

Unfair Contract Terms

A bulletin issued by the Office of Fair Trading

Issue No 3 March 1997

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Further copies of this Bulletin, and copies of issues Nos 1 and 2, the explanatory Office of Fair Trading 'Briefing Note' *Unfair Standard Terms* and other OFT publications, are available, free of charge, from:

**Office of Fair Trading
PO Box 172
East Molesey KT8 0XW**

Copies of the *Unfair Terms in Consumer Contracts Regulations* (SI 1994/3159), which include the 'Schedules' referred to in Parts 2, 3, and 4 of this Bulletin, can be purchased, price £1.55, from Stationery Office bookshops, or (by post):

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1 INTRODUCTION

This is issue No 3 of the Bulletin produced by the Unfair Contract Terms Unit of the Office of Fair Trading (OFT). In the period since Bulletin No 2 was published, the Unit reached and passed its own first millennium. Part 3 of the present issue includes a statistical breakdown of the 1,197 cases handled up to 30 November 1996, with details of another 39 cases where suppliers have amended or dropped terms as a result of enforcement action taken by the OFT. This issue follows the same format adopted in issue No 2, whereby the case studies shown in Part 3 are, where appropriate, cross-referenced to Part 4 which gives a selection of example unfair terms that have been deleted, or revised to remove the potential for unfairness. Where a contract term has been revised, the replacement term is also shown.

Points of special interest in this Bulletin include action on a breach of undertakings given to the Director General of Fair Trading by DFS Furnishing Co plc, and the extended case report on Vodacall Ltd which illustrates the progress on mobile phone contracts. These have given rise to a larger number of complaints than any other type of contract. Another case report of interest is that on Country Holidays, which illustrates how the Director General's powers under the Control of Misleading Advertisements Regulations can complement those under the Unfair Terms in Consumer Contracts Regulations. Among the specimen terms, the GKR Karate term in Part 4 Group 1 (see pages 51-52) is an outstanding example of both unfairness and unintelligible jargon.

The statistics in Part 3 show that we continue to deal with a high volume of complaints about unfairness in consumer contracts and that, to date, we have managed to resolve complaints entirely without the need to resort to the court. At the same time, however, they demonstrate that lack of litigation should not be assumed to indicate lack of enforcement activity. Nevertheless, the statistics - particularly as regards the number of cases 'still under discussion' - also reveal that many complaints are taking a long time to resolve. In other words, while difficulties in the way of persuading firms to use fair terms are not insuperable, they are nonetheless real.

The task currently facing us is more one of education, rather than doing battle in the courts, and there is still a long way to go. This Bulletin aims to push the process forward by providing an insight into our thinking about what constitutes unfairness, and by giving practical examples of terms that traders and their legal advisers have themselves devised which we regard as likely to be considered fair.

In Part 2 we reproduce sectoral guidance prepared particularly for the home-improvement industry. This was originally drawn up for use with double-glazing companies, because of the large number of complaints about unfair terms in consumer contracts used in the double-glazing business, and the similarity of the concerns arising. The guidance was subsequently found capable of wider application and was adapted accordingly. It will help to explain our policy and

thinking on a wide range of terms, many of which are by no means restricted to the home-improvements sector.

The guidance is not yet in a final form, and we would warmly welcome comment and suggestions on how it might be further added to and improved. Once we are confident that it satisfactorily covers all the main forms of unfairness that commonly occur in home-improvement contracts, we intend to publish this guidance in the form of an advisory leaflet. We hope to be able to develop and publish comparable guidance for other sectors in due course.

Plain and intelligible language

We are glad to note that some suppliers and their advisers are becoming more comfortable with the use of plain and intelligible language, and more flexible in meeting the challenge of this requirement of the Regulations. Part 4 contains some good examples of the use of plain and intelligible language. The whole of the British Fuels (Oils) Ltd contract for domestic natural gas supply is reproduced (in Part 4 Group 17, see pages 83-87) as such an example because it is not only clear but contains much information that is useful to consumers. Other examples of plain and intelligible language are to be found in the new Gimson Stairlifts Ltd contract and in the revised Maples Stores plc contract.

Undertakings

Undertakings have been given to the Director General in a further three cases, in lieu of injunctive proceedings under Regulation 8. The full texts of these undertakings are given in Part 5.

Compulsory arbitration clauses now blacklisted

With the commencement of the Arbitration Act 1996 on 31 January 1997, the Arbitration Agreements Act 1988 is repealed. Section 91 of the new Act states that a term which constitutes an arbitration agreement is automatically unfair for the purposes of the Regulations, if it relates to a claim for up to a certain amount, currently set at £3,000.

2 HOME-IMPROVEMENT CONTRACTS

Guidance on standard terms with potential for unfairness commonly found in double-glazing and other home-improvement contracts

Introduction

This guidance explains why the OFT considers certain types of terms commonly found in home-improvement contracts to be potentially unfair. It also offers some positive suggestions as to how fairness might be achieved. This guidance applies particularly to contracts for installation of products such as double glazing, bathrooms and kitchens.

The guidance is organised under headings which correspond to the illustrative list of ‘terms that may be regarded as unfair’ in Schedule 3 to the Regulations. The significance of that list is explained, and each item in it is briefly considered, in the OFT Briefing Note dated July 1995. Further illustration of both fair and unfair terms, arranged under the same headings, is given in the second and subsequent issues of the OFT Bulletin *Unfair Contract Terms*.¹

Please note the following general points:

- i) The test of unfairness takes note of how a term *could* be used. If a term is so widely drafted that it could be used in such a way as to cause consumer detriment, then it is open to challenge. The OFT cannot regard such a term as fair solely on the basis of protestations that it is not in practice used unfairly. Such claims usually show that the term in question could be drafted more narrowly, so as to reflect the intentions of the supplier and achieve fairness at the same time.
- ii) In assessing fairness, the Director General also has to consider what a consumer is likely to understand by the wording of a clause. Even if a clause would be clear to a lawyer, the OFT is likely to conclude that it has potential for unfairness if it is likely to mislead consumers, or be unintelligible to them. Consumers entering home-improvement contracts do not normally seek legal advice, so contracts should use language that is plain and intelligible to ordinary people. See section 12 (page 19), on the general requirement to use plain language.

1 For details of how to obtain copies of the publications mentioned in this paragraph, see page 3.

1 No liability for death or injury

1.1 **Paragraph 1(a) of Schedule 3** identifies as potentially unfair terms which exclude or limit the legal liability of a seller or supplier in the event of the death of the consumer or personal injury to the latter resulting from the act or omission of that seller or supplier. Guidance on paragraph 1(a) of Schedule 3 is given on page 4 of the OFT Briefing Note.

1.2 We have seen a small number of contracts in which companies explicitly exclude liability for death or personal injury, even if caused by their negligence. Such terms are always void under the Unfair Contract Terms Act 1977, and are likely to be found to be unfair in the light of paragraph 1(a) of Schedule 3 to the Regulations. It would be difficult to conceive of circumstances in which they would not be unfair.

2 No liability for breaches of contract

2.1 **Paragraph 1(b) of Schedule 3** identifies as potentially unfair terms which inappropriately exclude or limit the legal rights of the consumer against the supplier in the event of total or partial non-performance or inadequate performance of any of the contractual obligations, including the option of off-setting a debt owed to the supplier against any claim which the consumer may have against him. Guidance on paragraph 1(b) of Schedule 3 is given on pages 4-5 of the OFT Briefing Note.

2.2 We have found various different types of term which have potential for unfairness in the light of paragraph 1(b) of Schedule 3, and these are discussed in the following subsections.

2(a) No liability for unsatisfactory work or products

2.3 Terms excluding all liability for damage caused by the company in the proximity of the installation work are, in our view, likely to be unfair. We consider that such an exclusion clause is not compatible with fairness when it is not qualified in any way, and so covers damage that could have been avoided by reasonable care. One way to improve the fairness of such clauses is to narrow any exclusion of liability to refer only to the inevitable effects of installation on decor.

2.4 In our view, terms excluding all liability for *consequential* loss also have potential for unfairness. ‘Consequential’ is a technical term which is liable to mislead consumers into thinking that they have no claim for any loss consequent on a breach of contract by the supplier. In law, they do have a claim for precisely such loss provided it was foreseeable. The technical legal meaning of ‘consequential’ in fact covers losses of a kind that are (usually) unforeseeable, but most consumers will not know that.

2.5 Even if the exclusion clause is understood, it is still open to objection. Clauses of this kind are normally worded so as to exclude liability for consequential losses in *all* circumstances - regardless, for instance, whether the trader was specifically asked to take reasonable steps to avoid causing them. In such a case as that, we think that a trader should not be exempt from liability - if he fails to take reasonable care, he should accept liability for all the consequences which he should have foreseen. We do not normally object to clauses which exclude liability for losses that were *actually* unforeseeable - that is to say where the trader was not warned - rather than merely *of a kind* that is *usually* unforeseeable.

2.6 Guarantees can be used as a way to cut down on the consumer's legal rights to redress. This can occur where they are expressed in such a way as to exclude all other warranties or implied terms. This can leave consumers without important legal protection, and in a way which is entirely unclear to them without legal advice. Also, in contracts for the sale of goods - that is 'supply-only' contracts - failure to say that a guarantee does not affect the consumer's statutory rights may actually give rise to a criminal offence under the Consumer Transactions (Restrictions on Statements) Order 1976.

2(b) *Restrictions on liability, etc*

2.7 Terms which provide that the supplier will impose a charge for dealing with defects in products he has supplied - for instance if they were not manufactured by him - are also likely to constitute unfair exclusion clauses. A businesses must, by law, supply goods which are not defective, whether or not it has itself manufactured them. If it breaches that duty, consumers have a right to be reimbursed any costs which they reasonably incur as a result. Clauses like these in effect restrict the consumer's rights to redress, by saying that they must be responsible for certain costs caused by a defect.

2.8 We consider that clauses restricting the consumer's rights to redress for supply of faulty goods will normally be unfair. Indeed, their use in supply-only contracts, for the sale of goods, is ineffective in law and may give rise to an offence under the 1976 Order mentioned in paragraph 2.6 above.

2.9 This does not affect the right of a business to make charges for dealing with problems which are the consumer's responsibility - if they are caused by misuse of a product, for instance.

2(c) *Unreasonable time limit on claims*

2.10 We have seen terms which exclude the supplier's liability for defective products and workmanship where the defects are not brought to the attention of the supplier within a stated short period after installation is completed. Such terms are exclusion clauses for the purposes of paragraph 1(b) of Schedule 3, and have (in our view) potential for unfairness. Such terms could also amount to formality requirements for the purposes of paragraph 1(n) of Schedule 3, discussed on page 16.

2.11 Such terms have potential for unfairness for two reasons. Some inherent defects may not come to light immediately after installation, and this kind of term would act to deprive the consumer of a remedy for such defects. Also, the sanction imposed by this kind of term is inappropriate and, in some circumstances, illegal.

2.12 We would not, however, necessarily regard as unfair any term that was designed to urge consumers to notify the supplier reasonably promptly if they should discover a problem. But, for such a term to be seen as fair, consumers would need to be discouraged from unreasonable delay by means other than depriving them of their statutory rights to redress. In supply-only contracts, consumers *cannot* be deprived of such rights, and clauses which seek to do so give rise to an offence. This does not apply to *additional*, non-statutory rights, conferred under the supplier's own guarantee.

2(d) *Restriction of right to set-off*

2.13 Contracts used by double-glazing and other home-improvement companies sometimes contain terms which provide that the consumer cannot withhold payment of any sum due under the contract in respect of any defects. This excludes the right of 'set-off' which the law usually allows. Such terms correspond to the second part of paragraph 1(b) of Schedule 3 and in our view in general have potential for unfairness. If the right of set-off is excluded, the consumer is forced to pay in full for even the most defective work, and then to go to court for compensation with all the costs, delays and uncertainties that involves.

2.14 A clause which requires payment of the full contractual price on delivery of the goods, where installation of the goods is also part of the contract, is unfair in our view because it has the object or effect of denying the consumer any right of set-off as regards the installation work. If that is badly done and gives rise to a claim in damages, there is no longer any debt to the supplier against which that claim can be set. There is also no incentive for the supplier to do the work properly. We consider that such a term would have less potential for unfairness if it provided for part payment on delivery to cover the cost of materials supplied.

2.15 We do not rule out the possibility that a clause could be fair if it was drafted merely to deter customers from withholding a disproportionately large amount (in relation to the significance of the alleged fault). Other ways to achieve a greater degree of fairness may also be found.

2.16 We have also seen clauses which indiscriminately penalise the consumer for any failure to pay in full on time, and thus effectively prevent even legitimate exercise of the right of set-off. One type of such clause provides that a guarantee will not be operative if payments are not made promptly. It may be fair for the supplier to suspend any rights additional to those granted by statute until due payment has been made. But in our view two things need to be made clear:

- i) that restrictions on the guarantee do not affect the consumer's *statutory* rights, including the right to seek a remedy for defective workmanship (in supply-only contracts, use of a guarantee which does not make this clear may give rise to an offence - see page 9, paragraph 2.6);
- ii) that the benefit of a guarantee is not lost once and for all if payment is not made precisely on a due date - otherwise the clause is likely to constitute an unfair penalty as well as a restriction on the right of set-off.

2(e) Exclusion of liability for delay

2.17 Contracts also often contain terms which exclude liability for delay. We normally challenge such clauses when they exclude liability for delay *however caused*. This sort of exclusion is calculated to allow businesses completely to ignore the convenience of their customers and even verbal promises made as to deadlines.

2.18 We normally have no objection to such clauses where they are restricted in scope to delays caused by factors beyond the company's control. However, where such factors are listed by way of illustration, then, in order to be clearly fair, the list should *not* include situations such as 'shortage of materials' which can be the fault of the supplier, or list vague generalities which could similarly cover situations in which the supplier is at fault.

3 Retention of pre-payments

3.1 **Paragraph 1(d) of Schedule 3** identifies as potentially unfair terms which permit the supplier to retain sums paid by the consumer where the supplier decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the supplier if the supplier cancels the contract.

3.2 This reflects the principle that deposits and other advance payments should normally be repayable in full where the business cancels the contract, particularly where other terms require the consumer to compensate the business fully if the consumer cancels the contract. In addition, paragraph 1(d) of Schedule 3 casts doubt on the fairness of terms which provide for retention of just a percentage of the deposit, where the consumer has no redress if the company cancels, and particularly where such a sum is retained regardless of whether the company has yet laid out any sums on design work and/or materials for performance of the contract. Guidance on paragraph 1(d) of Schedule 3 is given on page 5 of the OFT Briefing Note.

4 Penalty clauses

4.1 **Paragraph 1(e) of Schedule 3** identifies as potentially unfair terms which require any consumer who has failed to fulfil his obligations to pay a disproportionately high sum in

compensation. Guidance on paragraph 1(e) of Schedule 3 is given on page 5 of the OFT Briefing Note.

4.2 Penalties can be void under English common law - when one party to the contract has to pay more compensation for a breach of the contract than the loss reasonably incurred by the other. In our view such clauses, where they affect consumers, are also potentially unfair under the Regulations.

4.3 Two examples of potentially unfair penalty clauses may be given.

- i) 'Accelerated payment' clauses, which require that the consumer pay up-front the whole price of the contract before anything is supplied - as a penalty, for instance, for failure quickly to agree an installation date. Full payment before installation gives rise to objections dealt with above in paragraph 2.14 (see page 10). Our view is that payment of a lesser sum, or some other contractual sanction, would be more appropriate to protect the business against delay or other breach of contract by a consumer.
- ii) Clauses which make the consumer pay more than the costs reasonably incurred by the supplier if he or she cancels the contract, or commits a serious breach of it which effectively brings it to an end - by, for instance unreasonably refusing to allow delivery to agree a date for installation. The law allows a business, where the contract ends through the fault of the customer, to keep as much of any deposit as is needed to cover its reasonable costs. There is unlikely to be any objection to terms which fairly reflect this general contractual position (see Bulletin No 2, page 53, for example). But clauses which purport to allow the supplier to keep the whole of any advance payment regardless of the circumstances will come under suspicion of unfairness.

4.4 The OFT normally objects to clauses which reflect the general contractual position concerning damages for breach of contract, but in a misleading way. Contracts sometimes give the impression that, if they are cancelled by the consumer, the company can recover all the profit it would have made. In law the supplier actually has a legal duty to 'mitigate his losses' - that is, keep them to a reasonable minimum, for instance by seeking replacement business. Normally, this will greatly reduce the consumer's liability where cancellation takes place before the supplier has incurred significant costs or otherwise prejudiced his position. But consumers cannot be expected to know this and so are likely to be misled. We have evidence of such clauses being used to intimidate consumers, in circumstances where they could in fact legitimately have cancelled without significant liability. Such terms are particularly objectionable where there is no balancing acknowledgment by the supplier of equally full liability in the event of cancellation on his part.

4.5 Terms which impose disproportionate sanctions for breaches of contract are also in our view, just as likely to be unfair as those described above *even though the sanctions are not of a strictly financial nature*. Examples of unfair sanctions imposed for failure to pay on time (for instance) are unrestricted right of entry to the consumer's home to remove fitted installations, or

the permanent loss of guarantee rights. These are considered below, as examples of general unfairness, under heading 11.

5 Unequal cancellation rights

5.1 Home-improvement contracts commonly allow the company to cancel the contract either at its discretion or after survey, and limit its liability to pay anything to the consumer when it does so. Consumers frequently have no comparable cancellation rights, or must compensate the company fully if they do cancel. This seems to us, in the light of paragraphs 1(b), 1(c), 1(d), and 1(f) of Schedule 3, to be unbalanced and potentially unfair. (Guidance on these paragraphs of Schedule 3 is given on pages 4-5 of the OFT Briefing Note.)

