

Unfair contract terms bulletin 17

Case reports July to September 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.

March 2002

Contacting the OFT

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

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Unfair contract terms bulletins

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

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The Regulations

Copies of the *Unfair Terms in Consumer Contracts Regulations* (ref: SI 1999/2083), which include the Schedules referred to in this bulletin, can be purchased, price £2.00, from Stationery Office bookshops, or by post from:

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

Copies are also available on the internet at:
www.hms.o.gov.uk/si/si1999/19992083.htm

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CONTENTS

<i>Chapter</i>		<i>Page</i>
1	Introduction	1
2	Case reports	3
3	Statistical breakdown of action on cases taken by the OFT	75
4	Alphabetical index of businesses approached	77
5	Geographical index of businesses by local authority	79
6	Categories of unfair term	82
 <i>Annexe</i>		
A	Undertaking given by Autonet 2000 Ltd	84
B	Undertaking given by Deltakey Ltd t/a Florida Direct	85

1 INTRODUCTION

- 1.1 This is issue 17 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 the power to seek an order forbidding any further use of it. However, cases are normally resolved informally when he accepts undertakings in lieu of court proceedings.
- 1.2 This bulletin covers the period from July to September 2001. Part 2 contains reports of 29 cases completed by the OFT. Two hundred and thirty-six contract terms were abandoned or amended as a result of enforcement action by the OFT, in all cases by means of acceptance of undertakings. This bulletin also includes details of two cases completed by other bodies, in which a further six terms were revised.

Guidance on unfair terms in tenancy agreements

- 1.3 On 8 November 2001, the OFT published guidance on unfair terms in assured and assured shorthold tenancy agreements. The guidance is available on the OFT website: www.offt.gov.uk
- 1.4 The aim of the guidance is to help ensure fair and equitable relations between landlords and tenants and to explain the complex interface between the Unfair Terms in Consumer Contracts Regulations and landlord and tenant law. Its purpose is not to regulate the market but to serve as a guide to the present law to help the market function in a clear, fair and up-to-date way. The guidance deals with potential unfairness only in assured and assured shorthold tenancy agreements in England and Wales. We will consider the need for separate guidance to other types of tenancy agreements if the evidence of unfairness to tenants arising from contracts covered by the Regulations (principally, concluded since July 1995) appears to justify the work involved. The guidance also deals, where appropriate, with the pre-tenancy agreements which often precede

an assured shorthold tenancy. The guidance assumes that, in general, landlords can be considered 'suppliers' and private tenants 'consumers' for the purposes of the Regulations.

- 1.5 The guidance is designed to assist landlords, letting agents, and suppliers of standard or model terms in meeting the requirements of the Regulations. But it will also be useful to housing advisers. The OFT expects those who use or supply standard pre-formulated tenancy agreements to review their terms and conditions in the light of the guidance and amend or remove any unfair terms from these contracts. The OFT will keep the guidance under review. The OFT has already asked publishers of model tenancy contracts to revise their terms. The most recent example of a pre-tenancy contract of the type discussed in the guidance and on which work has been completed is Spicer haart Group (case report 25).

Cases of note

- 1.6 As mentioned above, the bulletins now include cases taken by our enforcement partners. There are two in this bulletin: Arun Estate Agencies (case report 2) and Kestrel Alarms (case report 15), both taken by West Sussex County Council.
- 1.7 Another case of note is David Lloyd Leisure (case report 8). This health and fitness club has revised restrictions on liability and reduced the notice period required for cancellation. The OFT intends to publish guidance on unfair terms in fitness and health club contracts shortly. Complaints about such contracts form our fourth largest postbag. The guidance will include examples of terms with potential for unfairness in these contracts and how they have been changed after discussion with the OFT.

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.

1 Aerial Systems

Name of business	Aerial Systems	Lead TSD	Surrey County Council
Trading sector	TV/FM/satellite service and installation	Contract identifier	Invoice

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Front of contract – Terms & Conditions ‘Strictly Net’	Regulation 7: potentially unclear to consumers that the full contract price excluded VAT.	Deleted.	
‘We reserve the right to remove all equipment not paid for’	Had potential to constitute a non-financial penalty as it allowed the supplier to take unduly severe enforcement measures against consumers.	Deleted.	
Front of contract – completion and satisfaction statement	1(b): could lead consumers to believe that they had no right to challenge faulty workmanship. Constituted a declaration about contractual circumstances which might or might not be true.	Deleted.	
Front of contract – statement that guarantee was in addition to and did not detract from statutory rights	Regulation 7: such a statement was effectively meaningless as it did not convey to consumers the nature of their rights.	Revised to outline statutory rights and to inform consumers where they can obtain further information about them.	

Conditions of Guarantee	1(b): contained terms with the potential to exclude the supplier's liability in the event of a breach of contract.	Revised so that guarantee terms do not unfairly exclude supplier's liability for breach of contract.	Guarantee Terms
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Undertakings accepted	17 July 2001	Five terms revised or deleted
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Arun Estate Agencies Ltd t/a Cubitt & West

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

Name of business	Arun Estate Agencies Ltd t/a Cubitt & West	Lead TSD	West Sussex County Council
Trading sector	Estate agency	Contract identifier	Sole Agency Agreement

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
3	Regulation 7: the meaning of the phrase 'as soon as a sale is agreed' was unclear.	Clarified by substituting the phrase 'as soon as solicitors are instructed'.	3
5	1(b): had the potential to restrict liability for breaches of contract.	Revised by removing the word 'irrevocable'.	5
5	1(e): it was unclear whether interest was calculated on a monthly or annual basis, and term could have constituted a financial penalty.	Revised by inserting 'per annum' after the interest rate.	5

