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OFFICE OF FAIR TRADING

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unfair contract terms bulletin

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CASE REPORTS  
ISSUE NO 12  
(April to June 2000)

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November 2000

OFT325

One of a series of bulletins giving details of cases where the OFT or one of the other enforcement bodies has secured significant changes in contract terms. The purpose of the bulletins is to enable consumer advisers and consumers to monitor whether businesses are honouring the changes they have agreed to make.



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\* includes one case where action was taken by a Trading Standards Department

## 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:

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2-6 Salisbury Square  
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*email* [unfair.terms@oft.gov.uk](mailto: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: OFT143) and other OFT publications, are available, free of charge, from:

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<i>address</i>	Swallowfield Way Hayes Middlesex UB3 1DQ
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## 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 £2.00, from Stationery Office bookshops, or by post from:

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

Copies are also available on the internet at:  
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# 1 INTRODUCTION

- 1.1 This is issue 12 of the *Unfair Contract Terms Bulletin* series in which the Director General of Fair Trading publishes details of cases where terms he considers unfair have been amended or dropped. The Director General has the power to ask the court for an order forbidding further use with consumers of any term drawn up for general use that he considers to be unfair. However, cases are normally resolved through the acceptance of informal undertakings in lieu of court proceedings. The Director General also has the power to publish information about the Unfair Terms in Consumer Contracts Regulations 1999 and the work of the OFT.
- 1.2 This bulletin covers the period between April and June 2000. Part 2 contains reports of 20 cases completed in this period in which 104 standard contract terms were abandoned or amended as a result of enforcement action by the OFT under Regulation 10, in all cases by means of acceptance of undertakings. In addition, there is one report of a case completed by a 'qualifying body', the first such case to be reported in a bulletin, in which seven terms were abandoned or amended – see paragraph 1.5 below. Finally, there is one case report where subsequent enforcement action was required (Case Report 5 - Cable London plc).
- 1.3 Since 1 October 1999 certain other bodies have had powers to take action against the use of unfair terms. These are named in Schedule 1 to the Regulations. Part 1 of Schedule 1 specifies public authorities, including most of the main national regulatory bodies, and all local authorities providing a trading standards service. These public authorities have the power, along with the OFT, to require a supplier to provide copies of its contracts and other information necessary to identify whether it is using unfair terms – particularly if the supplier is still using unfair terms after giving an undertaking to drop them. Part 2 of Schedule 1 is reserved for independent bodies, and currently includes only the Consumers' Association.
- 1.4 The Director General has a duty to consider any complaint sent to him about unfair terms, unless one of the other enforcement bodies tells him it is considering it. The other enforcement bodies are not obliged to consider every complaint they receive, but when one of the other public authorities agrees to consider a complaint, like the Director General, it has a duty to give reasons for its decision to apply or not to apply for an injunction. It must also supply details of any undertakings and amended terms to the Director General.
- 1.5 The OFT is the focal point for voluntary co-ordination between all the bodies involved in enforcement of the Regulations since the other enforcement bodies have to notify the Director General of their intention to take action and give him details of the outcome. The Director General is obliged to publish this information, including undertakings or court orders received. This bulletin includes the first report of completed action by one of the other enforcement bodies. This is Case Report 21 - Weatherseal Holdings Ltd. The action was taken by Cheshire County Council.

## **Action against unfair terms**

### *Use of phrases claiming OFT approval*

- 1.6 The following statement appeared on the website of a double-glazing company whose terms had been amended following a complaint to the OFT and enforcement action by the OFT under the Regulations:

‘... really care about their customers, they have completely re-written their terms of business and have submitted them to the Office of Fair Trading in London who have confirmed that they are fair to you, the consumer and that they comply with current legislation and regulations.’

- 1.7 It is understandable that suppliers who have been to the trouble and expense of re-writing their terms may wish to claim credit for the fact, but statements such as these are misleading and will always be challenged by the OFT.

- 1.8 There is an important reason for this. The Director General does not have the final word on whether or not a term is unfair: that is the role of the court. The OFT considers complaints that standard contract terms are unfair and, if it believes they are, explains to suppliers why this is so. The OFT’s extensive experience in administering the Regulations lends the OFT’s views some persuasive force. But it is always open to consumers to challenge terms which the OFT has not challenged and to persuade a court that they are unfair in the circumstances of a particular case. The court might be asked to judge the fairness of a term in the light of evidence of how the term was used which the OFT did not have when considering that term. Or the court might simply disagree with the OFT’s view of whether the term was unfair. The damage done by any statement appearing to imply OFT ‘approval’ is that consumers with very good grounds for challenging terms might be deterred from doing so.

- 1.9 Suppliers should also be aware that references to OFT approval which are made in circumstances where they are intended to encourage potential customers to contract with that supplier are likely to fall foul of the Control of Misleading Advertisements Regulations 1988. These give the Director General powers to apply for an injunction preventing the use of misleading advertisements. For these purposes, an advertisement is ‘any form of representation made in order to promote the supply or transfer of goods or services’ and an advertisement is misleading if it deceives, or is likely to deceive, the people to whom it is addressed or who happen to see it and by reason of its deceptive nature is likely to affect their economic behaviour. For the reasons set out above, a claim that the OFT has ‘approved’ terms and conditions is deceptive. In appropriate cases, the OFT will use this power to prevent consumers being misled by statements about its ‘approval’.

## *IATA*

- 1.10 The OFT announced on 14 September 2000 that it had completed its work on the conditions of carriage recommended by the International Air Transport Association (IATA) to its members ('Recommended Practice 1724'). The OFT had challenged some 30 airline contract terms as potentially unfair and unenforceable. As a result, IATA extensively revised its recommended contract. The way is now clear for airlines to adopt the new terms, with British Airways understood to be planning to change its consumer contracts shortly.
- 1.11 IATA is unable to recommend the new terms to its members until it obtains approval from the US Department of Transportation. But the OFT has written to some 25 major airlines dealing with UK consumers to remind them of the need to review and amend their terms and conditions if they had been based on the superseded IATA-recommended terms. These are the international airlines carrying most passengers into and out of the UK. In due course this enforcement action will be extended to all airlines operating in the UK.
- 1.12 The revised terms represent a major improvement in air passenger rights, covering such issues as credit notes for non-refundable tickets when the passenger is unable to travel, sequential use of ticket coupons, rescheduling of flights, check-in policies, fare increases, agents' responsibilities and code sharing. A note covering the main changes is at Appendix A.

## *Ryanair*

- 1.13 On 20 September 2000 the OFT announced that Ryanair Ltd (an Irish airline) had agreed to drop contract terms which unfairly limited its responsibility for travellers' luggage. It has also agreed to remove notices disclaiming responsibility from its check-in desks. Following intervention by the OFT, the airline will no longer operate a blanket refusal to take any responsibility for oversized or over-packed baggage, nor will it refuse to pay out if any protruding parts on luggage, such as wheels and handles, are damaged or lost in transit. It now only refuses to accept responsibility for unsuitably packed, perishable, damaged or fragile baggage and for minor damage to the outside of luggage caused by normal wear and tear. This brings the company into line with the requirements of the Warsaw Convention.

