



---

OFFICE OF FAIR TRADING

---

unfair contract terms bulletin

---

CASE REPORTS  
ISSUE NO 10  
(October to December 1999)

---

October 2000

OFT313

# CONTENTS

<i>Part</i>	<i>Page</i>
1 Introduction.....	1
2 Case reports.....	2
3 Statistical breakdown of action on cases.....	38
4 Alphabetical index of businesses approached.....	39
5 Geographical index of businesses by local authority.....	41
6 Categories of unfair term.....	43
 <i>Appendix</i>	
A Undertakings given by Cable London Ltd.....	45

## Contacting the OFT

If you think that any of the standard terms in a consumer contract are unfair, or if you have any comments on the contents of this bulletin, please write to:

The Unfair Contract Terms Unit  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX

*email*      unfair.terms@oft.gov.uk

## Unfair contract terms bulletins

Further copies of this bulletin, copies of earlier issues, the explanatory Office of Fair Trading briefing note *Unfair Standard Terms* (ref: OFT 143) and other OFT publications, are available, free of charge, from:

<i>NEW name</i>	<b>E C Logistics</b>
<i>address</i>	Swallowfield Way Hayes Middlesex UB3 1DQ
<i>tel</i>	0870 60 60 321
<i>fax</i>	0870 60 70 321
<i>NEW email</i>	<b>oft@eclogistics.co.uk</b>

## The Regulations

Copies of the *Unfair Terms in Consumer Contracts Regulations* (ref: SI 1999/2083), which include the Schedules referred to in this bulletin, can be purchased, price £2, from Stationery Office bookshops, or by post from:

The Stationery Office Publications Centre  
PO Box 29  
Norwich NR3 1GN

Copies are also available free of charge on the internet at  
[www.oft.gov.uk/html/research/reports.htm#uctu](http://www.oft.gov.uk/html/research/reports.htm#uctu)

## Copyright

© Crown copyright 2000

This material may be freely reproduced except for sale or advertising purposes.

# 1 INTRODUCTION

1.1 This bulletin covers the period between October and December 1999. Part 2 contains reports of 24 cases completed in this period in which 189 standard contract terms were abandoned or amended as a result of enforcement action by the OFT under Regulation 8, in all cases by means of acceptance of undertakings.

1.2 The case reports are supplemented by indexes to help you find information that you might 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)

## Case reports between January and June 2000

1.3 Circulated under cover of this bulletin is also *Bulletin 11* for the period January to March 2000. *Bulletin 11* does not contain an introduction.

1.4 Due to be published shortly is *Bulletin 12*. In addition to case reports for the period between April and June 2000, it will include copies of the concordats signed with the four qualifying bodies referred to in *Bulletin 9*.

## 2 CASE REPORTS

- 2.1 The purpose of the case reports is to give enough information about significant changes in terms secured by the OFT and qualifying bodies to enable consumers, consumer advisers, and other agencies to see whether undertakings to drop or amend terms in line with the Unfair Terms in Consumer Contracts Regulations 1999 are being honoured.
- 2.2 When a case ends in undertakings, formal or otherwise, the OFT 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 OFT'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 OFT has concerns 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 of 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, except 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 the 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 2 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 6, not on the basis of establishing a correspondence with one of the types of term listed in the Schedule. Schedule 2 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 had to be generally revised, no figure is given for the number of terms challenged.

## 1 A and S Domestic Services

<b>Name of business</b>	A and S Domestic Services	<b>Lead TSD</b>	Trafford Metropolitan Borough Council
<b>Trading sector</b>	Supplier of domestic appliances	<b>Contract identifier</b>	General terms and conditions

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1	1(n): excluded oral agreements, variations to the terms and conditions unless varied by the supplier in writing, and errors and omissions made in its published material	Revised so that the consumer is required to make sure any changes are in writing	1
3(a)	1(k): supplier allowed to vary what is supplied	Deleted	
4(c)	1(i): bound the consumer to additional terms not detailed in the agreement	Revised so the manufacturer's instructions are supplied. The reference to separate conditions has been deleted	4c
4(d)	1(b): excluded the supplier's liability for supplying defective goods	Revised to remove the reference to exclusion of liability	4d
7(b)	1(b): limited the supplier's liability and interfered with the consumer's right to reject defective goods	Revised so that the consumer may now elect for a replacement or a refund	7b
9(b)	1(n): excluded oral agreements	Deleted	
9(d)	The interest rate charging period was not clear	Revised to make it clear that an annual rate of interest is charged	9d

10	Supplier sought indemnity from the consumer which could be used to recover more costs from the consumer than would normally be awarded by the courts	Revised to make it clear that the consumer is only responsible for costs awarded by the courts	10
13(a)	1(b): interfered with the consumer's right to reject defective goods	Revised so that the consumer may now elect for a replacement or a refund	13a
13(b)	1(b): interfered with the consumer's right to reject defective goods	Revised to provide that a small handling charge may apply when the consumer cancels without good reason	13b
14	1(n) and 1(b): contained a formality requirement and operated as an exclusion of liability for obtaining the necessary consents	Deleted	
15(h)	1(b) and 1(l): excluded claims for refunds based on breach of contract and bound consumers to hidden terms	Revised to provide for a refund of the premium if the supplier breaches the contract	14h
17.4	1(b): interfered with the consumer's statutory rights in the event of delay or non-delivery of the services	Deleted	
E and OE	Acted as a generally unfair exclusion of liability	Deleted	

<b>Other information</b>	The supplier originally withdrew the terms. As a result of a further complaint about the original terms, which the supplier assured the OFT was due to an error, the OFT reviewed the supplier's new terms.	
<b>Undertaking accepted</b>	2 December 1999	Fourteen terms revised or deleted

## 2 Access Garage Doors and Gates Ltd

<b>Name of business</b>	Access Garage Doors and Gates Ltd	<b>Lead TSD</b>	Bedfordshire County Council
<b>Trading Sector</b>	Home improvements: doors and gates	<b>Contract identifier</b>	Terms and conditions of sale

