



Department
for Business
Innovation & Skills

**TERMS & CONDITIONS AND
CONSUMER PROTECTION FINING
POWERS**

Call for Evidence

MARCH 2016

Contents

Terms and Conditions: call for evidence	3
1. Foreword from the Minister for State	4
2. Executive summary	5
3. How to respond	7
4. Confidentiality and data protection	8
5. Help with queries.....	8
6. The problem.....	9
7. The current law	12
8. Proposed T&C enhancements	15
9. Fining powers.....	19
10. Consultation questions	22
11. What happens next?	27
Annex A: Case studies on potential use of civil penalties	28
Annex B: Consultation principles.....	30
Annex C: List of organisations consulted.....	31
Annex D: Terms and Conditions response form	32

Terms and Conditions: call for evidence

In this Call for Evidence we are seeking a better understanding of how Terms and Conditions (T&Cs) can be made more user-friendly and consumers might be helped and encouraged to engage more effectively with Terms and Conditions. It includes a request for feedback on a number of proposals along with some more general questions for consumers on how they see Terms and Conditions and what might work better for them.

At the same time we want to understand better how T&Cs are used by businesses, what purposes they use them for and whether those goals might be better achieved in other ways (e.g. by using other means of communication as suggested in [guidance](#)¹). We also want to investigate whether fair competition between businesses could be better supported by a wider range of enforcement tools including the provision of civil fining powers for breaches of consumer protection legislation.

Views are sought from the public, consumer representatives, businesses, trade bodies and regulators.

Issued: 1 March 2016

Respond by: 25 April 2016

Enquiries to:

Craig Belsham
BIS Consumer and Competition Policy
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 5884

Email: T&Cs@bis.gsi.gov.uk

This consultation is relevant to: the public, consumer representatives, businesses, trade bodies, trade union and membership organisations and regulators.

¹ The Competition and Markets Authority issued Guidance on Unfair contract terms on 31 July 2015. See: www.gov.uk/government/publications/unfair-contract-terms-cma37.

1. Foreword from the Minister of State

“Terms and Conditions apply!” we hear that all the time on adverts and see it at the bottom when we are buying products and services. It seems that anything from a night out at a show, booking a train or downloading an app comes with the message “Terms and Conditions apply!” (or T&Cs as they are known). So you might think we would spend an awful lot of our time reading these T&Cs. The reality, however, is few of us even look at them.

The good news is that, as well as T&Cs, consumer protection rules apply and that these have been enhanced by the Consumer Rights Act 2015 (CRA) that came into force on 1st October 2015. T&Cs must be fair and transparent and businesses must make price and core details prominent to avoid challenge. Consumers are now in a better position to dispute terms they believe to be unfair – but only if they check them!

My own experience is that on the rare occasions I have clicked on and opened “T&Cs”, I have found them to be very long, in small print and full of impenetrable jargon and legalise. That does not help anyone and certainly doesn’t encourage further engagement by customers. As a result customers may be missing differences that could have a significant influence on their choice. That is not good for the individual but it is bad for the economy as a whole also – individual choices drive competition between businesses and boost productivity. That is why in this call for evidence we are looking for practical ways to make T&Cs more transparent and accessible for customers.

We also have a specific proposal we want views on. We think enforcers need additional tools particularly to deal with those who persistently break the rules. So we are consulting on the introduction of monetary fining powers for enforcers to deal with breaches of consumer protection and unfair terms rules. Some enforcers, particularly in the regulated sectors already have these powers, but we want to extend them into the wider economy and are therefore seeking comments on how best to do this in the second part of the call for evidence.

This is a great opportunity to influence how T&Cs are provided and make them accessible, please take it and answer the questions at the end of the document – you can do so online. I promise it’s not 50+ pages!

Nick Boles
Minister of State for Skills

2. Executive summary

1. When was the last time you clicked “accept”, without even looking at the terms and conditions you were signing up to? It would seem that many of us routinely do so – deciding not to read the terms and conditions (T&Cs) associated with products and services which we purchase. There may be a number of reasons for this – we may think that the T&Cs are standard and we understand them or we may just be in a hurry.
2. We hear from consumers that the length and complexity of many T&Cs is excessive, and in reality therefore many consumers just simply don't feel a need to read them. Even though protections against unfair terms exist, agreeing to T&Cs they haven't read may put consumers in a poor position, leaving them with products and services that don't suit their needs.
3. The government highlighted T&Cs as a key issue for further work in “A better deal: Boosting competition to bring down bills for families and firms”, which was published on 30 November. You can find it here: www.gov.uk/government/publications/a-better-deal-boosting-competition-to-bring-down-bills-for-families-and-firms.
4. “A better deal” sets out steps to boost competition and ensure that markets deliver real benefits for consumers. One aspect of ensuring that consumers can engage effectively with markets is by reducing the complexity and increasing the accessibility of T&Cs, and thereby providing greater clarity for consumers and business.
5. This call for evidence is intended to support that ambition, helping us to get to the bottom of how consumers and businesses use T&Cs, and how they could be improved to make them more user-friendly. In addition this call for evidence asks for specific views on the value of:
 - Building on the requirements of the Consumer Rights Act (CRA) for price and subject matter terms to be prominent and transparent so that it is easier to make comparisons between the T&Cs offered by different suppliers.
 - Putting key facts together bold and up front (e.g. on two pages)
 - Making T&Cs more navigable, by grouping certain terms under clear headings. More specifically, creating themes in T&Cs so that the material that is required by law or regulators is distinguishable from terms that are at the discretion of the parties, or where T&Cs go beyond minimum requirements.
 - Encouraging business to enable and support consumers to actively engage with T&Cs. For example, working to reduce the length and complexity of T&Cs to make it more likely that T&Cs have been read and understood by consumers, boosting the confidence of both parties in the agreement.
 - Increasing incentive for business compliance with consumer protection and unfair term rules by granting enforcers civil powers to seek or impose fines.
6. The government recognises it will not always be possible for T&Cs to be short and snappy. Some products are complex and legislation or regulators may set out

requirements to be included in order to best protect consumers. In general important information must be provided prior to purchase in a clear comprehensible manner. Government has also already made significant reforms to provide that if the most important elements of T&Cs are not made sufficiently obvious to prospective buyers they can be assessed for fairness and ruled not binding on the consumer. But we believe more can be done to aid clarity and improve consumer understanding, and this Call for Evidence is seeking views on practical examples of ways to do this.

7. A related matter is the enforcement of consumer protection legislation. The legislation itself has just been given a refresh by the Consumer Rights Act 2015, but the effectiveness of the available enforcement tools is a recurring concern and the government feels there is not sufficient incentive for all business to comply with the law and compete fairly. Civil enforcement action is limited in scope and does not contain sufficiently strong deterrence or reference to the previous harm or detriment caused; this means there may be a lack of incentive for businesses to stop using unfair terms or practices even when they are likely to be found to be unfair by a court.
8. Creating a power to apply or seek civil fines on businesses for non-compliance would encourage swifter compliance and deter future breaches. We therefore intend to introduce new monetary penalties to enforce consumer protection law, and welcome views on how best to implement this proposal.
9. Following this Call for Evidence government will make resulting recommendations to address these issues in Spring 2016.

