

Unfair Contract Terms

A case report bulletin
issued by the Office of Fair Trading

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1 INTRODUCTION

- 1.1 This is issue 7 of the Unfair Contract Terms Bulletin series in which the Director General of Fair Trading publishes details of cases where potentially unfair contract terms have been amended or dropped. Under the Unfair Terms in Consumer Contracts Regulations 1994 the Director General can ask the High Court for an order forbidding further use of any term he considers unfair. The Regulations implement an EC Directive (EC Dir 93/13) in the UK. They apply to standard terms in consumer contracts drawn up from July 1995 onwards. The Regulations say that a consumer is not bound by a standard term in a contract with a seller or supplier if the term is unfair. The Director General can resolve a case informally through the acceptance of undertakings rather than going to court. However, it is only the courts which have the authority to determine categorically whether a term is unfair.
- 1.2 The current Bulletin is the second to be published under the new arrangements announced in Bulletin 5. Part 2 contains reports of 34 cases concluded between January and March 1999 in which 237 standard contract terms were abandoned or amended as a result of enforcement action by the Office under Regulation 8.
- 1.3. As in Bulletin 6, the case reports are supplemented by indexes to help readers quickly find the information they need. The indexes are:
- the names of suppliers who have given undertakings arranged alphabetically indicating the market sectors in which they operate (Part 4)
 - the names of suppliers who have given undertakings listed by local authority area (Part 5)
 - the types of unfair term which have attracted OFT action (Part 6).

Reform of the Regulations

- 1.4 The OFT understands that Government proposals to reform the Regulations are at an advanced stage. Under the changes all local authority trading standards departments, and a number of other bodies, are likely to gain powers to enforce the Regulations. When the Government's plans are clearer the Office intends to hold a conference with qualifying bodies and interested parties to discuss coordination. It is likely that the qualifying bodies will be put under a duty to notify the Director General of any undertakings accepted in lieu of legal proceedings for an injunction, and details of these will be included in future Bulletins.

First court case

- 1.5 For the first time a case of alleged unfair contract terms will be heard in court. This is expected to be on 22 July. All other cases to date have been resolved through the acceptance of undertakings. The court hearing follows an application by the Director General in March for an injunction against First National Bank under Regulation 8. Details of the outcome of the court action will appear in a future Bulletin.

Case reports (Part 2)

- 1.6 A particularly notable case report is that of Cable & Wireless Communications plc - see case report 5, page 12. This case has largely brought to completion work on a significant area, the cable TV and telephone sector. Nynex Cable Communications merged with Bell Cablemedia (incorporating Videotron) and Mercury Communications Ltd to become part of Cable & Wireless in September 1997. Following the merger we were able to complete our consideration of the Nynex, Videotron and Mercury terms in discussion with Cable & Wireless.

Trading sectors covered (Part 4)

Problem sectors

- 1.7 The **home improvements** sector continues to provide many examples of unfair terms. **Nurseries, domestic care** and **educational contracts** have raised numerous issues of concern including pre-payments and refunds on cancellation and price increase clauses. **Mobile phone companies** (Sony, Intercell and Martin Dawes) continue to figure in the case reports and considerable work is in hand in this sector, as new types of contracts continue to be brought on stream.
- 1.8 **Airline terms and conditions** are likely to feature prominently in future Bulletins. On 9 June the Director General warned airlines to expect legal action if they do not make scheduled flight contracts fairer to passengers. He has cited non-transferable ticketing, re-scheduling of flights without compensation and restrictions on liability for goods damaged in flight as being the worst of 30 airline contract terms which are potentially unfair and unenforceable. The Director General's warning to IATA (the International Air Transport Association) followed a complaint by the Air Transport Users' Council.
- 1.9 The Director General is taking action under the Regulations against Conditions of Carriage recommended by IATA. The Conditions in question are those forming the recently revised and introduced IATA 'Recommended Practice 1724'.

1.10 Other concerns identified include:

- cancellation of the remaining coupons if part of a ticket is unused - for example, where a consumer misses his flight and is prevented from using the return coupon even if he purchases and travels on a second outward ticket;
- exclusion of liability for other services arranged by an airline such as car hire;
- the right to increase a fare after the booking has been made;
- exclusion of responsibility for statements and promises made by an airline's agents and employees;
- and arrangements for refunds for lost tickets under which a passenger gives the airline an indemnity if the lost ticket is used fraudulently, even when the passenger is not himself to blame and the airline itself may have been negligent in letting the ticket be used.

Approaches to trade associations

- 1.11 The Office welcomes the opportunity to work with trade associations to improve recommended standard terms and conditions because this is the quickest and most useful way of bringing about widespread change in a particular industry. The case reports include details of work with two trade associations, the Kitchen Specialists' Association (KSA) - see case report 20, page 24 - and the Federation of Recruitment and Employment Services (FRES) - see case report 25, page 31. KSA is an association representing small independent and medium-sized fitted kitchen suppliers. FRES represents employment agencies such as those supplying nannies and care assistants in the home.
- 1.12 As mentioned in Bulletin 6, the Office has continued to work with the Association of British Travel Agents (ABTA) as part of the Office's sectoral work on package holiday conditions. ABTA has made some useful modifications to its Model Booking Conditions in the light of the Regulations. One of the most important changes is the addition of a cooling-off period which allows holiday-makers some time to change their mind and cancel a holiday without charge. The aim of the clause is to ensure the consumers have the opportunity to read and understand all the contractual material - an increasing proportion of consumers book holidays by telephone and may not have seen the full terms of the contract before booking. The Regulations indicate that it is unfair to bind consumers to terms of which they were unaware, and such 'hidden' terms may not be enforceable against the consumer.

Types of unfair term (Part 6)

The most common unfair terms in the reporting period

- 1.13 By far the largest category of unfairness continued to be that of terms excluding or limiting liability for shortcomings in the quality of goods and/or services (see Schedule 3, paragraph 1(b)). However, the number of price variation clauses successfully challenged was also particularly high in this reporting period.

The promotion of plain language

- 1.14 The promotion of plain language remains a priority. Suppliers are always urged to review their contract terms completely rather than make piecemeal alterations, and to pay particular attention to the use of plain language. Coldseal is an example (see case report 7, page 13) of a major national double glazing company that revised its entire contract using the services of a plain language organisation. Some examples of Coldseal's old and replacement terms may be included in the forthcoming Specimen Terms Bulletin.

