Competition & Markets Authority

Unregulated legal services – guidance on consumer protection law

Helping unregulated providers of will writing, online divorce, and pre-paid probate services to comply with their consumer protection law obligations



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1. Overview

What does this guidance cover?

- The purpose of this guidance is to help unregulated businesses active in providing will writing, online divorce and/or pre-paid probate services to understand and comply with their obligations under consumer protection law.

- By ensuring their practices are consistent with consumer protection law, businesses can mitigate the risk of harm to consumers, minimise the risk of enforcement action being taken against them, and support trust in unregulated legal services generally.

1.1 Businesses selling to consumers in the UK are required to comply with UK consumer protection law. In the specific context of will writing, online divorce, and pre-paid probate services, consumers are often making purchasing decisions in challenging circumstances, and those decisions are likely to have important and long-lasting consequences. Consumer law provides important protections for these consumers.

1.2 The guidance identifies important consumer protection law requirements that unregulated providers of legal services must comply with.[1] It sets out examples of practices or conduct that, in our view, could breach consumer protection law, and sets out some of the practical steps businesses can take to help them comply with the law. While each case will depend on the particular facts, businesses which fail to adhere to this guidance are more likely to break the law.

Who is this guidance for?

1.3 This guidance is intended for unregulated providers of will writing, online divorce and pre-paid probate services in the UK.

1.4 In this context, unregulated businesses[2] are those not regulated by an approved legal regulator.[3] The fact that a business employs legally qualified

[1] Just like providers of other services.
[2] Or their agents, representatives, and sub-contractors.
[3] For example, the Solicitors Regulation Authority, the Law Society of Scotland, or the Law Society of Northern Ireland. Of course, regulated providers must meet their legal obligations (including compliance with consumer law), and in addition must meet the requirements of professional regulation. However, the focus of this guidance is unregulated providers, where the additional requirements of professional regulation do not apply. We note that the Regulation of Legal Services (Scotland) Act 2025 received Royal Assent on 27 June 2025. Once the relevant provisions are brought into force, it will extend the Scottish Legal Complaints Commission's power to investigate complaints to cover unregulated legal services providers.

staff, such as solicitors, does not take it outside this definition.[4]

1.5 This guidance was issued as part of the CMA's investigation into the provision by unregulated providers of will writing, online divorce, and pre-paid probate services.[5] For that reason, the guidance is not specifically addressed to either (i) unregulated providers of other legal services or (ii) regulated providers of legal services. This should not be taken as a comment on the quality of regulated versus unregulated providers: the CMA considers that unregulated providers play an important role in the market for legal services[6] (see Annex 1 for further details).

1.6 The CMA has previously published a number of reports and responses to consultations regarding the legal services market as a whole in England and Wales and Scotland, which have included recommendations in respect of the regulatory regimes applicable to unregulated legal services. It is important to note that the focus of this guidance is not on regulatory reform, but instead on promoting compliance with existing consumer protection law.

What do businesses need to do?

1.7 Businesses providing will writing, online divorce and/or pre-paid probate services should:

(a) consider this guidance and ensure that they are complying with their consumer protection law obligations;

(b) comply with their wider legal obligations and industry standards;

(c) consider carefully whether they need to make changes to their practices; and

(d) make any changes necessary to comply with the law, such as:

(i) ensuring they give consumers the information they need to make informed choices;

(ii) amending their terms and conditions to ensure they are compliant;

(iii) taking steps to ensure that services are performed with reasonable care and skill; and

(iv) ceasing any aggressive or misleading trading practices.

1.8 If in doubt about what it needs to do, a business should seek its own

[4] In those cases, the legally qualified individuals may be subject to professional regulation but, unlike firms of solicitors, the business is not regulated.
[5] CMA (2023), Will-writing and other unregulated legal services: case page.
[6] See Legal Services Market Study and Review of the Legal Services Market Study.

independent legal advice on the interpretation and application of consumer protection law. Businesses can also speak to their Trading Standards Service for advice, for example as part of a primary authority relationship.

What happens if businesses fail to comply with consumer protection law?

1.9 If a business does not comply with consumer protection law, the CMA can impose fines on it and direct it to make changes to its business.[7] Additionally, the CMA and other bodies, such as Trading Standards Services, can bring court proceedings which may also lead to fines. In some cases, businesses may be required to pay redress to any consumers harmed by the breach of consumer protection law and take additional measures to reduce the likelihood of future breaches and to give consumers information that helps them exercise greater choice (together, these things are known as 'Enhanced Consumer Measures').

1.10 This guidance is not legal advice, and responsibility for compliance with the law remains the responsibility of each business individually. The guidance is also not a substitute for the law itself, nor does it replace the role of the courts in providing definitive interpretations of consumer protection law when issuing judgments based on the facts of each case.

1.11 It is also the responsibility of businesses to ensure that they have familiarised themselves with, and comply with, developments in consumer protection law.

1.12 The guidance is not exhaustive. It covers the areas that the CMA considers, at the date of issue, to be the most relevant, but does not cover every situation in which an infringement of consumer protection law may occur. The guidance should be read alongside the CMA's guidance on, for example, unfair commercial practices,[8] unfair contract terms,[9] and enforcement of consumer protection law (and any revised or reissued versions of the same).[10]

1.13 Businesses may also face legal action from individual consumers, who can bring legal proceedings in response to a business's conduct or seek redress in the courts for certain breaches of consumer protection law.

[7] The Digital Markets, Competition and Consumers Act 2024 (the DMCC Act) came into force on 6 April 2025 and gave the CMA direct enforcement powers. For more information on how the CMA will use its new direct enforcement powers see Consumer protection: enforcement guidance (CMA58); and Direct consumer enforcement guidance (CMA200).
[8] Unfair commercial practices guidance (CMA207).
[9] Unfair contract terms guidance (CMA37).
[10] Consumer protection: enforcement guidance (CMA58); and Direct consumer enforcement guidance (CMA200).

2. Consumer protection law obligations: an overview

2.1 This chapter sets out the CMA's views on some of the most important consumer protection law requirements which apply to providers of unregulated legal services. These include businesses' obligations to ensure that:

(a) prospective consumers have the information they need to make informed decisions;[11]

(b) terms and conditions are fair;[12]

(c) services are performed with reasonable care and skill;[13] and

(d) sales practices are not misleading, aggressive or generally unfair.[14]

2.2 Discussion of how these obligations may apply in practice to providers of wills, online divorce, and pre-paid probate services follows in chapters 3, 4, and 5.

Ensuring that consumers have the information they need to make informed decisions

Businesses must provide prospective consumers with the information they need to make an informed decision. The information provided must be accurate and not misleading.

Misleading actions and omissions

2.3 A business breaks consumer law if it fails to give consumers the information they need to make an informed decision. This is known as a **misleading omission.**[15] What information is required sometimes depends on the context, and whether omitting it is likely to affect consumers' decision making, but consumer legislation also specifies information that must always be given. For example, it is unlawful to omit certain listed information from an 'invitation to purchase.[16]

[11] Under Part 4 of the Digital Markets, Competition and Consumers Act 2024 (DMCC Act) and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs).
[12] Under the Consumer Rights Act 2015 (CRA).
[13] Under the CRA.
[14] Under Part 4 of the DMCC Act.
[15] DMCC Act, Section 227.
[16] When a trader gives information to consumers about a product and its price, this will normally be an 'invitation to purchase'. An invitation to purchase does not need to include an actual opportunity to enable the consumer to purchase the product (for example a TV, radio, print or online advertisement). It does not need to include an actual opportunity to enable the consumer to purchase the product, and a consumer may be presented with an invitation to purchase at multiple points during the process of deciding whether to purchase a product.' See: DMCC Act, Section 230. Also see Chapter 4 of the unfair commercial practices guidance (CMA207) and the CMA's price transparency guidance (CMA209).

2.4 A business also breaks the law if it misleads consumers by giving them information which is false or deceptive, where this is likely to affect consumers' decision making. This is a **misleading action.**[17]

Avoiding misleading consumers by omission: what information needs to be provided?

Material information

2.5 Where a business informs consumers about any service they are providing, and its price, this is normally an 'invitation to purchase. Consumer protection law specifies certain information that the business must provide to consumers in this situation, unless the information is already apparent from the context, regardless of whether that is likely to affect consumers' decisions.[18] This material information includes:

(a) a description of the main characteristics of the services that will be provided, including how the services will be delivered and the timing for delivery. This is likely to require clarifying the details of any services which (contrary to a consumer's reasonable expectations) are not included within the advertised price;

(b) the total price of the service, payable by the consumer (including taxes or payments to third-parties) or, where the total price cannot be reasonably calculated in advance, because of the nature of the service, the way the total price will be calculated (enabling the consumer to calculate the total price);

(c) information about the business, such as their identity and business address;

(d) if services are to be provided by a third party, details of the business that will provide them;

(e) applicable cancellation rights;

(f) any arrangements for payment, delivery, performance or complaint handling which depart from the trader's otherwise published practice; and

(g) information required to be given to consumers under other legislation.