5.2 A right for the company to cancel at its discretion without liability of any kind is highly likely to be considered unfair for obvious reasons. A right to cancel qualified only by a duty to return prepayments, excluding any other right of redress is also unsatisfactory. Cancellation late in the day seriously inconveniences consumers who have made arrangements associated with installation, and often leaves them facing costs without having gained any benefit.

5.3 The right to cancel after survey, at the company's discretion, even upon repayment of the customer's deposit, is also of questionable fairness in our view. We have received complaints that companies use this as a cover for increasing prices when they have made an unrealistically low quote to secure the contract. There is no justification for a price increase where a survey does not actually reveal any adverse conditions that could not reasonably have been foreseen and taken into account in giving the initial quote. Consumers are unfairly inconvenienced by this sort of unfair sales tactic even if they suffer no financial loss.

5.4 We recognise, of course, the need for companies not to be required to proceed with installations despite a genuinely adverse survey report. Our approach is, therefore, to suggest that such clauses be modified rather than dropped altogether. We consider that their potential for unfairness may be reduced in one or both of two possible ways.

- i) The company's freedom to cancel is not unrestricted. For instance, the company might promise to carry out the survey within a short period, so as to minimise inconvenience to the consumer. Unfairness would also be reduced if the company committed itself to giving a valid reason for cancellation - an explanation of the adverse structural conditions encountered - preferably in writing.
- ii) The company's right to cancel is balanced by the consumer being given an *equally extensive right*. If the consumer is given a right to cancel without penalty for a period after signing the contract, this amounts to a 'cooling-off period'. See paragraph 13.2 (page 20) on the generally beneficial effect of a cooling-off period. But to avoid imbalance, obviously the consumer's right to cancel must last as long as the company's.

5.5 Where a surveyor is employed, it is in our view clearly not fair for the contract to make the customer responsible for assessing whether the property is suitable for the works to be undertaken. Thus a contract should not give the company a right to cancel without liability, on the grounds of structural unsuitability, that is drafted so that it could be relied upon even though a survey had earlier taken place and no structural problem was identified.

6 Right to change what is supplied

6.1 **Paragraph 1(k) of Schedule 3** identifies as potentially unfair terms which enable the supplier to alter unilaterally without a valid reason any characteristics of the product or service to be supplied. Guidance on paragraph 1(k) of Schedule 3 is given on page 6 of the OFT Briefing Note.

6.2 We have seen a number of terms which give the supplier an unqualified right to change products, often linked to a vague justification in terms of ‘product development’ or ‘a policy of continuous improvement of products’. Any term which has the effect of allowing a company to substitute what it wants to supply for what a customer has actually ordered is likely to be considered unfair.

6.3 Such variation clauses are especially likely to be unfair where they are associated with a right to increase prices (see paragraph 7(1) on page 15 and guidance in the OFT Briefing Note). The two types of clauses together can be a means of forcing consumers to buy and pay for higher specification products than they actually ordered.

6.4 Contract terms sometimes reserve a right to substitute products of equivalent or better quality or performance in place of those ordered. Such terms are open to the same objection. They are particularly inappropriate in relation to products such as glazing and bathroom fittings which are frequently chosen for reasons of appearance, not just for quality of make, or effectiveness.

6.5 We normally have no quarrel with terms permitting minor and technically unavoidable deviations from specifications. (Similarly, paragraph 1(b) of Schedule 3 may not cast doubt on exclusion of liability for minor and inherent defects in glass.) But significant changes of specification should not be permitted except by agreement with the customer.

7 Right to increase the price

7.1 **Paragraph 1(l) of Schedule 3** identifies as potentially unfair terms which provide for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the

contract was concluded. Guidance on paragraph 1(l) of Schedule 3 is given on page 6 of the OFT Briefing Note.

7.2 We have seen a number of terms in home-improvement contracts that allow price rises in effect at the discretion of the company without allowing the consumer the right to cancel. Such terms have obvious potential for unfairness in the light of paragraph 1(l) of Schedule 3. The consumer can be lured into contracting at a low price which is then increased.

7.3 A term is also unfair if it sets a time limit, after which prices may be raised, where it is within the power of the company to determine whether the contract is or is not completed within the time limit. This could result in the company rewarding itself for gratuitous delays.

7.4 A price variation clause may in principle be made fair by the company giving the consumer a right to cancel the contract where the price is raised but only provided the consumer suffers no penalty by exercising that right. In other words he or she must be given back not only any payments made, but also compensation for any foreseeable loss suffered as a result of having entered the contract in the first place (except for loss which is his or her own fault). Otherwise the right to cancel is of no real value, and the right to increase the price could be used as a means to escape from liability for such things as defective work, or damage done to the consumer's property.

7.5 An example of an amended price variation clause which we did not consider unfair is given on page 58 of Bulletin No 2.

8 Right of final decision in contractual disputes

8.1 **Paragraph 1(m) of Schedule 3** identifies as potentially unfair terms which give the seller or supplier the right to determine whether goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract. Guidance on paragraph 1(m) of Schedule 3 is given on page 7 of the OFT Briefing Note.

8.2 We have seen a number of terms in home-improvement contracts which reserve to the company the right to determine whether goods supplied, or work carried out, is defective, for instance by saying that the existence of a defect must be proved to the company's satisfaction. The effect of this is potentially to allow the company to deny redress at its discretion. The consumer has no choice other than to accept the company's decision, and may be left with sub-standard goods or installation.

9 'Entire agreement clauses' and formality requirements

9.1 **Paragraph 1(n) of Schedule 3** identifies as potentially unfair terms which:

- i) limit the seller's or supplier's obligation to respect commitments undertaken by his agents; or
- ii) make his commitments subject to compliance with a particular formality.

Guidance on these two kinds of terms is given on page 7 of the OFT Briefing Note and on pages 13-19 of Bulletin No 1. Home-improvement contracts that we have seen commonly contain both these kinds of term.

9(a) *'Entire agreement' clauses*

9.2 Contracts often contain terms that exclude liability for any representations made, and provide that all the terms and conditions are contained in the standard written agreement.

9.3 Such 'entire agreement' clauses are included in contracts to deny redress to consumers should a statement or promise by a company representative turn out to be false or repudiated, even where the consumer has relied heavily upon what was said in good faith in deciding to enter the contract. As such, they are open to abuse and tend to remove any incentive for suppliers to train and control their representatives. In the worst cases they may act as an incentive to misrepresentation.

9.4 In interpreting a contract, a court is bound to look to the intentions of both parties. It will normally give effect to written terms but will not treat any term as conclusive solely because it is in writing. It will consider other matters, including what was said verbally, if that is necessary to determine what was really agreed. Some entire agreement clauses operate by indicating that no employee is authorised to alter the written terms, but in our view, mere inclusion of such a clause, especially in small print, cannot on its own effectively warn consumers of their position on a matter of such importance, and therefore cannot be effective in excluding liability for what would otherwise reasonably seem to a consumer to be a statement of fact or promise made with authority on behalf of the supplier. A term which purports to do what it cannot is open to the objection of being misleading as well as ineffective. It certainly does not contribute to certainty as to the content of the contract.

9.5 In discussions with companies in other industries, we have come across alternative approaches. One is not to purport to exclude liability, but merely to express an intention that written terms should prevail, either implicitly or explicitly. This reinforces the legal presumption in favour of written terms without purporting to make it conclusive. We have also seen a term used by a national company which simply invites the consumer to ask for any changes to be embodied in writing. Our view is that both these approaches have less potential for unfairness, and yet do not leave the business unprotected, since if properly drawn to the consumer's attention, they will make it difficult for him or her to argue that the terms of the contract are different from those embodied in writing.

9.6 Examples of amended entire agreement clauses which we have accepted as not being unfair are given on page 35 of Bulletin No 1, and page 60 of Bulletin No 2.

9(b) Formality clauses

9.7 We have seen terms which provide, for instance, that any claim for compensation for damage caused by the company must be made in writing, and must reach the company within, say, 14 days of installation. Such terms have a potential for unfairness (in the light of paragraph 1(n) of Schedule 3) as a formality requirement, and may also, as discussed above, be unfair exclusion clauses. Our reasons for considering that consumer detriment can result are given in paragraphs 2.10-2.12 on pages 9-10.

10 Right to assign without consent

10.1 **Paragraph 1(p) of Schedule 3** identifies as potentially unfair terms giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement. Guidance on paragraph 1(p) of Schedule 3 is given on page 8 of the OFT Briefing Note.

10.2 We have seen a small number of terms in home-improvement contracts which put entirely unwarranted barriers in the way of assignment of guarantees. Guarantees are in effect a separate product being sold, but they add substantial value to the main product, and it is therefore detrimental to consumers not to be able to sell the guarantee along with the product. Hence, such terms have potential for unfairness.

11 Regulation 4 - the general fairness test

11.1 **Regulation 4** provides that a term is unfair if it causes a significant imbalance in the rights and obligations of the parties to the contract, to the detriment of the consumer, contrary to the requirement of good faith. The terms in Schedule 3 are merely illustrative, and do not comprise an exhaustive list of terms which may be considered unfair.

11.2 We have identified a number of types of term which do not obviously correspond with items in the indicative list shown in Schedule 3, but which nevertheless are questionable in the light of the general test of fairness. Some examples of such terms are as follows.

11(a) Indemnification clauses

11.3 We have seen clauses which place liability on the consumer that more properly belongs to the supplier, in that it relates to a risk that the supplier is better able to insure against, or control, or both. An example would be a clause which forces the consumer to indemnify the

company for all its legal costs in the event of disputes arising - regardless of whether they arose as a result of the consumer's fault, or the company's. Another example of such a clause is one which makes the consumer responsible for any damage to materials, equipment and so on (even where the consumer was not responsible or even negligent). Our view is that such terms are likely to fail the general test of fairness given in Regulation 4.

11(b) Unfair enforcement clauses

11.4 Terms which give a company unduly wide powers to enforce its contractual rights are likely, in our view, to fail the general test of fairness in Regulation 4. An enforcement clause which commonly appears in home-improvement contracts is one that is intended to permit a company to enter a consumer's property to repossess goods it has supplied, in the event of the consumer not paying on time.

11.5 The intention of such terms is to allow a company to avoid the necessity of going to court to sue the consumer for an unpaid bill. The company is enabled to take unilateral action without the need for a favourable court judgment and enforcement order. One objection to this is that, if the company fails in its obligations, the consumer has to go to court with all the attendant expense and delay. We can see no disparity in the level of risk to which the parties are exposed which can possibly justify this imbalance.

11.6 Moreover, such clauses are often drafted so that they could be read as allowing the supplier to rip out products which have already been installed without replacement or making good. This would cause serious damage to property, and any term which indicates to customers that they could be subject to such a severe contractual sanction in any circumstances is, in our view, wholly unacceptable in a consumer contract.

11.7 In any case, we consider that it is objectionable in principle to reserve a right to go into a private residential property without the owner's consent - whether or not reservation of such a right is linked to any retention of title clause. Any right of access should be revocable, to allow the consumer to exclude company representatives who have, for example, behaved badly or dishonestly. Clauses which reserve a right in perpetuity are particularly objectionable, and obviously quite unnecessary for the purposes of a single double-glazing or home-improvement contract.

11(c) Signed statements

11.8 Many contracts require the consumer to sign a statement (usually on the other side of the document from the terms and conditions) to the effect that the consumer has read the contract and associated documents. Such statements

are of no effect if the consumer has not done so, and

are of no benefit if he has, and

could mislead the consumer into thinking that he is bound by a term whether or not he was actually given an opportunity to see it when entering the contract.

11.9 A better practice used by certain companies is to place prominently a warning that the consumer *should* read the contract. Such a warning, by contrast, is not only likely to be fair in itself, but may serve to add to the likelihood of other terms being considered fair.

11(d) Delivery/installation in consignments

11.11 Sometimes contract terms reserve to the supplier the right to deliver, and/or install, goods by stages, in as many or few consignments as the supplier thinks fit. We consider that this causes an unfair imbalance in the contract, by allowing the supplier at any time to change the way it proposes to perform the contract without any reference to the consumer's convenience. In supply-only contracts, the consumer needs to know when goods will be supplied, so that he or she can arrange for installation. In work-and-materials contracts, all sorts of arrangements have to be made to facilitate installation. In our view, such things as the time and method of delivery should be a matter for individual agreement between the parties, not a standard term which allows the supplier freedom to do as it likes.

12 Regulation 6 - plain and intelligible language

12.1 **Regulation 6** requires that standard terms must be written in plain language. All types of term are more liable to be found to be fair if this rule is complied with, and the Regulations provide that ambiguous terms will be interpreted so as to favour the consumer. Bulletin No 2, pages 8-12, gives further guidance on the requirements of Regulation 6.

12.2 The OFT takes the view that contracts must be intelligible to ordinary consumers without legal advice. Therefore a drafting style which might be normal in a commercial contract is wholly inappropriate. This means using normal words in their normal sense, and avoiding jargon such as 'consequential loss' and 'time of the essence'. Such phrases should preferably not be used at all, and certainly not without explanation.

12.3 Complying with Regulation 6 also means adopting a different approach to the organisation of the contract document than is often found in home-improvement contracts. Sentences should be short, and the text broken up with easily-understood sub-headings. Statutory references, elaborate definitions, and extensive cross-referencing should be avoided. Material designed to cover technical legal points 'for the avoidance of doubt' is unnecessary since nearly all consumer disputes are now dealt with informally even if they go to court.

12.4 Please note in particular that in our view, unfairly broad exclusion clauses **cannot be made fair merely by a statement that the consumers statutory rights are unaffected**. Few consumers will have any idea what rights are referred to and, even to those who do, the net effect of such a clause combined with those which it affects cannot possibly be clear except in the light of legal advice. Fairness in consumer contracts requires clear statements in plain language of what the consumer's rights and duties actually are - not statements of what they are *not* which are subsequently negated by a piece of legal jargon.

12.5 There are various publications on and sources of advice about the use of plain language in legal documents.

13 The opportunity to examine terms

13.1 Terms are, in general, less likely to be unfair if the consumer has been given a full opportunity to examine the terms in advance of entering into the contract. To meet this requirement, efforts should be made to draw the consumer's attention to, and to explain, those provisions which are of particular importance, such as those which may be onerous.

13.2 The availability of a cooling-off period is likely to enhance the fairness of terms, since consumers have an opportunity to reflect on whether they find the terms acceptable before binding themselves to the contract. A right to cancel without penalty for seven days is also required by law in cases which fall within the law relating to doorstep selling.

3 CASE STUDIES

Statistical breakdown of action taken on cases completed by 30 November 1996

Between 1 July 1995 and 30 November 1996 we examined 1,197 cases. In 833 of them, we took action under the Regulations with the following results:

Unfair terms revised or discontinued without formal undertakings	96
Formal undertakings given	<u>5</u>
	(101)
Terms found to be no longer in use or supplier in liquidation - no further action necessary	71
Cases still under discussion with suppliers	376
'Duplicate' complaints dealt with by means already in hand	193
Answers to requests for advice on the application of the Regulations	<u>92</u>
	(732)

In some cases, action could be taken more appropriately under other legislation enforced by the Director General.

	<u>55</u>
<i>Total</i>	888

In the remaining cases, no action was taken for the following reasons:

the complaint was not about a contract term	41
the complaint was about a term excluded from the scope of the Regulations:	
as between businesses	51
under Schedule 1(a) - employment contract	11
under Schedule 1(e)(i) - statutory/mandatory provision	6
the complaint was about a 'core term' not subject to the fairness test under Regulation 3(2):	
a) defining the main subject matter of the contract	26
b) concerning the adequacy of the price	8
the contract term complained of was not considered unfair	140
the complainant provided insufficient information for action	<u>26</u>
<i>Total</i>	309

The latest 39 cases where unfair terms were revised or discontinued after examination are reviewed in the following pages.

ADVANCED HAIR STUDIO PTY LTD

Source of complaint: Trading Standards Department

The company provides hair replacements of human hair or synthetic fibre, for cosmetic purposes.

One clause was potentially unfair in the light of paragraph 1(b) of Schedule 3 to the Regulations since it implied, for example, that if the hair replacement unit was faulty, the consumer would not be entitled to a refund of his deposit. Under the Supply of Goods and Services Act 1982 the consumer would be entitled to full redress. The company's intention was to allow the consumer to cancel his order if he was not entirely satisfied, even in circumstances when he would not ordinarily be entitled to. The revised term now enables the consumer to cancel the order at any time but entitles the company to reasonable compensation if the unit has already been manufactured subject to the consumer's right to terminate the contract and seek redress for breach.

AMBROW TRAILER SERVICES

Source of complaint: Consumer

The company supplies trailers for hire.

Two widely drafted exclusion clauses were revised to make them less unfair under the Regulations.

The first was a widely drawn exclusion of liability which had potential for unfairness in the light of paragraph 1(b) of Schedule 3 to the Regulations. But it also required the consumer to give an indemnity in terms that could have made him liable for damage caused by the company's negligence. This was potentially unfair under Regulation 4 and was revised to make it clear that the company accepted liability for its own negligence.

The second term with potential for unfairness purported to restrict the consumer's right to make any claim against the company in respect of 'any personal injury, damage, inconvenience, delay or any other matter arising from or incidental to any accident to the equipment'. This term was potentially unfair under paragraphs 1(a) and 1(b) of Schedule 3 to the Regulations as well as being void (in relation to the personal injury exclusion) and subject to the test of reasonableness under the Unfair Contract Terms Act 1977. The revised term is much more narrowly drawn.

