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Chartered Trading Standards Institute

The Chartered Trading Standards Institute (CTSI) response to:
draft revised guidance on unfair contract terms (CMA37)

Response sent to: consumerguidance@cma.gov.uk

Response submitted by: [redacted]

This response is being sent on behalf of The Chartered Trading Standards Institute and has been compiled by the expertise of CTSI members and Lead Officers.

ABOUT CTSI

Founded in 1881 (as the 'Incorporated Society of Inspectors of Weights and Measures'), today's Chartered Trading Standards Institute (CTSI) is one of the world's longest-established organisations dedicated to the field of Trading Standards and Consumer Protection.

At CTSI, and through the Trading Standards profession, we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices. We provide information, guidance and develop evidence-based policies and campaigns to support local and national stakeholders including central and devolved governments.

CTSI also provides the secretariat to the All-Party Parliamentary Group on Consumer Protection and campaigns on range of topics including product safety issues. CTSI is responsible for business advice and education in Trading Standards and consumer protection legislation, including running the Business Companion service to provide clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI is also contracted to provide administrative support to the Approved Codes Scheme which was established to give consumers greater confidence when they buy from members of the approved scheme and raises the standards of trading of all businesses that operate under the relevant Approved Code for that sector. CTSI run training and development events for both the Trading Standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

Response:

Introduction

CTSI welcomes the opportunity to respond to the Competition and Markets Authority consultation on the revised guidance on unfair contract terms and consumer notices under Part 2 of the Consumer Rights Act 2015. CTSI members include Trading Standards professionals in many regulatory fields, including Local Authority Trading Standards services across the UK, who play a critical frontline role in enforcing consumer protection law.

Q1. Do you have any comments on the new structure and presentation of the Draft Guidance? If any, please be specific about the areas of the Draft Guidance that you think could be restructured and the changes you feel would improve them.

CTSI welcome the improved clarity and accessibility of the Draft Guidance, including the simpler wording in some areas, enhanced readability and general use of boxes and flowcharts to highlight parts of the guidance. The quick links provided throughout the document make it much easier to navigate. Updating the guidance with more recent case law and the changes brought in, or to be brought in, by the Digital Markets, Competition and Consumers Act 2024 is also beneficial to businesses and enforcers alike.

The feedback from our members about the new structure and presentation of the updated guidance is very positive. Although it is acknowledged that it is still a sizeable document, the worked examples and explanations are seen to be beneficial and therefore still needed.

Although we have noted that this consultation only covers the updated work on CMA37, we would also strongly support an update of shorter guide options for businesses and a refresh of the supporting videos. These resources are very helpful for the many businesses that our members advise, and assist in improving understanding of the concepts raised in the guidance.

Q2. Does the tone strike the right balance between comprehensive explanation of the legal provisions and readability for non-specialist users of the Draft Guidance? If not, please specify what changes you would like to see.

CTSI feels that the CMA have achieved the right balance in the Draft Guidance for businesses, but there are a few parts where we would suggest re-wording is needed.

3.7 of the Guidance states that 'Traders must give consumers the following rights under contracts for the supply of goods.' We would suggest that this sentence is reworded as it gives the impression that the trader is giving the consumer the rights listed, which are statutory rights provided to consumers in Part 1 of the Consumer Rights Act 2015. The trader must comply with and not restrict the consumer's statutory rights. Similar wording is used for digital content and services. We would therefore suggest these parts are re-worded to avoid any potential confusion about the origin of the rights referred to.

Q3. Do you have any comments on the usefulness, relevance and clarity of the illustrative examples in the Draft Guidance of contract terms that are unlikely to be fair and more likely to be fair?

Unfair contract terms is a complex area, and our members find this guidance very useful to provide to the many businesses that our members engage with. It is pleasing to see many useful examples included/retained in the guidance. Whilst we understand and support the streamlined approach to the new Draft Guidance, the worked examples of how to make terms more likely to be fair are extremely beneficial to enforcers and businesses in understanding how the law may be interpreted and how compliance can be achieved.

On page 18, there is a bullet point referring to the liability of risk for deliveries. The point mentions the legal position if goods are delivered to the consumer or another nominated person, which is a relevant and useful example. However, in our experience, most disputes relate to issues where goods are left on doorsteps, in bins or gardens etc. The addition of a comment on this point would significantly improve the usefulness of this example for businesses.

Q4. Are there any areas where you think other examples could be added to the Draft Guidance, particularly for terms which may have arisen since 2015 and were therefore not reflected in the Current CMA37?