2 CASE REPORTS

- 2.1 The intention in devising the new style of case reports is to give enough information about significant changes in terms secured by the Office to enable agencies such as trading standards departments which receive complaints about contract terms, and consumers themselves, to see whether undertakings to drop or amend terms in line with the Regulations are being honoured. This is particularly important because so many cases result in the giving of undertakings.
- 2.2 When a case ends in undertakings, formal or otherwise, the Office invariably makes clear to the supplier that revised contracts, and even individual terms that have been revised, are not immune from future action. Only the courts have the power to determine whether a term is unfair. The Director General remains under a duty to consider complaints that *any* standard terms are unfair. In some cases, however, the Office's willingness to consider future action in the light of the possibility of subsequent complaints may be more specifically indicated. This usually occurs where the Office has doubts about the potential unfairness of a term, but lacks sufficient evidence of a real possibility of harm to the consumer to warrant pressing a demand for it to be dropped. The terms on which the Director General's position has been specifically reserved are now identified in the case reports, so that consumers and other agencies can monitor their use and report any unfairness.
- 2.3 Any title of the contract or the conditions is given under 'Contract identifier' together with any reference numbers. The number of any revised term is given as well as the original term, other than in some cases where the contract has been so comprehensively redrafted that the replacement terms cannot be readily distinguished. Reasons why terms were considered unfair are indicated, and, where they were amended rather than simply deleted, the nature of the changes introduced is summarised. To avoid uncertainty, the date on which final revisions were agreed is also given in the case report. The intention is to say enough to enable monitoring authorities to check whether old terms are still in use or have been replaced.
- 2.4 Please note that it cannot be assumed that any term apparently matching the description of a revised term will necessarily be fair. The aim is to illustrate OFT's line on the fairness of different kinds of terms as concisely as possible. For convenience, the reasons for considering terms unfair are generally indicated by reference to the nearest example of unfair terms given in Schedule 3 to the Regulations - the so-called 'grey list'. This is not a full explanation. Fairness is assessed by reference to the test embodied in Regulation 4, not on the basis of establishing a correspondence with one of the types of term listed in the Schedule. Schedule 3 is non-exhaustive and simply illustrates a number of types of term which may be considered unfair in the light of all the circumstances. Items in the Schedule

overlap, and terms often resemble more than one in different ways. Where this occurs, the most obviously appropriate illustrative term is selected for citation. In cases of particular interest, additional descriptive information is given in a separate part of the case report.

- 2.5 Often in small contracts, terms are not numbered and therefore no numbers appear in the side columns. In cases where the whole contract has been dropped or generally revised the number of terms challenged is given.

1 Adorn Supplies

Name of Company	Adorn Supplies	Lead TSD	Somerset
Trading Sector	Home improvements: suppliers and installers of extensions etc.	Contract identifier	Terms and conditions 1997

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Declaration	Consumer required to declare he has read and understood contract	Deleted	
'Extra work' 4a 17	1(l): discretion to increase price in various circumstances	Revised to allow cancellation if increase unacceptable	18 21 15
1c	1(n): requiring all variations in writing and denying employees authority to vary contracts	Revised, consumer asked to request that alterations are made in writing	27
2	Excluding rights relating to doorstep selling	Revised to meet statutory requirements	24
6	1(e): excessive financial penalty for cancellation	Revised, seller entitled to claim ordinary damages	26
7	Regulation 6: statutory references	Revised to explain statutory rights	23
8	1(b): excluding consumer's right to set-off via prohibition on retention of money and penal interest rate on outstanding sums	Prohibition deleted and interest rate revised	8
9	1(k): right to vary goods supplied	Revised to provide only for minor alterations not materially affecting the contract	17
10	1(b): excluding liability for poor services or damage	Revised clarifying responsibilities of both parties	5,6,7
12	Regulation 6: statutory references	Revised to indicate that warranty is addition to statutory rights	9

14	1(b): restricting liability for delay	Revised so as not to exclude liability except where delays are for reasons outside supplier's control	16
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Undertakings given	27 January 1999	13 terms revised or deleted
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2 Advanced Residential Theatre and Television Skillcentre International Ltd

Name of Company	Advanced Residential Theatre and Television Skillcentre International Ltd	Lead TSD	East Riding of Yorkshire
Trading Sector	Further education - theatrical school	Contract identifier	Agreement

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
2a	1(d): non-returnable deposit	Indication that deposit is 'non-returnable' deleted	2a
5 11	1(f): allowing company to terminate tuition at its discretion and retain fees paid	References to 'no return of fees' removed	5 11
6	1(d): non-returnable fees if school closes	Revised to allow for return of pre-paid fees	6
7	1(k): allowing school to change course curriculum without notice	Revised so that changes are only in students' interests	7

Other information	The Director General's position reserved on possibility that the absence of an express right to refunds could be treated as a basis on which refunds can be refused.	
Undertakings given	26 March 1999	5 terms revised

3 The British School of Motoring Ltd

Name of Company	The British School of Motoring Ltd	Lead TSD	London Borough of Merton
Trading Sector	Driving school	Contract identifier	Terms and conditions of driving tuition given by a BSM franchised instructor (BSM instructor)

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
8	1(b) excluding all liability on the basis that BSM is only acting as an agent of the driving instructor	Revised to accept duty to take reasonable care in acting as agent	8

Specific Reservations on Revised Term	Reserved position on term 8 as we considered that it could be written in clearer language as required by Regulation 6.		
Undertakings given	24 March 1999		1 term revised

4 British Telecommunications plc

Name of Company	British Telecommunications plc	Lead TSD	Corporation of London
Trading Sector	Telecommunications	Contract identifier	Conditions for telephone service

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
7.5(b)	Deposit can be required at discretion	Revised so that deposit can be demanded only in reasonable circumstances	9.5(b)
8.7	Reg. 6: Use of jargon - 'indemnify'	Revised to apply only to business use	10.7
13.2	1(j): general right to vary terms - notice provisions inadequate	Revised: customer to be given advance individual notice of any changes	15.2

16.3	1(d): retention of pre-payments - no refund of prepaid line rental on cancellation within minimum period	Revised to introduce right to refund less stated cancellation charge	18.3
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Specific reservations on Revised Terms	11.3, 11.4 & 11.5: limitations of liability; we have no current evidence of likely detriment, but will take appropriate action if complaints provide it; 20.2: details of price list: we reserved right to take action if it becomes clear consumers are contracting without knowing full details of their financial commitment; & 20.1: term might function as entire agreement clause		
Undertakings given	3 March 1999		4 terms revised

5 Cable & Wireless Communications plc

Name of Company	Cable & Wireless Communications plc	Lead TSD	London Borough of Camden
Trading Sector	Cable television and telephony services	Contract identifier	Terms and conditions for cable telephone services and for cable television equipment and services

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
8.1.1	Unlimited deposit can be required	Maximum deposit (and further deposit) specified	8.1.1
10.4	Reg.6: Use of jargon - 'indemnify'	Revised to 'You agree to be responsible for'	10.4
15.2	1(e) potential penalty: no limit on reconnection costs after suspension	'Reasonable' appears in revised term	14.2
16.2, 16.3, 16.4	1(l) rights to increase charges during minimum term, when customer is captive	Removal of minimum term	15

Specific reservations on Revised Terms	3.5: wayleave provision; 4.4.1: Supplier's continued ownership of phone number; 4.5: call monitoring rights; 7.2: right to change billing date - in all these cases there was no evidence of a detrimental effect for consumers but the possibility of receipt of complaints in future could not be ruled out	
Undertakings given	4 March 1999	6 terms revised

6 C Anderson & Sons

Name of Company	C Anderson & Sons	Lead TSD	London Borough of Hammersmith & Fulham
Trading Sector	Plumbing and tiling	Contract identifier	Terms and conditions

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Whole Contract	Generally unfair	Deleted	

Undertakings given	9 February 1999	23 terms deleted
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7 Coldseal Ltd