3. How to respond

10. This call for evidence commences on 1 March 2016 and will close on 25 April 2016. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
11. You can reply to this consultation online at <https://bisgovuk.citizenspace.com/ccp/terms-conditions> .
12. The consultation response form is available electronically on the consultation page: www.gov.uk/government/consultations/improving-terms-and-conditions (until the consultation closes). The form can be submitted online/by email or by letter to:

Craig Belsham
Consumer Policy and Strategy Team
Department of Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 5884
Email: T&Cs@bis.gsi.gov.uk
13. A list of those organisations and individuals consulted is in [Annex C](#). We would welcome suggestions of others who may wish to be involved in this consultation process.
14. You may make printed copies of this document without seeking permission.
15. BIS consultations are digital by default but pdf versions are available. Other versions of the document in Braille, other languages or audio-cassette are available on request.

4. Confidentiality and data protection

16. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). There is also a statutory Code of Practice issued under section 45 of the FOIA with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
17. If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

5. Help with queries

18. Questions about the policy issues raised in the document can be addressed to:

Craig Belsham
Consumer Policy and Strategy Team
Department of Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 5884

Email: T&Cs@bis.gsi.gov.uk

The consultation principles are signposted at [Annex B](#) along with how to make comments or complaints.

6. The problem

The issue

19. Goods and services are frequently sold with additional associated written T&Cs which consumers are required to accept before their order is to be confirmed. This is particularly prevalent in online sales but not uniquely so.
20. The Consumer Detriment² survey suggests that over 60% of people almost never look at T&Cs and will typically tick a box or sign acceptance without opening them or any knowledge of any unusual terms that might be lurking within. A survey of 2000 people conducted by Fairer Finance earlier this year suggested 73% do not read the small print, and a similar subsequent Money Advice Service Survey suggested this figure was nearer 84%.
21. It may be that consumers simply have to accept the T&Cs in order to be able to proceed so there is no incentive to read the terms. In certain sectors this might be considered rational (e.g. because terms are closely monitored by the regulator under their licencing regime) but there are also likely to be instances where this behaviour has brought with it considerable risk of consumer detriment.
22. T&Cs must be fair – if they are not then they are not binding on the consumer. It is our intention to stop anyone being misled and we want consumers to be able to take active informed decisions. However, there are many details they might only need to follow-up if something goes wrong or in particular circumstances. In this case they should find that the T&Cs are easy to consult as well as treating them fairly.
23. To many, T&Cs seem excessively lengthy, covering a very wide range of eventualities, and making it very difficult for customers to identify the terms which might interest them most (and might influence their choice of one offer over another). As we will see there are legal protections which mean that consumers are not bound by terms that are hidden, misleading or unfair but despite this, there is a danger that T&Cs do not help empower customers, but rather risk undermining their confidence and hindering them in asserting their rights.
24. In some cases, especially where the service is being marketed or introduced by club, trade union or association which the consumer is a member of, it may be unclear who the contract will be with, but such contracts will often be covered by unfair terms law if they are provided as a result of a monetary payment being made.

The role of Terms and Conditions

25. People carry out transactions every day and most do not require written terms and conditions. Where they do exist, detailed T&Cs should provide customers with additional information regarding the product or service they are purchasing and their rights if something goes wrong.

² www.gov.uk/government/publications/consumer-engagement-and-detriment-survey-2014

26. Whilst the majority of transactions may be straight forward, parties to a complex transaction do need to know what rules apply, including when things go wrong, so there is a role for terms and conditions. They will normally set out the legal framework in which they operate and the applicable law.
27. Where there are known and established standards and terms then it may be quite sensible for customers not to read them in detail (given that some T&Cs run for many pages). Some services are very complex or last a long time so need to account for a range of contingencies which means the terms and conditions need to reflect these. Indeed T&Cs are often longest in the regulated sectors where regulators specify the information that must be given to all customers which then feature in the T&Cs. If the regulator has already considered and approved industry terms and conditions there may be little for the consumer to be worried about. The FCA sets out rules for financial products sold by licensed operators, for example.
28. T&Cs will often also involve a consumer agreeing to the business privacy statement and policy. This may be more of a concern for a customer and may involve a further document and may also be a need for another box to be ticked. We know that data privacy and security has an important impact on consumer trust.
29. Most T&Cs are directly related to the immediate purchase or service being contracted for though they may need to clarify details of the provider (e.g. where the service is being introduced as part of a trade union, club or membership scheme). However, T&Cs sometimes include de facto or implied requirements to use a certain service along with the immediate purchase. Locked mobile phones are one example of this that the government has announced it will take action on³, but it might also apply to products which access media services such as TV, music and books. At the time of purchase it may not be clear that an e-reader, say, will not be able to download books from some e-book providers.
30. As a result, consumers need to be aware that T&Cs may be used to bind them as customers in a number of ways. These may involve:
 - Application of additional charges for associated services
 - Restricting customer choice regarding other services (e.g. phone locking)
 - Restricting onward sales or transfer by the customer (e.g. tickets)
 - Time constraints on changes or cancellation (or charges to lift such constraints) such as an 18 month term
 - Usage or qualifying requirements (e.g. paying certain amount each month into your bank account, carrying your railcard)
 - Limitation of or charges for changes (e.g. change of address)
 - Data sharing, sale and release of their personal data to other parties
 - Confidentiality requirements

³ www.gov.uk/government/news/chancellor-launches-game-changing-plan-for-families-and-firms

- Restrictions on liability applying to the trader in given circumstances
- further details of the party being transacted with if it is not the party making the introduction (e.g. if a club or trade union introduces a member to a financial service)

31. There may be other terms but most will fall into one or more of the categories above, or be associated with them.

Reasons for the Call for Evidence

32. A typical consumer will probably enter into between 200 and 1000 consumer transactions on an annual basis – this would include every time we go to a shop to purchase something whether a sandwich, a newspaper or a bar of chocolate. In many cases the terms and conditions we enter into do not present a problem, and work well for both parties – you get the edible sandwich of your choice, and the shop receives from you the price they set for it. All such contractual transactions between traders and consumers have terms and conditions; whether they are for the supply of goods or services. Under UK law, as well as what the parties may explicitly agree, there are also implied terms for goods and services contracts. For example, in the situation above it is an implied term that the sandwich will be fit for human consumption.
33. Sales made in the UK to our 62 million consumers amount to around 320 million transactions per week. For most of these transactions there are no formally written Terms and Conditions (T&Cs). There are associated rights that have been simplified and clarified with the implementation of the Consumer Rights Act 2015 (CRA) on 1st Oct 2015, but most items are simply bought and carried away. Nevertheless these are “contractual transactions” - a consumer agrees to pay (usually money or equivalent) a trader in return for the provision of goods or services. However, the terms and conditions for contractual transactions need not be in writing and for the most part they are not.
34. Even for those people that claim to have considered the T&Cs, there is no guarantee that customers fully understood them or their impact. Some terms just do not register with consumers even if they are in plain sight. People may be far too engrossed in the good things about the item they are purchasing (e.g. latest smartphone or watch) to worry about more negative terms in the contract.
35. In recent BIS research on Consumer Empowerment⁴ it was demonstrated that consumers fall into different segments depending on their behaviours, traits and situation. As well as information, consumer choices are affected by their general levels of confidence and ability to negotiate, levels of trust in the advice of others financial status, attitude to risk and available time. These elements will impact on how they respond to Terms and Conditions also. The call for evidence will try and explore these impacts and understand the consumers that would benefit most from changes to T&Cs.

