



Engaging consumers in complex information:

**Evidence from the Lawtech
Sandbox & Amplifi
roundtable discussions**

Foreword

It is commonplace today for online products and services to be accompanied by lengthy terms and conditions. We neither read nor understand them and this is a well known fact. Commentary prevails comparing word count to Shakespeare plays. Lawyers worldwide spend hours trying to produce forms of words that meet the law, protect the company and sound straightforward. No-one is really getting under the skin of this problem and the detrimental impact it has on consumers.

Enter Amplified Global and a data driven approach, enabling an empirical and honest look at intelligibility and comprehension, and moving from a moment in time approach to contracting, to a lifecycle customer relationship.

Through their series of engagements in a few short months during the Lawtech Sandbox Pilot, the Amplified team were able to raise the searching and pertinent questions that need to be answered, and offer a practical, elegant and collaborative way forward.

Each one of the questions and data points in this report is worthy of pause for more than cursory reflection. The work itself provides a platform we may look back on as a turning point in reinventing how we all think about consumer contracting.

I congratulate the team on their vision, commitment and progress so far and wish them every success.



Jennifer Swallow, LawTech UK Director

Introduction

There is an often unacknowledged issue with the way that key information for products or services is communicated to consumers. Whether at the point of sale via the terms and conditions (T&Cs), or communicated over the lifetime of a product, key information is usually provided in a form that is difficult to read, and challenging for many consumers to understand.

This isn't specific to any one sector or product type – it affects consumer-facing legal documents across a broad spectrum of sectors.

The problem is that individuals very infrequently read or otherwise engage with the terms of the agreements they are entering into¹. This means they often fail to understand the key features of the product or service, and their (and the providing organisation's) obligations – at the outset or over time as changes take place. For example, in the context of the financial services sector:

- Can an un-informed customer decide if a product or service is appropriate, or compare it to others?
- What happens when something goes wrong – what redress is available?
- What is the cost or how much interest is being applied – and has this changed since the customer first took out the product or service?
- What happens if the customer misses a payment or goes into arrears?
- Will any payment holidays affect the length of the contract?
- What penalties might apply if the customer decides to end the contract early?

The chronic lack of engagement in the critical information in what are often long and complex documents often results in problems further down the line:

- For consumers the lack of clarity concerning their obligations may cause detriment, such as unforeseen fees and charges being applied.
- For organisations, complaints or claims of mis-selling may occur.
- For regulators, the challenge may be in ensuring a well-functioning market that adequately protects both consumers, and organisations they oversee.
- For the legal profession, producing intelligible documents should be a minimum expectation, and failing to do so may be contributing to customers' lack of engagement.

Facilitating LawTech Solutions

The development of new and innovative applications continues to expand the toolkit available to organisations and regulators to address issues such as those outlined above. The LawtechUK programme was set up by the Government to support the digital transformation of the UK legal sector, and to foster and build awareness around potentially impactful innovation. A key pillar of the programme is the LawtechUK Sandbox, which aims to increase experimentation and innovation, increase the legitimacy of LawtechUK solutions and promote cross-sector collaboration.

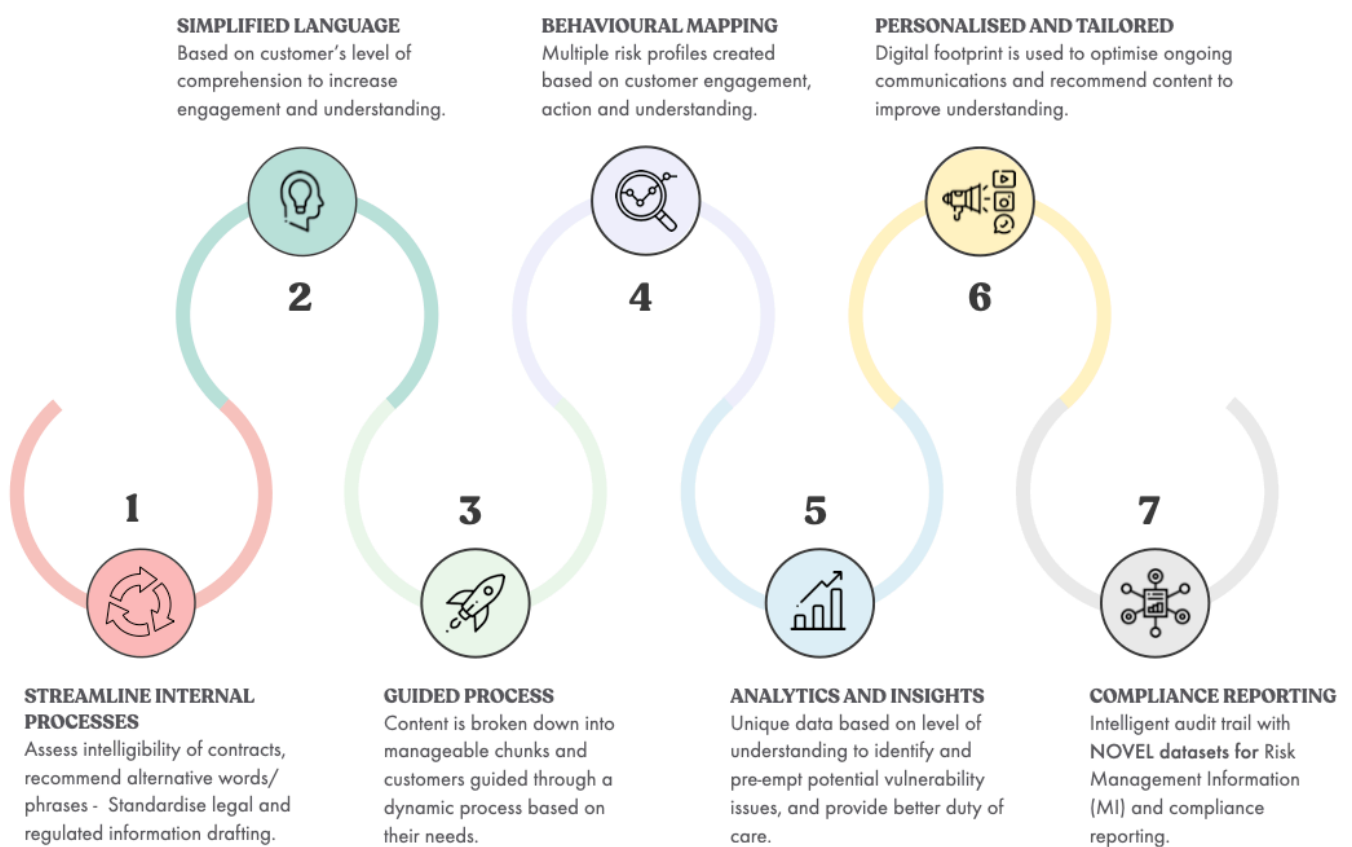
The discussions summarised in this paper formed part of Amplified Global's recent participation in the LawtechUK Pilot Sandbox programme.