Undertakings accepted	August 2001	Three terms revised
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Name of business	Ashbourne Management Services Ltd	Lead TSD	Solihull Metropolitan Borough Council
Trading sector	Financial services: credit facilities for health and fitness clubs	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Declaration on signature page	Unfair 'read and understood' declaration.	Revised to state that consumer has been advised to read the terms and conditions.	Declaration on signature page
1B	1(b): statement that the consumer was entitled to no refund of monies on termination of membership may have misled the consumer into believing that he/she could not claim damages if the club was in breach of contract.	Revised to make clear that the consumer's legal rights are not affected.	1B
3A	1(d): by providing that the subscription fee was non-refundable at the discretion of the club, the term failed to recognise the consumer's right to cancel the contract if the club was in serious default.	Revised to make clear that the fee can be refunded if the club ends the agreement without reasonable cause and has been negligent or is in breach of contract.	3A

Undertakings accepted	4 September 2001	Three terms revised
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Name of business	Autonet 2000 Ltd	Lead TSD	Leicester City Council
Trading sector	Car alarms	Contract identifier	Standard Installation Certificate

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	1(i), 1(h) and Regulation 7: this 'negative option' term was challenged on a number of grounds. Its meaning was unclear and it sought to levy an additional charge. In addition, the method used to levy the charge and enforce an automatic renewal of the service was a negative option. This meant consumers had to validate that they did not want to renew the service, as opposed to asking for it if they did want it.	Contract no longer in use - see 'Other information' box below.	

Other information	Autonet gave the Director General an undertaking on 24 August 2001 that it shall not rely upon or take advantage of any terms having potential for unfairness in the company's standard installation certificate and its terms and conditions or any terms having the same or similar effect, with specific reference to the term referred to above. In addition, Autonet indicated that the contract in question would not be used as it no longer installs car alarms. The undertaking is reproduced at Annexe A.	
Undertakings accepted	4 September 2001	One term withdrawn

Name of business	B-Safe Security Systems	Lead TSD	Nottinghamshire County Council
Trading sector	Security alarm systems	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Service Contract (second sentence)	1(b): had the potential unfairly to exclude the supplier's liability for poor quality or badly installed systems.	Revised to provide that the supplier will replace or repair at its expense any faults that arise within 12 months of the date of installation.	7.1
Conditions (second sentence)	1(f): stated that 'if a contract is terminated (for whatever reason) before the contract period has elapsed, the full payment left on the contract will become due for immediate payment'. The term failed to recognise the consumer's right to compensation if the cancellation was due to the fault of the supplier. Also potentially allowed the supplier to recover a greater sum than needed to cover its costs and losses where the cancellation was due to the fault of the consumer.	Either party can terminate the agreement if the other party commits a serious or persistent breach and fails to remedy it within a reasonable time.	9.3
Conditions (third sentence)	Regulation 7: the meaning of 'termination of contracts should be received in writing...28 days before any service visit becomes due with full payment' was unclear. This could have been interpreted to mean that notice had to be received exactly 28 days beforehand for termination to be effective.	Either party is obliged to give at least 28 days' notice to terminate the contract.	9.2

Conditions (sixth sentence)	1(b): the wording 'Cost of any parts are payable by the customer' had the potential unfairly to exclude the supplier's liability for defective goods or poor workmanship.	Revised to provide that the supplier will replace at its own expense or repair at its option parts that malfunction within 12 months of the date of installation of the system.	7.1
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Other information	Intelligibility was improved with clearly numbered paragraphs.		
Undertakings accepted	3 August 2001	Four terms revised	

Name of business	British Trust Hotels Ltd (formerly North British Trust Hotels Ltd)	Lead TSD	City of Edinburgh Council
Trading sector	Hotel breaks	Contract identifier	Easy Breaks Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Availability	Regulation 7: lack of clarity as to whether availability constraints for packages applied prior to or after booking.	Revised to provide that the reference to availability of rooms and published rates is only applicable up to the point of confirmation of the booking.	Availability
Payments	Regulation 7: lack of clarity in prepayment and pricing information.	Revised to clarify that prepayment is required for all bookings.	Payments
Prices	1(l): provided that prices were subject to alteration without prior notice.	Revised to provide that in circumstances where prices are altered after the booking has been confirmed the consumer may cancel the booking and obtain a full refund, plus compensation where appropriate.	Prices
Children's Reductions	Regulation 7: lack of clarity in term dealing with reduced charges for children.	Revised to clarify the different rates available for children's bookings.	Children's Reductions
Group Bookings	Regulation 7: lack of clarity in term dealing with free places for group bookings.	Deleted.	

Special Requests	1(n): provided that special requests could not be guaranteed.	Revised to provide that special requests made prior to confirmation and accepted by the supplier shall be met, and that reasonable efforts will be made to meet special requests made after confirmation.	Special Requests
Complaints	1(b): excluded the supplier's liability for problems which were not notified to the supplier within 14 days.	Deleted.	
Accuracy of Information	1(b): excluded liability for errors in the brochure information. Provided for the supplier to cancel the booking at any time with liability only to return the consumer's prepayments or offer an alternative booking. 1(k): provided for the supplier to alter the arrangements detailed in the brochure.	Exclusion of liability for errors in the brochure information deleted. Term revised to provide that if the supplier amends or cancels a booking after confirmation the consumer shall be entitled to any rightful compensation in addition to either accepting the change, taking an alternative hotel or dates, or receiving a full refund. Revised to provide that the consumer shall be informed of any alterations to the arrangements detailed in the brochure at the time of booking.	Accuracy of Information

Other information	British Trust Hotels proposed the introduction of a number of new terms to their 'Easy Breaks Terms and Conditions' during the course of the OFT's enforcement action. Comprehensive advice was given to ensure that those terms also met, in the OFT's view, the requirements of the Regulations.	
Undertakings accepted	25 September 2001	Eight terms revised or deleted

