

# Unfair contract terms bulletin 15

Case reports January to March 2001

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.

August 2001

OFT351



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## 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:

The Unfair Contract Terms Unit  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX  
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: 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](mailto: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.hmsso.gov.uk/si/si1999/19992083.htm](http://www.hmsso.gov.uk/si/si1999/19992083.htm)

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# 1 INTRODUCTION

- 1.1 This is issue 15 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, this is not normally necessary. Cases are usually resolved by the DG accepting 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 January and March 2001. Part 2 contains reports of 20 cases completed in this period in which 157 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. The bulletin also includes details of two cases completed by other bodies: FPDSavills Ltd (case report 7) and Motorpoint of Derby Ltd (case report 13). The action against Motorpoint by Derby City Council is notable because it was the first case taken in a county court, and the first case taken to court by a qualifying body. Derby City Council successfully took the supplier to court and obtained an undertaking that the supplier would cease to use the unfair terms which Derby had brought to its attention, or any similar terms.
- 1.3 Home improvement contracts still figure large in the case reports with four in the current issue (case reports 1, 8, 9 and 16). Other cases of note include the Exchange & Mart advertising contract (case report 21), in which excessive restrictions on liability were substantially modified. In another significant case (Singlepoint (4U) - case report 19) the small size of print was the sole issue. The company agreed to reprint its contract in more readily legible print.

## Further action on full payment in advance cases

### HOMEFORM GROUP LTD

- 1.4 *Bulletin 13* reported that the Director General had accepted undertakings from two large suppliers of fitted home improvements – MFI and B&Q - who ask consumers to pay in full before the delivery of goods which are to be installed by the suppliers themselves. Fuller details of the changes to B&Q's contract are given in case report 1.
- 1.5 A similar undertaking has now been accepted from another large supplier, HomeForm Group Ltd. This company (formerly Limelight Group plc) owns three of the best-known home improvements brands in the country: Moben Kitchens, Kitchens Direct, and Dolphin Bathrooms. All HomeForm companies ask consumers to pay in full when their goods are delivered. The undertakings mean that all the companies will give consumers access to the conciliation and adjudication services of Qualitas if there are problems with the delivery or installation of their goods. While Qualitas is considering a complaint it will hold 20% of the contract sum in an independent trust account. This is released only when Qualitas has reached a decision. If Qualitas finds in favour of the consumer, it can order HomeForm to put matters right, even if the cost is much more than the 20% already being held. Full case details will appear in the next bulletin.
- 1.6 The OFT has not received any complaints about similar schemes already being operated by MFI and B&Q, which suggests the schemes are effective. It is hoped that the scheme to be operated by HomeForm will be successful. However, if consumers experience difficulties using the scheme the OFT would like to know.

## Action on scale cancellation charges in package holiday contracts

- 1.7 The first issue of formal notices under Regulation 13 (6) was reported in the previous bulletin. Notices were issued to the four major UK tour operators, Thomson Holidays, Airtours, JMC Holidays and First Choice. The notices required the companies to supply the financial data on which they have calculated their losses and so their scale cancellation charges. The companies were given 14 days to comply and were warned that if

they did not comply with these notices the Director General would also seek pre-action disclosure under Civil Procedure Rule 31.16. All four companies have agreed to supply the information required, but in each case they have asked for and been given additional time to comply with the notices.

## 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 just 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.

<b>Name of business</b>	B&Q plc	<b>Lead TSD</b>	Hampshire County Council
<b>Trading sector</b>	Home improvements: fitted kitchens, bathrooms, bedrooms and conservatories	<b>Contract identifier</b>	Terms and Conditions of Sale; Installation Guarantee

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Terms and Conditions of Sale:			
3 (first clause)	1(b): restricted right to set-off by requiring payment in full with order.	Payment with order still required, but consumers entitled to refer disputes over installation to Qualitas, whose decisions will be binding on supplier but not on consumers (see 'Other information' box below).	3
4 (first clause)	1(k): could allow supplier to supply goods with different characteristics from the ones ordered.	Replaced with a warning that natural products may vary in colour.	4 (first clause)
4 (third clause)	1(n): disclaimed responsibility for employees' statements which consumers might have relied on.	Deleted.	
5 (second and third clauses)	1(b): excluded liability for delays in delivery.	Revised to limit circumstances in which delivery dates may be changed and to relate this to circumstances beyond the supplier's control.	5 (second clause)

6 (third clause)	1(b): could be used to exclude liability for negligence.	Revised to accept liability for damage beyond that which was commensurate with carrying out home improvements.	6 (third clause)
7	1(n): requirement that consumers notify defects in writing within seven days could operate as a formality requirement.	Deleted.	
8	1(b): could be used to exclude liability for negligence.	Revised so that liability for negligence accepted.	7
10	1(f): provided that consumers could cancel only if they had the supplier's written permission.	Deleted.	
Installation Guarantee:			
	Regulation 7 and 1(b): reference to 'consequential loss' unclear, and could mislead consumers about whether or not they had a claim against the supplier.	Deleted.	
	1(b): invalidation of guarantee if repairs done by third party could apply even where fault caused by supplier's poor workmanship.	Deleted.	
	Regulation 7 and 1(b): statement that consumers' statutory rights were not affected was unlikely to mean much to consumers.	Revised to tell consumers that they can obtain information about statutory rights from a trading standards department.	
	Guarantee not transferable to third parties.	Revised to provide that rights under guarantee are transferable to new owner of property so long as the original signed guarantee is produced.	

	1(b): advice to consumers to contact manufacturers' customer service departments over problems with electrical and gas appliances supplied by B&Q could have the effect of misleading consumers into thinking B&Q had no responsibility if the goods were faulty, ie could be read as an exclusion of liability.	Revised to state that problems with the goods are dealt with by the manufacturer for B&Q.	
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<b>Other information</b>	<p>Qualitas is a trade association which operates a conciliation and adjudication service for the furniture industry. While it is adjudicating complaints about B&amp;Q 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.</p> <p>The Guarantee was completely rewritten.</p> <p>B&amp;Q plc is a subsidiary of Kingfisher plc.</p>
<b>Specific reservations</b>	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 will be monitoring its effectiveness as a method of remedying the detriment caused by term 3.
<b>Undertakings accepted</b>	29 March 2001                      Thirteen terms revised or deleted

<b>Name of business</b>	Belle Aire Holiday Park	<b>Lead TSD</b>	Norfolk County Council
<b>Trading sector</b>	Holiday chalet rentals	<b>Contract identifier</b>	Conditions of Hire

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
6	1(e): allowed supplier to retain the consumer's deposit when the supplier had been successful in re-letting the property following consumer cancellation.	Revised to state that if the supplier is successful in re-letting then the consumer will be refunded in full less any costs or discounts offered for rebooking.	5
15	1(b): excluded supplier's liability for loss or damage to consumer's vehicle(s).	Supplier undertook to discontinue use of the term.	
16	1(b): excluded supplier's liability for shortcomings in the consumer's accommodation which were not notified to the supplier immediately.	Supplier undertook to discontinue use of the term.	