APCOA PARKING UK LTD

Source of complaint: MP

The company runs pay and display parking services. A notice it displayed at a British Rail car park disclaimed all responsibility or liability for loss or damage to vehicles or their contents, and for any injury or loss to any persons even when resulting from its own negligence or negligent employees.

This term had potential for unfairness in the light of paragraphs 1(a) and 1(b) of Schedule 3 of the Regulations. The notice also needed revision to comply with the plain and intelligible language requirements of the Regulations. The company removed the notice and proposed instead to apply terms and conditions made available to the consumer on request. Since these were unseen terms, it was questionable whether the terms were legally incorporated into the contract at all. Paragraph 1(i) of Schedule 3 indicates that terms binding consumers to unseen terms are themselves unfair. The company agreed to display the terms and conditions.

The revised standard terms themselves were initially drafted so as to include some that had potential for unfairness such as an exclusion of liability for collision or vandalism '*including damage caused by the physical state or layout of the car park or any lack of lighting*'. These words were deleted so that the company accepted responsibility for matters within its own control. A general indemnity clause was also considered unfair and was deleted (see Part 4 Group 15). Two other terms were not expressed in intelligible language and were redrafted.

AQUABILITY (UK) LTD

Source of complaint: Consumer

The company supplies and installs bathroom equipment.

The company had an unrestricted right under the contract to substitute alternatives for goods out of stock. This had potential for unfairness under paragraph 1(k) of Schedule 3 to the Regulations. The revised term is significantly narrower in scope.

Another clause excluded liability for delays in delivery/installation and was potentially unfair under paragraph 1(b) of Schedule 3 since it was in conflict with the customer's statutory right, under the Supply of Goods and Services Act 1982, that the goods be supplied within a reasonable time. The consumer could have to wait indefinitely with no right to cancel without penalty if delivery was not made within a reasonable time whereas the company could cancel the contract without liability if it could not deliver within a certain time. This was potentially unfair under paragraph 1(f) of Schedule 3. The company's right to cancel for its own delay was deleted.

Under the contract, the company could increase its prices if the installation date was more than 26 weeks after the date of contract. But the customer had no right to withdraw without penalty if the final price was too high. This was particularly invidious if the company was itself responsible for the delay and was potentially unfair under paragraph 1(l) of Schedule 3. The relevant term was revised to remove the right to raise prices.

The company also had wide contract rights to cancel the agreement. It could charge for uncompleted work if it preferred to stop the work because it considered that its own survey had been incorrect. This term had considerable potential for unfairness in the light of paragraph 1(f) of Schedule 3, since it gave the company wide discretion to cancel the contract and with no right for the consumer to cancel. The right of the company to cancel the contract and charge for part of the work was also potentially unfair in the light of paragraph 1(f) of Schedule 3, since the company was able to cancel the contract and still profit from doing so.

Another clause prohibited the consumer from cancelling the contract and required compensation if he did so, with no provision for consumer compensation if the company cancelled the contract. This was potentially unfair under paragraph 1(d) of Schedule 3 and was deleted.

BESTCO SURFACING LTD

Source of complaint: Consumer organisation

The company constructs tarmacadam and asphalt surface driveways.

One clause allowed the company to increase the price and was potentially unfair under paragraph 1(l) of Schedule 3 to the Regulations (see Part 4, Group 11). This clause was deleted.

Two clauses failed the requirements of Regulation 6 since they were not in plain and intelligible language (see Part 4, Group 16) and were deleted. A third term failed the general test of unfairness in Regulation 4 as an indemnification clause. The term put the onus on the consumer to determine whether the site was ready for resurfacing, when it was the company which had the expertise to decide this.

BODYTEC - THE ULTIMATE FITNESS CENTRE LTD

Source of complaint: Trading Standards Department

The company provides fitness facilities and exercise programmes.

We considered that one clause was void under section 2(1) of the Unfair Contract Terms Act 1977 because it attempted to exclude any liability for injury or illness caused by negligence. The clause was potentially unfair in light of paragraph 1(a) of Schedule 3 to the Regulations and was substantially revised to remove this unfairness.

BRADLEYS ESTATE AGENTS LTD

Source of complaint: Consumer

The company provides estate agency services.

We took the view that a sole agency term (see Part 4 Group 7) was unnecessarily confusing and likely to be unintelligible to consumers. It comprised a single sentence of eight lines with several parentheses and grammatical sub-clauses and was characterised by the use of legal jargon. This was particularly undesirable since the implication of any restriction on a client's right to cancel should be positively drawn to the consumer's attention rather than obscured.

We considered it essential to make it clear to consumers that their right to cancel could not for any reason be exercised at all until 24 weeks had elapsed, and that positive action would need to be taken to stop it continuing after that date. The consumer who did not understand these points might try to cancel within the six months or merely assume that the agreement had expired after that period. He would then wrongly believe himself to be free to instruct another agent and become liable for two commissions on the sale of his property. Consumers who might wish to instruct other agents within the following six months needed to be warned to consider their position carefully in light of this clause.

Accordingly, clear and simple contractual wording was required and the term needed to be highlighted by the use of italics or indents or by giving a clear explanation in a brochure given to the consumer well before the contract was signed. The clause automatically extended the life of the agreement unless the consumer indicated otherwise, but the consumer was unlikely to be aware of the term; it therefore had potential for unfairness in the light of paragraphs 1(i) and 1(h) of Schedule 3 to the Regulations.

Another clause (see Part 4 Group 6) allowed Bradleys wide discretion to cancel the contract at any time and was potentially unfair in light of paragraph 1(g) of Schedule 3 to the Regulations. Read with the sole agency clause, these clauses were potentially unfair in the light of

paragraph 1(o) of Schedule 3 to the Regulations, because they allowed Bradleys to cancel the contract at any time or to fail to carry out an adequate service, while binding the consumer to the minimum sole agency period and the sole agency fee. Both the consumer and Bradleys can now terminate on 14 days notice, with the consumer having that right after the initial period of the sole agency.

BRITANNIA RESCUE SERVICES LTD

Source of complaint: Trading Standards Department

The company provides emergency roadside assistance and vehicle repair.

Two clauses in particular were open to objection. Under the first, unused subscription paid was forfeited to the company if the consumer cancelled or suspended membership. This was potentially unfair under paragraph 1(e) of Schedule 3 to the Regulations since it could enable Britannia to retain a sum in excess of any reasonable loss suffered if the consumer cancelled or was otherwise in breach of the contract. Credit is now given for unused portions of subscriptions.

We took the view that another term (see Part 4 Group 5) was potentially unfair under paragraph 1(f) of Schedule 3 since it allowed Britannia to cancel contracts on a discretionary basis, and thus to get out of a bad bargain. It also permitted Britannia when dissolving the contract to retain money paid for a service which had not yet been provided. The revised term enables Britannia to cancel only where there has been excessive use of its service as a result of the consumer's failure get permanent repairs carried out, or his neglect of routine servicing.

BRITISH FUELS (OILS) LTD

The OFT was invited to review the contract by OFGAS

The company supplies gas to domestic consumers.

This well-drafted standard contract used by British Fuels (Oils) Ltd for the supply of gas contained two terms which had some potential for unfairness and which are discussed below. The full text of the revised contract is reproduced in Part 4 Group 17 as a good example of a contract written in plain and intelligible language. The terms contain much information and explanation which is helpful to the consumer. Both terms which gave rise to discussion were revised.

Clause 7 gave the company complete discretion to estimate the amount of gas used with no requirement that the estimate be based on previous consumption, or subject to any other limit of

reasonableness. The revised clause both provided that the estimate would be reasonable, and that it would be based on previous consumption. We also had concerns about **clause 21** since it disclaimed all responsibility for any indirect or consequential losses suffered as a result of either party's breach of contract and appeared to have some potential for unfairness in the light of paragraph 1(b) of Schedule 3 of the Regulations. The intention of the clause was to exclude liability for business losses but consumers could have understood it to exclude liability for non-business loss. Consumers could have been misled about their right to compensation. The revised clause makes clear that the company accepts liability for foreseeable loss incurred by consumers as a result of breach of contract by the company.

CHROMEARCH LTD
trading as NATIONWIDE DRIVEWAYS

Source of complaint: Consumer organisation

The company constructs driveways.

The contract contained a number of terms with potential for unfairness. These included a clause which enabled the company to withdraw from the contract if the site contained hidden problems that made it difficult to work. The company also reserved the right to increase prices. This clause was potentially unfair in light of paragraphs 1(f), 1(j), and 1(l) of Schedule 3 to the Regulations and it was not written in plain and intelligible language as required by Regulation 6. The term was revised to permit the consumer to withdraw.

Another clause allowed the company to deny liability for failing to supply goods which matched their description, or for failing to carry out the work with reasonable care, and was potentially unfair in light of paragraph 1(b) of Schedule 3 to the Regulations. The company now accepts responsibility to take reasonable care to prevent avoidable blemishes and irregularities.

Other terms gave the company wide discretion to decide when to begin or complete the work. The consumer now has the right to give written notice requiring the work to begin if it has not been started by the agreed date. The contract also included terms excluding all liability including damage and personal injury which were thus therefore void under the Unfair Contract Terms Act 1977 and potentially unfair in the light of paragraphs 1(a) and (b) of Schedule 3 to the Regulations. Another term obliged the consumer to report defects within two days and was thus potentially unfair in the light of paragraphs 1(b) and 1(q). The contract also allowed the company to evade responsibility for statements made by its employees before the contract was signed and was potentially unfair in light of paragraph 1(n) of Schedule 3 to the Regulations.

The entire contract was substantially revised.

CONFIDENTIAL CREDIT CONSULTANTS

Source of complaint: Trading Standards Department

Confidential Credit Consultants (CCC) obtains credit reference records from credit reference agencies on behalf of consumers. Its conditions are used both with consumers and with companies seeking credit checks on third parties. Much of the contract failed to comply with the plain and intelligible language requirements of Regulation 6 and some clauses were very difficult to decipher.

A clause under which the consumer indemnified CCC had potential for unfairness under Regulation 4 (see Part 4 Group 15) and was deleted. We considered that another clause (see Part 4 Group 2c) was potentially unfair under paragraph 1(b) of Schedule 3 to the Regulations, since it sought to exclude liability in certain circumstances for loss or damage resulting from the company's negligence. It also excluded liability for a breach of the terms implied into the contract by the Supply of Goods and Services Act 1982, which requires a service skill to be performed with reasonable care and skill. We also took the view that this term might be void under section 2(2) of the Unfair Contract Terms Act 1977. We were concerned that legitimate claims for foreseeable losses could be excluded by this term. This term was deleted.

COUNTRY HOLIDAYS

Source of complaint: Training Standards Department

The company lets holiday cottages.

The complainant passed on a complaint made by a consumer that the company had denied all liability by relying on terms in small print which stated that the company acted as agent for the owners of the properties rather than principal. Without the term, contractual responsibility for the supply of the holiday cottages appeared to rest with the company, and not with private cottage owners from whom consumers would have a less satisfactory mechanism for any kind of redress. This term was an important one and it was essential that it should comply with the requirements of Regulation 6, which states that terms must be written in plain and intelligible language.

The term was legally unambiguous in itself. However, intelligibility is assessed on the basis of its likely impact on ordinary consumers, whose understanding will be influenced by other statements made before entering the contract. The full implications of the term were likely to elude most consumers. Further, it was in apparent contradiction to other material the consumer would have read and understood, for example the brochure, which gave the impression that Country Holidays itself supplied accommodation. We stressed that, in this connection, the brochure also gave rise to concern in relation to the Control of Misleading Advertisements Regulations 1988. (This matter too was taken up with the company which subsequently made

changes to the brochure.) The term itself (shown in Part 4 Group 8) had potential for unfairness in light of paragraph 1(i) of Schedule 3 and was deleted

Since consumers were unlikely to apprehend that they were making a contract with the cottage owner, the term could also have given rise to unfairness in the light of paragraph 1(q) of Schedule 3 by hindering the consumer's ability to seek redress.

Other terms with potential for unfairness included payment and unequal cancellation terms with potential for unfairness as penalty clauses. The revised terms are more balanced and reasonable. Another term raised concerns in the light of paragraph 1(l) of Schedule 3 to the Regulations and was deleted. The company also deleted an 'entire agreement' clause (paragraph 1(n) of Schedule 3), and revised a jurisdictional term and terms that declined responsibility for brochure misdescription. Brochure material was also revised.

DAVID COVER & SON LTD

Source of complaint: Trading Standards Department

The company is a timber importer and builders' merchant.

The company's standard conditions of sale included many unfair terms with potential for unfairness when used with consumers. It gave assurances that none of its conditions would in future be used in consumer transactions, and that in such transactions it would not do business on standard terms. The transactions would instead be governed by the relevant statutes for the sale of goods. The conditions would continue to be used in sales to trade customers with each set of conditions clearly marked 'Trade Customers Only'. The company also undertook to install a sign above or adjacent to the till desk stating that 'All Sales to Trade Customers are subject to our Conditions of Sale a copy of which is available on request'. Examples of the discontinued terms are given in Part 4, Groups 9, 11, 12, 15, 16, and 17.

THE DAMP DETECTORS

Source of complaint: Trading Standards Department

The company provides a 30-year guarantee with its work. One clause which restricted the scope of the guarantee also operated to exclude the supplier's liability.

The effect of the guarantee clause (given in Part 4 Group 2a) was not simply to limit its scope but to exclude damage caused to the property, in particular by the installer's negligence. This was potentially unfair in the light of paragraph 1(b) of Schedule 3 to the Regulations. The

revised term now clearly expresses the installer's intention not to be responsible for damage before the new installation. Damage caused by the installer is now not excluded.

DFS FURNISHING CO PLC
trading as THE DINING ROOM CENTRE

Source of complaint: Trading Standards Department

The company supplies dining room furniture.

In Bulletin No 1 we reported that the company had revised its delivery and cancellation terms. The complainant drew our attention to the fact that the original invoices were nevertheless still being used with consumers. The company had breached its assurance to discontinue using unfair terms which required the consumer to accept delivery delays and severely restricted the consumer's right to cancel. We asked the company for an immediate assurance that it would amend the terms as previously agreed and would not rely on any unfair terms in disputes with consumers relating to contracts entered into on or after 1 July 1995.

The company informed us that old stationery had been used through inadvertence and that the company had taken urgent and positive steps to ensure that all stocks of the superseded stationery had been destroyed.

DONCASTER DOME LEISURE PARK

Source of complaint: Trading Standards Department

The undertaking operates a leisure centre.

The complainant reported that the leisure centre had declined responsibility for losses incurred by a consumer when a locker was broken into, by relying on disclaimer notices. These notices were displayed (a) on a gym changing room door, that denied responsibility for any articles left in the building, and (b) inside the gym, declining responsibility for articles left in unattended lockers. The notices thus appeared to deny liability for the centre's own negligence and were potentially unfair in the light of paragraph 1(b) of Schedule 3 to the Regulations.

The Centre told us that it did not in practice disclaim responsibility for loss or damage caused by its own negligence and the notices were reworded to make this clear.

ETIQUETTE PHOTOGRAPHY

Source of complaint: Consumer

Etiquette Photography provides a professional photographic service.

The company declined to accept liability for failure to carry out an order. Since this was a wedding photography service the potential detriment to consumers was obviously considerable.

The term (given in Part 4 Group 2) was dropped.

GIMSON STAIRLIFTS LTD

Source of complaint: Trading Standards Department

The company supplies and installs stair lifts.

This contract contained a number of terms with potential for unfairness but was substantially revised and improved by the company. The original contract was long and complex. Its replacement is succinct and easy for the consumer to understand. For this reason it is printed in full in Part 4 Group 17.

The terms with potential for unfairness included a right reserved to the company to pass on any increased costs on to the customer after the contract price has been agreed (see Part 4 Group 11). This was likely to be unfair in the light of paragraph 1(l) of Schedule 3 to the Regulations. It placed the risk of the contract price proving to be a bad bargain on the consumer, who was less likely to be able to anticipate such changes than a business. The consumer could not get out of the contract without penalty if the price was too high. The contract also included an 'entire agreement clause (see Part 4 Group 12).

A third term was of questionable fairness in the light of paragraph 1(e) of Schedule 3 (see Part 4 Group 4) since the consumer was penalised for postponing or delaying delivery, while the company could delay delivery without penalty.

Several clauses had potential for unfairness in the light of paragraph 1(b) of Schedule 3 to the Regulations. They are reproduced in Part 4 Groups 2a and 2d.

One term excluded liability for any errors or inaccuracies in drawings or specifications approved by consumers. The term purported to limit the consumer's recourse if he had approved defective drawings prepared by the company. The consumer may have been ill-equipped to assess the accuracy of such drawings, particularly if they were technical. The term was also potentially unfair because it permitted correction, without liability, of any errors or omissions in quotations

and invoices. The company was therefore not obliged to adhere to prices or specifications, accepted and relied on by the consumer in good faith.

Another term seemed to imply that, unless expressly agreed, the company would not be liable if the product failed a test. The term did not meet the plain and intelligible language requirement of the Regulations.

A further term passed the risk for damage or loss of goods awaiting delivery. The consumer had to accept the risk of something happening to the goods as soon as they were available for collection. The consumer would find it difficult to insure against loss, whereas the company would have found it easier to insure goods normally stored on its premises.

A term which excluded liability for delays in installation appeared to conflict with the customer's right under the Supply of Goods and Services Act 1982, for services to be carried out within a reasonable time. In addition, the term did not oblige the company to deliver promptly or permit the consumer to cancel without penalty if delivery could not be made after a certain lapse of time.

Another term gave the company sole discretion to provide refunds and sought to exclude the consumer's statutory right to reject goods and claim a full refund.