⁴ www.gov.uk/government/publications/consumer-behaviour-survey.

7. The current law

Current protections for consumers

The law on Terms and Conditions, including updates in the Consumer Rights Act.

36. The current law on terms and conditions set out rules which business must abide with when dealing with consumers. They are founded on the idea that terms must be fair, plain and intelligible and not be significantly unbalanced against consumers. Legislation – particularly the unfair terms provisions of the CRA - provides protection for consumers through a list of “dos” and “don’ts” including terms that are always to be considered unfair (the “black list”⁵) and those which can always be assessed by the courts for fairness (the “grey list”⁶). For instance, the blacklist means it is not possible for a trader to use terms and conditions to exempt themselves from certain liabilities if they are negligent. So, a trader cannot by a term of a consumer contract or by a consumer notice exclude or restrict liability for death or personal injury resulting from negligence.
37. The grey list shows other terms which are seen as being potentially unfair. As a result, they are always assessable for fairness. This is true even if they are related to price or core subject matter, which are normally exempt from assessment for fairness if prominent and transparent. These grey list terms (they include the supplier having the right to cancel the contract without notice or binding a consumer to a term they have had no opportunity to become acquainted with before a contract is concluded), may be generally avoided by reputable traders, but that does not mean they never crop up.
38. The CRA 2015 (which came into force on 1 October 2015) also clarifies that notices (including End User License Agreements) are assessable for fairness. This will mean that business cannot just rely on a statement on the website or a notice (e.g. in a car park) and presume that such terms are automatically applicable. Rather than these terms being accepted as binding, the Consumer Rights Act will allow them to be challenged if they are unfair.
39. The CRA clarifies that non-transparent terms can be challenged. Previously this was unclear, which tended to create difficulties for those seeking to rely on the legislation, particularly for customers taking their own action, who instead felt bound by terms that could well have been set aside if challenged in the courts.
40. As a result of these changes some terms and conditions may no longer be upheld and considered “fair” and, if challenged, will cease to bind the consumer.
41. Guidance has been issued by the CMA⁷ regarding these changes but there may be doubts as to how well aware consumers are of these as yet and how well equipped they are to go about challenging terms that they believe are invalid or unfair. The

⁵ Blacklisted terms include exempting a supplier from liability for their own negligent actions.

⁶ Grey listed terms are set out in CMA guidance on unfair terms.

⁷ www.gov.uk/government/publications/unfair-contract-terms-cma37

government will work with its partners so that the call for evidence provides an opportunity to raise consumer awareness of the new rules.

42. Other legislation, in particular the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), can also apply to the use of unfair contract terms. The CPRs are intended to provide broad protection for consumers, and business practices which are likely to distort consumers' decisions regarding their purchases generally fall within their scope. Certain kinds of unfair term can have that distorting effect, for instance through misleading consumers about their rights. Terms might also be used in an aggressive or misleading way. Therefore, depending on the circumstances, the use of particular types of terms could give rise to breaches of either or both the CRA and CPRs.
43. Similarly, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, effective since 13 June 2014 which implement the EU Consumer Rights Directive provide protection for consumers when they enter into distance (including telephone, mail order or internet sales), off-premises (for example, at home, doorstep sales or at work) or on-premises (broadly, contracts made in person at the trader's business premises) contracts for goods, services or digital content. They replaced the Distance Selling Regulations and Doorstep Selling Regulations and require traders to give consumers certain information before they enter into a contract. The Regulations require that consumers are given important key information in a "clear and comprehensible" manner so that it is easily, directly and permanently accessible, before they are bound by a contract. The consumer has a 12 month right (on distance and off-premises contracts) to cancel, rather than the usual 14 days, if stipulated pre-contract information and forms enabling cancellation are not provided to consumers.

Alternative Dispute Resolution

44. From June 2015, approved third party mediators, called Alternative Dispute Resolution (ADR) providers, are available to help sort out disputes between consumers and traders who are unable to settle a contractual dispute for the supply of goods or services. ADR offers a quicker and cheaper way of resolving disputes than going through the Courts. Until now, the service has only been available in certain sectors. Once a consumer has exhausted the traders' internal complaint process, the trader must give the consumer details of a certified ADR provider and tell the consumer if they are willing to use them. Traders do not have to use ADR unless they operate in a sector where existing legislation makes it mandatory such as financial services. Furthermore, from 9 January the European Commission will be launching an Online Dispute Resolution platform that all online traders will be required to carry a link to. This will make it easier for consumers to facilitate ADR with traders across all member states and will include a translation function.

New EU Data Protection Regulation

45. As regards personal data the finalisation of new approach to data in the internet age is expected soon in the shape of the new EU Data Protection Regulation. This is likely to change the way consent to sharing personal data is given and maintained – use of a simple tick in a box at the very beginning of a contract may become less acceptable as evidence of consent., - The new rules are based on the principles of

necessity, proportionality and legality, with appropriate safeguards for the individuals and is expected to change the way businesses interact with their customers. The government will also consider ways to improve customer trust in the use of personal data through its Digital Transformation Plan. The government will take account of the finalised proposals along with the responses to the Call for Evidence in considering the next steps in this area.

8. Proposed T&C enhancements

Improving transparency, awareness and understanding

46. The government wishes to consider practical measures which might be used to improve awareness and understanding of Terms and Conditions, as well as discouraging the use of terms that are unfair or don't meet legal requirements. The goal is to help to ensure greater transparency about the exact terms associated with goods and services that will apply in practice, facilitating consumer choice and contributing to more robust competition.
47. It is evident that some sectors are more prone to problems and more likely to cause consumers financial loss than others. These are frequently, therefore, the most regulated sectors with terms and conditions that are to some degree prescribed by the regulator in question. This call for evidence is particularly focused on seeking evidence of where the greatest problems for consumers remain, in particular to test if it is the case that the sectors where consumers are most likely to accept T&Cs without checking them are also sectors in which customers have more frequent problems. For example, some regulators have developed requirements for "key facts" to be provided before or at the time of the transaction. These provide a more succinct way for customers to access the things they are most likely to need to know and we want to know if these have a positive impact on consumer decision making and satisfaction.

Specific proposals

48. In "A Better Deal" the government announced that Which? are to lead some work with businesses to change the way they present their T&Cs, particularly online, to help ensure there are no surprises for consumers⁸. Like us, Which? believe more must be done to ensure consumers can easily understand what they are signing up to.
49. We look forward to receiving feedback on the practical suggestions Which? will be working on. In parallel, this call for evidence seeks wider views from consumers and businesses. Below, we set out six areas where further action may help to improve protections for consumers:

i) Key terms presented "bold and upfront"

50. One improvement may be to require that all key terms are presented "bold and upfront" so that customers are unlikely to miss them. In shops this might be on leaflets that could also be taken away or on prominently placed signage. To encourage people to look at T&Cs online these key terms could be required to be succinct so that (for example) they fitted onto two smartphone sized screens on a mobile internet site. There may be other practical measures we could adopt such as T&Cs automatically opening before customers could move onto the confirmation of purchase screen or requiring the use of tagging so that key information related to

⁸ See: www.gov.uk/government/publications/a-better-deal-boosting-competition-to-bring-down-bills-for-families-and-firms.

certain themes (data privacy, additional charges, and renewal) could be found at the click of a button.