Name of Company	Coldseal Ltd	Lead TSD	Derbyshire
Trading Sector	Home improvements: windows, doors and conservatories	Contract identifier	Conditions of sale 1995

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Declaration	Consumer declaration that terms have been fully understood	relevant words deleted	Declaration

2, 3	1(n): Verbal agreements not binding, variations to contract only accepted if signed by company director	no exclusion of liability for representations and term merely advises consumers to ask for written confirmation of variations	1(a)
4	1(n): Requires cancellation to be sent by recorded delivery	now merely recommends recorded delivery	2(d), 11(d)
4, 5	1(f): Allows company to cancel at any time, consumer only within 7 days or on payment of penalty	Revised to allow both parties to cancel only within 7 days	2(a), 2(b)
4	1(e): penalty: consumers cancelling after 7 days liable to pay expenses already incurred by company, including loss of profit - no obligation for company to mitigate losses	Deleted	
6	1(b): lengthy term regarding delayed completion allowing too much latitude to company	Commits company to carrying out installation within 3 weeks of starting	6(h)
8	1(e): penalty: makes consumer liable to pay entire contract sum if consumer refuses to allow installation date	Amount payable reduced to reflect likely real costs. Typeface changed to draw consumer's attention to term	6(i)
9	1(k): Allows company to vary design and specification of products without notifying consumer	Revised to limit circumstances in which products can be varied	3(b), 3(c)
13	1(e): Penalises consumer who does not allow company to carry out survey	Revised to reduce amount payable. Typeface changed to draw consumer's attention to term	6(d)
14	1(b): Excludes liability for manufacturing defects	Revised to explain possibility that defects might arise with some types of glass	9(m)
15	1(b): Limits amount of compensation payable if company damages consumer's property	Revised to accept liability for faulty workmanship	9(k)

18	Unfair enforcement clause, allowing company to enter consumer's premises to remove products already installed	Deleted	
19	Regulation 6: indemnity clause difficult for consumer to understand	Revised to make meaning clear	8(c)

Other information	Amendments apply also to contract for conservatories. We expressed reservations about revised 'penalty' clauses at 6(d) and 6(i) and current draft of the consumer 'declaration', which asks consumers to acknowledge that their attention has been drawn to the terms on the reverse: it could imply that they had read and understood the terms.		
Intelligibility	The contracts have been completely rewritten by the Plain English Campaign, and a more legible typeface will be used.		
Undertakings given	14 January 1999	15 terms revised or deleted	

8 Daisychain Nursery

Name of Company	Daisychain Nursery	Lead TSD	East Sussex
Trading Sector	Nursery education	Contract identifier	Registration form

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
	1(d): deposit non-refundable on cancellation of reserved place	Revised so that consumer entitled to a full refund of deposit if fees increase before reserved place is taken up	

Other information	Terms and conditions completely revised		
Undertakings given	29 January 1999	1 term revised	

9 Dawlish Coaches Ltd

Name of Company	Dawlish Coaches Ltd	Lead TSD	Devon
Trading Sector	Coach hire	Contract identifier	Terms and conditions of coach hire

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Whole Contract	Generally unfair	Deleted	

Other information	Trader informed Director General that the terms and conditions were no longer in use with consumers and the company had adopted the model agreement drawn up by the Confederation of Passenger Transport.
Undertakings given	11 February 1999

10 Dollond & Aitchison

Name of Company	Dollond & Aitchison	Lead TSD	Birmingham City Council
Trading Sector	Medical services - opticians	Contract identifier	Planned replacement contact lens scheme

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Collection of lenses and solutions.	1(e): £10.00 penalty appeared to be payable if damaged lenses returned to the wrong branch	Term amended to make clear that no fee is payable unless damaged lenses are not returned at all	
Collection of lenses and solutions.	1(b): No refunds given for lenses or solutions not used for any reason	Term narrowed to apply only where consumer chooses not to use lenses	

Undertakings given	5 March 1999	2 terms revised
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11 Europa Computers

Name of Company	Europa Computers	Lead TSD	Manchester
Trading Sector	Computer retail	Contract identifier	Terms and conditions

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Whole contract	Generally unsuitable for use with consumers	Withdrawn	

Other information	<p>Many terms operated to restrict or deny the consumer's statutory rights.</p> <p>Trader signed an informal undertaking that the terms and conditions were no longer in use and that the printed forms in which they appear had been withdrawn.</p>
Undertakings given	26 January 1999

12 Exterior Protection Services

Name of Company	Exterior Protection Services	Lead TSD	West Yorkshire
Trading Sector	Home improvements: protective wall coating	Contract identifier	Conditions of sale 1997

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Balance payable	1(b): excluding consumers' right to set-off by requiring full payment on day of completion.	Revised: balance payable on satisfactory completion	Balance outstanding
Final decisions	1(k): right to change what is supplied	Revised: consumer can cancel if he does not accept changes in specification	Final decisions

Additional work	1(i): hidden terms: consumer would not know costs of additional work	Revised: consumer will enter into new contract for additional work	Additional work
Cancellation	1(e) penalty clause, consumer to pay liquidated damages of 30%	Revised: compensation on cancellation to reflect trader's losses and costs	Cancellation

Undertakings given	27 January 1999	4 terms revised
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13 Flowline Services Ltd

Name of Company	Flowline Services Ltd	Lead TSD	Southampton
Trading Sector	Home improvements: plumbing	Contract identifier	Conditions of contract Dec 1996

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Whole contract	Generally unfair	Deleted	

Other information	The original terms closely resembled the Abbeyflow terms highlighted in Bulletin 2. Trader gave an undertaking that he had discontinued the use of all standard terms.
Undertakings given	11 March 1999 32 terms deleted

14 Holmes Place

Name of Company	Holmes Place	Lead TSD	Royal Borough of Kingston upon Thames
Trading Sector	Fitness and leisure centres	Contract identifier	Terms and conditions of membership

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
2(a)	1(b): No liability for loss, damage or theft of member's property	Amended so that term does not apply where club is negligent	2(a)
8(a)	1(g): Term enables club to terminate contract without reasonable notice	Revised: cancellation without notice possible only on stated grounds	8
10, 11(6)	1(k): Terms enabling club to alter opening hours/facilities	Amended to give member opportunity to cancel if unhappy with changes	10(b)
11(3)	1(o): Member liable for fees even when club is unable to provide full range of services	Term now provides examples of situations that would be beyond the control of the club	11(c)

Undertakings given	3 March 1999	5 terms revised
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15 The Incorporated Society of Musicians

Name of Company	The Incorporated Society of Musicians (ISM)	Lead TSD	City of Westminster
Trading Sector	Private music tuition	Contract identifier	ISM conditions for private music tuition Agreement for private music tuition

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
4	Lessons can be suspended without notice at teacher's discretion - pupil to give four weeks' notice of holidays	Teacher now to give advance notice of holidays	4
6	Pupil not able to enter exams, competition or perform in public without teacher's permission	Revised so as not to apply where event is compulsory part of education	6
7	1(f): unequal cancellation rights	Revised to require equal notice of cancellation from both teacher and pupil	7
8	Regulation 6: legal jargon - waiver/forbearance	Term revised to remove legal jargon	8
1 Fees	1(l): right to increase prices takes no account of notice period to cancel lessons	Revised to give sufficient time for lessons to be cancelled without penalty. Intelligibility also improved	2 Fees

