



## Terms and Conditions: call for evidence - response form

### Chartered Trading Standards Institute response

The consultation is available at: [www.gov.uk/government/consultations/improving-terms-and-conditions](http://www.gov.uk/government/consultations/improving-terms-and-conditions).

The closing date for responses is **25 April 2016**.

Please return completed forms to:

Craig Belsham  
BIS Consumer and Competition Policy  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

Tel: 020 7215 5884

Email: [T&Cs@bis.gsi.gov.uk](mailto:T&Cs@bis.gsi.gov.uk)

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see section 4 of the consultation document for further information.

If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential

Comments:

## Questions

Name:

Organisation (if applicable): **Chartered Trading Standards Institute**

Address:

**1 Sylvan Court  
Sylvan Way  
Southfields Business Park  
Basildon  
Essex  
SS15 6TH**

	<b>Respondent type</b>
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
x	Consumer group or representative
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<u>x</u>	<b><i>Other</i></b> (please describe) – <b>Please see next page for information about CTSI</b>

## **About The Chartered Trading Standards Institute**

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government.

The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

We provide information, evidence, and policy advice to support local and national stakeholders.

We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website ( [www.businesscompanion.info](http://www.businesscompanion.info) ).

The CTSI Consumer Codes Approval Scheme was launched in 2013, superseding the OFT scheme ( [www.tradingstandards.uk/advice/ConsumerCodes.cfm](http://www.tradingstandards.uk/advice/ConsumerCodes.cfm) ).

CTSI is a member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

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***A key concern for CTSI is that of resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas. They have suffered an average reduction of 40% in their budgets since 2010 and staff numbers have fallen by 50% in the same period.***  
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This response has been composed by CTSI Joint Lead Officer Civil Law Jemma Robinson. Should you have any queries or wish to discuss the response please do not hesitate to contact Jemma at [locivillaw@tsi.org.uk](mailto:locivillaw@tsi.org.uk).

**PLEASE NOTE:- CTSI has responded to both Section B, citing trading standards experience of consumer behaviour, and C.**

## Section B: Questions for consumers

### General

**B1) Regarding Terms and Conditions do you:**

- a) always read the T&Cs
- b) read the T&Cs of certain kinds of contracts
- c) usually at least glance at T&Cs
- d) only look at T&Cs if there is a special reason
- e) never look at them

*Please give brief reasons for your answer.*

Trading Standards Services regularly receive referrals relating to situations where consumers have not read the terms and conditions of a contract that they have entered into. Complaints received include additional payments being taken from a consumer's account for free trial type contracts. The terms and conditions may clearly set out these charges but consumers will be unaware of these because they have not read the terms and conditions. Therefore, based on our membership's experience, consumers will often not look at terms and conditions.

The main reasons that consumers have given for not reading terms and conditions include:

- complexity of terms and conditions
- length of the terms and conditions
- size of the text when terms and conditions are opened, which could be due to the font size used by the seller or due to the device from which the consumer is accessing the contract, such as mobile phones with small screen sizes. Some terms and conditions are not always formatted to appear in a reasonable size when used on different devices
- lack of time to read the terms and conditions – this includes scenarios where a consumer is face to face with the seller in a business premises or in their home and feel uncomfortable asking people to wait whilst they read through them.

[If you answered e) please go to question B4)].

**B2) If you always read or read the T&Cs of certain contracts (a or b above) what type of good or service will they typically be related to?**

*List sectors*

[Click here to enter text.](#)

**B3) What kinds of information do you look for in T&Cs?**

*(For example: Information on data protection; financial exemptions; clauses; additional costs; additional charges (e.g. for change of data); other)*

Click here to enter text.

***Improving transparency, awareness and understanding***

**B4) Does length of T&Cs affect your willingness to look at them?**

x Yes       No

**If Yes, at roughly what length would you be willing to read T&Cs?**

- a) 1 page or less
- b) less than or equal two smartphone screens
- c) less than 5 pages
- d) less than 10 pages
- e) less than 20 pages

The contract should be an appropriate length for the type of contract that it is and how the information is accessed, i.e. hard copy, computer, mobile phone etc.