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
2	1(b): payment was required at the time of order before repairs could be carried out	Revised so that payment is due when the repairs have been completed	1a
3	Regulation 7: it was unclear whether the estimate was still valid if accepted within 14 days but a mutually convenient date for installation had not been agreed within that period	Revised to make it clear that an estimate is still valid if the order is placed within 14 days of the date of issue	2a
5	1(b): had the potential to be used to deny liability for damage caused by installation	Revised so that liability will be accepted for damage caused by the supplier's negligence	7a
6	1(b): no responsibility was accepted after installation for unsound judgement by the supplier prior to installation with regard to whether the work could proceed	Revised so that liability is only limited in cases where the consumer has decided to proceed against the supplier's advice	2c
9	1(b): damage and shortages had to be reported within two days of delivery	Revised to provide that goods must be checked at the time of delivery or as soon as practicable after delivery and damage or shortages must be reported as soon as practicable after being discovered	4d
10	1(b): allowed the supplier to reclaim goods in the event of non-payment having the effect of excluding the right of set-off	Deleted	
11	1(e): allowed the supplier the right to make any charge deemed sufficient to cover all	Revised to make it clear that the cancellation fee will be sufficient to cover lost	6a

	expenses and handling charges in the event of cancellation of order, with a minimum charge of at least 20%	expenses and handling charges	
12	1(b): no liability was accepted for late delivery or commencement of work	Revised so that the consumer may cancel if delivery or installation is delayed by more than two weeks	4a
13	1(b): no liability was accepted for consequential loss caused by faulty goods or installation  1(b): the supplier's liability was limited to a repair or replacement of faulty goods or substandard installation	Revised so that the supplier accepts responsibility for damage to property and any other losses which could be reasonably anticipated as resulting from such damage  Revised to provide for the offer of a refund of the cost of the product concerned	7a
14	1(e): the supplier reserved the right to charge for storage and any increase in labour or materials in the event that the consumer delayed the delivery of goods or installation	Revised to provide that storage charges must be reasonable. Increases in labour or material costs to be limited to any increase in the RPI between original date and actual date of delivery or instalment.	4b
Declaration	1(b): the consumer was required to sign a statement that the goods were received in good condition	Revised so that customer signs to confirm that goods were received and simply that they <u>appear</u> to be in good condition and complete	Declaration

<b>Other information</b>	The standard terms and conditions of sale were originally challenged as being generally unsuitable for use with consumers because the majority of the terms had potential for unfairness. The entry above gives an indication of how those terms have now been revised	
<b>Undertakings accepted</b>	5 October 1999	Eleven terms revised or deleted

### 3 Aspen Windows Group

<b>Name of business</b>	Aspen Windows Group	<b>Lead TSD</b>	Norfolk County Council
<b>Trading Sector</b>	Home improvements: supply and installation of windows	<b>Contract identifier</b>	Terms and conditions of sale

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Statement on front of agreement	1(n): excluded liability for statements not contained in the written terms	Deleted	
2	1(k): reserved the supplier's discretion to change products	Revised to provide that only minor changes are to be permitted as long as the quality of the goods is not affected	2
3(b)(v)	1(b): excluded liability for negligent work during installation	Revised so as not to exclude supplier's responsibility for negligence	3(b)(v)
4	1(n): variations to contract terms were only to be permitted if in writing	Revised to provide that requests for variations to the terms be made in writing	4
5(b)	1(e): consumer incurred financial penalty (loss of deposit) for refusing to allow survey to be conducted	Revised to allow the supplier to claim his reasonable costs where losses arise directly and foreseeably from the consumer's breach	5(b)
6	1(b): limited liability for delay in installation and use of jargon unlikely to be understood by consumers	Revised to provide for an approximate installation date. The reference to 'time of the essence' has been deleted	6
7	1(b): removal of the right of set-off by allowing supplier to enter consumer's premises and remove goods not paid for	Deleted	



#### 4 Bishop and Sons' Depositories Ltd t/a Bishop's Move

<b>Name of business</b>	Bishop and Sons' Depositories Ltd t/a Bishop's Move	<b>Lead TSD</b>	Lambeth, London Borough of
<b>Trading sector</b>	Household removals	<b>Contract identifier</b>	Terms and conditions

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Introduction	1(n): terms could only be changed by written agreement.	Revised to state that it is the intention of the supplier that all the terms of the contract are in the document	Introduction
2	1(b): excluded liability for negligent staff in relation to dismantling furniture and disconnecting appliances	Revised to recommend that a properly qualified person is employed independently to carry out the dismantling of furniture and disconnection of appliances	2
3	1(b): excluded liability for loss or damage in relation to certain matters	Revised to state that liability is not excluded for loss or damage caused by the supplier's negligence	3
5	1(b): excluded liability for loss or damage in relation to stated goods	Revised to state that such excluded goods will not be removed except by prior written agreement	4
8	1(b): excluded liability for loss, damage or failing to deliver	Revised to state that liability is not excluded for loss, damage or failure to deliver caused by the supplier's negligence	8
10	1(b): liability limited to damage caused to premises to a maximum of £200 unless insurance has been arranged, such a claim had to be made, in writing, within seven days	Revised to state that any damage should be noted on the worksheet	12

11	1(b): any claim for damage had to be noted at time of collection and any loss or damage during delivery had to be noted within seven days of delivery	Revised to provide that the consumer should request an extension to the time limits in writing	10
14	1(q): arbitration was only offered in the town where the contract was made	Revised to omit this condition	14
15	Consumers had to indemnify the supplier in respect of third party claims unless they proved that the supplier was negligent	Deleted	
18	1(q): contract governed by 'English or Scottish law'	Revised to state that the contract was subject to the law of the country in which the contract was made	18
22	1(b): inconsistent with the Torts (Interference with Goods Act ) 1977 as the supplier only gave 28 days notice before disposing of the goods	Revised to provide that the supplier may dispose of the goods by giving three months' notice	

<b>Other information</b>	The OFT reserved the Director General's position on the introduction term as it may be used to disclaim liability for verbal commitments made with apparent authority on behalf of suppliers, regardless of considerations of good faith	
<b>Undertakings accepted</b>	9 December 1999	Eleven terms revised or deleted

## 5 Brearley-Greens

<b>Name of business</b>	Brearley-Greens	<b>Lead TSD</b>	West Yorkshire Trading Standards Service
<b>Trading sector</b>	Estate Agency	<b>Contract identifier</b>	Residential Terms of Business Agreement 1997

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
3	Regulation 7: when reading term 2 and term 3 together it was unclear when commission became payable	Revised to remove the reference to 'Ready, Willing and Able Purchaser' and is now a Sole Selling Rights agreement	1
5	Potential to allow the supplier to terminate the contract at an early stage and charge a fee without having performed any estate agency services	Revised to provide for a minimum period to prevent this happening	4
7	1(b): excluded liability for damage in all circumstances which could include the supplier's own negligence	This aspect of term deleted	6
9	Regulation 7: the basis for calculation of interest on overdue payments was unclear	Revised to make it clear the basis on which interest is calculated	8
11	Regulation 7: reference to non-existent requirement 'under the Estate Agency Act and Regulations' to send confirmation of terms by registered post.	Deleted	

<b>Undertaking accepted</b>	8 November 1999	Five terms revised or deleted
-----------------------------	-----------------	-------------------------------

## 6 Bridal Retail Crawley Ltd

<b>Name of business</b>	Bridal Retail Crawley Ltd t/a Proposals	<b>Lead TSD</b>	West Sussex County Council
<b>Trading sector</b>	Supplier of bridal goods for hire	<b>Contract identifier</b>	Hire Agreement 1998

