
Consumer Protection

Reference Guide –overview of consumer law

Contents

Overview	4
Section one – The essentials	5
Why consumer law?	5
Virtuous circle between consumers and competition	5
Essential theories of harm.....	6
Competition law does not solve all problems	6
Different tools to solve different problems	7
What is consumer law?	8
What does consumer law cover?	8
EU and UK consumer law	9
UK specific rules	10
Protection for traders	10
Consumer vs trader	11
Challenging areas	11
Enforcing consumer law.....	13
Community infringements	13
Domestic infringements	13
Further reference	17
Section two – A deeper dive into the tools	18
Advertising and unfair trading.....	19
Core concepts.....	19
What is illegal under the CPRs?	20
What are the consequences?	21
Further reference	22
Fundamental contract rights – sale of goods, services and digital content.....	23
What is a contract?	23
Core concepts.....	24
Terms implied by the CRA	24
What are the consequences?	25
Further reference	28
Unfair contract terms	30

Core concepts.....	30
The unfairness test	30
What terms are covered by the CRA?	31
The exemptions from the unfairness test	31
The grey list	32
Blacklisted terms.....	32
What are the consequences?	33
Further reference	33
Distance selling, information and cancellation.....	36
Core concepts.....	36
How do the CCRs help?	Error! Bookmark not defined.
The information rules	37
Special protections online	39
Cancellation	42
Delivery	43
Telephone helplines.....	43
What are the consequences?	43
Further reference	44
Section three – Consumer enforcement in the CMA	44
Who should enforce?	44
The consumer enforcement landscape.....	44
Consumer Protection Partnership	Error! Bookmark not defined.
Is a case for the CMA?.....	Error! Bookmark not defined.
The CMA’s consumer guidance says.....	Error! Bookmark not defined.
What options are available?.....	Error! Bookmark not defined.
Part 8 Enterprise Act 2002	45
Overview of the power	45
Stages of the civil enforcement case process.....	46
Enhanced Consumer Measures.....	48
Breach of a court order	48
Wider considerations at different stages in consumer enforcement cases	Error! Bookmark not defined.
Risk Management	Error! Bookmark not defined.

Types of Risk	Error! Bookmark not defined.
Further reference	Error! Bookmark not defined.
Practicalities of enforcement	Error! Bookmark not defined.
Planning an enforcement case:.....	Error! Bookmark not defined.
Five Stage Analytical Framework for cases	Error! Bookmark not defined.
The framework in detail.....	Error! Bookmark not defined.
Setting out your strategic objective	Error! Bookmark not defined.
Examples of strategic objectives	Error! Bookmark not defined.
Examples of evidence sources	Error! Bookmark not defined.
Stakeholder engagement plan	Error! Bookmark not defined.
Further reference	Error! Bookmark not defined.

Overview

This reference guide provides support information on the topics found in this training. Please read this guide before you attend this training. Please also refer to this guide throughout the training and when you are working on projects that relate to the principles, concepts, processes and procedures concerning consumer law and consumer enforcement.

Section one – The essentials

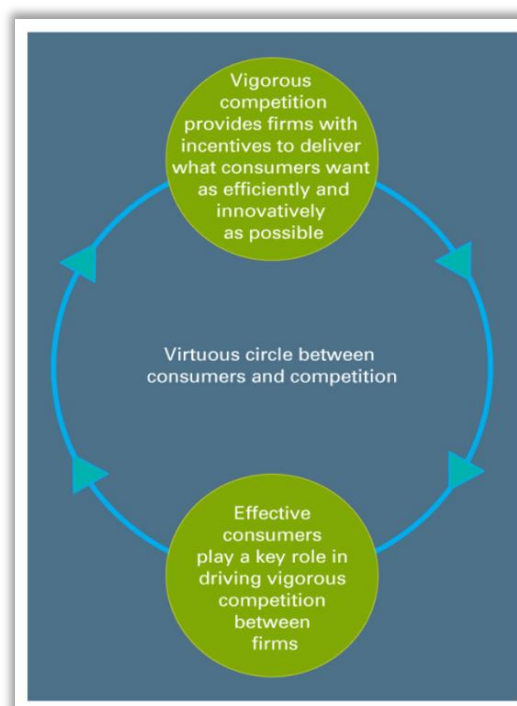
Why consumer law?

Virtuous circle between consumers and competition

What makes markets work well?

Markets work well when consumers drive competition and businesses compete fairly. The virtuous circle between consumers and competition delivers growth:

- Vigorous competition provides businesses with incentives to deliver what consumers want as efficiently and innovatively as possible, and
- Effective consumers play a key role in driving vigorous competition between businesses.



Consumers need to be empowered, informed, confident and able to shop around. They need to be able to access, assess and act on appropriate information. Businesses need to compete in relation to price, quality, range and service. They will be rewarded for best satisfying consumers' needs.

Why do some markets not work well?



However, when these characteristics are not present, markets will not work well. Businesses' practices may exploit consumer behavioural biases.

For example:

- if businesses do not compete fairly, there are no incentives for them to improve quality or reduce price;
- if consumers are unable to exercise informed choice, there are no incentives for businesses to improve efficiency or innovate; and
- if consumer trust is eroded, there is a reduction in consumption and a lack of economic growth.

Essential theories of harm

Based on experience, there are several key theories of harm that explain, from an economic perspective, how certain business practices may have a harmful effect on consumers. These include:

1. consumers make uninformed purchasing decisions – this may arise where important terms and conditions are not clear and up front. Consumers often do not read terms and conditions in full;
2. consumers find it harder to shop around – this may arise where the final costs of goods or services are not clear and where all costs, including additional compulsory charges, are not communicated to the consumer upfront; and
3. consumers overpay – this may arise where consumers underestimate the total costs or it is not communicated to them and they have already committed to the purchase when the total, higher price is revealed to them.

Competition law does not solve all problems

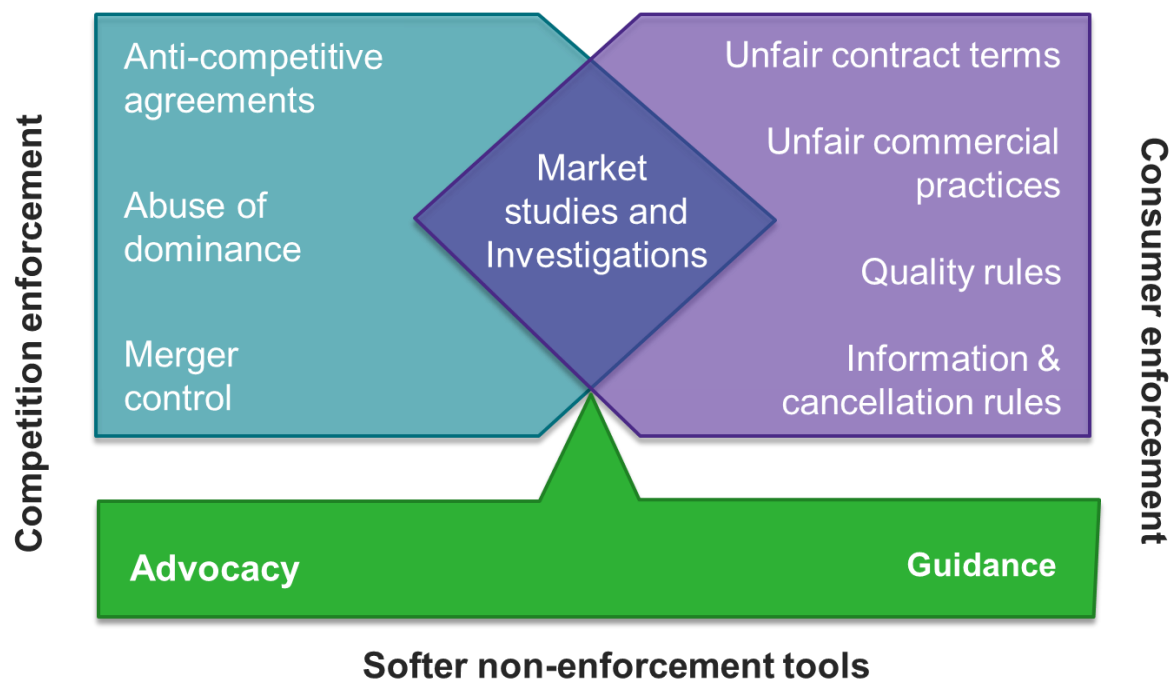
Competition problems often manifest themselves in breaches of consumer protection law. Sometimes competition enforcement alone does not, or cannot, make a market work well for consumers. Consumer protection can therefore provide alternative or additional remedies to competition problems.

The CMA will consider consumer enforcement action where:

- it has determined that breaches of the law point to systemic failures in a market (sector or geographic);
- changing the behavior of one business would set a precedent or have other market-wide implications;
- there is an opportunity to set an important legal precedent; and
- there is a strong need for deterrence or to secure compensation for consumers.

The appropriate enforcement tool for the CMA to use will be based on which of the objectives above the CMA is seeking to achieve.