About Amplifi

Amplifi utilises Artificial Intelligence and Machine Learning to make complex information such as terms and conditions and regulatory updates easier to understand and engage with, and provide clients with unique management information about customer engagement.

It is an innovative lawtech approach that is capable of assessing intelligibility of a legal document, enabling its simplification and its presentation to a consumer via a unique user journey, and to assess the customer's level of understanding. This creates a new dynamic between the customer and the organisation they are contracting with.

The Amplifi Process



The LawTech & Amplifi Roundtables

As new innovations and fresh approaches reach the market, this can cause existing but unaddressed issues to be made more prominent, as potential new solutions arise. New challenges also emerge alongside new opportunities. For instance, how should AI be regulated, and how to ensure new technology is harnessed for the good of organisations and consumers alike, while protecting them from potential harm.

Amplifi uses an AI-driven approach to assess the intelligibility of complex documents, simplifies the content and presents it in a more intelligible form, and assesses cognitive risk (the risk that a customer has not engaged with or understood the information).

A number of questions and issues have arisen, and we wanted to explore them with representatives of industry, AI experts and regulators via a series of three virtual roundtables.

To inform and guide the roundtables, we produced a discussion paper with detailed input from Amplified Global's legal counsel Mishcon de Reya. This set out the legal and regulatory context for a number of the most pertinent issues, as well as a number of questions that were explored with three stakeholder groups at the events.

Roundtable 1: Industry Representatives

The first roundtable invited representatives from industry associations and their members to discuss the issues concerning the purpose, complexity and intelligibility of legal documents such as T&Cs, and what might be done to remedy the lack of engagement and understanding we see amongst consumers.

The purpose of T&Cs:

T&Cs have a formal legal role, but also play a number of practical roles – they are used to inform customers, set out key information, and provide a degree of protection for firms.

- Are the legal and practical purposes aligned?
- Are T&Cs in their current form able to fulfil those roles effectively?

The simplification of complex legal documents:

There is extensive evidence that the majority of consumers do not read or engage with T&Cs before signing them.

- Can more be done to objectively assess their intelligibility?
- Are there ways to make them more consumer-friendly but retain their legal standing?

Should organisations have a duty to ensure customers understand key information?

An organisation's current obligations regarding T&Cs concern what information is presented and how. Yet techniques driven by AI and machine learning now exist that are able to assess the level of risk that a customer has not understood or engaged with the information they have been presented with, via a cognitive risk assessment.

- What would persuade organisations to do more to assess (or ensure) that a customer understands key product information?

Roundtable 2: AI, Personal Data and Applied Ethics Experts

The second roundtables invited experts in the application and ethical issues concerning AI and machine learning, as well as personal data use, privacy and data protection. The participants were invited to discuss issues concerning the application of emerging technologies such as cognitive assessment, customer profiling, and the regulations that govern AI and personal data use, and how to ensure an organisation's decision making can be augmented via these techniques without risk of consumer detriment.

The first half of the discussion focused on the issues concerning the grounds for use of personal data in AI, customer profiling and decision making. The use of personal data and profiling of consumers has significant safeguards written into legislation such as GDPR. This results in a series of often complex-to-navigate and overlapping requirements to be met before AI-based assessments or profiling can be used.

- To what extent are these safeguards sufficient to protect the consumer?
- Do they provide unnecessary barriers to innovation?
- Should consumers have a right to appeal or object to the use of AI?

The second part of the AI expert discussion focused on how to minimise legal, technological and ethical risks in the use of AI, and thereby to safeguard consumers. The use of algorithms, AI and machine learning is an ever-growing part of the toolkit used by firms to undertake their business operations and in the assessment and onboarding of customers. But how can consumers best be protected against unethical or biased processes?

- Are the current means to safeguard against bias in the development and use of AI sufficient?
- What might be the challenges and benefits of techniques able to assess the risks concerning a consumer's degree of understanding?
- As AI techniques become more complex, will consumers still be able to understand how their data is being used, and to what ends?

Roundtable 3: Regulators

The third and final roundtable in the series brought together a range of regulators and other public bodies. They considered the input from the preceding two sessions, and the full range of issues, from those concerning the intelligibility of legal consumer-facing documents and how that might be improved, measured and enforced, to the issues concerning the application and regulation of AI and advanced machine learning techniques.

- Do the regulators represented feel they have a role to play in regulating AI use in their areas of oversight?
- Do they have the tools needed to do so?
- What might the government and regulators do to facilitate the development and ethical deployment of AI in their sectors?

Findings

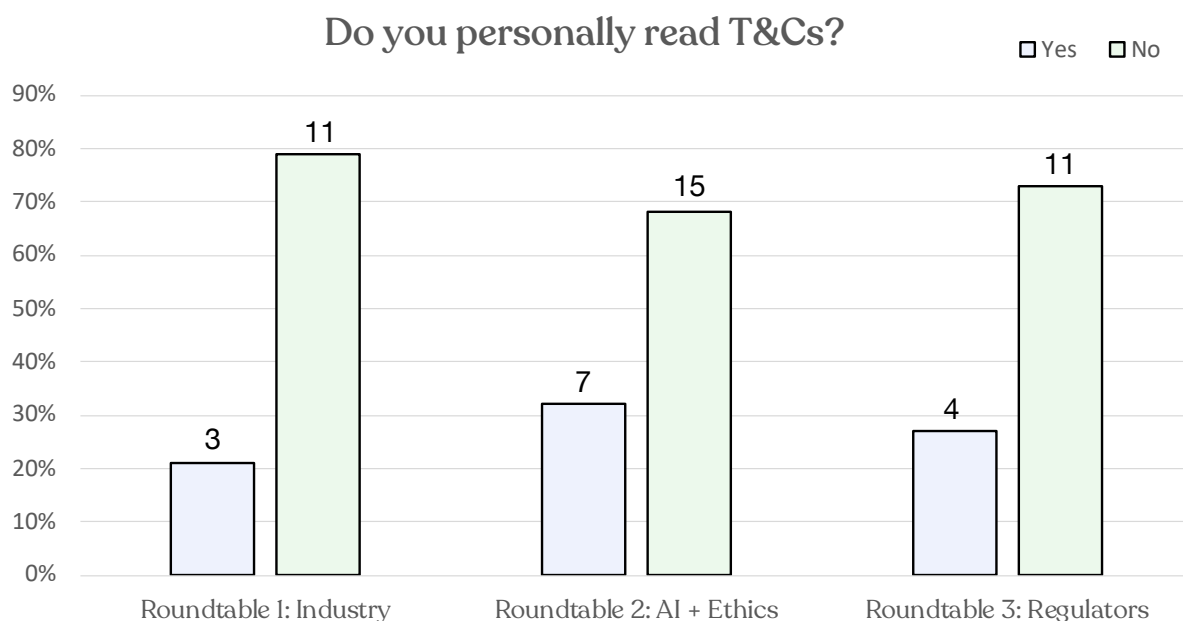
The intention was to create a discourse amongst representative groups, industry, regulators and the expert community concerning the issues highlighted above.

