

Unfair contract terms bulletin 14

Case reports October to December 2000

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One of a series of bulletins giving details of cases where the OFT or another body 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.

May 2001

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CONTENTS

<i>Part</i>		<i>Page</i>
1	Introduction	1
2	Case reports	5
3	Statistical breakdown of action on cases taken by the OFT	54
4	Alphabetical index of businesses approached	56
5	Geographical index of businesses by local authority	58
6	Categories of unfair term	60

Contacting the OFT

If you think that any of the standard terms in a consumer contract are unfair you may contact OFT at the address below or your local Trading Standards Department. If you have any comments on the contents of this bulletin, please write to:

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:

E C Logistics
Swallowfield Way, Hayes
Middlesex UB3 1DQ
tel 0870 60 60 321
fax 0870 60 70 321
email oft@eclogistics.co.uk

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:
www.hmso.gov.uk/si/si1999/19992083.htm

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1 INTRODUCTION

- 1.1 This is issue 14 of the quarterly *Unfair Contract Terms Bulletin* in which the Director General of Fair Trading publishes reports of cases where standard contract terms have been changed or dropped as a result of his enforcement action under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations). The bulletin also includes reports he has received of cases taken by the other bodies that have powers to enforce the Regulations. Where he considers that a term drawn up for general use is unfair he has power to seek an order forbidding any further use of it. However, cases are normally resolved informally when he accepts informal undertakings in lieu of court proceedings. He also has the power to publish information about the Regulations and the work of the OFT.
- 1.2 This bulletin covers the period between October and December 2000. Part 2 contains reports of 27 cases completed in this period in which 151 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. The bulletin also includes details of one case completed by another body – Stockport Metropolitan Borough Council.

Cases of note

- 1.3 The case reports illustrate the diversity of economic sectors in which potentially unfair terms are used. They can be found in the contracts both of large businesses (such as MFI and Vodafone) and of small (such as Best Training), as well as in contract terms recommended by professional bodies (Royal Institution of Chartered Surveyors).
- 1.4 While some cases involve a single unfair term, others are resolved only by a comprehensive re-drafting of the contract. Unusually, because the OFT has dealt with relatively few cases involving insurance, this bulletin includes reports of three insurance cases: Exeter Friendly Society (case report 8), Primary Underwriting (case report 21) and Rentokil (case report 22). In both the Exeter and Rentokil cases the main concern was clarity. In the Primary Underwriting case the OFT was concerned that the terms required the consumer to disclose facts that he might not be aware of, in that he not only had to notify the insurer about any pre-existing medical conditions of his own but also those of his relatives, travelling companions or anyone on whose health the trip depended. The term has been revised so that the insured is required to disclose only pre-existing conditions which are known to him. As previously drafted the term had the potential to invalidate claims unfairly.

Other cases of note are:

- Aquability (case report 3) where the contract was revisited in the light of further a complaint;

- Architectural Plastic Solutions (case report 4) – a case taken by another body – Stockport Metropolitan Borough Council;
- Hobbs Parker (case report 12) – an auction contract with a wide range of exclusion clauses and other potentially unfair terms;
- Lympstone House (case report 14) – a residential home with a wide range of unfair terms including one which enabled the home to retain the resident's furniture on his death unless otherwise agreed in writing;
- MFI (case report 16) – where the company has adopted an independently run conciliation and adjudication scheme to reduce the potential for unfairness inherent in full payment in advance clauses;
- and Nicholas Ashley (case report 19) – a comprehensively revised letting agency contract.

Unfair contract terms guidance (ref: OFT311)

- 1.5 In February 2001 the OFT published the most comprehensive guidance it has yet issued on what the Director General considers to be fair and unfair terms in consumer contracts. The guidance draws on the OFT's first six years' experience in enforcing the Regulations. The guidance falls into two parts. The first is an analysis of unfair terms by the categories of unfair terms in Schedule 2 to the Regulations, with two additional categories covering other types of unfairness. The second half of the guidance is a listing of examples of fair and unfair terms. This is the updated version of the specimen terms listing in *Bulletin 5* (which it replaces) and it draws on information in cases reported in bulletins up to and including *Bulletin 12*.
- 1.6 The analysis of unfair terms cross-refers to the examples section. An index of types of terms and the text of the Regulations are also included. The guidance is an essential work of reference for all bodies qualified to enforce the Regulations, those who draft standard consumer contracts, and consumer advisers. It is available free of charge from EC Logistics at the address shown in the contact information at the start of this bulletin.

Package holiday contracts – scale cancellation charges

- 1.7 The OFT announced on 29 March 2001 that the Director General had issued the first notices under Regulation 13. These were issued to the four major UK tour operators – Thomson Holidays, Airtours, JMC Holidays and First Choice. The notices require the companies to supply the financial data on which they have calculated their losses for cancellation by consumers and so their scale cancellation charges. The companies were given 14 days to comply. The companies have also

been warned that if they do not comply with these notices the Director General will seek pre-action disclosure under Civil Procedure Rule 31.16. Further details will appear in a later bulletin.

Qualifying Bodies

- 1.8 The Financial Services Authority gained powers to enforce the Regulations on 1 May 2001.
- 1.9 The OFT continues to offer training to groups of Qualifying Bodies around the country, mostly now in conjunction with the OFT's Distance Selling Unit, which enforces the Distance Selling Regulations. The OFT has recently undertaken training in Maidenhead, Dundee and South Yorkshire for 129 participants in all, representing 44 local authority trading standards services.

Consumer Regulation Website

- 1.10 The OFT has been successful in its bid for Treasury funding under the Invest to Save Budget (ISB) to develop a Consumer Regulation Website. The benefits expected from the website are:
 - more effective enforcement and swifter prevention of consumer detriment;
 - more consistent enforcement and better identification of priority issues;
 - better information for enforcers, consumers and businesses; and
 - efficient use of resources by avoiding duplication of effort.
- 1.11 The website will include general information about the application and enforcement of certain consumer protection legislation as well as details of cases completed by the OFT and the qualifying bodies. It will be available through the internet and will have public areas as well as information restricted to the Qualifying Bodies. The project is a partnership led by the OFT, embracing a range of central and local government bodies enforcing consumer protection legislation. It also includes the Consumers' Association which has powers under the Regulations.
- 1.12 If the Government extends the regulatory powers covered by the project to other bodies they will be able to become partners.
- 1.13 Initially the project will support the work of the OFT and the Qualifying Bodies under the Regulations. It is intended that it be extended to other legislative areas as quickly as possible. This will include the new Distance Selling Regulations, and the legislation implementing the Stop Now Orders (EC Directive) Regulations 2001, which come into force on 1 June 2001.

- 1.14 Further information is available from Pauline Goodship of the CRW Project Team at the OFT, on 020 7211 8420 or Pauline.Goodship@oft.gov.uk.

Consumers' Association and Barclays Bank plc

- 1.15 The OFT has been advised by the Consumers' Association that, following discussions between it and Barclays, in June 2000 Barclays agreed to introduce fairer redemption penalties for its customers. Customers with fixed rate mortgages will now:
- have a cap of 9% on any early repayment charge, backdated to 8 May 2000; or
 - choose a penalty in line with the Government's CAT standards.
- 1.16 Barclays also committed to approach certain customers who will be offered other mortgage options from September 2000 – including switching to another product or another lender without a penalty. The Consumers' Association has published guidance on fairness in mortgage contracts.

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 Regulations 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 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 such item 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 – headings or descriptions of the terms are used instead where possible.