Different tools to solve different problems



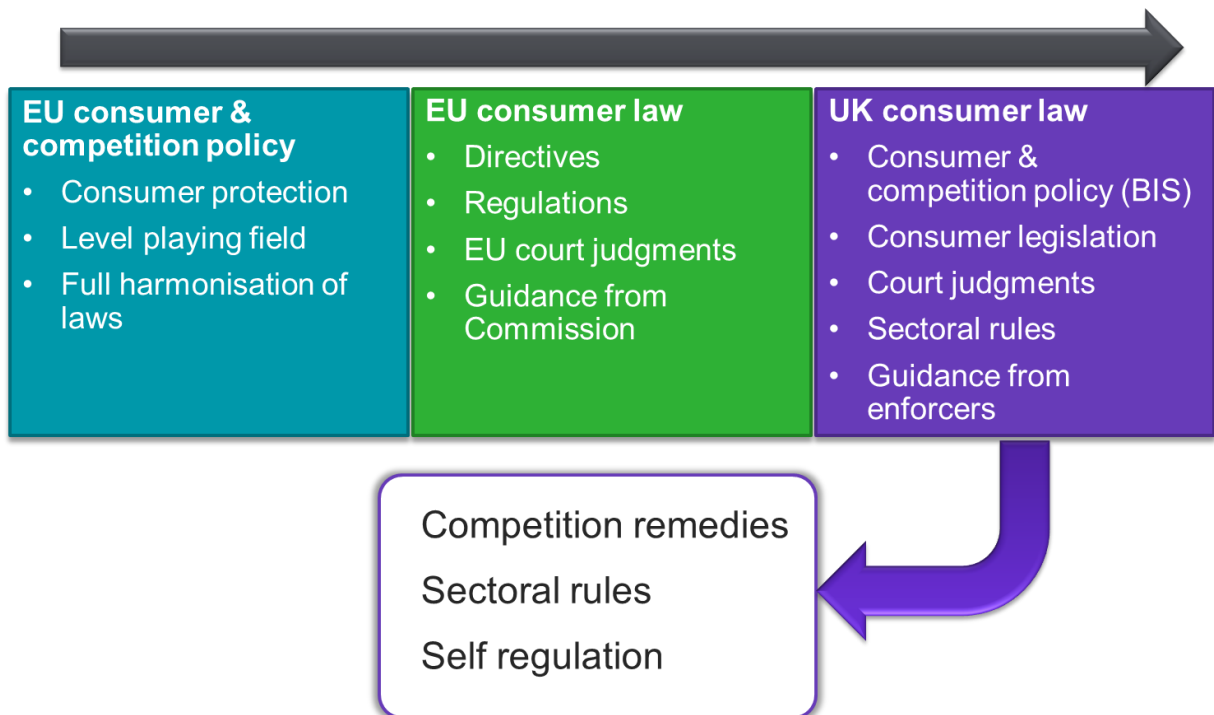
What is consumer law?

What does consumer law cover?

Examples of areas covered by consumer law include:

Term	Description
Fundamental contractual rights	Consumers will benefit from certain terms even if they are not included in the written contract.
Essential contractual information	Contracts should include all essential details, including a description of the goods or services, the total price, and the rights and obligations of all of the relevant parties.
Unfair terms	Contracts should be clear and not contain traps for consumers. There should be a level playing field between consumers and traders (<i>Consumer Rights Act 2015</i> (CRA)).
Distance selling	Consumers should get information about the trader and the goods, and be able to return the goods (<i>Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013</i> (CCRS)).
Doorstep selling	Consumers should have time to make an informed purchasing decision rather than when they are surprised by the trader's arrival at their home (CCRS).
Sale of goods, services and digital content	Consumers should be able to seek redress if the goods, services or digital content they purchase is not of the necessary quality (CRA).
Advertising and aggressive practices	Consumers should be able to make efficient and informed purchasing decisions (<i>Consumer Protection from Unfair Trading Regulations 2008</i> (CPRS)).
Credit	A complex and risky area (under the Financial Conduct Authority's jurisdiction).
Product Safety	Products circulating for sale within the EU must meet a minimum standard of safety, since consumers cannot judge quality and should not be placed in danger
Sectoral Specific rules	In many sectors there are specific risks to consumers, such as being denied boarding when travelling, or due to problematic practices, such as sale of timeshare and holiday club membership

EU and UK consumer law



UK consumer law mainly derives from EU law (directives and regulations). EU law reflects EU's policy intention of facilitating the internal market. This includes the following principles:

- high level of consumer protection – so people buy with confidence;
- level playing field for all EU traders – so national markets are open; and
- full harmonisation of laws – so national legislation is restricted.

This impacts on the content and interpretation of UK consumer law. For example, UK consumer law is increasingly diverging from English contract law and reflects European concepts such as good faith and the EU policy's objectives of effective competition and empowered consumers. Also, EU directives and judgments of the court of Justice of the EU (CJEU) are used by lawyers and judges in the UK to interpret UK consumer law.

UK specific rules

Apart from legislation, consumer law also comes from:

- **competition remedies** – eg point of sale warranties, home collected credit, payment protection insurance, payday lending;
- **sectoral rules** – eg Financial Conduct Authority, Information Commissioner, Phone Play Plus, Advertising Standards Authority, Ofgem (energy), Ofcom (communications), Ofwat (water), Office of the Rail Regulator, Civil Aviation Authority; and
- **self-Regulation** –Advertising Standards Authority, Codes Schemes.

Other relevant laws include – eg e-commerce, payment surcharges/services, and business names.

Protection for traders

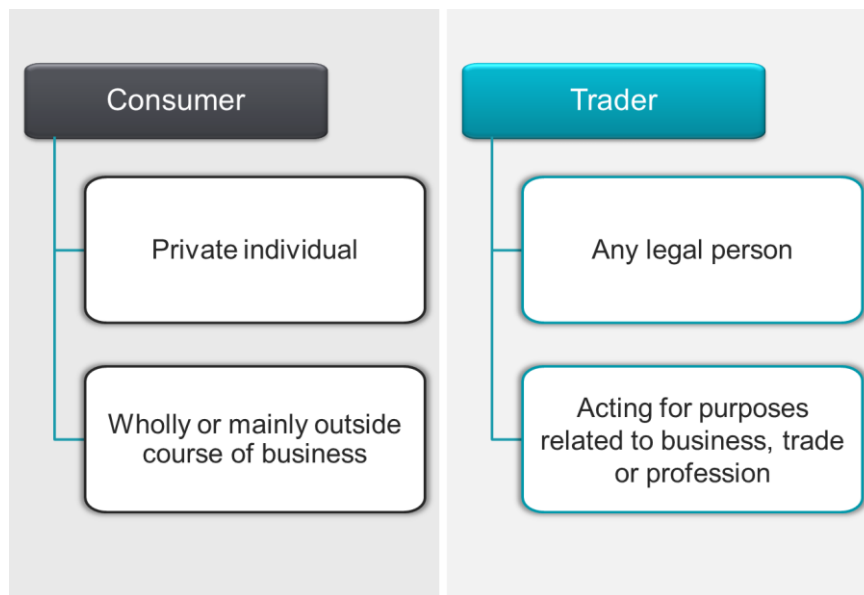
Consumer law also provides protection for traders, including by:

- creating a level playing field between businesses; and
- preventing traders from gaining an unfair competitive advance.

The legal protections for traders include:

- **contract law** – rights and remedies in relation to quality are generally available (but, some exclusions apply);
- **unfair terms** (Unfair Contract Terms Act 1977);
- **marketing and advertising** – protection from misleading marketing and comparative advertising (*Business Protection from Misleading Marketing Regulations 2008*); and
- **consumer credit** –the definition of “consumer” includes individuals and small partnerships, even where engaged in business.

Consumer vs trader

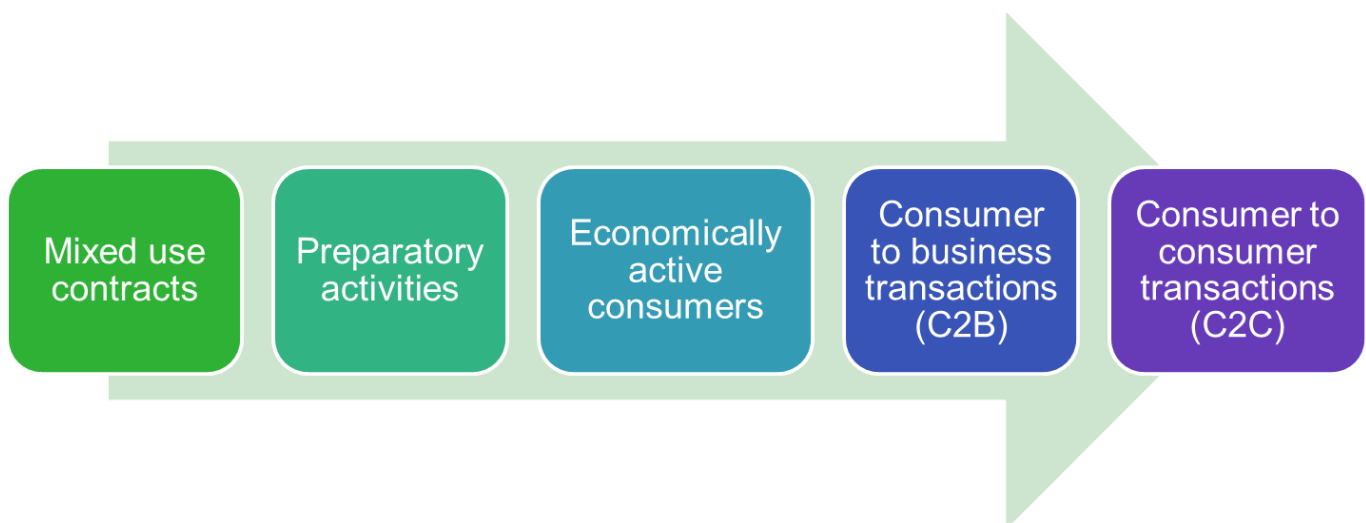


Consumers are defined in several different pieces of consumer legislation. While there are some variations, the general definition is that a consumer is a person who is acting for purposes wholly or mainly outside their business, trade or profession. So, consumer contracts include those that are for mixed professional and personal use.

Traders are defined as someone acting for purposes related to their business, trade or professional. Traders include companies, partnerships and individuals. In certain circumstances, public bodies can also be traders.

Challenging areas

It's not straightforward when consumer law applies and why – some areas are particularly challenging. For example:



Term	Example
Mixed use contracts	Buying a lap top for work and personal use. The individual is treated as a trader if the business use is predominant.
Preparatory activities	Buying equipment before opening a business. The law on this issue is unclear.
Economically active consumers	Investments.
Consumer to business transactions	A consumer selling their car to a trader.
Consumer to consumer transactions	The sharing economy. The common law regarding contracts applies.

