

Briefing Note: Unfair Contract Terms

An Introduction to the Briefing Note

This Briefing Note highlights the key issues your business needs to consider if you use contracts that impose minimum contract terms and early termination charges on consumers.

How are consumers protected?

Unfair contract terms

- Consumer protection legislation applies to any unfair terms in contracts between a consumer and a trade or business seller of goods or a supplier of services.
- A term will be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations under the contract in favour of the trade or business seller or supplier.
- When deciding whether a term is unfair, a court will take into account:
 - whether the term was negotiated;
 - the type of goods and services being provided; and
 - the circumstances surrounding the conclusion of the contract.

Consumers must be treated fairly

Consumer protection legislation prohibits your business from treating customers unfairly. The legislation:

- Imposes a duty on all businesses dealing with consumers to trade fairly.
- Prohibits misleading consumers by action or omission.
- Bans aggressive practices.

Review your standard terms and business practices

Minimum contract terms

- If your business uses contracts that impose a minimum term, you must ensure they do not entrap consumers into committing to a minimum term that is excessive without explaining the:
 - risks involved; or
 - possibility of alternative and more beneficial options.
- Your business must clearly notify consumers that they are entering into an agreement with a minimum term, both when speaking to them and in any written information you provide.
- You should consider whether there are any circumstances where a consumer should be able to terminate the contract early without incurring adverse financial consequences.

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Automatic renewal terms

If your contracts impose automatic renewal terms, your business must provide reasonable means for your consumers to exit the automatic renewal terms fairly. This option must be communicated in plain and intelligible language.

Early termination charges

Your business must ensure that charges for early termination include an appropriate discount for accelerated receipt of payment.

Notice provisions

Notice provisions should be drafted so that consumers are able to serve notice on the most obvious party. Your contract is likely to be unfair if it states that notice will only be valid if given to an agent unless it is obvious for the consumer to do so.

Parties

Your contracts must clearly identify the contracting party, the supplier of services (if different from the contracting party) and any agent, in clear and intelligible language.

Credit collection methods

Your business must not engage in any aggressive or unfair trading practices when attempting to recover outstanding payments. For example, you should avoid threatening:

- Legal proceedings when there is no intention of issuing proceedings.
- To report or reporting information of debts in dispute to credit reference agencies as a means to secure payment.
- To report or reporting information to credit reference agencies without informing individuals of their:
 - right to access records kept about them by credit reference agencies; and
 - ability to have incorrect entries corrected.

Know your customers

Your business must have in mind the behaviour of your average consumer and not create a business model or a standard form contract that is designed to exploit the average consumer's naivety for financial gain.

If you have any questions about the content of this Briefing Note, please contact Mark Williams: mew@gabyhardwicke.co.uk or on 01323 435900.

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