



Consumer protection

Session 2

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Recap...



- What can you remember about consumer rights?



Overall Outline

Session 1

- What is Consumer Law?
- Impact of Brexit...
- Consumer Rights for misleading and aggressive conduct
- Consumer Rights for Breach of Contract

Session 2

- Consumer rights for unfair terms
- The impact of covid-19 on consumer contracts
- Consumer rights for distance and doorstep contracts
- Public Enforcement of consumer law



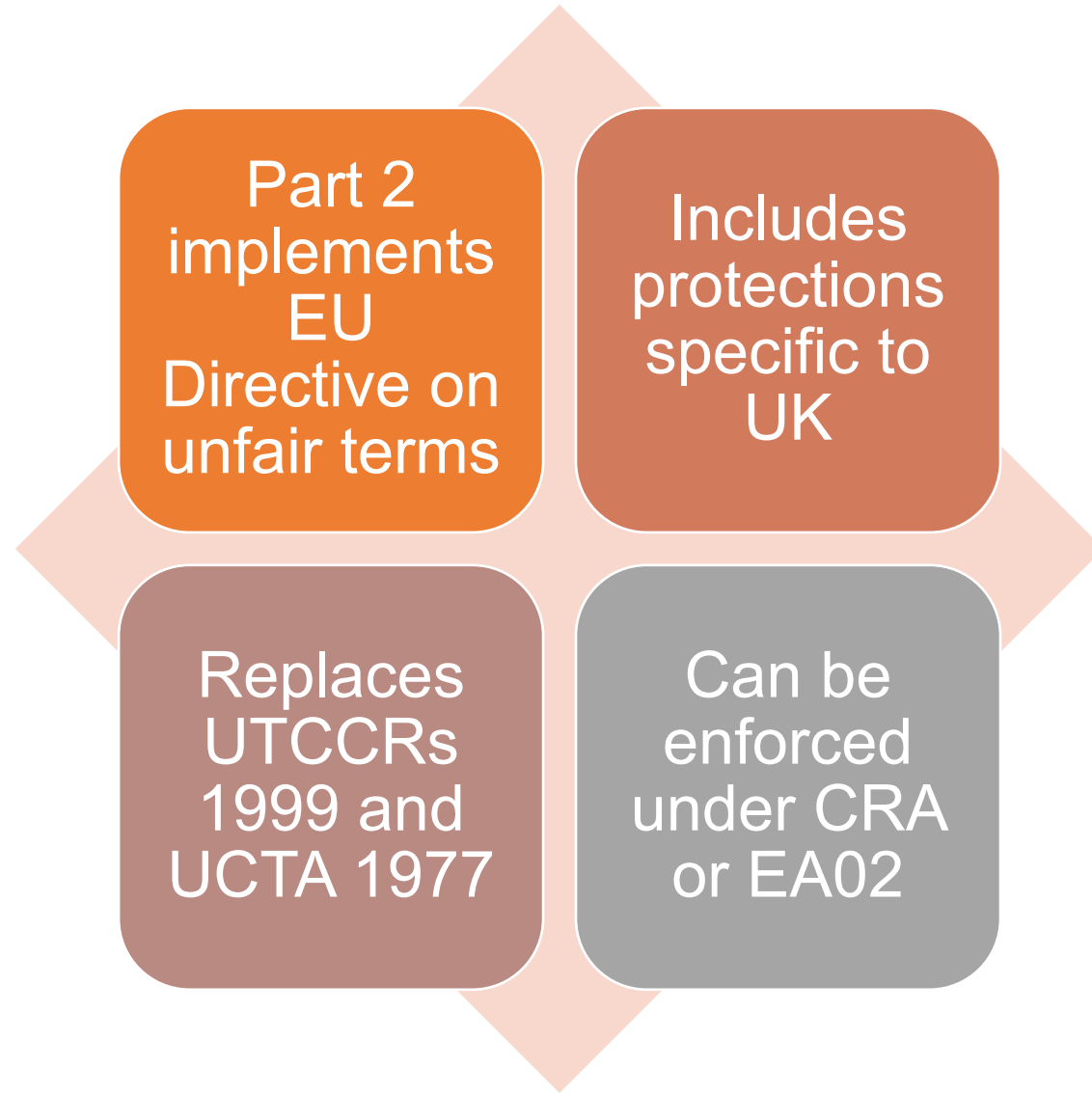
Session 3

Unfair contract terms

Overview

- This part will cover
- Part 2 of the Consumer Rights Act 2015 (CRA)
- By the end of the session you will be able to apply to a problem the law that requires terms to be
 - Transparent
 - Clear
 - Fair
- And explain when a term is exempt from the fairness test, and when it is blacklisted

The Consumer Rights Act



Is it unfair...?