The following sections summarise the combined highlights and key findings from the series of workshops. Please note that the data is not a representative sample or expressed to a high degree of confidence. It represents the views of the expert roundtable participants.

The sessions were conducted under the Chatham House rule, and as such any points raised in the sessions are non-attributed. Where findings relate to a specific workshop this is identified.

1) THE PURPOSE OF T&Cs

At each of the three roundtables we first asked the participants if they read T&Cs for products they personally buy. The findings, even amongst these highly informed and engaged individuals, reflected previous public studies – T&Cs are simply not read by most consumers.



The first and third discussions went on to explore the role that participants felt that T&Cs play – both in a formal, legal or regulatory sense, and in practical terms for each party. The legal and regulatory position was also explored with input from Mishcon de Reya in the discussion paper.

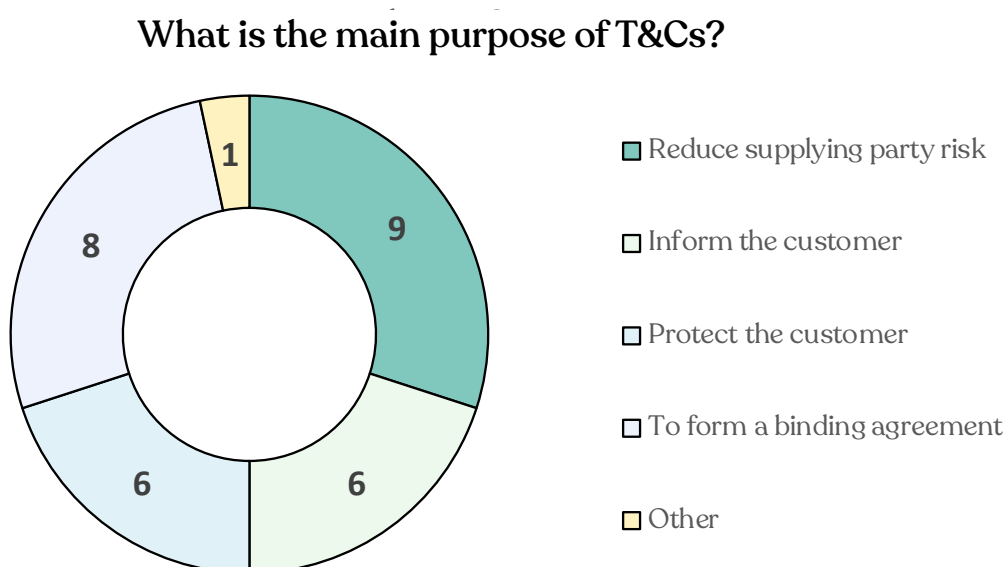
The primary purpose of T&Cs is to protect the consumer, by enabling them to understand the key elements of the agreement they are entering into². T&Cs also used for practical roles – for example to inform customers, to provide a degree of protection for consumers, but more particularly to protect the interest of organisations.

The purpose of legal documents in law and in practice should be aligned. It is particularly important where this includes the interests of the consumer, and for potentially important services such as legal support, property, insurance or credit. In this context, complex documents with a low level of readability are simply not fit for their intended purpose.

Participants were asked what they considered to be the main purpose of T&Cs. the following options (participants were each asked to choose up to two):

- To reduce risk for the supplying firm
- To inform the customer
- To protect the customer
- To form a binding agreement
- Other

At the regulators' roundtable, the results were as follows:



It is interesting to note the wide spread of results across the options, with the results suggesting that participants believed that T&Cs are used primarily in the interest of firms, specifically to reduce their risk, more so than to provide protection for the customer.

This seems at odds with the stance taken by consumer regulation. According to the Consumer Rights Act 2015, the principal purpose of T&Cs is to protect consumers ³.

This is derived from the basic premise that businesses are more sophisticated, commercially savvy operators that enjoy superior bargaining power and greater financial, commercial and legal knowledge and resources which they may use to take advantage of or exploit consumers, or act to the consumers' detriment. The misalignment of purpose and practical application of T&Cs should be of concern for stakeholders.

A further prominent issue raised at the roundtables concerns the role that T&Cs play (or are expected to play) in informing the consumer.

Given the significant research that demonstrates that consumers do not, on the whole, even read them (backed up by the participant's own anecdotal evidence), that seems like a significant misalignment.

T&Cs are expected to inform individuals, but consumers don't engage with them. This is a problem that should be addressed.

