

Unfair terms in holiday caravan agreements

Consultation response

September 2005

OFT734resp

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1 INTRODUCTION

- 1.1 This report is a summary of the consultation on the draft guidance, *Guidance on unfair terms in holiday caravan agreements* (OFT734-con), published in October 2004. The final version, *Guidance on unfair terms in holiday caravan agreements* (OFT734), was published in September 2005. This document can be downloaded from our website at www.offt.gov.uk
- 1.2 A consumer leaflet *A fair pitch for your holiday caravan – A guide to agreements for static holiday caravans* (OFT770) was also published in September 2005, and can be downloaded from our website as above.
- 1.3 The purpose of the guidance is to help caravan park owners and their advisers ensure that their contracts comply with the requirements of the Unfair Terms in Consumer Contracts Regulations 1999 ('UTCCRs'). It should also assist enforcers of the UTCCRs and consumers.
- 1.4 The aim of the consultation was to obtain feedback on the draft with a view to producing an improved version for publication.
- 1.5 We received 36 responses to the consultation. Respondents are listed in the annexe.
- 1.6 We would like to thank all those who contributed.

2 GENERAL REMARKS

- 2.1 The respondents welcomed the opportunity to participate in the consultation process. Reactions to some sections of the draft guidance were mixed, but respondents agreed that guidance was necessary and most thought it would have a positive impact.
- 2.2 The points raised in the consultation responses have been taken into consideration, and many have been reflected in the final version of the guidance. Answers to the consultation questions are dealt with in Chapter 3 of this report.
- 2.3 **A number of respondents had the impression that the guidance introduced new law or proposals or codes of practice.** This is not the case. The OFT shares with local trading standards and several others power to enforce the UTCCRs, which give consumers rights they themselves can enforce. The guidance offers our interpretation of the UTCCRs and an indication of how we would enforce them. But we do not have responsibility for drafting legislation and the guidance does not introduce new law or new obligations for park owners that do not already exist under the UTCCRs.
- 2.4 **Some respondents wanted to see the introduction of regulatory changes such as greater control over utility prices and compulsory gas meters. Paragraph 4.54 (now 4.52) suggested that, where not all contract details could be provided to consumers immediately, there should be a cooling-off period, and one respondent wanted compulsory cooling-off periods for caravan sale contracts.** We are unable to go beyond the powers given to us under the UTCCRs and cannot impose new regulatory controls or other requirements.
- 2.5 **Several respondents requested a level of detailed advice that goes beyond the scope of general guidance. Some asked questions, or raised concerns, that were outside our remit.** The guidance cannot cover every possible scenario, nor does it deal with aspects of the law other than the UTCCRs. There will still be situations where park operators or consumers will require legal advice. We have added a warning at paragraph 1.5 that

the guidance is not a complete guide to the law and is not a substitute for legal advice.

- 2.6 **Many comments in the responses reiterated points, or raised queries, that were already covered in the draft guidance. Several respondents compared their agreements with park owners to the guidance, rather than commenting on the guidance itself.** These responses confirmed that in Chapter 3 we had correctly identified the areas of concern to consumers.
- 2.7 **One respondent was of the opinion that the guidance focused on the practices of some less reputable park owners and did not give enough consideration to the needs of responsible park owners. Another expressed the fear that the guidance could protect irresponsible caravan owners from responsible park owners.** The draft guidance arose out of concerns raised by consumers in complaints to the OFT, and the UTCCRs are a consumer protection measure. We have ensured that the final version of the guidance balances the concerns expressed by consumers and the legitimate interests of park owners, and acknowledges the constraints placed on park owners by external factors such as local authority site licences and health & safety legislation.
- 2.8 **A consumer organisation called for the guidance to be reviewed and updated regularly, and for us to monitor customer satisfaction and publish the results. It also suggested that the guidance be independently monitored, with sanctions for non-compliance by park owners, and wanted an awareness-raising campaign to encourage caravan owners to read the small print of any agreement.** The guidance may be updated at an appropriate time, though we cannot say when that might be, and we cannot undertake monitoring. A failure to comply with the guidance will not itself give rise to a sanction. However, the guidance explains the principles that we think a court would apply in assessing the fairness of a contract term and the circumstances in which enforcement action may be taken against a park owner under the UTCCRs. If a park owner breaches an injunction granted under the UTCCRs, he or she will be liable to proceedings for contempt of court. We hope the consumer leaflet, together with our press release and other publicity, will help raise awareness among consumers of what to look out for before signing an agreement.