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Statutory rights statement	Reference to terms not affecting consumers' statutory or common law rights	Revised to provide a clear explanation of statutory rights	
Non-refund term	1(b): provided that no refunds could be given once goods had left the supplier's premises and therefore denied consumers the right to return faulty or defective goods	Deleted	
Examination term	1(b): required consumers to make a statement that they had examined the goods and make a statement about their condition, which might not in practice reflect reality.	Deleted	
Balance due term	1(b): by requiring full payment at a time which may have been long before the supplier performed the contract may have denied consumers the right of 'set-off'.	Deleted	
No refund on cancellation term	1(d): retention of all prepayments on consumer cancellation.	Revised to provide that cancellation within short period attracts full refund. Scale of cancellation charges introduced recognising principle of mitigation of loss.	
Security deposit term	1(i): return of security deposit was referred to as being subject to other unspecified terms. Therefore bound consumer to other terms and	Revised so that the reference to the security deposit being subject to other terms has been deleted.	

	conditions not detailed in the agreement.		
--	---	--	--

<b>Other information</b>	The contract terms are not numbered. For ease of reference descriptions have been used to aid identification of the terms in question		
<b>Undertakings accepted</b>	1 November 1999	Six terms revised or deleted	

## 7 British Gas Services Ltd

<b>Name of business</b>	British Gas Services Ltd	<b>Lead TSD</b>	Berkshire County Council
<b>Trading sector</b>	Home improvements: Central Heating	<b>Contract identifier</b>	Celsia Central Heating Quotation

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
4	1(l): supplier had the right to seek an increase in the price in respect of variations to the work, the necessity of which had become apparent after the work had commenced.	Revised to limit the additional charge for work which could not have been identified when the supplier gave the original quotation as well as providing that the consumer will be given reasons for the extra work.	4
5	1(b); excluded liability for delay	Revised to provide that liability only limited to delays due to the weather or other circumstances beyond the supplier's control.	6
6	1(l): supplier had right to increase the price for removal of dangerous waste	Revised to provide for an increase in the price for the removal of dangerous waste only where the supplier could not have reasonably foreseen the need for this at the time of	7

		the quotation.	
11	1(b): potential effect of excluding the supplier's liability for negligence in relation to the connection of new equipment to an existing system	Revised so the supplier no longer excludes liability for its negligence.	12
12	1(b): wide exclusion of supplier's liability for indirect and consequential loss and limitation on liability to the price paid under the agreement	Revised so that the supplier accepts liability for losses which are foreseeable	13
14	1(b): restricted the consumer's right of set-off by providing for payment of balance in full on completion	Revised to require payment when the work is finished to consumer's reasonable satisfaction	15
15	1(d): retention of pre-payments	Revised to provide for a cooling-off period and after that period all or part of the deposit may be used towards the supplier's costs or losses incurred on consumer cancellation	16
16	1(n); excluded oral representations	Revised to provide that the terms are intended to set out the whole agreement	17
Front of contract	Consumer declaration about contractual circumstances	Revised to provide that the consumer is advised to read the terms and conditions carefully before signing and is warned that by signing he may be regarded as understanding them and as having had the chance to raise concerns.	Front of contract

<b>Undertakings accepted</b>	16 December 1999	Nine terms revised or deleted
------------------------------	------------------	-------------------------------

## 8 Burglarm Security Ltd

<b>Name of business</b>	Burglarm Security Ltd	<b>Lead TSD</b>	Hampshire County Council
<b>Trading sector</b>	Security alarms and maintenance	<b>Contract identifier</b>	BSL 1029 Issue 3

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1(j)	1(m): stated 'Certificate of Completion is conclusive evidence of completion', and as such did not give the consumer an opportunity to disagree that completion had taken place satisfactorily	Revised to provide that both parties must agree any defects in writing, and before a Certificate of Completion can be issued both parties have to sign to agree completion	1(j)
2(f)	The consumer was excluded from the supplier's complaints procedure in the event that he breached any term of the contract	Revised to remove this aspect of the term	2(f)
2(g), 2(h) and 3(a)	Regulation 7: it was not made clear that the consumer's additional legal rights were unaffected	Revised so that it is clear to the consumer that he has legal rights in addition to those offered by the supplier	2(g), 2(h) and 3(a)
3(e) and 3(g)	1(f): the consumer was required to give three months' notice if he wanted to cancel in the event that the supplier had breached the agreement whereas the supplier could terminate with immediate effect	Revised to provide that both parties can terminate the agreement in the event that the other party has significantly breached the agreement	3(e) and 3(g)
3(i)	1(e): in the event of early termination, the supplier required 70% of the remaining minimum contract period of three years	Revised so that the supplier now only requires 30% of the remaining minimum contract period, observing its duty to mitigate its losses	3(i)
4(b)	Allowed the supplier to enter a private property without the owner's consent in order to recover the goods	Revised to remove this aspect of the term	4(b)

4(f)	Regulation 7: it was not clear by how much charges would be increased since the term made a reference to a 'cost of living' index	Revised to make it clear that charges will be increased in line with the Retail Price Index but not exceeding 5%	4(f)
4(n)	1(b): it had the potential to be used to deny liability to make good redecoration work caused by the supplier's negligence	Revised so the supplier now accepts liability for redecoration work caused by its negligence	4(n)
6	Regulation 7: it was not clear which matters were covered by unlimited liability and which were restricted to the supplier's cap on liability	Revised to provide a clear indication as to circumstances in which the supplier limits its liability and those in which it does not. The supplier also increased its overall cap on liability	5
7(b)	1(n): potentially denied liability for oral statements	Deleted	6(a)

<b>Other information</b>	The supplier's standard terms and conditions were originally challenged as being generally unsuitable for use with consumers because the majority of the terms had potential for unfairness. The entry above gives an indication of how those terms have now been revised		
<b>Undertakings accepted</b>	1 October 1999		Thirteen terms revised

## 9 Cable London plc

<b>Name of business</b>	Cable London plc	<b>Lead TSD</b>	Camden, London Borough of
<b>Trading sector</b>	Cable telephony and television services	<b>Contract identifier</b>	Residential Customer Service Agreement, 1999