## *Paragon*

- 1.14 The Paragon Group of Companies plc agreed in September 2000 to amend a term entitling it to charge interest on debts which are subject to court orders. These undertakings are equivalent to those given by First National Bank plc (FNB) reported in *Bulletin 9*. The undertakings affect those borrowers whose agreements are regulated by the Consumer Credit Act, and who have been taken to court for defaulting on their payments and made subject to an instalment order. The term says the lender may continue to charge interest on any money still owing to it at the same rate as in the original loan agreement even when the borrower is paying the debt off by instalments under a court order. In the case of FNB the Court of Appeal ruled that the term in question was unfair because it enabled FNB to use

the court to enforce an order requiring the borrower to pay back a loan by instalments without giving the court sufficient opportunity to reduce or disallow interest payments on that loan. Paragon has now agreed that it too will not charge additional contractual interest unless it has informed consumers about their right to ask the court to reduce or stop this interest and the attention of the court has been drawn to its powers to reduce or stop the interest. FNB has applied to the House of Lords for leave to appeal, and that application is still being considered.

### **Updated Briefing Note**

- 1.15 The updated Briefing note *Unfair Standard Terms – Guidance for consumer advisers on the Unfair Terms in Consumer Contracts Regulations 1999* was published in August 2000. This leaflet provides general guidance to consumer advisers on the Regulations and unfair terms, and sets out the names, addresses and contact numbers of the other bodies now able to enforce the Regulations.
- 1.16 The Briefing note (publication number OFT143) is available on the OFT website at [www.offt.gov.uk/html/about/unfairstandardterms.htm](http://www.offt.gov.uk/html/about/unfairstandardterms.htm).

### **Signed concordats**

- 1.17 Copies of all the concordats signed by the end of June 2000 are included at Appendix B. The concordat with the Consumers' Association was signed on 23 December 1999, that with OFTEL on 9 May 2000, and those with LACOTS (the Local Authorities Co-ordinating Body on Food and Trading Standards) and the Department of Enterprise, Trade and Investment (Northern Ireland) on 22 June 2000.
- 1.18 Negotiations are currently underway with other qualifying bodies to reach agreement on further concordats.

## 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 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, 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 Regulations 5 and 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.

## 1 ACE Alarms

<b>Name of business</b>	ACE Alarms	<b>Lead TSD</b>	London Borough of Bromley
<b>Trading sector</b>	Burglar Alarms	<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>
2	1(n): potentially unfair 'entire agreement' clause. Also contained an unnecessary formality by stipulating that all alterations to the agreement had to be in writing.	Revised to remove the potential unfairly to exclude representations made by supplier or its employees. Term now advises consumer to ask for any alterations to the agreement to be put in writing.	2
4	1(b): potentially unfair exclusion of consumer's right to set-off by demanding full payment on completion and exclusion of supplier's liability for loss and damage to alarm system.	Revised to require consumer to pay deposit on acceptance of agreement and balance on completion of installation, subject to the other terms of the contract. Term now makes it clear that supplier is not seeking to exclude liability for loss or damage caused by its negligence.	4
8	Potentially onerous enforcement clause allowed supplier to enter consumer's premises and remove goods if consumer defaulted.	This aspect of term deleted.	8
13	1(q): potentially unfair 'exclusive jurisdiction' clause specified governing law and jurisdiction in which proceedings might be brought.	Revised to specify governing law only for installations in England.	13
Maintenance Contract	1(b) and Regulation 7: potentially unfair exclusion of supplier's liability for poor services or materials. Also use of jargon without explanation.	Revised to clarify the cover afforded by the Maintenance Contract. Jargon explained.	Maintenance Contract

<b>Intelligibility</b>	Intelligibility improved by provision of explanations for technical jargon.	
<b>Undertakings accepted</b>	19 June 2000	Five terms revised

## 2 Allders Department Stores Ltd

<b>Name of business</b>	Allders Department Stores Ltd	<b>Lead TSD</b>	London Borough of Croydon
<b>Trading sector</b>	Retailer	<b>Contract identifier</b>	Carpet Estimate: Conditions of Sale & Acceptance of Estimate

<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): provided that an extra, unspecified charge would be incurred if all areas were not cleared.	Revised so that any extra charges are to be agreed prior to the fitting date.	4
5	1(b): accepted no responsibility for damage to under-floor services.	Revised to request that the consumer advises the fitter, prior to fitting taking place, of any under-floor water, gas, heating or electrical services which the consumer is aware of.	5
7	1(b): excluded liability for damage in certain circumstances.	Revised to advise consumer that there may be unavoidable damage to the tiles and that all remedial work/fitting will be carried out with reasonable care and skill.	7
Declaration Statement	Required consumer to sign declaration saying 'I accept your estimate and understand the conditions of sale'.	Revised to advise the consumer to read the conditions before signing the estimate.	Declaration statement on front of form

<b>Other information</b>	The front of the form asked the consumer to sign to confirm 'that the work has been carried out to my satisfaction'. The supplier agreed to delete 'to my satisfaction' from the form when reprinting it and not to rely on the term in the existing forms.	
<b>Undertakings accepted</b>	4 April 2000	Four terms revised

### 3 Belmont Finance (UK) Ltd

<b>Name of business</b>	Belmont Finance (UK) Ltd	<b>Lead TSD</b>	Royal Borough of Kingston-upon-Thames
<b>Trading sector</b>	Credit for Leisure Services	<b>Contract identifier</b>	Membership agreement

<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(h): automatically extended the agreement beyond its expiry date until such time as the sports/health club named in the agreement or Belmont Finance UK Ltd was notified in writing.	Deleted.	

<b>Other information</b>	Belmont Finance (UK) Ltd was reported in <i>Bulletin 6</i> . It had re-introduced a term which had previously been raised with it as unfair and has now agreed to delete it from the credit agreement.	
<b>Undertakings accepted</b>	5 May 2000	One term deleted

#### 4 The British Watch & Clock Makers' Guild

<b>Name of business</b>	The British Watch & Clock Makers' Guild	<b>Lead TSD</b>	Essex County Council
<b>Trading sector</b>	Trade Association: Watch and Clock Repairs	<b>Contract identifier</b>	Conditions of Repair Acceptance: Model terms

<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): exclusion of liability for goods sent or delivered by the consumer but not received by the supplier. Term may have allowed the supplier to exclude liability for goods delivered and accepted by someone on the supplier's business premises.	Deleted.	
3(A) and 3(B)	These terms gave the supplier rights to dispose of the consumer's goods if the consumer failed to pay repair charges. However, the terms gave the supplier more extensive rights to dispose of goods than is provided for by the Torts (Interference with Goods) Act 1977. The terms allowed the supplier to dispose of goods where there was a dispute and also to dispose of other goods in the supplier's possession belonging to the consumer.	Revised to make it clear that the supplier's right to dispose of the property will not be exercised where the consumer is in dispute with the supplier. The reference to rights over other goods owned by the consumer has been deleted.	2(A) and 2(B)
3(D)	Regulation 7: unclear reference to supplier having 'other rights' over the consumer's goods.	Revised to make it clear that the supplier's powers of detention and sale are in addition to the supplier's other legal rights to issue fresh proceedings to recover money due.	2(C)
4	Regulation 7: unclear reference to the contract not affecting the consumer's statutory rights.	Revised to provide clear reference as to what the consumer's statutory rights are and from where the consumer	3

		can obtain information on these rights.	
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<b>Other information</b>	See R C Woodhouse in <i>Bulletin 11</i> where these terms were withdrawn from use. The British Watch and Clock Makers' Guild has now revised the model terms.		
<b>Undertakings accepted</b>	30 May 2000	Five terms revised or deleted	

## 5 Cable London plc

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

### Subsequent enforcement action

It was reported in *Bulletin 10* (pages 16-17) that the OFT had secured undertakings from this supplier on 1 November 1999. Some months later, the OFT received a complaint that Cable London plc had relied on the original versions of terms 19.3 and 19.5 in refusing a consumer's claim for compensation and had moreover informed her that its terms had been 'referred to the Office of Fair Trading for approval'. The OFT therefore sought and received formal undertakings, signed on 25 May 2000, in place of the informal undertakings previously received: see pages 85-86 for the text. It also sought and received evidence that staff had been instructed not to make any statement which implied clearance by the OFT of its terms, nor to rely on any of the terms listed in *Bulletin 10*. (Note that the formal undertaking has already appeared out of sequence in *Bulletin 10*.)