Yet another term attempted to limit the company's liability for any consequential loss or damage and was questionable in the light of paragraph 1(b) of Schedule 3.

A retention-of-property clause (see Part 4 Group 15) with a coterminous right to enter the customer's premises to remove the goods, were of questionable fairness under Regulation 4 since a slight breach of contract could provoke a severe penalty. The clause also had the potential for abuse if it was used to pressure a consumer into giving up a legitimate claim to retain part of the contract price.

A contractual right to transfer the company's rights and obligations to another member company or to a sub-contractor, without the consumer's consent, was questionable in the light of paragraph 1(p) of Schedule 3 (see Part 4 Group 14). In particular we were concerned that the effect of this condition, in conjunction with another clause, could reduce the effectiveness of guarantees for the consumer.

An 'entire agreement' clause was deleted. This was questionable in the light of paragraph 1(n) of Schedule 3, since it limited the company's obligations to respect commitments undertaken by its employees or agents (see Part 4 Group 12).

GKR KARATE UK LTD

Source of complaint: Trading Standards Department

GKR Karate is a club that provides Karate training.

Three terms (given in Part 4 Group 1, sub-heading (a)) sought to exclude all liability for personal injury. These were potentially unfair in light of paragraph 1(a) of Schedule 3 to the Regulations. They were also void under section 2(1) of the Unfair Contract Terms Act 1977. One term (a single sentence of 280 words) clearly failed to meet the plain and intelligible language requirements of Regulation 6.

Another term gave the club the right to close any training centre which did not attract enough participants. Consumers were therefore, bound to fulfil their contractual promises by paying while the club could choose not to provide the services. This was potentially unfair in the light of paragraph 1(c) and 1(f) of Schedule 3 to the Regulations. The terms were deleted.

GP CARE SUPPLIES

Source of complaint: Trading Standards Department

The company is a supplier of mobility aids for less able consumers.

Several terms had potential for unfairness as ‘entire agreement clauses’ in the light of 1(n) of Schedule 3 to the Regulations and were revised. These clauses limited the liability of the company for any acts or statements made by its agents and were of concern since the products were sold only through the company’s agents or salesmen (see Part 4 Group 12).

A clause (see Part 4 Group 1) sought to exclude liability of any kind for any reason whatsoever and purported to restrict the consumer from seeking legal redress. Its use was likely to be an offence under the Consumer Transactions (Restrictions on Statements) Order 1976. It was substantially narrowed in scope and now affects only the consumer’s misuse of products.

Another clause had potential for unfairness in the light of paragraph 1(k) of Schedule 3 since it enabled the company to change the characteristics of what was supplied. This right has now been limited and the consumer now has the right to withdraw if fundamental changes are made to the goods (see Part 4 Group 10).

The company deleted a clause (see Part 4 Group 2a) which passed responsibility to ensure that goods were fit for the purpose for which they were intended to the consumer. It had clear potential for unfairness in the light of paragraph 1(b) of Schedule 3 to the Regulations and its use may have amounted to an offence under the Consumer Transactions (Restrictions on Statements) Order 1976. Another clause which could have been used to restrict the consumer’s rights to require delivery within a reasonable period was revised (see Part 4 Group 2d). A clause with potential for unfairness in the light of paragraph 1(q) of Schedule 3 (see Part 4 Group 14) excluded the discretion of the court to direct that a case be heard at a court convenient for the

consumer. This could have reduced the ability of the consumer to seek redress and was suitably revised.

HOME IMPROVEMENTS BEAUTIFUL DIRECT LTD

Source of complaint: Trading Standards Department

The company is a Middlesbrough-based furniture supplier. Its conditions of sale contained many terms considered to have potential for unfairness. Many of the potentially unfair terms corresponded with terms in the illustrative list at Schedule 3 of the Regulations (and an example of an unequal cancellation rights is shown in Part 4 Group 5).

The company provided formal undertakings to the Director General that it would cease the use of the terms. The undertakings, and the terms to which they relate, are reproduced in Part 5.

IMPULSE SECURITY SYSTEMS LTD

Source of complaint: Consumer organisation.

The company supplies and installs burglar alarms.

Two clauses gave cause for concern under paragraph 1(b) of Schedule 3. The first clause excluded all liability for the failure of the alarm to work even if this was due to the company's faulty workmanship or negligence. For example, the contract excluded liability 'whether such loss or damage be direct or coincidental, whatsoever and howsoever caused and notwithstanding that the same may be due to defects of workmanship or material or the negligent act or omission of the company, its servants or agents. The company shall not be held liable for any negligence on the part of the client, his servants or agents howsoever caused'. The second clause excluded liability for loss or damage due to the failure of the alarm to operate. The company dropped these terms and substituted standard conditions recommended by the National Approval Council for Security Systems (NACOSS) under which liability is limited but liability for negligence is not excluded. (The OFT had previously commented on the drafting of those conditions.)

LONDON BOROUGH OF MERTON

Source of complaint: Consumer

The Council provides leisure facilities. A disclaimer notice declining 'liability/responsibility for any loss and/or damage to the personal property/effects of any customer howsoever caused', was

revised so that liability was declined unless the loss or damage was caused by negligence of the Council or its employees.

Such terms have potential for unfairness under paragraph 1(b) of Schedule 3 to the Regulations. Terms which exclude the supplier's own negligence are likely to be considered objectionable under the Regulations and to the extent that they do they are subject to the test of reasonableness under section 2(2) of the Unfair Contract Terms Act 1977.

MAPLES STORES PLC

Source of complaint: Trading Standards Department

Maples is a furniture retailer.

One term (included under Part 4 Group 12) constituted an unfair entire agreement clause (paragraph 1(n) of Schedule 3 to the Regulations refers). The original clause effectively excluded liability for any false or misleading statement made by sales representatives or in promotional literature. The revised clause no longer excluded such liability.

Clause 3.3 (see Part 4 Group 3) had potential for unfairness in the light of paragraph 1(d) of Schedule 3 to the Regulations. The consumer was obliged to pay compensation if he cancelled the order, but had no right to receive compensation if the company cancelled. In addition, the company's right to retain a minimum 25% of the contract price in the event of cancellation appeared to be high for goods that had not been delivered, and which may be capable of being resold as new. There was scope for the company to mitigate its losses. The minimum 25% retention thus appeared to have potential for unfairness as a penalty clause (paragraph 1(e) of Schedule 3 to the Regulations).

The revised clause was more likely to be fair since it was more balanced; the consumer and the company had equal liability in the event of cancellation (ie both were liable to pay losses or costs suffered by the other party in the event that they cancelled). In addition, the revised contract now permitted the consumer to cancel in the event of delay in performance of the contract.

Elements of clauses 4 and 5 (given in Part 4 Group 4) had potential for unfairness as penalty clauses. The company was permitted to charge interest if payment was delayed by a few days, to treat the contract as repudiated, and withhold delivery of the goods. The company was also permitted to resell the goods if the consumer failed to take delivery or gave inadequate delivery instructions and to charge the consumer any shortfall between the price obtained and the contract price. This seemed harsh when the consumer might have been forced to delay delivery through no fault of his own, or made a genuine error in providing delivery instructions. The company itself would not guarantee when it would deliver the goods, and the consumer was not entitled

to cancel the contract in the event of a delay in delivery, however long the delay might be (see Part 4 Group 2d.)

Clause 4 also expressly excluded the consumer's right to off-set a debt, and so was also likely to be unfair in the light of paragraph 1(b) of Schedule 3 to the Regulations.

Clause 5.2 (given in Part 4 Group 15) provided that risk in the goods transferred to the consumer in the event that delivery was delayed. This had potential for unfairness under Regulation 4 since the goods could be damaged during any such period of delay because of the company's negligence, and liability for such negligence was excluded. Clause 5.3 had potential for unfairness under paragraph 1(o) of Schedule 3 to the Regulations (see Part 4 Group 13).

The cumulative effect of the revisions to these clauses was far more balanced. Both sides were liable in the event of cancellation, and the consumer was entitled to cancel without penalty in the event of delay in delivery or more than two weeks. The company was obliged to contact in writing and by telephone before reselling the goods, and the consumer therefore had the opportunity to correct any mistakes, eg in delivery instructions.

In addition, the revised clause no longer excluded the consumer's right of set-off. It also provided that the company would be liable for any damage caused by the company's negligence during a delay in delivery.

Liability had been extensively excluded under clause 7. The revision (included under Part 4 Group 2b) is brief, comprehensible and much fairer.

The revised clauses are notable for the use of plain and intelligible language.

MAZE TECHNOLOGY

Source of complaint: Trading Standards Department

The company is a retailer of computer equipment operating in East London. Its terms and conditions of sale contained a number of terms which plainly corresponded with terms stigmatised as potentially unfair in Schedule 3 to the Regulations. The company provided formal undertakings to the Director General that it would stop using them. The undertakings and the terms to which they relate are reproduced in Part 5. The unfairness of the terms is discussed below.

Clause 2 had the effect of an unfair entire agreement clause (see paragraph 1(n) of Schedule 3 to the Regulations).

Clause 6 had potential for unfairness since it attempted to exclude the consumer's right to insist on specific performance, and provided that the consumer could not cancel however long the delay in delivery. It also excluded liability for foreseeable loss.

Clause 7 had potential for unfairness as it purported to exclude the consumer's statutory rights in a number of ways: it attempted to put a time limit on the consumer's right to reject goods which might be inappropriately short and the clause provided that the consumer must bear the cost of returning any defective goods.

Clause 9 again attempted to exclude the consumer's statutory rights and was potentially unfair in the light of paragraph 1(b) of Schedule 3. It excluded all liability once goods were accepted and was void under the Unfair Contract Terms Act 1977, and as such an offence under the Consumer Transactions (Restrictions on Statements) Order 1976.

Clause 10 had potential for unfairness in the light of paragraph 1(b) of Schedule 3 since it explicitly excluded the consumer's right of set-off.

Clause 12 had potential for unfairness particularly in the light of paragraph 1(f) of Schedule 3 to the Regulations since it allowed the company to opt out of the contract at its discretion while the consumer did not have a comparable right. In addition, the clause excluded liability for foreseeable loss.

Clause 13 had potential for unfairness in the light of paragraph 1(q) of Schedule 3 to the Regulations since it placed a restriction on the consumer's legal remedies. In addition, the clause was void under the Consumer Arbitration Agreements Act 1988 insofar as it purported to exclude a consumer's right to go to court.

NEWCASTLE UPON TYNE BOROUGH COUNCIL

Source of complaint: Consumer organisation

The Council's Highways and Transportation Department provides car parking for the city.

A broad 'no liability' clause, used on the reverse side of the stickers to be fixed to the vehicles and issued at the Council's car parks, could have had the effect of excluding or limiting the legal liability of the Council in the event of death or personal injury or damage to or loss of property caused by negligence. This was considered potentially unfair in the light of paragraphs 1(a) and (b) of Schedule 3.

The clause was narrowed in scope so as not to extend to loss or damage caused to persons or to loss or damage to the vehicle or contents caused by the negligence of the Council or its employees.

NWS BANK PLC

Source of complaint: Trading Standards Department

The terms were contained in a hire-purchase agreement issued by the company.

The contract included a term which deemed that the customer's acceptance of delivery of the goods was conclusive evidence that the customer has examined the goods and has found them to be 'complete in good order and satisfactory in every way'.

The wording could have misled consumers into believing they had waived their rights to complain about defective goods once they had accepted delivery of them. The clause was also unclearly drafted, and in our view did not meet the plain and intelligible language requirements of the Regulations.

The clause was deleted.

PROTECTAWALL LTD

Source of complaint: Trading Standards Department

The company carries on a wall coating business.

One term had potential for unfairness under paragraph 1(b) of Schedule 3 to the Regulations (see Part 4 Group 2b) as it sought to deny consumers the legal right to redress if work was not completed properly. The term amounted to an exclusion of liability for breaches of contract terms implied by the Supply of Goods and Services Act 1982. The revision limits the scope of the guarantee instead of restricting liability.

A cancellation clause (see Part 4 Group 5) had potential for unfairness under paragraphs 1(e) and 1(f) of Schedule 3 to the Regulations if the amount due to the company on cancellation represented more than a reasonable pre-estimate of any loss incurred. Moreover, no equivalent right existed for the consumer to receive compensation were the company to cancel the contract. In our view the term also had potential for unfairness under paragraph 1(b) of Schedule 3 if it sought to limit the consumer's rights in situations where the company was in breach of its contractual obligations.

The contract also included two terms with potential for unfairness under paragraph 1(b) of Schedule 3 to the Regulations as excluding liability for delay (see Part 4 Group d.). One was capable of removing the obligation that a service must be carried out within a reasonable time as required by section 13 of the Supply of Goods and Services Act 1982. The other term was potentially unfair as it appeared to allow for work to be carried out at a time convenient to the company with no indication given to the consumer as to how long they might wait for the contract to be completed.

A payment term (see Part 4 Group 2c) could be understood to require full payment on completion of the work with no right for the consumer to hold back the balance of the contract price if the work had not been completed to a satisfactory standard or as promised. Such terms are potentially unfair in light of paragraph 1(b) of Schedule 3 to the Regulations. The revised term now requires payment only if the work is *satisfactorily* completed.

A term with potential for unfairness under paragraph 1(n) of Schedule 3 to the Regulations was deleted

Another term (see Part 4 Group 10) was potentially unfair in the light of paragraph 1(k) of Schedule 3 since it allowed the company to vary the product and/or service provided without first notifying the customer and allowing for the cancellation of the contract without penalty. This was deleted.

RICHLINE LTD

Source of complaint: Trading Standards Department

The company supplies wedding dresses. This contract contained a number of penalty clauses (see Part 4 Group 4) and exclusion clauses which the company agreed to stop using. The contract also contained terms which were potentially unfair under paragraph 1(b) of Schedule 3 to the Regulations (see Part 4 Groups 2a and d.) as they sought to exclude or limit the consumer's remedies for breaches of contract. One of these excluded liability for the non-delivery of wedding dresses. This had considerable potential for unfairness since the time of delivery was of fundamental importance. Moreover, to the extent that such terms attempt to exclude the consumer's rights under sections 12-15 of the Sale of Goods Act 1979 they are rendered void under section 6 of the Unfair Contract Terms Act 1977.

Another term was potentially unfair in the light of paragraph 1(k) of Schedule 3 to the Regulations (see Part 4 Group 10) since it provided for the supplier unilaterally to alter the goods supplied without a valid reason for doing so. It was deleted. A price variation clause was also deleted (see Part 4 Group 11). It did not provide consumers with the right to cancel the contract without penalty if the final price was too high in relation to the price that was agreed when the contract was entered into, and created a significant imbalance between the rights and obligations of the parties to the contract.

ROYAL INSURANCE PROPERTY SERVICES LTD

Source of complaint: Consumer

The terms appeared in the company's conditions of engagement for structural survey work.

One term was open to challenge in the light of paragraphs 1(a) and 1(b) of the illustrative list in Schedule 3 to the Regulations. It declined any liability if a purchaser was to proceed without obtaining and acting upon further advice if the report suggested further investigation works be carried out by a specialist firm, such as a structural engineer, timber specialist, drain or electrical engineer.

We considered that this clause could be used to deny liability where, for example, the surveyor had also given reassuring oral advice while refusing to commit himself in or herself in writing beyond recommending specialist investigation. As drafted, the term would exclude liability for such oral comment. Accordingly the term had potential for unfairness for the purposes of the Unfair Contract Terms Act 1977 and the Regulations. Any restriction on liability for death or personal injury arising from negligence was void under the Unfair Contract Terms Act and any

restriction on liability for other sorts of loss or damage arising from negligence was subject to the reasonableness test.

The clause was deleted.

SAFeway STORES PLC

Source of complaint: Consumer

This supermarket chain provides parking facilities for its customers.

The conditions printed on the ticket issued to consumers on entering the car park stated:

All persons using this Car Park do so entirely at their own risk and no liability will be accepted for loss, damage or injury to persons or vehicles including contents however such loss, damage or injury be caused.

The company told us that the term would be removed from all tickets issued to consumers and all customer notices displayed in the company's car parks by the end of January 1997.

The term had potential for unfairness as it could have had the effect of excluding or limiting the legal liability of the company in the event of death or personal injury or damage to or loss of property caused by negligence.

SALLY UK HOLDINGS PLC

Source of complaint: Consumer

Sally UK Holdings plc is a ferry operator. We identified a number of terms in the company's conditions of carriage which were, in our view, likely to fail the test of fairness at Regulation 4. In addition, the conditions as a whole were expressed in unclear language, and were unlikely to satisfy the plain and intelligible language requirements of the Regulations.

The company informed us that Sally Line Ltd has entered into an agreement through which a new company, Holyman Sally, will take over traffic in March 1997. The new company is to draft conditions of carriage, complying with the requirements of the Regulations. The company has given an assurance that it will not operate its terms to the detriment of the consumer in the meantime. The terms which we identified as having particular potential for unfairness in our correspondence with the company (but which were not intended to be an exhaustive list) are given in Part 4.

The liability exclusion clauses (see Part 4 Groups 2a and d.) had potential for unfairness because they were widely drawn. Clauses 5 and 13 were also particularly likely to fail the test of reasonableness in section 2 of the Unfair Contract Terms Act 1977.

A ‘note to passengers’ (see Part 4 Group 14) was, in our view, particularly unfair since it appeared to be calculated to deprive consumers of redress where foreign-owned ships were used.

Clause 18 (see Part 4 Group 14) also had potential for unfairness in the light of paragraph 1(q) of Schedule 3 to the Regulations. The clause was misleading and, in our view, capable of depriving consumers of fair access to a remedy in the event of a dispute.