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
3.1	Regulation 7: unclear description of consumer's	Revised to explain that copying for private use is	3.1

	right to copy television programmes	allowed	
3.2, 8.2	Regulation 7: the use of jargon such as 'indemnity', may have been unclear to consumers, and allowed the supplier to impose unfair financial penalties for breach of contract	Revised to remove the indemnity element of penalties	3.2, 8.2
5.4	The right to require consumers to change their apparatus could have imposed an unreasonable financial burden	Revised to provide for the requirement to change the apparatus only if it is not approved or interferes with the quality of service	5.4
9.2	1(b): sought to limit liability for the supplier's own delay	Revised so that liability is only excluded where delay is reasonable or unavoidable	9.2
14.1(d)	1(b): allowed supplier to charge for maintenance work made necessary by 'minor or intermittent' faults on its own equipment	Deleted	
19.3, 19.5	1(b) and Regulation 7: exclusions of liability too wide-ranging, and unclear in effect	Revised so as to limit the extent of the exclusions, and make them clearer to consumers	19.3, 19.5
26.1, 26.2	1(n): entire agreement clause, which excluded liability for statements by employees or agents	Revised so that liability is no longer excluded	26

<b>Other information</b>	<p>When this supplier was first approached, it was owned jointly by NTL Group plc and Telewest Communications plc. The supplier agreed to make a number of amendments to its terms, and these are recorded above. In August 1999, while the OFT was still in discussion with the company, Telewest announced that it was to acquire NTL's share, and informed the OFT that Cable London plc would in future trade under Telewest's terms (see Bulletin 6, page 80). The OFT therefore closed the case, having accepted undertakings from Cable London that, in the period until Telewest's terms applied to Cable London plc customers, it would not enforce those terms it had agreed to amend. Please refer to page 45 of this bulletin for details of the undertakings.</p>
<b>Undertakings accepted</b>	<p>1 November 1999</p> <p style="text-align: right;">Ten terms revised or deleted</p>

## 10 Connoisseur Cars

<b>Name of business</b>	Connoisseur Cars	<b>Lead TSD</b>	Bury Metropolitan Borough Council
<b>Trading sector</b>	Supplier of wedding vehicles for hire	<b>Contract identifier</b>	Terms and conditions of hire

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Cancellation	1(e): non-refundable deposit on consumer cancellation regardless of whether trader could mitigate his loss in practice	Revised to allow for the return of the deposit, for each vehicle, less any administrative fee, where the supplier has rehired all or individual vehicles	

<b>Other information</b>	Advice was given on these terms and conditions at the request of the supplier and not as a result of a complaint.	
<b>Undertakings accepted</b>	8 December 1999	One term revised

## 11 Direct Legal Care

<b>Name of business</b>	Direct Legal Care	<b>Lead TSD</b>	Suffolk County Council
<b>Trading sector</b>	Will-making Service	<b>Contract identifier</b>	Terms and conditions, 1997

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1	1(n): term excluded any conditions put forward by the consumer.	Deleted	
2 and 4	These terms were inconsistent about the date when the contract came into existence and charges were made.	Deleted	
3	1(b) and 1(l): term excluded the supplier's liability for delay and allowed the supplier discretion to charge for further time or attendance.	Deleted	
5(ii/iii)	1(b): terms excluded the supplier's liability for delay and 'consequential loss' due to consumer delay in posting back documents. The supplier uses a box number and the consumer was not in a position to verify who was responsible for any delay.	Deleted	
5(iv)	1(b): excluded the supplier's liability where it was the supplier who could have made the error.	Deleted	
5(ii/v/vii)	Regulation 7: terms contained long sentences with little punctuation and references to 'consequential loss'.	Deleted	
6	Regulation 7: unclear whether the consumer was being required to pay a cancellation charge that was in breach of	Deleted	

	the Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations.		
7	1(b) and 1(n): term required a statement from the consumer to the effect that no oral representations had been made and excluded the supplier's liability for losses arising from delay or deficiency in the service.  Regulation 7: the term contained legal jargon and was otherwise unclear.	Deleted	
8	Regulation 7: the prevailing rates referred to in the term may not have been clear to the consumer.	Deleted	

<b>Other information</b>	All terms in use were deleted by the supplier	
<b>Undertakings accepted</b>	15 December 1999	Thirteen terms deleted

## 12 Emanuel Spence Ltd

<b>Name of business</b>	Emanuel Spence Ltd	<b>Lead TSD</b>	Middlesborough Metropolitan Borough Council
<b>Trading sector</b>	Home improvements: Emergency 24 hour maintenance service	<b>Contract identifier</b>	Conditions of sale: 1 January 1996

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
2	1(n): potentially denied liability for oral statements. It also required that variations be authorised in writing by a senior manager.	Deleted	
3	1(b): delivery of the goods was at the risk of the buyer.	Deleted	
4	1(b): excluded liability for any delay in delivery or for any loss resulting directly or indirectly from such delay.	Deleted	
5	1(b): limited the consumer's rights in respect of defects in the goods unless the supplier was notified of defects within seven days of delivery thus imposing a duty on the consumer to inspect the goods. The supplier also denied the consumer's right to reject and excluded the supplier's liability for negligence.	Deleted	
6	1(b): no liability for shortages or defects since the consumer was deemed to be satisfied with the quality of the goods by signing the delivery form.	Deleted	
7	Regulation 7: provided that the consumer could not cancel the contract. Unclear	Deleted	

	as to whether the term applied to unsatisfactory goods, or only where consumer changed his mind, or both.		
8	1(l): entitled the supplier to increase the price at any time up until the date of invoice, without allowing the consumer the right to cancel the contract if discontented with the increase.	Deleted	
9	1(b): provided that the consumer was not entitled to withhold payment of any amount by reason of any dispute and therefore denied the consumer the right of set-off which the law usually allows.	Deleted	
10	1(b): provided that the consumer was not entitled to exercise any right of set-off.	Deleted	
12	Provided that the consumer was to indemnify the supplier in full against any liability incurred by the supplier including liability arising from its negligence.	Deleted	
17	1(b): guarantee provided by the supplier appeared to limit rather than extend the consumer's statutory rights.	Deleted	

<b>Other information</b>	In response to the OFT's consideration of the terms under the Regulations, the supplier deleted all its standard terms.		
<b>Undertakings given</b>	6 October 1999		Eleven terms deleted

### 13 Fishers Property Management

<b>Name of business</b>	Fishers Property Management	<b>Lead TSD</b>	Birmingham City Council
<b>Trading sector</b>	Property Management	<b>Contract identifier</b>	Letting Agreement Terms and conditions 1997

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
3	1(o): placed an obligation on the consumer to pay indefinitely where the tenant remained, even if the supplier was disinsturcted for breach of the agreement.	Revised to provide that the requirement to continue to pay does not apply where the supplier has been disinsturcted for breach of contract.	
11	Sought commission on sale of the property to a tenant or associated party but did not meet the requirements of s.18 of the Estate Agents Act 1979.	The term itself was not revised but a separate notice is now issued to the consumer making clear the charge to be made on a sale and the circumstances in which it will be payable.	
12	1(j): allowed the supplier to revise the terms and conditions on giving one month's notice without allowing the consumer the right to cancel without penalty.	Deleted.	