Enforcing consumer law

Enterprise Act 2002

Enterprise Act 2002 Part 8

CMA (and other enforcers) can seek an **Enforcement Order** to stop traders breaching the law and secure redress for consumers



Part 8 of the [Enterprise Act 2002](#) (EA02) provides the legal power for the CMA & other enforcers to take civil legal action to enforce consumer law such as the CPRs, CCRs and CRA (mentioned above and detailed below). Under Part 8 EA02, the CMA (and other enforcers) has the power to seek an enforcement order from the court.

An enforcement order can require a trader to stop breaching UK and European consumer protection laws. Such breaches are referred to as Community (EU) or Domestic (UK) infringements. An enforcement order can also include Enhanced Consumer Measures (detailed below). If the trader does not comply with an enforcement order, then they will be in contempt of court.

Delivering a civil enforcement case is an example of the main type of consumer enforcement project carried out at the CMA. The civil enforcement process and running a consumer enforcement project in the CMA are detailed below.

Community infringements

A community infringement is an act or omission which contravenes a specific EU directive or regulation, or a domestic law giving effect to an EU directive or regulation, which harms the collective interest of consumers.

Domestic infringements

A domestic infringement is an act or omission in the course of a business, contrary to a specific law, that harms the collective interest of UK consumers.

There are many domestic infringements, set out in the *Enterprise Act 2002 (Part 8 Domestic Infringements) order 2003/1593*.

Legislation	Extent
Accommodation Agencies Act 1953	The whole Act
Administration of Justice Act 1970	Section 40 (unlawful harassment of debtors)
Cancer Act 1939	Sections 4, 5 and 7 (prohibition of certain advertisements relating to cancer)
Charities Act 1992	Sections 60, 61 and 63 (information requirements, cancellation rights and false statements in respect of fundraising)
Children and Young Persons Act 1933	Section 7(1) to (2) (prohibition on sale of tobacco to persons under 16)
Children and Young Persons (Protection from Tobacco) Act 1991	Section 4 (display of warning statements)
Children and Young Persons (Scotland) Act 1937	Section 18(1) to (2) (prohibition on sale of tobacco to persons under 16)
[Companies Act 2006	Part 41 (business names)] ³
[Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015	Part 6 of the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 and any other provision of those regulations having effect for the purpose of Part 6] ⁴
Consumer Credit Act 1974	The whole Act
Copyright, Designs and Patents Act 1988	Sections 107 (making or dealing with infringing articles etc), 198 (making, dealing with or using illicit recordings), 297A (making and dealing with unauthorised decoders) ⁵
Estate Agents Act 1979	The whole Act

Hallmarking Act 1973	The whole Act
Intoxicating Substances (Supply) Act 1985	The whole Act
Lotteries and Amusements Act 1976	Part I (legal and illegal lotteries) and section 14 (prize competitions)
Malicious Communications Act 1988	The whole Act
Misrepresentation Act 1967	The whole Act
National Lottery etc Act 1993	Sections 13 (contravention of regulations) and 16 (false representations)
Prices Act 1974	Section 4 (price marking)
Protection from Harassment Act 1997	The whole Act
[Pyrotechnic Articles (Safety) Regulations 2010	Regulation 15 (prohibition on supply of category 1 fireworks to persons under 16 years and category 2 or 3 fireworks to persons under 18 years).] ⁹
Road Traffic Act 1988	Sections 75 (vehicles not to be sold in unroadworthy condition etc) and 76 (fitting and supplying defective or unsuitable vehicle parts)
Sale of Goods Act 1979	The whole Act
Supply of Goods (Implied Terms) Act 1973	The whole Act
Supply of Goods and Services Act 1982	The whole Act
Tobacco Advertising and Promotion Act 2002	The whole Act
Tobacco Products (Manufacture, Presentation and	The whole Regulations

Sale) (Safety) Regulations 2002	
Torts (Interference with Goods) Act 1977	Section 12 (power of sale of uncollected goods)
Trade Descriptions Act 1968	The whole Act
Trade Marks Act 1994	Section 92 (unauthorised use of trade marks etc in relation to goods)
Unfair Contract Terms Act 1977	The whole Act
Weights and Measures Act 1985	Sections 21 to 23, 25 (requirements to sell goods by particular quantities etc), 28 (short weight etc), [...] ¹¹ 30 (quantity less than stated), 31 (incorrect statements), 32 (offences due to default of third person), 50(5) and (6) (possession for sale, etc of inadequate regulated package)
Rules of Law	An act done or omission made in breach of contract for the supply of goods or services to a consumer. An act done or omission made in breach of a duty of care owed to a consumer under the law of tort or delict of negligence.
Northern Irish legislation	Not included here for reasons of space

In addition, The Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2015/1727 Specified Acts or omissions in respect of any provision of [Parts 1 and 2](#) and [Chapter 5 of Part 3](#) of the [Consumer Rights Act 2015](#), as Domestic Infringements.

Harm to collective interest of consumers

There is no statutory definition, but domestic cases provide the following guidance:

- harm to a section of the public, not just an individual;
- usually an accumulation of breaches, although there could be one breach if enough people are affected;
- breaches can be different in nature; and
- there is a risk of repetition.

Other options for enforcing consumer law

There are other options for enforcing consumer law, including:

- criminal legal action – eg by the CMA or Trading Standards under the CPRs or the BPRs;
- sectorial regulation – eg financial services (FCA), energy (Ofgem), water (Ofwat), telecommunications (Ofcom), rail (ORR) and airlines (CAA); and
- self-regulation – Advertising Standards Agency, Phone Pay Plus.

Further reference

- [Consumer law: overview](#) from Consumer know-how pages on CMA Live;
- [Guidance on the CMA's approach to use of its consumer powers](#) (CMA7), and
- [CMA Prioritisation principles](#) (CMA16).

Section two – A deeper dive into the tools

Area	EU law	UK law	Replaced (repealed) UK law
Advertising and unfair trading	Unfair Commercial Practice Directive (UCPD)	Consumer Protection from Unfair Trading Regulations 2008 (CPRs)	Numerous –eg Trade Descriptions Act
Fundamental contract rights – sale of goods, services and digital content		Part 1, Consumer Rights Act 2015 (CRA)	Sale of Goods Act 1979 (SOGA) and Sale of Goods and Services Act 1982 (SGSA)
Unfair contract terms	Unfair Terms in Consumer Contracts Directive	Part 2, Consumer Rights Act 2015 (CRA)	Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) and Unfair Contract Terms Act 1977 (UCTA)
Distance selling, doorstep selling, information and cancellation rights	Consumer Rights Directive (CRD)	Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs)	Consumer Protection (Distance Selling) Regulations 2000 (DSRs) and the Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008 (Doorstep Selling Regulations")

Advertising and unfair trading

Core concepts

The [Consumer Protection from Unfair Trading Regulations 2008](#) (CPRs) implement the Directive [2005/29/EC](#) of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices (UCPD). They came into force on 26 May 2008.

The UCPD is intended to provide a high level of protection and sets the standard across the whole of the EU. In the UK, individuals have a **private right of redress** for certain infringements, which allows them to unwind contracts, recover payments and claim some damages.

The CPRs prohibit unfair **commercial practices** (before, during and after a purchase) which cause or are likely to cause the **average consumer** to take a different **transactional decision**.



A **commercial practice** is intended to be a broad concept, encompassing practically anything a trader might do in the course of business, including one off acts.

The **standard of protection**. Aside from a set of completely banned practices, in order to infringe the CPRs, misconduct must:

- Actually or be likely to have an effect on
- the decision making
- of the average (vulnerable / targeted) consumer.

The **average consumer**:

- refers to a notional (not statistically) average consumer who the commercial practice reaches or to whom it is addressed. It is a legal concept, not a question of fact; and is **either**

- is reasonably well informed, observant and circumspect, taking into account social, cultural and linguistic factors; **or**
- is the average member of a group when a commercial practice is targeted at a particular group, or where it is reasonably foreseeable that a particular group will be vulnerable to a commercial practice or the product (because of infirmity, age or credulity) in a way that might distort their economic behaviour.

Transactional decisions cover a wide range of decisions that have been or may be taken by consumers in relation to products. It includes any decision directly related to the decision whether or not to purchase a product taken before, during and after a contract (if any) is formed.

Transactional decisions include:

- pre-purchase decisions – eg going into a shop, travelling to a sales outlet, agreeing to sales presentation, continuing with an online transaction (the next ‘click’), deciding to buy from a trader, etc; and
- post-purchase decisions – eg requesting a refund, repair or other remedy, returning goods, renewing a subscription or paying for an upgrade/update, complaining, bringing legal or other proceedings, etc.

What is illegal under the CPRs?

General prohibition (Regulation 3 CPRs)	Contrary to the requirements of professional diligence	(Likely to) appreciably impair the average consumer’s ability to make an informed decision And as a result...	Cause (or is likely to cause) the average consumer to take a different transactional decision
Misleading action (Regulation 5 CPRs)	False or deceptive practice in relation to a specific list of key factors	And...	
Misleading omission (Regulation 6 CPRs)	Omission (or unclear/untimely provision) of material information	And...	
Aggressive practice (Regulation 7 CPRs)	Aggressive practice by harassment, coercion or undue influence	(Likely to) significantly impair the average consumer’s freedom of choice or conduct And as a result...	

Banned practice (Schedule 1 CPRs)	One of 31 specified practices	No impairment or transaction decision tests
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Examples of illegal practices

Professional Diligence: negligent advice, incompetent building work requiring remedial action

Misleading Actions: drip pricing, headline claims contradicted by small print, outright lies, seeking to rely on a contractual term which is not enforceable

Misleading Omissions: VAT exclusive pricing, failing to include information the consumer needs, or which is required by other EU legislation, failing to disclose the commercial intent of a practice

Aggressive Practices: imposing barriers to consumer exercising contractual rights, exploiting a consumer's predicament to pressurise them to contract, threatening legal action that won't in fact be taken

Banned Practices: bait and switch, false prize notifications, pretending not to be a trader, pyramid selling, falsely claiming to be in a Code of conduct.

What are the consequences?