SINGER & FRIEDLANDER FINANCE LTD

Source of complaint: Trading Standards Department

The company provides hire-purchase finance.

A large number of terms had potential for unfairness in the light of paragraph 1(b) of Schedule 3 to the Regulations and had potential to mislead consumers, particularly as to their rights under section 75 of the Consumer Credit Act 1974. Two sought to exclude liability for breach of the terms implied into the contract by the Supply of Goods (Implied Terms) Act 1973 and were also void under section 6(3) of the Unfair Contract Terms Act 1977. Two other terms were potentially unfair in the light of paragraph 1(n) of Schedule 3. One attempted to exclude the company’s liability for representations made by those who introduce consumers to the company as a source of finance. As an attempt to deny completely the agency relationship which exists by virtue of section 56 of the Consumer Credit Act 1974, it was void under section 56(3) of the Act. All these terms were revised.

A number of the clauses were not, in our view, written in plain and intelligible language as required by Regulation 6 and were revised to make them easier to understand.

SOUTH LAKELAND CARAVANS LTD

Source of complaint: Trading Standards Department

The company operates a holiday caravan park in Lancashire.

One broadly framed clause gave the company the right to refuse entry to park without reason, and was potentially unfair in the light of paragraph 1(o) of Schedule 3 to the Regulations because it could enable the company to dishonour any booking made. The company agreed to amend the clause.

Another clause had potential for unfairness, particularly in the light of paragraphs 1(a) and (b) of Schedule 3 to the Regulations since it excluded all responsibility for loss, damage or injury to any person. It was deleted.

A third clause provided that caravan owners were bound to changes in rules displayed on notice boards around the park. The clause (shown in Part 4 Group 9) had the potential for unfairness since it could operate as a general variation clause, binding consumers to terms that they might not have seen (paragraphs 1(i) and 1(j) of Schedule 3 to the Regulations indicate that such terms are unfair). The proposed revision removed the potential for unfairness.

Finally, a clause (shown in Part 4 Group 15 as an example of an unfair enforcement clause) had potential for unfairness since it gave the company unrestricted rights of entry to caravans. The company agreed to amend the clause so that it could be used only when it was reasonable to do so.

T-SHIRT PRINT

Source of complaint: Trading Standards Department

The company's brief terms and conditions printed on its order form disclaimed responsibility for damage to customers' garments. This has been revised so that the company now accepts responsibility for damage caused by its own negligence (see Part 4 Group 2a).

The company provided an undertaking to the Director General that it would cease to use the terms. The undertaking and the terms to which it relates, are reproduced in Part 5.

TOTAL OIL GREAT BRITAIN LTD

Source of complaint: Trading Standards Department

The company operates car-wash facilities at its petrol service stations.

A notice was displayed outside the car wash declining all 'responsibility for any injury, loss or damage of whatever nature and howsoever caused arising directly or indirectly' from the use of the machine or the premises. Another notice disclaimed 'responsibility for any damage to property or injury to person(s) resulting from failure to comply with the above instructions'.

The signs were removed from the service station (and a review was being undertaken to ensure other customer notices used by the company elsewhere did not breach the requirements of the Regulations).

The notices could have excluded the company's liability for breaches of contract and negligence. They had potential for unfairness in the light of paragraph 1 (a) and (b) of Schedule 3.

TOWN & COUNTRY DRIVEWAYS PLC

Source of complaint: Consumer organisation

The company constructs driveways.

This contract contained a number of unfair terms which were revised or deleted. It was similar to the Chromearch (Nationwide) contract reported elsewhere in this Bulletin. One clause (shown in Part 4 Group 2a) potentially denied liability if pooling or cracking occurred because of lack of care of the employees during the laying of the driveway. This was potentially unfair in light of paragraph 1(b) of Schedule 3 to the Regulations.

Another clause (shown in Part 4 Group 2c) was potentially unfair as it excluded the company's from responsibility for determining whether the site was suitable for the installation when the company, rather than the consumer, was in the best position to assess this. This term was important and should have been pointed out very clearly to the consumer but could easily have been overlooked in this detailed contract.

Other clauses that were substantially revised or deleted included: a compulsory arbitration clause; a clause allowing the company to retain sums paid by the consumer when the company cancelled the work after the technical survey (this was potentially unfair particularly in the light of paragraph 1(f) of Schedule 3 to the Regulations); a clause that denied all liability for the company's own negligence; and a clause that denied the consumer's right to have the work completed in the time agreed (potentially unfair in the light of paragraph 1(b) of Schedule 3 to the Regulations).

The company had the right to cancel without penalty but the consumer was subject to a range of compensation payments should he withdraw. The relevant term (see Part 4 Group 5) created a significant imbalance in the rights and obligations of the parties. Furthermore, the company reserved the right to increase the price through a requote. Such terms have obvious potential for unfairness in the light of paragraph 1(l) of Schedule 3 to the Regulations since the consumer could be lured into contracting at a low price which was then increased.

Another term with potential for unfairness under paragraph 1(l) of Schedule 3 (see Part 4 Group 16) was couched in the language of commercial law and likely to be meaningless to a consumer. It was therefore unlikely to satisfy the plain and intelligible language requirements of Regulation 6.

Another term was considered unfair as restricting the consumer's right to set-off (see Part 4, Group 2c) since it stripped the consumer of his rights under the warranty if he delayed paying, even if he later made the payment or had a legitimate grievance for which he was withholding payment. This was deleted. The company also deleted a clause compelling the consumer to arbitration (see Part 4 Group 14).

ULTRATONE LTD

trading as AMPLIVOX ULTRATONE and SIETECH HEARING LTD

Source of complaint: Trading Standards Department

The company sells hearing aids. It has branches throughout the UK. One clause gave the company the option to repair or replace (at its discretion) defects in hearing aids, for twelve months after fitting. The term had potential for unfairness since it could have misled consumers as to their statutory rights in some circumstances to choose between a refund or having the goods repaired or replaced. The clause was redrafted.

Another clause provided that a consumer could return an unsatisfactory hearing aid within 30 days and claim a refund. We were concerned that this term, as drafted, could have led the consumer to believe that faulty goods could not be returned outside this period. It also made the consumer liable to pay a fee if the goods were returned and implied that fees would be payable even when faulty goods were returned. It was amended and written in plain language to make clear that no fees would be charged if goods were returned because they were faulty, and that there were no statutory time limits for the return of faulty goods.

VODACALL LTD

a VODAFONE GROUP PLC company

Source of complaint: Consumer organisation

Summary

This was the first mobile phone service provider airtime contract brought into line with the requirements of the Regulations as a result of action taken by the OFT under the Regulations. The action was taken in response to a complaint from the Consumers' Association about nine such contracts. Vodafone agreed not to enforce the unfair terms in future in contracts concluded on or after 1 July 1995, the date when the Regulations (which are not retrospective) came into effect. The unfair terms included a three month notice requirement which could not be given until the expiry of a 12 month minimum term, and a substantial disconnection charge of £50 plus VAT. Vodafone also agreed not to enforce such terms in other group company contracts such

as Talkland International, in which it had recently acquired a controlling interest. The OFT issued a news release about this case on 31 October 1996. Our main concerns with the contract are discussed below.

Plain and intelligible language

The contract was long and in very small print with 18 definitions, 15 main clauses or some 100 clauses, sub-clauses and sub-sub-clauses some of which were further subdivided (although we understand that a larger print version was available on request). A number of clauses cross-referred and mentioned other legislation, without explanatory notes. This was a subtle and complex legal document which a consumer, unless he was legally advised, was unlikely to understand. Equal emphasis was given to the important clauses with potential for unfairness as to more trivial clauses. And there appeared to be little additional elucidatory material. The contract also lacked the headings that are useful as signposts to important information. Although the consumer was warned on the signature page to read the terms and conditions before committing himself, the contract did not lend itself to ready understanding. Having signed, the consumer was irrevocably committed to terms that it was essential that he had read and fully comprehended, whereas in reality he was unlikely to have more than a fleeting acquaintance with them.

The effect of the Regulations, however, is to require that the consumer be given the opportunity to read and understand all the terms before he enters a contract. The Regulations require standard terms to be in plain, intelligible language; paragraph 1(h) of Schedule 3 to the Regulations indicates that terms are unfair if they bind consumers to terms which they had no real opportunity to become acquainted; Recital 20 to the underlying EC Directive states that the consumer should actually be given an opportunity to examine all the terms; and the test of unfairness requires us to consider whether the supplier acts in accordance with the requirements of good faith, which includes an assessment of whether the supplier's treatment of the consumer is fair and equitable. The trouble that a supplier takes to bring onerous terms to the consumer's attention has some bearing on the last of these considerations.

The drafting of the contract is now much improved. It is shorter and easier to understand. Vodafone have also agreed to preface the contract with a useful summary of its main terms.

Three month notice requirement

The contract included a requirement to give three months notice after the expiry of the minimum term of 12 months. Several concerns arose with this provision. It appeared that the requirement to give notice *after* the expiry of the term was a formality with which the consumer had to comply precisely. Notice could not be given earlier to expire at the same effective date, so the consumer who wished to terminate at the earliest opportunity had to give notice exactly at the end of 12 months. This made it more difficult for the consumer to resign the contract at least cost.

Many consumers who complained to the OFT had not appreciated that notice period was *added* to the minimum period of the contract. But this needed to be drawn to the specific attention of the consumer because it was coupled with a requirement to pay for airtime throughout the currency of the contract, and thus had potential for unfairness as a penalty clause.

The use of long notice periods was not universal within the industry and a more reasonable one-month notice period was also used in airtime contracts. There appeared to be no practical reason for a long notice period since final billing and disconnection could be effected very much more quickly. The three month requirement appeared to have potential for unfairness for most consumers since it perpetually extended the life of a contract, and required refined powers of anticipation and planning on the part of the consumer in order to avoid paying for a period of service he did not require. Moreover, it had special potential for unfairness for particular groups of consumers. These included consumers who were dissatisfied with the reliability or coverage of the service; those who no longer had access to a mobile phone (or became incapable of using one) and could not use the airtime service for which they were nevertheless required to pay; and those whose service was terminated by Vodacall for any breach of the contract and for whom the 'notice' period was a pure penalty charge.

Vodacall shortened the contract to one year inclusive of a one month notice requirement.

Deposits

Another clause enabled Vodacall, potentially, to demand a deposit after the contract had been entered into, of as much as all charges due under the remainder of contract. But the consumer was denied all choice even if he was unwilling to pay the deposit. The terms had potential for unfairness since consumers who could not to pay the deposit were unlikely to afford to resign the contract, or pay the charges due if Vodacall then terminated the contract for failure to pay the deposit. Vodacall narrowed the scope to require deposits to just two situations: where there consumer has applied to take the service and has failed to satisfy fully the company's credit clearing procedures, and where the consumer subsequently applies for international or premium rate services. In both cases the agreement of the company to supply service would be conditional on the payment of a deposit and no deposits would be imposed after the consumer was committed to taking the service.

Indemnity

Another clause (shown in Part 4, Group 15) as an example of a term which fails the general test of unfairness) required the consumer to indemnify Vodacall against unlimited liability arising out of claims made by third parties against Vodacall, including liability for its own negligence. The consumer was thus exposed to claims for unforeseeable loss and the jeopardy of other unpredictable claims, whereas the contract absolved Vodacall's liability for remote claims. The requirement to indemnify Vodacall was withdrawn.

Suspension of services

The contract gave Vodacall wide rights to suspend the service for servicing and repairs and for breaches of contract by the consumer. The clause had potential for unfairness in the light of paragraph 1(d) of Schedule 3 since it enabled Vodacall to suspend the service for the most minor breach of contract by the consumer but required the consumer to pay for services not supplied in circumstances where Vodacall itself could have been responsible. The revised clause is in much more concise and intelligible terms and now includes a limited right to a rebate if there is technical failure on any of the networks by which services are provided or while they are being rested, modified or maintained or if access is denied to Vodacall for any reason. The clause and revision are given in Part 4 Group 13.

Compensation clause

This contract (in common with most airtime contracts) requires the consumer who terminates the contract before the expiry of the minimum term, to pay all the monthly payments (including the notice period) that would otherwise have been paid. In this contract the relevant clause required the payment at once of sums that would otherwise have been paid by monthly instalments. The rationale generally advanced for provisions of this kind is that they are necessary for the service provider to recoup the substantial investment it has made to secure the contract, through the payment of commission and subsidy of the phone itself. Such provisions appear to make the consumer bear all the risk from a complex system of intra-industry subsidies, commission, and financial accommodations although he has scant appreciation of it or responsibility for it, and has played no direct or conscious part in such arrangements. However, the relevant clause in this contract has been revised so that the consumer receives a discount for early payment, and the amount of compensation has been reduced by the effect of the reduction in the length of the contract from 15 to 12 months. The contract itself is significantly fairer and easier to understand, with the result that the consumer is less likely to make the contract without some awareness of the nature of the commitment he has taken on. However we remain concerned that the compensation clause may have potential for unfairness since the charges are calculated by multiplying monthly airtime payments and may represent the crudest of approximations to the actual 'losses' from early termination. We shall therefore review this clause in the light of any future complaints, further information about the commercial arrangements that give rise to this clause, and developments in case law in applying the Regulations.

Termination clause

The relevant clause, which was very long and complex, had potential for unfairness in the light of the illustrations of unfairness given in paragraphs 1(d), 1(f), and 1(g) of Schedule 3 to the Regulations. The clause gave Vodacall wide discretion to terminate the contract immediately for any breach not put right within 21 days and then, given the compensation provisions discussed above, to retain sums paid or to require payment to be made for services which Vodacall intended

no longer to supply. The much briefer revised clause now restricts the right to terminate to more serious breaches. The parties now have more balanced rights of termination.

Variation of charges

A term gave Vodacall the general right to raise prices with the consumer having the right to terminate the contract immediately if prices were raised by 2% more than the Retail Prices Index (RPI). However, there was no requirement to notify the consumer before the increase was made or to inform the consumer if the RPI threshold had been exceeded and it might thus have escaped his notice that the right to terminate had been triggered. The clause had potential for unfairness in the light of paragraph 1(1) of Schedule 3. The revised term now enables the consumer to terminate if RPI + 2% is exceeded, and requires Vodacall to inform the consumer before the increase is made and to tell him if the threshold has been exceeded.

'Entire agreement' clause

The contract included a clause excluding all oral or written understandings or agreements (shown in Part 4 Group 12) prior to the contract. This excluded representations made by Vodacall's agents on which the consumer could have relied and substituted terms which the consumer had probably not read or understood. Accordingly, the clause had obvious potential for unfairness in the light of paragraph 1(n) of Schedule 3 and was deleted.

Disconnection charge

Another clause which appeared to be capable of consumer detriment, and which had given rise to a number of complaints under the Regulations, was a disconnection charge. The clause gave the right to Vodacall to make a disconnection charge even during a technical failure of the system. The clause enabled Vodacall to have regard to the circumstances at the time of disconnection or reconnection and to elect to charge a reasonable fee for disconnection. In practice the charge appeared to be invariably £50 plus VAT and to be levied without exception when a consumer terminated the contract or it was terminated by Vodacall for breach, even after the end of the minimum term and the notice period. The charge appeared to be unrelated to any actual administrative costs incurred by Vodacall and was a substantial charge which was likely to cause consumer detriment. It was possible that consumers could be misled into believing that the charging of a disconnection charge was exceptional when in fact it may have been automatic. The clause had potential for unfairness as a penalty clause in the light of paragraph 1(e) of Schedule 3 to the Regulations and may have been misleading to consumers. It was deleted.

4 SPECIMEN TERMS

This part of the Bulletin contains a selection of terms (or, in some cases, parts of terms) referred to in the summary of individual case studies in Part 3. Most of these terms were simply deleted from contracts used by the businesses named. In some cases, they were replaced by terms which we judged were sufficiently likely to be considered fair to warrant discontinuance of further action under Regulation 8. A selection of these revised terms is also included. Wherever no 'revision' is shown, it may be assumed that the business concerned has stated that it would drop the term quoted.

Terms are listed in 'groups' which correspond to the paragraphs of Schedule 3 to the Regulations (the 'illustrative list'), while additional groups have been introduced where terms do not obviously fall into any of those categories. In addition, because there are many different kinds of exclusion clause, the group that corresponds to paragraph 1(b) of Schedule 3 has been further subdivided. No particular 'official' significance should be attached to the subheads used within this group - they have been introduced purely for illustrative purposes.

Our overall aim has been to present material in a way that is likely to be helpful to business and consumer advisers. Terms have been selected on the basis that they provide practical illustrations of our interpretation of the Regulations generally, and of Schedule 3 in particular. But it should be stressed that this *is* a selection only, and other terms to which we objected have been omitted because we considered that they served little purpose as illustrations. In some cases, the points at issue are already adequately covered by examples that have been included; in others, they are unduly technical and would require lengthy explanation of little general application.

In most of the cases cited, the reasons why we considered the terms to be unfair should be self-evident. Where further explanation is needed, please refer to the summaries of individual case studies in Part 3.

It must also be emphasised that this listing of terms objected to does *not* constitute a generally applicable 'black list' - nor should the revised versions be seen as making up a 'white list' of terms that would always be considered fair under all circumstances. This is also true of the 'indicative and illustrative list of terms which may be regarded as unfair' in Schedule 3 itself. For the purposes of the Regulations, 'fairness' depends on an assessment of good faith, and all the factors relevant to each individual case, as well the wording of the term itself, are taken into account. It also depends on the effect of other terms in the same contract. Thus a form of words which is considered likely to operate unfairly in one situation may not be considered unfair in another.