- a. If people knew key T&C would be “succinct, bold and upfront” would it encourage customers to read them? If yes how might it be achieved?
- b. Would customers check the T&Cs if key facts were all fitted onto the equivalent of two smartphone screens? Yes/No.
- c. How else could businesses make T&C documents and key facts genuinely accessible to customers in practice?

ii) The use of tick boxes

51. When setting out contracts referring to Terms and Conditions it should be easy for consumers to access any T&Cs that they are being asked to accept without adding to the complexity of completing a purchase. Typically the customer will be asked to tick a box to agree to the T&Cs, so they need a simple way to access them and identify the key terms.
52. Tick boxes themselves can be confusing. Not only are they used for T&Cs but also for the acceptance of other propositions (e.g. insurance) or personal data. Most people will expect that where tick boxes are used a tick should mean yes and a blank no, but in some cases the wording sets out that you should tick if you do not agree with something. Sometimes there will be a mixture within the same set of questions. We think that firms should be consistent in their use of tick boxes and a tick should always mean, yes I want this option to apply to me.
 - a. Do you agree that where tick boxes are used by business ticking the box should always mean “I want/agree to this”?

iii) Restrictions on hardware or restrictions caused by linked services

53. Sometimes people will make a purchase (e.g. technology hardware) and not realise that the manufacturer will be placing constraints on the software or media that the customer can use with it. These may be physical and technical in the sense of incompatible formats or through restricting or seeking to invalidate consumer rights and other protections using the T&Cs if another provider’s software or media is used. Some of these might be entirely justifiable e.g. to prevent illegal piracy but others may have the effect of inhibiting competition amongst software or media sellers. In some cases this can be exacerbated by intellectual property rules meaning that media that a customer has purchased over a period of years may become valueless and unusable as a result. We wish to understand whether this is a genuine issue for customers and if so what might be a practical way of addressing it.
 - a. Have you ever bought a product and then unexpectedly found that you are constrained in the use of competitors’ media or software. (e.g. through incompatibility of formats for streaming or downloads or the threat of the invalidation of rights for use of other software)?
 - b. What would help customers to understand these rules better at the time of making the purchase?

iv) Competing through Terms and Conditions

54. The government is keen to promote competition between business and this includes over the most customer friendly terms and conditions. We want this to mean that business is encouraged to incentivise the customer to look in more detail at T&Cs. Business would need to have confidence in their legal position but we want to use this Call for Evidence to help find practical ways to support businesses to do this.

- a. If business incentivised customers to engage with Terms and Conditions (e.g. through discounts if customers complete an understanding test based on the T&Cs) would they then read them?

v) Tracking changes in Terms and Conditions

55. Terms and conditions in contracts that consumers enter for the long term⁹, or repeatedly renew may alter over time leaving customers uncertain of their current position. This can be particularly true where one provider has a market position with many active users that itself becomes a key attraction for other users. We think customers need an easy way to be able to track current terms and conditions, understand their impact and monitor their acceptance through their account status or dashboard.

- a. Should all ongoing accounts (e.g. savings or energy accounts) be required to provide a clear track of changes in Terms and Conditions in the account history with the impact illustrated?

vi) Clarity on use of personal data

56. Many studies have shown the importance of consumer trust in relation to personal data. The question of how customer's personal data is used and shared is an area where improved clarity could be beneficial to all parties. Phone calls from businesses you have never had any known dealings with can be felt a significant nuisance but people also want to know how their details came to be in the hands of that business in the first place. We want to explore how customers can have greater transparency about which other organisations their personal data might be shared with and for what reasons. At the same time, we would be interested in views on how to ensure that customers know how consent can be denied or withdrawn and they know what benefits they are receiving for sharing information, without undermining important business models that are attractive to some consumers.

- a. Where should consent on the use of personal data (e.g. sharing of data with third parties) be covered? (please state?)
- b. T&Cs often refer to personal data and privacy policies. Are customers sufficiently aware of which other organisations their personal data will be shared with by suppliers. Yes/No

⁹ Note that legislation indicates that terms allowing a contract to be varied are potentially unfair and unenforceable, but where contracts continue indefinitely or over a long period, certain kinds of variation clause are normal and can be legitimate.

(vii) True Monthly Contract Costs

57. Lastly, the government believes it is important to improve customer understanding of true monthly contract costs for competition purposes. Where contracts are issued at varying prices (e.g. with at a discounted rate for the first 6 months) then being told the average monthly cost as well as the total charge and the different monthly rates and periods may help some customers better assess the suitability of a contract for their needs. The ASA is undertaking some research into the use of “teaser rates” in broadband deals to understand whether they are misleading consumers. Following this work, the government expects swift action to ensure that broadband prices are clear and costs are not hidden or confusing.

Wider ideas

58. There will be other suggestions and thoughts on ways to address the complexity, language and length of current Terms and Conditions and the government is keen to capture these. Respondents are particularly invited to contribute:

- Suggestions of practical measures to ensure that customers recognise key facts in contracts before they buy.
- How to make Terms and Conditions documents genuinely accessible to customers.
- Making the cost of long term contracts more readily understandable, e.g. by clearly setting out where and when additional charges may be applied.
- What prevents consumers from challenging Terms and Conditions that they are uncomfortable with?
- Ways of making competition on areas of genuine interest for customers more visible and transparent.

59. Helping consumers to be clear on the impact of contracts more broadly is also of interest. Some suppliers require the use of “continuous payment authorities”, which customers then authorise, occasionally unwittingly. This can lead to “surprising” debits which may impact on consumer budgeting. We are interested therefore in ways of ensuring consumers know what long term commitments they are entering into.

60. In considering any changes it will be important not to reduce or undermine existing protections or put a significant group of customers in a worse position than they are currently.

61. This Call for Evidence is primarily concerned with how to help business engage with customers more effectively, and keep within the boundaries of the existing rules. At this stage we are not considering issues of delivery of public advice or advocacy¹⁰ to consumers although there may be conclusions as to the best messages to be delivered through those vehicles.

¹⁰ Consumer protection and enforcement remain reserved matters in the devolved authorities other than Northern Ireland but advice and advocacy will be devolved in the Scotland Bill.