- 2.9 **Several caravan owners wished to see certain terms included in a standard model agreement. One consumer organisation wanted us to require park owners to follow best practice when drawing up agreements.** We cannot propose a model contract or insist on best practice. However, we expect those using or recommending standard agreements with holiday caravan owners to review their contracts in the light of the guidance and amend or remove any unfair terms. The caravan industry's trade associations jointly promote a model agreement and code of practice to their members, but not all park owners are members of these associations. The UTCCRs deal with the unfairness of terms, and paragraph 1.14 has been added to explain that we have no power to prescribe what park owners should include in their agreements.
- 2.10 **One trade association expressed dismay at the length of time it had taken the OFT to take action against a park owner.** We must exercise our enforcement powers proportionately and in accordance with the principles set out in an Enforcement Concordat, promoted by the Cabinet Office in partnership with the Scottish Executive and various local authority associations. In general, we will consult a trader and give him or her an opportunity to put things right, and will only take court action where this proves to be necessary.
- 2.11 **A caravan owners' association expressed disappointment that the consultation had been conducted at a time of year when most caravan owners were away from the parks and therefore unlikely to hear about the consultation and be able to participate.** The timing of the consultation was dictated by a number of factors. The draft guidance could not have been published any earlier, and we did not wish to delay the consultation.
- 2.12 **Both of the park industry's trade associations expressed disappointment that the OFT did not consult them prior to launching the consultation exercise and the draft guidance.** We met representatives of the two trade associations in April 2005, by which time we had a much-revised working draft of the guidance. Those discussions were productive and, while we did not agree on every point, we were able to resolve a number of contentious issues.

2.13 The consultation has helped us understand more about the industry and how it operates, which informed a number of revisions. We believe that the changes made to the guidance address many of the concerns raised and improve the final document.

3 SUMMARY OF RESPONSES TO CONSULTATION QUESTIONS

- 3.1 The consultation paper asked five general and six specific questions. Responses are summarised as follows:

General questions

Is the draft guidance sufficiently clear?

- 3.2 **Several respondents found the guidance sufficiently clear and understandable, but others expressed concerns about the use of legal and technical terms and complex language that lacked clarity.** As the guidance interprets the law it has not been possible to avoid the use of legal terminology entirely. However, some terms have been explained, for instance 'indemnity', and the paragraph on 'set off' has been rearranged so that the explanation of 'set off' appears immediately underneath the heading, or less technical language has been used, for instance 'hinder' instead of 'fetter'.
- 3.3 **Some respondents pointed out drafting errors. Several suggested that we had failed to distinguish properly between pitch and site, pitch licence and site licence, and pitch licence and park rules.** In the interests of clarity, we have amended some of the wording in the guidance, for instance by changing 'supplier' to 'park owner', 'company' to 'park owner', and 'charge' to 'commission', and corrected errors as appropriate. We have tightened up our use of words such as 'pitch' and 'site', so that the text is consistent with its intended meaning.

Is the draft guidance comprehensive – what significant omissions are there?

- 3.4 **Four respondents mentioned the issue of park owners permitting caravan owners to use static holiday caravans as permanent homes in contravention of site licence conditions, and the problems this might cause for consumers in the long term.** We have added a warning about this at paragraph 3.8 of the guidance.