<b>Other information</b>	The supplier's undertaking to discontinue use of terms 15 and 16 was accepted on the basis that the supplier intended to sell the business in due course.	
<b>Undertakings accepted</b>	24 January 2001	Three terms revised or deleted

<b>Name of business</b>	Construction Plant-hire Association	<b>Lead TSD</b>	City of Westminster
<b>Trading sector</b>	Plant hire	<b>Contract identifier</b>	Small Equipment & Tools: Terms of Hire

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
7(e)	Transfer of risk to consumer by requirement to insure, which was not highlighted for consumer.	Revised to give consumer the option of insuring the equipment at a reasonable price.	8(a)
12(a)	1(b) and 1(e): had potential unfairly to exclude supplier's liability for the supply of poor quality goods, and also had potential to impose an unfair liability on consumer in the event of loss or damage to the equipment.	Revised to provide that consumer will not be liable for damage to equipment that is of poor quality at the time of hire and that consumer must replace stolen or damaged equipment at its current value.	12 (d) and 12(e)
12(b)	Placed unfair financial burden on consumer by stating that consumer had to pay hire charges until lost or damaged equipment had been repaired or replaced.	Revised so that consumer is only liable to pay hire charges until loss or damage has been notified to supplier.	8(f)
13(c)	1(b): had potential unfairly to exclude supplier's liability for breach of contract in relation to claims brought by third parties.	Revised so that term no longer able to exclude supplier's liability for breach of contract.	13(c)

<b>Other information</b>	The Construction Plant-hire Association is a trade association. The contract originally submitted for consideration was not intended for use with consumers. Following an approach by the OFT, the Association forwarded the contract they recommended for use with consumers, which has now been revised.	
<b>Undertakings accepted</b>	7 December 2000	Four terms revised

<b>Name of business</b>	Coomber Security Systems Ltd	<b>Lead TSD</b>	Somerset County Council
<b>Trading sector</b>	Security alarm systems	<b>Contract identifier</b>	Conditions of Sale

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Definitions: 'The System'	Regulation 7: consumer unlikely to understand the phrase 'without prejudice to the generality of the foregoing'.	Redrafted in plain language.	1.2.4
2	1(n): potentially excluded the supplier's liability for oral statements.	Revised to advise that any alterations to the terms should be confirmed in writing.	2
4.2	1(e): potentially constituted an unfair penalty as it made consumer liable to pay immediately in full if he/she refused to let supplier install the system.	Deleted.	
6.1	Regulation 7: consumer unlikely to understand word 'indemnify'.	Redrafted in plain language.	12.14
6.7	Regulation 7: consumer unlikely to understand word 'procure'.	Redrafted in plain language.	12.4

8.2	1(b), 1(n) and Regulation 7: requirement to give supplier immediate notice of any fault may have represented an unfair time limit on claims. Requirement for written confirmation of the same was an unnecessary formality. Phrase 'force majeure' did not comply with the requirement for plain language.	Revised to ask consumer to report any faults as soon as they become obvious and obligation to report them in writing removed. Term also redrafted in plain language.	12.9
8.4	Regulation 7: consumer unlikely to understand phrase 'without prejudice to the generality of the foregoing'.	Redrafted in plain language	12.2
8.4.3	1(b): had potential unfairly to exclude liability for poor work, materials or services.	Deleted.	
9	1(h): over long notice period for cancellation of contract.	Notice period reduced.	13
10	1(l): provided that supplier could increase Maintenance Charge on one month's notice, but cancellation period was three months, so consumer could have been forced to accept higher price for two months.	Revised to state that there will be no increase in Maintenance Charge until contract comes up for renewal.	14.2
11.1	1(b): potentially unfairly excluded liability for misdescribed goods.	Deleted.	
11.2	1(k): potentially gave supplier unfair right to change what is supplied.	Consumer has right to cancel the contract without penalty if he finds changes unacceptable.	11.8

12	1(l): all prices were subject to change without notice.	Revised to provide that there will be no price increase in respect of a maintenance contract. The only price increase will relate to the actual cost of repairing the system, reflecting increases beyond the supplier's control.	14
13	1(b) and 1(e): unfairly excluded consumer's right to set-off. The provision for interest to accrue on overdue amounts may have constituted an unfair penalty, as may the provision that the supplier could withhold services under other contracts.	No longer precludes right to set-off and no longer provides for interest to accrue on overdue amounts. Provision that supplier could withhold services under other contracts also deleted.	6
14.1.1	Regulation 7: use of legal jargon ('title').	Redrafted in plain language.	10.1
14.1.2	Regulation 7: use of legal jargon ('bailee').	Deleted.	
14.1.3	Onerous enforcement clause allowing supplier to enter consumer's premises to repossess goods.	Revised to allow for supplier to attend at a mutually convenient time.	10.2
14.1.4	Regulation 7: not drafted in plain and intelligible language.	Deleted.	
14.2	1(b) and Regulation 7: had potential unfairly to exclude liability for damage to the system caused by the supplier's employees or agents. Also contained several instances of legal jargon.	Deleted.	

15	1(b), 1(k) and 1(n): potentially gave supplier unfair right to exclude liability for misdescribed goods, to change what was supplied and to exclude liability for oral representations.	Deleted.	
16	1(a), 1(b) and Regulation 7: potentially unfair wide-ranging exclusion of liability for injury and breaches of the consumer's statutory rights as well as for misrepresentation, negligence and consequential loss. Not expressed in plain language.	Revised to limit liability for breach of contract and negligence to £5million except where death or injury occurs. Redrafted in plain language.	8.2
20.9	1(e) and 1(f): may have constituted an unfair penalty by allowing supplier to cancel the contract if the consumer committed a minor breach of the agreement. Consumer had no reciprocal right.	Deleted.	
21	1(f): provided for unequal cancellation rights.	Deleted.	
21.1	1(b): potentially unfair exclusion of liability for poor services.	No longer seeks to exclude liability for poor services.	7.2
21.2	1(l): potentially unfair right to increase the price.	Deleted.	
22	Regulation 7: use of legal jargon ('waiver').	Deleted.	