Name of business	Classique Windows and Conservatories	Lead TSD	Stockton-on-Tees Borough Council
Trading sector	Home improvements: double glazing	Contract identifier	Conditions of sale

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2	1(i): may have unfairly bound consumer to hidden terms by referring to a separate guarantee form. 1(b): guarantee operated as an exclusion clause.	Revised by placing the guarantee on the same page as the conditions rather than on a separate form. Term includes a statement drawing to the consumer's attention the fact that statutory rights are not affected, and is accompanied by an explanation as to where information on those rights can be found.	2
3	1(b) and Regulation 7: inconsistent with the supplier's obligation to deliver goods and provide services within a reasonable time. Legal terminology ('time is not the essence') may not have been readily understood by consumer.	No longer excludes liability for delay caused by the supplier, and revised to delete the phrase containing legal jargon.	3
5	1(k): supplier reserved the right to vary design and/or specification of any installation without prior notice to the consumer.	Revised to state that no significant variations will be made without the agreement of the consumer.	5
10	1(b): excluded liability for any breakage of glass after installation.	Revised to make an exception for breakage caused by supplier, or caused by manufacturing design or design fault.	10

11	1(n): entire agreement clause had the potential to override any agreement made between the supplier's representative and the consumer whether oral or otherwise.	Revised to state that any amendments to the contract should be confirmed in writing.	11
13(a)	1(f): had potential to prevent consumer from cancelling even when the supplier was in breach of contract, while at the same time allowing the supplier to cancel.	Revised to specify that the supplier will cancel only in the case of a survey reporting adverse structural conditions, and will give a full written explanation and refund consumer's deposit.	13(a)
13(c)	Regulation 7: meaning unclear - appeared to allow cancellation whereas term 13(a) prohibited it.	Reference to cancellation deleted.	13(c)
Guarantee	1(b) and Regulation 7: exclusion of liability for damage to products was unclearly expressed and had potential to exclude supplier's own liability.	Revised to make it clear that exclusion applies only to damage caused by consumer.	Guarantee

Undertakings accepted	14 August 2001	Eight terms revised
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Name of business	David Lloyd Leisure Ltd	Lead TSD	London Borough of Richmond-upon-Thames
Trading sector	Health and fitness clubs	Contract identifier	Membership Agreement; Rules and Regulations of Membership

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
8d	Required members to give six months' written notice if they wished to cancel their membership.	Revised so that the period of written notice required is only three months.	8d
11c	1(b): exclusion of liability for damage to the contents of lockers where the company had removed the contents after the lockers had been used overnight and not been paid for.	Revised so that members may claim the contents of the lockers from the club reception for up to six weeks after removal.	11c
12a	1(b): exclusion of liability for any loss or damage however caused to property belonging to members or guests.	Revised so that the company's liability is limited to any damage or loss suffered as a result of its negligence or failure to take reasonable care.	12a

Other information	The company undertook not to rely on terms 14b and 16c to seek to exclude liability for negligence or failure to take reasonable care with regard to the use of swimming pools and car parks. The company also made revisions to other terms that were not challenged, and these do not raise any new concerns. Term 15 of the Membership Agreement required the company to give its members seven months' notice in writing of any change. As a consequence of this, all revisions, except for term 8d, became effective from 9 February 2002. The revision to term 8d became effective from 1 July 2001. Term 15 has been revised so that the company will be required to give only four months' notice of any changes.	
Undertakings accepted	17 August 2001	Three terms revised

Name of business	Deltakey Ltd t/a Florida Direct	Lead TSD	Essex County Council
Trading Sector	Package travel	Contract identifier	Booking conditions

Other Information	<p>Information received from trading standards and confirmed by the company indicated that it had closed to new business and ceased to trade altogether in September 2001.</p> <p>The managing director of the company signed a written undertaking (see Annexe B) that the company would not use, recommend for use, enforce or attempt to enforce terms identified as unfair. Those terms are terms 1, 3, 4, 5, 7, 8, 9(1), 9(2), 9(3) and 9(4) of the standard terms and conditions headed 'Booking Conditions' and terms 2, 3, 4, 5 and 6 of the standard terms headed 'Your Holiday Contract'.</p>
Undertakings accepted	12 July 2001

Name of business	Diamond Seal Ltd	Lead TSD	West Yorkshire Trading Standards Service
Trading sector	Home improvements: supply and installation of windows	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	Regulation 7: statement that consumers' statutory rights were not infringed was unlikely to mean much to consumers.	Revised to outline the nature of consumers' statutory rights and to inform them that they can obtain further information on those rights from a trading standards department.	1
2 (first two and last sentences)	1(n): exclusion of liability for oral statements and requirement that all variations be in writing.	Revised to record the supplier's intention that the written terms and signed order documents form the contract, and warning that consumers should ask for any changes they require to be put in writing to avoid future problems.	2
2 (third sentence) and 3	1(f): provided for unequal cancellation rights in favour of the supplier who could cancel at any time without penalty, whereas consumers could only cancel within seven days and upon payment to the supplier. In addition, acceptance of the contract was said specifically to be subject to survey.	The supplier's discretion to cancel the contract at any time has been removed. Term revised so that the supplier will conduct the survey within 14 days, provide written reasons for cancellation and refund the consumers' deposits. Consumers can cancel within seven days upon payment only of the supplier's reasonable losses and expenses thus far.	3, 4 and 6

