

The Unfair Contract Terms Regulatory Guide

Chapter 1

The Unfair Contract Terms and Consumer Notices Regulatory Guide

1.4 The CRA: the FCA's role and policy

1.4.1 **G** The *FCA* may consider the fairness of a term or notice within the meaning of the *CRA* following a complaint from a *consumer* or other person or on its own initiative if the term or notice is within its scope.

1.4.2 **G** There are three main ways in which we might receive a complaint from a *consumer* or other person. These are:

- (1) directly; or
- (2) from another regulator which considers that the *FCA* should deal with the complaint; or
- (3) from the *CMA*.

1.4.3 **G**

- (1) The main way in which we would act on our own initiative is to undertake a review of contracts or consumer notices in a particular area of business. This might involve looking at the terms or notices used by several firms in a particular sector.
- (2) We will, for example, consider launching such a review if multiple *consumer* complaints or other intelligence lead us to believe that under the *CRA* there may be an issue relating to contracts or notices of wider significance to firms and *consumers*.

1.4.4 **G** If, following either a complaint or an own-initiative review, we consider that a term or notice is unfair, we may challenge firms about their use of that term or notice.

Interaction with the FCA's powers under the Act

1.4.5 **G**

- (1) The *FCA* will consider using its powers under the *CRA* in the context of its wider regulatory powers under the *Act*.
- (2) In some cases, it might be appropriate for us to use other powers to deal with issues identified under the *CRA*. The powers available to the *FCA* under the *Act* may vary depending on the *regulated activities* which the firm carries out. For example, the use of an unfair term might involve a breach of a *Principle* or a *rule* in *BCOBS*, *COBS*, *CONC*, *MCOB* or *ICOBS* and the use of an unfair notice might involve a breach of the *financial promotions rules*. If so, the *FCA* might also address the issue as a *rule* breach.

- (3) We may, in some circumstances, consider treating the matter under our powers in the *Act* itself and also under the *CRA*.
- (4) However, the use of our powers under the *Act* will not be possible in all cases where a firm has used an unfair term. If we consider using an enforcement power under the *Act*, we will do so in accordance with the policy relating to that power as set out in *EG*.