<b>Other information</b>	Fishers are both a property management company and an estate agency. The OFT took the view that the sale commission term (term 11) did not have sufficient prominence in what is basically a letting introduction agreement. Terms in estate agency agreement, which do not meet the requirements of the Estate Agents Act 1979, are unenforceable under that Act.	
<b>Undertakings accepted</b>	10 November 1999	Three terms revised or deleted

## 14 MicroWorld 2000 Ltd

<b>Name of business</b>	MicroWorld 2000 Ltd t/a Computers R Us	<b>Lead TSD</b>	Ealing, London Borough of
<b>Trading sector</b>	Suppliers of computer equipment	<b>Contract identifier</b>	Sales invoice

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
2 and 10	Regulation 7: jargon was used making the meaning unclear	Deleted	
3	1(n): excluded the supplier's liability where the consumer failed to fulfil a formality requirement	Deleted	
5	Regulation 7: unclear whether the handling charge covered the return of repaired goods to the consumer.	Deleted	
7	1(b): potentially excluded the supplier's liability for substandard repairs	Deleted	
8	1(q): a £10 charge was levied for a duplicate invoice; since the invoice contained the terms and conditions it could have hindered the consumer's right to take action	Deleted	
Statutory rights statement	Regulation 7: a reference to the conditions not affecting consumer's statutory rights	Deleted	
Statement relating to deposits	1(d): retention of prepayments where the consumer cancelled even where the supplier was in serious default.	Deleted	
Tick Box – products	1(b): by requiring the consumer to tick a box	Deleted	

tested in front of the consumer	claiming that the products had been tested may have precluded the consumer from returning defective goods at a later stage		
Statement below tick boxes	1(n): excluded private deals with any salesperson, the meaning of which was unclear	Deleted	
Statement relating to delivery of the goods	1(b): the supplier delivered the goods but at the consumer's risk	Deleted	

<b>Other information</b>	The OFT originally approached Computers R Us, a trading company of MicroWorld 2000, about its terms and conditions. The supplier advised the OFT that Computers R Us ceased trading in December 1997. The supplier sent what was then its current terms and conditions, the majority of which were considered unfair. The supplier agreed to strike out all potentially unfair terms from its invoices	
<b>Undertakings accepted</b>	23 February 1998	Eleven terms deleted

## 15 National Westminster Home Loans

<b>Name of business</b>	National Westminster Home Loans	<b>Lead TSD</b>	London, Corporation of
<b>Trading sector</b>	Mortgages	<b>Contract identifier</b>	Offer of mortgage advance

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
B	1(e): variable charges imposed on consumers who redeemed their fixed rate mortgages early could be far greater than consumers had been given any reason to expect. Insufficient information was provided about the method of calculating the charges.	<p>Revised so that the redemption charges are capped at 5% or 7% of the sum redeemed depending on the length of the loan.</p> <p>No redemption charge in the event of death or repossession</p> <p>Hardship cases to be reviewed on an individual basis</p> <p>Explanatory material made much clearer with maximum redemption charges expressed in cash terms</p>	

<b>Other information</b>	National Westminster agreed not to include the term in new contracts and not to enforce it in existing contracts	
<b>Undertakings accepted</b>	28 October 1999	One term deleted

## 16 Redfearns International Removers Ltd

<b>Name of business</b>	Redfearns International Removers Ltd	<b>Lead TSD</b>	Nottinghamshire County Council
<b>Trading sector</b>	Household removals	<b>Contract identifier</b>	Removal quotation terms and conditions

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Introduction	1(n): terms could only be changed by written agreement	Revised to state that the terms were intended to prevail over any verbal discussions	17
2	1(b): excluded liability for negligent staff	Deleted	
3	1(b): excluded liability for loss or damage in relation to certain matters	Revised to state that liability is not excluded for loss or damage caused by the supplier's negligence	5.4
5	1(b): excluded liability for loss or damage in relation to stated goods	Revised to state that such excluded goods will not be removed except by prior written agreement	4
8	1(b): excluded liability for loss, damage or failing to deliver goods	Revised to state that liability is not excluded for loss or damage caused by the supplier's negligence	9
10	1(b) limitation of liability for damage caused to premises	Revised to remove upper limit on liability	11
11	1(b): any claim for damage had to be notified at time of collection and any loss or damage during delivery had to be notified within seven days of delivery	Revised to provide that a written extension to the 14 day time limit may be requested by the consumer	12
15	Regulation 7: the consumer had to prove that the supplier was negligent to avoid liability for all third party claims	Deleted	

<b>Undertakings accepted</b>	16 December 1999	Eight terms revised or deleted
------------------------------	------------------	--------------------------------

## 17 Rimacroft Ltd

<b>Name of business</b>	Rimacroft Ltd	<b>Lead TSD</b>	Richmond-upon-Thames, Royal Borough of
<b>Trading sector</b>	Motor vehicle parts and servicing	<b>Contract identifier</b>	1997 Guarantee for fitting of car engines

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
	The guarantee was not transferable	Revised to provide that the guarantee is transferable on payment of a fee for administrative costs	

<b>Specific reservations</b>	The Director General's position has been reserved with regard to the amount of the transfer fee. It is unclear whether the fee accurately reflects the cost of the work carried out by Rimacroft in transferring the guarantee
<b>Intelligibility</b>	The statement that the guarantee does not affect the consumer's statutory rights has been clarified to explain that the consumer's rights with regard to faulty or wrongly described goods are not affected by the terms of the guarantee
<b>Undertakings accepted</b>	13 September 1999 <span style="float: right;">One term revised</span>

## 18 Rockwool Insulation Services

<b>Name of business</b>	Rockwool Insulation Services	<b>Lead TSD</b>	Bedfordshire County Council
<b>Trading sector</b>	Home improvements: cavity wall insulation	<b>Contract identifier</b>	Conditions of contract

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1	1(n): no responsibility accepted for representatives' promises not specified on the work schedule.	Revised to state that it is intention of the supplier that all terms of contract are contained in contract document. Consumers are advised to ensure that any variation is written into the contract or notified to the supplier, in writing.	1
2	1(b): installation date was an estimate only, not guaranteed, and the supplier excluded liability for loss or damage caused by any delay.	Revised to provide that the supplier will make every effort to complete work on time but will not accept liability for delay caused by reasons beyond its control.	2
3	1(d): the supplier retained 25% of total cost of the transaction in cases of consumer cancellation.	<p>Revised so that the consumer may cancel the contract, in writing, within seven days, with a full refund of deposit.</p> <p>After this time, costs payable by the consumer are limited to reasonable losses and costs incurred by the supplier.</p> <p>It also makes clear that the consumer can cancel without penalty in the case of a serious breach by the supplier.</p>	3, 4 and 5.