Specific reservations on Revised Term	We reserved the Director General's position on term 7, in the light of future complaints: under it the teacher (unlike the pupil) is subject to no penalty for not giving adequate notice of termination. The term also enables the teacher to terminate without notice because of culpable behaviour by anyone connected to the pupil. This might be open to misuse and will be reviewed as necessary.
Undertakings given	11 January 1999 5 terms revised

16 Information Technology Group

Name of Company	Information Technology Group	Lead TSD	Southend-on-Sea
Trading Sector	Computer maintenance	Contract identifier	Engineers worksheet/invoice

Unfair term identifier	Application of the Regulations to significant unfair terms (Schedule 3 paragraph or as indicated)	How changed	New term identifier
Foot of the Worksheet/Invoice	1(b): excluding all liability for poor service, work and materials after technician leaves site	Deleted	

Undertakings given	15 March 1999	1 term deleted
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17 Intercell Ltd

Name of Company	Intercell Ltd	Lead TSD	Sheffield
Trading Sector	Mobile phones	Contract identifier	Airtime agreement

Unfair term identifier	Application of the Regulations to significant unfair terms (Schedule 3 paragraph or as indicated)	How changed	New term identifier
3.1	1(b):excluding liability for failure to provide service in broadly defined circumstances	Revised so that liability is not excluded for matters within the Company's control	4
4.1	1(i):imposing liability for unspecified charges	Revised to state what charges are payable	6a
4.3	1(b): no right of set-off - payment must be in full irrevocable authority given to debit credit card account	Deleted	
4.4	Prices shown as VAT exclusive	Charges are now VAT inclusive	Appears above 6b
4.5	1(b):restriction of right of set-off by imposing excessive penalties for failure to pay bills in full promptly	Term now merely provides that Where payment is late standard interest is payable	6b

4.6	1(l): right to increase prices	Consumer now has right to cancel where prices are increased by more than RPI	3b and 6e
5	1(h): overlong notice periods for consumer cancellation	The notice period is now 30 days	2 and 3
7	1(b): exclusion of every possible potential liability	Revised so that exclusion applies to both parties and is limited to any breach of the agreement outside the party's control	10
9.2	Unfair enforcement clause - unqualified right of entry to repossess equipment	Deleted	
10	1(p): supplier freedom to assign contract to another business	Improved by giving the consumer a corresponding right to assign	8c
11.1	1(n): denies liability for employees representations	Deleted	
11.2	unreasonable time limits for notification of changes of address	Time limit deleted	8d
11.7	1(q): exclusive English jurisdiction	Deleted	

Specific reservations	The Director General's position reserved on terms 2 and 3 since the effect of the notice period is that the minimum contract period is 13 months and not to 12 months. There is scope for this to confuse consumers.
Intelligibility	Significantly improved
Undertakings given	9 March 1999 13 terms revised or deleted

18 Jackson-Stops & Staff

Name of Company	Jackson-Stops & Staff	Lead TSD	York
Trading Sector	Estate Agency	Contract identifier	Terms of business

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Termination of the Contract	1(b): term required full payment in all circumstances - potential to exclude the right to set off	Deleted	
Agency terms and covering letter	Regulation 6: unclear whether agent acts on sole selling rights or sole agency basis	Deleted	
Responsibility for payment of fees and expenses	Regulation 6: provisions relating to payments unclear	Deleted	
Date of payment of account	Regulation 6: not clear what and when payments are due should sale fail or be delayed	Deleted	

Other information	Whole contract withdrawn		
Undertakings given	23 March 1999	4 terms deleted	

19 Jean Bartlett Holiday Cottages

Name of Company	Jean Bartlett Holiday Cottages	Lead TSD	Devon County Council
Trading Sector	Holiday accommodation	Contract identifier	Booking conditions

Unfair term identifier	Application of the Regulations to significant unfair terms (Schedule 3 paragraph or as indicated)	How changed	New term identifier
2	1(b): restriction on liability for misrepresentations and misdescriptions made over the telephone	Revised to make clear that some information is necessarily approximate in character	2

2	1(b) Supplier accepted no responsibility if facilities or services became unavailable for reasons outside its control.	Revised to remove non-acceptance of responsibility for matters within the supplier's control, and to promise advance notification of non-availability of services or facilities.	2
3	1(d): retention of deposit on consumer cancellation where property was re-let by trader	Revised to allow for the retention only of expenses not recovered	4
6	1(a): excluding liability for death or personal injury	Deleted	
6	1(b): excluding liability for loss or damage to consumer's possessions	Revised to exclude liability where such loss does not arise from trader's negligence or default	17
9	1(b): unreasonable time limit on claims	Revised to become a strong recommendation of prompt notification	12
9	1(q): restricting the consumer's access to the courts by granting the trader the unilateral right to refer the dispute to arbitration	Deleted	

Undertakings given	28 January 1999	7 terms revised or deleted
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20 Kitchen Specialists Association

Name of Company	Kitchen Specialists Association (KSA)	Lead TSD	Worcestershire County Council
Trading Sector	Home improvements - trade association for kitchen installers	Contract identifier	KSA Guidance Notes

Original term identifier	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term identifier
Point 2	1(b): Exclusion of the right to set-off by requirement to pay all but 5% of the contract price in advance of installation	Requirement removed	Point 2

Retention of Pre-payments	1(f): Unequal cancellation rights	Consumer may be liable for costs where cancellation is wrongful but nit if trader breaches his obligations	retention of Pre-Payments
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Other information	The KSA is an association linking a number of mainly small to medium size specialist home improvement firms. The Guidance Notes will be available for members to use when drafting their own terms and conditions and can be considered to recommend terms for the purposes of the Regulations.		
Undertakings given	22 March 1999		2 terms revised

21 Mack Alarms Ltd

Name of Company	Mack Alarms Ltd trading as Mack Security Systems	Lead TSD	London Borough of Greenwich
Trading Sector	Security system installation and maintenance	Contract identifier	Terms and conditions (MA 192/REV93)

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
2	1(b): excludes liability for damage in all circumstances	Accepts liability for foreseeable and negligent damage caused by the company	12 .1
10.6	1(k):right to make any alteration to the system which the company considers necessary	Limits such alterations to those required by Statute, British Standards, Codes of Practice or to ensure system is fully operational	4.5
18	1(l): right to increase price without notice	Gives 30 days notice of price increase	4.1
19	1(b): time limit on claims	Deleted	
20	Consumer required to indemnify company in the event of third party claims for loss and damage resulting from company's negligence and/or breach of contract	Deleted	

22	Regulation 6: unintelligible language and jargon (force majeure)	Issues covered by one term, in plainer language, which allows rescheduling of delivery and installation only in the event of unforeseen circumstances beyond the reasonable control of the company	12.4
26	Delivery and installation at company's discretion		
23	1(b): excludes all liability for consequences of default	Revised: terms accepts liability arising out of negligence, except liability for loss of profit	12.1 12.8
24	1(n): may deny liability for oral statements and requires that variation be made in writing	Deleted	
28	Legal jargon - 'these conditions shall not affect any statutory rights'	Deleted	