23	1(n): instituted an unfair formality requirement, ie notice to be sent by first class post.	Deleted.	
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<b>Undertakings accepted</b>	21 February 2001 Twenty-seven terms revised or deleted
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<b>Name of business</b>	Co-op Travelcare	<b>Lead TSD</b>	City of Manchester
<b>Trading sector</b>	Insurance: holiday travel	<b>Contract identifier</b>	Form of Indemnity

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
First part - declaration	Regulation 7: worded in a way which had the potential to mislead the consumer about the supplier's liability in certain circumstances.	Deleted.	
Second part	Regulation 7: offered cover for the risk of 'scheduled airline failure' without defining the types of failure covered.	Deleted.	
Second part - declaration	Regulation 7: worded in a way which had the potential to mislead the consumer about whether or not the right to seek compensation had been forfeited in the event of airline failure.	Deleted.	

<b>Other information</b>	The whole document has been redrafted along similar lines to those recommended by ABTA. The revised form is called 'Insurance Indemnity Form'.	
<b>Undertakings accepted</b>	23 March 2001	Three terms deleted

<b>Name of business</b>	East Anglian Motor Auctions (Norwich) Ltd	<b>Lead TSD</b>	Norfolk County Council
<b>Trading sector</b>	Car auctions	<b>Contract identifier</b>	Conditions of Entry and Sale

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
6	1(b): had potential to allow auctioneers unfairly to charge commission even if the sale was subsequently voided or amended due to their negligence or breach of contract.	Revised to make it clear that commission is only payable on amended or voided sales if the seller has made an incorrect statement.	6
11	1(e): had potential to constitute an unfair financial penalty as it allowed auctioneers to sell uncollected vehicles without stating how much notice the consumer would be given before this sanction was imposed.	Revised to specify the notice period.	11
12	1(b): had potential unfairly to exclude auctioneers' liability if they failed to carry out their duties with reasonable care and skill.	Revised to say that the buyer cannot claim against the auctioneers for statements made by the seller, and also makes clear that the buyer's right to take action against the seller remains unaffected.	12
13	1(b): had potentially unfairly to exclude liability for loss or damage caused by auctioneers for vehicles left on the auctioneers' premises.	No longer seeks to exclude auctioneers' liability.	13

17	1(b): potentially unfairly excluded seller's and auctioneers' liability for selling vehicles which did not correspond to their description and vehicles which were not of satisfactory quality.	Revised to make clear that the exclusion of liability does not cover seller's incorrect statements.	17
18	1(b) and 1(q): unfairly hindered the consumer's right to take legal action if faults were not reported to auctioneers within one hour. The term also required the consumer to submit to arbitration of the dispute by the auctioneers.	Revised to make it clear that any requirement to notify the auctioneer of defects or misrepresentations does not affect the buyer's right to make a claim against the seller for those faults or misrepresentations. The buyer has the right to have disputes referred to an independent engineer.	18
21	1(e): stated that if vehicle was not paid for on day of sale, it could be resold and the deposit forfeited. Failed to state how much notice would be given of intention to resell the vehicle. The contract did not state the amount of the deposit and so there was potential for the consumer unfairly to lose a deposit of almost 100%.	No longer states that vehicle will be resold if not paid for on day of sale. Amount of deposit made clear by being published in sale room.	21

<b>Specific reservations</b>	The Director General's position was reserved in respect of term 10 on the understanding that further action would be taken if complaints indicated that it is operating to the detriment of consumers. Term 10 may operate unfairly to exclude the consumer's right to set-off.	
<b>Undertakings accepted</b>	14 February 2001	Seven terms revised or deleted

## 7

## FPDSavills Ltd

(this case was taken by the Consumers' Association and not by the OFT)

<b>Name of business</b>	FPDSavills Ltd	<b>Lead TSD</b>	City of Westminster
<b>Trading sector</b>	Estate agency	<b>Contract identifier</b>	Sales Terms of Business

<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, 5, 7 and 15	Regulation 7: all four terms related to the payment of fees but were scattered throughout the contract making payment requirements unclear.	Revised so that all payment requirements are grouped together.	2, 3, 4 and 6
5.1	1(e) and Regulation 7: 50% of the agreed sale fee was payable if 'ready, willing and able purchaser' was introduced and terms were agreed for sale of property, if consumer withdrew for whatever reason and contracts were not exchanged.	Revised so that fee not payable if consumer withdraws due to circumstances beyond his control. 50% payable if the consumer withdraws for other reasons. Words 'for whatever reason' deleted.  Clause renamed 'Withdrawal Fee'. Reference to 'ready, willing and able' purchaser deleted.	4.1 and 4.2
15.1 and 15.2	1(b): provided 'irrevocable mandate' to consumer's solicitors to pay the agency all outstanding monies plus sale fee from completion monies, thus effectively removing consumer's right to set-off.	Words 'irrevocable mandate' deleted. Revised to state that consumer agrees to instruct solicitors to pay properly payable outstanding invoices out of completion monies.	3.3 and 3.4

15.6	1(e): a potential unfair penalty in that the consumer was liable to pay any costs incurred if solicitors were used to recover outstanding fees.	Term limited so that only 'reasonable' costs can be recovered.	8
16	1(q): any dispute had to be referred to arbitration.	Additional term added clarifying that the option to have disputes resolved by arbitration did not affect the consumer's right to pursue a dispute through the courts.	16.3

<b>Other information</b>	This contract was amended as a result of action taken by the Consumers' Association in its capacity as a qualifying body. The original contract appeared to be a 'sole selling rights' contract but was in fact also using a 'ready, willing and able' agreement which had payment implications which were not immediately apparent. The revised contract makes it clear that it is a 'sole selling rights' agreement, with no reference to 'ready, willing and able'.		
<b>Undertakings accepted</b>	27 November 2000		Nine terms revised