Enforcement

Enforcers can take civil enforcement action under EA02. Most infringements are also criminal offences, so the CMA or Trading Standards could prosecute.

Private redress by consumers

The [Consumer Protection \(Amendment\) Regulations 2014 \(SI 2014/870\)](#) amended the CPRs to introduce a private right of redress for consumers. Consumers who entered into a contract with, or made a payment to, a trader after 1 October 2014 as a result of a **misleading action** or an **aggressive practice** may have a right to redress. They may be able to unwind the contract and get their money back, obtain a discount on the purchase price or claim damages. This right is enforceable in Civil proceedings.

The **right to unwind** applies if the product is capable of being returned and the consumer invokes the right within 90 days of the contract. The consumer is entitled to recover any item they supplied the trader, or its market value.

The **right to a discount** applies if the right to unwind is lost, or not used. Depending on the seriousness of the trader's conduct, its impact on the consumer and the time that's elapsed, the consumer may be entitled to 25% to 100% of the price paid.

The **right to damages** applies if the consumer has suffered financial harm, alarm, distress or discomfort, AND this was reasonably foreseeable at the time of the practice. The trader may seek to prove a defence of due diligence.

Further reference

- [OFT Guidance on the Consumer Protection from Unfair Trading](#)
- [BIS Guidance on misleading and aggressive commercial practices – new private rights for consumers](#)
- [EU Unfair Commercial Practices Directive](#) materials.

Fundamental contract rights – sale of goods, services and digital content

What is a contract?

Under English law, a **contract** is an agreement between two or more parties giving rise to rights and obligations, which are enforced or recognised by law.

In assessing whether a contract exists, consider:

Features of a contract

1. Invitation to treat or Offer?
2. Acceptance?
3. Consideration (moving from promisee)?
4. Intention to create legal relations?
5. Certainty of terms?

- **invitation to treat** –an expression of interest in contracting if terms can be agreed;
- **offer** – An expression of willingness to contract on specified terms, made with the intention that it is to be binding once accepted by the person to whom it is addressed. It must be specific, complete, and capable of acceptance and made with the intention of being bound by acceptance;
- **acceptance** – A final and unqualified expression of assent to the terms of an offer communicated to the offeror;
- **consideration** – The price (not necessarily money – could merely be submission to terms) by which one party secures the obligation of the other. Must have value in law, must move from the promise and must be current (not past), but need not be adequate;
- **intention to create legal relations** –the difference between a ‘gentleman’s agreement’ and a contract
- **certainty of terms** –what would a bystander think the contracting parties had agreed?

Contract terms may be:

- *express* – oral or written;
- *implied under common law* – in the course of dealing or based on the parties’ intention. They are necessary to provide business efficacy; or
- *implied by statute* – these terms are in all consumer contracts and cannot be excluded.

Core concepts

Part 1 of the [Consumer Rights Act 2015](#) (CRA) clarified the quality rights and remedies for goods and services, and created new regime for digital content. It replaced the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 for consumer contracts concluded after 1 October 2015. It covers contracts to supply:

- goods (including *hire and hire purchase agreements*) (Part 1, Chapter 2 CRA);
- digital content (Part 1, Chapter 3 CRA), and
- services (Part 1, Chapter 4 CRA).

Where a contract is mixed (eg for goods and digital content; or for services and goods), it is possible to end the whole agreement if just one part of it is defective.

Terms implied by the CRA

Consumers are entitled to expect the following broad rights:

	Goods	Digital content	Services
Satisfactory quality	Yes	Yes	
Fit for a particular purpose	Yes	Yes	
As described	Yes	Yes	Yes
Provided with reasonable skill and care			Yes
Provided within a <i>reasonable time</i> and for a <i>reasonable price</i> if not otherwise agreed			Yes

The Goods Rights

Goods must be satisfactory quality (s.9)

- Reasonable person's view taking into account description, price, any public statement.
- Consider –fitness for purpose, appearance/finish, freedom from minor defects, safety, durability
- Exemption for any defect specifically drawn to C's attention, or which C ought to have seen on inspection

Fit for purpose that C made known to the T (s.10)

- Unless C did not rely on T's skill or judgment, or unreasonable to so rely

As described (s.11)

- Includes information on main characteristics of goods required by CCRs, which may not be changed without consumer's express agreement

Match sample (s.13) & Model (s.14)

Properly installed (s.15)

- Where trader is responsible for installation

Any digital content included works properly (s.16)

- For example where a smart phone comes with pre-installed software

T has the right to supply (s.17)

- Unless C and T expressly agreed for T to supply limited title

Goods to be delivered when agreed, or within 30 days if can't be sooner (s.28)

- Consumer may treat contract as at an end if (s.28(6)-(7))
 - Trader refused to deliver
 - Timely delivery was essential (or specifically requested by the consumer)
 - Trader has failed to deliver within the further period specified by consumer
- Goods remain at the trader's risk until delivered (s.29)

Digital content rights

Digital content is "data which are produced and supplied in digital form"

- The rights apply where it is supplied for a price, or free with something C has paid for (NB no rights for completely free software).
- Not permissible to contract out of the rights (s.47)

Digital content must be

- Satisfactory quality (s.34)
- Fit for purpose (s.35)
- As described (s.36)
- Conforms to CCRs pre-contract information (s.37)
- Rightfully supplied to the consumer (s.41)

Any later updates must not stop digital content from conforming to the contract (s.40).

Services Rights

- Services must be performed with reasonable Care and Skill (s.49)
- Trader must to comply with any information given to C (**about service or trader**), which C has taken into account when making a decision to enter the contract, or about the service (s.50)
- Price will be reasonable, if not agreed (s.51)
- Service to be performed in a reasonable time, if not agreed (s.52)

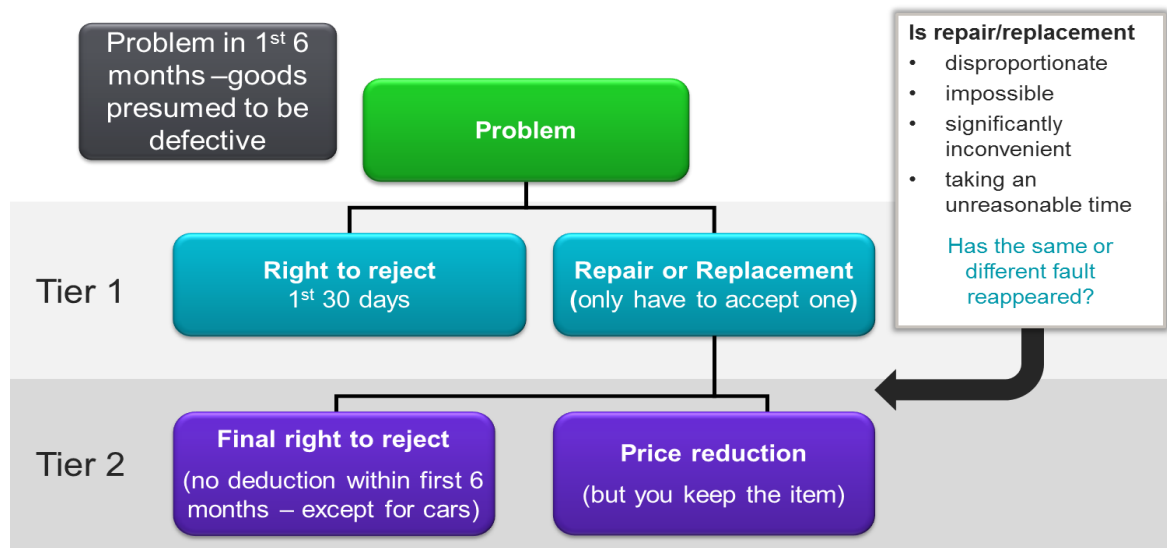
What are the consequences?

If the business is in **breach of contract**, the remedies include:

- specific performance – a common law remedy requiring the business to perform their obligations again;
- damages – monetary compensation; and
- special statutory rights – mandatory rights that cannot be excluded from consumer contracts by other terms in the contracts ie those under the CRA discussed below.

It is important to remember that the special statutory rights are **in addition** to the rights that all contracting parties have under the Common Law.

Remedies for **goods** contracts:



Remember: the trader must bear any costs or repair/replacement or the return of faulty goods

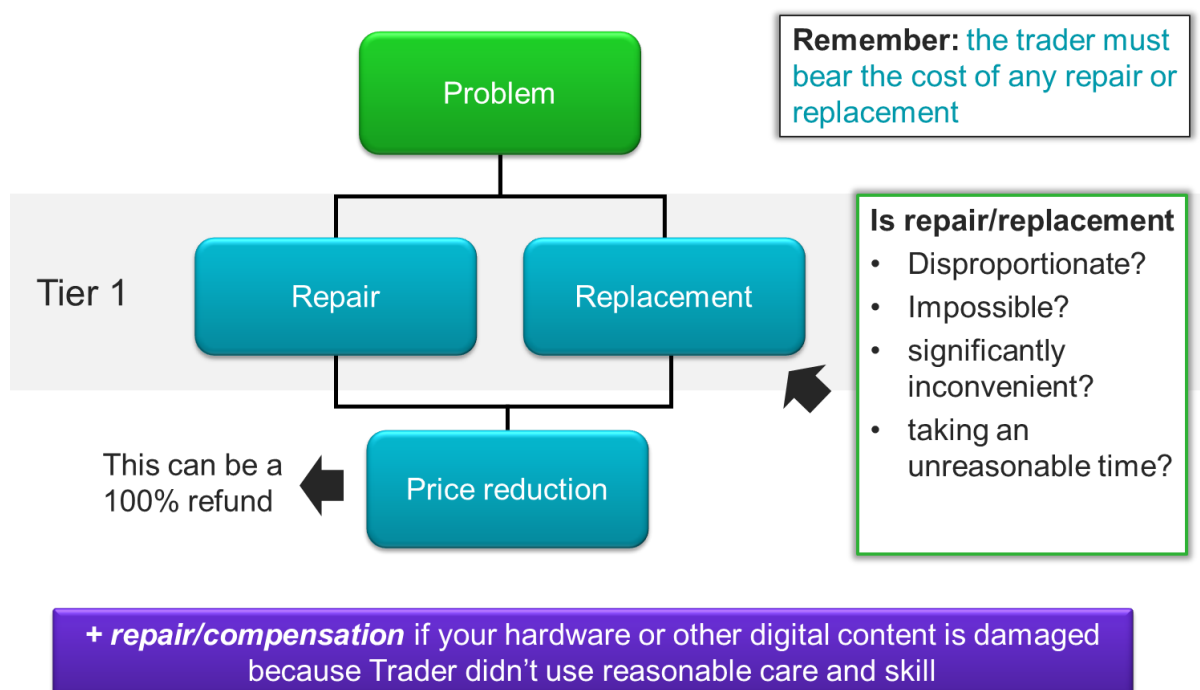
1. right to reject the goods (within the first 30 days);
2. right to repair or replacement (the consumer only needs to accept one). It is relevant to consider whether the repair or replacement is disproportionate, impossible, and significantly inconvenient or taking an unreasonable time as well as whether the same or different fault has re-appeared;
3. right to reject the goods after repair or replacement (there is no deduction within the first six months, except for cars); or
4. a reduction in the purchase price (the consumer still keeps the goods).