2 (fifth sentence)	1(e): a potentially unfair penalty when read with the second sentence of term 3 unless compensation rights were coupled with an acknowledgement of duty to mitigate.	As indicated above, revision provides that only reasonable losses can be recovered.	3 (first sentence)
6	Effect of term was that if consumers did not take delivery within five weeks of the order they were obliged to pay what they owed to the supplier without further notice from the supplier. 1(b): also had the potential to exclude consumers' right to set-off.	Revised so that if consumers cannot take delivery on the date agreed they and the supplier will agree on a new date within 14 days – if the consumers fail to make a new appointment within this period, the supplier may give them 14 days' notice that such action/inaction will be treated as a breach of the contract and result in termination and that the supplier will seek to recover any reasonable losses incurred.	10
9	1(l): potentially unfair right to increase the price.	Deleted.	
10	1(b): could have had the effect of an exclusion of liability by deeming alterations to constitute a separate contract.	Revised so that it is clear that supplier accepts liability for alterations resulting from its negligence and/or breach of contract.	10
12	1(k): permitted the supplier to change what was supplied without notice.	Revised so that significant changes will require the consumers' consent. Consumers will have the option of conciliation and refund of prepayments.	12
18	1(b): had the effect of an exclusion of liability to take reasonable skill and care as the supplier undertook only to keep superficial damage to a minimum.	Revised so that supplier accepts liability for damage caused by its failure to carry out work to a reasonable standard.	20
Undertakings accepted		20 July 2001	10 terms revised or deleted

Name of business	Econex Ltd t/a Cordula	Lead TSD	Cheshire County Council
Trading sector	Home improvements: automatic sun canopies	Contract identifier	Terms of business

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	1(n): entire agreement clause stated that no variation of or addition to the work should have effect unless agreed in writing under the signature of a duly authorised officer of the company.	Revised to invite consumers to ensure that they ask the supplier for any changes they require to be put in writing.	1
5	1(b) and Regulation 7: excluded liability for all delays, however caused. Use of legal jargon ('time...of the essence').	Revised to state that the supplier will make every effort to complete the work on time (or in a reasonable time if no date has been agreed). In circumstances beyond its control, the supplier will complete the work as soon as reasonably possible. Legal jargon removed.	5
6	1(f): purported to prevent cancellation by the consumer by requiring the supplier's consent to cancel.	Revised to state that either party shall have the right to terminate the contract without penalty within seven days and, in the event of such termination by either party, the supplier shall refund to the consumer all sums paid by the consumer.	6

7	1(f): allowed the supplier to cancel at any time at or after commencement of work regardless of whether the survey was genuinely adverse or not.	Revised to specify that the survey will be completed within a maximum of 14 days after entering into the agreement. Revised to specify that the supplier will reserve the right to cancel the contract in the case of a survey reporting adverse structural conditions after giving a full written explanation. In such circumstances, the supplier will also refund the consumer's deposit money.	7
8	1(k): allowed supplier to vary the specification, without reference to the consumer.	Revised so that changes in product specification will only be made if they are necessary to meet current building standards, comply with safety requirements or comply with other legislation. No changes will be made that materially affect performance or appearance.	8
Statement at the end of terms	Regulation 7: statement that the terms and conditions do not affect the consumer's statutory rights did not indicate the nature of those rights.	Revised to clarify that the consumer's statutory rights relate to the return of goods and claims in respect of losses caused by any negligence or failure on the part of the supplier to carry out its obligations.	Statement at the end of terms
Statement on front of contract	Required consumers to state that they have read the conditions when they may not have.	Revised to advise consumer to read terms and conditions carefully before acceptance.	Statement on front of contract

Intelligibility	Some legal jargon removed.	
Undertakings accepted	4 September 2001	Seven terms revised

Name of business	1 st National Tradesmen Ltd	Lead TSD	Oxfordshire County Council
Trading sector	Emergency household repairs (plumbing, heating, blocked drains)	Contract identifier	Terms and conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
The service:			
4	1(b): had the potential to exclude liability for delays caused by factors within the control of the supplier, such as availability of personnel.	Revised so that, in the event of circumstances beyond the supplier's control, the supplier will contact the consumer to agree an alternative time.	2.3
Charges:			
1(b)	1(n): implied that oral agreements were excluded.	Revised so that the standard hourly rate will be quoted to the consumer when an appointment is made by telephone. Term 3.1 allows oral agreement of a fixed price.	3.2
2	Allowed the supplier to charge for time spent collecting parts when this should not have been necessary.	Revised to make clear that the supplier is entitled to charge for collecting parts only in cases where it could not reasonably have foreseen that a particular part would be required.	3.5
5	1(n): implied that oral agreements were excluded.	Revised to make clear that the potential unfairness (excluding oral agreements) has been deleted.	3.9
7	1(l): sought to vary the price agreed or introduce uncertainty about the overall charges.	Deleted.	

8	1(b): had the potential for supplier to exclude liability where it was at fault, and to deny consumer the benefit of his/her statutory rights under the Supply of Goods and Services Act 1982.	Revised to make clear that liability is not excluded for defects caused by the supplier's own fault.	6.8
9	Introduced uncertainty about the overall charges, and was imprecise as to the circumstances in which additional charges would be incurred.	Deleted.	
10	Regulation 7: unclear in meaning and as to whether additional charges had been brought to consumer's attention at the time of contracting.	Revised to make clear that the supplier will notify the consumer of any additional charges for special tools, plant or equipment, before they are incurred.	3.11
11	Regulation 7: potential for misunderstanding as to whether VAT was included in estimates and quotations.	Revised to make clear that all prices quoted are exclusive of VAT.	3.17
Payment:			
2	1(b) and Regulation 7: potential to exclude right of set-off, and unclear as to the amount of the charge for late payment.	Revised so that term 4.2 makes clear that payment is due when the service has been completed to the consumer's satisfaction, and the charge for late payment is made clear in term 4.4.	4.2 and 4.4
3	1(b): contained potential to exclude right of set-off.	Exclusion of right of set-off deleted, and term revised to make clear that, in the event of late payment, the supplier may charge an administration fee of £5 (term 4.10). If the supplier engages the services of solicitors or collection agencies, it may charge and recover all reasonable costs and expenses from the consumer (term 4.11).	4.10 and 4.11