9. Fining powers

Effective tools for enforcing against unfair terms and practices

62. As set out above there are already significant protections in place for consumers through a variety of routes. These protections do not mean, however, that no business acts unfairly or tries to get away with hiding important terms in the small print and seek to exploit consumers. Where a business uses unfair terms and/or unfair practices they may face civil enforcement action but this is currently limited in scope and doesn't contain any sanction or punishment for previous detriment caused to consumers. There can be scope to prosecute businesses in certain circumstances, for instance in serious cases of deceptive or aggressive commercial practice, but where criminal investigation is not appropriate or criminal sanctions unavailable we believe this results in a gap in the enforcers toolkit which could lead to consumer detriment both now and in the future. This means there may be a lack of incentive for businesses to stop using unfair terms or practices or to agree to change them even when they are likely to be found to be unfair by a court (and therefore in the case of unfair terms not binding on the consumer).
63. This could undermine the effectiveness of enforcement action, particularly when dealing with fast-changing markets (such as online markets) where practices can become out of date and replaced before they can be effectively stopped. Whilst the CRA added the option for enforcers to apply to civil courts for Enhanced Consumer Measures (ECMs) these have as their primary aim consumer redress and only seek to restore the balance; they do not have a punitive element for which separate criminal proceedings would currently be necessary – and these are often not possible. ECMs may also not be appropriate in all cases, for example where no financial loss to consumers has yet occurred but preventative action is needed.
64. Delivering fair competition often relies on non-compliance costing business significantly more than compliance - enforcement action should not be regarded by competitors as an acceptable cost of doing business. If it is, then this undermines the image of business more broadly. The most effective way of addressing Terms and Conditions that are unfair may therefore be – subject to appropriate safeguards - to give enforcers punitive powers to act as a deterrent. Civil monetary penalties set at an appropriate level would act as a more visible deterrent to non-compliance and incentivise faster correction when business is alerted to breaches.
65. Penalties might be in the form of administrative fines imposed by and enforcer or fines imposed by civil courts at an enforcer's request for breaches of unfair terms and/or other consumer protection rules. These could be limited to specific breaches such as the black-list and grey-list terms under the Unfair Terms part of the Consumer Rights Act, and any prohibited practices (including misleading actions/omissions and aggressive practices in the CPRs) as well as the list of banned practices set out in Schedule 1 of the CPRs, or their application could be left open.
66. Similarly, the powers could be made available to all consumer protection enforcers or be constrained to an authority such as the CMA acting to protect competition and the consumer in the wider market.

67. The government believes that administrative or civil court fines would help to make consumer enforcement actions more effective in reducing breaches of the law and the harm they cause to consumers and compliant businesses. The aim would be to provide a more flexible, proportionate and consistent consumer enforcement toolkit, offering a number of potential benefits in incentivising compliance with consumer law by:
- ensuring more visible and meaningful consequences for businesses who fail consumers by not complying with the law;
 - achieving stronger and more credible deterrence against future unlawful trading practices which harm consumers.
68. Some UK regulators, such as the sector regulators (in their consumer protection function in relation to breaches of regulatory/licensing provisions) and the Information Commission's Office (ICO) already have the option of administrative fines available. Extending the availability of fines to consumer protection would bring the general consumer enforcement regime in line with the sector regulators, a number of overseas consumer protection enforcement agencies¹¹ and, in the CMA's, case its own powers on the competition law enforcement side. Alternatively, extending fining powers to the civil courts for breaches of consumer protection law would be consistent with the approach taken in some overseas consumer protection regimes, such as the Australia and Canada, and with UK consumer enforcers' existing powers, particularly under Part 8 of the Enterprise Act 2002.
69. Currently enforcement of consumer protection is provided by a combination of sector regulators (such as Ofcom, Ofgem and the Financial Conduct Authority), the CMA and in Great Britain local weights and measures authorities, in Northern Ireland the Department of Enterprise, Trade and Investment and designated private enforcers such as Which?. It is to be considered which of these entities would most benefit from the enhanced enforcement tools. The government's initial thinking is that this will be most valuable to the CMA in supporting its cross cutting powers, and potentially to other national regulators. This is because the national regulators should have a wider overview of the market and be better placed to assess the impact of breaches on consumers more generally. In considering the benefits to future consumers of the deterrent effect of fines the CMA may wish to seek input and advice from more local enforcers including relevant primary authorities.
70. Such measures may need new primary legislation or, in some cases a statutory instrument under existing powers could be possible. For example, the provisions in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (RESA) might be used, which introduced a framework allowing regulators to be given an extended toolkit of alternative civil sanctions for non-compliance with existing criminal prohibitions. This would enable a regulator to impose a sanction without recourse to

¹¹ For example, the Authority for Consumers and Markets in the Netherlands can impose fines of up to EUR 450,000 per breach as part of their toolkit for enforcing general consumer protection laws (including on unfair terms and unfair commercial practices). The Italian Competition Authority can impose fines ranging from EUR 5,000 up to EUR 5,000,000 when enforcing the Unfair Commercial Practices Directive, the Consumer Rights Directive and the Directive on business-to-business misleading and comparative advertising, as transposed into Italian law.

the court system, and allows for the person to appeal against it to a tribunal. The sanctions include 'discretionary requirements' which enable a regulator (among other things) to impose by notice a variable monetary penalty instead of prosecuting an offence. The RESA was designed as an alternative to criminal prosecution rather than to address deficiencies in enforcers' civil enforcement powers, so can only be used where existing criminal sanctions exist and in line with criminal standards of proof. The biggest drawback therefore is that it would leave out a significant area of consumer protection including Unfair Terms. The scope of the consumer protection measures to be covered by the fining powers may well determine the legislative vehicle needed – without amendment the RESA could not be used to address unfair terms breaches.

71. This Call for Evidence therefore seeks views on whether the current position and variety of enforcement tools is providing sufficient incentive for business to comply with the law. As set out in "A Better Deal", the government believes that new monetary penalties are necessary particularly in relation to protecting consumers from misleading, unfair or aggressive practices to ensure that consumer protections can be effectively enforced and welcomes views on how best to implement this proposal.
72. Some illustrative examples of where administrative or civil court fining powers might assist enforcers achieve better results for business and consumers are included in the [annex](#) of this document and may help correspondents in preparing their responses. We believe it is important that national regulators have the flexibility and discretion to make judgments on the most damaging breaches and their impact on consumers and the market. By limiting the scope of such measures we risk future proofing the policy and sending a message that some consumer laws are more important than others which might undermine efforts to secure wider compliance.
73. The following questions are posed:
- a. Would giving enforcers more tools to enforce consumer protection law help promote fairness to consumers and competition? Yes/No; Why is this? If so, which areas of consumer protection law is this most needed for?
 - b. What would be the main benefits, costs and drawbacks from having an option to impose civil monetary penalties for non-compliance?
 - c. If civil monetary penalties were to be introduced, should this be done via a) administrative decisions by enforcers (subject to appropriate procedural checks and balances and appeal mechanisms); b) reference to civil courts; or c) Only to a limited extent through enhancing existing powers under the RES Act (i.e. excluding unfair terms); d) other ways (please specify); Why do you think this?
 - d. Which enforcement bodies should be included if administrative or civil court powers to impose or seek monetary penalties were they to be granted? (All; CMA; CMA and other National regulators; other (please specify); None of them)
 - e. Should new fining powers apply to all consumer protection rules including unfair terms? (Yes, apply to all; No only to limited provisions (specify which ones and whether in full or not); No – no need for fines at all)

10. Consultation questions

Section A: Terms and Conditions questions for businesses

General

A1) Do you use formal terms and conditions? If so why?

If you answered No to question A1 you may skip to question A12.

A2) In your view would a general requirement for key T&C terms to be “succinct, bold and upfront” encourage consumers to read them?

If so how might it be achieved?

A3) Have you changed your terms and conditions since the Consumer Rights Act came into force on 1st October 2015 (e.g. to ensure price and subject matter clauses are prominent and transparent)?