The trader must bear any costs of the repair or replacement, or return of faulty goods.

For example, the information communicated to consumers at the point of sale could cover:

Up to 30 days	If your goods are faulty, you can get an immediate refund.
Up to 6 months	If it can't be repaired or replaced, then you're entitled to a full refund in most cases.
Up to 6 years	If the goods do not last a reasonable length of time you may be entitled to some money back.

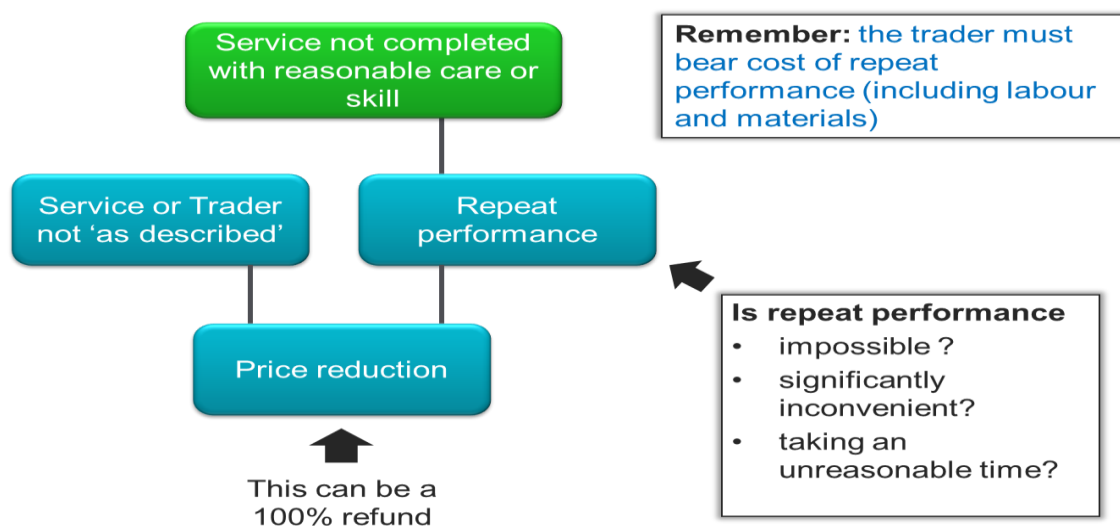
Remedies for Digital Content:



1. right to repair or replacement;
2. a reduction in the purchase price (up to a 100% refund). There is no right to reject as it is impossible to 'return' digital content;
3. repair or compensation if the consumer's hardware or other digital content is damaged because the trader did not use reasonable care and skill.

Again, the trader must bear any costs of the repair or replacement. It is relevant to consider whether the repair or replacement is disproportionate, impossible, significantly inconvenient or taking an unreasonable time.

Remedies for services contracts:



1. repeat performance – for services that are not performed with reasonable care and skill. The trader must bear the costs of repeat performance, including labour and materials. It is relevant to consider whether the repair or replacement is disproportionate, impossible, significantly inconvenient or taking an unreasonable time; or
2. price reduction – for services that are not performed with reasonable care and skill, for services or a trader that is not ‘as described’ (up to a 100% refund).

Further reference

- [Explanatory Notes](#) to the Consumer Rights Act 2015.
- [Chartered Trading Standards Institute Guidance](#).

Summary of Remedies Available for Breach

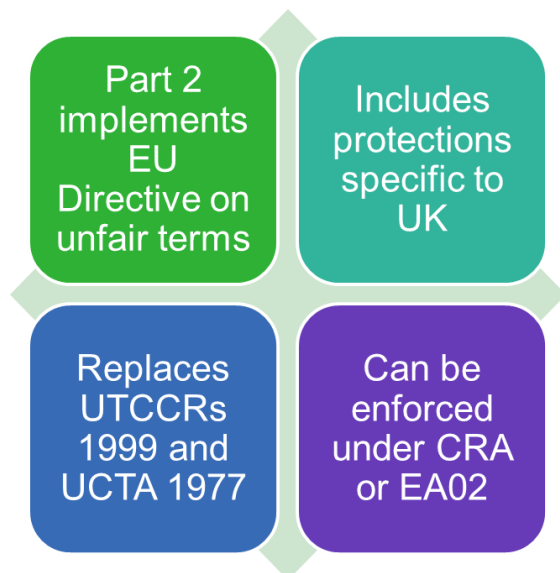
Breach	Short term right to Reject	Repair/ replacement	Repeat Performance	Price Reduction (upto 100%)	Final right to reject
Goods					
Satisfactory Quality s.9	Y	Y		Y	Y
Fit for purpose s.10	Y	Y		Y	Y
As described s.11	Y	Y		Y	Y
Match Sample s.13	Y	Y		Y	Y
Match model s.14	Y	Y		Y	Y
Installed digital content does not conform s.16	Y	Y		Y	Y
Goods not installed properly s.15		Y		Y	Y
CCRs information s.12				Y	
No right to supply s.17					Y
No delivery s.28					Y
Digital content					
Satisfactory quality s.34		Y		Y	
Fit for purpose s.35		Y		Y	

Breach	Short term right to Reject	Repair/ replacement	Repeat Performance	Price Reduction (upto 100%)	Final right to reject
As described s.36		Y		Y	
CCRs information s.37				Y	
No right to supply s.41				Y	
Services					
Skill and care s.49			Y	Y	
As described s.50			Y	Y	
Trader as described s.50				Y	
Provided too slow s.52				Y	

Unfair contract terms

Core concepts

Part 2 of the [Consumer Rights Act 2015](#) (CRA) implements, among other things, European Council Directive [93/13/EEC](#) on unfair terms in consumer contracts. It also replaces the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) and the Unfair Contract Terms Act 1977 (UCTA). The CRA also includes protections specific to the UK.



Part 2 of the CRA applies to consumer terms (both standard and individually negotiated) and notices that are entered into from 1 October 2015. It requires consumer terms and notices to be fair (section 62 CRA).

Unfair terms do not bind consumers and are not legally enforceable. Only a court can determine if a term is unfair.

If there is any doubt about the meaning of a term, it must be construed in favour of the consumer.

The unfairness test

A term or notice will be **unfair** if it creates a **significant imbalance** in the parties' rights and obligations under the contract, to the **detriment of the consumer** and contrary to the requirement of **good faith (s.62)**.

To determine whether there is a **significant balance**, it is relevant to consider:

1. how a term could be used, not just how it is presenting being used;
2. whether the term is weighted in favour of the business eg does the trader bear a risk and does the consumer derive some benefit? Can any legitimate aim be achieved in a less harmful way?
3. whether the term changes the normal position under the law;
4. whether the term defends the legitimate interest of the trader;
5. whether the term is surprising eg would a notional lawyer ask for the term to be deleted? Is the term used in commercial transactions? and
6. the context, including the nature of the product, the circumstances relating to the conclusion of the contract and all other terms of the contract or a related contract.

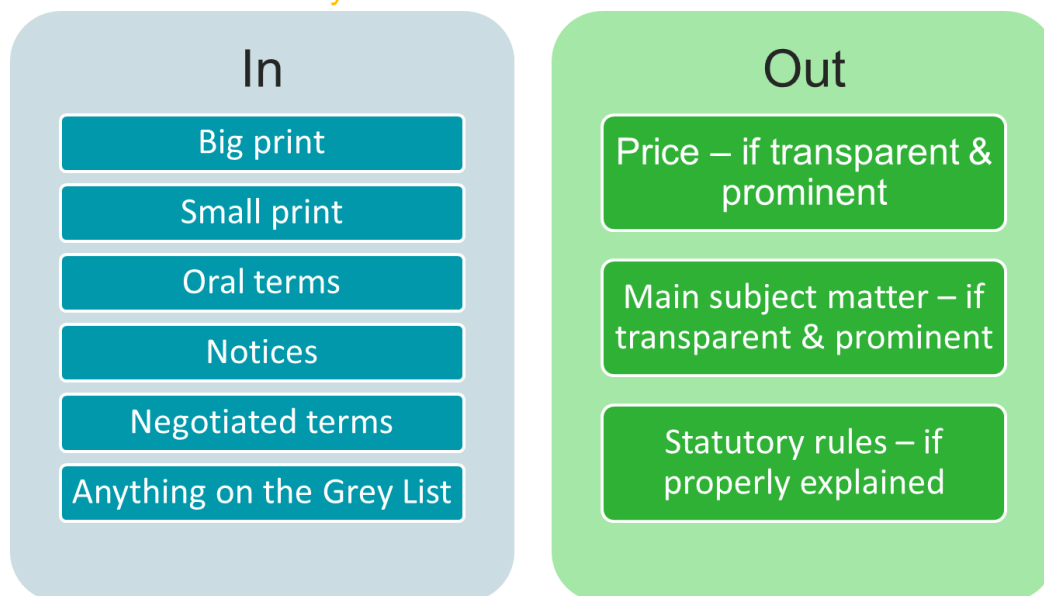
Good faith involves:

1. fair dealing – eg the motives of the trader, whether the trader is exploiting the consumer or taking advantage of their weaker bargaining position or behavioural biases; and
2. openness – eg whether a term is hidden or given sufficient prominence, and whether the consumer actively negotiated the term.