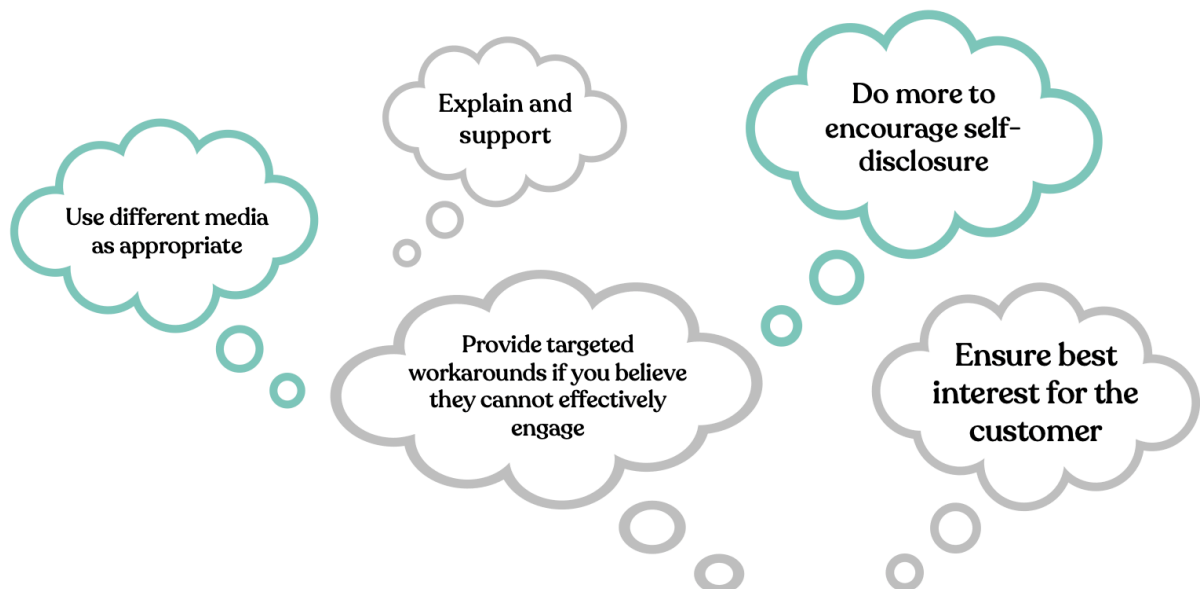
VULNERABLE CUSTOMERS AND T&Cs

Regulators have given the support of vulnerable customers a high prominence in their programmes in recent years, evidenced in initiatives such as the recent update to the FCA's Guidance for firms on the fair treatment of vulnerable customers.

Vulnerability as an issue is becoming better understood - it is an inherently mutable concept, varies widely in cause and effect between individuals, and may be a factor for most of us at some points in our lives. Regulated organisations have obligations to help identify potential vulnerabilities amongst their customers, and to provide appropriate support.

Given that we know that most consumers, whether vulnerable or not, may be under-informed due to their lack of engagement with T&Cs, should this require organisations to do more to identify and react to vulnerability?

We asked participants what they considered an organisation's responsibility was to vulnerable customers when it comes to T&Cs? The answers provided some interesting food for thought and potential direction towards future actions by organisations to support vulnerable customers.



2) THE INTELLIGIBILITY GAP

The rules governing consumer-facing documents feature requirements concerning what information is presented and how – but, crucially, do not require firms to assess whether key information has been understood. The outcome is therefore not currently measured.

Instead, the rules require transparency and fairness, the use of plain language, in a legible format, and in a way that is intelligible – i.e. understandable.⁴

Many industries have attempted to provide simpler, more accessible versions of complex documents, particularly terms and conditions. Despite this, we know that a significant proportion of customers still do not read or engage with them. Could a lack of intelligibility be part of the reason? We asked the regulatory and industry workshop participants whether they felt that, in their experience, T&Cs are generally understandable.

Combined, 78% of the participants answered they were not, with only 22% replying positively.

Interestingly, the regulator group were more sceptical of the level of intelligibility than industry representatives.

We followed up with the regulator group, asking if existing legal requirements regarding transparency and intelligibility help to ensure T&Cs are understandable to the public?

Again, the result was stark (although only small as a sample) with 30% responding positively, and 70% saying they did not feel the rules currently help.

The industry and regulator groups were then asked how intelligibility should be measured and by whom. Their comments included some suggestions concerning the role of regulators and how they can assess and improve the quality of T&Cs:

- As well as consumer legislation, GDPR says that organisations must be transparent and fair and have an obligation under Articles 13 and 14 to inform the customer.
- Regulators should do more to assess and act on intelligibility.
- Regulators cannot enforce a lack of intelligibility unless (until) a complaint is made.
- Intelligibility should be independently assessed.

Insights also focused on the shared responsibility of industry and legal teams:

- The responsibility should sit with companies as well as regulators.
- Industry should do more to avoid jargon.
- Products should be made less complex not just T&Cs.
- T&Cs are not fit for purpose, particularly for vulnerable customers.

Finally, comments also included how intelligibility should be measured and who by:

- Current intelligibility measures are based on number of words per sentence, time spent to read.
- Intelligibility should be measured by people with lived experience.
- Outcome-based measures should be considered.

The majority of participants across the three roundtables felt that the lack of intelligibility of legal and regulatory documents, and specifically T&Cs, is a problem that is not addressed by current rules.

Given the multiple roles that participants felt that T&Cs play for consumers, and given the balance of interest was felt to currently lie in favour of the supplying organisation, this is an area for industry and regulators alike to tackle.

MEASURING INTELLIGIBILITY

Currently the tools used to measure intelligibility are somewhat limited – focusing on simple metrics such as word count, sentence length and the number of multi-syllable words.

Tools such as Amplifi that are entering the market may change this by providing a more in-depth assessment of both words and sentence structure, in a more objective and automated assessment.

If innovations such as Amplifi can enable intelligibility to be measured in a more complete and objective way, could this make minimum intelligibility standards a realistic aim for regulators?

3) SIMPLIFYING COMPLEX DOCUMENTS

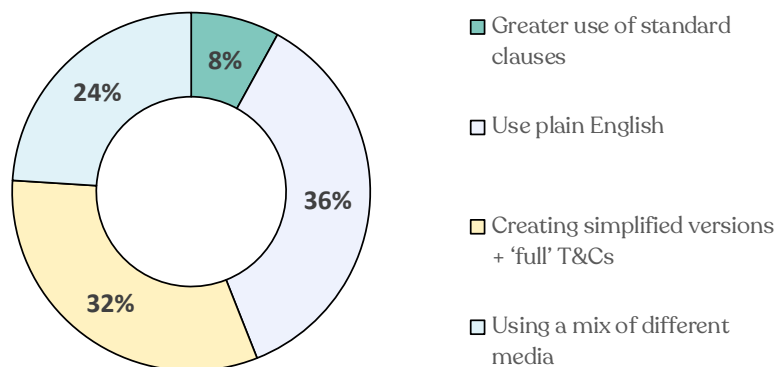
If intelligibility is a significant problem, one solution to address the understanding gap faced by consumers would be to make complex documents more intelligible, and look to increase their readability.