## 6 Carcraft at Empress

<b>Name of business</b>	Carcraft at Empress	<b>Lead TSD</b>	Gwynedd (Gwent) Council
<b>Trading sector</b>	Second-hand vehicle sales	<b>Contract identifier</b>	Provisional Order Form

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Mileage disclaimer	1(b): exclusion of liability for incorrect description.	Deleted.	
'No oral undertakings' statement	1(n): exclusion of liability for oral statements.	Revised to indicate the intention to contract on standard written terms, without ruling out the possibility of oral amendments or additions to the contract.	'Written terms policy' statement
'Deposits are non-returnable' statement	1(d): permitted retention of pre-payments.	Revised to make it clear that the 'deposit' is a small percentage of the total cost of the vehicle and is a reservation fee.	'Reservation fee' statement

<b>Undertakings accepted</b>	11 April 2000	Three terms revised or deleted
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## 7 Castle Point Insulation Ltd

<b>Name of business</b>	Castle Point Insulation Ltd	<b>Lead TSD</b>	Essex County Council
<b>Trading sector</b>	Home Improvements: Wall Insulation.	<b>Contract identifier</b>	Survey/Order: 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>
2	1(f): allowed supplier to cancel after survey, thus giving leeway for supplier to increase the price if the contract was underpriced or withdraw from the contract altogether.	Revised to allow supplier to terminate the contract if the property is found to be unsuitable, with full details of the reasons for cancellation to be provided. Also allows provision for consumer to cancel the contract.	5.4 and term 5 generally.
5	1(l): allowed supplier to increase the price if structural defects or previous poor workmanship were discovered during installation.	Deleted.	
9	1(e): excessive amount of 2.5% per month charged on late payment.  1(b): application of over-severe penalty likely to remove consumer's right to set-off.	Revised so that late payment is subject to an annual rate of 1% above the base rate of Lloyds TSB Bank plc.	6.6
11	1(d) and 1(e): permitted retention of 50% of contract value on cancellation by consumer and did not take into account consumer cancelling with justification.	Revised to allow cancellation by consumer with full refund of deposit in certain circumstances.	5

<b>Other information</b>	Term 2 also allowed a reduction in the bill if some parts of the property were found unsuitable, but not where the consumer had received a grant or a discount for the work. This term has been revised (see new term 4.3) so that such a consumer will receive a rebate calculated on work not carried out if the unsuitable parts exceed 30% of the total area of the property.	
<b>Undertakings accepted</b>	2 May 2000	Four terms revised or deleted

## 8 Edinburgh Fund Managers plc

<b>Name of business</b>	Edinburgh Fund Managers plc	<b>Lead TSD</b>	City of Edinburgh Council
<b>Trading sector</b>	Finance: Investment Trust Savings Plans	<b>Contract identifier</b>	InvestIT Investment Trust Savings Plan Brochure

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Alterations to or closure of the Plan	1(k): permitted Edinburgh Fund Managers plc to make alterations to the savings plan or cease to act as plan manager at any time.	Revised to allow Edinburgh Fund Managers plc to make only reasonable changes.	Variation and Amendment

<b>Undertakings accepted</b>	27 June 2000	One term revised
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## 9 GB Travel and Promotions Ltd

<b>Name of business</b>	GB Travel and Promotions Ltd	<b>Lead TSD</b>	London Borough of Redbridge
<b>Trading sector</b>	Holidays	<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>
9	1(n): supplier accepted no responsibility for any verbal claims or other offers made which were not included in the promotion.	Deleted.	
14	1(b): supplier accepted no responsibility for any expense, loss or inconvenience incurred, however caused.	Deleted.	
16	1(d): all registration fees were non-refundable.	Revised to include refund of registration fee less a cancellation fee, or full refund in the case of supplier's negligence.	20
17	1(n): vouchers had to be returned within 10 days of issue for the offer to be valid.	Revised to require vouchers to be returned within 14 days.	16
19	1(n): consumers applying for Choice A received only one holiday offer. Declining this offer or failing to accept within the stipulated time released GB Travel and Promotions Ltd from any further obligation to the consumer.	Revised to allow consumers on Option 1 (replacement for Choice A) who decline the offer to transfer to Option 2 (replacement for Choice C) or receive a refund of 70% of the registration fee.	20
20	1(n): consumers applying for Choice A had to accept holiday offered within 48 hours of receipt of offer.  Regulation 7: when accepting Choice A, a deposit of £50 per person was payable which was to be returned 'to all applicants who do travel'.	Acceptance period (for Option 1) extended to 72 hours.  Revised to make 'no show deposit', cancellation and refund provisions clearer.	19  21

21	1(n): consumers applying for Choice B or C had to accept holiday offered within 10 days of receipt of offer.	Acceptance period extended to 14 days. (Option 2 replaced Choice C and Choice B was deleted).	22
22	1(f): 'advised' consumers to purchase the supplier's own travel insurance or show proof of valid cover before departure.	Revised to state that approval of alternative insurance will not be unreasonably withheld.	23
27	1(b): stated that all accommodation arrangements were subject to the conditions imposed by the participating resort and that GB Travel Promotions Ltd could not accept responsibility for the resort's defaults or the negligence of others.	Deleted.	

<b>Undertakings accepted</b>	12 April 2000	Nine terms revised or deleted
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## 10 LA Fitness

<b>Name of business</b>	LA Fitness	<b>Lead TSD</b>	City of Westminster
<b>Trading sector</b>	Health and Fitness Centres	<b>Contract identifier</b>	Membership agreement

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
'Read and understood' declaration	Declaration that consumer had read the terms and understood the terms and conditions overleaf and agreed to comply with them.	Deleted.	
2(a)	1(b): excluded supplier's liability for any loss, damage or theft of a consumer's personal property or that of consumer's guest.	Exclusion of liability deleted. Revised term provides that the supplier's liability to compensate the consumer is limited to a reasonable amount having regard to whether the damage was due to the supplier's negligent act or omission.	5(b)
2(b)	1(a): excluded supplier's liability for any death or injury occurring on the club premises or as a result of the use of the facilities and/or equipment provided by the club.	Revised to provide that the supplier accepts liability to compensate the consumer except where it is the consumer's fault, due to a third party or due to unforeseen circumstances.	5(a)
8(a)1	1(f): allowed the supplier the right to terminate the contract at any point 'without cause', whereas terms 8(b)1 and 8(b)2 gave the consumer no right to cancel in first 12 months and after that only on one month's notice. Cancellation rights of the supplier and consumer were therefore imbalanced in the supplier's favour.	Provision to cancel 'without cause' deleted. Also revised to provide that either party may terminate the agreement if the other commits serious breaches of the agreement.	4(a) to 4(d)
8(a)2	1(e): allowed the supplier to terminate membership when the consumer made a late	Revised to provide that the membership may be terminated if the fee remains	4(b)

	payment and required payment by the consumer of all sums due.	unpaid 30 days after the due date, and that the supplier reserves the right to retain a proportion of the money already paid to cover any reasonable costs incurred.	
10	1(k): allowed the supplier the right to change the opening hours of the club.	Revised to provide that the consumer has the right to cancel if the supplier makes significant changes to the opening hours.	7
11(c)	1(o): made the member liable for full fees where the supplier was unable to provide a full range of services due to circumstances beyond its control.	Revised to provide that where the supplier's failure to provide services means that the supplier is in significant breach of his obligations the consumer has the right to cancel the agreement and receive a refund of membership fees for any period of significant suspension of services.	8(a)
11(e)	1(i) referred to a separate Rules and Regulations leaflet which the consumer was required to comply with.	Revised to provide that the rules of membership are displayed prominently in the club.	2(e)
11(f)	1(k) allowed the supplier to vary, add, or eliminate any of the services and facilities provided in the club.	Deleted	