2.6 In addition, wherever consumers need information to make an informed decision about the service, what constitutes 'material information' is likely to vary depending on the specific legal services being offered and the way those services are presented to consumers. When determining whether consumers

[17] DMCC Act, Section 226.
[18] DMCC Act, section 230.

have been, or are likely to be, misled by a business's failure to provide information, the circumstances of the omission would be taken into account.

2.7 When assessing whether particular information is 'material' businesses should ask: is this information that the average consumer would need to make an informed decision about whether to buy the service? If the answer is 'yes', the information should be provided.

2.8 The material information should be provided to consumers in a clear, intelligible, unambiguous, and timely way, before they make decisions.

2.9 In the context of unregulated will writing, online divorce, and pre-paid probate services generally, businesses are more likely to comply with the law if they provide the following information to consumers (in addition to the information required to be provided with an invitation to purchase):

(a) an explanation of whether the business is regulated by an approved legal services regulator, and whether it is a member of any self-regulatory bodies;

(b) details of the level of experience and/or qualifications of the staff involved in delivering the relevant services: this may include, for example, formal qualifications, experience, membership of a regulatory or self-regulatory body, or professional training completed;

(c) details of the business's complaints handling procedure and what (if any) other routes of redress are available to consumers;

(d) an explanation of whether or not the business holds professional indemnity insurance; and

(e) any terms that the consumer might find particularly surprising, or that are otherwise important.

Pre-contract information

2.10 The law also requires businesses to provide certain pre-contract information in a clear and comprehensible manner.[19] There is a considerable overlap between information that is likely to be material information and the pre-contract information that must be given to consumers.

2.11 The necessary pre-contract information that must be provided includes:[20]

(a) the main characteristics of the service;

[19] See CCRs, in particular regulations 10, 13, and 29 and schedules 1 and 2 (which contain the information a business needs to give consumers when selling on its own premises and via a distance contract, respectively).
[20] See CCRs, schedule 1 and schedule 2.

(b) the total price for the services, inclusive of taxes (or, where the nature of the services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated);

(c) the payment and performance arrangements;

(d) where the trader is acting on behalf of another trader, the address and identity of that other trader; and

(e) the duration of the contract, or, if the contract is of indeterminate duration, the conditions for terminating the contract.

2.12 Additional rules apply in relation to 'distance contracts' (for example, contracts negotiated and entered into online or via telephone), and 'off-premises' contracts (for example, contracts entered into at a consumer's home or in a public place). In particular, where a consumer agrees to purchase an unregulated legal service at a distance or off-premises, the consumer should also be informed of:[21]

(a) any other costs or charges that will apply (or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable); and

(b) the fact that the consumer has a right to cancel the contract within 14 days from when the contract is concluded, and how to exercise that right.[22]

Avoiding misleading actions: information must be accurate and not misleading

2.13 All information provided to consumers (including information contained in advertising, online, in terms and conditions, and in verbal communications) must be correct. The information must also not give a misleading impression, even if it is factually correct.

2.14 When a business gives people information that is inaccurate or misleading, and that causes or is likely to cause an average consumer to make a different decision in relation to the unregulated legal service than the one they would otherwise have made, that will breach consumer protection law.[23]

2.15 We set out below some specific considerations that apply in relation to claims relating to pricing; claims relating to the nature of services provided; claims related to membership of trade associations or membership bodies; and online reviews.

[21] See CCRs, schedule 2, paragraphs (g) and (l).
[22] See paragraphs 2.55 to 2.59 below.
[23] DMCC Act, Section 225.

Claims relating to pricing

2.16 Unregulated legal services may provide a cost-effective option for consumers. However, businesses providing such services must not mislead consumers about the costs of the services or the savings they might make.

2.17 The following are examples of practices that are likely to be unlawful:

(a) **Misleading 'from' prices**: Prices must include at least all charges that are mandatory for all consumers. It may also be misleading to advertise or present consumers with an unrealistically low starting price ('prices from £X') that does not reflect a realistic, meaningful and attainable price. This may be because it does not include the total costs that at least a significant proportion of consumers are likely to pay. A business is more likely to find itself on the right side of the law if the price reflects what most people will pay.

(b) **Drip pricing**: Giving consumers initial price information that is incomplete, and only telling them later in the purchasing process about other charges or fees they will have to pay (for example, additional charges to check the validity of a will).[24] The law requires that the total price must be given, including all fees, taxes, charges and other charges that the consumer will necessarily incur if they purchase the product.

(c) **Misleading claims regarding ancillary costs or third-party fees**: Mandatory fees and charges must be included in the total price, even if they are payable to a third party. It is also likely to be misleading to fail to inform consumers about the details of any additional or ancillary costs that are necessary to achieve the desired outcome (for example, court fees for divorce or probate). Businesses must be upfront about all costs a consumer will need to incur (including all expenses or disbursements, and third-party costs), prior to purchase of the service.

(d) **Misleading comparisons**: Comparisons can be helpful for consumers. However, comparisons between the prices of different services may be misleading where this is not a fair, like for like comparison, or it is not made clear that there is a difference in the service that the consumer will receive. For example, where an online divorce business offers a limited divorce management service,[25] but does not provide legal advice, it may be misleading for that business to run advertising stating that its service will save consumers thousands of pounds in comparison to obtaining advice from a solicitor. This can be a particular issue with unregulated legal

[24] Section 230 of the DMCC Act specifically prohibits drip pricing in invitations to purchase. For more guidance on price transparency see the CMA's Price transparency guidance (CMA209).
[25] For example, where the service consists of assistance with completing forms that are available to consumers online – in other words, purely administrative services.

services, if consumers must purchase further (reserved) legal services to achieve the outcome the unregulated legal service provider is advertising.

Claims relating to the nature of services provided

2.18 Legal services are potentially complex and may be intimidating to many consumers. Businesses must ensure that the claims they make about the services they are offering are not misleading to the average consumer.[26]

2.19 Legal services might involve jargon. Businesses must not use unclear language that gives consumers misleading impressions about the nature of the services they are receiving.

2.20 It is important that businesses providing unregulated legal services do not lead consumers to believe that:

(a) their activities are regulated or approved by a regulator (such as the Solicitors Regulation Authority, the Law Society of Scotland, or the Law Society of Northern Ireland); and/or

(b) consumers will have the same regulatory protections that are available to clients of regulated providers.

This includes giving consumers the impression that this is the case by using ambiguous language.

2.21 Where a business is selling both one-off and subscription services, it must be clear to consumers about the terms that apply to each, and it must not use the consumer's purchase of a 'one-off' service to 'opt-in' a consumer to a subscription service.[27]

2.22 Businesses must not give consumers the impression that the choices they make are easily reversible, where this is not accurate. For example, a business should not claim that a consumer's choice to appoint it as executor is easily reversible, when in fact there may be legal or practical difficulties to reversing such a decision, or where the consumer may incur costs to do so.[28]

Claims related to membership of trade associations or membership bodies

2.23 A business's membership of a trade association or membership body is likely to be a factor in establishing a consumer's trust in that business.

2.24 To comply with consumer law, a business must not misrepresent the nature of its involvement with such a body, and must not misrepresent the nature of the

[26] DMCC Act, Section 226 (misleading actions). See also DMCC Act, Section 229 (professional diligence).
[27] See paragraphs 2.60-2.63 below.
[28] For example, the legal constraint on the ability of an executor to renounce its executorship once it has already begun acting, and the need to amend the will if the consumer wishes to change their executor.

body itself and/or the consequences of membership.

2.25 For example, if membership is limited to individual practitioners, a practitioner's employer should not claim that the business as a whole (as opposed to the individual practitioner) is a member of that body. Such a claim would mislead consumers into thinking the business is bound by codes of practice which, in fact, do not apply.[29]

2.26 Where a business is a member of a trade association or membership body, consumers should be able to have confidence that the requirements that the body imposes on its members (for example, through a code of conduct) will be complied with. Consumer protection law therefore imposes a specific obligation on businesses not to break codes of conduct they claim they are subject to.[30]

Online reviews

2.27 Many businesses publish online consumer reviews. Genuine and accurate reviews can help consumers to choose which businesses and services to use, and increase competition between businesses. However, fake and misleading reviews have the potential to damage those businesses that play by the rules, and to harm consumers by leading them to make poor choices, undermining consumer trust. Submitting, commissioning, incentivising or publishing fake reviews or hidden advertising is a banned practice under the DMCCA Act – it is automatically considered unfair and illegal.[31]

2.28 Reviews will be 'fake' where they are not a person's honest and impartial opinion or do not reflect a person's genuine experience of a product or a business – for example, where a business poses as a consumer for the purpose of posting reviews on its website.[32]

2.29 Hidden advertising refers to a review that has been incentivised in some way (for example where it has been paid for, or the reviewer was given a free gift), but it is not clearly labelled as advertising.