What factors do you think are relevant to deciding?

A term that makes you responsible if you get injured

A very clear notice, in a sale, excluding any right to a refund

A charge of £150 for staying more than 2 hours in a parking space

A requirement that you take out a mobile phone contract for 3 years

What the law says

Certain terms are **Blacklisted**

- Eg excluding right to satisfactory quality

All terms must be **Transparent**

- So consumer can understand what their rights and obligations actually are

Is the term objectively weighted against the consumer? (**Significant imbalance**)

- Balance risks to trader vs benefits to consumer
- Changes ordinary legal position?
- Does it defend a legitimate interest of trader?
- Is it surprising?
- Likely to be unfair if on the Grey List

Does the term exploit the consumer? (**Fair dealing**)

- Behavioural biases
- Strength of bargaining positions

Is the term presented openly? (**Openness**)

- Did consumer actively negotiate the term?
- Does it act as a trap?

Scope of the Unfairness Test

Applies to all terms in contracts & notices, except

- Price &
- Main Subject Matter &
- Terms set out in legislation

Price & Main Subject Matter are narrowly construed

- To be exempt, term must be
 - very clear to consumer,
 - not on grey list, and
 - objectively set out 'price' or 'main subject matter'

Unfair terms often relate to... (Grey List)



EXCLUSIONS



ONE SIDED
OBLIGATIONS OR
RIGHTS



PENALTIES /
COMPENSATION



LOCK INS & AUTO
ROLLOVERS



INCORPORATION
& VARIATION OF
TERMS



DISPUTE
RESOLUTION



ASSIGNMENT OF
RIGHTS

Is it unfair?

“This contract will automatically renew for a further year, unless you tell us you don’t want it to, 13 days before renewal date”



“The caravan park reserves the right to increase the pitch fee by up to 15% each year”



“If for any reason you do not proceed with your wedding, the venue will charge you a cancellation fee of 100%”



“Any disputes under this contract must be referred to a Chartered Surveyor appointed by the builder”

Also in the Consumer Rights Act

Lettings Agents

- New obligations re fee transparency – agents must provide fee information upfront

Student Complaints Scheme

- Enables students at privately run HE providers to take complaints to the relevant ombudsman (Office of the Independent Adjudicator)

Secondary Ticketing

- New transparency obligations re
 - material ticket information (e.g. seat location, face value, any restrictions on use)
 - Identity of seller (where connected with secondary ticket site)
- Ban on resold tickets being cancelled (except where this is allowed in the T&Cs and the relevant term is fair)
- Review of Secondary Ticketing market (report due by end of May 2016)

What happens when my contract
can't go ahead?

Impact of Coronavirus on Consumer Contracts

Legal Framework

Frustration of contracts

Refunds -Law Reform (Frustrated
Contracts) Act 1943

Contract term issues –where
contract is not frustrated...

Sector Specific Protections -eg
Package Travel

Brief Summary of Law on Frustration

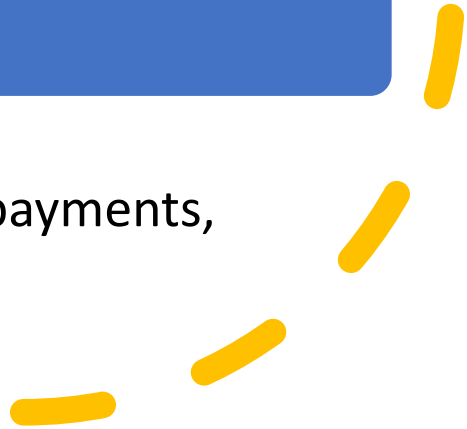
Contracts get frustrated where -

- **Illegal** subsequently to perform as a result of lockdown laws (national, local)
- The **purpose** of the contract can no longer be achieved
- The performance is **radically different** from what was agreed

When does frustration occur?

- Usually at point of performance
- Or when reasonably clear that performance will not occur

Consequences of frustration?

- The contract is dead
 - The consumer should get a refund of pre-payments, subject to limited exceptions
- 

How Covid might cause frustration

Supervening Illegality

- Until 4 July it was illegal to go out, and many venues had to close
- Eg holiday lettings businesses, wedding venues
- Local lockdowns might make planned activities illegal...