Specific reservations on revised Terms	Terms 4.8, 8.4.2 and 11.3: these terms allow the company to retain a proportion of any prepayment made by the consumer to cover costs and losses incurred by the company on termination of the contract. The Director General's position was reserved in the light of any future evidence that retention amounted to a penalty charge. Paragraph 3 of Specification Guidance Notes: additional charges may be made where work is delayed due to factors outside the direct control of the company. The term is widely drafted and may have the potential to operate to the consumer's detriment. The position was similarly reserved.	
Intelligibility	Generally improved	
Undertakings given	18 March 1999	10 terms revised or deleted

22 Martin Dawes Ltd

Name of Company	Martin Dawes Ltd	Lead TSD	Warrington
Trading Sector	Mobile phones	Contract identifier	Consumer airtime agreement

Unfair term identifier	Application of the Regulations to significant unfair terms (Schedule 3 paragraph or as indicated)	How changed	New term identifier
4	1(b): Right to debit credit card account restricts right of set-off	Allows the consumer to notify the company of a reason why monies should not be debited from their account	5
5	1(h): over-long notice periods (90 days) for consumer cancellations	The notice period is now 30 days	12.1
8	1(b): exclusion of every possible potential liability	The Company now accepts liability for foreseeable loss and losses sustained as a result of the Company's negligence	9
10.1 and 10.1.1	1(o): discretion to suspend the service for technical reasons - consumer remains bound to pay	Amended to require refunds and/or remove obligation of consumer to pay during periods suspension due to technical faults	11.1,11.2 and 11.7
11.1.1	1(b):restriction of right of set-off by supplier's right to terminate (and levy reconnection charge etc) for failure to pay any charge	The consumer is now given the opportunity of notifying the Company, in writing, of any outstanding dispute in relation to the services, before the Company terminates the agreement	12.2.1
13.1 and 13.2	1(l): right to increase prices	Terms revised to give the consumer 14 days notice of price increases and the right to cancel, without penalty, within the minimum contract period where prices are increased	12.4 and 12.6.2
15.1	1(n): excludes liability for oral promises	Deleted	

Other information	The Director General's position has been reserved in relation to term 9.7 because it imposes a limit on liability and, while we have no evidence suggesting significant risk of consumer detriment, future complaints may reveal potential for unfairness.	
Intelligibility	Generally improved	
Undertakings given	4 March 1999	9 terms revised or deleted

23 Mount St Mary's College

Name of Company	Mount St Mary's College	Lead TSD	Derbyshire
Trading Sector	Public school	Contract identifier	Enrolment agreement

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Definition b.	Regulation 6: use of words 'jointly and severally'	Revised to state 'jointly and individually'	Definition b
1	1(f): Offer of a place could be withdrawn for 'good reasons'	Revised to state reasons why a place would be withdrawn	1
2	1(i): School rules not included in contract but contain matters of contractual significance	Summary of rules to be provided with Agreement	2
4d	Regulation 6: use of the words 'liquidated damages'	Revised to say 'compensation'	4d
4e	Regulation 6: use of words 'fees in lieu' making it unclear what fees will be charged if a reserved place is not taken up	Revised to state level of fees payable	4e
5a (i), (ii) (iii)	Regulation 6: unclear what part of the deposit is non-refundable in particular circumstances	Revised to state clearly when and how much deposit is refundable	5a (i), (ii) (iii)
5a (vii)	1(e): high interest rate for failure to pay fees on time	Revised so that penalty reduced	5a (vii)

5b	1(l): fee increases at school's discretion	Revised to give sufficient notice of fee increases to allow penalty free withdrawal	5b
5g	1(e): no refunds if a pupil is expelled	Revised so that any fees paid for more than that term will be refunded	5g

Undertakings given	2 February 1999	11 terms revised
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24 NTL Group Ltd

Name of Company	NTL Group Ltd trading as NTL Cabletel	Lead TSD	Hampshire County Council
Trading Sector	Cable television and telephony services	Contract identifier	Standard terms and conditions

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
2	Absence of right to terminate If consumer opts for 12 month agreement together with variation clauses (at 5.2, 10 & 18) created potential for unfairness	Redrafted to allow penalty-free cancellation in the event of variation	3
4	1(d): non-return of prepayments on consumer cancellation	Deleted	
5.1 5.4	1(b): (exclusion of right of set-off) all sums payable must be paid without deduction;	Revised to remove indiscriminate full payment requirement	6.4
5.2	1(l): right to increase the price	Revised to allow for consumer to give notice and cancel	20
	1(b):(exclusion of right of set-off) interest to run on late payments in all cases	Revised so that interest will not accrue if Company is in breach	6.4
6.3	Onerous deposit clause: right to demand deposits unrestricted	Deposit provisions Revised to remove this element	7.3

8.1	1(l): right to increase the price: term, allows imposition of additional charges regarding connection at an unspecified level	Revised to state that additional charges will be reasonable	9.1
8.3	1(e): non return of prepayments on consumer breach	Revised to state all <i>or part</i> of deposit may be forfeited as appropriate	7.2
9.1	1(k): right to change equipment that is supplied	Equipment can only be varied or substituted if the company has a valid reason	9.5
9.2	1(e): supplier's right to impose charge for equipment damage at level chosen by supplier	Revised to correspond with normal compensation principles	9.7
12	1(f): unilateral cancellation and suspension rights for supplier in event of consumer misconduct/breach	Revised to be more specific as to circumstances and to indicate that consumer has cancellation rights too	19
13	Supplier's right to make charge on reconnection in all circumstances	Reconnection charge not payable where consumer not at fault	19.3
15.2	1(b): restricting liability for breaches of contract	Restriction applies only to business losses	22.2(iii)
17.1	1(b): excluding or restricting liability for delay	Revised so that all reasonable efforts will be made to meet delivery times	23.1
17.2(c)	1(l): right to increase the price	14 day notification of price increases (in clause 6.2) improves fairness of this clause	23.2(ii)
17.5(a)	1(n): deprives employees of authority to make representations, warranties	Provision states only that supplier intends that terms should be in writing	23.5
18	1(j): right to vary terms generally	Advance written notification of changes enables customers to cancel before variation takes effect	25

Other information	The company sought its own legal advice on the effect of the Regulations on its terms and conditions as part of a review of its standard terms. We agreed with the thorough analysis and raised some additional concerns.
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Specific reservations on Revised Terms	24: Assignment clause: the consumer can assign only with permission whereas the company; 5 Wayleave provision; 4 and 15.3 indemnity provisions - we reserved the Director General's position in the light of any evidence of detriment
Undertakings given	8 January 1999 18 terms revised or deleted

**25 Oxford Aunts Care
and
The Federation of Recruitment and Employment Services Ltd**

Name of Company	Oxford Aunts Care	Lead TSD	Oxford
Trading Sector	Domestic care agency	Contract identifier	Terms and conditions for the supply of care assistants' services to private households

