

The Unfair Contract Terms Regulatory Guide

Chapter 1

The Unfair Contract Terms and Consumer Notices Regulatory Guide

1.5 Risk Management

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- (1) Where a firm has given an undertaking or a court has ruled the firm's term unfair, then the *FCA* considers it desirable that the firm should promptly notify clients with whom it has already concluded contracts of the effect the undertaking or ruling will have on their contracts.
- (2) The firm should also, as part of its risk management, consider the effect on its own business, including whether there are relevant risks which need mitigation. For example, firms should consider the effect of section 62 of the *CRA* which provides that an unfair term or consumer notice is not binding on the *consumer*.
- (3) Section 67 of the *CRA* provides that where a term of a consumer contract is not binding on the consumer, the contract continues, so far as practicable, to have effect in every other respect. Mitigation may involve the firm contacting existing customers to ask that they agree to an amended contract, although any such amendment will itself need to avoid unfairness within the meaning of the *CRA* and to comply with the law of contract generally.
- (4) As part of their risk management, firms that have not given an undertaking or been subject to a court decision should remain alert to undertakings or court decisions about other firms, since these will be of potential value in indicating the likely attitude of the courts, the *FCA*, the *CMA* or other qualifying bodies to similar terms or notices or those intended to have similar effects.