A4) How do you ensure that your terms and conditions are compliant with the law?

Are there areas of compliance you find particularly challenging?

Improving transparency, awareness and understanding

A5) How could you make Terms and Conditions documents easier to understand and more readily accessible to customers?

(e.g. auto-opening of T&Cs online; a simple index; key facts sheets; other – please state)

A6) Do you foresee any problems in making it clear that where tick boxes are used ticking the box should always mean “I want/agree to this service”?

A7) If you maintain customer accounts relating to continuing services would you be able to provide a clear track of changes in Terms and Conditions in the account history with the impact illustrated?

A8) Could you fit key terms onto the equivalent of two smartphone screens if asked? If you answered yes, why do you not do this currently?

A9) Have you had to rely on T&Cs in disputes with customers (and if so did you do so successfully)?

A10) Have you ever adjusted your T&Cs following a (potential) customer request or complaint?

A11) Have you considered ways for your sales staff to encourage greater customer engagement with T&Cs (e.g. by completing a questionnaire in return for benefits or discounts)?

If so has what if anything has prevented you doing so?

A12) Do your terms and conditions restrict use of competitors' software or media on your product?

If Yes why?; How do you make it clear to customers at the time they purchase a product if there are any restrictions on the use of goods or services provided by another supplier and why?

Personal data

A13) How do you explain to customers how their personal data will be used by your and other businesses and confirm their consent for doing so?

A14) How should consent on the use of personal data (e.g. sharing of data with third parties) be covered? (please state)

A15) If requested could you tell customers all the other organisations that have access to the data you hold on them? Why have you answered in this way?

Consumer protection enforcement and fines

A16) Is there a need to give enforcers more effective tools to enforce consumer protection law help promote fairness to consumers and competition?

Yes/No Why is this? Which areas of consumer protection law are powers most needed for?

A17) What would be the main benefits, costs and drawbacks from having an option to impose civil monetary penalties for non-compliance by business?

How might any costs be overcome?

A18) If civil monetary penalties were to be introduced should this be done via:

a) administrative decisions by enforcers (subject to appropriate procedural checks and balances and appeal mechanisms); b) reference to civil courts; or c) To a limited extent through enhancing existing powers under the RES Act (i.e. excluding unfair terms); d) other ways (please specify); Why do you think this?

A19) Which enforcement bodies should be included if administrative or civil court powers to impose or seek monetary penalties were they to be granted?

(All; CMA; CMA and other National regulators; other; None of them)

A20) Should new fining powers apply to all consumer protection rules including unfair terms?

(Yes, apply to all; No only to limited provisions (specify which ones); No – no fines at all)

Section B: Terms and Conditions questions for consumers and consumer representative groups

General

B1) Do you (a) always read the Terms and Conditions? (b) read the T&Cs of certain kinds of contracts – if so which (c) usually at least glance at T&Cs (d) only look at T&Cs if there is a special reason; (e) never look at them.

Please give brief reasons for your answer.

If you answered e) please go to question B 4

B2) If you always read or normally read the T&Cs of certain contracts ((a) or (b) above) what type of good or service will they typically be related to?

List sectors.

B3) What kinds of information do you look for in T&Cs?

(For example: Information on data protection; financial exemptions; clauses; additional costs; additional charges (e.g. for change of data); other)

Improving transparency, awareness and understanding

B4) Does length of T&Cs affect your willingness to look at them? If Yes, at what length would you be willing to read T&Cs?

(a) I never will read them; b) 1 page or less; c) less than or equal two smartphone screens; d) <5 pages; e) <10 pages; f) < 20 pages; g) any length)

B5) If you knew T&Cs would be “succinct, bold and upfront” would it encourage you to read them? If so how might it be achieved? How else could businesses make Terms and Conditions documents and key facts genuinely accessible to customers in practice?

(e.g. auto-opening of T&Cs online; a simple index; key facts sheets; other – please state)

B6) Would you check the T&Cs if key facts could all be fitted onto the equivalent of two smartphone screens?

Yes/No. Why do you say that?

B7) Do you typically find Terms and Conditions easy to understand and free of jargon?

(Yes; no; occasionally; don't know) What do you find most difficult about them? Please attach or send examples of terms you believe to be good or bad.

B8) Do you agree that where tick boxes are used by business ticking the box should always mean “I want/agree to this”?

B9) Have you ever been surprised by a cost or condition imposed under T&Cs (such as a financial penalty or loss of prepayment, an increased price, or a charge for doing something such as leaving the contract early)?

Yes/ No. If yes please give brief details including the amount of the cost.

B10) Have you ever lost out in other ways as a result of terms you were unaware of or did not realise would apply to you? (For instance being tied into a contract for longer than you expected, being denied redress, or having to accept a product different from the one you ordered?)

Yes/No. If yes please give brief details including the sector involved and an estimate of any additional costs you incurred.

Personal data

B11) How should consent on the use of personal data (e.g. sharing of data with third parties) be covered? (please state)

B12) T&Cs often refer to personal data and privacy policies. Do you feel sufficiently aware of which other organisations your personal data will be shared with by suppliers.

If not how should they be given more information?

Other rules

B13) Have you ever bought a product and then unexpectedly found that you are constrained in the use of competitors' media or software?

(e.g. through incompatibility of formats for streaming or downloads or the threat of the invalidation of rights for use of other software). If so what was the impact?

B14) Do you think it should be clear to customers at the time they purchase a product if there are any restrictions on the use of goods? (Yes/No); What, if anything, would help you understand these rules better at the time of making the purchase? Should such constraints be made easier to challenge or reject? (Please state measures and how challenge might be applied)

Increasing Engagement

B15) If business incentivised customers to engage with Terms and Conditions (e.g. through discounts if customers complete an understanding test based on the T&Cs) would you read them then?

B16) Have you ever been involved in a dispute related to T&Cs with a supplier or potential supplier? (Yes; No) If yes what was it about and what was the outcome? If not why not? (e.g. a) I don't think the challenge would be successful; b) would not know

where to start; c) The process would take too long; d) lack confidence in ability to negotiate; e) Other – please state))

B17) Would you check them if all ongoing accounts be required to provide a clear track of changes in Terms and Conditions in the account history with the impact illustrated? (Yes/No)

Consumer protection enforcement and fines

B18) Is there a need to give enforcers more effective tools to enforce consumer protection law help promote fairness to consumers and competition?

Yes/No Why is this? Which areas of consumer protection law are powers most needed for?

B19) If civil monetary penalties were to be introduced should this be done via administrative decisions by enforcers (subject to appropriate procedural checks and balances and appeal mechanisms); b) reference to civil courts; or c) other ways (please specify); Don't Know. Why do you think this?

B20) Which enforcement bodies should be included if administrative or civil court powers to impose or seek monetary penalties were they to be granted? (All; CMA; Sector regulators such as OfGem, OfCom, the FCA etc.; Local Trading Standards; Dept of Enterprise Trade & Investment, Northern Ireland; all designated consumer enforcement bodies None of them)

11. What happens next?

74. The government will consider the responses to this call for evidence, alongside the work of the Which? ASA on teaser rates (and feedback on personal data from the Data Transformation Plan) before bringing forward proposals to influence the behaviours of consumers and business. Subject to feedback received options for bringing into effect a civil fining regime for relevant breaches of consumer protection rules will be developed in the same timeframe.
75. Where appropriate the government will consider legislative action, within the constraints of freedom of contract, gold plating, maximum harmonisation and a wish to minimise burdens on business, if other alternatives are unlikely to generate positive results.