1 Ages of Elegance

Name of business	Ages of Elegance	Lead TSD	London Borough of Richmond-upon-Thames
Trading sector	Bespoke bridal wear	Contract identifier	Terms of business

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1.1	1(n): excluded oral agreements and written terms which could form part of the agreement, eg those on a separate purchase order document.	Withdrawn.	
1.2	1(i): the placing of an order and a deposit bound consumers to the terms and conditions whether or not they had seen them.	Withdrawn.	
1.3	1(d): permitted retention of all pre-payments.	Withdrawn.	
1.4	1(b): deemed that goods were 'accepted' in the legal sense if delivery was accepted.	Withdrawn.	
1.5	1(b): excluded supplier's liability for delay.	Withdrawn.	
1.6	1(b): placed a three-day time limit on claims.	Withdrawn.	
1.7	1(b): deemed that goods were 'accepted' in the legal sense 24 hours after delivery.	Withdrawn.	
1.8	Had the potential to mislead consumers about their statutory rights to reject goods.	Withdrawn.	

1.9	1(b): excluded supplier's liability for poor service.	Withdrawn.	
2.1	1(b): excluded supplier's liability for delay.	Withdrawn.	
2.2	1(n) and 1(m): by requiring that goods could not be returned without prior written approval and at the absolute discretion of the supplier, introduced a formality requirement, and gave the supplier the right of final decision as to whether to accept returned goods.	Withdrawn.	
2.3	Had the potential to mislead consumers about their statutory rights to return rejected goods at the supplier's expense and risk.	Withdrawn.	
2.4	1(l): allowed the supplier the right to increase the price.	Withdrawn.	
2.6	1(l) and Regulation 7: allowed the supplier the right to increase the price on the basis of non-included items including 'materials', where it was not clear what was meant by 'materials'.	Withdrawn.	
2.7	Regulation 7 and 1(e): allowed for unspecified additional charges and imposed an unclear charge for cancelled appointments.	Withdrawn.	
2.8	Regulation 7: unclear as to when additional payments would be required.	Withdrawn.	
2.9	1(f): precluded cancellation by consumers.	Withdrawn.	

3.0	1(3): apparently imposed a potentially unfair weekly interest rate.	Withdrawn.	
3.2	1(l): allowed the supplier the right to increase the price.	Withdrawn	
3.3	1(l): allowed the supplier wide discretion to increase the price.	Withdrawn.	
3.4	1(b): had the potential to allow the supplier to supply goods which did not fit their description.	Withdrawn.	
3.5	Had the potential to come as a surprise to consumers in seeking to reserve the right to make a charge for pre-contract work (drawings) if no contract resulted or if the drawings could not be returned.	Withdrawn.	
3.6	1(b): excluded the supplier's liability for delay for reasons which may have been within her control.	Withdrawn.	
3.7	Had the potential to mislead consumers, as it appeared to apply only to trade orders but was not highlighted as such.	Withdrawn.	
3.8	Regulation 7: unclear reference to the contract not affecting consumers' statutory rights.	Withdrawn.	

Other information	The nature of the supplier's business has changed and she decided to withdraw her terms and conditions.	
Undertakings accepted	21 November 2000	Twenty-five terms deleted

2 Acclaim (Holdings) Ltd t/a APEX t/a Freight Fast

Name of business	Acclaim (Holdings) Ltd t/a APEX t/a Freight Fast	Lead TSD	Sandwell Metropolitan Borough Council
Trading sector	National and international courier services	Contract identifier	Conditions of carriage

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
	The whole contract was generally unsuitable for use with consumers.	The contract was completely re-drafted.	

Other information	The company have highlighted the fact that they do exclude or limit liability in certain specified circumstances and therefore a consumer should arrange sufficient insurance cover.
Undertakings accepted	14 December 2000

3 Aquability (UK) Ltd

Name of business	Aquability (UK) Ltd	Lead TSD	Hampshire County Council
Trading sector	Home improvements: supplier of fitted baths	Contract identifier	Agreement (1998)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2(a)	1(b): required full payment of the outstanding balance on delivery of goods and services in an installation contract.	Revised to provide for a percentage of the balance to be retained until installation completed. Also allows consumer to withhold a proportionate amount in the event of a defect in the goods or installation.	2(a)
2(b)	Regulation 7: legal jargon ('time of payment shall be of the essence').	Deleted.	
3	Regulation 7: meaning of the term not clear, including a reference to financial checks in relation to payment by cash.	Revised to clarify that the supplier may undertake financial status checks upon consumer and to give details of the form of payment required.	3
4	Regulation 7: meaning of 'interference by persons' not clear, when the supplier was seeking to exclude liability as a result.	Clarified to exclude the supplier's liability for damage arising from misuse, alteration or the negligence of the consumer or a third party (such as an installer other than the supplier).	4
5	1(k): allowed supplier to vary the agreement, with example given of providing a shower by a different manufacturer to that specified in the contract.	Deleted.	

6	1(b): had the potential to exclude the supplier's liability for delay.	Revised so that supplier undertakes to make every effort to perform contract on date agreed or, if not agreed, within a reasonable time. Excludes the supplier's liability for delay due to circumstances outside its control and provides that an alternative date for installation will be agreed as soon as reasonably possible.	6
7	1(b): excluded supplier's liability for loss or damage to goods after delivery in a contract which included installation.	Revised so that consumer is responsible for goods as soon as delivered, in goods contracts only. In goods and installation contracts consumer to be responsible once installation is complete. In such contracts, between delivery and installation, the supplier is responsible only for damage or defects caused by its negligence.	
10	Regulation 7: meaning of term relating to colour matching of goods to consumer's existing bathroom suite was unclear.	Revised to explain that the supplier will use its best endeavours but cannot guarantee an exact colour match for an existing suite.	10
12	1(b): allowed the supplier to cancel the contract if it had been underpriced, without any time limit for the exercise of this right; and restricted its obligations, if the right was exercised, to return of pre-payments only.	Revised to provide for specific periods of notice during which a revised price may be notified and the price either agreed or rejected by the consumer with a full refund of monies paid if rejected. Supplier has 21 days from signing the agreement in which to notify a revised price.	12

13	1(b) and 1(f): required consumer to agree that the structure and suitability of the premises for installation were his responsibility and further provided that if, for structural or technical reasons, installation became impractical, the supplier could cancel the contract and return the deposit.	Revised so that the supplier will exercise reasonable care and skill in carrying out its inspection but does not check the capacity or flow rate of the system unless specifically agreed in advance and does not accept responsibility for the existing water supply. Gives consumer a prominent warning within the term to check the capacity and flow rate of the water system.	5
Declaration on face of agreement	Stated that consumer had read, understood, and agreed the terms of the agreement.	Revised so that consumer is warned that the agreement is an important legal document and is advised to read and understand the terms and conditions before signing.	Declaration on face of agreement

Other information	Aquability was reported in <i>Bulletin 3</i> . The OFT reviewed the agreement, as subsequently amended, in the light of a further complaint. An additional undertaking was received later about the declaration on the face of the agreement.		
Undertakings accepted	3 July 2000	Eleven terms revised or deleted	

4 Architectural Plastic Solutions Ltd t/a Coldshield Windows
(this case was taken by Stockport Metropolitan Borough Council and not by the OFT)

Name of business	Architectural Plastic Solutions Ltd t/a Coldshield Windows	Lead TSD	Stockport Metropolitan Borough Council
Trading sector	Replacement windows	Contract identifier	Standard terms and conditions of supply

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	1(q): restricted consumers' remedies by granting supplier the unilateral right to refer the dispute to arbitration.	Reference to compulsory arbitration removed.	
2	1(n): had potential to exclude liability for oral statements and require that variations be made in writing. Regulation 7: meaning of term difficult to understand – text should be in short sentences.	Revised so that consumer is advised to ensure that oral representations are added to the contract. Requirement that variations be in writing deleted. Revised so that meaning of term is more clearly expressed.	
3	Regulation 7: not written in plain and intelligible language.	Revised so that meaning of term is more clearly expressed.	4
4	1(b): excluded or restricted liability for faulty goods and services. 1(e): imposed a high penalty for late payment, charged on a daily basis.	Deleted. Deleted.	
6	1(a): restricted liability for death or personal injury.	Deleted.	