4	1 (b): potential to exclude right of set-off by requiring payment in advance.	Revised so that the supplier will advise the consumer of the need for advance payments before agreeing to carry out the services.	4.5
5	Regulation 7: unclear as to the requirement to make payment in cash.	Revised by deleting the reference to making payment in cash.	4.6
6	1(e): imposed high penalty charges if supplier received a dishonoured cheque.	Revised to make clear that the consumer must reimburse the supplier for any bank charges it incurs.	4.7
8	1(n): entire agreement clause.	Revised to make clear that account facilities will be provided on the terms and conditions stipulated by the supplier in advance.	4.8
11	Appeared to be an unfair enforcement clause.	Deleted.	
14	1(b): had the potential for supplier to exclude liability where it was at fault, and to deny consumer the benefit of his/her statutory rights under the Supply of Goods and Services Act 1982.	Revised to make clear that the supplier will accept liability for damage resulting from its negligence or that of its servants and agents.	6.7
15	1(b): had the potential for supplier to exclude liability where it was at fault, and to deny consumer the benefit of his/her statutory rights under the Supply of Goods and Services Act 1982.	Revised to make clear that liability is accepted for damage caused by the fault of the supplier.	6.7
16	1(b): as above.	As above.	6.7
17	1(b): as above.	As above.	6.2
18	1(b): as above.	Revised so that reference to 'exclusion of liability' has been deleted.	6.6

19	1(b) as above, and 1(m): gave the supplier the exclusive right to determine whether damage was 'unavoidable'.	Revised to make clear that liability is accepted for any damage caused by the fault of the supplier, and to delete reference to 'unavoidable damage'.	6.7
20, 21, 22 and 23	1(b): as above.	Revised to make clear that the period of the guarantee was extended to three months, and the terms make clear that the consumer also has statutory rights and explains what these are.	7.1, 7.2, 7.3 and 7.4
24	1(b): as above	Deleted.	
25	1(b): as above	Deleted.	
27	Regulation 7: use of phrase 'the customer's statutory rights are unaffected'.	Revised to make clear that the consumer's statutory rights are not affected by the guarantee provided by the supplier, and to explain what those statutory rights are.	7.1
Avoiding complaints:			
5	1(b): appeared to restrict the supplier's liability.	The 'acceptance form' has been replaced by a 'worksheet/form of authority' that only requires the consumer to sign that the work has been completed. Original term deleted, and a new term included (term 9) to make clear that comments or complaints about the services should be notified to the supplier by telephone.	9

Worksheet/Form of Authority			
Read and understood declaration	Use of 'read and understood' declaration.	Revised to make clear that consumers should read terms and ask for clarification of any terms not understood before signing the contract.	
'Confirmation of satisfaction' declaration	1(b): had the potential for the supplier to exclude its liability for unsatisfactory work.	Revised to make clear that the consumer is signing only to confirm that the work has been completed.	

Other information	The supplier was using terms that were very similar to those used by Abbeyflow Ltd, and these contained numerous unfair terms. The OFT obtained formal undertakings from Abbeyflow Ltd and its directors in June 1996, and these are referred to in <i>Bulletin 2</i> (September 1996). 1 st National Tradesmen Ltd has revised the whole of its contract terms.		
Undertakings accepted	8 June 2000		32 terms revised

13

**Initial Electronic Security Systems Ltd
(formerly Shorrock Security)**

Name of business	Initial Electronic Security Systems Ltd (formerly Shorrock Security)	Lead TSD	Lancashire County Council
Trading sector	Security alarm systems	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Prices	1(l) and Regulation 7: gave the supplier a potentially unfair right to increase the price in the event of delayed performance, and did not meet the requirement for plain language.	Deleted.	
Access	1(l): gave the supplier an unfair right to increase the price if the work had not been completed due to factors which were not the fault of the consumer.	Revised so that the consumer only has to pay for any additional costs incurred as a result of delays caused by the consumer unreasonably hindering access.	3.6
Notification of Faults	1(b): unfairly excluded liability for poor installation and defective materials.	Revised to provide that consumer will not have to pay when failure is caused by poor quality workmanship or materials.	2.1
Third Party Charges	Unfairly made consumer liable for third party costs that may not have been his/her fault and may have been attributable to supplier.	Consumer only liable if he/she has failed to operate the system in accordance with the supplier's instructions.	3.5

Additional Work Required	1(b): had the potential to limit the consumer's legal rights unfairly in the event of delay if the supplier was in breach of contract. The term allowed for an additional charge to be made if delays were caused by the supplier's contractors. The term also allowed the supplier to carry out substandard work and then make an additional charge to repair it.	Consumer only liable for increased charges if the consumer or his contractors cause delay by unreasonably hindering access to the premises. Consumer no longer liable to pay for work carried out by supplier to repair substandard work.	3.6 and 2.1
Main-tenance	Regulation 7: failed to specify the frequency of maintenance visits.	Frequency of maintenance visits clearly stated.	2.2 and 2.3
Monitoring (term 1)	1(m): allowed supplier to decide what action to take in the event of an alarm signal being received.	Revised to provide that the supplier will take such action as is reasonably necessary.	2.4
Monitoring (term 2)	1(b): unfairly obliged the consumer to pay additional costs if police response was withdrawn, irrespective of whether this was due to the consumer's fault.	Consumer only liable for additional costs if police response is withdrawn as a result of consumer failing to operate the system properly.	3.7
Monitoring (term 4)	1(b): unfairly allowed the supplier to cancel the contract without liability to the consumer when it was in breach of contract.	Revised to provide that liability does not arise where delays or failures are caused by circumstances beyond the parties' control. Where such circumstances continue for three months, the other party may cancel the contract.	9