<b>Name of Business</b>	Hi-Lite Window Co Ltd	<b>Lead TSD</b>	Hampshire County Council
<b>Trading Sector</b>	Home improvements: supply and installation of windows	<b>Contract</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>
3	1(f): provided for unequal cancellation rights in favour of the supplier.	Revised to refer to cancellation rights under the contract and in accordance with the general law.	3
4	1(f): provided for cancellation on adverse survey by the supplier.	The survey will be carried out within a short period and if it reveals unforeseen technical problems which will increase the price for the work to be done the consumer has the choice not to proceed with the contract. If the job is found to be materially more difficult the supplier may cancel the contract. If the contract does not go ahead, the deposit will be refunded.	4
5	1(f): provided for unequal cancellation rights in favour of the supplier.	An absolute discretion to cancel the contract if references were not satisfactory has been replaced by a right to cancel if enquiries as to the consumer's creditworthiness lead the supplier reasonably to believe that payment may not be made and the consumer refuses to pay in advance.	5

6	1(f): had the effect of unequal cancellation rights in that the consumer's cancellation was penalised by the supplier's complete discretion as to whether to refund the deposit.	The refund of a consumer's deposit is no longer at the supplier's discretion.	6
7	1(n): disclaimed liability for employees' statements.	Replaced by a warning that consumer should ensure that oral representations are recorded in writing.	7
8	1(b): potentially unfairly excluded or restricted liability for delay on the part of the supplier.	Revised to set out procedure for consumer, in event of delay, to serve a notice requiring completion within six weeks. Exclusion of liability for delay is limited to events beyond the supplier's control.	8
11	1(b): limited the benefit of the guarantee and excluded consumer's right to set-off through an over severe penalty for consumer's failure to make full payment immediately.	Revised so that the guarantee is effective on payment in accordance with the contract.	11
12	1(b): potentially excluded liability for defective goods.	Revised term includes a guarantee to repair or replace goods which develop a fault within the guarantee period.	12
20	Declaration purporting to contract out of the Consumer Credit Act 1974.	Deleted.	
22	1(k): gave the supplier the right to change what was supplied.	Revised so that modifications to products are restricted to minor changes and do not affect the quality of the product supplied.	22

<b>Other information</b>	In respect of term 7, the supplier gave an undertaking that sales staff will never make a misleading statement, that measures are in place to prevent verbal agreements being made and that consumers are made aware of this.
<b>Specific reservations</b>	<p>The Director General's position was reserved in respect of three terms, as follows:</p> <p>Term 4: In practice, surveys are carried out once planning matters are settled and this is usually within two to three weeks, but the OFT will re-examine the term if complaint evidence shows that surveys have been unreasonably delayed.</p> <p>Term 7: The OFT will revisit the term if there is evidence to show that consumers are suffering detriment because they have relied on verbal representations made by sales staff in the course of entering into an agreement.</p> <p>Term 8: The OFT will revisit the term if there is evidence to show that consumers are waiting an unreasonably long time for windows to be installed.</p>
<b>Undertaking accepted</b>	16 March 2001                      Ten terms revised or deleted

<b>Name of business</b>	J.K. Lynch Construction Ltd	<b>Lead TSD</b>	City of Coventry
<b>Trading sector</b>	Building and home improvements	<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	Regulation 7: meaning was unclear as both 'tender' and 'quote' were used for the same matter.	Revised to remove 'tender' and to refer only to 'quotation', and quotation fixed for a longer minimum period of four months.	2
3	Regulation 7 and 1(l): meaning was unclear (as stated above) and term was vague about the supplier's right to change the price.	Revised using plain language and incorporates a specific reference to the supplier's duty to exercise reasonable skill and care in providing the quotation service.	3 and 5
5	1(b): exclusion of liability for supplier's delay, and lack of good faith.	Revised to indicate circumstances where the supplier will not be liable for delay, which circumstances are restricted to those outside the supplier's control.	4
6	Regulation 7 and 1(b): term unclear, and contained potential exclusion of liability for defective work.	Deleted.	

8	1(b): exclusion of liability for arithmetical and clerical mistakes on the quotation and for the consequences of such mistakes.	Revised so that consumer may cancel without being penalised if it is necessary for the supplier to issue a revised quotation as the result of arithmetical or clerical errors, and supplier agrees to pay all reasonable compensation due to such cancellation.	7
9	Unfair enforcement clause.	Deleted.	
10	1(b): exclusion of liability – contained expressed and implied statements that the consumer had to bear the burden of any damage caused by the supplier.	Revised to confirm that supplier will exercise reasonable skill and care and that the consumer will not be liable for damage caused by the supplier's negligence.	8
11	1(e): unfair penalty clause using an onerous interest rate.	Revised to remove the reference to the penalty.	9
14	1(q): bound the consumer to arbitration.	Deleted.	

<b>Undertakings accepted</b>	2 February 2001	Nine terms revised or deleted
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10

**The London Property Centre Ltd t/a The London Property Centre**

<b>Name of business</b>	The London Property Centre Ltd t/a The London Property Centre	<b>Lead TSD</b>	Essex County Council
<b>Trading sector</b>	Letting agents	<b>Contract identifier</b>	Deposit receipt

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Second paragraph	1(d): allowed agent not to return the deposit where the prospective tenant cancelled the agreement.	Revised so that tenant will receive a full refund if cancelling within 48 hours.	4
Second paragraph	1(e): made additional charges which were potentially unfair penalties where the prospective tenant cancelled the agreement.	Provision for an additional charge amended. The tenant, on cancellation after 48 hours, will be liable to pay the credit reference charges and the agency costs up to a specified amount.	
Second paragraph	1(f): made additional charges where the agent decided not to proceed with the agreement because of unsatisfactory references.	Revised to make tenant liable only for the agency's costs (up to a specified amount), where satisfactory references are not received because false or misleading declarations have been made.	3
Third paragraph	1(f): made the tenant liable for administration and credit reference fee where the landlord decided not to proceed with the agreement.	Revised so that tenant will receive a full refund where the landlord withdraws, unless the landlord withdraws where false or misleading declarations have been made by the tenant.	5

Consumer declaration	Declaration that the tenant has 'read and understood' the contract, and received particular advice and a copy of the brochure.	Deleted.	
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<b>Intelligibility</b>	Intelligibility was improved, with numbered paragraphs and a clearer list of charges.		
<b>Undertakings accepted</b>	2 January 2001	Five terms revised or deleted	