<b>Undertakings accepted</b>	21 October 1999	Three terms revised or deleted
------------------------------	-----------------	--------------------------------

## 19 Seymour Investments Ltd t/a Stonebow Leisure

<b>Name of business</b>	Seymour Investments Ltd t/a Stonebow Leisure	<b>Lead TSD</b>	Lincolnshire County Council
<b>Trading sector</b>	Furniture retailers	<b>Contract identifier</b>	Terms and conditions of sale

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
2	1(b): excluded right of set-off	Revised to state ways in which payment may be made	2
4	Allowed the supplier to enter a private property without the owner's consent in order to recover the goods.	Revised to state clearly the extent of the customer's and supplier's liability after delivery	4
5	1(b): a five-day time limit on onerous conditions was prescribed for claims for damages, shortages or non-delivery.	Revised to state that any damage or shortage relating to the order should be notified to the supplier as promptly as possible.	5
6	Regulation 7: use of the term 'force majeure'	Deleted	
7	1(b): limitation of the supplier's liability to replacement of goods or a refund of the price of the goods	Deleted	
8	1(b): limited the consumer's statutory rights by expressed or implied warranties relating to the quality and fitness for purpose	Revised so that the customer's statutory rights are not limited or excluded	7
9	1(b): stated that missing or faulty goods would be replaced where possible	Revised to state that unsatisfactory products may be returned to the supplier	8
10	1(q): stated that the English courts would have exclusive jurisdiction regarding any disputes	Revised to state non-exclusive jurisdiction of English Courts applies	9

<b>Undertakings accepted</b>	9 December 1999	Eight terms revised or deleted
------------------------------	-----------------	--------------------------------

## 20 Southern Electrical Contracting Ltd

<b>Name of business</b>	Southern Electrical Contracting Ltd	<b>Lead TSD</b>	Berkshire County Council
<b>Trading Sector</b>	Home improvements: Electrical contractors	<b>Contract identifier</b>	General conditions of contract for domestic installation

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
2(b)	Regulation 7: in relation to the requirement to obtain licences for building works, use of unclear language such as 'deemed' and 'quantum meruit'. Contained a reference to an indemnity which was too wide in scope	Revised to provide for plainer language and the requirement to pay an indemnity was deleted.	1.3
2(f)(i)	1(l): allowed the supplier the right to vary the price in certain circumstances without giving consumers a right to cancel.	Deleted	
2(f)(ii)	Regulation 7 and 1(b): excluded 'the builders work and making good' from the quotation price	Revised to explain adequately the exclusions from the quotation price, and explain that the term does not apply where the supplier has been negligent.	1.2(i)
2(j)	1(b): potentially excluded liability for delay	Revised to restrict liability to circumstances beyond the control of either party giving an opportunity to agree alternative dates.	6
7	1(l): gave supplier the right to vary the price without giving the consumer the right to cancel	Deleted	
8(b)	1(b): required the consumer to sign a satisfaction certificate with the effect of denying the supplier's liability for poor workmanship or	Revised to provide that the consumer is now <i>asked</i> to sign the satisfaction certificate	1.5

	faulty goods		
8(f)	Regulation 7 and 1(b): had the effect of denying the consumer's right of set-off by providing for a number of severe penalties (over and above an interest rate penalty) should consumers not meet progress payments.	Deleted	
9 (a)	Regulation 7: unclear and contained an inappropriate transfer of risk	Revised to explain clearly the passing of title and risk in the goods and also emboldened to give it prominence within the agreement	4
10	1(k): sought to give supplier the right to change what was supplied	Revised to allow for consumer cancellation	5
13(c)	Regulation 7: unclear statement on consumer's statutory rights in the warranty	Revised to explain clearly the consumer's statutory rights	9.6
14.1 and 2	1(b): limited liability for consequential loss and overall cap on liability	Revised to provide that the supplier is liable for loss or damage which is a reasonably foreseeable consequence of a breach of the agreement. Cap on liability deleted.	12
15	1(b); excluded liability for damage caused by the supplier's own negligence in fixing carpets and floor coverings.	Revised to provide that the quotation price includes the cost of remedying damage caused to floor coverings where due to the negligence of the supplier.	1.2 (ii)

<b>Other information</b>	The whole contract was revised and rewritten	
<b>Undertakings accepted</b>	13 December 1999	Thirteen terms revised or deleted

## 21 Suite Factory Outlets Ltd

<b>Name of business</b>	Suite Factory Outlets Ltd	<b>Lead TSD</b>	West Yorkshire Trading Standards Service
<b>Trading sector</b>	Upholstered furniture retailers	<b>Contract identifier</b>	Terms and conditions of sale

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
	1(f): no cancellation rights for the consumer in any circumstances	Revised to state that the consumer cannot cancel unless supplier is in breach of its obligations	
	1(b): excluded liability for delay however caused	Revised to state that the supplier is not liable for loss or damage through any reasonable or unavoidable delay	
	1(b) and 1(n): excluded liability for faulty goods by stating that the invoice would be required for after-sales service	Revised to state that an invoice would assist should a need arise for after-sales service	
	1(b): stated that goods must be paid for within 14 days of availability, potentially excluding the right of set-off	Revised to state that goods must be paid for on or prior to delivery	
	1(b): limited the supplier's liability to the value of the order	Revised to state that the supplier is liable for losses that are foreseeable	
	Supplier only liable for delivery to the door – term not sufficiently prominent	Revised so that the term is made more prominent	
	Declaration that the colour and description on the order match the samples	Revised to state that the consumer should check the colour and description on the order with the sample they were shown	
	1(b): excluded liability for faulty goods by requiring the consumer to sign that the goods were received in good condition	Revised so that the consumer signs only to say that the goods have been received	

<b>Undertakings accepted</b>	23 December 1999	Eight terms revised
------------------------------	------------------	---------------------

## 22 Techno Corporation Ltd t/a Mobility Direct

<b>Name of business</b>	Techno Corporation Ltd t/a Mobility Direct	<b>Lead TSD</b>	Torbay Council
<b>Trading sector</b>	Supplier of mobility aids	<b>Contract identifier</b>	Terms and conditions, May 1999

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1(d)	Regulation 7: inadequate reference to statutory rights	Revised to provide for a clear explanation of statutory rights	1(d)
2(c)	1(d): retention of pre-payments. Although the consumer was allowed to cancel within seven days, £750 was retained from the deposit	Revised so that the consumer now has the right to cancel within seven days without penalty. After this a cancellation charge applies and the supplier recognises his duty to mitigate losses	2(c)
4(a)	Regulation 7: inadequate reference to statutory rights	Revised to cross-reference the term to term 1(d)	4(a)
5(b)	1(d): non-refundable deposit of a minimum of 50% of the purchase price	Revised to provide that a deposit of 20% is non-refundable and there is a cross-reference to the cancellation provisions of term 2(c)	5(b)
5(c)	Regulation 7: misleading about jurisdiction of court proceedings	Revised to make it clear to consumer that he can ask for a court case to be heard in a court near his home	5(c)
Declaration	Consumer declaration about contractual circumstances which may not have been factually accurate	Revised so that the consumer is now asked to read the conditions and ask for them to be explained, if necessary. The consumer no longer has to declare he has received instructions.	Declaration