In the final analysis of course, it remains for the courts to *decide* what is, or is not, unfair. At the Office of Fair Trading, in monitoring the application of the Regulations, we can only give an informed view about what is *likely* to be found unfair.

**GROUP 1 SCHEDULE 3: PARAGRAPH 1(a) AND 1(b)
GENERAL DISCLAIMERS**

GP CARE SUPPLIES

Original clause

GP Care Supplies will not accept any responsibility whatsoever in the event that adverse side-effects are caused by using our product.

Revision

The company accepts no responsibility for loss or damage caused by the customer's misuse of the goods (the customer's statutory rights are not affected by this clause).

GKR KARATE UK LTD

Deleted clause

In consideration of the acceptance of my (our) application as a member (members) of the 'Go-Kan-Ryu Karate-Do' style of karate, I (we) for myself (ourselves), heirs, executors, administrators and permitted assigns, hereby formally:

1 Expressly agree that no servant or agent of or contractor to either any branch or other training centre of Go-Kan-Ryu Karate Do or G-K-R Karate UK Limited (No 314 1655) shall in any circumstances whatsoever be under any liability whatsoever to me (us) for loss, injury or damage of any kind caused to me (us), arising or resulting (either directly or indirectly) from any act, neglect or default by or on the part of any such servant, agent or contractor while that person or while those persons are acting either in pursuant to, in the course of or in some way in connection with his, her or their contractual or other arrangements with G-K-R Karate UK Limited and, without prejudice to the generality of the foregoing every exemption, limitation, condition, and liberty herein contained and every right, exemption from liberty, defence and immunity of whatsoever nature applicable to G-K-R Karate UK Limited or to which G-K-R Karate Limited is or might be entitled hereunder shall also be available to and shall both extend to and protect every such servant, agent or contractor of G-K-R Karate UK Limited either acting or engaged as aforesaid and for the purposes of all the foregoing provisions of this clause G-K-R Karate UK Limited shall be deemed to be acting either as an agent or trustee on behalf of and for the benefit of all persons who either are or might be servants or agents of or contractors to G-K-R karate UK Limited from time to time and all such persons shall to this extent either be or be deemed to be parties to the legal contract which is either in or evidenced by this agreement.

2 Waive all and any claim or right or cause of action which I (we) might otherwise have, arising out of or from any loss of my life or any injury, damage or loss of any description which I (we) may suffer or sustain in the course of my participation in Go-Kan-Ryu Karate-Do.

3 Agree that this waiver release and discharge shall be and operate separately in favour of G-K-R Karate UK Limited and all and any persons involved or otherwise engaged in organising or running the activities of G-K-R Karate UK Limited and Go-Kan-Ryu Karate Do and shall so operate whether or not the loss, injury or damage is attributed to the act or neglect of any one or more of them.

GROUP 2 SCHEDULE 3: PARAGRAPH 1(b)
NO LIABILITY FOR BREACHES OF CONTRACT

2a No liability for unsatisfactory goods or workmanship

THE DAMP DETECTORS

Original clause

This guarantee only provides cover for work carried out to remedy rising damp. The approved installer does not accept any liability for loss or damage to the property arising from their work beyond the making good of their work.

Revision

This guarantee only provides cover for work carried out to remedy rising damp. The approved installer does not accept any liability for damage caused by pre-existing structural defects.

ETIQUETTE PHOTOGRAPHY

Deleted clause

Note. Although all precautions will be taken to ensure the successful production of your order - it is regretted that no responsibility for financial or other loss can be accepted resulting from any unforeseen circumstances, from any source, which might result in failing to do so.

GIMSON STAIRLIFTS LTD

Deleted clauses

Drawings illustrations descriptive matter dimensions weights shipping specifications and descriptions and illustrations shown in catalogues and other advertising material are approximate and only intended to present a general idea of the goods offered as changes are constantly being made in design and materials used. Reasonable precautions will be taken to ensure the accuracy of these matters but no responsibility is accepted for errors therein. Design sketches layouts etc originated by us are submitted in confidence and unless otherwise agreed in writing they and the copyright in them will remain ours. We cannot accept any responsibility for errors in drawings or specifications approved by the customer.

Performance figures if given are such as may reasonably be expected to be attained on test upon completion of installation and are subject to reasonable tolerances. Reasonable time and

opportunity are to be given to comply with such performance figures and no liability will be accepted in respect of any failure of attainment on test unless they have been specifically guaranteed under any agreed sum by way of liquidated damages.

Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to us in accordance with these conditions we shall be entitled to replace the goods (or the part in question) free of charge or at our sole discretion refund to the customer the price of the goods (or a proportionate part of the price) but we shall have no further liability to the customer.

Except in respect of death or personal injury caused by our negligence we shall not be liable to the customer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of the contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by our negligence or by the negligence of our employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the customer except as expressly provided in these conditions.

GP CARE SUPPLIES

Deleted clause

It is the customer's responsibility to make sure they have tried the goods before delivery and that they are fit for the purpose for which they are intended.

PROTECTAWALL LTD

Original clause

The company will not guarantee, under any circumstances or be liable to the client in respect of the application of Textured Coating to woodwork, chimneys, gutters, pipes, plinths, parapets, ironwork, bitumastic coated surfaces, or red oxide and any surfaces below the damp proof course.

Revision

The company will not guarantee Textured Coating to woodwork, chimneys, gutters, pipes, plinths, parapets, ironwork, bitumastic coated surfaces, or red oxide and any surfaces below the damp proof course.

RICHLINE LTD

Deleted clause

All goods must be checked carefully before leaving the premises, otherwise the seller will not be held responsible for any defects or damage to goods claimed after leaving the premises.

SALLY UK HOLDINGS PLC

Deleted clauses

4 Save as provided by these Conditions the carrier shall not be liable for loss or theft of or damage to any property whatsoever of the Passenger whether arising by reason of the negligence or default of the carrier, its servants, agents and independent contractors or otherwise.

13 The Carrier does not accept any liability whatsoever for any loss suffered by the Passenger in respect of any loss of or damage to the Passenger's property while in the vicinity of the ship or on any premises used by the carrier or in any conveyance, whether or not such loss is caused by the negligence or fault of the Carrier or its servants, agents or independent contractors. In these terms and conditions the expression 'property' includes baggage, money valuables, motor vehicles, caravans, trailers, motor and pedal cycles and any other property whatsoever of the Passenger. In the event of any property of any Passenger remaining on board, the carrier shall be entitled to dispose of or destroy such property after a period of one month from the date that it was left on the vessel.

TOWN & COUNTRY DRIVEWAYS PLC

Deleted clauses

The nature of the process can result in:

variations in colour and depth of imprint and/or

water formation (pooling) and/or

cracking.

In each instance the company shall make all reasonable efforts and take all reasonable precautions and care to ensure that the customers' requirements are met and that where practicable pooling does not occur. The company shall be under no liability in respect of any defect or damage arising from or as a result of the effects of the process specified in the sub-clause which the customer accepts, may, in the normal course of events occur.

The company does not undertake to determine if the installation site is suitable for the installation, or that the installation of the goods is lawful and does not infringe any third parties' rights including planning permission.

T-SHIRT PRINT

Original clause

Tee Shirt Print accepts no responsibility for damage to customers' garments. Customers' garments are printed entirely at their own risk.

Revision

Tee Shirt Print only accepts responsibility for damages caused by our own negligence.

2b Restrictions on liability

CONFIDENTIAL CREDIT CONSULTANTS

Deleted clause

The provisions of the above subject to CCC in the provision of the services exercising such skill and diligence as is required by statute provided that in any event CCC will not be liable for any indirect or consequential loss or loss of profits or use whether arising out of negligence of CCC, its servants and/or agents, breach of contract or otherwise.

MAPLES STORES PLC

The full Term 7 and its plain English revision (now Term 6) are given although sub-clauses 7.1 and 7.5 in the original version belong more appropriately under sub-group 2a.

Original clause

7.1 If the Goods (or any of them) have been lost or damaged while at Maples' risk, Maples shall at its option either rectify or replace them or refund the price paid by the Customer provided that the Customer shall have given Maples written notice of such loss or damage with reasonable particulars thereof within 3 days of receipt of the Goods

Revision

6(a) If the goods (or any part of them) have been lost or damaged by Maples we will at your option either repair or replace them or refund the price you paid for them. You must tell us about any fault or damage as soon as is reasonably possible.

or (in the case of total loss) of receipt of the invoice or other notification of delivery. Maples shall have no liability for any consequential loss arising out of such damage or loss as mentioned above save as mentioned below.

7.2 Subject to the provisions of the Consumer Protection Act 1987 and section 2(1) of the Unfair Contract Terms Act 1977 and save as otherwise provided in these Conditions, Maples' liability in respect of any defect in or failure of Goods supplied or services carried out or in respect of a breach of warranty under the provisions of clause 6 is limited to replacing or (in its discretion) repairing or paying for the repair or replacement of goods or refunding the Contract price of Goods which within 12 months of delivery to the Customer are found to be defective by reason of faulty or incorrect design workmanship parts or materials and carrying out again any Services which within 12 months are found to be defective.

7.3 In the event of any error in any weight, dimension, capacity or performance or other description or information which has formed a representation or its part of a contract Maples' liability in respect of any direct loss or damage sustained by the Customer as a result of such error shall not exceed the price of the Goods in respect of which the description or information is incorrect.

7.4 Conditions precedent to Maples' liability under sub-clause 7.2 and 7.3 shall be that as soon as reasonably practicable by the Customer

6(b) As soon as possible you must tell us about the fault; and give us permission to inspect the goods or services.

6(c) If we agree to repair or replace the goods or provide any services again, a new delivery date will be agreed between Maples and you. In case of delay see point 4(a).

6(d) We will pay for any damage caused by our employees.

7.4.1 shall have given to Maples reasonable notice of the defect, failure or error

7.4.2 shall have provided authority for Maples' servants or agents to inspect the Goods and/or services as Maples may request.

7.5 Save as provided in these Conditions Maples shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with any such defect, failure, breach of warranty or error as aforesaid.

7.6 Where the Company agrees to repair or replace Goods and/or carry out again any Services in accordance with the foregoing provisions of this paragraph any time specified for delivery or completion under the Contract shall be extended for such period as the Company may reasonably require.

7.7 Maples will indemnify the Customer in respect of any direct damage to property caused by the negligence of Maples or the negligence or wilful default of its servants or agents provided that Maples' liability hereunder shall not exceed £1,000.

7.8 Save as otherwise expressly provided in the Conditions and subject to the provisions of section 2(1) of the Unfair Contract Terms Act 1977 the Company shall not be liable to the Customer for any damage or other consequential loss incurred by the Customer in consequence of any negligence on the part of the Company or negligence or wilful default on the part of its servants or agents or in connection with the supply of the Goods or the supply of the

Services or the design or manufacture thereof or the provisions of any information.

2c Restriction of right of set-off

PROTECTAWALL LTD

Original clause

On completion of the work the client hereby agrees to pay the balance due to the site foreman.

Revision

On satisfactory completion of the work the client hereby agrees to pay the balance due to the site foreman

TOWN & COUNTRY DRIVEWAYS PLC

Deleted clause

The company shall be under no liability under the above warranty, condition or guarantee, if the price of the contract has not been paid by the due date for payment notwithstanding that it may have been paid subsequently. The company shall not be liable to the customer pursuant to the provisions of this clause if the customer has not made any payment due to the company hereafter forthwith in full when due.

2d Exclusion of liability for delay

GIMSON STAIRLIFTS LTD

Deleted clause

Any time or date for delivery or performance is given by us as a business estimate only and not a contractual obligation so that time shall not be deemed to be the essence of the contract. We will make every endeavour to deliver or perform by the time or date given but failure to do so for any reason will not entitle the customer to cancel the contract nor shall we be liable for any direct or consequential loss claimed to have arisen directly or indirectly from any delay.

We may deliver the goods in advance of any estimated delivery date by giving reasonable advance notice to the customer.

GP CARE SUPPLIES

Original clause

The company shall use its best endeavours to fulfil promptly all orders made by customers but it will not be responsible for any delay due to matters beyond its control.

Revision

The company shall use its best endeavours to fulfil orders promptly but it cannot be responsible for any delay for matters outside of its control. In the event that such delay shall be unreasonable customers shall be entitled to cancel the contract and receive a full refund. For the purposes of this clause, an unreasonable delay shall be in excess of 6 weeks from the date of this contract.

MAPLES STORES PLC

Original clause

5.1 Any period or date for delivery and/or completion stated in the Contract is an estimate only and Maples shall not be liable to the Customer for any delay howsoever caused. The time for delivery and/or completion shall not be of the essence, however, Maples shall endeavour to deliver as stated in the Contract and the Customer shall make all arrangements necessary to take the delivery of the Goods and/or Services when tendered for delivery. The place for delivery and/or completion shall be that stated in the Contract, or if the Contract requires the Customer to supply delivery instructions by a certain date, then the place notified and agreed by Maples by that date.

Revision

4(a) Any date we give you for delivering the goods or services is an estimate only. We will only be liable for delays of more than 2 weeks. You may be able to arrange a specific date for delivery with us. If not, we will try to deliver your goods or services on the date set out in the contract. You must make all the arrangements you need to take delivery. The place where we deliver will be shown in the contract. If the contract asks you to give us delivery instructions by a certain date, then you must give us those instructions by that date. If the delivery is delayed by us for more than 2 weeks and no date can be agreed the contract may be cancelled by the consumer and the deposit refunded.

PROTECTAWALL LTD

Deleted clauses

Every endeavour will be made to commence the work within any agreed period. In the event of unforeseen circumstances the company cannot be held responsible for consequential loss arising from any delay, neither shall any delay constitute a breach of contract.

The customer agrees to the work being carried out at a time convenient to Protectawall Ltd under the block installation plan.

RICHLINE LTD

Deleted clause

Delivery dates can never be guaranteed and no liability can be accepted for delays or consequential loss arising from them.

SALLY UK HOLDINGS PLC

Deleted clause

5 The Carrier shall not be liable for any costs, claims, loss or damage suffered by the Passenger arising from any delay or inconvenience of the Passenger whether arising by reason of the negligence or default of the Carrier, its servants, agents and independent contractors or otherwise.

**GROUP 3 SCHEDULE 3: PARAGRAPH 1(d)
RETENTION OF PRE-PAYMENTS**

MAPLES STORES PLC

Original clause

3.3 No order which has been accepted by Maples may be cancelled by the Customer except with the agreement in writing by Maples (who have a discretion whether or not to accept such cancellation) and on terms that the Customer shall indemnify Maples in full against all losses and costs incurred by Maples as a result of cancellation. A MINIMUM CANCELLATION CHARGE OF 25% OF THE CONTRACT PRICE WILL BE PAYABLE BY THE CUSTOMER IN THE EVENT THAT MAPLES ACCEPTS SUCH CANCELLATION.

Revision

2(c) You cannot cancel an order unless we agree in writing. You must pay any losses and costs we suffer because of the cancellation. If we cancel the contract, we must pay you any losses or costs you suffer because of the cancellation.

**GROUP 4 SCHEDULE 3: PARAGRAPH 1(e)
PENALTY CLAUSES**

GIMSON STAIRLIFTS LTD

Deleted clause

When the customer has been notified that the goods are ready for despatch the right is reserved to deliver the goods to the consumer at any time on giving seven days prior notice in writing. Where the customer is unable to accept delivery at the expiry of that seven day period then the balance of the price shall immediately become due as if delivery had been made and if the goods remain on our premises they do so at the customer's risk and expense and (without prejudice to the generality of the foregoing) we may charge the customer for the reasonable costs of storage and insurance.

MAPLES STORES PLC

Original clauses

4.3 It is understood and agreed by the Customer that the obligation in respect of payment contained in clauses 4.1 and 4.2 is a fundamental obligation and that failure to make any payment within 6 days of payment falling due shall entitle Maples without prejudice to its other rights and remedies to:

4.3.1 treat the contract as repudiated by the Customer; and/or

4.3.2 withhold delivery and/or performance of the Goods and/or Services or any subsequent instalments of the Goods and/or services; and/or

4.3.3 withhold delivery of any relevant goods or services; and/or

4.3.4 appropriate any payment made by the Customer to such of the

Revision

3(b) Unless we agree otherwise, you must pay for the goods or services set out in the contract. If you do not pay within 2 weeks of the date set out in the contract, we will charge you at 4% above Bank of Scotland plc's base rate every day the monies owed remain outstanding.

3(c) If you do not pay for the goods and services within 2 weeks of the date the payment is due, we will treat the contract as cancelled or refuse to deliver the goods or services.

Goods and/or Services or other relevant goods or services supplied to the Customer as Maples may think fit.

5.4 If the Customer fails to take the delivery of the Goods by not accepting the them, or fails to give Maples adequate delivery instructions before the time stated for delivery or purports to or cancels the Contract and such purported cancellation is not accepted by Maples pursuant to clause 3.3 then without prejudice to any other right or remedy, Maples may at its option store the Goods until actual delivery and charge the Customer for the reasonable costs of storage and insurance or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage, insurance and selling expenses) charge the Customer for any short fall between the Contract price and the eventual sale price.

4(c) If you do not accept the goods or services when they are delivered, or your delivery instructions are not clear enough, we will hold the goods in storage. (This will also apply if you cancel goods or services without prior agreement). We will attempt to contact you by telephone and by letter to arrange delivery. If this is unsuccessful we will charge you for the reasonable costs of storage and insurance. Or we may sell the goods at the best price we can get. We will then take off all reasonable storage, insurance and selling expenses from the amount we receive and charge you the customer for any shortfall.

RICHLINE LTD

Deleted clauses

In the event of a cancellation up to seven days after date of order the deposit will be returned with a deduction of 20% to cover administration and staff costs.