2.30 It is also illegal to publish reviews or review information in a misleading way – for example, if a business's website has a feature which allows people to review its services publicly, the business must not "cherry-pick" only favourable reviews for publication rather than publishing all genuine, relevant and lawful customer reviews. Reviews can also be misleading where the business has provided any form of incentive or reward to a consumer to write the review, but this has not been clearly disclosed to consumers reading

[29] DMCC Act, Schedule 20, paragraph 1 and DMCC Act Section, 226.
[30] DMCC Act, Schedule 20, paragraph 4.
[31] DMCC Act, Schedule 20, paragraphs 13 and 25.
[32] DMCC Act, Schedule 20, paragraph 25.

reviews.

2.31 Businesses must take reasonable and proportionate steps as are necessary to prevent fake or misleading reviews appearing on their websites. Such steps include:

(a) implementing procedures to detect and promptly remove fake reviews (for example, through moderation policies); and

(b) making it easy to report suspicious reviews.

It is not sufficient for a business to take action only where it receives complaints or other notice that a review is fake or misleading.

2.32 The CMA has published separate guidance to help businesses meet their legal obligations in relation to customer reviews.[33]

Generally unfair commercial conduct

2.33 Consumer protection law also contains a broad general prohibition on unfair commercial conduct. Where a business falls below the standards of skill, care, honesty or good faith that can reasonably be expected in their field of activity, and that is likely to impact the decisions consumers make, that can break the law too[34].

[33] For more information see Fake reviews guidance (CMA208). Also see Reviews and social media endorsements: what businesses and content creators must know - GOV.UK
[34] DMCC Act, Section 229.

Ensuring that terms and conditions between providers of unregulated legal services and consumers are fair

Businesses must ensure that terms are transparent, clear, and unambiguous, and are not unfair.

General principles of fairness

2.34 The terms businesses use in contracts with consumers must be fair and transparent. That includes everything businesses say in documents that bind consumers as part of the relationship between them, not just the terms contained in a formal 'terms and conditions' document. Where we refer to 'terms' in this guidance, we mean all of these.

2.35 Most terms[35] will be subject to the test of fairness under the Consumer Rights Act 2015 (CRA).[36] That test says a term is unfair (and therefore unenforceable) 'if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer'.

2.36 In addition, the CRA contains:

(a) prohibited terms that are always unenforceable regardless of their effect on the consumer (and so do not need to be assessed for fairness before being found unenforceable); and

(b) an 'indicative and non-exhaustive list'[37] of terms that may be unfair – this is known as the 'grey list'.

2.37 Consumers are likely to be in a relatively weak position compared with an unregulated legal services provider, given the complexity of the services being purchased, and consumers' relative lack of knowledge about the contract and the way it operates. Terms which take away rights the consumer would usually have under the law, putting them in a worse position, and taking advantage of their relatively weak position, are likely to be unfair.

2.38 A term that is unfair will not be binding on consumers,[38] and the CMA can take enforcement action to stop businesses using unfair terms.

[35] The only exceptions are for terms which define the main subject matter or set the price, provided they are transparent and prominent (and do not have the object or effect of a term on the 'grey list').
[36] See CRA, section 62.
[37] See CRA, schedule 2.
[38] Consumers may be able to rely upon the unfair terms legislation in any legal proceedings they bring themselves against an unregulated legal services provider, or in defense of a claim where an unregulated legal services provider tries to enforce an unfair term.

2.39 The CMA has separate guidance to help businesses ensure their contract terms are not unfair.[39]

Terms should be transparent

2.40 Terms should also be easily located by and accessible to consumers. A provision that purports to bind consumers to terms that they have not had the chance to become familiar with or understand may be unfair.[40] This can occur where:

(a) terms are not clearly pointed out to consumers when they are considering the purchase;

(b) terms are located in a number of different documents and/or different places on a website, making them difficult to find and review;

(c) very lengthy documents are used; or

(d) the terms are written in language that is difficult to understand (for example, using legal jargon) or include irrelevant, inconsistent, or ambiguous information.

2.41 Businesses should ensure that any terms that may be particularly surprising or important are specifically brought to the consumer's attention; for example, by highlighting them within an offer letter or a factsheet. Providing information upfront will not necessarily transform a term that is unfair into a fair one, but it is one of the essential steps to comply with the law.

Terms relating to pricing

2.42 In addition to ensuring all fees and costs are transparently presented to consumers at the point of purchase (see paragraphs 2.16 to 2.17 above),[41] businesses should take particular care with terms that relate to price increases, hidden fees and contracts where the consumer 'pre-pays' for services:

(a) **Price increase clauses**: Clauses which give a business a right to vary the price after the contract is made are under strong suspicion of unfairness. They are less likely to be unfair where (i) they are adequately brought to the consumer's attention prior to entering the contract; (ii) they specify the level and timing of any price increase (so that the consumer can predict the impact on them of the term); (iii) the trader is required to give sufficient notice of the

[39] See Unfair contract terms guidance (CMA37).
[40] CRA, schedule 2, paragraph 10 (the grey list), and Unfair contract terms guidance (CMA37).
[41] See also the CMA's guidance Price transparency guidance (CMA209).

variation; and (iv) the consumer has a genuine right to cancel the contract without loss or serious inconvenience.[42]

(b) **Hidden fees**: It is likely to be unfair for a business to seek to enforce 'hidden' fees if the consumer had no real opportunity to become aware of the term imposing the fee prior to entering into the contract.[43] This could include for example terms which permit a professional executor to instruct other professionals to carry out work, for an additional fee that is not precisely specified in the contract.

(c) **Prepayment**: It can be unfair for a business to seek prepayment of large sums of money upfront, in return for services to be delivered at a later time.[44] This is because the prepayment results in an imbalance in incentives[45] and because it takes away a remedy that would otherwise be available to the consumer to withhold an element of the price to secure the business's performance.[46] In addition, unless the business takes appropriately robust measures to protect consumers' funds, pre-payment can expose consumers to the risk of the business's own insolvency or cessation of business.

Terms relating to variations of the contract

2.43 It is important that consumers receive the service they expected. Terms which allow the business to alter the terms of the contract after it has been agreed are under strong suspicion of unfairness.[47] This includes terms that allow the business to change what is being supplied.[48]

2.44 Terms allowing for variation of the contract are more likely to be fair where:[49]

(a) the term is narrow in scope - restricted to allowing either minor technical adjustments or changes required by law or necessity;

(b) the term sets out clearly what variation might be made, in what circumstances and how far it can go;

(c) the term is brought to the attention of consumers at an early stage;

(d) the term sets out valid reasons why the changes may be necessary, and consumers are able to foresee what changes may be made and when;

[42] See for example CRA, schedule 2, paragraphs 14–15 (the grey list); Unfair Contract Terms Explained (CMA37(a)) and CMA37.
[43] See CRA, schedule 2, paragraph 10 (grey list), and CMA37.
[44] There is unlikely to be an objection to partial prepayments which fairly reflect the business's expenditure in carrying out the contract: see CMA37.
[45] In other words, the business has already been paid so gains no further immediate benefit by performing its obligations under the contract.
[46] See CRA, schedule 2, paragraph 2 (grey list), and CMA37.
[47] See CMA37.
[48] See CMA37.
[49] See CMA37.

(e) the business is required to give notice of the variation in good time before it takes effect; and

(f) the consumer is able to terminate their obligations without penalty if they are adversely affected by the change.

Terms that seek to exclude or limit liability

2.45 Contractual terms may be considered unfair where they unduly exclude or restrict a business's liability to consumers.

2.46 The usual legal position is that a consumer who suffers losses as a result of a business's actions will be able to bring legal proceedings to obtain compensation. Terms which state that the trader will not be liable in certain circumstances, or that restrict the amount of compensation a trader is required to pay, may give rise to a significant imbalance in the parties' rights and obligations under the contract.

Terms excluding liability

2.47 Certain types of terms excluding liability are prohibited and are therefore automatically ineffective. This includes:

(a) terms that exclude the business's liability if it fails to provide the service with reasonable care and skill;[50] and

(b) terms that exclude the business's liability for things that the business has said to the consumer and which have been taken into account by the consumer when making decisions about the service.[51]

2.48 Terms that exclude liability but do not fall within these categories may still be unfair if they cause a significant imbalance in the way paragraph 2.37 describes.

2.49 The mere addition of a statement that 'statutory rights are not affected' will not make an unfair term acceptable.[52] Similarly, terms that exclude liability 'as far as the law permits' are still potentially unfair.[53]

2.50 Terms excluding liability are more likely to be fair where they are restricted to excluding liability for:[54]

[50] See CRA, section 57(1).
[51] See CRA, section 57(2).
[52] See CMA37.
[53] See CMA37.
[54] See CMA37.

(a) losses that were not foreseeable to both parties when the contract was formed; and/or

(b) losses that were not caused by any breach on the part of the trader.

Terms limiting liability

2.51 Terms that limit the amount of compensation a business is liable to pay will be prohibited if they:

(a) limit the business's liability if it fails to provide the service with reasonable care and skill;[55] and/or

(b) limit the business's liability if it breaches the consumer's statutory rights to an amount less than the price the consumer is required to pay under the contract.[56]

2.52 Terms that restrict liability but do not fall within these categories may still be unfair if they cause a significant imbalance in the way paragraph 2.37 describes.