10	<p>1(e): imposed a financial penalty.</p> <p>Regulation 7: not written in plain and intelligible language.</p>	Deleted.	
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Undertakings accepted	6 October 2000	Six terms revised or deleted
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5 Bassetlaw District Council

Name of business	Bassetlaw District Council	Lead TSD	Nottinghamshire County Council
Trading sector	Venue hire	Contract identifier	Conditions of Hire for Rooms at Worksop Town Hall

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1(b)	An individual signing on behalf of a corporate body would incur individual liability.	Deleted.	
3(a)	1(l): the hire charge agreed could be increased if the Council raised its charges between the date of booking and the date of the function.	Revised to state that the hire charge in force at the time of the agreement will prevail even if the scale of charges increases in the meantime.	3a
4	1(d): retention of high deposit (50%) in the event of cancellation by consumer. Regulation 7: unclear meaning.	Revised so that if the consumer cancels, the Council will only retain as much deposit as is needed to cover its reasonable costs and losses and only if another hirer cannot be found.	4b
5(a)	1(f): gave Council wide power to cancel booking if premises used for purpose other than that for which they were 'taken'.	Revised to limit the grounds on which the Council can terminate agreement to certain kinds of statements made on the application form which led the Council to accept the booking.	5a
5(b)	1(b): excluded liability for consequential losses.	Revised to accept liability for losses which were reasonably foreseeable.	5b

6	1(k): Council retained discretion to alter the number of people permitted.	Revised so that there is no discretion to alter the number of people permitted.	6a, 6b and 6c
8(a)	1(b): made hirer liable for wide range of loss and damage potentially including losses caused by negligence of Council.	Revised to accept liability for loss or damage caused directly by the negligence of the Council.	8a
8(b)	1(m): assessment of damage by officer of the Council is final.	Deleted.	
8(c)	Regulation 7: meaning of 'additional' cleaning unclear.	Revised to refer to 'cleaning greater than that required for function of that type' and to make it clear that the additional charge represents extra time taken in cleaning.	3c
8(d)	1(b): wide exclusion of Council's liability.	Revised to limit what the Council will not be responsible for, and to state expressly that the Council will accept liability for its negligence or breach of contract.	8c
9(a) and 9(b)	Onerous enforcement clauses: entitled Council to cancel booking and retain high proportion of fee if evidence of copyright licences was not submitted.	Revised so that right to cancel is restricted to circumstances in which Council might otherwise suffer some legal liability if unlicensed performances take place. Amount retained in event of cancellation reduced.	9a and 9b
15	1(b): time limit on claim.	Revised to provide a longer time in which to make a claim and also provides scope for the Council to consider claims made outside of the time limit.	15

Other information	The whole contract was challenged as being written in very unclear and legalistic language. It was rewritten to make it much clearer and easier to understand.
Undertakings accepted	14 December 2000 Thirteen terms revised or deleted

6 Best Training (West Midlands) Ltd

Name of business	Best Training (West Midlands) Ltd	Lead TSD	Oxfordshire County Council
Trading sector	IT training	Contract identifier	Conditions of Enrolment

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2	1(d): no refund of fees paid.	Revised to allow for refunds if sufficient notice is given to enable the supplier to enrol a replacement student.	2
4	1(b): excluded liability where the supplier was in breach of contract,	Revised to include a reference to the consumer's rights under the Supply of Goods and Services Act 1982.	4
Not numbered	Consumer declaration.	Revised to state that the consumer should read the terms and conditions.	Not numbered

Other information	Best Training (West Midlands) Ltd is a franchise of Best Training Ltd.		
Undertakings accepted	24 November 2000	Three terms revised	

7 Computeach International Ltd

Name of business	Computeach International Ltd	Lead TSD	Dudley Metropolitan Borough Council
Trading sector	Distance learning: computer courses	Contract identifier	Terms and conditions of enrolment

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
9	1(b): excluded consumer's rights under the Sale of Goods and Services Act 1982 by ruling out all possibility of refunds where studies were abandoned.	Revised so that the term is cross-referenced to a new term 17 which refers to the consumer's statutory rights relating to the supply of unsatisfactory goods and services.	9
17	1(k): permitted unilateral changes to be made to any of the courses.	Revised so that changes will be made only for the benefit of the consumer.	7
19	1(q): exclusive jurisdiction clause.	Revised to refer to law and courts of the relevant UK jurisdiction.	19

Other information	Term 18 was challenged under paragraph 1(n). However, the supplier provided an assurance that this term would never be used to the detriment of the consumer. The supplier also provided an assurance that its contract for the Full-Time Training Programme was not used with consumers.	
Undertakings accepted	7 November 2000	Three terms revised

8 Exeter Friendly Society Ltd

Name of business	Exeter Friendly Society Ltd t/a Exeter Healthcare	Lead TSD	Devon County Council
Trading sector	Health insurance	Contract identifier	Policy Document

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Out of band Benefit	Regulation 7: term failed to satisfy the plain and intelligible language requirement as it failed to highlight adequately a potential detrimental effect. The basic cover provided for in-patient treatment in a hospital was a full refund of virtually all the costs incurred. However, where treatment was received in a hospital which was in a higher band than the particular band of cover for which the consumer was insured, then claims were limited to £300 per day for all costs.	The term was unchanged but appropriate warnings were incorporated to draw the consumer's attention to the potential effect of the term.	Out of band Benefit

Continued over

<p>Other information</p>	<p>The company told the OFT that in effect it was possible, but perhaps unlikely, that a consumer could be obliged to attend an out-of-band hospital. Although the consultant chooses the treating hospital, he or she generally has admitting rights to more than one and it would only be in a rare case that he or she has no admitting rights to a hospital within the consumer's band of cover or insists against the consumer's wishes on referral to an out-of-band hospital. Even in this case, the consumer could change specialists.</p> <p>Similarly, the company considered that it is only a very remote possibility that the consumer may be referred for a treatment which could not be given at any hospital within his or her band of cover. The OFT took the view that it would improve fairness to incorporate a warning to this effect. The OFT asked whether the terms could warn consumers that, in rare cases, they may find that their consultant is unable or unwilling to refer them for treatment to a hospital within their band of cover. In this case, they may want to consider changing consultant to one who will do so, and there is also a remote possibility that a particular treatment for which they may be referred cannot be performed at a hospital within their band of cover.</p> <p>The company also suggested that it include a statement to the effect that certain specialised procedures may involve travelling further afield than the consumer's locality.</p>
<p>Undertakings accepted</p>	<p>27 October 2000</p>

9 Fakenham Tyres

Name of business	Fakenham Tyres	Lead TSD	Norfolk County Council
Trading sector	Motor vehicle parts	Contract identifier	Conditions of sale

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2	<p>1(a): exclusion of liability for personal injury.</p> <p>1(b): exclusion of liability for loss or damage.</p> <p>Regulation 7: it was not clear what was meant by the term requiring the consumer to compensate the company against insurance claims by a third party.</p>	Rewritten to make it clear that the company does not exclude liability in cases where injury or loss or damage occurs as a result of the company's negligence or other breach of duty.	2 and 3
3	Placed unreasonably short time limits on notifying the company of loss of or damage to the goods.	Deleted.	
4	Required the consumer to accept all risks when leaving a vehicle at the company's premises.	Rewritten to make it clear that the company does not exclude all liability for the consumer's property, only that for damage caused by the consumer's negligence.	4

Undertakings accepted	14 November 2000	Three terms revised or deleted
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10 FlyAway Parking

Name of business	FlyAway Parking	Lead TSD	Birmingham City Council
Trading sector	Car parks	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1(c)	1(b): unfairly excluded liability for loss or damage if not reported prior to vehicle being removed from car park.	No longer excludes liability if loss or damage was not apparent upon reasonable inspection prior to leaving car park.	1(c)
8	1(b) and Regulation 7: gave company right to retain and sell consumer's vehicle for non-payment of charges, thus potentially infringing consumer's right to set-off. Term not drafted in plain language and used jargon such as 'lien'.	Right to set-off in respect of valid claim or dispute explicitly recognised and term re-drafted in plainer language.	8
11	1(n): potentially unfair 'entire agreement' clause, which could have unfairly excluded liability for verbal representations.	Deleted.	