It is also relevant to consider:

- the strength of the bargaining positions of the parties;
- whether the consumer was induced to agree to the term; and
- whether the product was supplied by special order to the consumer.

What terms are covered by the CRA?



The exemptions from the unfairness test

Certain terms are not subject to the unfairness test. Terms will not be assessed for fairness if they:

- specify the **main subject matter** of the contract; or
- 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 (section 64 CRA).

However, the exemptions will only apply if the term is **transparent** and **prominent**. also don't apply to terms in the **grey list** or the **blacklist**.

The **main subject matter** relates to the principal obligation for which the contract is entered into ie the identity, nature and essential features of the good or service provided.

Description of the **price** may involve reference to any remuneration provided in exchange for consideration. It does not include ancillary matters relating to payment, such as additional fees that are not necessarily and directly related to the main obligation.

Terms are **transparent** if:

- they are expressed in plain and intelligible language;
- written terms are legible;
- consumers understand the nature and extent of their rights and obligations under the contract, and
- consumers not only comprehend the words, but also understand the economic consequences.

Terms are **prominent** if they are brought to the consumer's attention in such a way that an average consumer would be aware of the term. It is unlikely that terms only in small print can be 'prominent.'

The grey list

[Schedule 2 of the CRA](#) sets out terms that are likely to be unfair, which are referred to as the grey list. These terms have the aim or effect of reducing the consumer's rights under the ordinary rules of law or contract eg taking rights away from the consumer or giving the trader greater rights. Some grey list terms are subject to further qualification in Part 2 of Sched 2. However where Part 2 applies, it does not mean the term is fair.

The types of terms covered include:

- exclusions, one sided obligations or rights, compensation payable;
- lock ins or auto rollovers, incorporation and variation of terms; and
- dispute resolution, assignment of rights.

Blacklisted terms

Blacklisted terms are certain types of terms that are deemed to be unfair in all circumstances and are unenforceable with no need to prove that the particular term is unfair.

Blacklisted terms include:

- exclusions or restrictions for liability for death or personal injury resulting from negligence (sections 65 and 66 CRA); and
- exclusions or restrictions of statutory rights and remedies (Part 1 CRA).

What are the consequences?

Under Schedule 3 of the CRA, they can challenge unfair terms by:

- applying to a court for an injunction (interdict in Scotland) to prevent a trader from stating, using or enforcing an unfair term; or
- taking enforcement action under Part 8 EA02.

The CMA may also publicise its concerns about certain terms to increase awareness.

Only a court can determine if a term is unfair. The court has duty to ensure that consumers are not bound by unfair terms.

In any court action or ADR proceedings, a consumer may rely on the unfairness of a term as a means of preventing its use, regardless of whether or not an enforcer has taken action. Where a consumer has paid money because of an unfair term, this money may be recoverable under the law of unjust enrichment.

Further reference

- [Unfair contract terms explained](#) (CMA37a).
- [Guidance on unfair contract terms](#) (CMA37).
- [EU Unfair Contract Terms Directive](#) materials.

Unfair Terms Grey List

1 A term which has the object or effect of excluding or limiting the trader's liability in the event of the death of or personal injury to the consumer resulting from an act or omission of the trader. This does not include a term which is of no effect by virtue of section 65 (exclusion for negligence liability).

2 A term which has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the option of offsetting a debt owed to the trader against any claim which the consumer may have against the trader.

3 A term which has the object or effect of making an agreement binding on the consumer in a case where the provision of services by the trader is subject to a condition whose realisation depends on the trader's will alone.

4 A term which has the object or effect of permitting the trader to retain sums paid by the consumer where the consumer decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the trader where the trader is the party cancelling the contract.

5 A term which has the object or effect of requiring that, where the consumer decides not to conclude or perform the contract, the consumer must pay the trader a disproportionately high sum in compensation or for services which have not been supplied.

6 A term which has the object or effect of requiring a consumer who fails to fulfil his obligations under

the contract to pay a disproportionately high sum in compensation.

7 A term which has the object or effect of authorising the trader to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the trader to retain the sums paid for services not yet supplied by the trader where it is the trader who dissolves the contract.

8 A term which has the object or effect of enabling the trader to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so. This is subject to paragraphs 21 (financial services) and 24 (sale of securities, foreign currency etc).

9 A term which has the object or effect of automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express a desire not to extend the contract is unreasonably early.

10 A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has had no real opportunity of becoming acquainted before the conclusion of the contract.

11 A term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract.

This is subject to paragraphs 22 (financial services), 23 (contracts which last indefinitely) and 24 (sale of securities, foreign currency etc).

12 A term which has the object or effect of permitting the trader to determine the characteristics of the subject matter of the contract after the consumer has become bound by it.

This is subject to paragraph 23 (contracts which last indefinitely).

13 A term which has the object or effect of enabling the trader to alter unilaterally without a valid reason any characteristics of the goods, digital content or services to be provided.

14 A term which has the object or effect of giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it, where no price or method of determining the price is agreed when the consumer becomes bound.

This is subject to paragraphs 23 (contracts which last indefinitely), 24 (sale of securities, foreign currency etc) and 25 (price index clauses).

15 A term which has the object or effect of permitting a trader to increase the price of goods, digital content or services without giving the consumer the right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded.

This is subject to paragraphs 24 (sale of securities, foreign currency etc) and 25 (price index clauses).

16 A term which has the object or effect of giving the trader the right to determine whether the goods, digital content or services supplied are in conformity with the contract, or giving the trader the exclusive right to interpret any term of the contract.

17 A term which has the object or effect of limiting the trader's obligation to respect commitments undertaken by the trader's agents or making the trader's commitments subject to compliance with a particular formality.

18 A term which has the object or effect of obliging the consumer to fulfil all of the consumer's obligations where the trader does not perform the trader's obligations.

19 A term which has the object or effect of allowing the trader to transfer the trader's rights and obligations under the contract, where this may reduce the guarantees for the consumer, without the consumer's agreement.

20 A term which has the object or effect of excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, in particular by—

- (a) requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions,
- (b) unduly restricting the evidence available to the consumer, or
- (c) imposing on the consumer a burden of proof which, according to the applicable law, should lie with another party to the contract.

Distance selling, information and cancellation

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

Core concepts

Directive [2011/83/EU](#) of the European Parliament and of the Council on consumer rights (CRD) consolidates and adds to the rules relating to consumer contracts (in particular distance and doorstep contracts). It provides full harmonisation of law across the EU, except for the rules regarding on premises contracts, which are minimum harmonisation.

The CRD covers:

- information requirements;
- cancellation rights;
- delivery and passing of risk;
- surcharges for different payment methods (implemented separately in the UK by the Consumer Rights (Payment Surcharges) Regulations 2012);
- telephone helpline charges; and
- 'pre-ticked' additional payments.

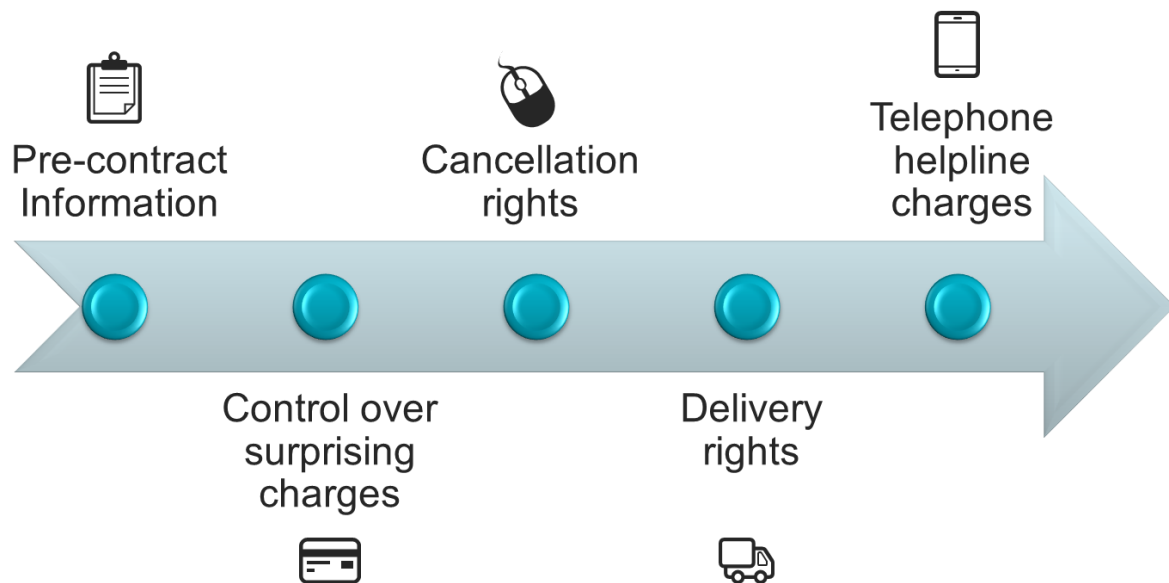
The CRD made the following changes:

- eliminated hidden charges and costs on the internet;
- increased price transparency;
- banned pre-ticked boxes on websites;
- introduced 14 days to change your mind on a purchase;
- improved refund rights;
- introduced an EU-wide model withdrawal form;
- eliminated excessive surcharges for the use of payment cards and hotlines;
- required clearer information on who pays for returning goods;
- improved consumer rights in relation to digital products; and
- provided common rules for businesses to make it easier for them to trade all across Europe.

The [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#) (CCRs), which came into force on 13 June 2014, implement the CRD in the UK and replaced the *Consumer Protection (Distance Selling) Regulations 2000* (DSRs) and the *Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008* (Doorstep Selling Regulations).

