Core Terms of a Contract

Deeper Dive | Authority & Concepts Table

IMPORTANT DISTINCTION: "Core term" is used in more than one sense. Do not collapse contract formation/certainty, the central obligations of the bargain, and the Consumer Rights Act 2015 section 64 exclusion into one doctrine.

Three questions that are often confused

Question	Legal focus	Key point
Has a contract been formed with sufficient certainty?	Agreement, intention, completeness and certainty	The parties must have reached sufficient agreement; not every detail must be expressly fixed because terms may be implied or machinery may supply a workable answer.
What are the central obligations of this particular bargain?	Construction of the agreement as a whole	Identify what each party actually promised. Avoid assuming that labels such as "core", "fundamental" or "essential" have one universal remedial effect.
Can a consumer term be assessed for fairness?	Consumer Rights Act 2015, ss 62-68, especially s64	Section 64 excludes assessment of the appropriateness of the price and the main subject matter only if the relevant term is transparent and prominent. Other aspects of a term may still fall within the fairness regime.

Authority table

Authority	What it helps with	Revision point
Scammell v Ouston [1941] AC 251	Certainty / incomplete agreement	An agreement may fail where essential machinery is too uncertain for the court to identify a binding bargain.
RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG [2010] UKSC 14	Formation despite unsigned formal contract	Look objectively at words and conduct. Parties can conclude a binding contract even though anticipated formal documentation was never signed, depending on the facts.
Rainy Sky SA v Kookmin Bank [2011] UKSC 50	Interpretation where wording admits competing meanings	Commercial consequences can assist where language is genuinely capable of more than one meaning.
Arnold v Britton [2015] UKSC 36	Text, context and commercial common sense	Do not use commercial common sense to rewrite clear language merely because the result is imprudent.

Authority	What it helps with	Revision point
Wood v Capita Insurance Services Ltd [2017] UKSC 24	Modern synthesis of interpretation	Textual and contextual analysis are tools within a unitary exercise; the balance depends on the nature and formality of the agreement.
Office of Fair Trading v Abbey National plc [2009] UKSC 6	Historical predecessor regime on price terms	Useful background only. Under the CRA 2015, use the wording of s64 itself and its transparency/prominence requirements rather than treating Abbey National as a complete modern rule.
Consumer Rights Act 2015, s62	Fairness test	An unfair consumer term is not binding on the consumer, subject to the Act.
Consumer Rights Act 2015, s64	Main subject matter / price exclusion	The fairness assessment does not concern the main subject matter or appropriateness of price only where the term is transparent and prominent.
Consumer Rights Act 2015, s68	Transparency	A trader must ensure written consumer terms and notices are transparent.

Section 64 - a safe analysis sequence

1. Identify the challenged term precisely.
2. Ask whether the challenge concerns the main subject matter or the appropriateness of the price against the goods/services/digital content supplied.
3. If yes, ask whether the term is both transparent and prominent.
4. If either requirement is not met, section 64 does not exclude the fairness assessment on that basis.
5. Do not assume that every “price-related” or commercially important term is automatically immune from fairness review.

Worked mini-example

A gym advert prominently states a £600 annual membership fee. The small print contains a £200 “maintenance surcharge” triggered by ordinary use. Do not simply ask whether the surcharge is a “core term”. Identify exactly what is challenged, then apply the CRA 2015 fairness provisions and s64 criteria. A hidden ancillary charge should not be treated as automatically immune merely because it affects the total amount paid.

LIGHTBULB LAW MOMENT: A single label can hide several legal questions. First ask what doctrine you are actually applying: formation, interpretation, classification/remedy, or consumer unfairness.

Primary reference points: Consumer Rights Act 2015, ss 62-68; RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Co KG [2010] UKSC 14; Arnold v Britton [2015] UKSC 36; Wood v Capita Insurance Services Ltd [2017] UKSC 24.