Undertakings accepted	18 October 2000	Three terms revised or deleted
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11 Friern Manor Country House Hotel Ltd

Name of business	Friern Manor Country House Hotel Ltd	Lead TSD	Essex County Council
Trading sector	Hotel: event organisation and catering	Contract identifier	Terms & Conditions (for weddings)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
10	1(d): non-returnable consumer pre-payments on cancellation on more than four months' notice.	Where cancellation occurs at least four months prior to the booked date, the hotel may retain the consumer's deposit to cover its reasonable expenses. There is also a reference to the principle of mitigation of losses.	9
11	1(e): arbitrary and rigid financial penalties on cancellation within four months of the function.	Revised to link the hotel's rights of recovery with the estimated loss on the individual contract. Guidance is given on the amounts which the consumer is likely to pay should cancellation occur at four months, three months and less than two months before the event. The principle of mitigation of losses is referred to.	10
12	1(b): disclaimer regarding arrangements with District Registrar for services, and exclusion of liability for wedding not taking place for any reason.	Revised to show that the hotel accepts liability for the cancellation of a wedding where this is due to the negligence of the hotel or its employees.	12

15	1(b): exclusion of all liability for loss of wedding gifts.	Revised to show that the hotel will only accept liability for wedding gifts which are stored in the locked room provided for that purpose.	16
16	1(l): variation clause allowed hotel to change the published prices.	Deleted.	

Other information	The terms complained about were issued specifically for weddings. The hotel relies on other terms and conditions for other types of event.		
Specific reservations	The Director General's position was reserved with regard to the wording of terms 9 and 10. Although the duty to mitigate loss is mentioned in both clauses, the OFT considered that term 9 should make it clearer that the hotel is entitled to retain as much of the deposit as is necessary to cover the costs incurred, or, in term 10, a reasonable pre-estimate of the hotel's losses.		
Undertakings accepted	24 October 2000	Five terms revised or deleted	

12 Hobbs Parker

Name of business	Hobbs Parker	Lead TSD	Kent County Council
Trading sector	Auctioneers	Contract identifier	Conditions of entry sale and purchase

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2	1(i): may have unfairly bound consumers to a rate of commission which they had not seen.	Sheet of paper detailing current commission stapled to terms.	2
4	1(b): may have unfairly excluded liability for loss or damage caused by the company's negligence.	Responsibility accepted where loss or damage is caused by the company.	4
5	Regulation 7: use of legal jargon ('indemnify').	Deleted.	
6(a)	1(b): excluded the company's liability for any matter arising from the sale.	No longer excludes the company's liability if the consumer's loss on the sale is due to the company's error, negligence or failure to disclose relevant information.	5(a)
6(b)	1(b): could have unfairly excluded liability for errors or misdescriptions made by the company.	No longer excludes the company's liability if it is responsible for errors, negligence or failure to disclose information.	5(b)
8	1(b) and Regulation 7: deemed the consumer to have inspected the product which may have misled him/her into believing he/she had no right of redress. Clause not expressed in plain language.	Revised to advise the consumer to inspect the product before purchase and to make it clear that the buyer may have a right of action against the vendor. Clause re-drafted in plainer language.	7

13	1(b): could have unfairly excluded the company's liability for loss or damage due to its negligence.	No longer excludes liability for loss or damage caused by the company.	12
14	Regulation 7: not written in plain language.	Intelligibility improved.	13
15	Regulation 7: not written in plain language.	Intelligibility improved.	14
17	1(q): may have constituted unfair compulsory arbitration clause if it extended to matters beyond the conduct of the auction.	Revised to make it clear that it only relates to matters arising from the auction.	16
20	1(i) and Regulation 7: may have unfairly bound the consumer to a sum which he/she may not have had an opportunity to see. Also used legal jargon ('indemnify' and 'title').	Sheet of paper detailing charge stapled to terms. Jargon removed.	19
21	Regulation 7: employed phrase 'warranted vehicles' which may not have been readily understood by consumer.	Definition of 'warranted vehicles' provided.	20
Declaration on signature page	Declaration assumed that the consumer had read and understood the conditions.	Consumer advised to read terms.	Declaration on signature page

Undertakings accepted	20 November 2000	Thirteen terms revised or deleted
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13 Invicta Leisure (Brighton) Ltd t/a The Brighton Health & Racquet Club

Name of business	Invicta Leisure (Brighton) Ltd t/a The Brighton Health & Racquet Club	Lead TSD	Brighton & Hove Council
Trading sector	Health and leisure clubs	Contract identifier	Terms and Conditions of Membership

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
5	1(b) and 1(e): allowed club to retain pre-payments made except in exceptional circumstances agreed by the company.	Amended so that a proportionate refund is given in the event of material and/or persistent breach of obligations by the club.	5.2
9d	1(l): allowed club to change tariff charges from time to time at its discretion.	Amended to make it clear that subscription fees will not increase for one year from the date of joining, after which the consumer can end the contract without penalty; thereafter, the club will take reasonable steps to advise members of any planned increase in tariff charges.	9.7
10	1(k): allowed the club to alter opening times at its discretion.	Amended so that opening hours can only be altered on a temporary basis in the event of necessary repair or upgrading work, health or safety reasons, or reasonable commercial reasons.	10.1
11	Regulation 7: unintelligible term which did not make it clear when the club would be liable under law for any and all loss, cost, injury, damage or other liability.	Rewritten into plainer language to make it clear that the club accepts liability for death and/or personal injury caused as a result of its negligence or deliberate act or omission.	11.5

13	Member declaration provided that the member had read and understood the rules and conditions of membership when this may not have been true.	Deleted.	
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Other information	The Brighton Health & Racquet Club is owned by Invicta Leisure (Brighton) Ltd, which is part of the Invicta Leisure group of companies, the ultimate parent company of which is Invicta Leisure Ltd. The Invicta health clubs also use the trading name of Club Indigo.		
Specific reservations	The Director General's position has been reserved in respect of terms 9e and 9f. Term 9e stated that club rules were available on request, and term 9f allowed the club to expel any member whose conduct was considered injurious to the character of the club. The OFT was concerned that, as a breach of the club rules could have serious consequences, there was no individual disclosure of the club rules. The club's reasons regarding the practical issues involved in disclosing the rules to every member were noted, together with the following amendments: the rules are to be displayed in the reception area; additionally, the club will act 'reasonably' in determining whether or not to expel or suspend a member, and nothing in the relevant term will be deemed to exclude or restrict the legal rights of the member.		
Undertakings accepted	14 November 2000	Five terms revised or deleted	

14 Lympstone House Residential Home

Name of business	Lympstone House Residential Home	Lead TSD	Devon County Council
Trading sector	Care homes	Contract identifier	Agreement

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	1(k): allowed the Home discretion to change the accommodation supplied.	Revised to provide that the resident will not be moved without a valid reason and will have sufficient notice of this.	2.2, 2.3 and 2.4
2.2	1(l): allowed fees to be reviewed annually without identifying the grounds for renewal, and also provided for a shorter notice period than the termination notice period, thus binding the resident to paying increased fees even if he withdrew from the contract.	Revised to provide for the annual fees increase to be in line with the Retail Prices Index and for a four-week notice period.	3.6 and 3.7
3.1	1(k): allowed for 'Rules and Regulations' to be issued and modifications and additions to be made to these without providing for the resident to be consulted or to terminate the agreement without penalty.	Revised so that reasonable modifications only are made, the resident is consulted and, subject to notice, the resident may terminate the agreement without penalty.	5.1.1
3.6	1(b): excluded the Home's liability for negligence in respect of the resident's property.	Revised so as not to exclude the Home's liability for negligence, fraud or breach of the agreement.	5.1.8
4.2	1(b): excluded the Home's liability for negligence in laundering the resident's clothes.	Revised so as not to exclude the Home's negligence in providing the laundry service.	6.1.2