The roundtables explored a variety of methods that could be used to achieve this, asking ‘how could T&Cs best be simplified?’ including the following options:

- Greater use of standard clauses
- Using plain English
- Creating simplified or ‘translated’ versions in tandem with ‘full’ T&Cs
- Using a mix of different media
- Other

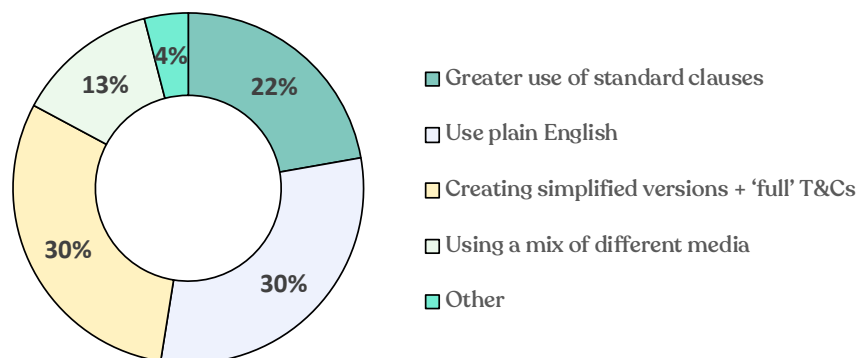
In the polling, the industry roundtable responses broadly suggest that participants felt that all of the options presented had merit. This was particularly true of the option to create simplified versions in tandem with the ‘full’ T&Cs and by using plain English, to a lesser extent the use of different media, with a number of participants also supporting standardisation of T&Cs.

How can T&Cs be simplified? Industry roundtable



In the regulator discussion there was more significant support for standardisation, as well as simplified versions and plain English, with less focus on the use of a wider range of media.

How can T&Cs be simplified? Regulator roundtable



DIFFERENTIATION VS STANDARDISATION

One of the topics that featured in the discussion was the potential to further standardise document content and certain clauses; whether across a single organisations' own products, between organisations operating in a common sector, and even across different sectors.

There is already a degree of standardisation for particular industries or products, for example the specific terms and clauses required by legislation such as the Consumer Credit Act.

Yet informal research by Amplified Global has shown that even a single organisation will produce widely varying terms and conditions for the same set of products within its own product range – in this case the T&Cs for an organisation's range of credit cards.

This is highly inefficient for organisations, and adds the complexity consumers face.

There is significant scope for greater standardisation of T&Cs.

The discussion focused on the question of how extensively and in what particular areas standardisation should be carried out to gain benefits for consumers and industry.

Key product information concerns the issues that may have the greatest impact on a customer, and the information a customer needs to be able to compare products from other providers.

Generally, participants felt this type of differentiating information should be presented to consumers in a more intelligible way, but in the manner of an organisation's choosing (while meeting all of the relevant obligations).

However, a significant proportion of T&Cs concerns non-differentiating information, common to a particular product type, usually required by law or regulation, and which is presented to the consumer on a take-it-or-leave-it basis.

Non-differentiated 'boilerplate' elements were generally agreed to provide an opportunity for greater standardisation, in tandem with simplifying the language used.

Other suggestions included:

- To treat the 'standard elements' as a searchable and accessible resource for future reference - able to be easily accessible or searchable on an as-needed basis at a later date.
- Present the information of greatest impact on the consumer and important for their decision making upfront, and in a simple intelligible form.
- Consider short-form T&Cs for frequent and low risk services
- Greater consumer testing.

ARE INTELLIGIBILITY STANDARDS AN EMERGING OPTION?

While the legal requirements specifically call out the need for organisations to produce ‘intelligible’ documents, there have been, until recently, few ways to objectively measure intelligibility in a widely accepted way.

There are established industry marks based primarily on word length, length of sentence and use of passive tense. However, there remain few tools available to companies or regulators to assess intelligibility on a more systematic or objective basis.

Given the importance placed on intelligibility, would having the means to assess readability in an objective way, such as that enabled by Amplifi, provide the basis for intelligibility standards to be developed, for the intelligibility of customer-facing documents to be measured, and enforced?

Could the objective assessment of intelligibility be a game-changer for industry and regulators?

The understandability of a document will vary from person to person, based on their capacity, standard of reading or experience of the terms and concepts used, and contextual issues. As such, establishing a one-size-fits all approach to intelligibility for all customers is undoubtedly a challenge. A variety of options will be needed to ensure documents that are intelligible for all.

However, establishing minimum levels of intelligibility could be a good starting point to ensure that all customers at least have a better chance of understanding the information they are presented with, and avoiding consumer detriment further downstream.

OUTCOME-BASED APPROACHES

The legal duty on organisations is currently focused on what information is presented to consumers, in what form (intelligible, legible and clear), and that the customer is given sufficient opportunity to read it.

There is currently no express obligation on organisations to assess or take into account the risk that a consumer has not read or understood the key information contained in T&Cs and other regulatory or legal documents.

In recent years attention has been given to whether consumer interests should be more strongly protected, such as the FCA’s 2018 discussion paper (DP 18/5) which sought views on whether a new statutory or regulatory duty should be introduced to provide additional protection.

The extent to which a consumer has understood the key information presented to them could be a key metric to avoid customer detriment. Tools such as Amplifi provide the means to assess this.

Could a duty to ensure key information has been understood provide a way to further protect consumers?

4) COGNITIVE ASSESSMENT: THE IMPLICATIONS OF TECHNOLOGY TO ASSESS UNDERSTANDING

The roundtable discussions included consideration of the implications that flow from the emerging ability to objectively assess not just intelligibility, but also the level understanding a specific consumer is likely to have achieved (for example such as via a cognitive risk assessment).