<b>Other information</b>	The supplier revised the whole contract and two further separate membership contracts were also reviewed.
<b>Intelligibility</b>	The OFT considered that the contract as a whole failed the requirement for intelligibility and it was rewritten in plain English.
<b>Undertakings accepted</b>	11 April 2000 <span style="float: right;">Nine terms revised or deleted</span>

## 11 Lightning Computers

<b>Name of business</b>	Lightning Computers	<b>Lead TSD</b>	Wirral Metropolitan Borough Council
<b>Trading sector</b>	Computer retailer	<b>Contract identifier</b>	Invoice: 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>
Whole Contract	Generally unfair.	Deleted.	

<b>Other Information</b>	Several terms were particularly objected to but the whole contract was regarded as generally unfair and all terms have been deleted. Sales invoices will no longer show any terms and conditions of sale.		
<b>Undertakings accepted</b>	13 June 2000		Ten terms deleted

**12 Living Design (Home Improvements) Ltd  
(formerly Living Design (Kitchens) Ltd)**

<b>Name of business</b>	Living Design (Home Improvements) Ltd (formerly Living Design (Kitchens) Ltd)	<b>Lead TSD</b>	Glasgow City Council
<b>Trading sector</b>	Home improvements: fitted kitchens and bedrooms	<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>
Front of contract	Consumers were required to declare that they had read and understood the terms.	Deleted.	
6	1(f): allowed suppliers to cancel contract after survey, at their discretion.	Revised to state that, within a short period after the survey, consumers will be given written reasons why the work cannot be done at the price originally agreed, plus a revised quotation, and will then be entitled to cancel if they wish.	6.3
14	1(b): up to 90% of the price was due on delivery, with 10% due on completion.	Revised so that consumers can retain 25% until satisfactory completion of installation.	15.1

<b>Other information</b>	Living Design (Home Improvements) Ltd is a subsidiary of Anglian Windows Ltd. In January 1998 the OFT challenged the whole contract (21 terms) as generally unfair. It was re-drafted before the OFT entered into a discussion on individual terms. In order to produce a concise summary, only those terms which were individually discussed have been reported.
<b>Specific reservations</b>	Further action on term 14 was suspended subject to any decision the courts might make on the issue of payment in advance in respect of other suppliers.  A provision in another term that consumers pay the suppliers a survey fee of £95, which was not returnable in the event that either party cancelled the contract, was considered to be a core term but the suppliers were warned that it should be highlighted so that consumers knew they risked losing the sum.

<b>Intelligibility</b>	Considerably improved.	
<b>Undertakings accepted</b>	6 April 2000	Three terms revised or deleted

### 13 Penthouse

<b>Name of business</b>	Penthouse	<b>Lead TSD</b>	London Borough of Hammersmith and Fulham
<b>Trading sector</b>	Furniture retailer	<b>Contract identifier</b>	Invoice: 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>
2	1(d): required minimum deposit of 25%.	Deleted.	
3	1(b): required outstanding balance to be paid prior to delivery.	Deleted.	
4	1(k): allowed the supplier to change makes or discontinue models without notice.	Deleted.	
5	1(b): vague as to explanation of circumstances which could cause delay in supplier completing the order.	Deleted.	
7	1(d) and 1(e): permitted supplier to retain 50% of the order value if the order was cancelled.	Deleted.	
8	1(f): prevented consumer from cancelling the order if the goods were in stock.	Deleted.	
9	1(f): allowed supplier to cancel orders if not completed within 6 months, with the supplier retaining all payments.	Deleted.	
10	1(f): allowed supplier to terminate any order.	Deleted.	
11	Stated that delivery was only to the consumer's front door. This term needed to be more prominent to be brought to the consumer's attention.	Deleted	

E & OE	Regulation 7: use of jargon.	Deleted.	
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<b>Undertakings accepted</b>	23 June 2000	Ten terms deleted
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## 14 Perfect Partners

<b>Name of business</b>	Perfect Partners	<b>Lead TSD</b>	Worcestershire County Council
<b>Trading sector</b>	Dating Agency	<b>Contract identifier</b>	Standard 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>
Declaration	1(b): no refunds given once introductions had been received.	Limited to no refunds if: (i) consumer changes mind or meets ideal partner at start of membership, or (ii) agency carries out services with reasonable care and skill.	Declaration
Declaration	1(f): right to terminate membership at supplier's discretion without refund.	Amended to apply in situations where complaints are received regarding consumer's conduct, or due to the giving of inaccurate information by the consumer. Consumers will be given the right to answer such complaints.	Declaration

<b>Undertakings accepted</b>	3 May 2000	Two terms revised
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**15      Snows Business Forms Ltd**

<b>Name of business</b>	Snows Business Forms Ltd	<b>Lead TSD</b>	Southampton City Council
<b>Trading sector</b>	Supplies standard contract forms to motor industry	<b>Contract identifier</b>	Repairs/Service invoice: 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>
Consumer transactions box	Regulation 7: referred to statutes which the consumer could not be expected to be familiar with.	Revised to explain what the reference means in relation to faulty or misdescribed goods and services.	Consumer transactions box
13b	1(b): denied liability for loss or damage when the vehicle had been left on the repairer's premises.	Revised to accept liability where the repairer is negligent and the vehicle has been left on the repairer's premises.	13b
14	Regulation 7: unclear reference to consumer's statutory rights.	Revised to explain what the reference means in relation to faulty or misdescribed goods and services.	14

<b>Other information</b>	This case was initiated by Snows Business Forms Ltd. The company asked for advice on proposed revisions to terms it publishes to the motor trade.		
<b>Intelligibility</b>	Considerably improved.		
<b>Undertakings accepted</b>	15 May 2000	Three terms revised	

**16      Snows Business Forms Ltd**

<b>Name of business</b>	Snows Business Forms Ltd	<b>Lead TSD</b>	Southampton City Council
<b>Trading sector</b>	Supplies standard contract forms to motor industry	<b>Contract identifier</b>	Sales Invoice: 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>
Front of form – ‘Buyer’s declaration’	Consumer declaration as to contractual circumstances.	Revised to advise the consumer to check the condition of various parts of the vehicle including the paintwork and upholstery before signing the order form.	‘Buyer’s declaration’
Consumer transactions box	Regulation 7: referred to statutes which the consumer could not be expected to be familiar with.	Revised to clarify reference in relation to faulty or misdescribed goods and point consumer to sources of information on consumer rights.	Consumer transactions box
2	Regulation 7: unclear reference to consumer’s statutory rights.	Revised to refer consumer to sources of information on consumer rights.	2
5	Onerous enforcement clause limiting the consumer to 14 days in which to take and pay for the vehicle.	Revised to allow 21 days for the consumer to collect the vehicle after notification from the trader that it is available for collection.	5
7a	Regulation 7: plain and intelligible language.	The reference in this term to manufacturer’s guarantees on accessories was potentially confusing when read in relation to guarantees for parts supplied by the dealer (term 3). The revision makes it clear that term 3 concerns dealer-fitted parts and term 7 concerns factory-fitted parts.	7a
11	Regulation 7: plain and intelligible language.	This term had not been revised in the light of advice previously provided by the Office in 1997 and remained	11

		unnecessarily legalistic. It has been revised to explain that where the trader's or consumer's obligations under the agreement are not strictly enforced at any time this will not affect the enforcement of them at a later date.	
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<b>Other information</b>	The terms and conditions had been first revised in the light of advice provided by the OFT in 1997 but the supplier had delayed issuing them until it had produced a guidance booklet for traders on completing the forms. The supplier asked the OFT to comment on the terms in the light of its current interpretation of the Regulations.		
<b>Intelligibility</b>	Considerably improved.		
<b>Undertakings accepted</b>	15 May 2000		Six terms revised

