

Unfair Contract Terms

What is the purpose of the unfair terms in consumer contracts legislation?

The unfair terms in consumer contracts legislation¹ is designed to protect consumers against unfair terms in particular when they enter into standard form contracts with traders and regulated financial services providers. Accordingly, the legislation relates to contracts between businesses and consumers. The legislation recognises that where consumers enter into such contracts, there will typically be no negotiation of the individual terms of the contract and as such, the terms of the contract may be unfairly weighted in favour of the trader or regulated financial services provider to the detriment of the consumer.

What kind of contractual terms are unfair from a consumer's perspective?

Contractual terms must be drafted in plain, intelligible language so that they can be understood by a typical/average consumer. Contractual terms may be considered unfair where they cause a significant imbalance in the parties rights and obligations to the detriment of the consumer.

Some examples of contractual terms that *may* be considered unfair include:

- terms unreasonably limiting the liability of the trader or regulated financial services provider to the consumer;
- terms unreasonably restricting the rights of the consumer;
- terms unreasonably allowing the trader or regulated financial services provider to terminate or alter the contract or alter the product/services to be provided under the contract without recourse to the consumer; and
- terms which are not expressed in plain, intelligible language.

What is the role of the Central Bank in respect of unfair contract terms?

The legislation provides the Central Bank with powers to protect consumers in Ireland from unfair contract terms where they relate to regulated financial services providers such as banks, insurance companies and retail intermediaries. Under the legislation, certain supervisory powers are available to the Central Bank to ensure compliance with the legislation by regulated financial services providers. These powers mean that the Central Bank may require amendments to consumer contracts. In certain circumstances, the Central Bank may seek a court order preventing the use of contract terms that are considered to be unfair or use other regulatory tools, including the Administrative Sanctions Procedure, to combat the use of unfair contract terms in consumer contracts.

¹ The legislation consists of the Unfair Contract Terms Directive 1993/13/EEC and the Regulations which give effect to the Directive in Irish Law - the European Communities (Unfair Terms in Consumer Contracts) Regulations, S.I. No. 27 of 1995 as amended by the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2000, S.I. No. 307 of 2000 and the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2013, S.I. 160 of 2013.

What is the role of the Competition and Consumer Protection Commission in respect of unfair contract terms?

Under the legislation, the Competition and Consumer Protection Commission performs a similar role to the Central Bank in respect of ensuring compliance with the legislation by traders other than regulated financial services providers.

Please find below a link to the Competition & Consumer Protection Commission's website where further details are available on the role and function of the Competition & Consumer Protection Commission.

www.consumerhelp.ie

How do I report a suspected unfair term in a standard form consumer contract?

In reporting a suspected unfair contract term, it is important to be aware that the Central Bank does not have any remit to intervene or investigate a specific issue raised on behalf of an individual. The Central Bank also operates under a strict duty of regulatory confidentiality, set out in section 33AK of the Central Bank Act 1942 (as amended). However, the Central Bank can use the information received from consumers and the public to inform our supervision of regulated financial services providers.

If you wish to report a suspected unfair contract term in relation to a regulated financial services provider to the Central Bank, you may contact the Central Bank's Public Contacts Unit using the details below:

Public Enquiries Contact Details:

Post: Central Bank of Ireland
PO Box 559
Dame Street
Dublin 2

Our Public Contacts Helpline, 1890777777, is also open Monday to Friday from 09:00-18:00

Email: enquiries@centralbank.ie

If you wish to have an individual complaint in respect of an unfair contract term with a regulated financial services provider resolved, you may wish to invoke the relevant firm's internal complaints process and if necessary, refer the matter to the Financial Services Ombudsman. Contact details for the Financial Services Ombudsman are set out below:

Post: Financial Services Ombudsman
3rd Floor,

Lincoln House,
Lincoln Place,
Dublin 2

Lo-Call 1890882090

E-mail: enquiries@financialombudsman.ie