Common Purpose (narrow)

- Government guidance might mean the purpose of the contract is frustrated
 - Businesses should not force people to breach guidance
- Eg FCO advice not to travel may reflect unacceptable risk of catching c-19 overseas –holiday is no longer relaxing
- Requirements to quarantine might mean no longer practical to go on holiday

Radically Different

- Eg where lockdown laws limit number of people in a venue

When does frustration occur?

- Can business make consumer keep on paying until performance date, or can consumer elect to end the contract?
 - Eg will lockdown be continued? Will the full range of services be available?
- Key point –if the consumer has to make a spending decision, they may be able to treat contract as frustrated, but otherwise should wait and see...
 - *Embiricos v Sydney Reid & Co* [1914] 3 KB 45

Consequences of Frustration - Refunds

- **Law Reform (Frustrated Contracts) Act 1943** (in England & Wales)
 - Customer gets full refund
 - But seller might be permitted to retain
 - Cost of anything of value supplied to C (s.1(3))
 - Expenses incurred in or for the performance of the contract (s.1(2))
- Usually full refund is appropriate
 - Holiday lets
- In some cases, there are long lead in times, with significant expenses
 - Weddings (costs of tastings, wedding planning etc)

Contract terms issues –unfair terms...

- **Cancellation**
 - Should not charge where Trader cancels
 - If consumer cancels, Trader should not recover more than their loss
 - Consumer should not be penalised for following government guidance
- **Force Majeure**
 - Should not 'oust' frustration rules
- **Variation**
 - Should be restricted grounds and clear when term can change
 - OK for consumers to renegotiate, if not pressurised

Examples –see CMA statement on Nurseries



Sector Specific Rules

Package Travel and Linked Travel Arrangements Regulations 2018

- Must provide **refunds** without undue delay and in any event not later than 14 days from termination (regs 12-14)
 - Where a package holiday contract is **terminated by an organiser** where it is prevented from performing the contract because of unavoidable and extraordinary circumstances, or
 - where **the consumer terminates** the contract in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and which significantly affect (a) the performance of the package, or (b) the carriage of passengers to the destination.
- Refund must be in **cash**
- Person entitled is the “**traveller**” –so applies also where holiday booked by intermediary

Session 4

Information and cancellation

Overview

This part will cover

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

By the end of this session you will be able to explain what rights consumers have regarding

- Information
- Delivery
- Cancellation

Where they enter into contracts

- On premises (in a shop)
- At a distance (eg online)
- Off Premises (eg on a doorstep, on an excursion etc)

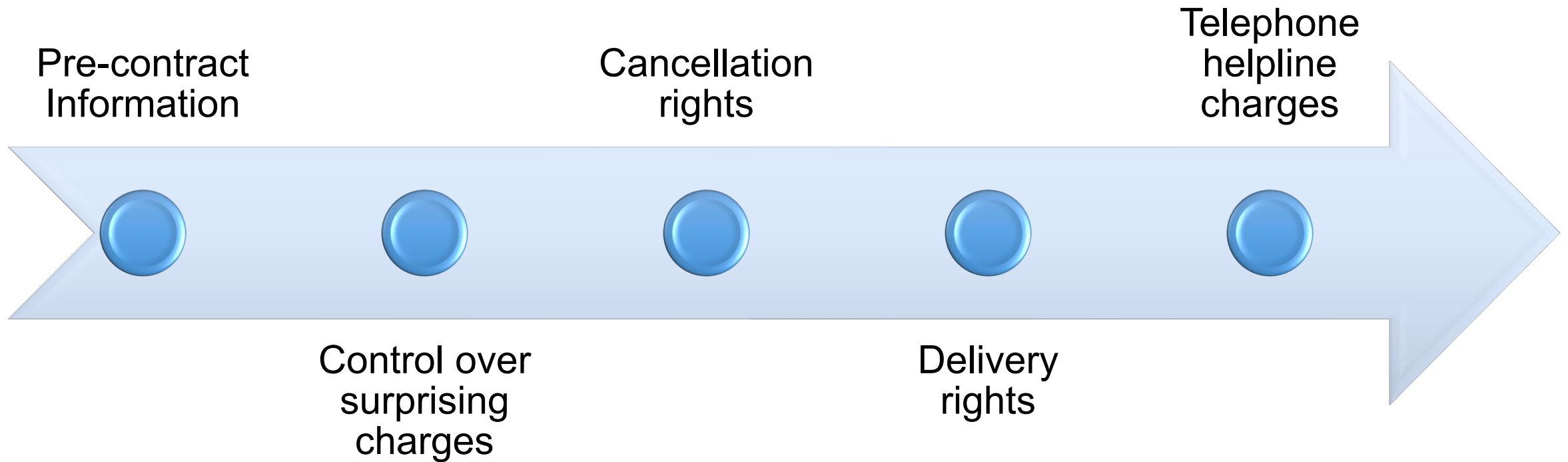
What is “buyer’s remorse” & what causes it?