Terms of payment	1(b) and 1(e): the requirement that all payments had to be made on delivery or on the completion date, which the supplier decided, had the potential to limit unfairly the consumer's right to set-off. Term also provided for potentially unfair rate of interest on late payments.	Payment is due within 21 days of the completion date, which is certified by both consumer and supplier, thereby giving the consumer an opportunity to exercise his/her right to set-off. Interest rate on late payments reduced.	3.1 and 4.1.5
Charges	1(l): gave the supplier a potentially unfair right to increase its charges at a time when the consumer was unable to cancel the contract.	Deleted.	
Delivery and installation	1(b), 1(o) and Regulation 7: potentially unfair exclusion of the supplier's liability for delay. Where installation could not be completed for reasons beyond the supplier's control, the consumer was still required to pay 90% of the total price. The clause was not expressed in plain language.	Revised so that term only excludes liability for delay if it is beyond the supplier's control. Requirement for payment of 90% of total price deleted and term redrafted in plain language.	2.5
Guarantee	1(b): the guarantee failed to give the consumer the protection afforded by his/her ordinary legal rights.	Guarantee redrafted and makes it clear that it is in addition to the consumer's statutory rights.	2.1
Cancellation	1(f) and Regulation 7: prevented the consumer cancelling the contract once the estimate had been accepted. Other terms allowed the supplier to cancel the contract. Also, the term was not drafted in plain language.	Deleted.	

Limits of liability	1(b): purported to restrict the supplier's liability to an extent not permitted by statute, and imposed a potentially unfairly low limitation of liability for other breaches.	Revised in accordance with statutory requirements, and limitation of liability raised. (See specific reservations).	5.2.1
Consents	Regulation 7: the type of 'consents' required was not made clear.	Deleted.	
Right of assignment	Potentially unfair restriction of the consumer's right to assign the contract.	Consumer may assign his/her rights under the contract.	7
Retention of title	Onerous enforcement clause allowing the supplier to enter the consumer's premises and repossess the goods.	Revised to allow the supplier to enter the consumer's premises at reasonable times to collect the equipment, exercising all reasonable care.	8.2.2
Force majeure	Regulation 7: not expressed in plain language.	Redrafted in plain language.	9
Termination for breach of agreement	1(f): provided for unequal cancellation rights. Also unfairly allowed the supplier to terminate any other contracts if the consumer breached this agreement.	Both parties can terminate the contract if the other commits a breach which cannot be remedied within seven days.	10
Variation	1(n): constituted an unfair entire agreement clause.	Consumer advised to ensure that any variations are noted in writing.	11

Specific reservations	The Director General's position was reserved in respect of the limitation of liability to £500,000 contained in term 5.2.1, and in respect of term 12 dealing with the Contracts (Rights of Third Parties) Act 1999.	
Undertakings accepted	3 July 2001	21 terms revised or deleted

Name of business	International Paper Converters Ltd t/a Cheque Changers	Lead TSD	London Borough of Redbridge
Trading sector	Financial services	Contract identifier	Power of Attorney Form

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Second paragraph	<p>1(b): made consumer liable to make good losses suffered by supplier which were caused by supplier's negligent handling of the cheque. Also prevented consumer from informing drawer of cheque that it had been assigned to the supplier for encashment.</p> <p>Regulation 7: use of legal terminology 'irrevocably indemnify'.</p>	<p>Revised to exclude consumer from making good losses caused by supplier's negligence. Consumer allowed to inform drawer of cheque of assignment in event of the cheque being returned unpaid and the consumer becoming liable for the full amount of the cheque.</p> <p>Words 'irrevocably indemnify' removed.</p>	Second paragraph
Third paragraph	<p>1(e): demanding immediate repayment from the consumer without allowing him/her to make enquiries as to why the cheque had not been honoured (see above term) meant the term operated as an unfair penalty.</p> <p>Also made consumer liable for all costs on an indemnity basis together with interest and 'other expenses'.</p> <p>1(b): demanding repayment where the cheque had not been honoured due to negligent handling of it by the supplier amounted to an unfair limitation of liability.</p>	<p>Revised to allow the consumer a reasonable period of time to make enquiries with the drawer as to why the cheque had been returned unpaid.</p> <p>Revised term allows supplier to recover a reasonable amount to cover its legal costs.</p> <p>Amendments to above term removed exclusion of supplier's liability and permitted disclosure to drawer that cheque had been assigned.</p>	Third paragraph

Fifth paragraph	The wording of the term was misleading and ambiguous as it suggested that a mere breach of the agreement would result in a criminal prosecution. This did not accurately reflect the criminal law provisions alluded to. Could have had the effect of making a consumer meet his/her obligations when it was not in his/her interests because of the perceived threat of a criminal sanction.	Term was rewritten to reflect more accurately the provisions of the criminal law.	Fifth paragraph
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Undertakings accepted	11 July 2001	Three terms revised
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Kestrel Alarms Ltd

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

Name of business	Kestrel Alarms Ltd	Lead TSD	West Sussex County Council
Trading sector	Security alarm systems	Contract identifier	Sale and Maintenance Agreement

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Heading	Regulation 7: not written in plain and intelligible language.	'Outright' was deleted from the contract heading.	Heading
Agreement	1(b) and Regulation 7: excluded supplier's liability for negligence and defective goods, and was not expressed in clear language.	Revised so that term no longer excludes liability for negligence or defective goods. Paragraph shortened and split into shorter sentences.	Agreement
Installation	Supplier retained ownership of the external bell cover, with potential for imposing an unfair financial burden.	Clause relating to retention of title to bell cover deleted.	Installation