One such area is where businesses are using 'deferred acceptance' within their terms and conditions. We acknowledge this practice has been around for a long time, but CTSI believe that it should be made explicitly clear to consumers in such terms and conditions that they are not bound by the contract until acceptance has taken place and they can therefore withdraw their offer until that time. It is our members experience that many consumers do not understand the legal term 'acceptance' and the implications of deferring when the contract becomes legally binding. We would therefore recommend that businesses using deferred acceptance should also ensure they are clearly and transparently explaining what this practically means for the consumer, as well as themselves, within the terms of their contract. To support this point, we refer to the work of the Law Commission report in 2021 and the issues raised in relation to consumer detriment and the Government consultation that followed. Although no changes to the law were made, the consultation response published in 2022, along with the May 2025 'Report on the Implementation of Law Commission Recommendations' confirms that it was agreed that this area would continue to be monitored. As the use of 'deferred acceptance' is common by businesses but not widely understood by consumers, CTSI feel that this would be an important example to include to ensure transparency.

Another issue that has been problematic for consumers for many years relates to terms which require consumers to contact traders via an online form on their website. Forms which do not allow the consumer to keep a copy of the message sent or to upload attachments can lead to consumer detriment, particularly in relation to the exercise of time-limited rights such as their 14-day cancellation period or exercising the right to reject goods within 30 days. Similarly, requiring consumers to contact the trader via Artificial Intelligence (AI) systems that have similar limitations are also becoming more common. CTSI would like to see a reference to this practice in the updated guidance, as it reflects a modern challenge for consumers. By including a worked example of terms that are likely to be unfair and ones that are not, this would help to provide clarity for businesses in this area.

CTSI would also recommend some additional mention of issues such as in-contract price escalation through complex fee structures. For example, subscription contracts that introduce new 'service fees,' 'administration fees' or 'technology charges' without genuine justification or consumer benefit. Examples linked to any follow-on fees, alongside the general core exemption relating to price, would also be useful to include in the explanation.

Q5. Is there anything in the Current CMA37 you wish to retain in the Draft Guidance that has not been included? If yes, please explain your reasoning.

The flow chart on page 5 of the Draft Guidance is more complex than the flow chart in the previous guidance. Feedback from our membership indicates that the original flow chart is more logical and easier to follow. We would therefore suggest it is retained as the overview flow chart and then supplemented by the shorter ones throughout the guidance, which focus in on specific areas and are useful. Although CTSI welcome the focus on the important of areas such as transparency, it should not be at the expense of overcomplicating such flow diagrams, which are designed to act as a simple visual reference to aid understanding for businesses.

Trading Standards Services receive regular enquiries and complaints about cancellation clauses. The more specific worked examples in the current guidance are very helpful and should be retained. Worked examples of terms more likely to be unfair and terms more likely to be fair, help to illustrate what disproportionate looks like in practice, which will provide further clarity for businesses.

CTSI would also like to see some of the worked examples in the current guidance retained in relation to the excessive trader enforcement, particularly in relation to accessing a consumer's home or land to remove products that have been installed. Retaining some of the worked examples in this area is important due to their link with aggressive trade practice offences under the Digital Markets, Competition and Consumers Act 2024 and doorstep crime work carried out by Trading Standards Services.

Q6. Do you have any comments on the usefulness and clarity of the technical note accompanying the Draft Guidance?

The feedback received from our members has been positive about the technical note and as mentioned in other questions, we support the approach of separating the technical note out from the CMA37 main guidance. This acts as a useful summary for enforcers as well as businesses.

Feedback from our members is that enforcers find the worked examples particularly useful. Any existing worked examples that cannot be included in the Draft Guidance to ensure it is kept readable, could be included as an Annex in the technical guidance.

One trend we are seeing is an increase of tactics such as 'confirmshaming,' when consumers are seeking to cancel online contracts and are required to do this via the use of negatively-framed decline buttons, navigating through emotional or guilt-based statements or visual cues such as a sad character. This, coupled with the increased use of countdown timers during a consumer's contract journey and other dark pattern tactics, are a developing issue. CTSI therefore suggests including a mention of these practices in the technical note, as this update provides a useful opportunity to highlight how these practices may breach the Digital Markets, Competition and Consumers Act 2024. Although they are not unfair terms in themselves, CTSI feel that this would be a good opportunity to acknowledge and make reference to these increasing trends and their relationship to consumer contracts and the wider consumer protection landscape. Perhaps briefly mentioning such practices in 3.5 of the technical note could achieve this.

Q7. Would you prefer the technical note to be incorporated in the Draft Guidance or to remain separate?

Due to the length of the guidance, we prefer the technical note to remain a separate document, as this makes the guidance less daunting for businesses to read. Despite it being streamlined, it is still a large document, even without the technical note being included.

Q8. Do you have any other comments on topics not covered by the specific questions above? If so, please structure your responses to separate out your views in relation to each of the Draft Guidance's chapters.

NA.