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Statement	1(i): hidden terms - consumer deemed to accept terms subsequently supplied	Revised term omits this provision	2.1
4	1(b): All right to a refund denied if payment made later than 10 after invoice issued	Deleted	
6	1(e): Penalty clause - consumer liable for payment of full introduction fee if, at any time, i. the consumer engages a carer introduced by the agency, or ii. the consumer re-engages a carer introduced by the agency	Revised - reduced fee payable where the consumer engages a carer within six months of i. the agency introducing the carer to the consumer, or ii. the re-engagement of the carer	6.1, 6.2
7	1(e): Penalty clause - consumer liable for payment of the full introduction fee if, at any time after the introduction, the carer's details are passed by the consumer to a third party which then employs the carer	Revised - reduced fee payable and period in which consumer is liable for payment limited to 6 months after initial introduction.	6.1, 6.2

9	1(b): excluding liability for losses etc in connection with the service	Deleted	
10	Regulation 6: indemnity clause - implication of term unclear	Deleted	
13	1(n): written consent of partner required for variation of terms	Term states that it is preferable for variations to be agreed in writing	2.3

Other information	The contract used by Oxford Aunts was drawn up for use by the Federation of Recruitment and Employment Services Ltd (FRES). Our correspondence was conducted with FRES. The contract has been completely redrafted and it is to be circulated to all FRES members for use with consumers.
Specific reservations on revised Terms	<p>Revised Term 2.1: Reserved the Director General's position since, though improved, the term could be used to impose terms upon the consumer about which they had no knowledge when entering the contract.</p> <p>Revised Terms 6.1 and 6.2: FRES have advised members that the reduced fee should be calculated to represent lost profits for period not exceeding three months. Reserved the Director General's position to take action were complaints to indicate that the term operates as a penalty clause.</p> <p>Revised Term 11 - jurisdiction: FRES model agreement is not necessarily used by member businesses without modification. The Director General's position was reserved in this case because of a concern that the term could be modified so as to deny the consumer the right to take action under the law and/or in the courts of the UK jurisdiction in which the consumer contracted.</p>
Intelligibility	Generally improved
Undertakings given	22 March 1999 7 terms revised or deleted

26 Paul Davey & Company

Name of Company	Paul Davey & Company	Lead TSD	Nottingham
Trading Sector	Estate agency	Contract identifier	Terms of business - sole selling rights

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
10	1(b): excluding liability for loss caused by agent's negligence whilst requiring consumer to indemnify agent where loss results from consumer's actions	Deleted	
Declaration	Consumers required to declare that they have read and understood terms	Consumers warned of <i>need</i> to read terms before signing	Warning

Other information	Agent also advised to include statutory explanation of certain terms required by the Estate Agents (Provision of Information) Regulations 1991.		
Intelligibility	Generally improved		
Undertakings given	5 March 1999	2 terms revised or deleted	

27 Powersure Hire and Service Centres

Name of Company	Powersure Hire and Service Centres	Lead TSD	Derby
Trading Sector	Power tool hire	Contract identifier	Hire Association Europe January 1998 11th Edition

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Declaration (box to left of invoice face)	Consumer declaration saying that consumer had read the terms and conditions	Contains a warning that the consumer should read the terms and conditions	Declaration (box to left of invoice face)

Other information	The declaration will be struck out in the original invoice until the invoice is reprinted with the new declaration.	
Undertakings given	26 January 1999	1 term revised

28 Regency Heating and Gas Services

Name of Company	Regency Heating and Gas Services	Lead TSD	Warwickshire County Council
Trading Sector	Home improvements: central heating installation	Contract identifier	Conditions of the contract

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
3	1(b): excluding liability for delay in delivery or commencement of work.	Consumer may cancel contract or set a further commencement date if work not started within 14 days.	3
9(d)	1(b): term restricts consumer's right to set-off - no right to withhold payment re defects	Deleted	
5	1(n): excludes liability for any verbal statements made unless notice of reliance on such statements confirmed in writing within 7 days	Amended to show that it is only trader's intention that changes to content of contract shall be agreed in writing.	5
7b	Unfair enforcement clause - allows entry for repossession of goods, and excludes liability for damage caused	Term now states that legal proceedings will be taken in the event of failure to pay in full	7b

Undertakings given	7 January 1999	4 terms revised or deleted
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29 Sivananda Yoga Vedanta Centre

Name of Company	Sivananda Yoga Vedanta Centre	Lead TSD	London Borough of Wandsworth
Trading Sector	Fitness and leisure centres	Contract identifier	club brochure

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
'Payments' and 'To Register'	1(d).Terms stated 'no refunds will be made for any reason', and '.....send a non-refundable deposit...'	Amended to allow some refund of deposit in certain circumstances, and full refund if Centre cancels	

Undertakings given	19 March 1999	2 terms revised
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30 SMAE Institute

Name of Company	The SMAE Institute	Lead TSD	Royal Borough of Windsor and Maidenhead
Trading Sector	Further education/training: chiropody and pediatric medicine school	Contract identifier	Terms and conditions

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
4	1(l): right to increase fees	Revised to explain how additional charges will be made	5
8	1(k): right to change course structure	Revised to allow (only) update and improvement of course	11

Specific Reservations on Revised Terms	We had concerns regarding new term 4, as giving a power to retain prepayments, but took into account the company's explanation of its refunds policy and reserved the Director General's position on new term 4.	
Undertakings given	31 March 1999	2 terms revised

31 Sony United Kingdom Ltd

Name of Company	Sony United Kingdom Ltd	Lead TSD	Surrey
Trading Sector	Mobile phones	Contract identifier	Airtime agreement

Unfair term identifier	Application of the Regulations to significant unfair terms (Schedule 3 paragraph or as indicated)	How changed	New term identifier
Declaration	Consumer declaration that terms have been read and understood, and that they are fair waiver of all data protection rights	Warns that the consumer <i>should</i> read the terms and conditions before signing Deleted	Declaration
3b (1st provision)	1(f):Unilateral right to cancel at will for supplier	Deleted	
3b (bold type)	1(e) charges on cancellation include itemised billing and other ancillary charges for unexpired minimum period	The consumer is now required to pay only balance of line rental	2b (bold type)
4	1(l): Right to increase the price at any time, including during minimum period when consumer is 'captive'	Term 2 allows the consumer to cancel within the minimum contract period. Term 3f states that the consumer will be given 1 month's notice of price increases.	Term 2 and 3f
6 (3rd provision)	Consumer declaration that consumer has checked coverage map	Prominently warns consumer to check a coverage map	Front page (reverse) 'IMPORTANT'
8B (2nd provision)	1(b):Restriction of right of set-off - network may be disconnected if any charges not paid on time for any reason	If charges are in dispute, the account is only suspended, until a satisfactory resolution of the dispute	6 (5th provision)

8B (3rd and 4th provision)	1(g): Right of immediate cancellation without notice if the consumer's direct debit instruction is cancelled or refused, or the consumer is uncontactable through the address or telephone number provided	Sanction is now initially suspension: the consumer is given 14 days in which rectify the situation,	6 (6th and 7th provision)
9 (end of)	1(b): over-broad exclusion of liability for interruption of services caused by outside factors	The reference to strikes has been deleted	7 (end of)
10 - Transfer of rights	1(p):Supplier's freedom to assign	Supplier's right is now balanced by the consumer having the right to assign. This is subject to the agreement of the Company, but authority will not be unreasonably withheld.	8 - Transfer of rights
10 - Data protection	Excessive right to pass on information	Information may be passed on to Sony companies to allow performance of the contract	8 - Data Protection
10 - Law	1(q): Restricting the consumer's access to remedies to courts of England and Wales	Allows disputes to be settled in a relevant court of the UK	8 - Law