4.7	1(a): excluded liability for any interruption to the services and had the potential to exclude the Home's liability for causing death or injury.	Revised so as not to exclude the Home's liability for negligence and breach of any other duty owed or implied by law or under the contract, and to exclude the Home's liability only where the interruption of services arises due to events beyond the Home's reasonable control.	6.2
7.2	1(l): provided for unspecified additional costs to be charged.	Revised to clarify that costs and charges are due for any provisions specifically ordered by the residents or their representatives.	8.2
10.3	Provided that the Home could retain the resident's furniture on the death of the resident unless otherwise agreed in writing at the time of admission. Such a term is regarded as a breach of good faith and a surprise in an agreement for the supply of a service.	Revised to provide for what happens to property left behind on the departure or death of the resident, and no longer conflicts with the requirements of the Torts (Interference with Goods) Act 1977.	4
10.4	1(b): term placing a restriction on the resident's movements was not given prominence and was widely drafted, allowing the Home to exclude its liability for negligence.	Revised to give term prominence within the agreement and to exclude liability only once the resident is outside the premises and has left without being accompanied by the member of staff.	9.3
11	Too wide in scope, allowing for the resident to be charged for damage.	Revised so that the Home may make a reasonable charge for any damage caused by the resident.	5.1.2

Undertakings accepted	25 October 2000	Ten terms revised
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15 MDS Skip Hire

Name of business	MDS Skip Hire	Lead TSD	Hampshire County Council
Trading sector	Skip hire	Contract identifier	General Conditions of Hire

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
3	1(b): could have been used to exclude liability for supplier's negligence unfairly.	Deleted.	
4	Regulation 7: consumer warned not to overfill skip and informed of consequences of doing so, but no definition of overfilling provided.	Consumer advised not to fill skip above its sides.	Not numbered
6	Regulation 7: clause not written in plain and intelligible language.	Deleted.	
7	Imposition of a requirement for consumer to obtain suitable insurance needed greater highlighting.	Deleted.	
8	1(b): unfairly excluded liability for damage caused by supplier's negligence.	No longer excludes liability for damage caused by supplier's negligence.	Not numbered
Declaration	Regulation 7: lacked clarity, and contained statement about contractual circumstances ('I have read and understood').	Deleted (with section relating to contractual circumstances to be manually crossed out until next print run).	

Undertakings accepted	9 November 2000	Six terms revised or deleted
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16 MFI Furniture Group plc t/a MFI Furniture Centres Ltd

Name of business	MFI Furniture Group plc t/a MFI Furniture Centres Ltd	Lead TSD	London Borough of Brent & Harrow
Trading sector	Retailer and manufacturer of kitchen, bedroom and home office furniture	Contract identifier	Terms & Conditions of Trading

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Before numbered terms	1(n): required variations to terms to be agreed by supplier in writing.	Deleted.	
1	1(b): restricted right of set-off by requiring payment in full no later than seven days before delivery.	Payment in advance still required, but consumer is entitled to refer disputes over installation to Qualitas, whose decisions will be binding on supplier. Consumer retains right to go to court if dissatisfied with Qualitas's decision.	1.1 and 5
3	1(k): could allow supply of goods different from those on display or advertised.	Revised to provide that, unless consumer agrees otherwise, goods supplied will be of equivalent value, functionality and appearance. Consumer also given right to return goods within a reasonable period, with a full refund, if dissatisfied with any significant variation.	2.1

Other information	Qualitas is a trade association which operates a conciliation and adjudication service for the furniture industry. While it is considering complaints about MFI under this scheme, it will hold 20% of the contract sums in an independent trust account. See OFT News Release dated 23 November 2000 for further details.
Specific reservations	The payment protection scheme appears to be capable of meeting the Director General's concerns about full payment in advance and he therefore agreed to it, but he intends to monitor its effectiveness as a method of remedying any detriment caused by term 1.
Undertakings accepted	20 November 2000 Three terms revised or deleted

17 Mentor Group t/a Mentor ADI Recruitment Ltd and t/a Mentor ADI Training Ltd

Name of business	Mentor Group t/a Mentor ADI Recruitment Ltd and t/a Mentor ADI Training Ltd	Lead TSD	Stockton-on-Tees Borough Council
Trading sector	Driving instructor training	Contract identifier	Course Enrolment Form

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Not numbered	1(b): limited the rights of the consumer when the supplier was in breach of contract.	Revised to provide that a consumer's statutory rights can be relied upon in the event of breach of contract by the supplier.	Not numbered

Undertakings accepted	13 December 2000	One term revised
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18 National Westminster Bank plc

Name of business	National Westminster Bank plc	Lead TSD	Corporation of London
Trading sector	Driving instructor training	Contract identifier	Course Enrolment Form

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
7	Regulation 7: it was not clear from the drafting of the term whether loan payments would continue to be taken from the consumer's nominated current account on all occasions as they became due even if this meant the account became overdrawn.	Amended to make the bank's options for the charging of loan payments clear to the consumer.	7

Other information	<p>National Westminster Bank plc also confirmed that term 7 would not be used unreasonably in conjunction with term 11 to bring the loan agreement to an end when continued charging of payments results in the account being overdrawn.</p> <p>The bank also confirmed that term 13, which provides that loan repayments can be set off against any other account, would only apply to accounts held in the name(s) of the loan applicants(s) and not against an account which is also in the name of any person who is not a party to the loan agreement.</p>
Specific reservations	The OFT reserved the Director General's position in respect of term 12. This term contained an 'interest after judgment' clause. The bank confirmed that it does not in practice charge interest at the contractual rate once judgment has been obtained. With regard to reviewing the wording of the term, it is currently considering its position following the Court of Appeal decision in the case of Director General of Fair Trading v First National Bank.
Undertakings accepted	<p>2 October 2000</p> <p>One term revised</p>

19 Nicholas Ashley Ltd

Name of business	Nicholas Ashley Ltd	Lead TSD	London Borough of Lambeth
Trading sector	Property management	Contract identifier	Terms and conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Terms in general	1(i): consumer was asked to sign up to an abbreviated set of terms and conditions when there was a comprehensive set in use.	Abbreviated set of terms deleted so that there is only one full set of terms and conditions.	
Declaration (at end of abbreviated terms)	Required consumer to sign declaration saying that he had read and understood the agreement when this may not have been true.	Deleted.	
Intro- duction Service: 9	Provided that a refund was due only when the property was re-let by the agent. Regarded as an inappropriate transfer of risk as it could ensure that the agent suffered no financial loss even though the consumer landlord suffered loss when a tenant left, which may have been a result of a poor letting service. Term unfairly tied the consumer to the agent.	Revised to provide for a refund on a pro-rata basis where the tenant stays less than 12 months, except that no refund is payable where the landlord has been in breach of the tenancy agreement. Tying-in provision deleted.	9