## 17 Total Web Solutions Ltd

<b>Name of business</b>	Total Web Solutions Ltd	<b>Lead TSD</b>	London Borough of Croydon
<b>Trading sector</b>	Internet Service provider	<b>Contract identifier</b>	Consumer Terms

<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	1(n): denied liability for previous oral or written promises.	Revised to state that all services are subject to the terms together with any previous written or oral representations given.	1.1
1.2	1(o): this term when read in conjunction with the payments term meant that the consumer was potentially liable to pay for a service which was not being provided at all or which only came on stream some time later than expected.	Revised to state that the price must be paid within seven days of the commencement of the service.	7.1
1.3	1(h): Automatic renewal of contract unless consumer notified supplier in writing of wish to terminate.	Revised to state that a renewal notice will be sent approximately 1 month before the renewal date. The consumer must respond in writing before the renewal date to indicate if the service is to continue.	1.4
4.5	Made consumer liable for unauthorised use.	Revised to exclude the consumer's liability if the unauthorised use is as a result of a third party hacking into the company's website.	4.5
4.8	Ambiguous reference to the consumer not performing 'any action' which would result in reduced performance of the system.	Revised to give an example of such action.	4.6
5	1(b): inappropriate exclusions of liability for consequential loss.	Comprehensively revised so that the supplier accepts liability for own negligence accompanied by a very high	5.1

		limit of liability.	
6	Regulation 7: Wide-ranging indemnity term.	Revised to explain that the consumer will be responsible to the supplier for costs and losses which arise inevitably from the consumer's fault.	6
8.1	1(e): supplier retained right to immediate cancellation without refund if consumer breached terms.	Revised to state that consumers have 14 days to remedy a breach of contract, if remediable. Also, the supplier explicitly recognises its duty to mitigate its losses.	8.1 and 8.4

<b>Undertakings accepted</b>	8 May 2000	Eight terms revised
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## 18 Transco

<b>Name of business</b>	Transco	<b>Lead TSD</b>	Reading Borough Council
<b>Trading sector</b>	Public Gas Transporter	<b>Contract identifier</b>	Request for (sic) alter position of gas supply: B364 (A) (6/98)

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
2.7	1(b): general exclusion of the supplier's liability for loss however this arose.	Revised so that the supplier is now only liable for losses that are foreseeable and where the cause of the loss is the fault of the supplier.	3.1
3.4	1(f): potentially allowed the supplier to retain all pre-payments where the supplier terminated the agreement.	Revised to state that pre-payments are to be refunded where the supplier terminates the agreement.	4.4
4.5	1(e): potentially allowed the supplier to retain pre-payments where the consumer might have been at fault regardless of the degree of fault and the costs actually incurred.	Revised to provide for an initial inspection on arrival and, where the supplier terminates the agreement because of incorrect information previously given by the consumer, the consumer will be refunded any part of the pre-payment which does not cover costs reasonably incurred by the supplier at the time of termination.	5.5
5.2	1(l): allowed the supplier to increase the price by means of additional charges which had not been specifically agreed with the consumer at the time of contract.	Revised to allow the supplier to make additional charges for agreed additional work in the limited circumstances specified.	6.2
6.1	Open-ended consumer liability on consumer cancellation.	Revised so that, except where the consumer cancels for breach of contract by the supplier, the consumer is liable for all the supplier's costs reasonably incurred directly and foreseeably up to	7.1

		or as a result of consumer cancellation.	
6.2	1(e): potentially allowed the supplier to retain pre-payments where the supplier terminated the agreement on the grounds of incorrect information given by the consumer where that information significantly affected the quotation.	Revised to state that the supplier will now refund any unspent or uncommitted part of the pre-payment at the time of termination.	7.2
10.2	1(q): restricted the agreement to the sole jurisdiction of the English courts.	Revised so that the agreement is now subject to the exclusive jurisdiction of the English courts where the works are carried out in England or Wales and the Scottish courts where the works are carried out in Scotland.	11.2

<b>Other information</b>	Revised term 2.7 also excludes business losses.
<b>Specific reservations</b>	Transco is part of BG plc. It is under a statutory obligation to connect, at cost, premises situated within 23m of a gas main. It is also under a duty to start work within 15 days of receiving the consumer's payment. Given these factors and the ambit of the statutory regulator, the OFT reserved its position on the clause requiring full payment in advance of this work being done. However, the OFT warned that action could be taken if complaints indicated that the term operated unfairly. The OFT also insisted on clarification of the consumer's right to a refund at various points in the agreement.
<b>Undertakings accepted</b>	6 June 2000 <span style="float: right;">Seven terms revised</span>

**19 UCON Megastore t/a UCON Ltd**

<b>Name of business</b>	UCON Megastore t/a UCON Ltd	<b>Lead TSD</b>	London Borough of Camden
<b>Trading sector</b>	Computer retailer	<b>Contract identifier</b>	Terms & 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	Regulation 7: meaning of term unclear.	Deleted.	
3	1(b): required receipt to be shown when returning goods.	Revised to make it clear that showing the receipt when returning goods is desirable but consumers will not lose their rights if they do not have a receipt.	3
4	1(b): accepted no liability for shortages not notified at the time of purchase.	Revised to advise consumers to check that they have all the necessary parts before leaving the premises.	4
6	1(b): allowed the suppliers the discretion to refund or offer credit if goods were faulty.	Revised to state that if the suppliers are liable for the fault they will refund money, replace the item or carry out the repair.	6
7	1(b): stated that consumers had to return goods in the original packaging and that the suppliers were not responsible for carriage costs of returned goods.	Revised to state that suitable packaging should be used as the suppliers are not liable for damage in transit.	7
Note i	Excluded the consumers' right to assign.	Deleted.	
Note ii	Regulation 7: use of legal jargon.	Deleted.	