**Prize for best
definition...**

**Prize for best cause,
with most tech speak in
it...**

**When is buyer’s
remorse a real
problem?**

How does the law help?



What are the information rules?

Clear and prominent Information to consumers

- Price, delivery charges, what product is, who trader is
- More information for distance and doorstep contracts

Information is a **term** of the contract

Information **cannot be changed** without consumer's consent

Implied term that the trader has complied with information requirements

Summary of Information rules

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 <u>give</u> a cancellation form. <u>(Streamlined info requirements for consumer requests for trader to carry out immediate repair or maintenance service for a price up to £170).</u> 	<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.

Distance Contracts -summary

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 <u>make available</u> 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.

Surprising charges online

Clear and prominent information, directly before consumer places order

- Price
- Total costs per billing period of a subscription
- Minimum duration of consumer's obligations

Information must be confirmed on 'durable medium'

Consumer must 'explicitly acknowledge' the obligation to pay

'Express consent' for any payments going beyond trader's main contractual obligations

Cannot use pre-ticked boxes

Subscription trap...

Gale gets a weightloss product on free trial online. It arrives, but there is no paperwork.

A month later, she is surprised to find another product, and £15 is debited from her card.

She reads the ts and cs –it says she has signed up for a 3 year supply of weightloss product, for £15 a month, because she didn't cancel within the trial period.

She can't find any email address on the trader's website.

Her bank says she has to get the seller's permission to stop making monthly payments.

Cancellation rights

Generally speaking you have a 14 day cancellation period

- When you buy *at a distance* or *off premises*

Summary of Cancellation Rights

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.

Delivery

Goods must be delivered:

- Without undue delay.
- Within 30 days of entering into the contract (unless otherwise agreed).
- Goods remain at trader's risk until they are delivered.

Goods supplied to the consumer, but not ordered, are a gift.

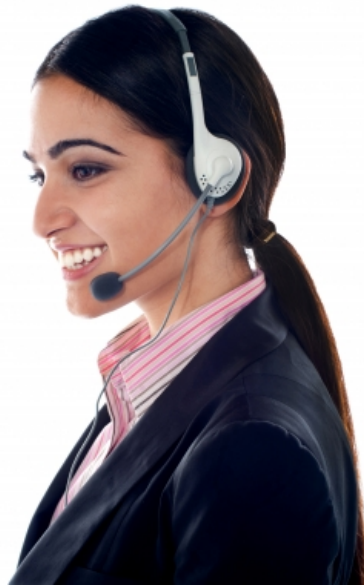
If goods are not delivered when agreed, consumer can treat contract as at an end and get refund.

Telephone helplines

Consumer must not be charged more than the basic rate.



Any costs above this must be refunded to Consumer.



Is it legal?

Sam the Solicitor takes instructions for a will in a consumer's home. He immediately starts work, and presents the will, and his bill 3 days later.

Terry buys a new coat on line. He wants to return it, but the seller says he will have to pay £5, and also can't have the delivery cost back.

- Because he opened the packaging, the seller also says Terry has to pay £15 for diminished value of the coat.
- Terry wants to complain, but the phone calls are costing him a lot of money, as they are to an 0870 number



Consumer enforcement

Public Enforcement of Consumer Law

Overview

- This section will cover
 - Who enforces consumer law
 - What enforcement options are available
- By the end of the session you will be able to
 - Explain to a consumer who might be able to help them to solve their dispute



Who might be able to help?

Trading Standards

Most compliance activities nationally

Local and regional enforcement

Sectoral regulators

Airlines, telecoms, water, energy, rail

Established means

Industry bodies –eg ADR providers & Code schemes –some statutory

Advertising Standards Authority; Phone Paid Services Authority

Consumer bodies

Which?

Citizens Advice

EU System

CPC authorities Obligation to act where appropriate (but Brexit will impact this)

European Consumer Centre

ICPEN members

Including bilateral requests for action

Some –such as US FTC- can secure redress for UK consumers

Some Self Regulatory Schemes

Retail
Ombudsman

Furniture
Ombudsman

Housing
Ombudsman

The Glazing
Ombudsman

The Removals
Industry
Ombudsman

Various CTSI
approved
Codes...