Overview of CCRs

The CCRs cover:



The CCRs apply to:

1. on-premises contracts eg buying in a shop;
2. off-premises contracts eg buying on the doorstep, such as a home, consumer's place of work, excursion organised away from a trader's premises; and
3. distance contracts eg buying online.

There are several exceptions, including gambling, financial services, creating rights in immoveable property, residential lettings and household goods delivered by regular roundsmen.

The information rules

The information requirements include:

- business must provide specified information to consumers, including information concerning the price, delivery charges, what the product is, who the trader is. More information is required for distance and doorstep contracts;
- information should be treated as a term of the contract; and
- information cannot be changed without the consumer's consent.
- There is an implied term in the contract that the trader has complied with the information requirements.

Any payments the consumer is liable to make must be specifically authorised, especially where these go beyond a trader's main contractual obligation.

The information required and when is as follows:

Contract	Pre-contract	Point of purchase	Post-purchase
On-premises	<ul style="list-style-type: none"> • Information in Schedule 1 • Clear and comprehensible manner. • Unless apparent from the context or involves a day-to-day transaction completed immediately. 	<ul style="list-style-type: none"> • Must expressly consent to any additional payments (but not through a 'pre-ticked' box). 	
Off-premises (unless a contract price of less than £42)	<ul style="list-style-type: none"> • Information in Schedule 2. • Clear and comprehensible manner. • On paper. • Must give a cancellation form. • (Streamlined info requirements for consumer requests for trader to carry out immediate repair or maintenance service for a price up to £170). 	<ul style="list-style-type: none"> • Must expressly consent to any additional payments (but not through a 'pre-ticked' box). 	<ul style="list-style-type: none"> • Signed copy of the contract or confirmation of the contract (all information in Schedule 2 unless already given in durable medium). • On paper. • Reasonable time after conclusion of the contract. • No later than delivery of the goods or commencement of services.

Contract	Pre-contract	Point of purchase	Post-purchase
Distance (online)	<ul style="list-style-type: none"> • Information in Schedule 2. • Clear and comprehensible manner. • Appropriate to the distance means being used. • If distance means insufficient space or time to display required info, certain info can be provided in another appropriate way. • Must make available a cancellation form. • Website must indicate any delivery restrictions and what means of payment are accepted. 	<ul style="list-style-type: none"> • Must expressly consent to any additional payments (but not through a 'pre-ticked' box). • Online/mobile sales some information must be provided directly before the consumer places an order and the consumer must explicitly acknowledge any obligation to pay. 	<ul style="list-style-type: none"> • Confirmation of the contract (information in Schedule 2 unless already given in durable medium). • Durable medium. • Reasonable time after conclusion of the contract. • No later than the delivery of the goods or commencement of services.

What information is required?

On Premises Contracts:

- (a) the main characteristics of the [goods, services or digital content]¹, to the extent appropriate to the medium of communication and to the [goods, services or digital content] ;
- (b) the identity of the trader (such as the trader's trading name), the geographical address at which the trader is established and the trader's telephone number;
- (c) the total price of the [goods, services or digital content] inclusive of taxes, or where the nature of the [goods, services or digital content] is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated;
- (d) where applicable, all additional delivery charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (e) where applicable, the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods [, to perform the service or to supply the digital content];
- (f) where applicable, the trader's complaint handling policy;
- (g) in the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract;
- (h) where applicable, the existence and the conditions of after-sales services and commercial guarantees;
- (i) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
- (j) where applicable, the functionality, including applicable technical protection measures, of digital content;
- (k) where applicable, any relevant compatibility of digital content with hardware and

software that the trader is aware of or can reasonably be expected to have been aware of.

Distance and Off Premises Contracts

- (a) the main characteristics of the [goods, services or digital content], to the extent appropriate to the medium of communication and to the [goods, services or digital content];
- (b) the identity of the trader (such as the trader's trading name);
- (c) the geographical address at which the trader is established and, where available, the trader's telephone number, fax number and e-mail address, to enable the consumer to contact the trader quickly and communicate efficiently;
- (d) where the trader is acting on behalf of another trader, the geographical address and identity of that other trader;
- (e) if different from the address provided in accordance with paragraph (c), the geographical address of the place of business of the trader, and, where the trader acts on behalf of another trader, the geographical address of the place of business of that other trader, where the consumer can address any complaints;
- (f) the total price of the [goods, services or digital content] inclusive of taxes, or where the nature of the [goods, services or digital content] is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated,
- (g) where applicable, all additional delivery charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- (h) in the case of a contract of indeterminate duration or a contract containing a subscription, the total costs per billing period or (where such contracts are charged at a fixed rate) the total monthly costs;
- (i) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
- (j) the arrangements for payment, delivery, performance, and the time by which the trader undertakes to deliver the goods [, to perform the services or to supply the digital content];
- (k) where applicable, the trader's complaint handling policy;
- (l) where a right to cancel exists, the conditions, time limit and procedures for exercising that right in accordance with regulations 27 to 38;
- (m) where applicable, that the consumer will have to bear the cost of returning the goods in case of cancellation and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
- (n) that, if the consumer exercises the right to cancel after having made a request in accordance with regulation 36(1), the consumer is to be liable to pay the trader reasonable costs in accordance with regulation 36(4);
- (o) where under regulation 28, 36 or 37 there is no right to cancel or the right to cancel may be lost, the information that the consumer will not benefit from a right to cancel, or the circumstances under which the consumer loses the right to cancel;
- (p) in the case of a sales contract, a reminder that the trader is under a legal duty to supply goods that are in conformity with the contract;
- (q) where applicable, the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees;
- (r) the existence of relevant codes of conduct, as defined in regulation 5(3)(b) of the Consumer Protection from Unfair Trading Regulations 2008, and how copies of them can be obtained, where applicable;
- (s) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;

(t) where applicable, the minimum duration of the consumer's obligations under the contract;
(u) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
(v) where applicable, the functionality, including applicable technical protection measures, of digital content;
(w) where applicable, any relevant compatibility of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;
(x) where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.
Note: In the case of a public auction, the information listed in paragraphs (b) to (e) may be replaced with the equivalent details for the auctioneer.

Digital content

Where a consumer purchases digital content, the trader must provide information about its functionality and interoperability with relevant hardware and software.

Inertia Selling

Consumers often face problems with 'subscription traps' –where they are unwittingly signed up to make recurring payments as a result of agreeing to a free trial. The CRD information provisions make these sort of practices unlawful.

In addition, the consumer is not obliged to pay for products supplied unsolicited, or charges which are not expressly consented to.



Because most of these exploit payment cards, it is important also to be aware of other financial service protections for consumers when they pay by card, under:


- section 75 *Consumer Credit Act 1974* for credit cards;
- payment services regulation, there is no liability for unauthorised transactions and the consumer must notify the bank as soon as possible; and
- debit card charge back scheme.

If the trader is based in another country, UK consumers will have the right to sue in the UK where the trader directs their activities to the UK. In these circumstances, the law applicable to the contract ought to be UK law. The contract is likely to be unfair if it contains terms that deprive a UK consumer of UK consumer protections.

Cancellation

Applies to	Distance.	Digital content – consumer may lose right to cancel.
	Off premises.	Services – consumer may have to pay for services provided before cancellation.
14 days right to cancel	Extends to 1 year.	If trader fails to give the statutory information.
Consumer must generally return goods delivered	Trader refunds cost of delivery.	Consumers pays costs of returning items.
	Consumer gets full refund.	But may have to pay for any diminished value of the items.

	<p>Goods</p> <p>Consumers have statutory cancellation rights for distance and off premises contracts (with some exceptions). Consumers have the right to cancel within 14 calendar days from the day of delivery of the last item in the order – there is no need for the consumer to give reasons and the trader must provide a full refund (including standard delivery charges) within 14 days. In these circumstances, ancillary contracts are also cancelled. Consumers must return the goods within 14 days and pay the return costs (unless they are not informed of this requirement before ordering the goods).</p> <p>The cancellation period is extended by up to 1 year if the trader fails to give the required information on cancellation rights. The trader may have to pay compensation if the value of the goods has diminished.</p>
	<p>Services</p> <p>Cancellation period is 14 days from day contract made. Services can only start during the cancellation period if the consumer expressly requests this, and acknowledges the effect their on cancellation rights. Consumers must pay reasonable amount for services provided before any cancellation. If services are completed during cancellation period then cannot subsequently be cancelled by the consumer.</p>

	<p>Digital content</p> <p>If the consumer downloads digital content during the cancellation period (eg immediately) then they have no right to cancel if they have given express consent and acknowledged that they will lose the right to cancel.</p>
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Traders must provide consumers with the model withdrawal form. If they fail to provide any information on withdrawal at all the cancellation period continues until 14 days after the trader provides it, or 1 year and 14 days, whichever is shorter.



Delivery

Goods must be delivered:

- without undue delay; and
- within 30 days of entering into the contract (unless otherwise agreed).

The goods remain at the trader's risk until they are delivered. If goods are not delivered when agreed, the consumer can treat the contract as ended and obtain a refund.

Goods that are supplied to the consumer, but not ordered, are a gift. If goods are not delivered when agreed, the consumer can treat the contract at an end and get a refund.

Sections 28 to 29 of the *Consumer Rights Act 2015* are also relevant.



Telephone helplines

Where a trader offers a post contract phone helpline, consumers must not be charged more than the basic rate (ie should not be a premium rate number). Any costs over the basic rate must be refunded to the consumer.

What are the consequences?

Enforcement

Enforcers can take civil enforcement action under EA02.

It is also a criminal offence for traders to enter into doorstep contracts, and fail to tell the consumer about the cancellation right, the cost of returning any item or any obligation to pay for a service supplied during the cancellation period.

Contractual

Consumers have contractual rights they can enforce against traders –it is a breach of contract not to supply the required information (for which consumers can get damages), and where the trader charges for delivery, or phone costs, when they are not entitled to, the consumer can get this money back.