Specific reservations	<p>Term 2a since the Company requires that the consumer send notice by recorded delivery. This appears an unnecessary formality, and would be reviewed in the light of complaints that redress had been withheld through to failure to comply with it.</p> <p>Term 3f states that customers may warned if they are nearing their credit limit and be suspended if they exceed their credit limit. The warning may not always be given. May be reviewed in the light of future complaints that warning was not given where it was possible for the Company to do so.</p> <p>Term 7(2nd provision) imposes a limit on liability and, while we have no evidence suggesting significant risk of consumer detriment, future complaints may reveal potential for unfairness.</p>
Intelligibility	Significantly improved
Undertakings given	31 March 1999 12 terms revised or deleted

32 Sunuser Ltd

Name of Company	Sunuser Ltd	Lead TSD	West Yorkshire Trading Standards Service
Trading Sector	Home improvements - solar heating systems	Contract identifier	Terms and conditions of contract

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
3	1(b): No liability for loss due to delay in commencement or completion of work	Scope of disclaimer narrowed to delays beyond company's reasonable control	3
2	1(e): Company reserves the right to increase price by up to 10% if customer delays installation beyond normal delivery period of four weeks from date of order	Price will increase only to reflect additional costs incurred, and Appropriate evidence will be provided to support any such claim	2
4	1(k) and (l): Term potentially allows company to decide further work is required, and charge consumer accordingly	Amended to make it clear that term only applies to further work requested by customer	4
5	1(k): Term allows company the right to modify the product	Term now states that such changes only be made unilaterally if they have no effect on quality, appearance or usefulness of system	5
6	1(m): Term allows company to decide whether work has been carried out in accordance with contract	Amended so that company will demonstrate that work is complete.	6
7	1(n): Excludes liability for verbal statements	Amended to show it is only the company's intention that all terms of agreement should be in writing	7
7,8.	Regulation 6: the phrases 'conditions implied by statute' and 'statutory rights' considered unclear	Revised to give an indication of what those rights are	11

Undertakings given	2 November 1998	8 terms revised
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33 Welsh Nannies and Carers

Name of Company	Welsh Nannies and Carers	Lead TSD	Newport
Trading Sector	Domestic care agency	Contract identifier	Terms of business

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
Statement	1(n):no liability on terms outside written contract	Deleted	
1a	1(i): hidden terms - consumer deemed to have accepted terms on interview of prospective employee	Deleted	
2d	1(o): Customer must pay in full even for unsatisfactory service	Deleted	
3	1(e): Penalty clause - consumer liable for introduction fee if at any time after introduction the details of a carer are passed by them to a third party which then employs	Revised - period in which consumer is liable for fee limited to 12 months after initial introduction made	6
4	1(b): Excludes liability for any loss etc in connection with the service	Revised - exclusion limited to unforeseeable losses	9
6	1(e): Penalty clause - excessive interest of 5% per week charged on late payments	Revised - Interest charged at 2% above bank base rate	13
7	1(b): limits the rights of the consumer to a refund	Adequate refunds provided for should carer leave having accepted a long term position	10

Undertakings given	2 March 1999	7 terms revised or deleted
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34 The Westminster Collection Ltd

Name of Company	The Westminster Collection Ltd	Lead TSD	Hertfordshire
Trading Sector	Mail order - collectibles	Contract identifier	Advertisement: the Golden Wedding Anniversary Coin

Original term	Application of the Regulations (Schedule 3 paragraph or as indicated)	How changed	New term
'Opportunity to view'	Exclusion of non-contractual rights: consumer required to sign a statement which could unintentionally serve as a request for further goods denying protection under the Unsolicited Goods and Services Act 1971	Revised to make explicit that consumers would receive further items on approval	'Receive'

Other information	We also advised the Mail Order Traders Association and the Direct Marketing Association of our view that terms of this kind could mislead consumers and consequently deny them protection offered by the 1971 Act.
Undertakings given	13 January 1999 1 term revised

3 STATISTICAL BREAKDOWN OF ACTION ON CASES

	Jan - Mar 99	To end Mar 99
Total complaints considered	322	3753
<i>Cases not proceeded with under the Regulations</i>		
Defective complaints	17	105
Duplicate complaints	86	683
More appropriate for other legislation	13	172
<i>Cases opened for consideration under the Regulations</i>		
Not about a contract term	13	111
About an excluded term	11	205
About a 'core' term	9	173
Term not considered unfair	27	342
Closed for other reasons	16	254
Dealt with by advice or warning	50	563
<i>Cases involving an approach under Regulation 8</i>		
Still in hand	46	754
'Formal' undertakings given	0	8
Informal undertakings given	34	383

Notes

- 'Complaints considered' are any communications received by the Office about contract terms which are not frivolous or vexatious. This category includes general enquiries about the Regulations which are dealt with as complaints only if they indicate that specific terms have a real possibility of harming the consumer.
- 'Duplicate complaints' are those which relate to terms already being dealt with.
- 'More appropriate for other legislation' are complaints where action under another of the statutes administered by the Office is more likely to be effective.
- 'Excluded terms' are those not between consumers and businesses, or covered by Schedule 1.
- 'Core' terms set the price or define the main subject matter of the contract, and are not subject to the test of fairness provided they are in plain and intelligible language - see Regulation 3(2).
- 'Closed for other reasons' are cases where, for instance, the supplier has gone (or goes) out of business, or is no longer using the terms complained of.
- 'Dealt with by advice or warning' includes cases where another regulator (for example, a trading standards department) is able, on the basis of OFT advice, to deal with the matter in exercising its own powers, or where the seriousness of the problem does not warrant a full approach.

4 ALPHABETICAL INDEX OF BUSINESSES APPROACHED - INDICATING TRADING SECTORS

1	Adorn Supplies	home improvements; extensions
2	Advanced Residential Theatre and Television Skillcentre	theatrical school
3	British School of Motoring Ltd	driving school
4	British Telecommunications plc	telecommunications and cable television
5	Cable & Wireless Communications plc	cable television and telephony services
6	C Anderson & Sons	plumbing and tiling
7	Coldseal Ltd	windows doors and conservatories
8	Daisychain Nursery	nursery education
9	Dawlish Coaches Ltd	coach hire
10	Dolland & Aitchison	opticians
11	Europa Computers	computer retail
12	Exterior Protection Services	home improvements; protective wall coating
13	Flowline Services Ltd	home improvements; plumbing
14	Holmes Place	fitness and leisure centres
15	Incorporated Society of Musicians	private music tuition
16	Information Technology Group	computer maintenance
17	Intercell Ltd	mobile phones
18	Jackson-Stops & Staff	estate agency
19	Jean Bartlett Cottage Holidays	holiday accommodation
20	Kitchen Specialists Association	home improvements
21	Mack Alarms Ltd trading as Mack Security Systems	security system installation and maintenance
22	Martin Dawes Ltd	mobile phones
23	Mount St Mary's College	public school
24	NTL Group Ltd trading as NTL Cabletel	cable television and telephony services
25	Oxford Aunts Care and The Federation of Recruitment and Employment Services Ltd	domestic care
26	Paul Davey & Company	estate agency
27	Powersure Hire and Service Centres	power tool hire
28	Regency Heating and Gas Services	central heating
29	Sivananda Yoga Vedanta Centre	fitness and leisure centres
30	SMAE Institute	distance learning chiropody and pediatric medicine school
31	Sony United Kingdom Ltd	mobile phones
32	Sunuser Ltd	home improvements
33	Welsh Nannies and Carers	domestic care
34	The Westminster Collection Ltd	mail order - collectibles