Undertakings accepted	19 July 2001	Three terms revised
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Name of business	Lombard North Central plc	Lead TSD	Surrey County Council
Trading sector	Financial services: hire purchase finance	Contract identifier	Conditional Sale Agreement

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1.04	1(b): could have been understood to exclude the consumer's statutory right to take a reasonable time to examine the goods before being deemed to have accepted them.	Revised to require consumer to inspect goods 'within a reasonable time of delivery, although you are encouraged to do so promptly' rather than 'on delivery', and to substitute 'as soon as reasonably possible' for 'immediately'.	1.04
4. Bankruptcy	Regulation 7: the heading 'Bankruptcy' (ie of the consumer) was inappropriate for a wide clause applying to any breach.	Sub-clause 4.02 dealing with wider breaches of the agreement has been removed and incorporated into the appropriate clause (6.01) dealing with breach by consumer.	4
4.02	Regulation 7: wide clause applying to breaches. Appeared to be superfluous in view of term 6.01.	Incorporated into term 6.01 (the term dealing with consumer breaches).	6.01
8.02	1(e): by charging interest on sums in arrears at the APR rate rather than at the contractual interest rate the term increased the financial liability of consumers beyond that which the Consumer Credit Act 1974 permits.	Revised by substituting 'rate of interest' for 'APR'.	7.02

8.03	Term provided for the consumer to be sent a credit token if he/she failed to indicate dissent to being provided with one, but Section 51 of the Consumer Credit Act 1974 makes it an offence to give a person a credit token (for example, a credit card) if he/she has not asked for it.	Deleted.	
8.08	1(n): entire agreement clause limited the supplier's obligations by binding consumer to written terms and thus excluding any terms agreed orally.	Deleted.	

Undertakings accepted	24 September 2001	Six terms revised or deleted
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Name of business	London Borough of Hammersmith & Fulham	Lead TSD	London Borough of Hammersmith & Fulham
Trading sector	Car parks	Contract identifier	'Pay and Display' parking tickets

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Disclaimer on reverse of ticket	1(a) and 1(b): had the potential unfairly to exclude or limit the local authority's legal liability in the event of death of or personal injury to consumers. It also had the potential to exclude liability in respect of loss or damage to consumers' vehicles in the event of the local authority's negligence.	Deleted.	

Other information	The OFT has agreed that existing stocks of tickets containing the term are to be used until December 2002. The London Borough of Hammersmith & Fulham has confirmed that it will not seek to rely on the term during that time.	
Undertakings accepted	6 September 2001	One term deleted

Name of business	National Pawnbrokers' Association	Lead TSD	City of Westminster
Trading sector	Financial services	Contract identifier	Sale and Repurchase Agreement and Receipt for Goods Sold

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Sale and Repurchase Agreement 4	Regulation 7: the unclear wording of the term appeared to permit traders to recover the full purchase price of goods from the consumer who had sold them to the supplier if the goods were seized or lawfully taken from the trader for any reason – including reasons unconnected to and caused by no fault of the consumer.	Withdrawn.	
Option to Repurchase 4	Regulation 7: the term was unclear but appeared to exclude liability if a supplier was unable to sell the goods back to the consumer. The attempt to exclude this liability even where the supplier was not at fault had the potential to be particularly unfair as the 'buy back' option was central to the operation of the agreement.	Withdrawn.	

<p>Other information</p>	<p>This case concerned a Sale and Repurchase Agreement, a type of agreement commonly used instead of a classic pawn agreement. Under these transactions, a consumer sells goods to a supplier and is granted an option to buy back the goods within a specified period. The OFT has previously considered the legality of such agreements under the Consumer Credit Act 1974 and has formed the view that these agreements are not regulated by the provisions of the Act.</p> <p>The National Pawnbrokers' Association has not generally supported the use of these types of agreements and has argued that they are or should be regulated by the Consumer Credit Act. However, given the OFT's view that they are not regulated, the Association took the decision to include a sample agreement in its <i>Pawnbrokers Guide</i> so that its members were not at a competitive disadvantage.</p> <p>When the OFT raised its concerns about the terms with the Association, the Association undertook to withdraw the entire agreement from its Guide as it considered that these transactions are not central to the businesses of most of its members.</p> <p>However, in offering to withdraw the agreement, the Association did not accept that these terms were unfair. It has, nonetheless, written to its members notifying them of the OFT's concerns.</p> <p>The OFT assured the Association that appropriate action will be taken against all traders using unfair terms in this type of transaction where this is brought to its attention.</p>
<p>Undertakings accepted</p>	<p>29 May 2001</p> <p>Two terms withdrawn</p>

Name of business	Nationwide Security Blinds Ltd	Lead TSD	Dorset County Council
Trading sector	Awnings and blinds	Contract identifier	Terms and conditions on reverse of contract

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
4	1(n): restricted contract to the terms as printed or as agreed in writing by a director.	Replaced with a statement of the supplier's intention to rely on the terms, and a request that any variation be put in writing.	4
5	1(k): supplier reserved the right to modify the specification.	Revised to state that significant changes will not be made without prior consultation with the consumer.	5
6	1(f): supplier reserved the right to cancel following inability to install for 'practical reasons'.	Right limited to situation where supplier is unable to install for reasons beyond its control.	6
7	1(b): when coupled with terms 4 and 8, term could have unfairly restricted supplier's liability where consumer had relied on supplier's advice.	Supplier accepts responsibility for the advice of its consultant where consumer acts in accordance with that advice.	7.1
8	Guarantee did not state that statutory rights were unaffected, contrary to the Consumer Transactions (Restrictions on Statements) Order 1976.	Term encourages early inspection for faults. A highlighted, new term (1.2) states that statutory rights are not reduced.	8
9	1(n): supplier sought to exclude liability for representations unless set out in the contract or agreed in writing by a director.	Replaced with a request that any variations be put in writing.	9