Annex A: Case studies on potential use of civil penalties

Unfair contract term breaches

Case Study 1

A national outdoor pursuit business offers consumers 'exhilarating' experiences including bungee jumping and rock climbing. Its contract contains terms and conditions which seek to exclude all liability for death or personal injury to customers. The company also displays similar notices at its outdoor locations. Terms or notices that seek to exclude or restrict liability for death or personal injury resulting from negligence are 'blacklisted' under unfair terms law and therefore legally ineffective.

Case Study 2

A lettings agent offers a service to find tenants for consumer landlords. The lettings contract for this service contains an unfair term which requires the landlord to pay a large commission if they sell the property to the tenant, even where the agent has played no part in the sales transaction. The term is also buried away in the small print of the lettings service contract, operating as a 'trap' to unsuspecting landlords.

Unfair contract term, CCRs and CPRs breaches

Case Study 3

A business runs a subscription membership scheme that operates as a 'subscription trap' via its website. Consumers can be lured in using the 'bait' of a 'free trial' for services or goods but in signing up they also sign up to a full subscription membership of the scheme without their full knowledge and agreement. Consumers can cancel within the free trial period but are unaware of the need to do so and are also unaware that they will subsequently be charged a large recurring subscription fee, until they notice that unauthorised monthly payments are being taken automatically from their bank accounts via a continuous payment authority. Consumers are unaware of the terms and conditions on which they have joined the scheme - for example, information about the price and ongoing subscription commitment are hidden in a link to the terms and conditions and buried within the small print – in breach of unfair terms law, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the CPRs, the process by which they were signed up is misleading under the CPRs, and several of the terms themselves are also unfair (for example, there are a number of onerous 'formality' requirements that the consumer must meet in order to cancel their subscription).

Case Study 4

A 'Quick house sale' firm offers consumers a faster sale than might be achieved on the open market in exchange for agreeing to receive a below market value price for their home. Vulnerable consumers may be particularly attracted by claims of a hassle-free service, with no viewings or hold-ups (older people, for example, may wish to sell their property quickly due to declining health, or homeowners in financial difficulty may look for a quick sale to help reduce their debts). Prior to agreeing the sale, the consumer signs a long-term 'exclusivity agreement' that uses unfair terms to prevent them selling to other buyers while negotiations are ongoing, with severe financial penalties for breach of contract. However, the business reduces the price offered at the last minute after the

seller is financially committed to the transaction, makes misleading claims about the value of the property or level of discount to be applied, and stresses the fastest possible times to completion rather than the more typical longer times, all in breach of the CPRs. These unfair contract terms and unfair practices prevent customers from making informed choices when selling their home, or exploit their difficult financial or other circumstances, and can result in sellers receiving a significantly lower sale price than they were originally expecting.

CPRs breaches

Case Study 5

A business writes or commissions fake positive reviews about themselves to boost their ratings on review sites relative to rivals. These reviews mislead consumers by creating the false impression that the content has been written by a consumer, and by giving a misleading impression about the merits of the product or service and business being reviewed, in breach of the CPRs. It also leads to rival suppliers losing custom that they otherwise may have won.

Case Study 6

An airline engages in 'drip pricing' of fares on its website in order to advertise an artificially low headline price, only adding in mandatory taxes, fees, and charges at the end of the booking process. This misleads consumers into progressing a booking and they may purchase flights they wouldn't have bought otherwise, in breach of the CPRs, and gives the airline a significant advantage over its competitors who are complying with the law.

Annex B: Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

www.gov.uk/government/publications/consultation-principles-guidance

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BIS Consultation Co-ordinator
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 1661

Email: angela.rabess@bis.gsi.gov.uk

However if you wish to comment on the specific policy proposals you should contact the policy lead (see [Section 5](#)).

Annex C: List of organisations consulted

Citizens Advice	Santander	Uswitch
Citizens Advice Scotland	Clydesdale/Yorkshire	Money Supermarket
Which?	Vanquis	This is the Big Deal
MoneySavingExpert.com	MBNA Europe	Go Compare
CBI	American Express Services Limited	Compare the market
TUC	Creation Financial Services (LaSer UK)	Council of Mortgage Lenders
FSB	Bank of Ireland	Building Societies Association
BCC	Capital one Bank	Financial Conduct Authority
IOD	Visa UK	UK Cards Association
Consumer Future	Mastercard UK	Lending Standards Board
Communications Consumer	Tesco Bank	Association of British Insurers
Soapbox Shout	UK Cards	British Bankers' Association
Resolver	Call credit	Bacs Payment Scheme Ltd
Vodafone Limited	Credit Group	Open Data Institute
Three UK	BBA	British Standards Institution
Everything Everywhere	Banklink	Prudential Regulation Authority
Telefonica	Moneydash	Chartered Trading Standards Institute
Virgin Media	UK Payment	Competition and Markets Authority
Talk Talk	British Gas	Local Government Association
Tesco Mobile	E.on UK Ltd	OfGem
Three	RWE Npower	OfWat
BT	EDF Energy	OfCom
Dixons Carphone	Scottish and Southern Power	British Retail Consortium
Mobile Broadband Group	Scottish Power Generation Holdings	CAA
Sky	First Utility	DETINI
Telefonica/O2	Utilita	Facebook
UKCTA	Good Energy	Google
Virgin Media	Ecotricity	Microsoft UK
Vodafone	Co-operative	Apple
Lebara Mobile	Spark Energy	Ctrl Shift
Lyca mobile	Green Energy UK	ARLA
Asda Mobile	IoCO2	ARMA
Giffgaff	Isupply	NEA
Kcom	Flow Energy	The Property Ombudsman
Association for UK	Better Energy Supply Ltd	FIA
Interactive Entertainment	Green Star Energy	
Interactive Media in Retail Group	Daligas	
Tech UK	Economy Energy	
Cooperative Bank Plc	Energy UK	
Barclays PLC	The Energy Shop	
HSBC	First Helpline	
First Direct	UK Power	
Lloyds		
Nationwide Building Society		
RBS/Natwest		

Annex D: Terms and Conditions response form

The consultation is available at: www.gov.uk/government/consultations/improving-terms-and-conditions.

The closing date for responses is **25 April 2016**.

Please return completed forms to:

Craig Belsham
BIS Consumer and Competition Policy
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 5884

Email: T&Cs@bis.gsi.gov.uk

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see [Section 4](#) for further information.

If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential

Comments:

Name:

Organisation (if applicable):

Address:

	Respondent type
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Consumer group or representative
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

Section A: Questions for Businesses

General

A1) Do you use formal terms and conditions?

Yes No

If yes please say why?

If you answered No to question A1) you may skip to question A13).

A2) In your view would a general requirement for key T&C terms to be “succinct, bold and upfront” encourage consumers to read them?

If yes how might it be achieved?

A3) Have you changed your terms and conditions since the Consumer Rights Act came into force on 1st October 2015 (e.g. to ensure price and subject matter clauses are prominent and transparent)?