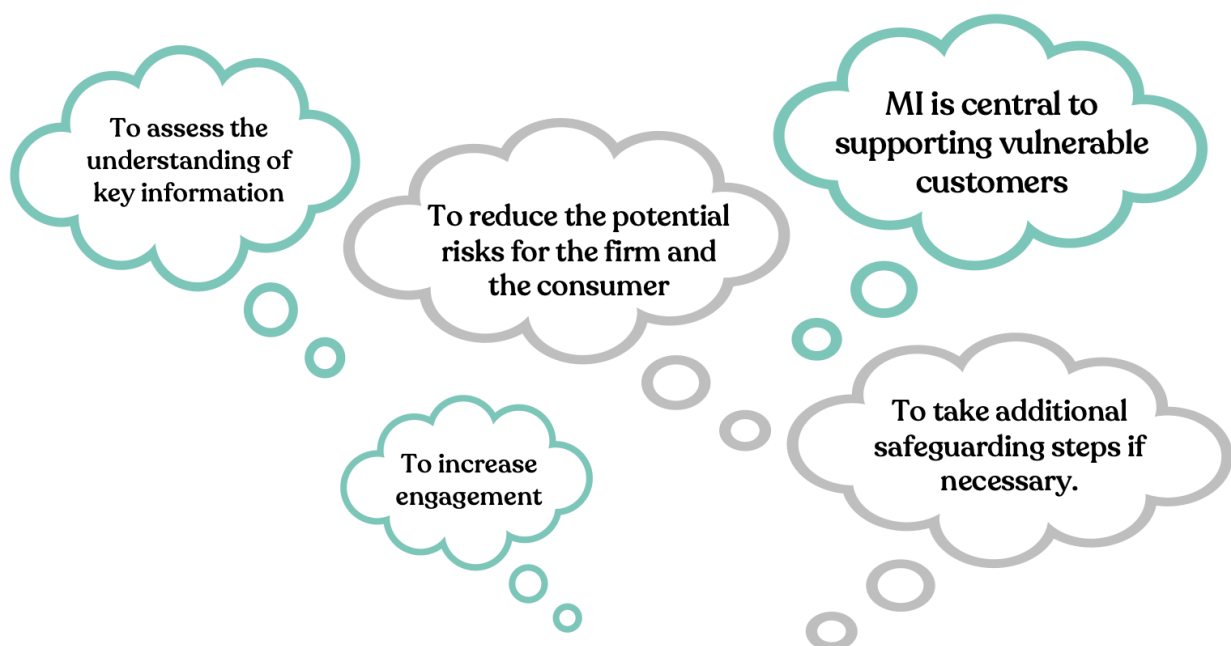
Such assessment methods are made possible in real-time via the use of AI and machine learning techniques. However, they are not without their challenges:

- The complexity and newness of the techniques utilised (AI and customer profiling) and in particular how they may be viewed by customers.
- The type of data used and the ensuing complexity of ensuring that data use is in line with complex legal requirements.
- To ensure that such tools are used to improve outcomes for the consumers, not just in the interest of organisations (for examples to identify more risky customer relationships and subsequently justify preventing their access to services).
- To ensure not just consumer understanding of the product but the implications of their decisions in relation to the product.

POTENTIAL USES FOR COGNITIVE ASSESSMENT METHODS

We asked industry participants what they saw as the main uses for cognitive assessments concerning the degree of understanding a customer has demonstrated?

The discussion focused on both the positive and potentially negative aspects of cognitive assessments.



CUSTOMER AND ORGANISATIONAL BENEFITS

It was generally agreed that a practical way to assess whether a customer has or has not engaged with the key product information would provide valuable MI (management information) for an organisation. It would help target improvements to product information at the elements consumers are finding most challenging.

It was suggested by a number of participants that the end goal should not be for a customer to read the entire T&Cs, to have engaged with and understood the product information most relevant to their contracting decision.

At a product or cohort level, knowing if there are particular elements of T&Cs or other key information presented that customers (or specific groups of customers) are finding unengaging, or at higher risk of not understanding, enables the organisation to target improvements or adaptations to its documentation. The organisation may also choose to adapt the way it is presented to customers, particularly any groups that are known to be at a higher risk of failing to engage with or understand the content.

At the level of a particular customer, if they are assessed not to have understood particular elements, this provides organisations with a means to follow-up with the customer, to check that they are confident in their understanding of the information in question or if they wish to have further information provided, perhaps via another media.

POTENTIAL CHALLENGES

There were also potential negative consumer outcomes or risks discussed by participants across the roundtables concerning approaches utilising cognitive assessment.

The first was the potential for organisations to limit access to products or services based on a higher level of assessed risk of a customer having failed to understand the key data.

At present, a consumer can fail to read the key information contained within T&Cs at all, and yet sign up to the product or service even when the providing organisation knows that they have not spent time reading the T&Cs as part of the onboarding journey. It was raised in discussion that customers should therefore not be disadvantaged solely if they are assessed to have a higher risk of misunderstanding based on a cognitive risk assessment that evidences what we already know to be true.

The possibility was also raised that organisations may use such a tool unscrupulously to 'weed-out' certain groups of customers that may have a higher cost to service (such as vulnerable customers), or those with a higher risk of complaining of mis-selling in future.

If regulation or standards are not in place, this leaves it open for cognitive assessment to be used to negatively impact the customer, rather than as a means to identify areas of potential misunderstanding and to rectify them. This is an important factor for regulators and organisations to consider.

Cognitive assessment is an emerging but powerful tool able to better support customers, and to ensure that complaints and the risk of misunderstanding are minimised. But the potential risks need to be controlled or mitigated.

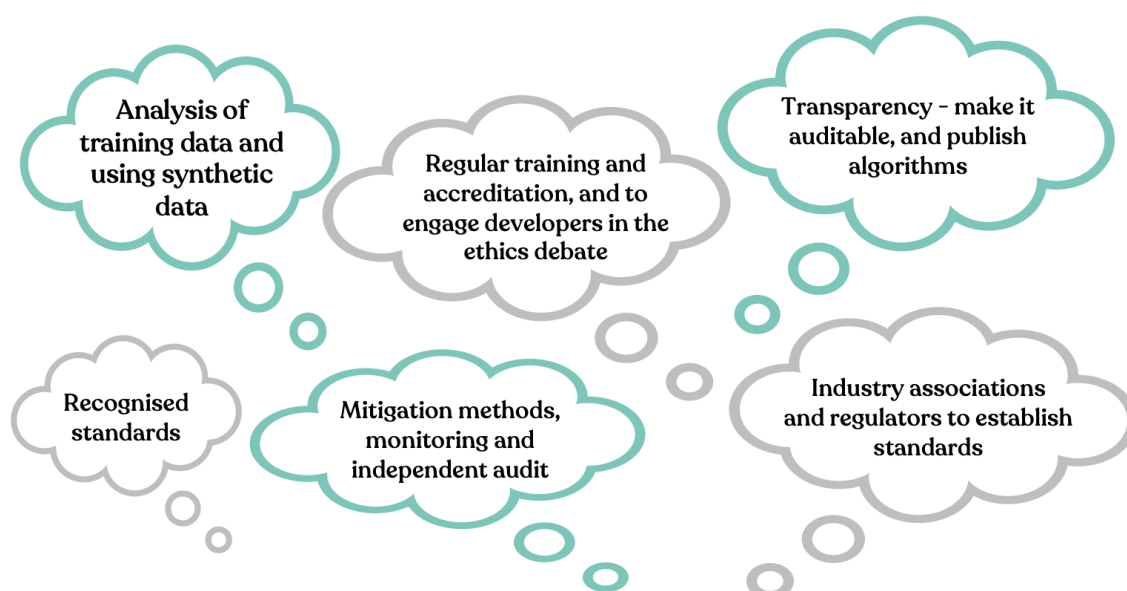
Amplifi is playing its part, by engaging directly with a wide range of industry bodies and regulators to explore the opportunities tools like Amplifi present, while also being aware of the potential risks and how they may be addressed.