- 3.5 **One respondent pointed out that the legal definition of caravan applies to both permanent residential caravans, also known as mobile homes, and static holiday caravans, and expressed disappointment that the guidance was not extended to cover permanent caravans.** Owners and occupiers of mobile homes have protection under primary legislation that does not extend to holiday caravans. The Office of the Deputy Prime Minister publishes guidance for the mobile home sector, and we do not wish to add to or duplicate this.
- 3.6 **Some respondents raised the issue of implied terms in mobile home agreements - many park owners manage both permanent and holiday sites, or mixed sites. One suggested that Government might wish to consider introducing implied terms into holiday caravan agreements, though it was not clear which department would take the lead.** We have taken into consideration the Office of the Deputy Prime Minister's consultation on implied terms when working on the redraft. The introduction of new legislation is outside our remit.
- 3.7 Consumers reported that the guidance omitted to mention:
- **lack of transparency in pricing for new caravans and part-exchange value of old caravans. One respondent wanted prices to be restricted to the manufacturers' recommended retail price.** The price of a caravan is usually a core term, and therefore exempt from an assessment of fairness under the UTCCRs. We have however revised and expanded the guidance to provide more information on core terms, in particular Chapter 2 and paragraphs 5.55 to 5.56. This makes it clear that an important core term must be in plain language and transparent.
 - **terms safeguarding the privacy of caravan owners by restricting park owners' access to caravans.** The legal position on park owners' access to caravans is not as clear-cut as that of landlords' access to premises occupied by tenants. New paragraph 4.28 sets out our views on terms about access.
 - **local authority rates, particularly overcharging by park owners.** We have amended paragraph 5.3 to explain that the basis for a variable charge, which covers costs such as local authority rates, should be reasonable and transparent.

- **service level agreements with third parties, to resolve problems where work has been carried out by contractors.** We cannot recommend or impose service level agreements (broadly speaking agreements that set out the expectations of both parties, for instance what the client wants and what the supplier is prepared to supply). Paragraphs 4.13 and 4.14 of the guidance have been amended to make it clear that a park owner should not purport to exclude its contractual liability for a failure, caused by its agents, contractors or employees, to supply agreed amenities or other services to a reasonable standard.

3.8 The parks' trade associations mentioned that their model licence agreement allows refunds of pre-paid pitch fees on a sliding scale, based on the time of year the cancellation is made. We have added at paragraph 4.33 that we do not disagree in principle with such sliding scales, provided they represent a genuine pre-estimate of park owners' losses.

3.9 One respondent suggested that increases in caravan sale prices could create the potential for a misleading price indication under Part III of the Consumer Protection Act 1987, and queried whether we should mention that. As stated in new paragraph 1.5, the guidance does not extend to other consumer protection legislation and is not intended to provide a complete guide to compliance with all aspects of the law.

Does the draft guidance need to be amplified, or clarified, and if so, in what respect?

3.10 Three respondents requested that the guidance deal with contracts for the purchase of caravans separately from pitch licence agreements. A separate section on sales of caravans would have created duplication and increased the length of the guidance. We have amended the text to clarify when we are referring specifically to contracts for the sale of caravans and when we are referring to pitch licences, but many points will apply to both types of agreement. We have added an explanation of this at paragraph 1.15. The index has been expanded to make it easier to find paragraphs on caravan sale contracts.

- 3.11 **Three respondents wanted us to emphasise the unsatisfactory nature of annual licences, and said we should not give the impression that annual licences are a preferable option.** Some park owners use annual licences. Paragraph 3.7 of the guidance acknowledges that such licences give very little security to caravan owners, but that the length of the licence period is likely to be construed as a core term. There is a warning in paragraph 1.18 of the guidance and in the consumer leaflet that consumers should, before entering into the agreement, carefully check for how long the park owner is proposing to let them keep their caravan on the park and, if an annual licence is offered, make sure that they are satisfied that this will meet their needs.
- 3.12 **Three respondents were concerned at the emphasis the draft placed on oral contracts, in case park operators took these to be the preferable option.** The guidance already stated that we considered it important for the terms of a contract to be in writing, to avoid confusion or misunderstanding. We have revised paragraph 3.6 to warn consumers to think carefully about entering into oral agreements.
- 3.13 **One respondent asked for more sample terms throughout the guidance, and two asked for sample terms on the competency of contractors in respect of health and safety.** The example terms in the guidance are taken from standard contracts where we secured changes or the terms were withdrawn from use. Some wording in the examples has been edited or amended in the interests of clarity. We did not have further suitable terms to use as examples.
- 3.14 **The issue of core terms was raised by many of the respondents. There were requests for us to clarify the difference between core terms and standard terms, and provide clearer definitions of what constitutes a standard term and what a core term. Not all respondents understood that a standard term could constitute a core term and that these categories were not mutually exclusive. Two asked for a list of common core terms in holiday caravan contracts. One wanted us to say that where the length of a pitch licence is individually negotiated it is a core term. Many of the queries from caravan owners related to problems with core terms.** It was clear that we needed to say more about core terms. Chapter 2 has been expanded to provide a more detailed definition of a core term, and gives some examples. Paragraphs 5.55 to 5.56 have been amended to give a fuller explanation of the circumstances in which