Full management service:19	1(h) and 1(e): required three months' notice which may be over-long in relation to a six-month tenancy. The charge of one week's rent in addition to an administrative fee on consumer cancellation of the service appeared to operate as a penalty.	Revised to provide for one month's notice. Additional charge of one month's rent deleted.	19.1
General 25	Sought commission on sale of the property to any party introduced by the agent either before or after entering into the tenancy agreement, but did not meet the requirements of s.18 of the Estate Agents Act 1979.	Revised to clarify when a commission on sale fee is due. A separate notice appears at the beginning of the agreement making it clear that the agreement is both for rental and for sale.	28
General 26	1(e): provided for an administration charge if the landlord withdrew from the letting after having verbally agreed to it subject to references being collected.	Revised to indicate that charges of up to the specified amount would be levied in respect of work undertaken by the agent.	29
General 28	1(p): allowed the agent to assign the agreement without seeking the consent of the consumer.	Revised to provide that the consumer's consent to assignment will be sought.	31
General 31	Regulation 7: unclear term referring to landlord's compliance with statutory obligations.	Revised to indicate that where the landlord is unaware of his statutory obligations he should seek legal advice or advice from the local housing authority.	34
General 33	Regulation 7: referred to compliance certificates without defining these.	Revised to delete confusing wording.	36

General 36	Regulation 7: was unclear as to what words relating to gender would mean within the contract.	Revised to clarify what words relating to gender or number would mean within the contract.	39
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Other information	Nicholas Ashley Ltd is a property management company. The OFT took the view that the sale commission term (term 25) did not have sufficient prominence in a letting introduction and management agreement. Terms in estate agency agreements which do not meet the requirements of the Estate Agents Act 1979 are unenforceable under that Act.		
Undertakings accepted	19 December 2000	Ten terms revised or deleted	

20 The Old Rectory Adult Education College

Name of business	The Old Rectory Adult Education College	Lead TSD	West Sussex County Council
Trading sector	Adult education: residential college	Contract identifier	Terms & Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Deposit	1(d): enabled supplier to retain sums above those necessary to compensate for losses caused by consumer cancelling, and failed to allow compensation to the consumer if the supplier cancelled.	Revised to give details of circumstances in which the deposit and balance would be refundable upon cancellation by either party. The circumstances ensure a fair balance between the parties in the event of cancellation.	Deposit
Security	1(b): denied liability for loss or damage to valuables even if caused by supplier's negligence.	Revised to allow for liability where losses caused by supplier's negligence.	Security
Course Changes	1(k): allowed the supplier to make major changes to the course with no right for the consumer to cancel and receive a full refund.	Revised to allow for only minor changes.	Course Changes

Other information	Having received the final set of terms and conditions, the OFT became aware of terms contained within the supplier's application form which made statements about the deposit which were contradictory to the revised terms. The form within the prospectus had already been printed and the cost of reprinting would have been disproportionate. The OFT therefore accepted an undertaking from the College that when any booking was received, a letter would be sent to the student explaining the true position.		
Undertakings accepted	23 October 2000	Three terms revised	

21 Primary Underwriting Ltd

Name of business	Primary Underwriting Ltd	Lead TSD	West Sussex County Council
Trading sector	Insurance	Contract identifier	Terms and conditions of travel insurance

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Health Conditions + Health-check	Placed a requirement on the consumer to disclose facts that he might not be aware of in that he had to notify the insurer about any pre-existing medical conditions concerning the health of not only himself but also of his relatives, travelling companions or anyone upon whose health the trip depended.	Revised to require the consumer to follow the 'Healthcheck' procedure should he be aware of any condition fitting the health conditions criteria in the policy in respect of himself or any person whose ill-health would force him to cancel or cut short the trip. The definition of 'pre-existing medical condition' was amended to relate only to conditions known to the insured.	Health Conditions + Health-check
What will happen if you do not contact Health-check	Regulation 7: how the 'Healthcheck' procedures applied to anyone other than the insured was unclear, as was how the term related to the 'Healthcheck' section of the policy. It lacked sufficient prominence given the importance of the exclusion.	Deleted.	
Special Note	1(n): insurer was relieved of the obligation to meet the consumer's claim if its medical assistance company was not informed immediately of certain events including accident or death.	Revised to provide that events relating to claims should be notified to the medical assistance company as soon as possible.	Special Note

Other information	The terms and conditions were used in travel insurance policies provided by The Holiday Store and Premier Direct Travel Insurance, both underwritten by Primary Underwriting Ltd.
Undertakings accepted	17 November 2000 Three terms revised or deleted

22 Rentokil Initial UK Ltd t/a Rentokil Property Care and t/a Rentokil Insurance Ltd

Name of business	Rentokil Initial UK Ltd t/a Rentokil Property Care and t/a Rentokil Insurance Ltd	Lead TSD	West Sussex County Council
Trading sector	Insurance	Contract identifier	Complete Property Guarantee Conditions of Contract; Contract of Insurance & Policy Document.

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Complete Property Guarantee Conditions of Contract – 4	1(n): potentially excluded the supplier's liability for oral statements by stating that the written documents would be recognised as the complete description of the contract.	Reference to 'complete description of the contract' deleted. Clause amended to allow for agreement contrary to written terms. Additional term added suggesting consumer reads document carefully to ensure it is an accurate record of what was agreed.	2 and 3
Contract of Insurance & Policy Document	Regulation 7: difficult to understand.	Whole document rewritten in plainer language.	

Other information	The Complete Property Guarantee concept and its associated literature, which were the subject of the original complaint, are no longer in use and have been replaced by Rentokil's Property Care, which incorporates the above changes.	
Undertakings accepted	13 November 2000	One term revised

22 Roofline Systems Ltd

Name of business	Roofline Systems Ltd	Lead TSD	North Ayrshire Council
Trading sector	Home improvements: fascias, soffits and cladding	Contract identifier	Sales Agreement: Conditions of Sale

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	Regulation 7: statement about consumer's ownership of building where work was to be carried out was not clearly expressed.	Deleted.	
2	1(n): excluded liability for oral statements unless confirmed in writing.	Deleted.	
3 (second sentence)	1(n): formality clause: required consumer to use recorded delivery to cancel.	Deleted.	
3 (third to fifth sentences)	1(e) and Regulation 7: circumstances in which consumer might have to pay a cancellation charge were not clear, but charge could amount to a penalty.	Deleted.	
4	1(f): no commitment by supplier to return deposit if contract was cancelled after survey.	Deleted.	

6	1(k) and Regulation 7: right to change specification without reference to consumer, and not clearly expressed.	Deleted.	
7 (first sentence)	Regulation 7: use of legal jargon ('time not of the essence').	Deleted.	
7 (third sentence)	1(n): formality clause: required consumer to use recorded delivery to ask supplier to complete work.	Deleted.	
8	1(b): no explicit commitment to repair damage to consumer's property caused by supplier's negligence.	Deleted.	
9 (first and second sentences)	1(b) and Regulation 7: meaning not clear but appeared to be that consumer was allowed to exercise right of set-off only with supplier's permission and with qualifications to that right.	Deleted.	
9 (third sentence)	1(q): compulsory arbitration clause.	Deleted.	
10 (first part)	1(e): interest charged on overdue accounts could amount to a penalty.	Deleted.	

10 (second part)	1(b): consumer's right of set-off subjected to penalty by provision that consumer benefited from guarantee only if full amount paid by 'due date'.	Deleted.	
11	Regulation 7: unclear description of guarantee.	Deleted.	
13	1(e) and Regulation 7: penalty charge if consumer denied supplier access to property, not clearly expressed.	Deleted.	
Declaration on front of invoice	Consumer required to sign statement that he had read and fully understood terms.	Deleted.	
Occasionally used	1(l): supplier had right to increase price without consulting consumer where preliminary work done by other contractors was unsatisfactory.	Deleted.	