Part of the answer is in ensuring that developers of lawtech and AI-driven solutions do so with an ethical approach in mind, and build appropriate safeguards and a consumer-centric philosophy into their values and mission at the outset.

This is something the Amplifi has built into the DNA of the organisation.

DEALING WITH POTENTIAL BIAS

As well as the need to avoid potentially unethical or disadvantageous use of AI-driven cognitive risk assessment, the presence of bias is also a factor inherent in AI and machine-learning-based techniques. We asked the expert roundtable participants what they felt could be done to avoid bias in the development and deployment of tools such as cognitive assessment.



A number of themes emerged in the discussions:

- The importance of standards – both the use of existing standards concerning the development of AI, and the development of new standards by regulators and industry to govern deployment in different sectors.
- The need for high quality, unbiased information at the development stage.
- The need for external monitoring, accreditation and audit.
- The need for transparency.

SETTING STANDARDS FOR AI DEVELOPMENT AND DEPLOYMENT

We asked the AI expert roundtable participants what they thought should be the role of regulators or standard setters in protecting consumers and ensuring appropriate deployment.



Given the

strong focus on regulators or other authoritative organisations to set standards, we asked regulators in the subsequent roundtable firstly whether they saw setting standards for AI as part of the role of their organisation.

The results showed a clear split amongst the group, with 50% saying yes, they did see standard setting for AI as amongst the roles their organisation should play, and an equal number answering negatively.

We then asked whether they felt that their organisation has the right tools at its disposal to oversee and enforce the appropriate use of AI.

Only one participant answered positively.

The majority responded that the tools required to oversee and enforce appropriate use of AI were currently lacking at their organisation – an important point for regulators and overseeing bodies to address for the future.

5) USING CUSTOMER DATA + AI

As well as the previously stated need to use high quality real or synthetic data to avoid bias in the development of AI, deploying AI in practice involves the use of a range of data sources. In the case of the profiling that could take place ahead of the presentation of tailored, simplified content, or at the cognitive assessment stage, data use could in principle involve a range of information concerning the customer and their onboarding journey.

This could involve a customer's biographic data, personal data such as their age, level of education or employment. Cognitive assessment would also involve their in-session data such as an assessment of their engagement with information or media, their expressed levels of confidence in the information they have been presented with, or eventually information such as biometric tracking of eye movements, or even facial expressions (Amplifi does not currently utilise biometric data in its assessment methodology).

There are a range of obligations and restrictions governing the use of data in this way, primarily from the GDPR rules concerning the legal processing of personal data.

GDPR is a relatively new legal regime, and some aspects have yet to be further clarified by court rulings. Yet given the importance to adhere to the rules (both in terms of potential fines and to respect a consumer's privacy) and due to the innate complexity of the rules, we asked participants whether they felt that the requirements for the use of personal data in AI-based approaches are sufficiently clear.

Only one participant out of the 20 who answered felt that the rules were clear. The other 19 of 20 participants who expressed an opinion felt that there was a lack of clarity.

This lack of clarity affects both industry and regulators (especially the ICO). It highlights the need for simpler, clearer and more practical guidance from the ICO, the use of sector codes by regulators and case studies to demonstrate what good looks like.

DO CONSUMERS UNDERSTAND AI AND HOW IT IS USED?

There are further challenges that were discussed by participants. These included:

- Protecting data privacy for consumers.
- Ensuring that the application of AI and what it may be used for is itself disclosed in a clear way.
- Providing customers with the choices they may have to opt out of profiling or fully automated decisioning processes.

As one participant put it ***“are we simply shifting from customers being unable to understand T&Cs, to being unable to understand how AI and their data is being used?”***

We asked the AI expert roundtable participants whether they thought it was possible for firms to easily and clearly articulate the use of AI to consumers?

There was a split of opinion, with 30% of respondents confident that this was possible, and the majority (70%) responding negatively.

The complexity of AI approaches per se, and the additional challenge of explaining that to consumers in a clear and understandable manner during what may be an already complex onboarding process provides a significant challenge. One that industry and experts seem equally confronted by.

There are clear advantages of employing some of the AI-driven processes emerging into the market, such as lawtech applications.

Perhaps there is a need to engage consumers in the topic, so they are better informed about what AI entails and how it may advantage or disadvantage them. But this needs to be balanced against what is reasonable for a consumer to understand.

Alongside improving consumer confidence in processes such as AI, there need to be adequate controls:

- Standards governing how organisations utilise AI technology in practice.
- Adequate measures to ensure AI is appropriately deployed, for instance via standardisation or independent audit.
- An enforcement regime that provides a credible deterrent to the mis-use of AI

OPT OUTS

One of the consumer protections included in the GDPR rules concerns the rights that consumers have to withhold use of their personal data, and in some circumstances to opt out of the use of AI in providing a customer profile, or the use of automated decision-making processes.

We queried whether this was a realistic approach, given what else had been discussed. We asked the AI expert roundtable participants whether consumers should be able to opt out of or appeal the use of AI in an organisation's decision making?

An 82% majority of participants supported the continued use of an opt-out facility for consumers, with only 18% being against this continuing.

6) SUPPORTING THE UK'S AI DEVELOPMENT

To round off the discussions on a future-facing topic, we asked both the regulator and AI expert roundtable participants what actions by regulators or government could best facilitate the development of AI and ML in the UK?