5 GEOGRAPHICAL INDEX OF COMPANIES BY LOCAL AUTHORITY

BIRMINGHAM CITY COUNCIL

- Dolland & Aitchison

CORPORATION OF LONDON

- British Telecommunications plc

DERBYSHIRE COUNTY COUNCIL

- Coldseal Ltd
- Mount St Mary's College
- Powersure Hire and Service Centres

DEVON COUNTY COUNCIL

- Dawlish Coaches Ltd
- Jean Bartlett Cottage Holidays

EAST RIDING OF YORKSHIRE

- Advanced Residential Theatre and Television Skillcentre ('ARTTS')

EAST SUSSEX COUNTY COUNCIL

- Daisychain Nursery

HAMPSHIRE COUNTY COUNCIL

- NTL Group Ltd trading as NTL Cabletel

HERTFORDSHIRE COUNTY COUNCIL

- The Westminster Collection Ltd

KINGSTON UPON THAMES, ROYAL BOROUGH OF

- Holmes Place

LONDON BOROUGH OF CAMDEN

- Cable & Wireless Communications plc

LONDON BOROUGH OF GREENWICH

- Mack Alarms Ltd trading as Mack Security Systems

LONDON BOROUGH OF HAMMERSMITH AND FULHAM

- C Anderson & Sons

LONDON BOROUGH OF MERTON

- British School of Motoring Ltd

LONDON BOROUGH OF WANDSWORTH

- Sivananda Yoga Vedanta Centre

MANCHESTER CITY COUNCIL

- Europa Computers

NEWPORT

- Welsh Nannies and Carers

NOTTINGHAM CITY COUNCIL

- Paul Davey & Company

OXFORDSHIRE COUNTY COUNCIL

- Oxford Aunts Care

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

- SMAE Institute

SHEFFIELD, CITY OF

- Intercell Ltd

SOMERSET COUNTY COUNCIL

- Adorn Supplies

SOUTHEND-ON-SEA BOROUGH COUNCIL

- Information Technology Group

SOUTHAMPTON CITY COUNCIL

- Flowline Services Ltd

SURREY COUNTY COUNCIL

- Sony United Kingdom Ltd

WARWICKSHIRE COUNTY COUNCIL

- Regency Heating and Gas Services

WARRINGTON

- Martin Dawes Ltd

WESTMINSTER, CITY OF

- Incorporated Society of Musicians

WEST YORKSHIRE TRADING STANDARDS SERVICE

- Exterior Protection Services
- Sunuser Ltd

WORCESTERSHIRE COUNTY COUNCIL

- Kitchen Specialists Association

YORK TRADING STANDARDS

- Jackson-Stops & Staff

6 CATEGORIES OF UNFAIR TERMS

Schedule 3: paragraph 1(a) - Excluding or restricting liability for death or injury	1
Schedule 3: paragraph 1(b) - Excluding or restricting liability for breaches of contract	
<i>a - Excluding liability for defective or misdescribed goods</i>	1
<i>b - Excluding liability for poor services, or work and materials</i>	24
<i>c - Restricting amount or type of liability</i>	22
<i>d - Time limits on claims</i>	3
<i>e - Excluding consumers' right of set-off</i>	14
<i>f - Excluding or restricting liability for delay</i>	5
<i>g - Excluding or restricting liability for a supplier's non-performance</i>	2
<i>h - Excluding or restricting liability via guarantee</i>	1
Schedule 3: paragraph 1(c) -	
Binding consumers while allowing a supplier to opt out on a pretext	0
Schedule 3: paragraph 1(d) - Non-return of prepayments on consumer cancellation	7
Schedule 3: paragraph 1(e) - Financial penalties	20
Schedule 3: paragraph 1(f) - Cancellation clauses	10
Schedule 3: paragraph 1(g) - Supplier's right to cancel without notice	3
Schedule 3: paragraph 1(h) - Excessive notice periods for consumer cancellation	2
Schedule 3: paragraph 1(i) - Binding consumers to hidden terms	5
Schedule 3: paragraph 1(j) - General variation clause	2
Schedule 3: paragraph 1(k) - Right to change what is supplied	11
Schedule 3: paragraph 1(l) - Right to increase the price	27
Schedule 3: paragraph 1(m) - Supplier's right of final decision	1
Schedule 3: paragraph 1(n) - 'Entire agreement' and formality clauses	
<i>a - Clauses disclaiming liability for employees' statements</i>	11
<i>b - Formality requirements</i>	5
Schedule 3: paragraph 1(o) - Binding consumers where a supplier defaults	4
Schedule 3: paragraph 1(p) - Supplier's right to assign without consent	2
Schedule 3: paragraph 1(q) - Restricting the consumer's remedies	4
Other terms	
<i>a - Allowing a supplier to impose an unfair financial burden</i>	4
<i>b - Transferring unfair risks (eg: by indemnities) to consumers</i>	1
<i>c - Onerous enforcement clauses</i>	5
<i>d - Excluding consumers' right to assign</i>	0
<i>e - Consumer declarations about contractual circumstances</i>	9
<i>f - Excluding consumers' non-contractual rights</i>	3
<i>g - Delivery at supplier's discretion</i>	1
<i>h - Other</i>	7
Regulation 6 - Plain and intelligible language	<u>20</u>
	<u>Total 237</u>

Notes

The above is a list of commonly occurring types of unfairness identified by the Office and an indication of the number of terms found during the reporting period which can be placed under these headings. It is based on the 17 items in paragraph 1 of Schedule 3 to the Regulations ('the grey list'). However, two of these headings are sub-divided to reflect the range of terms covered by that heading.

There are two additional groups of terms in addition to the 17. One is a miscellaneous category for alleged types of unfairness not obviously covered by the 17 headings. The final group is of cases involving possible breaches of the plain and intelligible language requirement of Regulation 6.

The numbers of terms challenged are to be regarded as broadly indicative, not an exact account, for two reasons. First, in a number of cases unfairness was so extensive and interrelated, and revision of the contract was so comprehensive, that it would have been impracticable to list all the particular terms considered unfair and relate them to changes. Secondly, minor changes to wording, mainly designed to improve intelligibility, have been generally ignored.

Examples of the types of unfairness denoted by the headings above are to be found in previous Bulletins, and will be published in the Specimen Terms Bulletin which will from now on be published separately.