<b>Undertakings accepted</b>	9 June 2000	Seven terms revised or deleted
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**20 University of the West of England (UWE)**

<b>Name of business</b>	University of the West of England (UWE)	<b>Lead TSD</b>	Bristol City Council
<b>Trading sector</b>	Higher Education	<b>Contract identifier</b>	Student Enrolment Form: Declaration

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
(iv)	<p>1(e): provided for potential retention of fees on student withdrawal, with any reduction of fees in these circumstances at UWE's discretion.</p> <p>1(i): obliged student to provide written notice of intention to withdraw, and referred to a prescribed procedure which was not clear on the face of the contract.</p>	Revised to explain that the full policy on withdrawal and refunds can be found in the Student Handbook, and to clarify that the student may have fees refunded (less administration costs) if withdrawing after 21 days and UWE can fill the vacated place.	(iv)

<b>Undertakings accepted</b>	26 May 2000	One term revised
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## 21 Weatherseal Holdings Ltd

(this case was taken by Cheshire County Council and not by the OFT)

<b>Name of business</b>	Weatherseal Holdings Ltd	<b>Lead TSD</b>	Cheshire County Council
<b>Trading sector</b>	Replacement windows and doors	<b>Contract identifier</b>	Purchase agreement – Terms and Conditions 10/99

<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(e): penalty clause: consumer who did not allow access to supplier was required to pay most of contract sum before installation could take place.	Revised so that amount of advance payment has been reduced to a more reasonable figure.	3
4	1(b): provided that 'installation target date' quoted to consumer was not a term of the agreement.	Retained as a term of the agreement but is also repeated on the face of the contract close to the estimated installation date.	4 and front of contract
5	1(e): consumer cancelling within a seven-day cooling-off period was required in most instances to pay a £50 administration fee.	Deleted.	
6	1(b): products not manufactured by supplier were excluded from scope of supplier's 10-year guarantee.	Revised to provide that supplier will guarantee such products for a period equivalent to that of the manufacturer's guarantee.	6
8	1(l): supplier reserved right to increase price if survey found that extra work was needed.	Revised to provide that consumer's approval and written confirmation must be given before extra work is charged for.	8
12	1(n): provision that promises made by a sales agent were binding only if written down and signed by consumer and agent.	Revised to recommend that such promises are written down and signed.	12
Front of contract –	Consumer was required to sign a declaration that terms	Revised to recommend that consumer reads the terms.	Front of contract –

declaration statement	had been read and understood.		declaration statement
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<b>Other information</b>	This case is a follow-up to one reported in <i>Bulletin 1</i> . It was dealt with by Cheshire County Council Trading Standards Department.		
<b>Undertakings accepted</b>	12 June 2000	Seven terms revised or deleted	

## 22 Woolwich Surveying Services Ltd t/a Ekins Surveyors

<b>Name of business</b>	Woolwich Surveying Services Ltd t/a Ekins Surveyors	<b>Lead TSD</b>	Kent County Council
<b>Trading sector</b>	Surveyors	<b>Contract identifier</b>	Ekins HomeFile General Conditions of Engagement: HF1,2&3/CofE/VI/4 98

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
5	1(b): exclusion of the supplier's liability for consequential loss, and unclear reference to the consumer's statutory rights.	Deleted.	
9	1(b): exclusion of the supplier's liability for failure to perform the contract and for consequential loss.	Revised so that, if the property is unsuitable for the level of inspection requested, the supplier will stop the inspection and contact the consumer to discuss the position.	8
13	1(n): potentially excluded the supplier's liability for oral statements.	Deleted.	
16	1(l): allowed the supplier to increase the price without giving the consumer the option to withdraw from the contract.	Revised so that the price is agreed in advance. Exceptional disbursements to be agreed.	11
18	1(j): allowed the supplier to change the conditions of the contract without giving the consumer the option to withdraw from the contract.	Revised to allow the consumer the option to withdraw from the contract without penalty.	13
109	1(k) and 1(i): allowed the supplier to substitute another supplier for the telephone hotline service and bound the consumer to the new terms and conditions.	Deleted.	

<b>Other information</b>	The revised agreement makes the intended scope of the chosen survey very clear. The contract as a whole is much shorter.
<b>Undertakings accepted</b>	10 April 2000 Six terms revised or deleted

### 3 STATISTICAL BREAKDOWN OF ACTION ON CASES BY THE OFT (See also Notes on next page)

<b>LIVE CASES</b>	<b>APRIL-JUNE 2000</b>	<b>TO END JUNE 2000</b>
Live cases carried over from previous quarter (A)	750	
Cases received in quarter (B)	255	
Cases completed in quarter (C)	283	
Live cases carried over to next quarter (A+B-C) = D		(750+255-283) = 722

<b>BREAKDOWN OF CASES COMPLETED</b>	<b>APRIL-JUNE 2000</b>	<b>ALL CASES TO END JUNE 2000</b>
Defective cases	8	189
Duplicate cases	58	1,095
More appropriate for other legislation	37	259
Not about a contract term	3	142
About an excluded term	12	301
About a 'core' term	12	245
Term not considered unfair	26	494
Closed for other reasons	32	368
Dealt with by advice or warning	72	1,057
Referred to qualifying bodies	3	74
'Formal' undertakings given	0 *	9
'Informal' undertakings given	20	513
<b>TOTAL</b>	<b>283 (C)</b>	<b>4746 (E)</b>

<b>TOTAL NUMBER OF CASES</b>		
Total number of cases received by end of previous quarter (live & completed) (F)	Cases received in current quarter (B)	Total number of cases received by end of current quarter (live & completed) (F+B) = (D+E) = G
5,213	255	(5,213+ 255) = 5,468

\* Formal undertaking for Cable London appeared in *Bulletin 10*

## Notes

<i>'Complaints considered'</i>	are any communications received by the OFT regarding 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.
<i>'Duplicate complaints'</i>	are those which relate to terms already being dealt with.
<i>'Complaints are 'more appropriate for other legislation'</i>	are complaints 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 businesses, or covered by Schedule 1.
<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 or warning'</i>	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
<i>'Referred to qualifying bodies'</i>	are those cases referred to other bodies specified in Schedule 1 of the Regulations as qualified to take enforcement action under the Regulations. These referrals take place under formal co-ordination arrangements set out in bilateral concordats.

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

1	ACE Alarms	burglar alarms
2	Allders Department Stores Ltd	retailer
3	Belmont Finance (UK) Ltd	credit for leisure services
4	British Watch & Clock Makers' Guild	watch and clock repair
5	Cable London plc	telecommunications: cable telephony and television services
6	Carcraft at Empress	second-hand vehicle sales
7	Castle Point Insulation Ltd	home improvements: wall insulation
8	Edinburgh Fund Managers plc	finance: investment trust savings plan
9	GB Travel and Promotions Ltd	holidays
10	LA Fitness	health and fitness centre
11	Lightning Computers	computer retailer
12	Living Design (Home Improvements) Ltd (formerly Living Design (Kitchens) Ltd)	fitted kitchens and bedrooms
13	Penthouse	furniture retailer
14	Perfect Partners	dating agency
15 & 16	Snows Business Forms Ltd (two cases)	suppliers of standard contract forms to the motor industry
17	Total Web Solutions Ltd	internet service provider
18	Transco	public gas transporter
19	UCON Megastore t/a UCON Ltd	computer retailer
20	University of the West of England (UWE)	higher education

- |    |   |                                  |
|----|---|----------------------------------|
| 21 | Weatherseal Holdings Ltd<br>(approached by Cheshire County Council) | replacement windows and<br>doors |
| 22 | Woolwich Surveying Services Ltd<br>t/a Ekins Surveyors              | surveyors                        |

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

### **BRISTOL CITY COUNCIL**

- University of the West of England (UWE)

### **BROMLEY, LONDON BOROUGH OF**

- ACE Alarms

### **CAMDEN, LONDON BOROUGH OF**

- Cable London plc
- UCON Megastore t/a UCON Ltd

### **CHESHIRE COUNTY COUNCIL**

- Weatherseal Holdings Ltd (approached by Cheshire County Council)

### **CROYDON, LONDON BOROUGH OF**

- Alders Department Stores Ltd
- Total Web Solutions Ltd

### **EDINBURGH COUNCIL, CITY OF**

- Edinburgh Fund Managers plc

### **ESSEX COUNTY COUNCIL**

- British Watch & Clock Makers' Guild
- Castle Point Insulation Ltd

### **GLASGOW CITY COUNCIL**

- Living Design (Home Improvements) Ltd  
(formerly Living Design (Kitchens) Ltd)