a core term may be open to objection. Mentions of core terms have been inserted elsewhere in the text, for instance at paragraphs 3.15 and 4.73 on variations in pitch fees, to aid readers' understanding.

- 3.15 Variation of terms was a source of concern for the majority of respondents. Park owners and their representatives argued that they need the flexibility to amend pitch licences and park rules over time. New licences are being entered into constantly as caravan owners move on and off sites, and park owners do not wish to have caravan owners on one site at the same time subject to different agreements. They argue that a variety of factors may necessitate changes in licences and park rules. Caravan owners were unhappy that some parks unilaterally change terms and alter or withdraw services so that they do not receive the service they originally contracted for, and deplored some of the tactics employed to introduce these changes.** The draft already noted our likely objection to terms allowing park owners unilaterally to alter significant characteristics of the service to be provided, and stated that consumers should receive what they had agreed to purchase. However, we have revised and extended the relevant paragraphs to improve clarity. We have inserted a new paragraph 4.27, and expanded paragraph 4.56, to explain that a term that permits a park owner to amend the terms in the agreement to reflect changes in legislation, or in the provisions of the local authority site licence or liquor licence, is unlikely to be objectionable. These paragraphs also now state that we are unlikely to challenge a term that provides that ancillary services may only be altered or withdrawn for valid and specific reasons and that the park owner will provide for suitable alternative services, unless it is unreasonable to do so. New paragraph 4.64 reiterates our position on changes to ancillary services and facilities. We have revised paragraph 4.57 to say that we are unlikely to object to terms that permit changes to park rules where these changes are necessary for the safe and efficient running of the park and do not alter the agreement substantially.
- 3.16 Park owners say they may wish to change and develop facilities, for instance in response to customer demand, and substitute different amenities if necessary. One respondent wanted park owners to be able to add, remove or substitute different amenities when developing their parks and limit their liability while this was taking place. Another wanted**

to be able to close the park to enable overall improvement for the benefit of caravan owners. As mentioned above, we are likely to object to terms that allow park owners to supply something different from what was agreed or alter important characteristics of the service, and this has been made clear in the revised text. Exclusion of liability for failure to comply with obligations or supply agreed services is dealt with at paragraphs 4.4 and 4.13. Problems with changes to terms may occur when parks change hands, and where caravan owners believe there may have been breaches of the original contract they may need to take legal advice – we have added a paragraph to this effect at 4.58.

- 3.17 Caravan owners were concerned that they were financing park owners' investment in their sites. They reported that some park owners increase fees to pay for park improvements, and then the following year the fees are increased further so the cost of previous improvements is paid again.** The costs that it may be reasonable for park owners to pass on to caravan owners will depend on the circumstances. Our views are set out in revised paragraphs 4.72 to 4.77. We have added a comment about double-recovery of costs through pitch fees at paragraph 4.74.
- 3.18 The lack of transparency in fees and charges generally was a key issue for a number of respondents.** Core terms are the main aspects of the bargain, but should be transparent before the consumer enters into the agreement. We have stressed the need for transparency in pitch fees and other charges at paragraphs 3.17, 4.72 to 4.75, and 5.3. At paragraph 3.17 we have added examples of the types of charge that may be made, to alert consumers to their potential financial obligations.
- 3.19 Consumers expressed concern about procedures for disputing fee reviews, and wanted the OFT to clarify the position. One reported that the trade associations' model agreement would not allow collective bargaining by caravan owners, only individual responses. Another was unhappy that a park owner refused to recognise a caravan owners' association. Several respondents pointed out that it was difficult to get a sufficient number of dissenting caravan owners to write in individually to protest at fee reviews or rule changes given their transient and dispersed nature, especially if the relevant notices are only posted at the end of the season when owners are not on site. One trade association queried whether the courts have jurisdiction to determine disputes over pitch fee reviews.** We cannot introduce or prescribe precise procedures for fee

