

From: Cecilia Parker Aranha
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Dear Sir/Madam,

An open letter to cloud storage providers on complying with consumer law

The Competition and Markets Authority (CMA) recently launched a [review](#) into the cloud storage sector to see if consumers are being fairly treated when saving and storing their content online. Cloud storage can offer many benefits for consumers, but we also discovered some problems. We found that some providers are using contract terms and practices that we were concerned could breach consumer protection law.

Our review had a particular focus on the terms being used in consumer contracts. If you are a cloud storage business that deals with consumers, you must ensure that your contract terms are fair and that they comply with consumer protection law. We are publishing this letter so that cloud storage providers know what to avoid when drafting the terms of their consumer contracts.

What you need to know

The Consumer Rights Act 2015 (CRA) regulates the use of unfair terms in business-to-consumer contracts. It aims to protect consumers from being unfairly treated. If a business tries to use an unfair term when dealing with a customer, this would not be legally binding (even if a customer has signed up to it in a contract).

You should also be aware that:

- The CMA and Trading Standards Services have the power to take enforcement action against a business where there is evidence that it is using potentially unfair terms; and
- Consumers can challenge unfair terms in court.

What you need to look out for

From our review, we found a number of areas of concern and identified terms that could be unfair. These included, terms which:

- allow providers too much discretion to unilaterally vary the price, service or contract and without giving consumers adequate notice or an opportunity to cancel the contract without penalty;
- allow providers too much discretion to terminate or suspend services, particularly where they can do so without notice;
- allow providers to automatically renew a contract at the end of a fixed term without giving consumers reasonable notice or the opportunity to cancel after renewal;
- exclude or limit a provider's liability under the contract, particularly where this would exclude or restrict a consumer's statutory rights;
- prevent consumers from bringing legal proceedings in their local courts and under their local law.

We also had concerns about the transparency of contract terms. Some contract terms are written or structured in a way that makes it difficult for consumers to understand their rights and obligations under the contract.

We are also making consumers aware of these issues so that they are more informed when signing up to a cloud storage service.

Businesses should also make sure that:

- Consumers are given the right information, before they become bound by a contract;
- Advertising reflects the true price of the service; and
- Consumers are clear when they are entering into a contract and what the nature of that contract is.

What you should do next

We recommend that you review, and where necessary revise, your consumer contract terms, particularly the terms we have highlighted above, to ensure they comply with consumer protection law. The CMA has produced a [checklist](#) of specific things to look out for. This checklist provides our views on how consumer law is likely to apply when providing cloud storage services to consumers.

You may also find it helpful to consider the CMA's recently updated [guidance on unfair contract terms](#) and our short [at-a-glance guides for businesses](#). However, you should note that this checklist is not a substitute for legal advice and ultimately it is only the courts that can determine whether or not a term is fair.

Some providers have already changed or committed to changing their terms and practices. Be aware that the issues raised in this letter are also relevant to services other than cloud storage.

If you wish to seek advice on your consumer contract terms and practices, you may wish to obtain independent legal advice and contact Trading Standards (either your Primary Authority, Home Authority or local authority Trading Standards Service, as appropriate) and/or a Trade Association.

Remember, if a term is not fair it will not be legally binding on a consumer and you are at risk of enforcement action. Having clear and fair terms will save you time, help prevent disputes and reputational damage, and protect your business if something goes wrong.

Yours faithfully,

Cecilia Parker Aranha
Project Director

Checklist for Cloud Storage Providers – terms to look out for

The CMA's consumer compliance review of the cloud storage sector revealed concerns about how some providers are using their terms when dealing with customers. If you are a business that provides cloud storage services to consumers, the checklist below includes some common areas where you should review the terms to make sure they comply with consumer protection law. These are the particular areas of concern that we have identified, but are not exhaustive.

Pre-Contractual Information

Consumers are able to apply in-store or online to purchase cloud storage services. It is during the sign-up process or on the providers' webpages where the service is described in more detail.

Before the consumer is bound by a contract, you must either:

- give the consumer specific mandated information¹ in a clear and comprehensible manner; or
- make that information 'available' to the consumer in a clear and comprehensible manner.

Automatic renewal

You should be clear with your consumers up-front about how and when their contract will renew and what options they have to cancel. To help ensure your terms are fair, providers should:

- ensure that consumers can opt-out of automatic renewal at any time;
- notify consumers about renewal a reasonable time before it occurs, and before payment is taken, so consumers have the chance to decide whether they want to accept the renewal (this is particularly important when consumers are renewed on to fixed or long-term contracts);
- ensure that notice of renewal includes details of any changes to the price or service; and
- allow consumers to exercise their statutory cancellation rights under the CCRs after a fixed-term contract has been renewed for a further fixed term period (although this should not be seen as a substitute for reasonable notice or the ability to opt-out of automatic renewal at any time).

