wish to do so
- allow consumers to exercise their statutory rights under the CCRs to cancel within 14 days of signing up (whether to a fixed term or indefinite contract) or renewing for an additional fixed period

For guidance on automatic renewals see our guide [here](#).

Changing the terms or characteristics of the service (unilateral variation)

If you have a term that gives you the right to change elements of a contract, after it has been agreed with the consumer, this is known as a variation clause.

Less likely to be fair

Examples of variation clauses that the CMA considers are *less likely to be fair*, include terms that allow dating service providers to:

- unilaterally vary the contract or service at any time and for any reason and without giving consumers adequate notice or an opportunity to cancel the contract without penalty.
- only post changes, including material changes, to their contract on their website and expect consumers to proactively monitor the website for such changes.

Consumers can be harmed where the terms or the service they receive is changed in a material way without them being informed and having a right to cancel and receive a pro-rata refund.

More likely to be fair

The CMA considers that terms that deal with variation are *more likely to be fair* if dating service providers:

- give consumers adequate notice of any changes to the terms of service, or the price.
- give consumers rights to cancel and receive a pro-rata refund if they do not wish to accept the changes.

For guidance on variation terms see our guide to [changing the terms of a contract](#).

Privacy and data

Online dating services by their very nature often require consumers to provide personal and sometimes sensitive information. Terms that deal with privacy and data may form part of the membership contract, privacy policies, terms of use, or other policies that form part of the terms and conditions. The General Data Protection Regulation (GDPR) places specific obligations on organisations in relation to the privacy information they must provide to consumers when obtaining personal data.

Less likely to be fair

Examples of privacy and data terms that the CMA considers are *less likely to be fair*, include terms that:

- give dating service providers an irrevocable right or licence to use, process and share consumers' information in any way, including information from linked social media accounts, without giving consumers a real opportunity to become acquainted with those terms before entering into the contract.
- do not require dating service providers to obtain consumers' explicit consent to the sharing of their information, for example with third parties or across a network of dating websites.
- require consumers to assume full responsibility for the processing of their personal information and/ or seek to indemnify dating service providers against claims from consumers about how their information is used.

Consumers can be harmed where they do not have sufficient information to make meaningful choices about the privacy of their data and may not understand the types of personal information that the dating service provider collects, or the technologies used to collect the information, or the ways information is used or shared.

Failure to disclose that a consumer's personal data, such as profile information, may be shared with other websites within a network also has the potential to mislead consumers about the nature of the service on offer and is unlikely to be compatible with the requirements of data protection legislation.

More likely to be fair

The CMA considers that terms and practices related to privacy and data are *more likely to be fair* if dating service providers:

- clearly and prominently tell consumers from the outset what personal information they collect about them, where it is collected from, and explain how it is used. For example, explaining to consumers if information is collected from linked social media accounts.
- before sharing consumers' data on any other website (including those controlled by the provider) explain to consumers that they do so and provide them with a list of websites where their data may appear.
- obtain express consent from consumers before copying personal information across partner websites and/ or sharing personal information with third parties. Such consent is unlikely to be valid if it is made a pre-condition of offering the service to the consumer. Agreement to terms and conditions is not a guarantee of valid consent under the GDPR.
- explain to consumers the steps that they need to take to remove their personal information from the website, should they wish to do so. The GDPR requires that consumers' data protection rights should also be set out.
- do not seek to exclude their liability for loss, or damage to, consumers' personal data and/ or to transfer inappropriate risks to consumers by seeking to indemnify against such claims for loss or damage.

ICO

Companies that control and process personal data in the UK, including companies that operate dating websites, also have obligations under the GDPR. The GDPR came into force on 25 May 2018 and replaces the Data Protection Act 1998 (DPA).

The GDPR is regulated by the ICO, which is the UK's independent authority set up to [uphold information rights in the public interest](#), promoting openness by public bodies and data privacy for individuals.

The GDPR builds upon existing data protection laws, and the main responsibilities for organisations are set out in the data protection principles, which require personal data to be;

- processed lawfully, fairly and in a transparent manner in relation to individuals;
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;

- accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed;
- processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

Dating service providers must comply with the data protection principles and the wider requirements of the regulations. The ICO continues to publish guidance on the GDPR on its website. See the Guide to the GDPR for more information:

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

Limitation of liability

The CRA creates an obligation on online dating providers to ensure that their services are provided with reasonable care and skill. Likewise, the CCRs require that the nature and cost of the dating services are disclosed to customers in a clear and timely manner.

Terms that attempt to exclude or limit liability for breaches of consumers' statutory rights (whether under the CRA, CCRs or CPRs) are blacklisted, which means that they are automatically unenforceable, as are terms making it excessively difficult for customers to invoke such rights. The CMA is likely to have significant concern about the presence of any such terms in consumer contracts.

More likely to be fair

The CMA considers that liability terms are *more likely to be fair* if dating service providers:

- do not seek to unreasonably cap or limit their liability for losses or harm to consumers.
- avoid complex language and legal jargon.

For guidance on limitation of liability see our guide to [your responsibility if things go wrong](#). Part 4 of the CMA's [main guidance on unfair contract terms](#) explains more about your customer's statutory rights and remedies under the CRA.

Transparency

In order to ensure that your terms comply with the law in relation to transparency, you should:

- draft terms to ensure that consumers can make informed choices about whether the dating service meets their needs.
- set out all obligations in a clear and comprehensible way.
- ensure that the structure of your terms and the language used enables consumers to understand their rights and obligations under the contract.

Contract terms should also be prominently and clearly communicated to consumers so that they know what to expect.

For help on writing fair terms for customers, see our simple [at-a-glance advice for businesses](#). Further guidance is available in the CMA's [main guidance on unfair contract terms](#).

UNFAIR COMMERCIAL PRACTICES

Provider generated profiles

The CMA has seen terms that require consumers to *acknowledge* and *agree* that they may communicate with 'pseudo profiles', that is profiles created by and operated by the dating service provider.

The CMA considers that it is *unlikely* to be fair for dating service providers to include in their terms an obligation on consumers to accept that they may communicate with provider-generated profiles without any recourse to the business.

Dating service providers should also be aware that creating and operating their own profiles, whether directly or through the use of agents, without very prominently disclosing which profiles have been created in this manner is highly likely to mislead consumers and is therefore likely to be in breach of the CPRs.

False or misleading claims

Dating service providers should not make claims or promises about their service that they do not offer or cannot substantiate. For example:

- claims about connecting members with common interests, preferences and/or characteristics should only be made if the services offered match these claims; and

- claims about membership should be based upon the number of regular users rather than historical figures for all current and previous members of the website.

The Advertising Standards Authority has published advice for online dating providers on key issues to consider when promoting dating services. See their guides for more information: <https://www.asa.org.uk/news/caps-guide-to-dating-services.html>, <https://www.asa.org.uk/advice-online/dating-services.html>

Termination of membership

Dating service providers should not make it difficult for consumers to terminate their membership by, for example:

- requiring them to follow several links;
- only allowing cancellation through a very narrow pathway;
- burying the link to cancellation in a hard-to-spot area of the site.

Such practices are likely to be viewed by the CMA as an unfair practice in breach of the CPRs. Similarly, and in line with the section above on 'privacy and data', practices by dating service providers that make it difficult for members to delete their data when they terminate membership are also likely to be deemed unfair practices in breach of the CPRs.