Financial Ombudsman Service

Parliamentary and Health Ombudsman

Energy Ombudsman

Communications Ombudsman

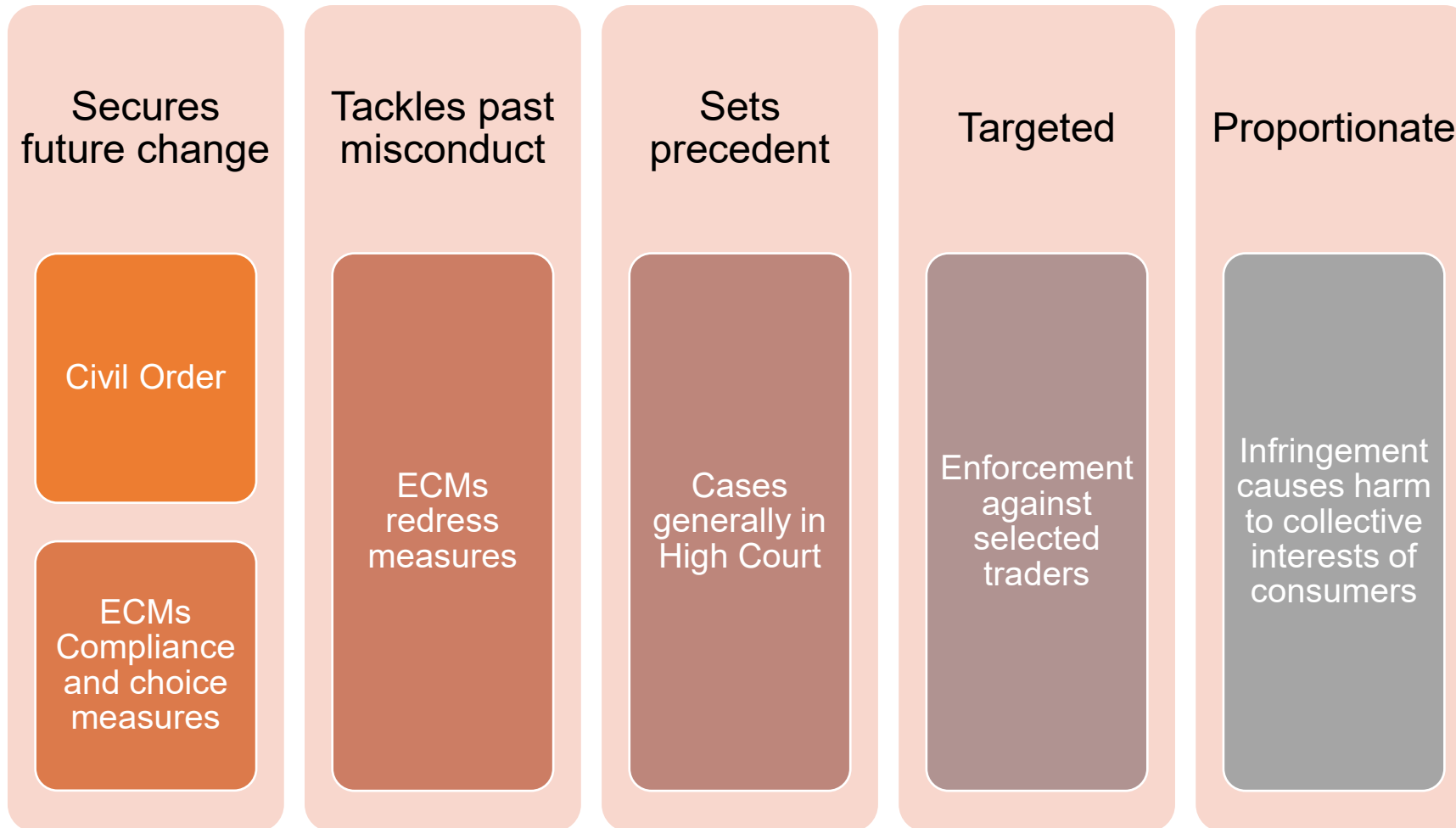
Legal Service Ombudsman

Tenancy deposit protection schemes

The Property Ombudsman

Enforcement under Enterprise Act 2002 Part 8

Overview of the power



If you could tell me one thing...

What have you learnt?