Other information	The supplier gave an assurance that he would not rely on any of the terms listed above in respect of contracts entered into before the terms were deleted. He was also warned that he should not make any statement implying OFT approval of his terms, and gave an assurance that he would not do this.	
Undertakings accepted	11 December 2000	Seventeen terms deleted

24 Royal Institution of Chartered Surveyors (RICS)

Name of business	Royal Institution of Chartered Surveyors (RICS)	Lead TSD	City of Westminster
Trading sector	Professional body: surveying	Contract identifier	Building Surveys of Residential Property: A Guidance Note for Surveyors

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
6.3.1	1(b): advised that limitation clauses should be included in the surveyor's report.	Revised to advise that limitation clauses should clearly state that they do not restrict consumers' statutory or common law rights and should inform consumers that if they are in doubt as to these rights they should contact their local Trading Standards Department or Citizens' Advice Bureau.	6.3.1
Annex B: Model Conditions of Engagement: 6	Provided that fees were chargeable net of VAT, contrary to the DTI <i>Code of Practice for Traders in Price Indications</i> .	Revised so that fees term provides that an inclusive figure (to include VAT) will be quoted.	Annex B: Model Conditions of Engagement: 6

Other information	The Guidance Note for Surveyors provides advice to RICS members on aspects of their professional work. Following an approach to a member surveyor who used a term similar to one contained in the Guidance Note, the OFT approached RICS about its advice.
Undertakings accepted	26 October 2000 Two terms revised

25 Securicor Management Services Ltd

Name of business	Securicor Management Services Ltd t/a Securicor Omega Express Ltd	Lead TSD	London Borough of Sutton
Trading sector	National and international courier services	Contract identifier	Standard Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
	The whole contract was generally unsuitable for use with consumers. Terms contained the potential for several types of unfairness under Schedule 2, particularly (1)(b), and under Regulation 7.	The contract was completely re-drafted to remove unfair exclusion clauses and to introduce plain language to remove the potential for unfairness under Regulation 7.	

Undertakings accepted	12 December 2000
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26 The Student Support Centre (UK) Ltd t/a The Student Support Centre (Mercia) Ltd

Name of business	The Student Support Centre (UK) Ltd t/a The Student Support Centre (Mercia) Ltd	Lead TSD	London Borough of Bromley
Trading sector	Distance learning: support services	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2	Declaration that consumer had read and understood the terms.	Revised to make it clear that consumer should carefully read the terms.	Preamble
3	1(b): the consumer was compelled to carry on paying for the product or service in situations where he might have the right to make a claim or counter-claim against the supplier. Regulation 7: use of legal terminology (eg 'time of payment shall be of the essence').	Revised to allow consumer to withhold a proportion of any sum due to the supplier. Legal terminology removed.	2
6	1(b): refunds were not permitted regardless of the reason for cancellation. 1(d): supplier was able to retain sums paid by the consumer if the consumer cancelled the contract but the consumer was not able to receive compensation if the supplier cancelled the contract.	Revised to require the consumer to pay the supplier's foreseeable losses and reasonable costs where the consumer cancels and the supplier to pay the consumer's costs and losses in the event of its cancellation.	5
8	1(n): no liability for oral representations of employees.	Deleted.	

9	1(b): sought to hinder consumer from seeking redress even when the supplier was in default.	Deleted.	
11	Transferred unfair risks to the consumer. Regulation 7: use of legal terminology (eg 'without prejudice', 'indemnify').	Deleted.	
12	Regulation 7: use of legal terminology (eg 'whether arising by reason of statute, common law or otherwise').	Revised to remove legal terminology and clarify the position in relation to the consumer's statutory rights.	7

Other information	The supplier revised the contract as a whole.		
Undertakings accepted	3 November 2000	Seven terms revised or deleted	

27 Town & Country Driveways plc

Name of business	Town & Country Driveways plc	Lead TSD	City of Manchester
Trading sector	Driveways	Contract identifier	Customer Satisfaction Form & Guarantee

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Customer Satisfaction Form	Form contained warning that failure to complete all sections could invalidate warranty, but not all information required was necessarily within consumer's knowledge.	Warning deleted.	Contract Completion Form
Guarantee	Guarantee failed to refer to consumer's statutory rights.	Revised so that guarantee refers to consumer's statutory rights.	Guarantee

Undertakings accepted	2 October 2000	Two terms revised
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28 Vodafone Group plc t/a Vodafone UK Ltd and t/a Vodafone Retail Ltd

Name of business	Vodafone Group plc t/a Vodafone UK Ltd and t/a Vodafone Retail Ltd	Lead TSD	West Berkshire District Council
Trading sector	Mobile phones	Contract identifier	Equipment Repair Form

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Customer Acceptance	1(b): customer acceptance form potentially unfairly made consumer liable for certain repair charges if he or she was returning goods which were under warranty or not of satisfactory quality.	Tick boxes added which store staff will only tick if applicable to the particular consumer's circumstances.	Customer Acceptance

Specific reservations	The Director General's position was reserved in respect of a declaration reading 'I agree and understand the above declaration'. The OFT warned that action could be taken if complaints indicated that the term operated unfairly.	
Undertakings accepted	5 December 2000	One term revised

3 STATISTICAL BREAKDOWN OF ACTION ON CASES BY THE OFT

TABLE 3.1: BREAKDOWN OF CASES COMPLETED

Case outcome	Oct-Dec 2000	All cases to end Dec 2000
Advice or warning:	42	1,151
<i>advice to consumers/solicitors</i>	8	
<i>advice to TSOs and CABx</i>	28	
<i>advice to Qualifying Bodies</i>	5	
<i>advice to trade associations</i>	1	
<i>warning letter</i>	0	
'Core' terms	6	254
Defective cases	7	203
Duplicate cases	48	1,166
Enquiries	0	0
Excluded terms	10	324
'Formal' undertakings given	0	13
'Informal' undertakings given	28	568
Not about a contract term	5	157
Other legislation	8	294
Other reasons:	34	423
<i>approach made</i>	30	
<i>no approach made</i>	4	
Referred to Qualifying Bodies	8	86
Terms not considered unfair	8	537
Total	204	5,176

KEY TO TABLE 3.1

Advice or warning

includes cases where another regulator (for example, a trading standards service) 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.

'Advice to TSOs and CABx'

means that OFT letters to TSOs etc are used to advise consumers.

'Advice to Qualifying Bodies' means that OFT letters to TSOs etc are used to advise suppliers.

KEY TO TABLE 3.1 (continued)

<i>'Core' terms</i>	refers to cases where the term at issue sets the price or defines the main subject matter of the contract. Core terms are not subject to the test of fairness provided they are in plain and intelligible language – see Regulation 6(2).
<i>Defective</i>	refers to incomplete complaints, eg a copy of the contract was not sent in when requested, or the consumer was uncontactable.
<i>Duplicate</i>	relates to terms already being dealt with.
<i>Excluded terms</i>	refers to contracts which are not between consumers and businesses, or to terms not covered by Schedule 2(2).
<i>Other legislation</i>	refers to complaints where action under other legislation under which the OFT has powers or duties is more likely to be effective.
<i>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>'approach made'</i> means that the OFT was in negotiations with the supplier at the time the case was closed.
	<i>'no approach made'</i> means that the OFT had not yet entered into negotiations with the supplier at the time the case was closed.

TABLE 3.2: SUMMARY OF CURRENT CASE STATUS

Case status	Total at end last quarter (Sept 2000)	This quarter (Oct-Dec 2000)	Total at end this quarter (Dec 2000)
Cases received	5,705*	265	5,970
Cases completed	4,972*	204	5,176
Cases carried over to next quarter	733*		794

* Adjusted following transfer of information to a new computer system.

Note to both tables: The layout of these tables has been adjusted following the introduction of a new computer system.