In the event of a cancellation after seven days of order the customer will be liable to pay the balance due for the goods purchased.

**GROUP 5 SCHEDULE 3: PARAGRAPH 1(f)
UNEQUAL CANCELLATION RIGHTS**

BRITANNIA RESCUE

Original clause

We may cancel a membership at any time by sending seven days' notice by recorded delivery to your last known address and in such an event you will receive a pro rata refund of your subscription, unless the service has been used. We reserve the right to decline renewal of any membership.

Revision

If excessive use of the service has occurred, e.g. through failure to seek permanent repair following any temporary repair effected by an agent or due to lack of routine vehicle maintenance, we may cancel the membership by sending seven days' notice by recorded delivery to your last known address.

HOME IMPROVEMENTS BEAUTIFUL DIRECT LTD

Deleted clause

Term 10 - CANCELLATION

- a) The company may cancel the contract and all money paid by the customer will be refunded upon receipt of a technical survey report unsatisfactory to the company or financial report unsatisfactory to the company or any other reason the managing director sees fit.
 - b) No order which has been accepted by the company may be cancelled by the customer except with the agreement in writing of the managing director of the company and on the terms that the customer shall indemnify the company in full against all loss, including loss of profit costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the company as a result of cancellation.
-

PROTECTAWALL LTD

Original clause

Once this agreement has been signed by the client and representative it shall be non-cancellable by the client other than within the Consumer Credit Act 1974 or on payment of 40% of the contract value.

Revision

Once this agreement has been signed both Protectawall and the customer will be bound by this agreement and should either party cancel the agreement compensation will be paid up to a maximum of 40% of the contract value.

TOWN & COUNTRY DRIVEWAYS PLC

Deleted clause

No order which has been accepted by the company may be cancelled by the customer except with the agreement in writing of the company and on terms that the customer shall indemnify the company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages, charges and expenses incurred by the company as a result of cancellation and, for the avoidance of doubt, if such cancellation takes place the following charges may be applied by the company:

the company shall be entitled to charge an administration fee of £100 on an accepted cancellation plus

prior to the technical survey being carried out, 20% of the price; or

after the technical survey has been carried out, 50% of the price.

The company reserves the right to cancel the contract or requote should details be brought to their notice that do not appear in the contract or if the contract has not been priced correctly.

**GROUP 6 SCHEDULE 3: PARAGRAPH 1(g)
RIGHT TO TERMINATE WITHOUT NOTICE**

BRADLEYS ESTATE AGENTS LTD

Original clause

The right is specifically reserved to decline instructions, to decline to offer any discount, or to terminate this engagement at any time, where in Bradleys Estate Agents' opinion, the asking price is unrealistic in the light of the prevailing market conditions, to the extent that there is little or no likelihood of a sale being arranged at, or near, the price in the immediately foreseeable future, or the vendor later raises any additional point which is unacceptable to Bradleys Estate Agents.

Revision

We can end this agreement by giving 14 days notice in writing to you at any time in the following circumstances:

- a) if we believe that the price at which you require is to market the property is unrealistic: or
- b) if you require us to take any step which may put us in breach of our legal or professional obligations.

**GROUP 7 SCHEDULE 3: PARAGRAPH 1(h)
AUTOMATIC RENEWAL CLAUSES**

BRADLEYS ESTATE AGENTS LTD

Original clause

In the event of Bradleys Estate Agents being instructed as SOLE AGENTS the following provisions shall apply:

- (a) I/we undertake not to instruct any other estate agent in connection with this proposed sale for a period of 24 weeks, during which time Bradleys Estate Agents may indicate they are sole agents.
- (b) I/we acknowledge that the sole agency period referred to in paragraph (a) above will last for a minimum period of 24 weeks and that the period of sole agency shall continue, unless and until terminated upon the giving of at least 14 days notice in writing (which shall not expire until at least 24 weeks from the date hereof) and at the end of the said 14 days notice period I/we shall be at liberty to instruct another firm of Estate Agents in connection with the sale of the property, so that thereafter unless otherwise stated to the contrary, Bradleys Estate Agents will continue to act for me/us on a multiple agency basis, applying the rate of commission applicable to a multiple agency as specified in clause 5 above.

Revision

LENGTH OF THE SOLE AGENCY PERIOD

The initial period of the SOLE AGENCY will be () weeks from the date of this agreement.

You agree that, during that initial period, you will have no right to end this SOLE AGENCY.

If you want to end the SOLE AGENCY at the end of that initial period, you must give at least 14 days notice in writing ending at the earliest on the last day of the initial period, which is ().

If you do not give us notice at the end of the initial period, then the SOLE AGENCY will continue after the end of the initial period indefinitely until it is ended either by you giving us notice under the next clause, or by you giving us notice under clause 24 below.

At the end of that initial period, you can end the SOLE AGENCY at any time by giving us 14 days notice in writing. However, if we have not yet sold the property, we will contact you at that time to talk about renewing our agreement and discussing a new marketing campaign.

**GROUP 8 SCHEDULE 3: PARAGRAPH 1(i)
HIDDEN TERMS**

COUNTRY HOLIDAYS

Deleted clause

The company does not own or operate the holiday accommodation (as stated in condition 1) and accordingly its use is subject to the terms and conditions of each of the property owners.

**GROUP 9 SCHEDULE 3: PARAGRAPH 1(j)
GENERAL VARIATION CLAUSE**

SOUTH LAKELAND CARAVANS LTD

Original clause

46 Acceptance of a pitch on Harwood Bar caravan park will be deemed as acceptance to abide by these printed rules, and also to accept updates to the rules that are shown on the notice boards around the park.

Revision

The company agreed that the clause would be amended to provide that caravan owners would be individually notified of rule changes.

**GROUP 10 SCHEDULE 3: PARAGRAPH 1(k)
RIGHT TO CHANGE WHAT IS SUPPLIED**

DAVID COVER & SON LTD

Deleted clause

All orders are taken subject to the availability of goods and materials in stock and the seller reserves the right to alter the specification of, or to withdraw any item without prior notice. Provided however that such alternative materials that are used shall be of satisfactory quality.

GP CARE SUPPLIES

Original clause

The company reserves the right at any time and without notice to vary or alter any of the design specifications and packaging of equipment described in its sales literature.

Revision

The company will use its best endeavours to supply the customer with the exact goods ordered but where this is not possible the company will notify the customer as soon as possible of any alterations to the design, specifications and packaging of the equipment described in the sales literature and where the alteration is fundamental to the goods ordered the customer may terminate this contract and any deposit paid will be refunded.

PROTECTAWALL LTD

Deleted clause

The company reserves the right to change and improve its products or services without prior notification in accordance with its progressive policy.

RICHLINE LTD

Deleted clause

Colour and trimmings may differ and are ordered at the customer's own risk.

**GROUP 11 SCHEDULE 3: PARAGRAPH 1(I)
RIGHT TO INCREASE THE PRICE**

BESTCO

Deleted clause

Any variation in the quantity of work completed from that stated in our quotation from the enquiry will be charged pro rata and any additional material used for groundwork which is not properly made up will be charged pro rata.

DAVID COVER & SON LTD

Deleted clause

Prices of the Goods shall include delivery of the Goods to the Buyer's premises. Provided however, that the Seller reserves the right to impose a delivery charge where the Seller sees fit. Any charge for delivery will be at the Seller's rates from time to time in force.

GIMSON STAIRLIFTS LTD

Deleted clause

We reserve the right by giving notice to the customer at any time before delivery to increase the price of the goods to reflect any increase in the cost to us which is due to any factor beyond our control including (without limitation) any foreign exchange fluctuation currency regulation alteration of duties or taxes significant increase in the cost of labour materials or other costs of manufacture any change in delivery dates quantities or specifications for the goods which is requested by the customer or any delay caused by any instructions of the customer or failure of the customer to give us adequate information or instruction.

RICHLINE LTD

Deleted clause

The price at which an order is accepted is subject to revision if prior to delivery there is any significant change in costs relating thereto.

**GROUP 12 SCHEDULE 3: PARAGRAPH 1(n)
ENTIRE AGREEMENT CLAUSES
AND FORMALITY REQUIREMENTS**

DAVID COVER & SON LTD

Deleted clause

No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

Any advice or recommendation given by the Seller or its employees or agents to the buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

GIMSON STAIRLIFTS LTD

Deleted clause

Our employees and agents are not authorised to make any representations concerning the goods unless confirmed by us in writing. In entering into the contract the customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not confirmed.

GP CARE SUPPLIES

Original clause

These conditions shall apply to all orders and contracts for the supply of equipment in the UK by the company or its Authorised Distributor to customers and any purported qualification or variation hereof by any employee or agent of the company or its

Revision

These conditions shall apply to all orders and contracts for the supply of equipment in the UK by the company or its Authorised Distributor to customers and if there are any qualifications or variations to these conditions it is important for the avoidance

Authorised Distributor shall be ineffective unless agreed to in writing by the company.

The placing of an order by a customer together with these conditions of sale shall constitute the entire contract between the company and the customer.

of doubt that such variations should be in writing in the space provided overleaf.

All orders for goods shall be deemed to be an offer by the customer to purchase goods in accordance with these conditions.

MAPLES STORES PLC

Original clause

2.1 The conditions are incorporated into the contract and supersede any other including terms or conditions appearing in advertisements, catalogues or other literature relating to the goods and override and exclude other terms or conditions stipulated or referred to by the Customer.

2.2 All orders hereafter given by the Customer are given subject to the conditions and the signing by Maples of the Customer's order form or other documentation shall not imply that any modification of the Conditions. The Customer acknowledges that there are no other representations or warranties outside the Conditions and the express written terms of the Contract that have induced the Customer to enter into the Contract.

2.3 No representative or agent of Maples has authority to agree any terms or make any representations that are inconsistent with the Conditions or to enter into any contract except on the basis of them; any such terms, representations or contract will bind Maples only if in writing and signed by a director.

Revision

2(a) The quantity, quality and description of any goods or services will be those set out in the contract under 'specification'.

VODACALL LTD

Deleted clause

Except as provided in these terms and conditions the Network Services Agreement and the Recall Service Agreement are the complete and exclusive statement of the agreement between the parties and replace all understandings or prior agreements whether oral or written and all representations or other communications between the parties relating to the provision of the Network Services and/or the Recall Service.

**GROUP 13 SCHEDULE 3: PARAGRAPH 1(o)
UNEQUAL OPT OUT CLAUSES**

MAPLES STORES PLC

Deleted clause

5.3 A failure by Maples to make an instalment delivery will not entitle the Customer to repudiate the Contract.

VODACALL LTD

Original clause

10 SUSPENSION/DISCONNECTION

10.1 Vodacall may from time to time without notice suspend the Network Services (and, at Vodacall's discretion, disconnect the Apparatus or the SIM Card from the System) and/or the Recall Service in any of the following circumstances:

...

10.2 Notwithstanding any suspension of the Network Services and/or the Recall Service under this condition 10 the Customer shall remain liable for all charges due throughout the period of suspension unless Vodacall at its sole discretion determines otherwise.

10.3 Disconnection shall entitle Vodacall to levy a disconnection charge as set out in its then current tariff. Any reconnection subsequently made shall be at the sole discretion of Vodacall who shall be entitled to levy a reconnection charge as set out in its then current tariff.

Revision

6 SUSPENSION OF THE SERVICES

We can suspend the provision of the Services without telling you: . . .

In the above cases your Agreement does not come to an end and you are still liable for all monthly (or other periodic) charges due during any period of suspension. Therefore, we recommend you privately arrange insurance to cover any monthly (or other periodic) charges you have to pay. However, if you are unable to use all of the Services for a continuous period of 3 days because:

- there is a technical failure of the networks;
- they are being tested, modified or maintained; or
- access is denied to us

you shall receive a refund of your monthly (or other period) charge. The refund will represent that part of the monthly (or other periodic) charge for the period of suspension.

**GROUP 14 SCHEDULE 3: PARAGRAPH 1(q)
RESTRICTION ON LEGAL REMEDIES**

DAVID COVER & SON LTD

Deleted clause

Any dispute arising under or in connection with these conditions or the sale of the Goods or the provision of Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society.

GP CARE SUPPLIES

Original clause

The acceptance of this order by the company having taken place at its offices, this agreement is deemed to have been entered in Torquay, Devon and accordingly any proceedings arising out of or in connection with this agreement shall be brought either in the Torquay County Court or in Exeter County Court.

Revised clause

This agreement is deemed to have been entered into in Torquay, Devon and accordingly any proceedings by the company arising out of or in connection with the agreement shall be brought in Torquay and Newton Abbot County Court but this clause shall not affect the rights of the customers to issue proceedings from any other county court or other court in accordance with the rules of those courts.

SALLY UK HOLDINGS PLC

Deleted clause

Notes to passengers . . . It is further agreed that each and every Contract of carriage shall be deemed to be made with the owner or Charterer by the Demise of the Vessel notwithstanding that any documents which are evidence of the Contract of Carriage may be issued by a Company or Line other than the Owner or Charterer by Demise of the Vessel (or anything else that may indicate or appear to the contrary) in which case such Company or Line shall act solely as agent and shall have no personal liability whatsoever.

The issue of the ticket and these Conditions shall be governed by English Law and the carrier and the Passenger hereby submit to the exclusive jurisdiction of the English High Court in London

in respect of all disputes whatsoever or howsoever arising under or in connection whatsoever with this contract.

TOWN & COUNTRY DRIVEWAYS PLC

Deleted clause

The contract shall be governed by the laws of England. Any dispute arising under the contract may, at the option of the company, be referred to an arbitrator to be agreed between the parties and in default of such agreement by the President for the time being of the RIBA and whose decision shall be final and binding.

**GROUP 15 REGULATION 4
GENERAL UNFAIRNESS**

APCOA PARKING UK LTD

Deleted clause

The company is entitled to recover from anybody who brings a vehicle into the car park or drives a vehicle in the car park, any damages or legal costs it has to pay as a result of any damage caused by that person bringing or driving the vehicle in the car park. This right is known in law as an indemnity. It covers damage caused to any other vehicle or property or the death or the injury of any other person, and in any claim arising from any other personal vehicle being prevented or delayed from leaving the car park.

CONFIDENTIAL CREDIT CONSULTANTS

Deleted clause

The applicant will indemnify CCC its officers, employees or other agents any claim or action made or institutes against any of them in respect of any losses, damages, costs or other expenses in connection there WITH [*sic*]. (Including any payment made by CCC on legal advise to settle any such claim or action) to the extent that it arises from any such information, advise or opinion being provided to the applicant using the disclosing the same to the third party (Whether or not the subject of such information, advise or opinion).

DAVID COVER & SON LTD

Deleted clauses

Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection;

Where the goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the buyer in respect of any one or more instalments shall not entitle the buyer to treat the contract as whole as repudiated.

GIMSON STAIRLIFTS LTD

Deleted clause

Until such time as the property and the goods passes to the consumer, we shall be entitled at any time to require the customer to deliver up the goods to us and if the customer fails to do so forthwith to enter upon any premises of the customer or any third party where the goods are stored and repossess the goods.

MAPLES STORES PLC

Original clause

5.2 Subject to any agreement in writing by Maples the risk in Goods which Maples agrees to supply shall pass to the Customer on the Goods being off-loaded at the delivery destination or the date (if earlier) on which the Goods being ready for delivery, delivery is postponed at the Customer's request.

Revision

4(b) As soon as we have delivered the goods or services, you will be responsible for them. If you delay a delivery, our responsibility for everything other than damage due to our negligence will end on the date we agree to deliver them, as set out in the contract.

VODACALL LTD

Deleted clause

The Customer will indemnify Vodacall against all liability (including liability for negligence) incurred by Vodacall or for which Vodacall is liable as a result of any claim made by any third party out of the provision of the Network Services and the Recall Services or otherwise, together with all legal costs incurred by Vodacall relating to any such claim, except to the extent of Vodacall's liability under condition 9.2.1. If the claim relates to direct physical damage to or loss of property resulting from the negligence of Vodacall, the Customer will indemnify Vodacall for any liability and/or legal costs over and above the sum for which Vodacall is liable under condition 9.2.3.

**GROUP 16 REGULATION 6
TERMS NOT IN PLAIN AND INTELLIGIBLE LANGUAGE**

BESTCO SURFACING LTD

Deleted clauses

Retention will not be allowed unless the rate and duration are agreed at the time of ordering.

When work is completed to the customer's specification we cannot guarantee that such specification is suitable for the conditions to be met.

DAVID COVER & SON LTD

Deleted clause

Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or any term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims of consequential compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these conditions.

TOWN & COUNTRY DRIVEWAYS PLC

Risk of damage to or loss of the goods shall pass to the customer at the time of delivery or, if the customer wrongfully fails to take delivery of the goods, the time when the company has tendered delivery of the goods.

Notwithstanding delivery and the passing of risk in the goods or any other provision of these conditions, the property in the goods shall not pass to the customer until the company has received in cash or cleared funds of the price in full.

Until such time as property in the good passes to the customer, the customer shall hold the goods as the company's fiduciary agent and bailee, and shall keep the goods separate from those of the customer and third parties and properly stored, protected and insured and identified as the company's property.

GROUP 17 REGULATION 6

EXAMPLES OF PLAIN AND INTELLIGIBLE LANGUAGE

BRITISH FUELS (OILS) LTD

This contract has been reproduced in its entirety as a good example of the use of plain and intelligible language. As originally drafted, however, Terms 7 and 21 were not considered to be satisfactory, and both the original and revised forms have been shown here.

Arrangements to Supply

1 We will supply gas to your home provided the property is already connected to the mains gas supply. You must not enter into these arrangements with us if you already have a contract with anyone else to supply you with gas (unless you will have terminated that contract before we start to supply you).