¹ As set out in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 – see paragraph 9 for in-stores purchases and paragraph 13 for distance contracts.

For guidance on automatic renewals see our guide [here](#).

Changing the terms or characteristics of a service (Unilateral Variation)

Consumers should be able to foresee at the time of entering the contract if and in what circumstances the service or contract may change. This is particularly important for fixed term contracts. Terms which give you a wide discretion to make changes are likely to be unfair.

We understand that there are some circumstances where you may be required to make changes, sometimes with little or no notice, for example to ensure security and operability of the service or to meet legal requirements. However, to help ensure your terms are fair, providers should:

- only be able to make changes to the terms or the service for valid reasons which are clearly set out in the contract, so that consumers understand how the changes might affect their rights and obligations under the contract. This is particularly important for fixed-term contracts where the scope to make changes should be limited;
- ensure that consumers receive adequate notice of changes, so that they can consider their position and decide whether to accept the changes; and
- ensure that consumers who do not wish to accept changes can cancel the contract, obtain a refund for any services not yet provided (including, where relevant, any additional services they have purchased) and retrieve their data.

For guidance on variation terms see our guide to [changing the terms of a contract](#)².

Termination/Suspension

We have seen complaints where accounts have been terminated without warning for unspecified reasons. It may be unfair to retain a wide discretion to unilaterally suspend or terminate contracts without notice or valid reasons. To help ensure your terms are fair, providers should:

- only terminate the service or contract without notice if there is a material breach of contract by the consumer or there is a real risk of harm or loss to the provider if the contract continues;

² Further information can be found in the CMA's unfair terms guidance (paragraphs 5.21 – 5.22 <https://www.gov.uk/government/publications/unfair-contract-terms-cma37>)

- clearly and narrowly define the circumstances in which the provider may suspend or terminate the contract or service with notice (this is particularly important for fixed-term contracts);
- ensure that consumers are given adequate notice of suspension or termination to enable them to minimise the impact on them (except where there are serious grounds for immediate suspension or termination without notice, see above);
- give consumers a reasonable opportunity to remedy minor or potential breaches of contract by them before the service or contract is terminated or suspended by the provider; and
- allow consumers to obtain a pro-rated refund of any prepayments if the service or contract is suspended or terminated by the provider and the consumer is not at fault.

For guidance on termination/ suspension see our guide to [cancelling a contract: when and how](#) ³.

Exclusion and limitation of liability

We have seen examples of terms which significantly exclude or limit a provider's liability under the contract. Most terms that exclude or limit liability for breaches of consumers' rights under the Consumer Rights Act 2015 are also blacklisted, i.e. legally ineffective.

To help ensure your terms are fair, providers should:

- not exclude or limit a consumer's statutory rights and remedies under the CRA. For example, terms should not seek to exclude or limit the provider's liability if it fails to provide the service with reasonable skill and care. They should not exclude or limit the provider's liability if the provider fails to provide the service in accordance with a statement or description given to the consumer by the provider;
- not otherwise unreasonably limit or exclude their liability for losses or harm to consumers, for example, where a provider's breach of contract is caused by events outside the provider's control. Concerns may arise, for example, where a contract places an unreasonably low cap on compensation which the consumer can claim;

³ Further information can be found in the CMA's unfair terms guidance (paragraphs 5.16 – 5.18 <https://www.gov.uk/government/publications/unfair-contract-terms-cma37>)

- clearly set out the circumstances when liability will not be excluded as well as explaining any applicable limitations or restrictions; and
- avoid unnecessary ‘legal jargon’.

For guidance on limitation of liability see our guide to [your responsibility if things go wrong](#)⁴.

Jurisdiction and choice of law

Consumers must be able to exercise their legal rights in relation to their contracts with you. You should ensure that you clearly explain that consumers are able to bring legal proceedings to enforce their rights in their local courts and their local law will apply to the contract.

Transparency

In order to ensure that your terms comply with the law in relation to transparency, you should:

- draft terms to ensure that consumers can make informed choices;
- set out all obligations in a clear and comprehensible way;
- ensure that the structure of your terms and the language used enables consumers to understand their rights and obligations under the contract.

For help on writing fair terms for customers, see our simple at-a-glance advice for businesses. Further guidance is available in the CMA’s [main guidance on unfair contract terms](#).

⁴ Further information can be found in the CMA’s unfair terms guidance (paragraphs 5.2 – 5.11 <https://www.gov.uk/government/publications/unfair-contract-terms-cma37>)