

**UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999¹ (UTCCRs)
ENTERPRISE ACT 2002 (EA02)**

A Concordat between the Office of Fair Trading (OFT), and the Financial Services Authority (FSA)

The purpose of this statement is to record our agreement to co-ordinate enforcement action and to co-operate in all ways permitted by law to ensure the effective and consistent delivery of consumer protection in relation to unfair contract terms in consumer contracts under the UTCCRs and the EA02. Working arrangements are summarised in Annex A, but may be developed further by agreement between the OFT and the FSA within the terms of this concordat.

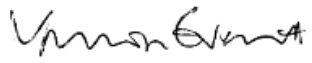
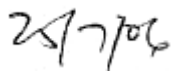
We agree to co-operate, by sharing information, and in all other ways, as permitted by law, with each other and with other UK qualifying bodies responsible for the enforcement of the UTCCRs and EA02. We will have regard to any guidance on unfair contract terms which has been discussed with each other and published.²

We will ensure that:


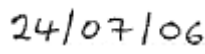
- any action we take is necessary and proportionate where there is evidence of a potential breach of the UTCCRs and of potential consumer harm stemming from the breach; and
- business, in normal circumstances, is given a reasonable opportunity to stop relying on unfair terms, removing or revising them as appropriate, before formal action is taken.

The OFT and the FSA will work together to ensure that a consistent and co-ordinated approach is taken under the UTCCRs and the EA02 in relation to unfair contract terms in consumer contracts and to agree which of them is best placed to lead in each case. This will be the body best placed to deliver swift and effective protection of consumers having regard to its expertise, knowledge, and priorities among other matters.

The concordat has effect from 31 July 2006 and replaces the 2001 concordat between the OFT and FSA³.

Signed by..... Date... 

Vernon Everitt, Director of Retail Themes Division, Financial Services Authority

Signed by..... Date... 

Christine Wade, Director of Consumer Regulation Enforcement, Office of Fair Trading

¹ SI 1999/2083

² Such as OFT 311, the FSA's May 2005 Statement of Good Practice on 'Fairness of terms in consumer contracts' and other sectoral guidance published from time to time

³ OFT, Unfair Contract Terms Bulletin 16, June 2001, Annex B

Annex A

Principles of working arrangements under UTCCRs/EA02 in relation to unfair contract terms to be followed by OFT and FSA

Subject to any legal obligations and/or restrictions on disclosure and having regard to any overriding policy aims, we will follow the principles set out below in our working arrangements.

FSA will, in addition to its statutory obligations to the OFT under the UTCCRs and EA02:

- consult and liaise with the OFT to reduce duplication of effort and promote appropriate action by the body best placed to lead with an issue;
- have regard to the Home Authority Principle⁴;
- consider the use of all appropriate methods of resolution, whether statutory or not, before taking formal enforcement action under the UTCCRs or the EA02;
- provide copies of material for publication on the Consumer Regulation Website (CRW) or OFT website if such publication is considered lawful and appropriate by the FSA and OFT;
- use its powers under the EA02 if it considers it necessary and appropriate and notify and consult with the OFT in accordance with the EA02;
- consult the OFT of any new guidance issued on unfair contract terms; or change in policy on unfair contract terms that would be relevant to the OFT's role under this Concordat.

OFT will, in addition to its statutory obligations under the UTCCRs and EA02:

- consult and liaise with the FSA to reduce duplication of effort and promote appropriate action by the body best placed to lead with an issue;
- have regard to the Home Authority Principle⁵;
- provide training as required on the use of the legislation and the notification process; and
- disseminate case and other material of wider interest, including:
 - preparing, consulting on and publishing guidance from time to time on the application of the UTCCRs and the EA02, both generally and to particular sectors;
 - publish details of successful enforcement action on the Consumer Regulation Website (CRW);
 - publishing reports of completed cases in bulletins and the public side of CRW; and
 - consult the FSA of any new guidance issued on unfair contract terms; or change in policy on unfair contract terms that could be relevant to the FSA's role under this Concordat.

The division of responsibilities between OFT and FSA

The FSA has agreed with the OFT that the FSA will consider the fairness within the meaning of the UTCCRs of standard terms in financial services contracts issued by authorised firms or

⁴ A description can be found at the Local Authorities Coordinators of Regulatory Services website: www.lacors.com/pages/trade/HAPrinciple.asp

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appointed representatives for carrying on any regulated activity (as specified in Part II of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and subsequent amending legislation).

This will include contracts for:

- mortgages and the selling of mortgages;
- insurance and the selling of insurance;
- bank, building society and credit union savings accounts;
- life assurance;
- pensions;
- investments; and
- long term savings.

For all complaints referred to either the FSA or OFT they will consider whether they, or the other, is best placed to consider the matter. In doing so consideration will be given to matters such as which body is responsible for most of the contract, or the particular focus of the term complained about, and whether either body is already considering the same or similar issues.

If the FSA considers the OFT is better placed to deal with the matter, it will pass the case to the OFT for it to decide whether, in its view, action by the OFT is required and, if so, what action is appropriate, or vice versa.

The OFT will consider the fairness within the meaning of the UTCCRs of standard terms in financial services contracts where activities are governed by the Consumer Credit Act 1974, including second charge mortgage loans, buy to let mortgages, and non-mortgage personal loans (including credit cards). Further, the OFT may consider fairness under the UTCCRs in respect of financial services contracts involving the carrying on of activities within the FSA's remit where the firm concerned is **not** an authorised firm or an appointed representative.