The AI expert participants focused in part on the need for legislation to empower, or at least not to hinder the effective regulation of AI development and deployment, with suggestions including:

- For BEIS to lead a call for input from a wide range of stakeholders, and the potential to include organisations such as the UK Regulators Network in achieving that aim.
- For the government and regulators to lead by example, to publicly showcase that government bodies utilise AI/ML in an ethical and innovative way, and in the public interest and demonstrate how.
- For the government to ensure legislation is in place that empowers regulators to effectively oversee the use of AI/ML technology.

Similar points were raised by participants in the regulator roundtable, alongside some wider points concerning how to address public perceptions of AI, and actions to facilitate the development of new approaches.

Suggestions included:

- Establish principles, not just rules.
- Develop standards, guidance and toolkits, and in doing so foster collaboration and wider engagement.
- Clarify GDPR and other data rules where uncertainty currently exists.
- Improve access to high quality data.
- Encourage public understanding of AI and a more rational view.
- Decide what 'public benefit' means for the sector(s) they regulate.
- Coordinate more effective engagement between regulators.

Conclusions

Amplified Global's involvement in the Lawtech Sandbox has been a wholly positive and often enlightening experience. The virtual roundtable discussions we held with the three stakeholder groups were a highlight of our participation which raised a range of interesting questions and views.

We set out to build a dialogue concerning the purpose and effectiveness of T&Cs, the development and application of measures to assess intelligibility and to simplify documents, and the development and deployment of AI to understand consumer behaviour.

A number of prominent themes and issues emerged:

1. **T&Cs must do much more to fulfil their most important and legally required purpose – to inform and protect consumers.** In their long and complex current form, T&Cs are not often read (seemingly even by experts!), and when they are, they are not easily intelligible, despite this being a key regulatory and legal requirement.
2. **There are a variety of ways to effectively simplify key information and make T&Cs more engaging for customers.** Whether by simplifying the language used in the base document, by providing a shorter, simpler version alongside, using a richer mix of media or by standardising non-differentiated sections, simplification is something that all stakeholders wanted to see.
3. **We now have the means to objectively assess intelligibility, and regulators and industry should consider developing or applying intelligibility measures.** The requirement to ensure documents are intelligible is a key legal requirement. However, lawyers do not write documents that are suited to the purpose, industry does not demand better for its customers, and the requirements are not measured or enforced by regulators. Given that tools now exist to provide an objective measure of intelligibility, regulators could consider developing minimum standards or an outcome-focused regulatory approach and utilise the emerging data to inform their approach.
4. **While AI and machine learning techniques can be used to effectively assess the level of understanding of a customer, the technique needs to be deployed in an ethical and consumer-focused way.** The tools AI-driven techniques can provide are powerful, and can result in a range of positive consumer outcomes, from better and more targeted engagement by organisations ensuring customers understand their choices, rights and responsibilities to better identify and support potentially vulnerable customers. However, there are insufficient principles and standards in place to ensure this happens in a consumer-positive way at present.
5. **The important rules designed to ensure data privacy and appropriate use of data are currently complex and difficult to understand for AI developers, industry and consumers alike.** The development of clearer guidelines and illustrative and practical examples are needed for industry, and positive examples needed to engage and inform consumers.

What Comes Next?

Amplified Global will be considering the importance of the findings from the Lawtech roundtables to our own evolution as specific industry-led proofs of concept are generated, by continuing our discussions with stakeholders, and as Amplifi enters the next stage of its development.

While the roundtable discussions were not intended to identify specific recommendations, four clear steps have emerged that stakeholders may wish to consider.

1. DEVELOP RULES FOR THE USE OF AI

There are complex rules regarding what data can be used, how and by whom. Yet there is no comprehensive ruleset or standard directly governing how AI should be developed or deployed, and to ensure this is done in a way that protects the interests of consumers. The developers of AI and those seeking to deploy it would benefit from a clear framework of rules, including principles, standards, practical guidance and sectoral use cases.

2. COLLABORATION BETWEEN INDUSTRY, REGULATORS AND THE LEGAL PROFESSION

The challenges and opportunities presented by genuinely new technologies and innovative approaches require a coordinated approach. The framework of rules referenced in 1 above needs to be formed and implemented in close collaboration between government and regulators, industry, and in the case of improving T&Cs and regulated communications, the legal profession.

3. APPLY NEW TOOLS TO AID THE CONSUMER

Consumers have suffered from the failure to provide them with clear, understandable information. Yet the tools now exist to simplify information more effectively, and to provide an objective and real-time assessment of whether they have understood it. Organisations and legal teams that produce complex, customer-facing information should consider how these new tools can help them, and by so doing improve outcomes for consumers.

4. MAKE BETTER DATA AVAILABLE TO AI DEVELOPERS

A recurring theme has been the need for high-quality data for developers to utilise to train and develop solutions. Initiatives such as the Lawtech Sandbox and the FCA's Digital Sandbox Pilot programmes are addressing this issue, but more needs to be done to collate and make more accessible high quality, unbiased and detailed data to empower the growth of the UK's AI sector and lawtech innovation.

Roundtable Participants

ROUNDTABLE 1: INDUSTRY

- Association of British Credit Unions Limited
- Equilaw
- Fairer Finance
- Financial Ombudsman Service
- HSBC
- Legal Services Consumer Panel
- Lending Standards and Financial Inclusion Commission
- Mishcon de Reya
- Monzo
- Personal Finance Research Centre, Bristol University
- StepChange
- Vodafone

ROUNDTABLE 2: AI & ETHICS EXPERTS

- Centre for Data Ethics and Innovation
- Chartered Institute of Arbitrators
- City of London Corporation
- Digital Dispute Resolution Lab, Oxford University
- Digital Ethics Lab, Oxford University
- Innovate UK
- LawtechUK Panel
- Law Society of England & Wales
- Law Society of Scotland
- Ministry of Justice
- Mishcon de Reya
- Open Data Institute
- School of Electrical Engineering, Electronics and Computer Science, University of Liverpool
- Solicitors Regulation Authority

ROUNDTABLE 3: REGULATORS

- CILEx Regulation
- Competition and Markets Authority
- and Markets Authority
- HM Courts and Tribunal Service
- Information Commissioner's Office
- Law Society of Scotland
- Ministry of Justice
- Ofcom
- Solicitors Regulation Authority