Further reference

- [CCRs BIS Implementing Guidance](#).
- [Chartered Trading Standards Institute guidance](#).
- [EU Consumer Rights Directive](#) materials.

Section three – Consumer enforcement

Who should enforce?

The consumer enforcement landscape

There are a wide range of bodies with formal powers or state funding who may be able to deal with problems

Consumer education & advice Campaigns	Self-regulatory	Sectoral	National compliance & enforcement	International
Citizens Advice Which? European Consumer Centres	Adverting Standards authority – adverts Phone Pay Plus – premium numbers Code Schemes	FCA (financial services) Ofcom (telecoms) Ofgem (energy) Ofwat (water) ICO (privacy)	CMA Trading Standards	EU Consumer Protection Cooperation (CPC) competent authorities International Consumer Protection and Enforcement Network (ICPEN) members Bilateral relations with other enforcers – eg US Federal

				Trade Commission
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ADR Schemes

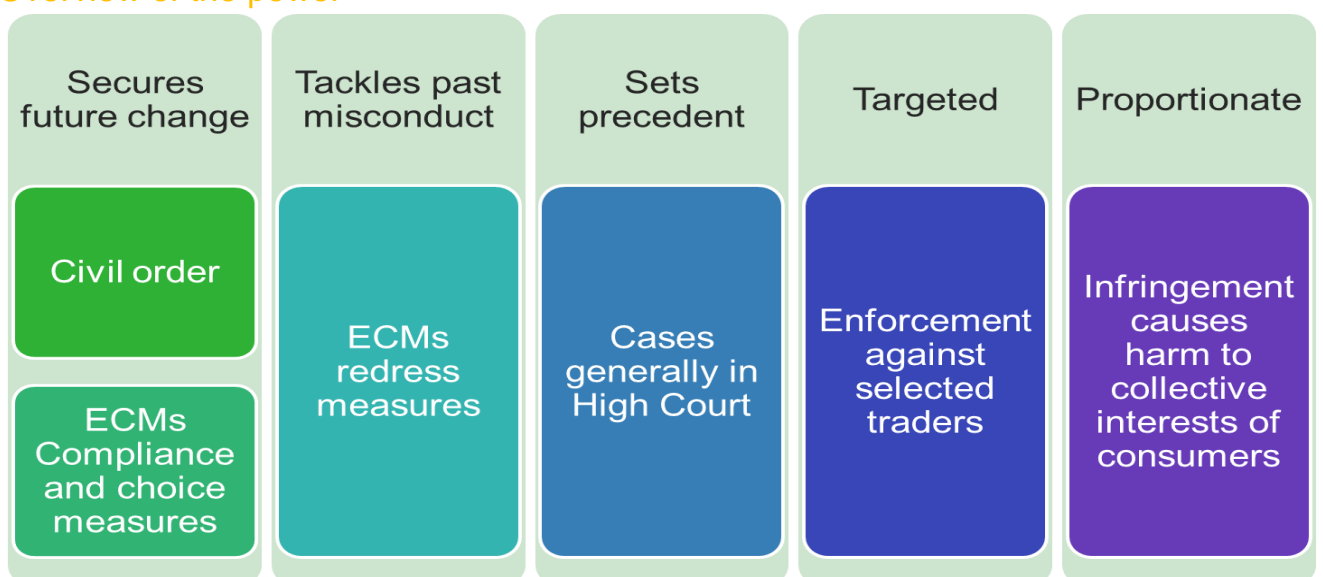
There are a wide range of industry run self regulatory Codes, which provide a dispute resolution mechanism consumers can use. These include:

- Retail Ombudsman
- Financial Ombudsman Service
- Parliamentary and Health Ombudsman
- Energy Ombudsman
- Communications Ombudsman
- Legal Service Ombudsman
- Furniture Ombudsman
- The Property Ombudsman
- Housing Ombudsman
- The Glazing Ombudsman
- The Removals Industry Ombudsman
- Tenancy deposit protection schemes

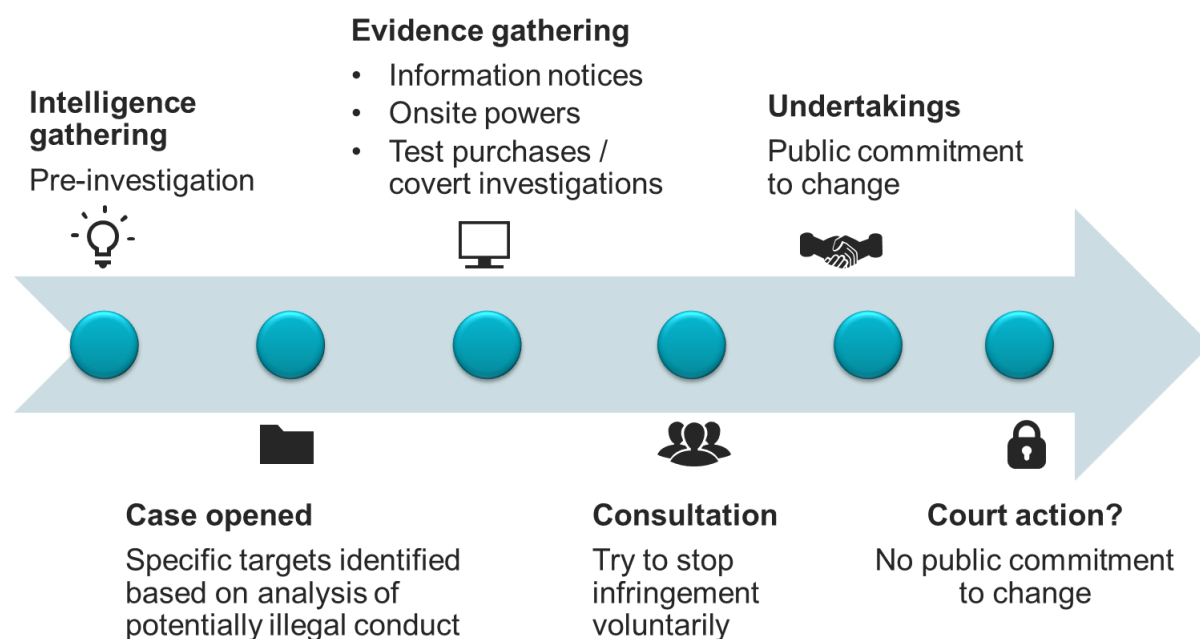
There are also TSI Approved Code Schemes such as Removers, Will writers, Debt managers, Car engineers...

Part 8 Enterprise Act 2002

Overview of the power



Stages of the civil enforcement case process



Stage	Description
Intelligence gathering	The CMA can use its formal powers to gather evidence before opening a case, as well as conducting desk based research and analysis.
Case opening	<ul style="list-style-type: none"> • The CMA will usually open a case when specific target businesses and legal issues have been identified based on the CMA's analysis for the potentially misleading conduct; • The CMA will send a letter to the party or parties setting out the scope of the investigation, unless this would cause prejudice to the parties; • The CMA may announce the case opening publicly (eg through a press notice or case opening page), but there are particular risks around this eg Part 9 EA02 disclosure, defamation claims by the businesses, and the resources needed to deal with inbound correspondence, and • See the CMA's Transparency Policy (CMA6) for expectations.

Evidence gathering	<p>The CMA's formal powers are set out in Schedule 5 of the <i>Consumer Rights Act 2015</i>. These include:</p> <ul style="list-style-type: none"> • information Notices – to gather information from a trader or third party. They can be enforced through a court order. The threshold for sending an Information Notice is low; • test purchases or observing the conduct of the business; • onsite visits, with notice, unless there is a good reason (eg reasonable suspicion of infringement); • onsite visits, with warrant (without notice); and • when on premises, inspect, require production of documents, seize goods and documents, break open any container and access electronic devices. <p>It is an offence for someone to obstruct the CMA's exercise of its evidence gathering powers.</p>
Case resolution	<p>A civil enforcement case is resolved by way either of undertakings or a court order, or case closure on administrative priorities grounds.</p>

Undertakings	<p>Undertakings are a public commitment by the trader to refrain from infringing conduct (section 219 EA02). Undertakings may contain Enhanced Consumer Measures, and the CMA may use its formal powers to investigate any suspected breach.</p> <p>Undertakings can require the same steps as an enforcement order and are usually drafted in the same terms as the enforcement order the CMA would apply for. It should actually deal with the consumer harm, make it clear what is required of the business and make it possible to identify breaches of the undertaking.</p> <p>Where a trader has given undertakings, the court must consider whether they have been breached before granting an enforcement order.</p>
Enforcement	<p>If the trader has not given a public commitment to refrain from infringing</p>

order	<p>conduct, the CMA can apply to the court (the County court or the Queen's Bench or Chancery Division of the High court) for an enforcement order. A court order (enforcement order) may be interim or final.</p> <p>A court may grant an interim order where it is satisfied that:</p> <ul style="list-style-type: none"> • the business is alleged to have committed a domestic or Community infringements or is likely to commit a Community infringement; • it is likely a final enforcement order would be granted; and • it is expedient to immediately prohibit or prevent the conduct. <p>A court order:</p> <ul style="list-style-type: none"> • indicates the nature of the domestic or Community infringement; • directs the business not to: <ul style="list-style-type: none"> ○ continue, repeat or commit the infringement; ○ commit the infringement in the course of this or another business; and ○ consent or connive in the committing of the infringements by anybody with which they have a special relationship (eg Director). • must actually deal with the harm, and be drafted with precision!
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Enhanced Consumer Measures

Enhanced Consumer Measures (ECMs) may be included in undertakings or a court order where it is just and reasonable to do so. The measures may be to:

- give redress to consumers who have suffered loss;
- permit consumers to terminate contracts;
- do other things in the collective interests of consumers;
- take compliance steps to reduce risk of repetition; or
- take steps to facilitate consumers' ability to make choices between traders.

Breach of a court order

Where a trader breaches a court order this is contempt of court, and is punishable with up to 2 years in prison and/or an unlimited fine.