<b>Name of business</b>	Midland Registrations	<b>Lead TSD</b>	Birmingham City Council
<b>Trading sector</b>	Personalised number plates	<b>Contract identifier</b>	MOV 11

<b>Other information</b>	The telephone sales script adhered to by staff for term 14 appeared to bind the purchaser to terms about which they were not aware when entering into the contract to purchase a personalised number plate. The telephone sales script used by the sales operators now makes the purchaser aware of the contract terms and conditions before the agreement is entered into.
<b>Undertakings accepted</b>	15 February 2001

<b>Name of business</b>	Midland Registrations Ltd	<b>Lead TSD</b>	Birmingham City Council
<b>Trading sector</b>	Personalised number plates	<b>Contract identifier</b>	MOV12

<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(b): potentially excluded liability for delay or failure of the transaction caused by the company.	Revised to that the company accepts liability for delay or for the failure to conclude the transaction where this has been caused by the company.	3
9	1(e): allowed an unfair penalty to be imposed on the consumer selling the number plate.	Revised to provide that the consumer selling the number plate will be liable for the supplier's loss only where the consumer's breach has caused the transaction to fail.	9

<b>Undertakings accepted</b>	15 February 2001	Two terms revised
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### 13 Motorpoint of Derby Ltd

(this case was taken by Derby City Council and not by the OFT)

<b>Name of business</b>	Motorpoint of Derby Ltd	<b>Lead TSD</b>	Derby City Council
<b>Trading sector</b>	New and secondhand cars	<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(d): purported to render prepaid deposit non-refundable in all circumstances.	Deleted.	
3	1(d): allowed cars to be re-sold if not collected within seven days and deposit forfeited.	Revised to permit supplier to apply deposit to meet reasonable costs upon failure to collect car by consumer.	7
5	1(f): allowed supplier to dissolve the contract on a discretionary basis in certain circumstances.	Revised so that contract can only be avoided if the consumer made deliberately false statements about the condition of a part-exchange car.	12
'To protect yourself in the event of any of the following circumstances'	1(b): permitted supplier to choose the remedy offered for several types of breach of contract.	Deleted.	

<p>*Please Note* Withdrawal for any reason on your behalf will render your deposit non-refundable</p>	<p>1(d): permitted retention of prepayments.</p>	<p>Deleted.</p>	
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<p><b>Other information</b></p>	<p>A significant number of complaints were received by the local authority about the application of the old terms and conditions, particularly about the retention of deposits. Negotiation failed to resolve the matter. Court action was instigated and an undertaking was signed before a District Judge at Derby County Court.</p>
<p><b>Undertakings accepted</b></p>	<p>12 January 2001                      Five terms revised or deleted</p>

<b>Name of business</b>	National Cycling Forum	<b>Lead TSD</b>	City of Westminster
<b>Trading sector</b>	Passenger transport	<b>Contract identifier</b>	Model Conditions of Carriage - accommodating the bicycle on bus and coach

<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): in relation to the carriage of bicycles, could have unfairly excluded liability for loss or damage caused by a bus company's negligence or breach of duty.	No longer seeks to exclude liability for loss or damage where a bus company has been negligent or is in breach of its duty.	5

<b>Other information</b>	The National Cycling Forum is not a seller or supplier which contracts with consumers but a lobby group which sought the advice of the OFT about model conditions which it recommends bus and coach operators adopt.	
<b>Undertakings accepted</b>	23 January 2001	One term revised

<b>Name of business</b>	Portland Enterprises (CI) Ltd t/a Television X - The Fantasy Channel	<b>Lead TSD</b>	States of Jersey
<b>Trading sector</b>	Leisure services: subscription television programmes	<b>Contract identifier</b>	Terms and Conditions of Use

<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(i) (first sentence)	1(k): company reserved right to make a number of changes at its discretion to what it contracted to supply.	Revised so that changes will be made only when necessary and the company will endeavour to keep changes to a minimum.	3(i) (first sentence and new second sentence)
3(i) (second sentence)	1(n): exclusion of liability for all prior representations whether written or oral.	Deleted.	
10 (first sentence)	Gave the company an unfairly wide discretion to decide when a malfunction in the viewing card was attributable to its own default (ie to decide when it was in breach).	Deleted.	
11(v)	Regulation 7: unclear and included legal terminology ('consequential loss').	Redrafted in plain language and intelligible form.	9(v)
14(iii)	Regulation 7: plain and intelligible language.	Redrafted in plain language.	12(iii)

<b>Other information</b>	The OFT expressed concern about annual subscribers being subject to significant price increases without being able to cancel the agreement. The company explained that the annual fee payable covered the whole of the forthcoming subscription year, at the end of which the consumer could decide not to renew. For those subscribers paying monthly, the company indicated that while they could be subject to price increases, other terms limited the company's rights in this respect as well as imposing a cap on the allowable increase.
<b>Specific reservations</b>	The Director General's position was reserved on the understanding that telephone subscribers will be informed of their obligations under the contract, in particular that they are committing themselves to an annual contract.
<b>Undertakings accepted</b>	15 February 2001                      Five terms revised or deleted

<b>Name of business</b>	Pronto Maintenance Services Ltd t/a PlumbFast Services Ltd	<b>Lead TSD</b>	London Borough of Waltham Forest
<b>Trading sector</b>	Home improvements: plumbing	<b>Contract identifier</b>	Conditions of Contract

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1	1(i): had potential to tie consumer to a price increase of which he was not aware.	Method of calculation of charges made clear at outset of contract.	4.3
2	1(b): excluded liability for supplier's delay.	Limits exclusion of liability for delays to delays caused by reasons beyond supplier's control.	1.6
3	1(b): no liability for damage caused by the supplier.	Revised to state that damage caused due to supplier's negligence will be either made good, compensated for, or notified to supplier's insurers.	1.8
4	1(b): no liability for defects arising in water tanks or pipes etc during or subsequent to installation work.	Revised so that term is limited to existing systems that are not in good condition before work is carried out.	3.2
7	1(b): guarantee term with the potential to operate as an exclusion clause.	Deleted.	
8	1(l): allowed the supplier to increase the price after quotation to meet any variations in labour or materials.	Deleted.	