2.53 In particular, clauses that impose an upper limit on the amount of compensation the consumer would be entitled to claim would be under strong suspicion of unfairness.[57]

2.54 Unregulated businesses are not legally required to hold professional indemnity insurance. However, as a matter of good commercial practice, unregulated businesses providing legal services should have in place adequate insurance to cover potential claims.

Terms relating to the right to cancel

2.55 Businesses must ensure that their terms and conditions are consistent with consumers' legal rights to cancel their contract.

2.56 The starting point is that a consumer who has purchased a legal service away from the business premises of the unregulated legal service provider[58] will usually have the right to cancel their purchase (and receive a full refund)[59] within 14 days of the purchase. Businesses should not usually supply the service until that period has expired.

[55] See CRA, section 57(4)(a).
[56] See CRA, section 57(3).
[57] See CMA37.
[58] For example, online, or at their home.
[59] To be paid within 14 days of cancellation: CCRs, regulation 34.

2.57 There will be many situations where a consumer wants (or needs, in the case of a deathbed will) the service to be delivered within the 14-day time period. So, a business can, exceptionally, provide the service in that period where the consumer has requested, in writing, that the service is provided within that time. In that case, the consumer still has a right to cancel the contract, unless the contract has been performed in full within the cancellation period, and the consumer has acknowledged that they will lose their right to cancel once the service is completed in full.[60]

2.58 Businesses can propose that the consumer gives a waiver which meets these requirements. If the consumer is happy to do so, this should be recorded in writing. If the consumer wishes to cancel the contract in the cancellation period before the work has been completed, the consumer would need to pay a reasonable amount that is proportionate to the work that has actually been done.

2.59 In addition, even after the 14-day period has expired, the terms that govern early termination by either the business or consumer must be fair.[61] This includes not unfairly penalising a consumer who chooses to end their contract with the business earlier than initially agreed. In particular, a term which has the effect that the consumer will always lose everything they have paid, regardless of the actual losses caused by the cancellation, is likely to be unfair. A term is more likely to be fair if, for example, the consumer is entitled to a refund of sums paid, but the business is permitted to deduct legitimate costs it has incurred or loss of profits arising from the cancellation.

Terms relating to subscription services

2.60 We are aware that some unregulated legal service providers operate a subscription model for elements of their services (for example, in relation to will storage or will updates).

2.61 Businesses offering services on a subscription basis must ensure the terms of their subscription are fair.[62] A term which has the effect of automatically renewing or 'rolling-over' a contract is more likely to be fair where:

[60] CCRs, regulation 36. If the consumer has requested early performance and then cancels during the 14-day period but before the service has been completed in full, the consumer would need to pay a proportionate amount for the service (for example, initial advice) that had been supplied: CCRs, regulations 29 and 36. These calculations will be more straightforward where businesses keep a record of time spent and work completed within the 14-day period.
[61] See CRA, schedule 2, paragraphs 4,5, 6, 7 and 8 (grey list), and CMA37.
[62] See CMA37.

(a) The fact of the renewal and the terms of the renewal are properly brought to the consumer's attention before entering into the contract.

(b) The business is required to take reasonable effective steps to inform the consumer of the upcoming renewal and to give the consumer a reasonable opportunity to cancel the contract before any further payment is taken.

(c) There are reasonable procedures which allow for cancellation of the contract during the renewed period. For example, any fees charged at termination should have been made clear to the consumer prior to their purchase of the subscription service, and should reflect only the actual costs to the business (for example, the reasonable cost of shipping a will from storage to a consumer). Consumers should not be subject to unreasonably long notice periods in order to cancel a non-fixed term contract.[63]

2.62 The DMCC Act will, once the relevant provisions come into force, introduce new obligations for businesses offering services on a subscription basis. These provisions are expected to come into force no earlier than Autumn 2026.

These include:

(a) a duty to provide or make available certain key pre-contract information,[64] including specific requirements where the contract is entered into online;[65]

(b) giving consumers regular six-monthly reminders ahead of renewal payments (including the opportunity to end the subscription);[66]

(c) 14-day cooling off periods, allowing the consumer to cancel the subscription without penalty or charge within that period, both at the start of the contract and when it renews;[67] and

(d) a right for consumers to cancel a subscription contract without penalty or charge where the trader breaches certain key requirements applying to subscription contracts.[68]

2.63 The outline above is not exhaustive. Businesses offering subscription services should therefore review the new obligations in detail and adjust their practices as necessary to ensure they comply, seeking legal advice if necessary.

[63] See CRA, schedule 2, paragraph 9 (grey list), and CMA37. For example, a term requiring a notice period of three months was previously viewed as unfair by the Office for Fair Trading – see CMA37, Annex A.
[64] DMCC Act s 256 and schedule 23, parts 1 and 2
[65] DMCC Act s 257
[66] DMCC Act s 258 and schedule 23, part 3
[67] DMCC Act s 264
[68] DMCC Act s 263

Ensuring that services are performed with reasonable care and skill

Businesses must ensure that their services are provided with reasonable care and skill.

2.64 Consumer protection law requires that businesses use reasonable care and skill in providing services to consumers.[69]

2.65 Consumers purchase unregulated legal services to address very specific and often sensitive needs. In many cases, these will be one-off purchases. Consumers are unlikely to have wide experience of the services in question, and may be at a disadvantage relative to providers of those services in detecting shortfalls in quality. For many consumers, an unregulated legal service provider will be an alternative to more traditional vendors, such as solicitors' firms. The requirement to use reasonable care and skill applies in that context.

2.66 Areas of particular relevance here include:

(a) **Competence**: The service must be delivered by individuals possessing a degree of professional knowledge appropriate to the complexity of the service offered.

(b) **Suitability**: Businesses should ensure that their services meet the legal requirements of the jurisdiction they are marketed for use in.[70] Similarly, businesses should ensure that they do not carry on 'reserved' legal activities unless they are legally permitted to do so.[71]

(c) **Selling additional services**: Businesses should not use their position as adviser to 'up-sell' unnecessary or unsuitable services.

(d) **Clear advice**: Unregulated providers of legal services must be clear about the nature and limits of the service they are providing. Simply including disclaimer language in contractual materials does not mean that an unregulated provider is absolved of this responsibility. Consumers should be informed when issues arise that impact the effectiveness of the service being delivered and that require other professional help to resolve (for example, tax issues).

[69] CRA, sections 54–55.
[70] For example, there are differences in the law relating to wills, probate, and divorce between England and Wales, Scotland and Northern Ireland.
[71] See Annex 2 – Relationship with other law, regulation and guidance, para 9 below.

(e) **Safeguarding of consumer assets**: If the service involves long-term responsibility for consumer assets (for example, will storage) there will need to be safeguards to address not only 'business as usual' risks, but also to ensure that consumers do not suffer losses where the business itself changes, ceases or becomes insolvent.

(f) **Record keeping**: Businesses should keep (and share with consumers, if appropriate), accurate records of the advice they are providing, and should ensure they comply with data protection law.[72]

(g) **Responsiveness and complaints handling**: Businesses offering unregulated legal services should have processes for taking care of consumers' requests or complaints promptly and effectively: consumers should also be given, before purchase, the business's contact details and its complaints handling policy.

(h) **Prompt and timely service**: Businesses are required to deliver services at the time agreed or, if none is agreed, within a reasonable time.[73] Delays that arise for reasons genuinely beyond a business's control should be communicated to consumers appropriately, and failing to offer consumers a termination right (along with a refund) in such a case is likely to be unfair.

2.67 Where a service is not performed with reasonable care and skill, the consumer will have the right to request that the business provide the service again,[74] and (in certain circumstances) the right to a refund.[75] In addition, the consumer may pursue other legal remedies, including a claim for damages.[76] Contract terms which exclude or limit these obligations and consumer rights are not binding on the consumer.[77]

[72] For further information, see the Information Commissioner's Office.
[73] CRA, section 52.
[74] CRA, sections 54–55
[75] CRA, sections 54 and 56.
[76] Provided the consumer does not recover twice for the same loss: CRA, section 54(6).
[77] CRA, section 57.

Ensuring that sales practices are not aggressive, or otherwise contrary to statutory obligations

Businesses must not use sales practices that amount to harassment, coercion, or undue influence, and they must not take additional payments without consent.

Aggressive sales practices

2.68 Consumer protection law prohibits practices that harass, coerce or use undue influence that are likely to affect consumers' decisions about products.[78]

2.69 This covers a variety of behaviours, including:

(a) staying in a consumer's home after being asked to leave, or staying for so long that they feel compelled to purchase the products the representative is selling;[79]

(b) using knowledge about a consumer's affairs gained in, for example, drawing up a basic will, to aggressively 'upsell' other products;

(c) making misleading, exaggerated or frightening claims regarding, for example, inheritance tax liabilities, to pressurise a consumer who has purchased will writing services to order additional complex trust products which the consumer would not otherwise purchase;

(d) pressuring consumers to purchase additional services by presenting the decision not to buy such a service as a legal risk (for example, pressurising a consumer into purchasing a service that is unnecessary and unsuitable by requiring them to sign a 'disclaimer' stating that the business is not responsible for the consequences of that consumer choosing not to purchase the service in question);

(e) exploiting a consumer's specific misfortune, and/or exploiting other circumstances which are serious enough to affect the consumer's judgement (for example a recent bereavement), to influence the consumer's decision about the service;

(f) using abusive or threatening language to dissuade a consumer from terminating a contract;

(g) making unjustified threats of legal proceedings.