However, having a maximum length for contracts may encourage consumers to read them, as they may appear less onerous than longer documents. However, the language used, size of font visible to the consumer and clarity of the terms and conditions would also be important factors, as consumers may still be unable to read and understand a shorter contract if it is complicated.

**B5) If you knew T&Cs would be “succinct, bold and upfront” would it encourage you to read them?**

Having succinct, bold and upfront terms and conditions is likely to encourage consumers to read them, if the contract was also shorter and easier to read.

**B6) Would you check the T&Cs if key facts could all be fitted onto the equivalent of two smartphone screens?**

x Yes       No

*If yes how might it be achieved?*

If key information is brought to the consumer’s attention in a clear and easily accessible way, it is likely to encourage more consumers to check terms and conditions. It also

encourages businesses, in addition to the requirements set out under Part Two of the Consumer Rights Act 2015 and the Consumer Protection from Unfair Trading Regulations 2008, to be as clear and transparent as possible with their consumers. This would improve the ability of a consumer to make an informed decision when purchasing goods and services, and is likely to reduce the number of complaints received by businesses and advice agencies relating to charges, key deadlines, cancellation rights etc. Having a clear requirement for businesses to provide a key summary of the terms and conditions to consumers would enhance clarity, consistency and transparency for both consumers and businesses.

However, consideration also has to be given to the information requirements under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations and other legislation which introduce requirements to include information within consumer contracts. Local Authority Trading Standards Services (LATSS) work closely with businesses to provide advice and support in understanding the complexities between providing pre-contractual information, whilst also making contracts clear, easy to read and concise for consumers. LATSS have a wealth of expert knowledge and experience in supporting businesses to find the balance between legal requirements and making them work in practice, which can often be challenging for businesses.

**B7) How else could businesses make Terms and Conditions documents and key facts genuinely accessible to customers in practice?**

*(e.g. auto-opening of T&Cs online; a simple index; key facts sheets; other – please state)*

We would support making it as easy as possible for consumers to see, and be encouraged to read, the key facts of a contract. To increase the likelihood of consumers reading the key terms, sub-headings and/or a clear index breaking down the key facts may encourage consumers to see that important points such as costs, key times in the contract and cancellation rights etc. are clearly set out and easy to find.

Having the key facts on display wherever possible, and in particular at the start of the purchasing process, would improve the chances of consumers reading the key terms. In addition, where possible, it may assist if a business actively points out the key terms to a consumer wherever possible. The full set of terms and conditions could then be provided after the key facts have been presented. For written contracts, the key facts could act as a cover sheet for the contract.

**B8) Do you typically find Terms and Conditions easy to understand and free of jargon?**

Yes                       No                      x Occasionally                       Don't know

*If you answered no, can you give examples of terms and conditions you find difficult to understand?*

Consumers will often comment that the language used within contracts can be difficult to understand. Examples may include terms and conditions relating to restrictions in liability,

the difference between store policies and legal rights, calculation of costs and important timescales within a contract for cancellation, automatic renewal etc. We also find that some businesses have been influenced by other businesses within the same sector when they have written terms and conditions, which can lead to complex terms being unnecessarily included within contracts. Some of these may also be from other countries and this can lead to restrictive statements and complex language being used, which causes a lack of clarity for consumers.

**B9) Do you agree that where tick boxes are used by business ticking the box should always mean “I want/agree to this service”?**

Yes       No

**B10) Have you ever been surprised by a (financial) cost or condition imposed under T&Cs (such as a financial penalty or loss of prepayment, an increased price, or a charge for doing something such as leaving the contract early)?**

Yes       No

*If yes please give brief details including the rough amount of the cost.*

The Chartered Trading Standards Institute recently contributed to a working group as part of the Consumer Protection Partnership, which focussed on consumer detriment when entering into contracts for wedding venues. This project identified some issues with large deposits and pre-payments being taken by some businesses, which could lead to an imbalance in the parties' rights within the contract and involve unfair contract terms. Guidance was issued for consumers and businesses following on from this project but this issue can also occur in other areas, such as home improvements.