9	Regulation 7 and 1(b): not drafted in plain and intelligible language.  1(b): capable of excluding consumer's right to set-off.	Redrafted into plain and intelligible language.  Deleted.	4
10	1(i): had potential to bind consumer to costs of which he was not aware.	Deleted.	
11	1(i) and Regulation 7: had potential to bind consumer to costs of which he was not aware, and was not drafted in plain and intelligible language.	Deleted.	
15	1(n): instituted a formality requirement of notification of damage within three days.	Deleted.	
16	1(n): had potential to exclude liability for any oral statements made.	Deleted.	

<b>Undertakings accepted</b>	28 March 2001	Eleven terms revised or deleted
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<b>Name of business</b>	Protection One (UK) plc	<b>Lead TSD</b>	Hampshire County Council
<b>Trading sector</b>	Security alarm systems	<b>Contract identifier</b>	Maintenance and monitoring agreement; Sale and installation 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>
Maintenance and monitoring agreement:			
2	1(n): had the potential to exclude liability for oral representations.	Consumer advised to have any changes recorded in writing.	2
3	1(f) and 1(h): provided for unequal cancellation rights and over long notice period.	Revised so that parties have equal cancellation rights and notice period has been reduced.	3
5.2	1(b): excluded liability for poor services or materials.	Supplier accepts liability if it has not carried out its responsibilities satisfactorily.	5.2
6.2	Regulation 7: unclear reference to supplier's responsibilities under British Standards.	Revised to give consumer the opportunity to obtain further information about supplier's obligations under British Standards.	6.2
6.6	1(b): implied exclusion of liability for poor service or materials by imposing an emergency call-out charge in all circumstances.	Revised so that charges will not be made for call-out visits where the supplier has been at fault.	6.6
7.2	1(b): potentially unfair exclusion of consumer's right to seek monetary compensation if system broke down.	No longer seeks to exclude consumer's right to seek monetary compensation.	7.2

7.4	1(b): had potential to exclude supplier's liability if its negligence caused phone line to fail.	Supplier accepts liability if phone line failure is caused by its negligence.	7.4
7.5	1(b): had potential unfairly to exclude liability for damage caused to consumer's property by poor workmanship or negligence.	Revised to state that supplier will accept responsibility for damage that could reasonably have been avoided.	7.5
7.7	1(b): unfair exclusion of liability for financial or indirect loss.	Revised to accept liability for losses caused by supplier's failure to carry out its responsibilities.	7.7
9	1(p): created imbalance in the contract by allowing supplier, but not consumer, to assign the agreement.	Revised so that either party can assign its rights under the contract.	9
10.1	1(f): allowed supplier to cancel the contract for minor breach by consumer.	Both parties given equal cancellation rights.	10.1
10.2	Regulation 7: inappropriate reference to 'liquidation'.	Reference deleted.	10.2
11.3	1(e): potentially imposed an unfair penalty by failing to refer to reasonable expenses incurred by supplier when enforcing agreement.	Revised to refer to reasonable expenses.	11.3
12	1(f): potentially misleading reference to rights of parties upon cancellation of the agreement.	Rights and responsibilities of each party clarified.	12
16	1(q): potentially unfair exclusive jurisdiction clause.	Revised to allow consumer to use the courts in country where work carried out.	16
17	Regulation 7: unclear reference to consumer's statutory rights.	Statutory rights explained and consumer informed where to obtain further information.	17

Declaration on front page	Unfair 'read, accepted and understood' declaration.	Deleted.	
Sale and installation agreement:			
2	1(n): potential exclusion of liability for oral representations.	Consumer advised to have any alterations recorded in writing.	2
4	1(b): potentially unfair exclusion of liability for supplier's loss or damage after installation.	Supplier accepts liability for loss or damage caused by its failure to perform its obligations under the agreement.	4
10.4	1(b): exclusion of liability for damage caused to consumer's property by poor work or negligence.	Revised to state that supplier will accept liability for damage that could reasonably have been avoided.	10.4
11	1(p): allowed supplier, but not consumer, to assign the contract.	Either party can assign its rights under the contract.	11
12.1	1(f): allowed supplier to cancel contract for minor breach by consumer.	Both parties given equal cancellation rights.	12.1
12.2	Regulation 7: inappropriate reference to 'liquidation'.	Reference deleted.	12.2
16	1(q): potentially unfair 'exclusive jurisdiction' clause.	Revised to allow consumer to bring an action in country where work performed.	16
17	Regulation 7: unclear reference to consumer's statutory rights.	Revised to explain statutory rights and inform consumer where he/she can obtain further information.	17

<b>Other information</b>	The original complaints concerned contracts used by ATI Ltd and Sabre. The consumer contract business of ATI Ltd was acquired by Protection One (UK) plc. Protection One (UK) plc has a nationwide network of branches, as well as dealerships such as Sabre, which use its contracts.
<b>Undertakings accepted</b>	8 January 2001      Twenty-five terms revised or deleted

<b>Name of business</b>	Roberts Residential Ltd t/a Roberts Property Solutions	<b>Lead TSD</b>	Bournemouth Borough Council
<b>Trading sector</b>	Letting agents	<b>Contract identifier</b>	Tenants' checklist

<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(d) and 1(e): provided for retention of whole deposit if the tenant or landlord withdrew from the agreement.	Revised to provide that the costs incurred by the agent and lost rent will be deducted from the deposit where the tenant withdraws from the agreement. Term further provides that, where the landlord withdraws, the deposit is refundable except where the prospective tenant has been at fault.	1
2	1(i): had the effect of binding the consumer to hidden charges by failing to state the amount of specific charges.	Deleted.	
4	Regulation 7: unclear about a lengthy period of time required for cheque clearance.	Revised to clarify that the agent requires ten banking days for clearance of cheques as this is the period taken by the bank for notification.	3
(a)	Consumer declaration: tenants were required to acknowledge that they had received a copy of the information sheet.	Consumer acknowledgement deleted.	(a)

(b)	1(d), 1(e) and Regulation 7: provided for retention of deposit on cancellation and in these circumstances was also unclear about the costs involved.	Revised to highlight that the deposit may not be repaid in full and may be forfeited as a contribution towards the agency's abortive costs and the landlord's lost rent if the tenant withdraws or gives significantly incorrect or misleading information.	(b)
(d), (f), (i) and (j)	Fees quoted net of VAT.	Revised so that specific fees are quoted inclusive of VAT.	(d), (e), (g) and (h)
(e)	Provided instances of when the agreement could not proceed but these details were hidden in the body of the agreement.	Deleted.	
(h)	Regulation 7: did not reflect what happened in practice in relation to the reference enquiry fee. Fee quoted net of VAT.	Deleted.	
(k)	Regulation 7, 1(i) and 1(e): did not make clear the level of charges arising and thereby bound consumer to hidden costs. Imposed a 7.5% fee at the discretion of the agent and appeared to be a financial penalty.	Deleted.	
(l)	Provided for an administration charge to be levied in circumstances where the consumer was entitled to a full refund of the deposit. Charge quoted net of VAT.	Administration charge deleted.	(i)