<b>Other information</b>	Techno Corporation also trades as GP Care Supplies whose terms were reported in <i>Bulletin 3</i> (see page 33). Further complaints revealed potential unfairness in the agreement, which has now been addressed. Suppliers are warned that the OFT will revisit terms in an agreement if further complaints reveal that they can be used unfairly	
<b>Undertakings accepted</b>	12 November 1999	Six terms revised

## 23 Uno plc

<b>Name of business</b>	Uno plc	<b>Lead TSD</b>	Halton Borough Council
<b>Trading sector</b>	Upholstered furniture retailers	<b>Contract identifier</b>	Conditions of sale

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
	1(b): placed conditions on the return of goods, which the consumer had a right to reject.	Deleted.	
	1(b): deemed that the goods were accepted (for legal purposes) as seen and that the consumer was aware of all apparent defects.	Deleted.	
	1(b): a 14-day time limit was prescribed for claims for damages, omissions or variations.	Revised to state that if the consumer finds any fault, damage or omission relating to the order he should notify the supplier as promptly as possible.	C.1
	1(b): excluded liability for delay.	Revised to state that delivery dates are approximate only. When the goods are ready for delivery, the supplier will contact the consumer to arrange a fixed date.	D.1
	1(f): no cancellation rights for the consumer in any circumstances.	Revised to state that cancellation will not normally be allowed except in accordance with the	X.1

		consumer's rights under sale of goods legislation or if the supplier is in breach of other legal obligations.	
	Regulation 7: references to statutory rights without any explanation of what these are.	Revised to state that if the consumer has any doubts about his statutory rights, he should contact his local trading standards department or Citizens' Advice Bureau.	X.1
	1(b): excluded liability for direct or consequential loss or damages.	Deleted.	
	Declaration Statement: a 'have read and understood' declaration.	Deleted.	

<b>Undertakings accepted</b>	25 November 1999	Eight terms revised and deleted
------------------------------	------------------	---------------------------------

## 24 Willsafe Document Protection Ltd

<b>Name of business</b>	Willsafe Document Protection Ltd	<b>Lead TSD</b>	Suffolk County Council
<b>Trading sector</b>	Supplier of document storage facilities	<b>Contract identifier</b>	General conditions for the provision of storage facilities

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
4	1(b): excluded liability for any 'consequential loss' including any loss caused by a document failing to fulfil its intended purpose. The term could therefore potentially exclude the supplier's liability if it negligently lost or destroyed the document.	Deleted	
6	1(b): excluded liability for any 'consequential loss' suffered	Deleted	

	by the consumer when this arose from the damage or loss of any documents in the supplier's care. The term also limited the supplier's liability to the original purchase cost of the document.		
10	1(b): denied consumers the right to a refund of any money paid to the supplier when they may have been entitled to it where the supplier was in breach of the agreement.	Deleted	
12	1(l): if consumers requested the return of stored documents, the supplier was allowed to charge a fee that it deemed reasonable.	Deleted	
14	Regulation 7: did not make it clear that if documents were returned to the consumer in the normal way, the consumer would have no evidence to seek redress from the Post Office for the loss of any documents.	Deleted	

<b>Other information</b>	All terms in use were deleted by the supplier	
<b>Undertakings accepted</b>	25 November 1999	Five terms deleted

### 3 STATISTICAL BREAKDOWN OF ACTION ON CASES

	Oct-Dec 99	To end Dec 99
Total number of cases received		4789
Cases carried over from the previous quarter (A)	861	
Cases received in the quarter (B)	286	
Cases completed in the quarter (C)	298	
Cases still in hand (A+B-C)		849
Breakdown of cases completed		
Defective cases	25	153
Duplicate cases	55	892
More appropriate for other legislation	11	202
Not about a contract term	4	128
About an excluded term	23	267
About a 'core' term	14	227
Term not considered unfair	27	432
Closed for other reasons	19	297
Dealt with by advice or warning	93	877
Referred to Qualifying bodies	3	3
'Formal' undertakings given	1	9
'Informal' undertakings given	23	453

#### Notes

<i>'Cases'</i>	are based on any communication received by the Office regarding contract terms that are not frivolous or vexatious. This category includes general enquiries about the Regulations, which are dealt with as cases only if they indicate that specific terms have a real possibility of harming the consumer.
<i>'Duplicate cases'</i>	relate to terms already being dealt with.
<i>Cases are 'more appropriate for other legislation'</i>	are cases where action under another of the statutes administered by the OFT is more likely to be effective.
<i>'Excluded terms'</i>	are those not between consumers and suppliers
<i>'Core' terms'</i>	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 6(2)
<i>'Closed for other reasons'</i>	are cases where, for instance, the supplier has gone (or goes) out of business, or is no longer using the terms complained of.
<i>'Dealt with by advice standards or warning'</i>	includes cases where the seriousness of the problem does not warrant a full approach. Or where a Qualifying Body has dealt with the matter.

#### **4 ALPHABETICAL INDEX OF BUSINESSES APPROACHED INDICATING TRADING SECTORS**

1	A and S Domestic Services	supplier of domestic appliances
2	Access Garage Doors and Gates Ltd	home improvements: doors and gates
3	Aspen Windows Group	home improvements: supply and installation of windows
4	Bishop and Sons' Depositories Ltd	household removals
5	Brearley-Greens	estate agency
6	Bridal Retail Crawley Ltd	supplier of bridal goods for hire
7	British Gas Services Ltd	home improvements: central heating
8	Burglarm Security Ltd	home improvements: security alarms
9	Cable London plc	telecommunications: cable telephony and television services
10	Connoisseur Cars	wedding vehicle hire
11	Direct Legal Care	will-making service
12	Emanuel Spence Ltd	home improvements: emergency 24hr maintenance service
13	Fishers Property Management	property management
14	MicroWorld 2000 t/a Computers R Us	computer equipment
15	National Westminster Home Loans	mortgages
16	Redfearns International Removers Ltd	household removals
17	Rimacroft Ltd	motor vehicle parts and servicing

18	Rockwool Insulation Services	home improvements: cavity wall insulation
19	Seymour Investments Ltd t/a Stonebow Leisure	furniture retailers
20	Southern Electrical Contracting Ltd	home improvements: electrical contractors
21	Suite Factory Outlets Ltd	upholstered furniture retailers
22	Techno Corporation Ltd t/a Mobility Direct	supplier of mobility aids
23	Uno plc	upholstered furniture retailers
24	Willsafe Document Protection Ltd	supplier of document storage facilities