Yes No

A4) When ensuring that your terms and conditions are compliant with the law are there any areas you find particularly challenging?

Yes No

If yes, which area(s) and why?

Improving transparency, awareness and understanding

A5) How could you make Terms and Conditions documents easier to understand and more readily accessible to customers? (e.g. auto-opening of T&Cs online; a simple index; key facts sheets; other – please state)

A6) Do you foresee any problems in making it clear that where tick boxes are used, ticking the box should always mean “I want/agree to this service”?

Yes No

If yes please explain.

A7) If you maintain customer accounts relating to continuing services would you be able to provide a clear track of changes in Terms and Conditions in the account history with the impact illustrated?

Yes No

If not, why not?

A8) Could you fit key terms onto the equivalent of two smartphone screens if asked?

Yes No

If you answered yes, why do you not do this currently?

A9) Have you had to rely on T&Cs in disputes with customers?

Yes No

If yes please explain (including whether you were successful)

A10) Have you ever adjusted your T&Cs following a (potential) customer request or complaint?

Yes No

If yes, in what way?

A11) Have you considered or used ways for your sales staff to encourage greater customer engagement with T&Cs (e.g. by completing a questionnaire in return for benefits or discounts)?

Yes No

If yes, what did you consider or do?

A12) Do your terms and conditions restrict use of competitors' software or media on your product?

Yes No Not applicable

If yes, how do you explain to customers at the time they purchase your product that there are restrictions?

Personal data

A13) How do you explain to customers how their personal data will be used by your and other businesses and confirm their consent for doing so?

Please state.

A14) Where do you think consent on the use of personal data (e.g. sharing of data with third parties) would best be covered?

Please state.

A15) If requested could you tell customers all the other organisations that have access to the data you hold on them?

Yes No

Why have you answered in this way?

Enforcement and fines

A16) Is there a need to give enforcers more effective tools to enforce consumer protection law?

Yes No

If yes, which areas of consumer protection law are powers most needed for and why?

A17) What would be the main benefits, costs and drawbacks from having an option to impose civil monetary penalties for non-compliance by business?

Please explain your answers.

A18) If civil monetary penalties were to be introduced should this be done via:

- a) administrative decisions by enforcers**
(subject to appropriate procedural checks and balances and appeal mechanisms)
- b) reference to civil courts**
- c) To a limited extent through enhancing existing powers under the RES Act¹²**
- d) other ways** *(please specify)*

Why do you think this?

A19) Should any new fining powers apply to all consumer protection rules including unfair terms?

(Yes, apply to all; No only to a limited number (specify which ones); No – none at all)

A20) Which enforcement bodies should be included if administrative or civil court powers to impose monetary penalties were they to be granted?

Please state.

Why do you think this?

¹² www.legislation.gov.uk/ukpga/2008/13/contents

Section B: Questions for consumers

General

B1) Regarding Terms and Conditions do you:

- a) always read the T&Cs
- b) read the T&Cs of certain kinds of contracts
- c) usually at least glance at T&Cs
- d) only look at T&Cs if there is a special reason
- e) never look at them

Please give brief reasons for your answer.

If you answered e) please go to question B4)

B2) If you always read or read the T&Cs of certain contracts (a or b above) what type of good or service will they typically be related to?

List sectors

B3) What kinds of information do you look for in T&Cs?

(For example: Information on data protection; financial exemptions; clauses; additional costs; additional charges (e.g. for change of data); other)

Improving transparency, awareness and understanding

B4) Does length of T&Cs affect your willingness to look at them?

Yes No

If Yes, at roughly what length would you be willing to read T&Cs?

- a) 1 page or less
- b) less than or equal two smartphone screens
- c) less than 5 pages
- d) less than 10 pages
- e) less than 20 pages

B5) If you knew T&Cs would be “succinct, bold and upfront” would it encourage you to read them?

B6) Would you check the T&Cs if key facts could all be fitted onto the equivalent of two smartphone screens?

Yes No

If yes how might it be achieved?

B6) Would you check the T&Cs if key facts could all be fitted onto the equivalent of two smartphone screens?

B7) How else could businesses make Terms and Conditions documents and key facts genuinely accessible to customers in practice?

(e.g. auto-opening of T&Cs online; a simple index; key facts sheets; other – please state)

B8) Do you typically find Terms and Conditions easy to understand and free of jargon?

Yes No Occasionally Don't know

If you answered no, can you give examples of terms and conditions you find difficult to understand?

B9) Do you agree that where tick boxes are used by business ticking the box should always mean “I want/agree to this service”?

Yes No

B10) Have you ever been surprised by a (financial) cost or condition imposed under T&Cs (such as a financial penalty or loss of prepayment, an increased price, or a charge for doing something such as leaving the contract early)?

Yes No

If yes please give brief details including the rough amount of the cost.

B11) Have you ever lost out in other ways as a result of terms you were unaware of or did not realise would apply to you? (For instance being tied into a contract for longer than you expected, being denied redress, or having to accept a product different from the one you ordered?)

Yes No

If yes please give brief details including the sector involved and an estimate of any additional costs you incurred.

Personal data

B12) Where should consent on the use of personal data (e.g. sharing of data with third parties) be covered?

Please state.

B13) T&Cs often refer to personal data and privacy policies. Do you feel sufficiently aware of which other organisations your personal data will be shared with by suppliers.

Yes No

B14) Have you ever bought a product and then unexpectedly found that you are constrained in the use of competitors' media or software?

(e.g. through incompatibility of formats for streaming or downloads or the threat of the invalidation of rights for use of other software)

Yes No

What, if anything, would have helped you understand these rules better at the time of making the purchase? (Please state).

Increasing engagement

B15) If business incentivised customers to engage with Terms and Conditions (e.g. through discounts if customers complete an understanding test based on the T&Cs) would you read them then?

Yes No

B16) Have you ever been involved in a dispute related to T&Cs with a supplier or potential supplier?

Yes No

If yes, what was it about and what was the outcome?

B17) Should all ongoing accounts – (e.g. savings or energy accounts) be required to provide a clear track of changes in Terms and Conditions in the account history with the impact illustrated?

- Yes No

Enforcement and Fines

B18) Is there a need to give enforcers more effective tools to enforce consumer protection law?

- Yes No

Which areas of consumer protection law are powers most needed for and why?

If you answered No you can go to C1.

B19) If civil monetary penalties were to be introduced should this be done via:

- a) administrative decisions by enforcers
(subject to appropriate procedural checks and balances and appeal mechanisms)
- b) reference to civil courts
- c) other ways (please specify)
- d) Don't know

B20) Which enforcement bodies should be included if administrative or civil court powers to impose monetary penalties were to be granted?

Tick each that you think should be included.

- a) Competition and Markets Authority
- b) Sector regulators such as OfGem, OfCom, the FCA etc.
- c) Local Trading Standards
- d) Dept. of Enterprise Trade & Investment, Northern Ireland
- e) all designated consumer enforcement bodies

Section C: Further comments

C1) Do you have any other comments that might aid the consultation process as a whole?

C2) Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No



© Crown copyright 2016

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication available from www.gov.uk/bis

Contact us if you have any enquiries about this publication, including requests for alternative formats, at:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

Email: enquiries@bis.gsi.gov.uk

BIS/16/67