[78] That is likely to cause the average consumer to take a different decision: DMCC Act, Section 228. For further details see CMA 207 Unfair commercial practices, Chapter 7.
[79] DMCC Act, Schedule 20, paragraph 27.

Additional payments without express consent

2.70 Businesses must not attempt to charge consumers for amounts over and above the amount agreed for the main services they will receive unless the consumer has first given their express consent.[80] This includes charges for additional services (such as professional executor services) which will be provided later.

2.71 The consumer is not legally regarded as having given their consent where the business has made consent a 'default' position that the consumer must take some action to change (for example, if an 'I consent' box on a webpage is pre-ticked)[81].

2.72 Similarly, consumers should not be 'opted-in' to subscription services (such as a will update service where the service they have set out to purchase is a standalone will).

[80] CCRs, regulation 40. Also see guidance on getting consent for additional charges when selling online.
[81] See guidance on getting consent for additional charges when selling online.

3. Will writing

3.1 Consumers are unlikely to use the services of a will writer frequently, and so may not have a clear idea of what to expect as regards costs, processes and services. Will writing businesses must take care not to take advantage of the imbalance of experience and expertise between their position and consumers, or to use other harmful practices.

3.2 Businesses must not, for example, provide misleading or insufficient information regarding pricing and costs, or use aggressive 'upselling' practices to sell services the consumer was not initially seeking. Nor should they use contract terms that seek unfairly to limit or avoid the usual obligations they are under, and the usual rights and protections consumers have, under the law. Businesses that use misleading or aggressive marketing practices and/or unfair contract terms will be in breach of consumer law.

3.3 This Chapter sets out 'do and don't' checklists and case studies as a means of illustrating how the consumer law principles outlined in Chapter 2 can apply to the unregulated will writing sector.

3.4 It is important to emphasise that these examples are focused on compliance with consumer protection law specifically, and are not intended to provide a comprehensive account of all legal considerations that may be relevant to will writing services. Further, the examples do not cover every potential consumer law issue that may arise.

3.5 We note that some will writing businesses partner with charities to offer consumers wills free of charge (encouraging the consumer to leave a gift to the relevant charity). The fact that a business is not directly receiving payment for its service from consumers does not automatically remove it from the scope of consumer protection law.[82]

[82] For further details see CMA 207 Unfair commercial practices, Chapter 2.

Do and don't

Ensuring consumers have the information they need to make informed decisions

Do

- ✓ Clearly and prominently give consumers the **total price** of the service you are marketing, including VAT and including likely expenses or associated costs, even if not charged by you (or, if you genuinely cannot state the total price, explain the basis on which it will be calculated, so that the consumer can calculate the price).
- ✓ Provide consumers with the information they need to make an informed decision about whether to proceed. This will vary depending on the circumstances but may include:
    - a description of the main characteristics of the services you will provide;
    - an explanation of whether the business is regulated;
    - details of the level of experience and/or qualifications of staff; and
    - an explanation of whether or not you hold professional indemnity insurance.
- ✓ If you sell **other services** alongside will writing (such as acting as a professional executor, or offering will storage services) market those services clearly and transparently, including by providing information about:
    - whether such services are included or excluded in the initial will writing product sold;
    - the price of any such (separate) service (or the basis on which the price will be calculated) (*for an example, see case study 3 below*);
    - the fact that such services are not necessary for a valid will;
    - the implications of a consumer taking on such a service (for example, the fact that appointing you as a professional executor will mean amending the will if the testator subsequently changes their mind);
    - where your marketing materials advertise future flexibility, any relevant legal or practical limitations on that flexibility (for example, the law limits the

ability of an executor to renounce their executorship or 'retire' in certain circumstances) (*for an example, see case study 2 below)*; and

- in the context of will storage services, what will happen to the consumer's will, including in the event that your business stops trading.

✓ In addition to the above, if you sell **subscription services**, you should provide information before the consumer enters into the initial contract, and before each renewal takes effect (see also paragraphs 2.61 - 2.62 on the relevant DMCC Act requirements).

Before entering into the initial contract

You should provide information about:

- whether or not the contract auto-renews at the end of a period of time; and
- the timing and frequency of payments.

Before renewing the contract

You should send consumers a reminder a reasonable time before the renewal takes effect, setting out:

- the terms of the proposed renewal, including how much the consumer will be charged for the service upon auto-renewal;
- how they can cancel the subscription before renewal; and
- how they can cancel the subscription once the contract is renewed.

✓ If services will be carried out by a **third party** (for example, where the will writer's practice is to instruct another provider to provide professional executorship services or will storage services) businesses should ensure that this is clearly and accurately communicated to consumers (*for an example, see case study 6 below)*. In addition, consumers should be provided with:

- the name of the provider(s) (or, if a panel system is used, the names of the potential providers); and
- the regulatory status of the provider(s) or potential providers.

Don't

- × Make **misleading comparisons** when marketing your services: for example, if you are selling a straightforward will template, and do not provide legal advice, it will be misleading to compare your prices with those of providers offering a more comprehensive service. If you want to use a price comparison, you should explain the differences between the services on offer.
- × Give consumers incomplete price information when extra charges will be added later, or suggest that consumers will pay a lower price than they realistically will (*for an example, see case study 3 below*).
- × Lead consumers to think that by purchasing your service they are engaging a firm of solicitors or other regulated legal professionals on their behalf, or that the service provided is otherwise subject to regulatory oversight, if this is not actually the case (*for an example, see case study 1 below*).
- × Make misleading claims about your membership of a trade or professional body (*for an example, see case study 1 below).*
- × Make misleading claims about the availability of future options that are restricted by law or are in fact difficult to exercise (*for an example, see case study 2 below*).

Ensuring terms and conditions between providers of unregulated legal services and consumers are fair

Do

- ✓ Ensure that your terms and conditions are easily accessible, clearly signposted and available to consumers before they make their decision to purchase.
- ✓ Ensure your terms are written in accessible, clear and transparent language that the average consumer will be able to understand (including as to their practical consequences for the consumer).
- ✓ Ensure that any terms that may be surprising or important are specifically brought to consumers' attention.
- ✓ Where substantial sums are involved, charge consumers on a reasonable schedule, as and when you deliver the relevant services.

Don't

- × Use terms that generally allow you to **change the price** of services a consumer has agreed to purchase as this is likely to be unfair, unless you comply with the principles outlined at paragraph 2.42(a) above *(for an example, see case study 4 below).*
- × Use terms that allow you to **change elements of the service** you have agreed to provide, unless there is a specific and fair reason for doing so, and the term is implemented in a fair way (see paragraph 2.44 above) *(for an example, see case study 4 below.)*
- × Unfairly **limit your liability** to consumers (see paragraph 2.45 above) (*for an example, see case study 5 below*).
- × Use terms which are inconsistent with consumers' **rights to cancel** the contract, or which unfairly penalise a consumer who chooses to end the contract (see paragraphs 2.55-2.59 above)
- × In relation to **subscription services**, do not use terms which provide that the subscription will automatically renew or 'roll over' without taking reasonable steps to inform the consumer of the renewal, and giving the consumer a reasonable opportunity to cancel the contract without incurring further cost.

Ensuring services are performed with reasonable care and skill

Do

- ✓ Ensure your business has the staff and capability to deliver the services you advertise and to meet your obligations to your customers.
- ✓ Ensure that the services your business offers meet the legal requirements of the jurisdiction they will be used in.
- ✓ Ensure that services are delivered when agreed or, if no time is agreed, within a **reasonable time**.
- ✓ Ensure that your business has processes for dealing with **consumer complaints** promptly and effectively.

Don't

- × Rely on unfair terms or 'small print' to avoid delivering on your obligation to deliver services with reasonable care and skill.

Ensuring that sales practices are not misleading or aggressive, or otherwise contrary to statutory obligations

Do

- ✓ Provide balanced, complete and accurate information about the range of options available when informing consumers about additional services (for example, appointing executors to a will or making arrangements for will storage), so that consumers can make a fully informed choice.

Don't

- × Use **pressure selling** techniques (for example, staying in a consumer's home after you have been asked to leave) which harass, coerce or unduly influence a consumer to make a decision they would otherwise have been unlikely to make (*for an example, see case study 2 below*).
- × Attempt to enrol a consumer into a subscription or other service by presenting them with **pre-ticked boxes** which steer them towards, for example, taking up a will storage service or appointing you as professional executor.
- × Unfairly steer the consumer towards appointing you as professional executor, for example by making **exaggerated statements** about the burdensome or stressful nature of executorship duties (*for an example, see case study 2 below*).
- × Lead consumers to believe that their only option is to take up your will storage service, when there are other options available (for example, storing a will with HM Courts and Tribunals Service).