Penalty charges for leaving contracts early are common areas of contention for consumers and there appears to be a lack of knowledge of these terms when consumers originally sign up to the contract. We would therefore welcome important terms such as whether a contract will automatically renew, when the contract needs to be cancelled to prevent charges and any charges involved to be part of the key facts information. We would also encourage businesses to remind consumers when the contract is going to be renewed wherever possible.

Terms which include the potential for price increases during the contract should also be included within key information and any charges or changes to charges should be actively agreed to due to their importance.

**B11) Have you ever lost out in other ways as a result of terms you were unaware of or did not realise would apply to you? (For instance being tied into a contract for**

**longer than you expected, being denied redress, or having to accept a product different from the one you ordered?)**

Yes       No

*If yes please give brief details including the sector involved and an estimate of any additional costs you incurred.*

The types of queries that Trading Standards Services receive include:

- contracts which have long tie in periods such as mobile phone contracts and gym memberships, where the consumer's personal circumstances have substantially changed since they initially entered into the contract
- subscription traps for beauty products, clothing, food and service contracts
- notice periods for cancelling contracts can be required too far in advance and not set out clearly in the contract across numerous sectors
- requirements in tenancy agreements and mobile homes that cause imbalance in the contract such as requiring onerous restrictions on selling the mobile home/ending tenancy agreements
- situations where larger pre-payments have been made by a consumer for a contract, such as wedding venues or home improvements, and the service is not completed. The consumer may suffer a financial loss if the pre-payments amount to more than the cost of the services received and the difference is not returned to the consumer. The consumer may then have to pursue the matter via the court system at their cost, which many consumers find a daunting and time consuming process, and this can lead to them failing to recover redress for contracts not completed.

### ***Personal data***

**B12) Where should consent on the use of personal data (e.g. sharing of data with third parties) be covered?**

This should appear in a clear and simple manner in the key facts section of the contract and consumers should have to positively agree to their data being shared.

**B13) T&Cs often refer to personal data and privacy policies. Do you feel sufficiently aware of which other organisations your personal data will be shared with by suppliers.**

Yes       No

This is a very important aspect of entering into contracts for consumers, as it can lead to unwanted contact via post, email and telephone for consumers who are unaware of how their personal data will be used. Data lists are readily available online at a low cost and are



used for scam mail and calls, in addition to being used by businesses cold calling consumers. Therefore, the Chartered Trading Standards Institute would welcome stronger provisions to raise awareness of how consumer data is being used. We would also welcome the requirement for a proactive agreement by the consumer for their data to be shared, presented in a simple and clear way that can be easily understood. This is important for the protection of vulnerable adults and would help to complement the work of local Trading Standards Services and key partners such as the Information Commissioner's Office in tackling these matters.

**B14) Have you ever bought a product and then unexpectedly found that you are constrained in the use of competitors' media or software?**

*(e.g. through incompatibility of formats for streaming or downloads or the threat of the invalidation of rights for use of other software)*

Yes                       No

*What, if anything, would have helped you understand these rules better at the time of making the purchase? (Please state).*

We would encourage all businesses to be as clear and transparent as possible when supplying information to consumers about products that they are supplying. It is important to provide consumers with all material information to assist them to make an informed decision.

***Increasing engagement***

**B15) If business incentivised customers to engage with Terms and Conditions (e.g. through discounts if customers complete an understanding test based on the T&Cs) would you read them then?**

x Yes                       No

The Chartered Trading Standards Institute would welcome any proactive steps undertaken by businesses to improve customer engagement with terms and conditions, which are cost effective for the business. If consumers have a clear understanding of the terms and conditions of the contract, this could potentially reduce the number of complaints that a business receives and reduce the time they spend answering queries about information contained within terms and conditions.