reviews. Paragraph 4.75 has been revised to clarify our position on fee variations. We see pitch fee reviews as a two-way process and consider that a caravan owner should not be prevented from exercising his or her right to take court action.

3.20 Respondents also requested clarification of the following:

- **the meaning of terminology such as 'reasonable'.** Paragraph 1.16 has been added to explain that what is 'reasonable' can only be decided by a court in the light of the particular circumstances of a case.
- **how park rules can be incorporated into pitch licence agreements.** We now mention incorporation at paragraph 4.50.
- **what park rules relate to.** Paragraph 3.1 stated that park rules are for the use of the park. A sentence has been added to paragraph 4.50 explaining that park rules cover local arrangements for the site, for example speed limits.
- **the position on full payment in advance of a consumer taking occupation of a caravan.** Paragraph 4.22 on payment in advance has been amended.
- **the circumstances that would allow a caravan not to be returned to the original pitch.** We have revised paragraphs 4.65 to 4.66 to recognise that a caravan may need to be moved in certain circumstances, but explain that in our view the caravan should be returned to the original pitch or an alternative pitch of similar quality.
- **the regulations, if any, governing provision of utility supplies.** We have clarified at paragraph 5.10 that there are no maximum resale prices for LPG supplied in cylinders and bulk tanks, although contract terms controlling the supply of LPG to caravan owners will come under particular scrutiny. We have added at paragraph 5.11 that park owners reselling mains gas and electricity need to comply with the guidelines set by Ofgem and Ofreg.

- **park owners' discretion to refuse any person the right to enter the park.** The paragraph on this, now 5.42, has been amended to indicate that a term that gives a park owner the power to refuse to allow a person to enter the park for specific and valid reasons may not be considered unfair.

3.21 A number of respondents commented on the issues of age of caravans and forced upgrading. One park owner wanted to retain age limits and pointed out that keeping caravans in good condition is a condition of the site licence. Another considered that age was more clear-cut as a criterion for retention than the condition of a caravan. Park owners and their trade associations requested guidance on age as a core term of the contract. One trade association said that there should be a method of assessing the condition of a caravan if necessary, and a government department said park owners should not have the final say in evaluating the condition of a caravan. Caravan owners do not like age limits, particularly where caravans have been maintained to a good standard. Ensuring that caravans are kept in good condition may be a requirement placed on the park owner by the local authority site licence. Revisions have been made to paragraphs 3.10 to 3.12, which deal with age limits. We doubt that terms limiting the age of the caravan will amount to core terms, though they may do so in certain cases. The revised paragraphs state that, although age can be a useful indicator of condition, we consider that a term allowing the licence to be terminated by the park owner should focus on the condition of the caravan. The fairness of such a term may be improved if it provides that a dispute about the condition of a caravan can be referred to an independent arbitrator.

3.22 In addition respondents asked us to:

- **take into account increases in the cost of providing services, insurance, utilities and so on when discussing increases in pitch fees, and provide examples of costs that may legitimately increase pitch fees. One trade association wanted operating costs included. One caravan owner was concerned that the guidance gave park owners too much scope to pass costs on to consumers through pitch fees.** We have revised paragraphs 4.72 to 4.75 to provide greater clarity on ensuring that terms allowing park owners to vary pitch fees are fair. The examples of terms to which we are likely to object in paragraph 4.77 have been amended to limit the range of

costs that it would be reasonable to pass on to caravan owners through pitch fees, and now include operating costs.

