



Briefing

FinTech



BIS – Call for Evidence

At the beginning of March, the Department for Business Innovation and Skills (**BIS**) issued a Call for Evidence on “*Terms & Conditions and Consumer Protection Fining Powers*” to seek a better understanding of how terms and conditions (**Terms**) can be made more user-friendly and consumers might be helped and encouraged to engage more effectively with Terms.

Why is it relevant?

Terms are everywhere, no matter what your business, product or service and regardless of what stage your business is at in its lifecycle. Indeed, all businesses, including start-ups and early phase businesses, are likely to consider the drafting of Terms as a key activity prior to trading. So, it would be a fair assumption that your business has some in place. The outcome of this Call for Evidence may well manifest in changes to consumer law and related rules, that affect your Terms and, as such, the Call for Evidence represents a good opportunity to present your views.

What is addressed?

The specific areas that the Call for Evidence seeks to address include:

- general requirements to make terms “succinct, bold and upfront”;
- standardising the use and presentation of tick boxes;
- limiting constraints on the compatibility and usability of competitors’ media or software with purchased products;
- considering an ability for customers to be able to track changes to Terms over the life of their utility for each customer;
- providing greater clarity on the use (including sharing) of personal data by businesses and ensuring customers know how to withdraw consent to the use of such data; and
- requiring businesses to give greater clarity on the true monthly cost of contracts (especially where prices are variable or include an initial offer period).

BIS is also considering whether competition between businesses would be better supported through a wider range of enforcement tools including administrative (civil) fines for breaches of unfair terms or other consumer protection rules.

Questions on each of the above areas are included in the Call for Evidence and are split into those questions targeted at businesses and those aimed at consumers and consumer groups.

In many respects, the issues being considered by BIS are not new and the Financial Conduct Authority has already been heavily engaged in this from a regulated financial services perspective - especially in the context of the treating customers fairly principles. However, this Call for Evidence and the potential increase in consumer protection that may occur as a result of BIS’s findings could have a more wide-ranging impact.

What do I need to do?

The deadline for responses is **25 April 2016** and it is understood that BIS will make recommendations in spring 2016 based on the responses received.

We will continue to monitor the developments in this area and once we know how this is likely to affect our client base we will look to issue a further briefing.

We have significant experience producing consumer-friendly Terms and undertake “plain-English projects” for FinTech clients. If you would like assistance in this area please feel free to contact your usual Burges Salmon contact or Adrian Shedden in our FinTech practice.

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