Will writing case studies

Wills example 1: Misleading claims regarding involvement of solicitors and regulatory oversight

A will writer employs in-house solicitors who are regulated by the SRA, and a staff of unregulated paralegals. The solicitors do not advise clients (or supervise paralegals giving advice).

The business claims on its website that:

- '*our template will was drawn up by our in-house solicitor, and our in-house legal professionals will review your draft will before sending it to you for attestation*'; and

- '*our clients benefit from the additional protection of the involvement of our in-house solicitors, regulated by the Solicitors Regulation Authority'*.

Statements such as these are likely to mislead consumers as to the nature of the service they are buying. That is because:

- The first statement may mislead consumers as to the nature of the service they are buying, by giving the impression that each will is reviewed by a legally-trained person who will ensure it is suitable for the consumer's circumstances. If, in fact, the review is limited to checking for typographical errors, for example, this is likely to be misleading.
- The second statement may mislead consumers as to their rights and protections, by giving the impression that consumers will benefit from the fact that the will writing business employs regulated solicitors. In fact, a consumer who purchases the services of this business may not have the benefits which regulation confers on the clients of solicitors, such as potential recourse to the SRA compensation fund or Legal Ombudsman.

A compliant statement may read: '*Our template will has been developed with the assistance of a solicitor. Your individual will is sense-checked by a member of our trained team. You should be aware that members of our team may not be regulated solicitors. They do not give legal advice specific to your situation and no solicitor-client relationship exists between you and our team*.'

Wills example 2: 'pressure selling' techniques

A will writer marketing its services as a professional executor sets up a 15-minute meeting with a potential customer at their home to discuss will writing. The will writer's representative stays 45 minutes, despite the consumer indicating shortly after the 15-minute appointed time period that she wishes to end the conversation and move on with other matters in her day.

Businesses engaged in behaviours such as this are acting unlawfully and must remedy these behaviours immediately. All sales staff should be trained in the importance of avoiding practices that seek to pressure potential clients into purchasing products.

In addition, the will writer's sales literature in respect of its executor services includes claims that '*you don't need to worry about appointing us, as we will renounce our position on request by the beneficiaries of your will'*. It also claims that '*most people appoint us as their executor as if a loved one is appointed as an executor, it is time-consuming, complicated and stressful'*.

This claim may induce a consumer to appoint the will writer as their executor on the basis that the appointment is easily reversible in the event their family so wishes, as well as giving the impression that they are saving their loved ones a burden by doing so. However, in the absence of a more detailed explanation, this statement may be misleading, as there may be legal barriers to the executor renouncing (for example, where it has already begun acting as executor). In addition, it omits the fact that a non-professional executor may (assuming the will includes an appropriate charging clause) be able to appoint a professional to assist them in their duties should they so wish.

To be compliant, this statement would need to be qualified, such as: '*We may be able to step down from our role of executor. That depends on what is in the best interests of the estate, and we may discuss this with the beneficiaries before we start administering your estate. In some cases, we might not be able to step aside, or doing so might incur additional costs if we have already started work".*

A will writing business should also explore with a consumer whether other executors can be appointed alongside it, so that the risk to consumers of having to replace a professional executor is reduced.

Finally, this business should provide a more accurate and complete description of the duties associated with executorship, for example by signposting advice on the Citizens Advice or GOV.UK websites.

Wills example 3: Misleading claims and potentially unfair terms regarding pricing of future services

A will writer advertises that it '*does not charge a fee for our appointment as professional executor*' when, while it is true that no fee will be payable on appointment, the will writer will charge the estate fees for delivering the professional executor services after death.

This is likely to be misleading as it could cause a consumer to appoint a professional executor believing that the executor service will be provided at no extra cost, when in fact substantial fees may be incurred depending on the nature and extent of the work involved. It is also likely to be an unlawful omission of material information (in other words, the total price) from an invitation to purchase. Contract terms which give a business a unilateral and unlimited right to change fees and prices after the contract is agreed are also likely to be unfair.

To be more likely to comply, the will writer should ensure that, before deciding to appoint the will writer as professional executor, consumers are given accurate and clear information on the amount of any fees that may be charged and/or a detailed basis of how they will be calculated, when they will be charged and, in the event there is any future variation of those fees, how they may change.

It should always be clear whether the amounts quoted are for the work involved in administering the estate, or whether they are instead the fee for acting as an executor (and supervising others to do the necessary work).

The business's contract terms should also reflect these points.

Wills example 4: potentially unfair contract term allowing business to unilaterally change terms and conditions

A will writer's terms and conditions for its professional executor service include a term stating that the firm will provide executor services '*subject to the terms and conditions in place at the time of your death*'.

This type of variation clause, which allows a firm the unfettered right to vary the terms of the contract and the service – for example impose increased costs, new requirements or reduced benefits – is likely to be unfair whether or not it is meant to be used in that way, because the term permits the firm to change the terms of the service in unspecified ways that the consumer will not be in a position to predict.

A much more narrowly scoped term may be fair, if (for example) it:

- Only provided for variations that reflect changes in the law, to meet regulatory requirements or to reflect new industry guidance or codes of practice which are likely to raise standards of consumer protection.

- Set out in the contract the potential reasons for the variation of contract terms, which are clear and specific enough to ensure the power to vary cannot be used at the firm's discretion and that the consumer could understand in advance.

- Required the firm to (i) give the consumer notice of the variation before becoming bound by it, and (ii) expressly draw the consumer's attention to their option of replacing the will writing business as professional executor if the new terms are unsatisfactory to them (for example, by issuing a re-written will omitting the appointment at no charge to the consumer).

Wills example 5: potentially unfair term which limits trader's liability

A will writer's terms state '*our liability to you and/or the beneficiaries of your estate under and in connection with this contract shall not exceed £10,000 in the aggregate*.'

While this will allow the consumer (or their estate) to recover the purchase price of the will, the losses arising as a result of a negligently drafted or executed will could easily and substantially exceed this amount.

For example, in *Esterhuizen v Allied Dunbar Assurance Plc* compensation of over £170,000 (in today's money) was awarded to disappointed beneficiaries who had not received the estate intended by the testator, due to an unregulated will writer's negligence in connection with the attestation of the will. A consumer could also reasonably expect an unregulated will writer to maintain sufficient professional indemnity insurance to meet such a claim.

A blanket liability cap is likely to be unfair. Ordinarily (in other words, if the clause is not included) the consumer has a legal right to compensation for breaches, so blanket liability creates a significant imbalance to the detriment of the consumer. A clause of this type is also likely to be contrary to the requirement of good faith: in purchasing an unregulated will writing service, the consumer would not reasonably expect to be left in a materially worse-off position when compared with purchasing a will prepared by, for example, a practitioner such as a solicitor (or an unregulated will writer) that is properly insured and does not include such clauses.

A term limiting liability is more likely to be fair if it reflects the usual legal position. Accordingly, limits on liability are more likely to be fair if they only exclude:

- losses that were not foreseeable to both parties when the contract was made; and
- losses that were not caused by any breach on the part of the trader.

Wills example 6: services carried out by a third party

A firm relies on third party professionals to provide certain services (for example, the drafting of wills, professional executor services and will storage services) without clearly communicating this to the customer at the time of contracting.

The fact that certain services may be provided by a third party (and the details of any third-party providers) would likely constitute material information for the customer. A failure to provide this information may constitute a misleading practice.

On this basis, as mentioned in the ‘do and don’t’ checklists above, if services will be carried out by a third party, businesses should ensure that this is clearly and accurately communicated to consumers, including details of the relevant providers.

4. Online divorce

5.1 To finalise a divorce, it is necessary to obtain a formal court order dissolving the marriage. In this guidance, references to 'divorce' also include 'dissolutions' of civil partnerships. The process of applying for a divorce operates differently in each of England and Wales, Scotland, and Northern Ireland, and there are some differences in the terminology used.

5.2 Obtaining even a 'straightforward' divorce in the UK involves a degree of engagement with the courts. In England and Wales, it is now possible to file much of the paperwork connected with that process online.[83] This may be done (if the consumer so chooses) without the involvement of a regulated legal professional such as a solicitor. In Scotland[84] and Northern Ireland,[85] there are also processes allowing members of the public to file simple (or 'DIY') divorce applications.

5.3 A particular concern in this sector is the marketing of online divorce services where the service consists of assistance with completing forms that are available to consumers online – in other words, purely administrative services for divorce management. While some consumers may benefit from assistance with completing such administrative tasks during a challenging period in their lives, businesses must not mislead consumers about the substance of what they will or will not do for them, and the costs they will face.

5.4 In addition, depending on the individual consumer's circumstances, the legal work necessary to complete the divorce may extend to reserved activities (for example, if litigation is necessary). It is important that consumers understand which services can, and cannot, be offered by unregulated businesses.

5.5 The following section sets out 'do and don't' points and case-study examples as a means of illustrating the consumer protection issues that are likely to be particularly relevant to unregulated legal service providers in the online divorce sector.

[83] GOV.UK, Get a divorce: step by step.
[84] Scottish Courts and Tribunals, Divorce and dissolution of civil partnership.
[85] NIDirect, Getting a divorce or dissolving a civil partnership.