4 ALPHABETICAL INDEX OF BUSINESSES APPROACHED INDICATING TRADING SECTORS

- | | | |
|----|--|--|
| 1 | Ages of Elegance | bespoke bridal wear |
| 2 | Acclaim (Holdings) Ltd t/a APEX
t/a Freight Fast | national and international
courier services |
| - | APEX – see Acclaim (Holdings) Ltd | |
| 3 | Aquability (UK) Ltd | home improvements:
supplier of fitted baths |
| 4 | Architectural Plastic Solutions Ltd
t/a Coldshield Windows | replacement windows |
| 5 | Bassetlaw District Council | venue hire |
| 6 | Best Training (West Midlands) Ltd | IT training |
| - | The Brighton Health & Racquet Club –
see Invicta Leisure (Brighton) Ltd | |
| - | Coldshield Windows – see Architectural Plastic Solutions Ltd | |
| 7 | Computeach International Ltd | distance learning:
computer courses |
| 8 | Exeter Friendly Society Ltd
t/a Exeter Healthcare | health insurance |
| 9 | Fakenham Tyres | motor vehicle parts |
| 10 | FlyAway Parking | car parks |
| - | Freight Fast – see Acclaim (Holdings) Ltd | |
| 11 | Friern Manor Country House
Hotel Ltd | hotel: event organisation and
catering |
| 12 | Hobbs Parker | auctioneers |
| - | The Holiday Store – see Primary Underwriting Ltd | |
| 13 | Invicta Leisure (Brighton) Ltd
t/a The Brighton Health & Racquet Club | health and leisure clubs |
| 14 | Lympstone House Residential Home | care homes |

15	MDS Skip Hire	skip hire
16	MFI Furniture Group plc t/a MFI Furniture Centres Ltd	furniture: retailer and manufacturer of kitchen, bedroom and home office furniture
17	Mentor Group t/a Mentor ADI Recruitment Ltd and t/a Mentor ADI Training Ltd	driving instructor training
18	National Westminster Bank plc	financial services
19	Nicholas Ashley Ltd	property management
20	The Old Rectory Adult Education Centre	adult education: residential college
21	Primary Underwriting Ltd	insurance
22	Rentokil Initial UK Ltd t/a Rentokil Property Care and t/a Rentokil Insurance Ltd	insurance
23	Roofline Systems Ltd	home improvements: fascias, soffits and cladding
24	Royal Institution of Chartered Surveyors (RICS)	professional body: surveying
25	Securicor Management Services Ltd t/a Securicor Omega Express Ltd	national and international courier services
26	The Student Support Centre (UK) Ltd t/a The Student Support Centre (Mercia Ltd)	distance learning: support services
27	Town & Country Driveways plc	driveways
28	Vodafone Group plc t/a Vodafone UK Ltd and t/a Vodafone Retail Ltd	mobile phones

5 GEOGRAPHICAL INDEX OF BUSINESSES BY LOCAL AUTHORITY

BIRMINGHAM CITY COUNCIL

- FlyAway Parking

BRENT & HARROW, LONDON BOROUGH OF

- MFI Furniture Group plc t/a MFI Furniture Centres Ltd

BRIGHTON & HOVE COUNCIL

- Invicta Leisure (Brighton) Ltd t/a The Brighton Health & Racquet Club

BROMLEY, LONDON BOROUGH OF

- The Student Support Centre (UK) Ltd t/a The Student Support Centre (Mercia) Ltd

DEVON COUNTY COUNCIL

- Exeter Friendly Society Ltd t/a Exeter Healthcare
- Lypstone House Residential Home

DUDLEY METROPOLITAN BOROUGH COUNCIL

- Computeach International Ltd

ESSEX COUNTY COUNCIL

- Friern Manor Country House Hotel Ltd

HAMPSHIRE COUNTY COUNCIL

- Aquability (UK) Ltd
- MDS Skip Hire

KENT COUNTY COUNCIL

- Hobbs Parker

LAMBETH, LONDON BOROUGH OF

- Nicholas Ashley Ltd

LONDON, CORPORATION OF

- National Westminster Bank plc

MANCHESTER, CITY OF

- Town & Country Driveways plc

NORFOLK COUNTY COUNCIL

- Fakenham Tyres

NORTH AYRSHIRE COUNCIL

- Roofline Systems Ltd

NOTTINGHAMSHIRE COUNTY COUNCIL

- Bassetlaw District Council

OXFORDSHIRE COUNTY COUNCIL

- Best Training (West Midlands) Ltd

RICHMOND-UPON-THAMES, LONDON BOROUGH OF

- Ages of Elegance

SANDWELL METROPOLITAN BOROUGH COUNCIL

- Acclaim (Holdings) Ltd t/a APEX t/a Freight Fast

STOCKPORT METROPOLITAN BOROUGH COUNCIL

- Architectural Plastic Solutions Ltd t/a Coldshield Windows

STOCKTON-ON-TEES BOROUGH COUNCIL

- Mentor Group t/a Mentor ADI Recruitment Ltd and
t/a Mentor ADI Training Ltd

SUTTON, LONDON BOROUGH OF

- Securicor Management Services Ltd t/a Securicor Omega Express Ltd

WEST BERKSHIRE DISTRICT COUNCIL

- Vodafone Group plc t/a Vodafone UK Ltd and t/a Vodafone Retail Ltd

WEST SUSSEX COUNTY COUNCIL

- Old Rectory Adult Education College
- Primary Underwriting Ltd
- Rentokil Initial UK Ltd t/a Rentokil Property Care and
t/a Rentokil Insurance Ltd

WESTMINSTER, CITY OF

- Royal Institution of Chartered Surveyors (RICS)

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	2
Schedule 2: paragraph 1(b) – Excluding or restricting liability for breaches of contract	
<i>a – Excluding liability for defective or misdescribed goods</i>	2
<i>b – Excluding liability for poor services, or work and material</i>	5
<i>c – Restricting amount or type of liability</i>	17
<i>d – Time limits on claims</i>	3
<i>e – Excluding consumers’ right of set-off</i>	11
<i>f – Excluding or restricting liability for delay</i>	4
<i>g – Excluding or restricting liability for a supplier’s non-performance</i>	3
<i>h – Excluding or restricting liability via guarantee</i>	0
Schedule 2: paragraph 1(c) – Binding consumers while allowing suppliers to opt out on a pretext	
Schedule 2: paragraph 1(d) – Non-return of prepayments on consumer cancellation	5
Schedule 2: paragraph 1(e) – Financial penalties	6
Schedule 2: paragraph 1(f) – Cancellation clauses	3
Schedule 2: paragraph 1(g) – Supplier’s right to cancel without notice	
Schedule 2: paragraph 1(h) – Excessive notice periods for consumer cancellation	1
Schedule 2: paragraph 1(i) – Binding consumers to hidden terms	4
Schedule 2: paragraph 1(j) – General variation clause	
Schedule 2: paragraph 1(k) – Right to change what is supplied	9
Schedule 2: paragraph 1(l) – Right to increase the price	10
Schedule 2: paragraph 1(m) – Supplier’s right of final decision	1
Schedule 2: paragraph 1(n) – Entire agreement and formality clauses	
<i>a – Clauses disclaiming liability for employees’ statements</i>	5
<i>b – Formality requirements</i>	5
Schedule 2: paragraph 1(o) – Binding consumers where a supplier defaults	

Schedule 2: paragraph 1(p) – Supplier’s right to assign without consent	1
Schedule 2: paragraph 1(q) – Restricting the consumer’s remedies	3
Other categories of unfair terms	
<i>a – Allowing a supplier to impose an unfair financial burden</i>	
<i>b – Transferring unfair risks (eg: by indemnities) to consumers</i>	7
<i>c – Onerous enforcement clauses</i>	2
<i>d – Excluding consumers’ right to assign</i>	
<i>e – Consumer declarations about contractual circumstances</i>	7
<i>f – Excluding consumers’ non-contractual rights</i>	
<i>g – Delivery at supplier’s discretion</i>	
<i>h – Other</i>	10
Regulation 7 – Plain and intelligible language	25
	Total 151

Notes

The above is a list 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 potential 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 generally been ignored.

Examples of the types of unfairness denoted by the headings above are also to be found in previous bulletins and in the *Unfair Contract Terms Guidance* (ref: OFT311).

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