**B16) Have you ever been involved in a dispute related to T&Cs with a supplier or potential supplier?**

x Yes                       No

*If yes, what was it about and what was the outcome?*

Local Authority Trading Standards Services often become involved with disputes relating to terms and conditions through complaints received, inspections of businesses, criminal

and civil enforcement action, business advice and Primary Authority work. Some Authorities are also members of schemes that can assist with Alternative Dispute Resolution. Trading Standards Services are one of the bodies responsible for enforcing unfair terms and conditions and provide expert advice to businesses to help reduce burden on business and reduce the number of these types of disputes.

**B17) Should all ongoing accounts – (e.g. savings or energy accounts) be required to provide a clear track of changes in Terms and Conditions in the account history with the impact illustrated?**

Yes       No

### ***Enforcement and Fines***

**B18) Is there a need to give enforcers more effective tools to enforce consumer protection law?**

Yes       No

*Which areas of consumer protection law are powers most needed for and why?*

The report discusses the appropriateness of using the right enforcement tool to deal with enforcing consumer protection law. The use of civil enforcement such as the Enterprise Act is not always a cost effective option for enforcing areas such as unfair terms in consumer protection law. The Chartered Trading Standards Institute would therefore welcome a wider range of tools to assist our members to deal with such matters as timely and cost-effectively as possible. Tools such as the option to levy a financial penalty against a business who fails to comply with consumer protection law after advice and guidance has been supplied, would be welcomed. This ensures that Trading Standards Services have a range of fit for purpose tools to assist them to enforce consumer protection laws in a proportionate and appropriate manner. This will cut costs and time burdens on both regulators and businesses, which is of particular importance in light of budget cuts to Trading Standards Services.

[If you answered No you can go to C1].

**B19) If civil monetary penalties were to be introduced should this be done via:**

- a) administrative decisions by enforcers**   
*(subject to appropriate procedural checks and balances and appeal mechanisms)*
- b) reference to civil courts**
- c) other ways** (please specify)
- d) Don't know**

**B20) Which enforcement bodies should be included if administrative or civil court powers to impose monetary penalties were to be granted?**

*Tick each that you think should be included.*

- |  |                          |
|--|--------------------------|
| <b>a) Competition and Markets Authority</b>                            | X                        |
| <b>b) Sector regulators such as OfGem, OfCom, the FCA etc.</b>         | X                        |
| <b>c) Local Trading Standards</b>                                      | X                        |
| <b>d) Dept. of Enterprise Trade &amp; Investment, Northern Ireland</b> | X                        |
| <b>e) all designated consumer enforcement bodies</b>                   | <input type="checkbox"/> |

### **Section C: Further comments**

**C1) Do you have any other comments that might aid the consultation process as a whole?**

The Chartered Trading Standards Institute would welcome changes to assist the relationship between consumers and businesses with clearer terms and conditions and more consumer engagement with these. We feel that this will enhance consumer confidence and reduce the burden on business and detriment on consumers. We would also welcome appropriate enforcement methods, such as financial penalties, to reduce the burden on regulators and businesses, particularly with the reduction in budgets and staff numbers within Trading Standards Services. It is important that any enforcement mechanisms that are introduced are time efficient, cost saving and clear for both enforcement bodies and businesses.

In addition to the suggestions outlined in this consultation paper, the Chartered Trading Standards Institute believe that educating and supporting businesses is an important part of any changes of this nature. Therefore, it is pertinent at this stage to raise the importance of having suitably resourced local Trading Standards Services to enforce any changes that may be introduced and to support businesses to put these changes into practice.

**C2) Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.**

We would have liked more opportunity to discuss a regulator's perspective to some of the points raised during this consultation. We would welcome further engagement on this point and would be happy to meet with officials to discuss the issues in more depth.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply x

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

BIS/16/67RF