Not numbered	1(b): excluded the agent's liability for supplying inaccurate property particulars.	Deleted.	
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<b>Undertakings accepted</b>	21 February 2001	Fourteen terms revised or deleted
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<b>Name of business</b>	Singlepoint (4U) Ltd	<b>Lead TSD</b>	City of Stoke-on-Trent
<b>Trading sector</b>	Telecommunications: mobile phones	<b>Contract identifier</b>	Terms and Conditions of Supply of Cellular Telephone Services

<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	1(i): contract presented in print size which majority of consumers would find difficult to read.	Contract presented in print of acceptable size.	Whole contract

<b>Intelligibility</b>	Intelligibility improved.
<b>Undertakings accepted</b>	21 February 2001

<b>Name of business</b>	Stainbusters Ltd	<b>Lead TSD</b>	Suffolk County Council
<b>Trading sector</b>	Dry cleaning	<b>Contract identifier</b>	Conditions of Sale

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
2	1(n): had potential unfairly to exclude liability for oral representations by requiring all variations to the terms to be in writing.	Advises consumer to request that any changes be put in writing.	2
5	1(b): stipulation that all claims had to be notified to company within seven days may have constituted an unfair time limit on claims.	Consumer is required to notify company of claim within a reasonable time.	5
7	Appeared to read as an unfair enforcement clause.	Deleted.	
8	Regulation 7: use of legal jargon ('waiver').	Clause redrafted in plain language.	7
9	1(q) and Regulation 7: exclusive jurisdiction clause, and unclear reference to consumer's statutory rights.	Revised so that contract is subject to laws of country where work carried out and consumer is advised where to obtain more information about statutory rights.	8

<b>Undertakings accepted</b>	19 February 2001	Five terms revised or deleted
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<b>Name of business</b>	United Advertising Publications plc t/a Exchange & Mart	<b>Lead TSD</b>	Dorset County Council
<b>Trading sector</b>	Publishing: advertising	<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>
1	1(k): gave the supplier a general right to vary the advertisement.	Revised to make it clearer as to which restricted circumstances will enable the supplier to vary the advertisement, and to make it incumbent upon the supplier to contact the consumer in such circumstances where possible, and to clarify the circumstances in which the consumer may cancel the contract. Also a new term (term 3) is included to clarify the supplier's policy on cancellations.	2 and 3
2	Unfair requirement that the consumer make a declaration about compliance with the British Code of Advertising Practice and the Trade Descriptions Act 1968.	Revised to make consumer aware that advertisements must comply with current UK legislation and the British Code of Advertising Practice.	8
3	Regulation 7: term (drafted widely) appeared to require the consumer to indemnify the supplier against any damage, loss or expense incurred as a result of publishing an advertisement.	Revised to make clear that the consumer is responsible for any losses, expenses or costs incurred by the supplier arising out of a published advertisement except where the supplier has acted negligently.	9

4	1(o): the supplier gave no undertaking that an advertisement would be inserted on any particular date or at all.	Revised to make clear that the supplier will not be liable for any loss arising from its failure to publish an advertisement in a specific section, page or issue, or at all, if the failure is caused by circumstances beyond its control.	4
6	1(b), 1(n) and 1(m): sought to exclude the supplier's liability for negligence and consequential loss, introduced a formality requirement, and allowed the supplier the right of final decision in disputes.	Revised to make clear that the supplier will not be liable for errors contained in advertisements where incorrect information has been supplied by the consumer, or where the consumer has failed to correct a proof submitted by the supplier provided that the supplier has allowed the consumer enough time to correct the proof.	5
8	1(e): the interest rate used in this term relating to account facilities could have constituted an excessive penalty.	Revised to clarify that account (credit) facilities will be offered to trade customers only.	14
9	1(q): permitted exclusive jurisdiction.	Revised to make clear that UK law and UK courts will have exclusive jurisdiction in relation to the agreement.	16

<b>Undertakings accepted</b>	31 January 2001	Seven terms revised
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<b>Name of business</b>	The Wedding Photo Company	<b>Lead TSD</b>	Hampshire County Council
<b>Trading sector</b>	Photography	<b>Contract identifier</b>	Terms of Business

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Preamble	1(n): limited supplier's obligations in respect of commitments undertaken by his agents and employees.	Revised to record the supplier's intention that his written terms form the contract.	Preamble
Preamble	1(j): allowed supplier to alter the terms of the agreement.	Deleted.	
2	1(n): required all variations to be in writing.	Revised so that any changes should be confirmed in writing by both parties.	2
3	1(d): permitted non-return of deposit on consumer cancellation.	Revised to state that the consumer's deposit will only be forfeited if the supplier is unable to make an alternative booking for the same day.	3
4	1(b): excluded liability for non-performance of the contract.	Revised to limit the exclusion of liability to failures beyond the supplier's control.	4

5	1(b) and 1(n): had the effect of excluding supplier's liability for unsatisfactory goods and services once full payment had been made, and contained a formality requirement.	Deleted.	
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<b>Undertakings accepted</b>	9 January 2001	Six terms revised or deleted
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### 3 STATISTICAL BREAKDOWN OF ACTION ON CASES BY THE OFT

**TABLE 3.1: BREAKDOWN OF CASES COMPLETED**

<i>Case outcome</i>	<i>Jan-Mar 2001</i>	<i>All cases to end Mar 2001</i>
Advice or warning:	54	1,205
<i>advice to consumers/solicitors</i>	25	
<i>advice to TSOs and CABx</i>	10	
<i>advice to Qualifying Bodies</i>	16	
<i>advice to trade associations</i>	1	
<i>warning letter</i>	2	
'Core' terms	3	257
Defective cases	8	211
Duplicate cases	120	1,286
Enquiries	16	16
Excluded terms	8	332
'Formal' undertakings given	0	13
'Informal' undertakings given	20	588
Not about a contract term	11	168
Other legislation	7	301
Other reasons:	75	498
<i>approach made</i>	38	
<i>no approach made</i>	37	
Referred to Qualifying Bodies	11	97
Terms not considered unfair	10	547
<b>Total</b>	<b>343</b>	<b>5,519</b>

