



Consumer Rights Act 2015

2015 CHAPTER 15

PART 2

UNFAIR TERMS

What are the general rules about fairness of contract terms and notices?

62 Requirement for contract terms and notices to be fair

- (1) An unfair term of a consumer contract is not binding on the consumer.
- (2) An unfair consumer notice is not binding on the consumer.
- (3) This does not prevent the consumer from relying on the term or notice if the consumer chooses to do so.
- (4) A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.
- (5) Whether a term is fair is to be determined—
 - (a) taking into account the nature of the subject matter of the contract, and
 - (b) by reference to all the circumstances existing when the term was agreed and to all of the other terms of the contract or of any other contract on which it depends.
- (6) A notice is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer.
- (7) Whether a notice is fair is to be determined—
 - (a) taking into account the nature of the subject matter of the notice, and
 - (b) by reference to all the circumstances existing when the rights or obligations to which it relates arose and to the terms of any contract on which it depends.
- (8) This section does not affect the operation of—

- (a) section 31 (exclusion of liability: goods contracts),
- (b) section 47 (exclusion of liability: digital content contracts),
- (c) section 57 (exclusion of liability: services contracts), or
- (d) section 65 (exclusion of negligence liability).

63 Contract terms which may or must be regarded as unfair

- (1) Part 1 of Schedule 2 contains an indicative and non-exhaustive list of terms of consumer contracts that may be regarded as unfair for the purposes of this Part.
- (2) Part 1 of Schedule 2 is subject to Part 2 of that Schedule; but a term listed in Part 2 of that Schedule may nevertheless be assessed for fairness under section 62 unless section 64 or 73 applies to it.
- (3) The Secretary of State may by order made by statutory instrument amend Schedule 2 so as to add, modify or remove an entry in Part 1 or Part 2 of that Schedule.
- (4) An order under subsection (3) may contain transitional or transitory provision or savings.
- (5) No order may be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
- (6) A term of a consumer contract must be regarded as unfair if it has the effect that the consumer bears the burden of proof with respect to compliance by a distance supplier or an intermediary with an obligation under any enactment or rule implementing the Distance Marketing Directive.
- (7) In subsection (6)—
 - “the Distance Marketing Directive” means Directive [2002/65/EC](#) of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive [90/619/EEC](#) and Directives [97/7/EC](#) and [98/27/EC](#);
 - “distance supplier” means—
 - (a) a supplier under a distance contract within the meaning of the Financial Services (Distance Marketing) Regulations 2004 ([SI 2004/2095](#)), or
 - (b) a supplier of unsolicited financial services within the meaning of regulation 15 of those regulations;
 - “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978;
 - “intermediary” has the same meaning as in the Financial Services (Distance Marketing) Regulations 2004;
 - “rule” means a rule made by the Financial Conduct Authority or the Prudential Regulation Authority under the Financial Services and Markets Act 2000 or by a designated professional body within the meaning of section 326(2) of that Act.

64 Exclusion from assessment of fairness

- (1) A term of a consumer contract may not be assessed for fairness under section 62 to the extent that—

- (a) it specifies the main subject matter of the contract, or
 - (b) the assessment is of the appropriateness of the price payable under the contract by comparison with the goods, digital content or services supplied under it.
- (2) Subsection (1) excludes a term from an assessment under section 62 only if it is transparent and prominent.
- (3) A term is transparent for the purposes of this Part if it is expressed in plain and intelligible language and (in the case of a written term) is legible.
- (4) A term is prominent for the purposes of this section if it is brought to the consumer's attention in such a way that an average consumer would be aware of the term.
- (5) In subsection (4) "average consumer" means a consumer who is reasonably well-informed, observant and circumspect.
- (6) This section does not apply to a term of a contract listed in Part 1 of Schedule 2.

65 Bar on exclusion or restriction of negligence liability

- (1) 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.
- (2) Where a term of a consumer contract, or a consumer notice, purports to exclude or restrict a trader's liability for negligence, a person is not to be taken to have voluntarily accepted any risk merely because the person agreed to or knew about the term or notice.
- (3) In this section "personal injury" includes any disease and any impairment of physical or mental condition.
- (4) In this section "negligence" means the breach of—
- (a) any obligation to take reasonable care or exercise reasonable skill in the performance of a contract where the obligation arises from an express or implied term of the contract,
 - (b) a common law duty to take reasonable care or exercise reasonable skill,
 - (c) the common duty of care imposed by the Occupiers' Liability Act 1957 or the Occupiers' Liability Act (Northern Ireland) 1957, or
 - (d) the duty of reasonable care imposed by section 2(1) of the Occupiers' Liability (Scotland) Act 1960.
- (5) It is immaterial for the purposes of subsection (4)—
- (a) whether a breach of duty or obligation was inadvertent or intentional, or
 - (b) whether liability for it arises directly or vicariously.
- (6) This section is subject to section 66 (which makes provision about the scope of this section).

66 Scope of section 65

- (1) Section 65 does not apply to—
- (a) any contract so far as it is a contract of insurance, including a contract to pay an annuity on human life, or
 - (b) any contract so far as it relates to the creation or transfer of an interest in land.

- (2) Section 65 does not affect the validity of any discharge or indemnity given by a person in consideration of the receipt by that person of compensation in settlement of any claim the person has.
- (3) Section 65 does not—
 - (a) apply to liability which is excluded or discharged as mentioned in section 4(2) (a) (exception to liability to pay damages to relatives) of the Damages (Scotland) Act 2011, or
 - (b) affect the operation of section 5 (discharge of liability to pay damages: exception for mesothelioma) of that Act.
- (4) Section 65 does not apply to the liability of an occupier of premises to a person who obtains access to the premises for recreational purposes if—
 - (a) the person suffers loss or damage because of the dangerous state of the premises, and
 - (b) allowing the person access for those purposes is not within the purposes of the occupier’s trade, business, craft or profession.

67 Effect of an unfair term on the rest of a contract

Where a term of a consumer contract is not binding on the consumer as a result of this Part, the contract continues, so far as practicable, to have effect in every other respect.

68 Requirement for transparency

- (1) A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is transparent.
- (2) A consumer notice is transparent for the purposes of subsection (1) if it is expressed in plain and intelligible language and it is legible.

69 Contract terms that may have different meanings

- (1) If a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail.
- (2) Subsection (1) does not apply to the construction of a term or a notice in proceedings on an application for an injunction or interdict under paragraph 3 of Schedule 3.