- **take into account park owners' responsibilities under health & safety and other legislation.** Several paragraphs have been amended to take park owners' responsibilities into account.
- **recognise that parks with piped LPG cannot offer consumers the choice of using bottled LPG.** This is now mentioned at paragraph 5.10.
- **provide examples of acceptable terms dealing with park owners' responsibilities under health & safety legislation.** The example terms were based on real terms from contracts we have considered, though some of the wording has been edited or amended in the interests of clarity. We did not have further suitable terms to use as examples.
- **make compulsory the provision of documentation prior to caravan owners entering into licence agreements, and insist that each owner receives his or her personal notice of any changes to park rules.** The guidance stresses the need for transparency so that consumers can make informed choices. We have added at paragraph 4.50 that it is a requirement of contractual fairness that consumers should have the opportunity to read and understand terms before becoming bound by them.
- **say that a term that lists the documents that have been provided, and asks the caravan owner to sign to confirm receipt, would not be unfair.** We disagree. Such declarations may not reflect the true position, and could create the potential for consumer detriment. Paragraph 5.35 refers.

Are there any parts of the draft guidance that are not needed?

3.23 Those who responded to this question found all parts of the guidance relevant.

Do you disagree with any points in the draft guidance and, if so, in what respect, and why?

- 3.24 There were several areas of disagreement with the OFT's interpretation, and these are described below.

Assignment of a caravan with its pitch licence

- 3.25 **Several respondents took the view that the guidance blurred the distinction between a licence and a lease and could cause confusion. They considered that licences are personal and non-assignable, that our references to assignment of pitch licences made them appear to be leases, and that the guidance appeared to give more rights to caravan owners than they otherwise have under the law. Park owners' representatives also argued that short-term licences, or licences nearing the end of the licence period, should not be assignable, provided the terms were clear.** While we do not agree entirely with the position taken by some of the respondents, for instance on licences nearing the end of the licence period, we have revised paragraphs 5.30 and 5.31 to reflect more clearly our understanding of the law. Paragraph 5.30 now informs the reader that assignment of caravans is not a straightforward issue and that licences may not be assignable.

Tying in – caravan purchases and sales

- 3.26 **Caravan owners reported a lack of choice, as they often had to purchase caravans from an on-site sales team or specific agents, and manufacturers would not deal direct with consumers for sales or after-sales services. Park owners receive commission on sales of new caravans, and prices could be inflated. Caravan owners and their representatives were not happy with the restrictions on selling second-hand caravans, for instance park owners having first refusal. Park owners can charge a lower pitch fee where a caravan is bought from them, which is a hindrance to private sales, as the purchaser will want to deal with the park owner, and the discount is not passed on to future purchasers of those caravans. Caravan owners can be forced to sell at low prices, and the park takes a commission on top of that. One association wanted us to look at this area and suggest guidance. One park owner was concerned that the investment made in sites should not be ignored, and that park owners should be able to have some control**

over what is put on their land and be able to profit from it. Another wanted to approve private sales in order to maintain site and licence conditions and ensure new owners are given the park rules. Our views on monopoly provision of goods and services are outlined at paragraph 5.4 and new paragraph 5.8. Elsewhere we have recognised that park owners have an interest in maintaining the appearance, amenity and safety of the site, and we cannot prevent park owners offering incentives to consumers who purchase caravans from them. But we take the view that private sales of caravans already on the site should not be completely prohibited. We accept that park owners have a legitimate interest in approving prospective purchasers, but such approval should not to be withheld unreasonably. Paragraphs 5.30 to 5.34 have been amended accordingly.

Tying in - insurance

- 3.27 **Several respondents opposed terms requiring caravan owners to use park owners' block or nominated insurance, because it could be too expensive or unsuitable or both. Many park owners charge a fee for checking the policy if a caravan owner buys a policy independently, and some respondents disagreed with our view that this practice would be acceptable if the fee was reasonable. One thought presentation of a valid certificate of insurance was sufficient. Two were concerned that park owners might not ensure that cover was appropriate. A few mentioned that parks do not always make it clear that insurance can be bought elsewhere.** Our amendments do not go as far as some respondents wished. We have amended paragraph 5.12 to say that block insurance may not always meet a consumer's needs. Our view is that, although it is reasonable for park owners to require that caravans should be insured, consumers should be given the option of obtaining appropriate insurance cover themselves, unless there is a good reason to require them to use the park owner's block insurance policy. However, we maintain that a reasonable fee may be charged for checking a consumer's insurance policy.