## **5 GEOGRAPHICAL INDEX OF BUSINESSES BY LOCAL AUTHORITY**

### **BEDFORDSHIRE COUNTY COUNCIL**

- Access Garage Doors and Gates Ltd
- Rockwool Insulation Services

### **BERKSHIRE COUNTY COUNCIL**

- British Gas Services Ltd
- Southern Electrical Contracting Ltd

### **BIRMINGHAM CITY COUNCIL**

- Fishers Property Management

### **BURY METROPOLITAN BOROUGH COUNCIL**

- Connoisseur Cars

### **CAMDEN, LONDON BROUGH OF**

- Cable London plc

### **EALING, LONDON BOROUGH OF**

- MicroWorld 2000 Holdings Ltd

### **HALTON BOROUGH COUNCIL**

- Uno plc

### **HAMPSHIRE COUNTY COUNCIL**

- Burglarm Security Ltd

### **LAMBETH, LONDON BOROUGH OF**

- Bishop and Sons' Depositories Ltd t/a Bishop's move

### **LINCOLNSHIRE COUNTY COUNCIL**

- Seymour Investments Ltd t/a Stonebow Leisure

## **LONDON, CORPORATION OF**

- National Westminster Home Loans

## **MIDDLESBOROUGH METROPOLITAN BOROUGH COUNCIL**

- Emanuel Spence Ltd

## **NORFOLK COUNTY COUNCIL**

- Aspen Windows Group

## **NOTTINGHAMSHIRE COUNTY COUNCIL**

- Redfearns International Removers Ltd

## **RICHMOND-UPON-THAMES, ROYAL BOROUGH OF**

- Rimacraft Ltd

## **SUFFOLK COUNTY COUNCIL**

- Direct Legal Care
- Willsafe Document Protection Ltd

## **TORBAY COUNCIL**

- Techno Corporation Ltd t/a Mobility Aids

## **TRAFFORD METROPOLITAN BOROUGH COUNCIL**

- A and S Domestic Services

## **WEST SUSSEX COUNTY COUNCIL**

- Bridal Retail Crawley Ltd t/a Proposals

## **WEST YORKSHIRE TRADING STANDARDS SERVICE**

- Brearley-Greens
- Suite Factory Outlets Ltd

## 6 CATEGORIES OF UNFAIR TERM

Schedule 2: paragraph 1(a) - Excluding or restricting liability for death or injury	0
Schedule 2: paragraph 1(b) - Excluding or restricting liability for breaches of contract	
<i>a - Excluding liability for defective or misdescribed goods</i>	14
<i>b - Excluding liability for poor services, or work and material</i>	19
<i>c - Restricting amount or type of liability</i>	13
<i>d - Time limits on claim</i>	6
<i>e - Excluding consumers 'right of set-off'</i>	13
<i>f - Excluding or restricting liability for delay</i>	15
<i>g - Excluding or restricting liability for a supplier's non-performance</i>	3
<i>h - Excluding or restricting liability via guarantee</i>	2
Schedule 2: paragraph 1(c) - Binding consumers while allowing a supplier to opt out on a pretext	0
Schedule 2: paragraph 1(d) - Non-return of prepayments on consumer cancellation	6
Schedule 2: paragraph 1(e) - Financial penalties	6
Schedule 2: paragraph 1(f) - Cancellation clauses	4
Schedule 2: paragraph 1(g) - Supplier's right to cancel without notice	0
Schedule 2: paragraph 1(h) - Excessive notice periods for consumer cancellation	0
Schedule 2: paragraph 1(i) - Binding consumers to hidden terms	2
Schedule 2: paragraph 1(j) - General variation clause	1
Schedule 2: paragraph 1(k) - Right to change what is supplied	3
Schedule 2: paragraph 1(l) - Right to increase the price	6
Schedule 2: paragraph 1(m) - Supplier's right of final decision	1
Schedule 2: paragraph 1(n) - Entire agreement and formality clause	
<i>a - Clauses disclaiming liability for employees' statements</i>	15
<i>b - Formality requirements</i>	2
Schedule 2: paragraph 1(o) - Binding consumers where a supplier defaults	1
Schedule 2: paragraph 1(p) – Supplier's right to assign without consent	0
Schedule 2: paragraph 1(q) - Restricting the consumer's remedies	4
Other terms	
<i>a - Allowing a supplier to impose an unfair financial burden</i>	3
<i>b - Transferring unfair risks (eg: by indemnities) to consumers</i>	3
<i>c - Onerous enforcement clauses</i>	2
<i>d - Excluding consumers' right to assign</i>	0
<i>e - Consumer declarations about contractual circumstances</i>	3
<i>f - Excluding consumers' non-contractual rights</i>	2
<i>g - Delivery at supplier's discretion</i>	1
<i>h - Other</i>	3
Regulation 7 - Plain and intelligible language	36
<b>Total</b>	<b>189</b>

### Notes

The list above is one of commonly occurring types of unfairness identified by the OFT 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 2 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. 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 language requirement of Regulation 7.

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 be 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 from now on be published in a separate *Specimen Terms Bulletin*.

# APPENDIX

---

## A UNDERTAKINGS GIVEN BY CABLE LONDON PLC

UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999

(IMPLEMENTING COUNCIL DIRECTIVE 93/13/EEC)

(‘THE REGULATIONS’)

-----  
UNDERTAKING  
-----

Cable London Ltd, company number 1794264, whose registered office is at 66 Wigmore Street, London, W1H 0HQ, hereby gives to the Director General of Fair Trading an undertaking under Regulation 10(3) of the Regulations. The undertaking is that Cable London whether by its directors or by its officers or servants or agents, or otherwise,

1 will not use or recommend for use in any contract concluded with a consumer after the date of this undertaking for the supply of goods or services in the course of any business,

(a) any standard term in attachment 1 whose potential for unfairness has been drawn to its attention in the attached letter of 14 October 1999 (attachment 2);

(b) any term having the same or a similar effect to a term referred to above; and

2 will not in relation to any contract concluded with a consumer before the date of this undertaking enforce or otherwise rely on any such term insofar as it purports to confer on Cable London any greater right or advantage as against the consumer than it would have enjoyed had the terms of the contract been identical to the standard terms of Telewest PLC as set out in attachment 3;

- 3 will, in drawing up or recommending any term for general use in contracts concluded with consumers for the supply of goods or services in the course of any business, have regard to Regulation 5 and the indicative list of terms contained in Schedule 2 to the Regulations.

**Signed** ..... **In the presence of** .....  
Director  
  
Name .....  
..... Dated .....  
Company Secretary