2 If you want to terminate these arrangements with us within a year of when we start supplying you with gas, you will have to pay us a termination fee of £10.

Price

3 We guarantee not to increase the price that we sell gas to you for at least a year from when we start supplying you.

4 Our guarantee only applies provided that there has been no change in your method of payment. If there has, it may lead to a price increase because a different tariff will apply to the gas we supply to you.

5 After the first year, we will be allowed to alter our prices which may go up or down. We will give you at least 28 days notice of any change. You can accept the change or terminate the contract - we will remind you of this right when we send you the notice. If you decide to terminate, then as long as we hear from you in writing within 14 days we will not implement the price change. Paragraph 17 tells you how to end the arrangement for us to supply you with gas.

Invoicing

6 We will send you an invoice monthly, unless you have a pre-payment meter, in which case we will just send you a statement of the amount of gas you have used.

[Original clause]

7 Our invoice will be based on a reading of your meter. The amount shown on the meter will be conclusive evidence of the amount of gas you have used (except where we think or British Gas TransCo thinks the meter has been tampered with or where it is shown to be faulty). If we have not been able to read your meter, we will estimate the amount of gas you have used (based on all relevant information available to us) and send you an estimated invoice. We will make appropriate adjustments to the next invoice we send you after we have been able to read your meter.

[Revision]

7 Our invoice will be based on a reading of your meter. The amount shown on the meter will be conclusive evidence of the amount of gas you have used (except where we think or British Gas TransCo thinks the meter has been tampered with or where it is shown to be faulty). If we have not been able to read your meter, we will make a reasonable estimate of the amount of gas you have used (based on all relevant information available to us) and send you an estimated invoice. We will make appropriate adjustments to the next invoice we send you after we have been able to read your meter.

8 We will add VAT and any other appropriate tax or duty to your invoice and you must pay the full amount of the invoice.

Payment

9 Payment must be received by us within 14 days after you receive our invoice, or in accordance with any other payment arrangements we have made with you. If you do not pay any of our invoices then we will be entitled to ask you to pay by an alternative method, in which case there may be a price increase because a different tariff will apply to the gas we supply to you.

Deposit

10 We may under special circumstances ask you to pay a deposit (which we will be entitled to do at the outset or if you do not pay any of our invoices). We will keep the deposit for a reasonable period but we will repay it if the arrangements for us to supply you with gas are terminated. When we repay the deposit we will be allowed to deduct from it any money you owe us.

Meters, pipework and apparatus

11 The meter and pipework bringing gas to your home is owned and operated by British Gas TransCo ('British Gas'). We have a contract with British Gas to allow us to use the pipework and meter to supply you with gas.

12 British Gas require us to make sure that the pipework and meter are used safely and properly and we need to make sure that you do the same. For this reason we have compiled details of how you must use the gas supply, pipework and meter.

13 A copy of the details can be obtained from us at any time and you must agree to comply with the most up-to-date set of details (we may have to update the details from time to time but we will let you know about material changes). Generally, unless you use your gas supply, meter and/or pipework in some unusual way, it is very unlikely that you will contravene the detailed obligations.

14 Neither British Gas nor ourselves are responsible for pipework or apparatus on your side of the meter (including boilers and central heating systems). You must make sure that all of these are properly installed and are kept safe and in good repair.

15 You must not continue to use any gas appliance if we or our representative advises you that it is unsafe to do so.

Access

16 You must allow British Gas and/or ourselves to have full and safe access at any reasonable time in connection with this Agreement (for example, to test or read your meter). If we think, or British Gas thinks, at any time that there is a risk or danger from using gas at your home or in your neighbourhood (for example, if there is a mains gas leak) you must make sure British Gas and/or ourselves have immediate access whether during the day or night. You must also allow British Gas access if they need to install, check, renew or maintain the meter or pipework for which they are responsible.

Termination

17 If you want to end the arrangement for us to supply you with gas you must:

17.1 give us at least 28 days in writing; or

17.2 if you are moving house, give us at least 48 hours notice, by telephone or preferably in writing.

We will then prepare a final invoice for you and you must make sure that we are able to obtain access for a final meter reading. If you fail to give us notice before you move house you will continue to be liable to pay for gas for a reasonable period (which will generally be until the new occupier takes on the gas supply).

18 If we want to end the arrangements for us to supply you with gas we must give you at least 28 days notice in writing. We will not end the arrangements for at least a year from when we start supplying you with gas unless any of the circumstances in paragraph 19 apply.

- 19 We can stop supplying you with gas at any time and end our arrangement with you if:
- 19.1 you do not pay our invoice or you commit a serious breach of the arrangements for us to supply you with gas (for example, theft of gas) in which case we may cut you off; or
 - 19.2 the Director General of Gas Supply (who is the head of OFGAS) directs that another supplier should supply your house; or
 - 19.3 another party cuts off the supply of gas to your house; or
 - 19.4 it would be dangerous to the public to continue supplying you with gas;
 - 19.5 we are no longer licensed by OFGAS to supply you with gas.

Miscellaneous

20 If we cannot supply you with gas for some reason which is beyond our control, for example damage to the pipeline system, then you will not be able to claim that we are in breach of our arrangements with you but we will take all steps that are reasonably practicable to secure the supply of gas to you.

[Original clause]

21 If either you or we are in breach of the arrangements under this Agreement, neither of us will be responsible for any indirect or consequential losses that the other suffers as a result.

[Revision]

21 If either you or we are in breach of the arrangements under this Agreement, neither of us will be responsible for any losses that the other suffers as a result except those losses which are a foreseeable consequence of the breach. The amount we charge you for gas assumes that you use your home as a private dwelling. For this reason, if you run a business from your home, we cannot accept responsibility for any loss of profits that you may incur as a result of any breach under this Agreement.

22 In some circumstances we may want to assign this Agreement to another company, for example due to company restructure. We will notify you in writing of any such change and we will make sure that the other company is approved and licensed by the Director General of Gas Supply as a supplier of gas to domestic customers.

23 This Agreement reflects certain obligations imposed on us by our licence to act as a supplier of gas to domestic customers. If OFGAS or the Government make changes to that

licence then in return we may need to make changes to our arrangements with you. In this event, we will notify you of such changes as soon as we can, but you must not unreasonably withhold or delay your consent to such changes.

24 Our contract with you is governed by English law.

GIMSON STAIRLIFTS LTD

This contract was entirely redrafted following objections to various terms in the version previously in use.

Gimson undertake to:

- 1 Deliver and install the lift on the agreed date (unless of course, truly unforeseeable problems arise).
- 2 Guarantee all materials and workmanship and provide a 24 hour emergency breakdown service for 12 months from completing the installation PROVIDED a maintenance contract is entered into with Gimson Stairlifts Limited for the 12 month period.
- 3 Offer an extended guarantee period if the Client so wishes provided the lift is maintained under contract with Gimson throughout the guarantee period.
- 4 Take good care of the Client's property at all times, and take responsibility for any direct damage or costs caused by our negligence.
- 5 Offer to provide at additional cost a Power Supply Point if the Client so wishes (subject to the satisfactory condition of the existing wiring).

The Client agrees to:

- 1 Pay all monies promptly and in full in accordance with the terms overleaf.
- 2 Provide on time
 - the work area for survey
 - approval of any drawing - if appropriate
 - the work area for installation of the lift.
- 3 Take good care of the lift and use it properly during the guarantee period.

- 4 Not carry out any modification to the equipment without Gimson's prior written agreement.
 - 5 Have main power supply available.
 - 6 Have good, safe, clear and clean access with sufficient working space.
 - 7 Have suitable toilet facilities.
 - 8 Have no other tradesmen working in the area at the same time.
 - 9 Have all existing wiring in a satisfactory condition and complying with all relevant Regulations. You are advised to consult a qualified electrician.
 - 10 Pay all reasonable costs properly incurred by Gimson pursuant to this order, if this order is cancelled for whatever reason, other than cancellation by Gimson.
-

5 UNDERTAKINGS GIVEN TO THE DIRECTOR GENERAL UNDER REGULATION 8(3)

HOME IMPROVEMENTS BEAUTIFUL DIRECT LTD (3 UNDERTAKINGS)

UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1994
(COUNCIL DIRECTIVE 93/13/EEC)
(‘THE REGULATIONS’)

UNDERTAKING

Home Improvements Beautiful Direct Limited, of 14 Carrick Court, Forest Grove Business Park, Middlesbrough TS2 1QE by its director(s) and company secretary hereby gives to the Director General of Fair Trading an undertaking under Regulation 8(3) of the Regulations. The undertaking is that Home Improvements Beautiful Direct Limited, whether by its directors or by its officers or servants or agents, or otherwise,

- 1 will not use, in contracts concluded with consumers for the supply of goods or services
 - (a) any term in the attached standard contract identified as potentially unfair in the attached schedule;
 - (b) any term having the same or a similar effect to those referred to above: and
- 2 will, in drawing up any term to be included in contracts concluded with consumers for the supply of goods or services, have regard to Regulation 4 and the indicative list of terms contained in Schedule 3 to the Regulations.

Signed	In the presence of
	Director	Name
	Dated
	Director and Company Secretary		

UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1994
(COUNCIL DIRECTIVE 93/13/EEC)
(‘THE REGULATIONS’)

UNDERTAKING

I, Stephen George Bean, Director of Home Improvements Beautiful Direct Limited, 14 Carrick Court, Forest Grove Business Park, Middlesbrough, TS2 1QE hereby give to the Director General of Fair Trading an undertaking under Regulation 8(3) of the Regulations. The undertaking is that I, in the course of any business, in any way, whether by myself, my servants or agents:

- 1 shall not use, in contracts concluded with consumers for the supply of goods or services
 - (a) any term in the attached standard contract identified as potentially unfair in the attached schedule;
 - (b) any term having the same or a similar effect to those referred to above: and
- 2 shall, in drawing up any term to be included in contracts concluded with consumers for the supply of goods or services, have regard to Regulation 4 and the indicative list of terms contained in Schedule 3 to the Regulations.

Signed by In the presence of
Stephen George Bean Name

Dated

UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1994
(COUNCIL DIRECTIVE 93/13/EEC)
(‘THE REGULATIONS’)

UNDERTAKING

I, Andrea Day, Director and Company Secretary of Home Improvements Beautiful Direct Limited, 14 Carrick Court, Forest Grove Business Park, Middlesbrough, TS2 1QE hereby give to the Director General of Fair Trading an undertaking under Regulation 8(3) of the Regulations. The undertaking is that I, in the course of any business, in any way, whether by myself, my servants or agents:

- 1 shall not use, in contracts concluded with consumers for the supply of goods or services
 - (a) any term in the attached standard contract identified as potentially unfair in the attached schedule;
 - (b) any term having the same or a similar effect to those referred to above: and
- 2 shall, in drawing up any term to be included in contracts concluded with consumers for the supply of goods or services, have regard to Regulation 4 and the indicative list of terms contained in Schedule 3 to the Regulations 1.

Signed by In the presence of
Andrea Day Name

Dated

Clauses referred to in the undertakings given by Home Improvements Beautiful Direct

Term 1

TERMS OF THE CONTRACT

- a) All the terms of the contract between the company and the customer are contained in the document. No variation to the printed terms of the contract shall bind either party unless the variation is made in writing and signed by the party to be bound. If the company is

the part to be bound then such variation must be signed by the managing director of the company.

- b) Any typographical, clerical or other error or omission in any sales literature, quotation price list, acceptance of offer, invoice or other document information issued by the company shall be subject to correction without any liability on the part of the company.

Term 2

REPRESENTATIONS AND WARRANTIES

- a) No representations or warranties are made or given by the company save as are set out or referred to in the contract. No person other than the managing director of the company has the authority to make any other representations warranties or undertakings and the company will not be bound by the same unless expressly approved, in writing by the managing director of the company.

Term 7

SPECIFICATION

Materials used in and the specification of the installation shall be determined by the company's technical surveyors subject to the provisions of the order. All specifications, figures, sizes and other descriptions are approximate only and should not be relied on as totally accurate. Sales are made on a direct sale basis by sample. The product arrangement shall in the absence of any special arrangement detailed in the contract be determined by the company. Pursuant to the company policy of continuous improvements to its products it reserves the right to make any necessary modifications not involving material changes to the design of the products and if the goods supplied are not exactly as stated in any literature of the company due to such necessary modifications the customer shall accept the same.

Cut out and use infills where required

The company reserves the right to make any changes in the specification in relation to materials which are required to conform with any applicable statutory or EC requirements or which do not materially affect their quality or performance.

Term 8

- a) The company undertakes to repair or replace free of charge any product manufactured by it which proves defective as a result of faulty materials or workmanship within 12 months from the date of commencement of the installation and the company's formal guarantee

will be sent to the customer upon installation. The condition does not affect the customer's statutory rights

- b) Electrical or gas appliances installed under the contract will be subjected to the respective manufacturer's own after sales services and guarantee
- c) Subject to any responsibilities of the company towards the customer pursuant to the Consumer Protection Act 1987, the company shall not be liable for consequential loss any nature whatsoever (including loss of earnings) arising from any faulty material or workmanship in the product, save for death or personal injury relating from negligence.

Term 10

CANCELLATION

- a) The company may cancel the contract and all money paid by the customer will be refunded upon receipt of a technical survey report unsatisfactory to the company or financial report unsatisfactory to the company or any other reason the managing director sees fit.
 - b) No order which has been accepted by the company may be cancelled by the customer except with the agreement in writing of the managing director of the company and on the terms that the customer shall indemnify the company in full against all loss, including loss of profit costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the company as a result of cancellation.
-

OWEN CULLUM trading as MAZE TECHNOLOGY

UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1994
(COUNCIL DIRECTIVE 93/13/EEC)
(‘THE REGULATIONS’)

UNDERTAKING

I, Owen Cullum, trading as Maze Technology of Zenith House, 210 Church Road, Leyton, London, E10 hereby give to the Director General of Fair Trading an undertaking under Regulation 8(3) of the Regulations. The undertaking is that I, in any business, whether by myself, my servants or agents or otherwise:

- 1 shall not use, in contracts concluded with consumers for the supply of goods or services,
 - (a) any term in the attached standard contract whose potential for unfairness has been drawn to my attention in the attached letter of 1 August 1996, or
 - (b) any term having the same or a similar effect to those referred to above; and
- 2 shall, in drawing up any terms for general use in contracts concluded with consumers for the supply of goods or services in any business, have regard to Regulation 4 and the indicative list of terms contained in Schedule 3 to the Regulations.

Signed In the presence of
Owen Cullum Name
Dated

Clauses referred to in the undertaking given by Owen Cullum

- 2 The Conditions apply to the sale of the Goods by the Company to the Buyer to the exclusion of all other terms and conditions (including any which the Buyer may purport to apply under any purchase order). No variation of the Conditions shall apply unless agreed in writing by the Company.

6 Delivery

Unless otherwise agreed in writing between the Company and the Buyer, the following provisions shall apply:

...

ii) The delivery date or dates specified in the Company's Quotation or Acknowledgment are estimates only. The Company shall not be liable for failure to deliver by such date or dates or for any damage or loss arising directly or indirectly out of delay of delivery, nor shall the Buyer be entitled to refuse the Goods because of late delivery.

7 The Buyer must within 3 days of delivery notify the Company in writing of any alleged defect, shortage in quantity, damage or failure to comply with description, and also (if so required by the Company) at the Buyer's cost return the Goods within 7 days of delivery and before any use is made of them. The Buyer shall otherwise be deemed to have accepted the Goods 3 days after delivery, and thereafter shall not be entitled to reject any as not in accordance with the contract.

9 If the Buyer rejects the Goods the Buyer shall have no further rights in respect of their supply to the Buyer or the Company's failure to supply goods in accordance with the contract. If the Buyer accepts or is deemed to have accepted the Goods the Company shall have no liability to the Buyer in respect of them. The Company shall not be liable to the Buyer for late or short delivery.

10 The Buyer may not withhold payment of any invoice or other amount due by reason of any alleged right of set-off or counterclaim for any other reason.

12 The Company may cancel the contract at any time before the Goods are delivered by giving written notice and promptly paying to the Buyer any sums paid in respect of the Price, and shall not be liable for any loss or damage arising from such cancellation.

13 The contract is subject to the law of England and Wales. Any dispute as to its meaning or as to anything arising out of it shall be referred to an arbitrator, to be appointed by agreement or (in default of agreement within 28 days of service upon one party of a written request to concur in such appointment) the President of the Chartered Institute of Arbitrators.

T-SHIRT PRINT

UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1994
(COUNCIL DIRECTIVE 93/13/EEC)
(‘THE REGULATIONS’)

UNDERTAKING

I, Charlotte Darling, trading as Tee Shirt Print, of B1 Hazleton Exchange, Horndean, Hants PO8 9JU hereby give to the Director General of Fair Trading an undertaking under Regulation 8(3) of the Regulations. The undertaking is that I, in the course of any business, in any way, whether by myself, my servants or agents:

- 1 shall not use any of the terms in the attached contracts that have been drawn to my attention as being potentially unfair in the attached letter of 24 June 1996 in contracts concluded with consumers for the supply of goods or services; and
- 2 shall not use any terms having the same or a similar effect to those referred to above in contracts concluded with consumers; and
- 3 shall have regard to Regulation 4 and the indicative list of terms contained in Schedule 3 to the Regulations in drawing up any terms to be included in contracts concluded with consumers for the supply of goods or services.

Signed by In the presence of
Charlotte Darling Name
Dated

Clause referred to in the undertakings given by T-Shirt Print

T-Shirt Print accepts no responsibility for damage to customers' garments. Customers' garments are printed entirely at their own risk.