Typing in – goods and services

- 3.28 **Caravan owners objected to having to use approved contractors, at controlled or elevated prices that may include commission to park owners, or having to seek advance permission from park owners. It was not always made clear to them that alternative sources or contractors can be used. Park owners asserted that they need to exercise a level of control in order to maintain standards, preserve the appearance of the park, and control who comes on to the site for health & safety reasons; they considered it reasonable to require the use of approved contractors.** We accept that there may be legitimate reasons for restricting individual consumer choice in the interests of the safety and amenity of the park, and have amended paragraph 5.9 accordingly. However, we still consider that park owners should not seek to be the sole suppliers of accessories or restrict the choice of suppliers unreasonably. Paragraph 5.9 has also been amended to reflect that park owners may impose restrictions where required to do so by outside factors such as the site licence or legislation.

Termination for breaches

- 3.29 **The original draft stated that park owners may only terminate licences if the caravan owner commits a serious breach that cannot be remedied within a reasonable time. Several respondents asked for examples of, or guidance on, such breaches, and several took issue with our views. One had encountered problems with enforcing terms worded similarly to those we had described as acceptable. Another reported that park owners need to be able to terminate licences for non-payment of fees and for less serious, but repeated, breaches. Park owners and their representatives were concerned that the guidance concentrated on protecting consumers and did not do enough to protect park owners from caravan owners who do not respect the park rules, cause damage, threaten staff, put park owners in breach of their obligations, or interfere with other caravan owners' rights and enjoyment of the park. A consumer representative on the other hand thought the guidance did not go far enough in ensuring that park owners are bound to behavioural standards similar to those applying to caravan owners. The guidance already stressed the need for consumers and park owners to have rights of equal extent and value to end or withdraw from an agreement. Paragraph 4.44 has been amended to give examples of types of conduct**

by caravan owners that may put them in serious breach of their agreements, including violence, intentional damage to property or a persistent refusal to remedy a lesser breach after due warning. We have amended the text on breaches – paragraph 4.50 of the original has been removed, and paragraphs 5.20 and 5.23 have been amended to reflect our revised thinking.

- 3.30 **Some park owners challenged our views on the remedies available to them, for instance detention and sale of caravans and goods, where caravan owners are in breach of agreements and owe money. Caravan owners thought there was not enough in the guidance about terms giving park owners rights to the property of caravan owners, for example through seizure.** The legal position is complex and goes beyond the scope of the guidance as other legislation is involved. Paragraphs 5.22 to 5.23 have been amended, and paragraph 5.24 expanded, to set out our general opinion more clearly.

Alteration of pitches and caravans by oral agreement

- 3.31 **Park owners and their representatives disagreed with our objection to terms that provide that no alteration or addition to the pitch or caravan can be made without written permission from the park owner. They say that allowing variations to be agreed orally could create problems on large parks, caravan owners may not comply with the requirements of legislation, and there is a risk of one person's wishes adversely affecting standards and other owners. Park owners have an interest in preserving the appearance and amenity of the park and need to ensure that legislative and other requirements placed on them are adhered to. They argue that written permission should be the norm, so long as that permission is not withheld unreasonably. Consumers on the other hand do not like being required to seek permission from park owners for changes to their caravans or pitches, and see this as an infringement of their rights.** Paragraphs 4.86 and 4.87 deal primarily with oral promises as inducements to consumers to enter into agreements. We have added a sentence at 4.87 to explain that we are unlikely to object to a cautionary statement saying that the law favours written terms and that, if a variation to a contract is agreed orally, the consumer should ask for it to be put in writing to avoid misunderstandings. Paragraph 5.47 deals

with terms that impose restrictions unless the park owner consents otherwise. This term sets out our view that we would expect oral consent, confirmed if necessary in writing, to be sufficient in many circumstances and would object to terms requiring that all consent be obtained in writing.