### **GWYNEDD (GWENT) COUNCIL**

- Carcraft at Empress

### **HAMMERSMITH AND FULHAM, LONDON BOROUGH OF**

- Penthouse

**KENT COUNTY COUNCIL**

- Woolwich Surveying Services Ltd t/a Ekins Surveyors

**KINGSTON-UPON-THAMES, ROYAL BOROUGH OF**

- Belmont Finance (UK) Ltd

**READING BOROUGH COUNCIL**

- Transco

**REDBRIDGE, LONDON BOROUGH OF**

- GB Travel and Promotions Ltd

**SOUTHAMPTON CITY COUNCIL**

- Snows Business Forms Ltd (two cases)

**WESTMINSTER, CITY OF**

- LA Fitness

**WIRRAL METROPOLITAN BOROUGH COUNCIL**

- Lightning Computers

**WORCESTERSHIRE COUNTY COUNCIL**

- Perfect Partners

## 6 CATEGORIES OF UNFAIR TERM

(on cases where action was taken by the OFT)

Schedule 2: paragraph 1(a) - Excluding or restricting liability for death or injury	1
Schedule 2: paragraph 1(b) - Excluding or restricting liability for breaches of contract	
a - Excluding liability for defective or misdescribed goods	1
b - Excluding liability for poor services, or work and material	4
c - Restricting amount or type of liability	12
d - Time limits on claim	0
e - Excluding consumers' right of set-off	3
f - Excluding or restricting liability for delay	1
g - Excluding or restricting liability for a supplier's non-performance	1
h - Excluding or restricting liability via guarantee	0
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	4
Schedule 2: paragraph 1(e) - Financial penalties	7
Schedule 2: paragraph 1(f) - Cancellation clauses	9
Schedule 2: paragraph 1(g) - Supplier's right to cancel without notice	0
Schedule 2: paragraph 1(h) - Excessive notice periods for consumer cancellation	2
Schedule 2: paragraph 1(i) - Binding consumers to hidden terms	1
Schedule 2: paragraph 1(j) - General variation clause	1
Schedule 2: paragraph 1(k) - Right to change what is supplied	5
Schedule 2: paragraph 1(l) - Right to increase the price	4
Schedule 2: paragraph 1(m) - Supplier's right of final decision	0
Schedule 2: paragraph 1(n) - Entire agreement and formality clauses	
a - Clauses disclaiming liability for employees, statements	5
b - Formality requirements	4
Schedule 2: paragraph 1(o) - Binding consumers where a supplier defaults	2
Schedule 2: paragraph 1(p) – Supplier's right to assign without consent	0
Schedule 2: paragraph 1(q) - Restricting the consumer's remedies	2
Other terms	
a - Allowing a supplier to impose an unfair financial burden	1
b - Transferring unfair risks (eg: by indemnities) to consumers	1
c - Onerous enforcement clauses	1
d - Excluding consumers' right to assign	1
e - Consumer declarations about contractual circumstances	5
f - Excluding consumers' non-contractual rights	0
g - Delivery at supplier's discretion	0
h - Other	14
Regulation 7 - Plain and intelligible language	12
<b>Total</b>	<b>104</b>

## Notes

The list on the preceding page 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 also be published in a separate *Specimen Terms Bulletin*.

## **A PRINCIPAL CHANGES TO IATA CONTRACT TERMS**

### **Main issues**

#### *Transferability (Article 3)*

- A.1 The OFT challenged the total ban on assignment or transfer of tickets because the consumer could lose the whole value of the ticket when he is unable to travel where the ticket is non-refundable. Tickets remain non-transferable under the revised conditions but such consumers will in future get a credit note. The new term makes it more likely that consumers will get proper value for their rights in the ticket that would otherwise be written off to the benefit of airlines.
- A.2 The term benefits consumers who are prevented from travelling by 'force majeure'. The definition of force majeure is taken from the Package Travel Directive (Council Directive 90/314/EC of 13 June 1990 on package travel, package holidays and package tours) and can be summarised as 'unusual and unforeseeable circumstances beyond the consumer's control'. The consumer will be entitled to a credit for any part of the price that is not refundable. This will be for use only with the airline but the credit can be used to purchase a ticket for another person. The OFT expects that the new rights will generally be more valuable than a right to transfer. In practice, most consumers would be unlikely to find an alternate to take their place in what could be a very short time before departure, when they could be ill or preoccupied with the very problem that prevented them from travelling. They could find it difficult to sell the ticket for anything approaching face value, even if a secondary market were developed. Under the new rules, the consumer gets back the full value of the ticket for later use for themselves at their leisure and the credit is issued without deduction of costs. IATA has told us that credit notes are valid for one year, but many airlines will extend the life of a credit note and if a credit note is not used for two or three years, it may be refunded as cash. Overall, transferability has been achieved in all but name. An insistence on universal refundability would go further than the common law allows and could limit the options, and cheaper fares, available to consumers.

#### *Where flights form part of a package holiday*

- A.3 IATA have acknowledged that consumers should be able to transfer a ticket that forms part of a package holiday, since consumers have a right under the Package Travel Directive to transfer their holiday to another consumer if they are prevented from travelling, notwithstanding the general ban on transferability in their recommended practice. In other words, they recognise that the Package Travel Directive overrides the airlines' terms and conditions where the airline ticket is part of a package holiday. The IATA terms do not address this point specifically (although there is a general statement that where the terms are inconsistent with 'applicable law', which would of course include the Directive where it applies) because this is a strictly EU issue, whereas their recommended practice has worldwide application.

- A.4 IATA will accordingly recommend members operating in the EU to contract on special terms to give effect to the Package Travel Directive and EU airlines will need to follow this recommendation.

*Sequential use of coupons (Article 3.3)*

- A.5 The OFT challenged the unqualified right to cancel onward reservations if a part of a ticket is not used. The OFT accepts that different ticket configurations may constitute distinct products, each with its own price. The price of these products is thus a 'core' term under Regulation 6(2) (terms relating to the main subject matter of the agreement and whether the price represented value for money cannot be assessed for unfairness). This limits our powers to force airlines to let consumers use tickets as they wish. But the relevant terms went wider than they needed and penalised consumers for missing a segment in all circumstances. IATA has recognised the case for more flexibility and reasonableness in the terms, and has made important improvements: onward reservations will not be cancelled if the consumer warns the airline that a part of a ticket is not to be used, and no additional charge will be made if this is for reasons of 'force majeure.' Airlines will also reinstate reservations if the passenger misses a stage for reasons of force majeure and is not able to notify the airline until after the departure of that stage. But the cost of the ticket will be recalculated if the consumer elects to change the configuration of travel (and therefore the main subject matter of the contract).
- A.6 Where the consumer is forced to change any aspect of his airline travel, he is required to notify the airline as soon as practicable. The new term requires the airline to use 'reasonable efforts' to transport the consumer onwards who misses a flight through force majeure in circumstances where the passenger's right to travel onward would otherwise not be entirely clear. The term provides important additional protection and reassurance for passengers who miss a flight and have inflexible tickets.

*Schedules/rescheduling (Article 9)*

- A.7 IATA has considerably improved the clarity and fairness of the terms dealing with the right to reschedule flights (Article 9). Article 9.1.2 now provides for the passenger to be told of flight time changes if possible (ie, where the consumer leaves contact information) and gives the passenger a right to a refund if there is a significant change in the time of the flight and the airline is not able to book an alternative flight that is acceptable to the passenger. Article 9.2 reflects the wording of the Warsaw Convention more closely now (placing an obligation on airlines to take 'all necessary measures to avoid delay' rather than 'best efforts', etc). Overall the term is much improved and the right to substitute an alternative carrier (thereby changing a significant element of the service to be provided) has been significantly curtailed.