Do and Don't

Do

- ✓ Clearly set out and distinguish **what is, and what is not, included** in the service you are selling; consumers should be aware of whether you are providing only an administrative 'divorce management' service, or if you are providing legal advice that will assist their decision-making around the divorce process.
- ✓ Clearly and prominently give consumers the **total price** of completing a divorce using your service, including VAT and all expenses that are likely to be involved (even if not directly charged by you): it should also be clear if this total cost excludes the costs of any additional legal services the consumer may need from other providers.
- ✓ **Provide consumers with the information** they need to make an informed decision about whether to purchase. This will vary depending on the circumstances but may include an explanation of whether the business is regulated, details of the level of experience and/or qualifications of staff, and an explanation of whether or not you hold professional indemnity insurance.
- ✓ Explain clearly to consumers the **situations you can and cannot advise on**, before the consumer engages your service.
- ✓ Ensure that the services your business offers meet the legal requirements of the jurisdiction they will be used in.

Don't

- × Give the impression your service provides benefits to consumers that it does not – for example, claiming that consumers in England and Wales who purchase your services will not have to attend court hearings, when this is not a standard part of the divorce process.
- × Suggest that consumers will pay a lower price than they realistically will (for example, by omitting court fees from overall pricing).
- × Lead consumers to think that by purchasing your service they are engaging a firm of solicitors or other regulated legal professionals on their behalf if this is not actually the case.
- × Make misleading comparisons with competing services where the content of

the service is substantively different (for example, comparing the (lower) cost of a straightforward administrative 'divorce management' service with the (higher) cost of engaging legal advice from a solicitor, without making clear the differences between these two services).

× Make misleading claims about the complexity of completing a 'DIY divorce' process so as to persuade consumers to purchase your service.

Online divorce case studies

Online divorce example 1: misleading claims

An unregulated online divorce provider operating in England and Wales markets a product that consists of providing some high-level guidance on divorce processes, and collating information requested from the consumer (which is essentially a reflection of the information the consumer would be required to input into the HM Courts and Tribunals Service (HMCTS) online form).

The business makes the following advertising claims:

- '*Online divorce: complete service for only £180'*.
- '*You can rest easy that your divorce is being handled by a team supervised by qualified solicitors*'.
- '*A DIY divorce will involve over 20 hours of time, but our service requires less than 2 hours of your time*'.
- '*No court hearings*'.
- '*Our service gives you a complete divorce with no need for you to fill out or look at the paperwork*'.

This conduct is likely to breach consumer protection law in a number of respects:

- The reference to 'complete service for only £180' omits the court fee of £593 which will be payable by the majority of consumers (and, if the consumer required other legal services or advice to complete their divorce, they would also incur the additional costs of these).

- The advertising is liable to give consumers the impression that they are receiving the benefit of a solicitor's legal advice whereas in reality there is no client relationship between the consumer and the solicitor.

- The statement that a DIY divorce will take 20 hours is not substantiated and is likely to mislead consumers as to the benefits of the service.

- The statement that 'no court hearings' are required is liable to be misleading as court hearings are not a standard component of the divorce process in England and Wales.

- Finally, the claim that there is no need for the consumer to 'complete or look at any paperwork' is a concern because, even if the provider assists with filling out paperwork (for example, by taking instructions over the phone) it would not be professionally diligent for an advisor to tell a member of the public to submit divorce filings without first reviewing them.

Compliance is more likely to be achieved if this business:

- is upfront with consumers about the service it is selling (its scope and its limits);

- removes misleading references to supervision by qualified solicitors;

- includes the court fees of £593 in the total price (as well as any other applicable costs);

- uses prominent language clarifying that no solicitor-client relationship is being established;

- ensures that all claims about the benefits of its service; and/or the disadvantages of the consumer completing the divorce process without the assistance of its service, are accurate and not misleading; and

- makes clear what consumers will need to do in order to achieve a successful outcome (and does not omit 'inconvenient' details, such as the need for a consumer to file their own paperwork).

Online divorce example 2: unfair limitation of liability

An online divorce provider includes, in its terms and conditions, the following:

'*Our liability to you for any loss, whether arising in tort, breach of contract or otherwise, shall not exceed the purchase price of our online divorce service'*.

This is likely to be an unfair term: if an online divorce provider fails to carry out services correctly, the usual legal position is that the consumer may be able to sue the provider (for example, for breach of contract) and claim damages for the loss they suffer.

That loss could be considerably greater than the price of the services (potentially many times greater if – for example – a consent order dealing with the division of valuable assets had been finalised based on faulty advice or guidance). The term seeks to change that position for the business's benefit and to the significant detriment of the consumer. That unfairness is likely to be amplified because consumers may reasonably expect that the provider of a professional service would have professional indemnity insurance in place sufficient to cover likely losses.

A term limiting liability is more likely to be fair if it reflects the usual legal position – so limits on liability are more likely to be fair if they only exclude:

- losses that were not foreseeable to both parties when the contract was made; and
- losses that were not caused by any breach on the part of the trader.

5. Pre-paid probate

Overview of consumer protection issues in the pre-paid probate sector

5.1 Pre-paid probate plans operate on the basis that consumers pay 'up-front' for probate services which will be provided after their death.

5.2 The term 'probate' is used throughout this guidance to refer to the broader process of dealing with the estate of a person who has died. This process is also commonly referred to as 'administering the estate' or, in Scotland, 'executry administration'. It includes, for example, valuing assets, obtaining a grant of probate (or, in Scotland, a grant of confirmation) from the courts, liaising with HMRC in relation to inheritance tax, liaising with the appropriate financial institutions, ensuring the accurate distribution of the estate, and preparing the necessary accounts.

5.3 The CMA considers that pre-paid probate plans give rise to significant consumer protection risks. In particular:

(a) It is difficult to predict in advance whether probate will be required, and the scope of the services required if it is. For example, if the consumer's financial position changes in the time between purchasing the pre-paid probate plan and their death, with the result that the estate is too small to require obtaining a grant of probate, the money spent on purchasing the pre-paid probate plan may be wasted.

(b) There is a risk that the company may cease trading in the time between the consumer purchasing the plan and the consumer's death (which may be years, or even decades, after the plan was purchased), leaving the consumer (or their estate) out of pocket.

(c) Although businesses may present themselves as taking steps to protect consumers' funds, these may not be meaningful: for example, the fact that consumers' funds are held on trust is unlikely to provide adequate protection if the terms of the trust deed allow the trustees to make distributions to cover management expenses.

5.4 Concerns about pre-paid probate plans are shared by other bodies:

(a) In January 2023, the Financial Conduct Authority published a 'consumer warning on pre-paid probate plans', alerting consumers to the fact that pre-paid probate plans are unregulated in the UK, and advising that consumers

'consider carefully whether these products meet your needs and offer value as there are no regulatory protections in place'.[86]

(b) At the time of writing, the codes of practice of two membership bodies for will writers and estate planning professionals – the Best Foundation, and the Society of Will Writers[87] – expressly prohibit their members from offering pre-paid probate plans.

(c) Similarly, The Society of Trust and Estate Practitioners (STEP) has expressed the view that 'the few advantages that pre-paid probate plans can offer are far outweighed by their risks',[88] and the Institute of Professional Willwriters has stated that it 'does not condone the sale of pre-paid probate plans and [considers that] any sale of such would breach the IPW code of conduct namely to ensure any product or service provided by an IPW member must always be in the best interest of the client.'

Practices likely to breach consumer protection law

5.5 Given the above, and the broad general prohibition on unfair commercial conduct in consumer protection law, it may be difficult for businesses to provide pre-paid probate services at all without falling foul of the law. Even if they can, the CMA's view is that the following practices would be likely to breach consumer law:

(a) Failure to clearly and accurately explain the scope of the services that are included in, and excluded from, the pre-paid probate plan.

(b) Making claims which mislead consumers as to the risks or benefits of purchasing a pre-paid probate plan (including by omitting to tell them about the risks).

(c) Making statements which convey to consumers that:

(i) a grant of probate is always required;[89]

[86] FCA (2023), Consumer warning on pre-paid probate plans.
[87] For example, the Best Foundation Code of Conduct provides that *"members must not take payment in advance for services that would be carried out after the Client's death such as Trustee or Probate services"*: https://bestfoundation.org.uk/about/member-code-of-conduct/ at paragraph 11.2 and SWW Statement Regarding Pre-Paid Probate - The Society of Will Writers.
[88] Today's Wills & Probate (2022), 'Pre-paid probate plans: unregulated and "risky"?' retrieved from https://todayswillsandprobate.co.uk/pre-paid-probate-plans-unregulated-and-risky/ on 4 April 2024.
[89] Information as to whether a grant of probate is required, and how to apply for one if necessary, is available online, see Applying for probate: What is probate - GOV.UK (www.gov.uk) for England and Wales, Dealing with a Deceased's Estate in Scotland | Scottish Courts (scotcourts.gov.uk) for Scotland, and Probate | nidirect in Northern Ireland.