Other disagreements

- 3.32 **One park owner took issue with the sentence in paragraph 2.4 (now 2.7) saying: 'It [a term] may be considered unfair if it could have an unfair effect, even if it is not being used unfairly in practice or does not have an unfair object', and took this to mean that terms used by one park could be rendered unenforceable because those terms could be unfair if used on other parks run to different standards.** While some terms may be unfair in any contract, the fairness of a contract term will be assessed taking into account all the relevant circumstances at the time the contract was made, and all the other terms of the contract, so we have not altered the text. As paragraph 2.10 of the guidance explains, a term that is considered to be fair in one agreement is not necessarily fair in another.
- 3.33 **One park owner disagreed with our view that it was unfair to charge a fee, in addition to interest, for persistent late payment by caravan owners, pointing out that credit card companies and banks have adopted this practice.** We regard as unfair a term in the contract of any supplier that requires a consumer to pay a disproportionately high sum in compensation. Paragraph 4.40 refers.
- 3.34 **One parks' industry trade association argued that to require compensation to be paid where a facility is uneconomic through lack of consumer use would be unfair to the park owner.** The example unfair term cited originally at paragraph 4.29 has been removed, but the text in the paragraph has not been altered.

Specific questions on the guidance (Part II):

Is the draft guidance consistent with any recent court decisions, reported or unreported, in this sector? If not, we would be grateful for details.

- 3.35 No details of court cases were provided. Consumers reported that some park owners employ delaying tactics to discourage caravan owners from taking action, and that some cases are settled 'at the door of the court'. The Department of Enterprise, Trade and Investment in Northern Ireland reported that they had helped consumers pursue complaints through the courts using the small claims procedure.

Is the draft consistent with legislation in the devolved administrations?

- 3.36 **The draft guidance stated that compulsory arbitration clauses are automatically unfair if they relate to claims of £5000 or less. The accompanying footnote linked the upper limit under the Act to the small claims upper limit. One respondent pointed out that although the Arbitration Act 1996 extends to Northern Ireland the upper limit for small claims in that jurisdiction is £2000.** Section 91 of the Arbitration Act does not set the limit for small claims actions - it provides that a compulsory arbitration clause is unfair in so far as it relates to a claim for a pecuniary remedy that does not exceed the amount specified by order. The relevant limit in Northern Ireland is £3000, as set by the Unfair Arbitration Agreements (Specified Amount) Order (Northern Ireland) 1996. Paragraph 4.93 has been amended to clarify that the limit, below which a compulsory arbitration clause is automatically unfair, is £5000 in England, Scotland and Wales and £2000 in Northern Ireland, and the accompanying footnote has also been amended. Cases with a financial value of less than £5000 in England, Scotland and Wales, or £2000 in Northern Ireland, are generally allocated to the small claims track.

ANNEXE

LIST OF RESPONDENTS

M Bowler

British Holiday & Home Parks Association (BH&HPA)

Caravan Storage Site Owners' Association (CaSSOA)

Citizens Advice (Northern Ireland)

Department of Culture, Media and Sport

Department of Enterprise, Trade and Investment (Northern Ireland)

A Dickinson

C & L Gale

General Consumer Council (Northern Ireland)

R Harvey

T Holland-Bunch

Kiln Park Owners Association

A J McSweeney

National Association of Caravan Owners (NACO Services Limited)

National Caravan Council (NCC)

National Holiday Caravan Owners Association

Office of the Deputy Prime Minister

G O'Neill

Park Home Legal Services Ltd

Pembrokeshire Trading Standards

Pinewoods Holiday Park

Pinsent Masons (on behalf of Park Resorts and Great British Holiday Parks)

Redcar & Cleveland Trading Standards

Rockley Park Owners' Association

Scottish Legal Services Ombudsman

Society of Chief Officers of Trading Standards in Scotland

South Lakeland Caravans Limited

G Stevenson

E Thomson

Trading Standards Institute

T J Warner

Waterside Holiday Park Resort

plus 4 responses where names have been withheld because of confidentiality restrictions