*Exclusions of liability for goods - 'baggage' (definitions) and liability (Article 15)*

- A.8 The definition of 'baggage' to which limits of liability apply was too wide and has been narrowed. Liability is now accepted for all recoverable losses, in express accord with the Convention.

*Additional services (Article 12)*

- A.9 The OFT objected that airlines appeared to limit their liability for their negligence in arranging additional services. The term no longer has this effect and has been clarified.

*Modification and waiver*

- A.10 The term excluding liability for statements and promises of employees and agents has been deleted.

*Fares/taxes fees and charges (Article 4)*

- A.11 The OFT was concerned about the right of airlines to raise fares. The price is now fixed in the conditions at the time of payment in full for the ticket, subject only to proportionate increases or decreases in taxes and charges shown separately on the ticket, and subject to the introduction of newly imposed airport charges and taxes. This removes the possibility of the consumer arguing that the contract is made earlier. The OFT believes that the revisions to the terms relating to taxes and charges go far enough to prevent a repetition of the additional charging which was made when the Passenger Service Charge was introduced.

*Lost or mutilated tickets (Article 3.1.7)*

- A.12 The OFT had concerns about the language of the term, which have been addressed. The terms now make clear that the airline (or agent) will bear responsibility for losses caused by its own negligence, both at the stage of the loss or mutilation of the ticket and at the stage of its subsequent fraudulent use by any third party. The term is silent on who carries the loss where the fault is that of neither party nor their agents such a case, the risk to which the consumer is exposed is now limited (i) to the situation where the airline has been unable, by taking all reasonable measures, to prevent the ticket being used by another and (ii) in any event to the value of the ticket, since the consumer no longer has to give an indemnity against fraudulent use. The current term is a significant improvement on the previous provision.

## **Other issues**

### *Code shares (Article 2.3)*

- A.13 Code Shares when a flight is advertised and sold under the designator code of one airline but is in fact operated by another. Airlines now promise to inform passengers if another carrier may operate the aircraft for the airline and to do so at the time that the reservation is made. The OFT was concerned that certain carriers may not be acceptable to consumers and that they should not book a flight believing it to be operated by one airline and then discover only at the boarding gate that it is in fact operated by another.

### *Period of validity of ticket (Article 3.2)*

- A.14 The original term was ambiguous and the period of validity has now been clarified.

### *Currency (Article 4.3)*

- A.15 The OFT questioned the right to determine exchange rates for fares and charges for payment other than in local currency, but accepted that agreeing to payment made in a foreign currency is a concession, and that it is therefore acceptable for the airline to set its own exchange rate. It is open to the consumer to exchange currency himself at commercial rates, if the airline rates are unsatisfactory. The term no longer refers to exchange rates.

### *Reservations (Article 5)*

- A.16 The term now promises that reservations will be recorded, and that airlines will provide written confirmation of the reservation on request.

### *Reconfirmation of reservations (Article 5.5)*

- A.17 The term is much improved. Airlines now have a duty to inform consumers how and where reconfirmation should be done and to use reasonable efforts to transport the passenger for whom there is no space because he has failed to reconfirm. The consumer whose reconfirmation is not recorded for any reason, perhaps because the airline's systems are inadequate, is likely to present himself for the flight nevertheless. Now when he shows for the flight, his reservation will be reinstated and he will be carried on that or a later flight. The term provides significant new rights for consumers.

### *Cancellation of onward reservations (Article 5.6)*

- A.18 Airlines automatically cancel onward reservations if a consumer does not show up, since it is fair to presume that he will not make use of subsequent segments of travel. The new term allows for the onward reservation to be preserved where the consumer notifies the airline in advance that he will use the remainder of his ticket. The term is therefore much improved. Cancellation

of reservations now applies only to those consumers who do not show up and do not advise the airline in advance that they will not be using the reservation.

*Seating (Article 5.4)*

- A.19 The term allows airlines not to guarantee any particular seat and not to honour advance seating requests. The substance of the term is unchanged. However, it now includes a list of reasons for changing seating arrangements. This limits the discretion of the airline. The OFT's main concern was with the employee or agent who led a consumer to believe that a seat was guaranteed since there was an 'entire agreement' clause (Article 17 - now deleted) that enabled the airline to dishonour a promise made by an employee or agent. The new term makes it a good deal easier for consumers to argue that the terms of the contract have indeed been modified by the employee or agent. The remaining scope for consumer detriment seems small now that all flights are non-smoking. The term may still give rise to problems in individual cases, but it will be easier for those few consumers to obtain a remedy.

*Check-in/boarding (Article 6)*

- A.20 This now imposes requirements on the airline to inform passengers of check-in times and gate-closing times.

*Right to refuse carriage (Article 7)*

- A.21 The term has been improved by the inclusion of a 'reasonableness' provision and other qualifications.

*Unacceptable items; right to refuse carriage (Article 7)*

- A.22 The term now expressly limits the airline's 'discretion' to decide that items are unacceptable, to what is 'reasonable'. The OFT doubted that it is possible under the Warsaw Convention for airlines to refuse liability for fragile items packed in luggage against an airline's wishes, where the airline had been negligent. But the new term is in line with the Montreal Convention which should come into force in the next year or two. There is also a commitment by the airline to provide advice on what is acceptable on request.

*Excess valuation facility*

- A.23 The term dealing with the passenger's rights under the Convention to agree a higher limit of liability was removed entirely. This was disappointing, but there is no requirement in the Convention to include it in the contract and we could not force the point. The deleted term was misleading since it suggested that airlines had the right to decide whether or not to offer an excess valuation facility so its deletion is welcome on that score at least. The removal of the term from the contract does not reduce the passenger's rights.

*Collection and delivery of baggage carried on later flight (Article 8.6.3)*

- A.24 The OFT objected that the consumer appeared to be obliged to return to an airport to collect baggage carrier on a later flight. The term now requires the baggage to be delivered to the consumer, unless his presence is required for customs clearance.

*Voluntary and involuntary refunds (Article 10)*

- A.25 The charges deducted from a refund are now required to be 'reasonable'. However, we argued that the refund for a cancellation or failure to provide the flight should be sufficient to cover the fare for the transport not used. However, all possible options of taking an alternative flight (at no extra cost) are available to the consumer under Article 9.2, and the passenger who rejects these and takes a refund is, by definition, electing not to fly. It is therefore not unfair to give a refund calculated in the way provided.

*Refund on lost ticket (Article 10.4)*

- A.26 The OFT accepted IATA's explanation that refunds could not be given before the expiry of the ticket, because of the risk of fraud. However, the time for making the refund has now been limited to 'as soon as reasonably practicable' after expiry. In addition, Article 3.1.7 makes it clear that if the ticket is found, a refund can be given immediately. Also, the airlines have expressly accepted responsibility for losses arising from their negligence.

*Conduct aboard aircraft (Article 11)*

- A.27 Misconduct on board an aircraft leading to removal of the consumer and other action must now be misconduct in the 'reasonable' opinion of the airline.

*References to airline's own regulations (Article 17)*

- A.28 The previous conditions included an unhelpful reference to other applicable airline regulations. These references have been fleshed out and are now more informative.

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## C UNDERTAKINGS GIVEN BY CABLE LONDON PLC

UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999

(IMPLEMENTING COUNCIL DIRECTIVE 93/13/EEC)

(‘THE REGULATIONS’)

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UNDERTAKING  
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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