(ii) the process of probate in the absence of a pre-paid plan is especially burdensome or stressful; and/or

(iii) in the absence of a pre-paid plan, their executors will have no option but to engage professional advisers to provide assistance with probate.

(d) Failure to implement protections to ensure that, in the event the business ceases trading prior to the consumer's death, the probate services will be provided by a third party, or the sums paid will be refunded in full.

(e) Failure to provide consumers with full and accurate details of the protections that have been put in place to safeguard their funds.

(f) Where funds are held on trust, using terms which:

(i) allow the business to deduct unspecified sums prior to the funds being placed on trust and/or allow the trustees to make unspecified payments to the business, to cover (for example), marketing and administrative costs; or

(ii) do not adequately protect consumers' funds, for example by permitting inappropriate financial investments.

(g) Using contract terms which provide that consumers who terminate their involvement with the plan prior to redeeming it will not receive any refund in any circumstances.

Consumer savings schemes

5.6 Businesses operating in the pre-paid probate market should be aware of obligations for traders operating 'consumer savings schemes' under the DMCCA Act, which came into force on 1 January 2026.[90] These provisions are not limited to a form of consumer savings scheme and, to the extent a pre-paid probate plan involves the retention of consumer funds for future redemption against a pre-paid probate service, these obligations could apply.

5.7 Businesses operating consumer savings schemes must make and maintain certain specific insurance or trust arrangements to return protected payments to consumers if the business becomes insolvent.[91]

5.8 Businesses offering pre-paid probate schemes will need to consider whether the specific products they offer amount to a 'consumer savings scheme' and therefore are subject to these legal obligations. They should seek legal advice on this point, if necessary.

[90] DMCC Act, ch 3.
[91] DMCC Act ss 285 – 287

Annex 1: Background

1. Unregulated[92] businesses are an important and growing part of the legal sector. It is estimated that there are at least 3,800 unregulated businesses providing legal services in England and Wales alone, with the largest number in the area of wills and estate administration.[93] Many unregulated providers offer services that are innovative and convenient for consumers, and that are less expensive than the services offered by regulated providers.[94]

2. The CMA recognises that unregulated providers of legal services are an important and growing part of the legal sector[95]. As noted in the CMA's Legal Services Market Study, unregulated providers may offer more affordable options for consumers, and can act as a starting point for consumers seeking assistance in navigating the market.[96] In its 2020 review of the Legal Services Market Study, the CMA also found evidence that unregulated providers are often more innovative than traditional regulated professions.[97]

3. In England and Wales, Scotland, and Northern Ireland, only certain legal services are restricted to regulated legal services professionals. Other 'non-reserved' legal services may be legally offered by unregulated businesses.

4. In the context of unregulated will writing, online divorce, and pre-paid probate services, failures to comply with consumer protection law are particularly likely to give rise to significant consumer harm. That is because:

   (a) these are infrequent purchases, and involve complex legal concepts and terminology with which consumers may not be familiar;

   (b) these are important services which are likely to have serious and long-term consequences for consumers;

   (c) consumers often purchase these services at a challenging and stressful time of their lives when they may be more vulnerable to misleading or aggressive sales practices;

   (d) the nature of these services is such that problems may not come to light until many years after the initial purchase is made; and

   (e) consumers who purchase legal services from unregulated businesses

[92] An explanation of what is meant by 'unregulated' legal services is set out above in Overview, at paragraph 1.4.
[93] Frontier Economics (2023), Understanding the Unreserved Market - report for the Solicitors Regulation Authority, at page 8.
[94] In May 2025 the Law Commission published its final report and proposals for significant reform to modernise the law of wills in England and Wales, including the introduction of electronic wills.
[95] See generally CMA (2016), Legal services market study - final report (the 'Legal Services Market Study') and Frontier Economics (2023), Understanding the Unreserved Market - report for the Solicitors Regulation Authority.
[96] Legal Services Market Study, paragraphs 2.39 and 5.57.
[97] CMA (2020), Review of the legal services market study in England and Wales - report, paragraph 5.41(c) ('Review of the Legal Services Market Study'). See also Legal Services Board (2018) Technology and Innovation in Legal Services – Main Report at paragraph 5.18

cannot necessarily access the same complaints processes and redress mechanisms available to consumers who purchase from regulated businesses.[98]

5. Consumers who have accurate information about all their options for legal services can make informed purchasing decisions, which drives competition and ultimately leads to lower prices, higher quality, and greater innovation.[99]

[98] For example, the Solicitors Regulation Authority Compensation Fund. We note that the Regulation of Legal Services (Scotland) Act 2025 received Royal Assent on 27 June 2025. Once the relevant provisions are brought into force, it will extend the Scottish Legal Complaints Commission's power to investigate complaints to cover unregulated legal services providers; see section 61.
[99] CMA (2016), Legal services market study - final report (the 'Legal Services Market Study') at 16.

Annex 2: Legal and regulatory information

The CMA's mission and powers

2.1 The Competition and Markets Authority (CMA) is the UK's primary competition and consumer protection authority. The CMA's objective is to promote competition and protect consumers with a clear end goal - to drive economic growth and improve household prosperity.[100]

2.2 The CMA has powers to tackle practices and market conditions that harm consumers and hinder their decision making. The CMA uses its consumer protection law powers to protect consumers from unfair business practices and unfair contract terms and to help businesses to do the right thing by their customers, including by producing guidance to promote compliance.

2.3 Under the Digital Markets, Competition and Consumer Act 2024 (DMCC Act) the CMA has powers to determine whether consumer law breaches have occurred, and to impose fines and order firms to pay compensation to affected consumers, effective from 6 April 2025.[101] The CMA can also go to court to enforce consumer protection law, as can Trading Standards and other enforcers.

The Digital Markets, Competition and Consumers Act

2.4 Provisions in the DMCC Act relating to unfair commercial practices came into force on 6 April 2025.

2.5 The DMCC Act contains broadly similar prohibitions against unfair and misleading commercial practices as were contained in the Consumer Protection from Unfair Trading Regulations 2008, although there are some changes and additions.[102]

2.6 Other changes to consumer protection law arising from the DMCC Act affect some of the issues covered in this guidance. Examples include:

a) new protections for consumers who enter into 'subscription contracts', which are likely to be relevant to will storage and will update products;[103]

b) a specific prohibition on 'drip pricing', in other words the practice of advertising a price but then introducing further additional fees later in the

[100] See CMA Strategy 2026 to 2029
[101] Further guidance on the CMA's approach to use of its consumer powers, including Enhanced Consumer Measures, can be found on the CMA webpages: for example Consumer protection: enforcement guidance (CMA58) and Direct consumer enforcement guidance (CMA200).
[102] See Technical note: unfair commercial practices, dated 4 April 2025.
[103] These provisions are expected to come into force no earlier than Autumn 2026.

sales;[104] and

c) new regulations applying to consumer savings schemes, which could be relevant to businesses offering pre-payment products.[105]

2.7 Businesses offering unregulated legal services may wish to seek legal advice on how the DMCC Act provisions apply to the specific practices of their businesses.

Relationship with other law, regulation and guidance

2.8 Consumer protection law sets requirements that apply to various aspects of an unregulated legal services provider's dealings with consumers. It sits alongside other sector-specific and general legal requirements.

2.9 Unregulated legal services providers are prohibited from providing certain 'reserved' categories of legal services, and businesses that provide reserved services for a fee in contravention of these rules may commit an offence. This may include, for example, conducting court proceedings in relation to a divorce, or the preparation of grants of probate/confirmation.[106] Businesses should be aware that the definition of reserved activities is not uniform across England and Wales, Scotland and Northern Ireland.

2.10 In addition, individuals involved in the delivery of unregulated legal services may be subject to individual regulatory requirements, even if the businesses they work for are not regulated.[107] Businesses may also be members of industry bodies or codes of practice, although these may not have the legal force of regulation.

2.11 Businesses must comply with their other legal and regulatory responsibilities, and this guidance should not be understood to be a 'one stop shop' in respect of unregulated legal services businesses' legal obligations.

2.12 Once the relevant provisions are brought into force, the Regulation of Legal Services (Scotland) Act 2025 will also impose requirements on unregulated legal services businesses, including extending the powers of the Scottish Legal Complaints Commission regarding services complaints to unregulated

[104] See Price transparency guidance (CMA209).
[105] See DBT guidance on Consumer savings schemes legislation for businesses, dated 18 November 2025. These provisions came into force on 1 January 2026.
[106] Legal Services Act 2007, section 12 and schedule 2; Solicitors (Scotland) Act 1980, section 32; and Solicitors (Northern Ireland) Order 1976, Articles 19, 23, and 24.
[107] In England and Wales the Solicitors Regulation Authority has published guidance for unregulated providers of legal services that employ solicitors who provide services to the public. The guidance explains what unregulated businesses can employ solicitors to do, and what their regulatory duties are: SRA (2019), Guidance: Unregulated organisations for employers of SRA regulated lawyers.

legal services businesses,[108] and a specific offence of pretending to be a regulated legal services provider.[109]

[108] Regulation of Legal Services (Scotland) Act 2025, section 61.
[109] Regulation of Legal Services (Scotland) Act 2025, section 91.