

Part II: Unfair contract terms

Briefing Summary: Section 65 of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the "LCF Law") empowers the Guernsey Financial Services Commission (the "Commission") to make rules in respect of consumer protection in connection with the business regulated by the LCF Law. This includes unfair terms and conditions of agreements and unfair practices.

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The Commission published the Lending, Credit and Finance Rules and Guidance, 2023 (the "**LCF Rules**") on 19 January 2023.

Part 6 (*Consumer Protection and Unfair Agreement Terms*) of the LCF Rules applies to:

- all regulated agreements¹ between customers and credit providers; and
- all agreements to provide ancillary services in connection with regulated agreements.

Any clauses of such agreements which contain "unfair" terms are unenforceable.

Part 6 defines a term as being unfair "... if, contrary to the requirements of good faith, it causes significant imbalance in the parties' rights and obligations, to the detriment of the customer."

Where such unfair terms have been enforced against a customer, customers must be "... provided with redress ... and must be returned to the position they would have been in had the unfair terms been voided."

The guidance provided at Part 6 of the LCF Rules states that the Commission will, in considering unfair contract terms, apply tests of:

- fairness; and
- transparency.

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Fairness

The fairness test takes account of the subject matter of the agreement, all the circumstances existing when the term was agreed, and all the other terms of the agreement or any other relevant agreement. The test is concerned with the effect that the terms can have and not just the intentions behind them.

There are three elements to the fairness test:

- *significant imbalance*, which is concerned with the parties' respective rights and obligations under the agreement – a term will be unfair "if it is so weighted in favour of the business that it tilts the rights and obligations significantly in its favour (for instance, by imposing a disadvantageous burden on the customer)";
- *customer detriment*, which is concerned with rights and duties and its focus is on *potential*, not *actual*, outcomes (a finding of unfairness does not require proof that a term has already caused actual harm); and
- *good faith*, which relates to the substance of terms as well as the way they are expressed. It is based on the general principle of "fair and open dealing", where terms are expressed fully, clearly, and legibly, and with due respect for the customer's interests.

Transparency

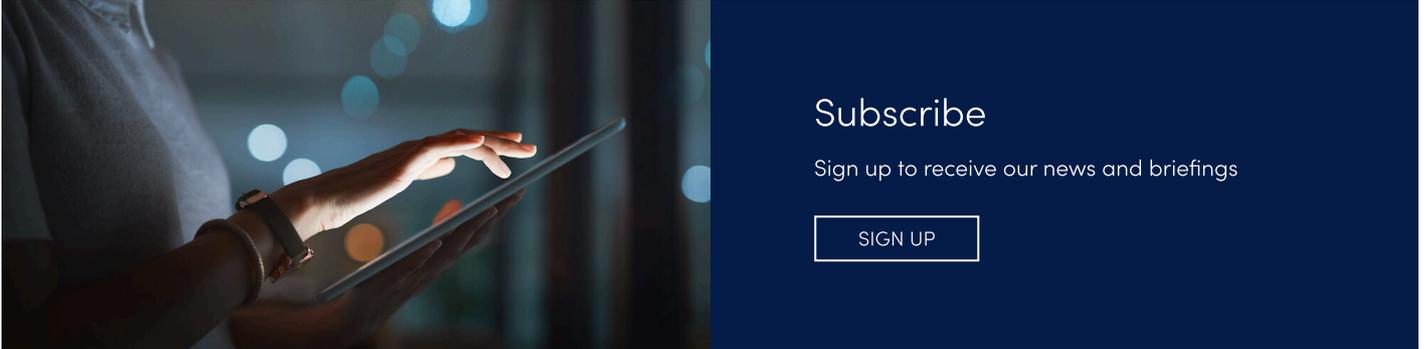
The transparency test relates to how an agreement is expressed. Agreements, made with customers, should be expressed in plain, understandable language, and be legible. Licensees should aim to put customers into a position where they can make a balanced and informed decision whether or not to enter into an agreement.

Schedule 4 (*Unfair agreement terms in relation to Regulated Agreements*) of the LCF Rules sets out a (non-exhaustive) list of terms which the Commission would consider to be unfair terms in most circumstances. This list includes terms:

- which inappropriately exclude or limit the consumer's rights to seek recourse in the event of non-performance or inadequate performance;
- which make the trader's performance subject to the trader's decision alone, where the consumer has no such decision; and
- which require the consumer to pay disproportionately high sums where the consumer decides not to conclude or perform the contract, or where the consumer fails to fulfil their obligations.

1. Please refer to our briefing note on *Consumer Credit and Home Finance for further information on "regulated agreements"*.

Please note that this briefing is intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen (Guernsey) LLP 2026



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