#### 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.

**KEY TO TABLE 3.1 continued/...**

<i>'Advice to TSOs and CABx'</i>	means that OFT letters to TSOs etc are used to advise consumers.
<i>'Advice to Qualifying Bodies'</i>	means that OFT letters to TSOs etc are used to advise suppliers.
<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 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**

<i>Case status</i>	<i>Total at end last quarter (Dec 2000)</i>	<i>This quarter (Jan-Mar 2001)</i>	<i>Total at end this quarter (Mar 2001)</i>
Cases received	5,970	358	6,328
Cases completed	5,176	343	5,519
Cases carried over to next quarter	794		809

## 4 ALPHABETICAL INDEX OF BUSINESSES APPROACHED INDICATING TRADING SECTORS

ATI Ltd - see Protection One (UK) plc

- |   |  |  |
|---|--|--|
| 1   | B&Q plc  | home improvements:<br>fitted kitchens, bathrooms,<br>bedrooms and conservatories |
| 2   | Belle Aire Holiday Park  | holiday chalet rentals   |
| 3   | Construction Plant-hire Association                              | plant hire   |
| 4   | Coomber Security Systems Ltd                                     | security alarm systems   |
| 5   | Co-op Travelcare   | insurance: holiday travel  |
| 6   | East Anglian Motor Auctions<br>(Norwich) Ltd                     | car auctions   |
| Exchange & Mart - see United Advertising Publications plc |  |  |
| 7   | FPDSavills Ltd   | estate agency  |
| 8   | Hi-Lite Window Co Ltd  | home improvements: supply<br>and installation of windows                         |
| Kingfisher plc - see B&Q plc                              |  |  |
| 9   | J.K. Lynch Construction Ltd                                      | building and home improvements   |
| 10  | The London Property Centre Ltd<br>t/a The London Property Centre | letting agents   |
| 11<br>and 12  | Midland Registrations  | personalised number plates   |
| 13  | Motorpoint of Derby  | new and secondhand cars  |
| 14  | National Cycling Forum   | passenger transport  |

PlumbFast Services Ltd - see Pronto Maintenance Services Ltd

15	Portland Enterprises (CI) Ltd t/a Television X - The Fantasy Channel	leisure services: subscription television programmes
16	Pronto Maintenance Services Ltd t/a PlumbFast Services Ltd	home improvements: plumbing
17	Protection One (UK) plc	security alarm systems
18	Roberts Residential Ltd t/a Roberts Property Solutions	letting agents
	Sabre - see Protection One (UK) plc	
	Savills - see FPDSavills	
19	Singlepoint (4U) Ltd	telecommunications: mobile phones
20	Stainbusters Ltd	dry cleaning
	Television X - The Fantasy Channel - see Portland Enterprises (CI) Ltd	
21	United Advertising Publications plc t/a Exchange & Mart	publishing: advertising
22	The Wedding Photo Company	photography

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

### **BIRMINGHAM CITY COUNCIL**

Midland Registrations (two entries)

### **BOURNEMOUTH BOROUGH COUNCIL**

Roberts Residential Ltd t/a Roberts Property Solutions

### **COVENTRY, CITY OF**

J.K. Lynch Construction Ltd

### **DERBY CITY COUNCIL**

Motorpoint of Derby Ltd

### **DORSET COUNTY COUNCIL**

United Advertising Publications plc t/a Exchange & Mart

### **ESSEX COUNTY COUNCIL**

The London Property Centre Ltd

### **HAMPSHIRE COUNTY COUNCIL**

B&Q plc  
Hi-Lite Window Co Ltd  
Protection One (UK) plc  
The Wedding Photo Company

### **JERSEY, STATES OF**

Portland Enterprises (CI) Ltd t/a Television X - The Fantasy Channel

### **MANCHESTER, CITY OF**

Co-op Travelcare

### **NORFOLK COUNTY COUNCIL**

Belle Aire Holiday Park  
East Anglian Motor Auctions (Norwich) Ltd

**SOMERSET COUNTY COUNCIL**

Coomber Security Systems Ltd

**STOKE-ON-TRENT, CITY OF**

Singlepoint (4U) Ltd

**SUFFOLK COUNTY COUNCIL**

Stainbusters Ltd

**WALTHAM FOREST, LONDON BOROUGH OF**

Pronto Maintenance Services Ltd t/a PlumbFast Services Ltd

**WESTMINSTER, CITY OF**

Construction Plant-hire Association

FPDSavills

National Cycling Forum

## 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	
	<i>a Excluding liability for defective or misdescribed goods</i>	7
	<i>b Excluding liability for poor services, or work and material</i>	15
	<i>c Restricting amount or type of liability</i>	10
	<i>d Time limits on claims</i>	4
	<i>e Excluding consumers' right of set-off</i>	4
	<i>f Excluding or restricting liability for delay</i>	5
	<i>g Excluding or restricting liability for a supplier's non-performance</i>	1
	<i>h Excluding or restricting liability via guarantee</i>	1
Schedule 2:	paragraph 1(c) – Binding consumers while allowing suppliers 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	10
Schedule 2:	paragraph 1(f) - Cancellation clauses	12
Schedule 2:	paragraph 1(g) - Supplier's right to cancel without notice	0
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	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	
	<i>a Clauses disclaiming liability for employees' statements</i>	9
	<i>b Formality requirements</i>	4
Schedule 2:	paragraph 1(o) - Binding consumers where a supplier defaults	1
Schedule 2:	paragraph 1(p) – Supplier's right to assign without consent	2
Schedule 2:	paragraph 1(q) - Restricting the consumer's remedies	5
Other categories of unfair terms		
	<i>a Allowing a supplier to impose an unfair financial burden</i>	6
	<i>b Transferring unfair risks (eg: by indemnities) to consumers</i>	1
	<i>c Onerous enforcement clauses</i>	3
	<i>d Excluding consumers' right to assign</i>	1
	<i>e Consumer declarations about contractual circumstances</i>	5
	<i>f Excluding consumers' non-contractual rights</i>	0
	<i>g Delivery at supplier's discretion</i>	0
	<i>h Other</i>	2
Regulation 7 - Plain and intelligible language		29

**Total 157**

## 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 subdivided 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).