10	1(b): supplier excluded liability for delay in supply/installation however caused.	Liability excluded only for 'reasonable or unavoidable delay'.	10
13	An unfair enforcement clause allowing the supplier to remove installed goods at any point until it had received payment in full.	Deleted.	13
14	1(e) and 1(n): formality – stated that contract could not be cancelled without agreement of supplier, and imposed financial penalties.	Deleted.	
15	Consumer declaration related in part to matters the consumer might not be qualified to assess. Could have effect of excluding liability for supplier's failure to provide product in accordance with contract.	Removed consumer declaration and introduced obligation on supplier to inform consumer of any alteration. Includes consumer's right to terminate with full refund if there is a fundamental alteration in specification.	14
16	1(b) and 1(k): no liability for any manufacturing or handling imperfections.	Restricted to no liability for imperfections 'beyond the supplier's reasonable control'.	15
17	1(b): the supplier restricted its liability to the contract price.	Deleted. Consumer's liability limited to price of contract.	16
18	1(q) and Regulation 7: requested that all claims be brought in a specified court and that costs be paid on indemnity basis.	Parties agree to submit to non-exclusive jurisdiction of (any) English court. Reference to indemnity costs deleted.	17

Specific Reservations	Term 11 is acceptable in principal but there could be potential for unfairness if the supplier does not negotiate all installation dates in good faith and with reasonable flexibility. The Director General's position has been reserved pending receipt of complaints about how the term is used in practice.
Undertakings accepted	10 September 2001 13 terms revised

Name of business	North Down Borough Council	Lead TSD	Department of Economic Development – Northern Ireland
Trading sector	Moorings	Contract identifier	Groomsport Moorings

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1(c)	1(c): allowed the Council to terminate the service without any reason.	Revised to allow the Council to terminate the licence on 28 days' notice where the consumer is in substantial breach of the terms and conditions or where there are engineering works. Also allows for the pro-rata refund of the licence fee.	1(c)
8(d)	1(d): failed to provide for a refund on consumer cancellation, and further allowed the Council to deem the mooring tackle as abandoned and become the property of the Council if it was not removed after 14 days.	Reference to abandoned mooring tackle deleted. Revised to allow consumer to give one month's notice and for him/her to remove the boat and tackle during this period, and also provides for a pro-rata refund of the licence fee.	9(d)
8(e)	1(d): allowed for the licence to lapse if the boat was disposed of without replacement.	Revised to allow a pro-rata refund where consumer no longer requires the mooring because he/she has disposed of the boat.	9(e)
8(f)	1(f): allowed the Council to cancel on consumer breach of the agreement, requiring immediate removal of the boat and forfeiture of the licence fee.	Revised to allow the Council to remove and store the boat and tackle after 28 days and to sell the boat, its contents and mooring tackle after three months. The consumer receives the net proceeds and a pro-rata refund of the licence fee.	9(f)

8(f) (final sentence)	1(b) and Regulation 7: exclusion of Council's liability for damage or loss. Also unclear what was meant by exclusion of liability for 'injury to the boat'.	Limited to situation where Council terminates the mooring in accordance with term 1(c) or licensee disposes of boat. Revised so that the Council does not exclude liability for damage or loss caused or brought about by the Council or its employees. Reference to 'injury' deleted.	9(f) (final sentence)
8(h)	Onerous enforcement clause, allowing the Council to deem tackle as abandoned.	Revised to allow a 28-day period before the tackle is deemed to be abandoned. Three-month period given before boat can be sold.	9(h)
9	Term requiring fee to be returned within 10 days of notification of successful application otherwise the site would be reallocated was not given sufficient prominence within the agreement.	Revised so that term is given prominence within the agreement as the second term.	2
10	1(a) and 1(b): exclusion of liability for injury, and exclusion of liability for the Council's negligence.	Exclusion of liability for injury deleted. Revised to exclude the Council's liability only where the damage is not caused by the Council.	10
12	1(j): allowed the Council to vary the terms of the contract unilaterally.	Revised so that there is no longer a variation of the terms during the annual licence period. Notice is given of any variation for the following year.	13
13	1(b): by requiring the consumer to accept the terms and conditions 'without reservation whatsoever', potentially interfered with the consumer's statutory rights.	Specific wording deleted. Terms and conditions to be appended to each application form.	14

Other information	The Director General's position was reserved on term 9(g), as it is not entirely clear whether the new wording introduced, 'without any notification having been given to the Council', applies both to moorings not taken up and to moorings left unused.	
Undertakings accepted	21 August 2001	10 terms revised

Name of business	Orange Personal Communications Services	Lead TSD	Bristol City Council
Trading sector	Telecommunications: mobile phones	Contract identifier	Talk Plan, Boxed & Ready and Everyday 20 (TPBRE); Just Talk (JT); Insurance and Warranty Details (IWD)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Definition of Phone (TPBRE and JT)	Regulation 7: was unclear about the definition of the phone in relation to what parts of the equipment were the property of the consumer and what remained the property of the supplier.	The definition now makes it clear which part of the equipment belongs to the consumer and which remains the property of the supplier (SIM Card).	Definition of Phone
2.4 (JT)	Allowed the supplier excessive discretion to suspend the services.	Redrafted so that the supplier must have reasonable cause to believe that the consumer has breached the terms and conditions or money owed by the consumer remains unpaid.	2.4
4.1.1 (JT)	Allowed the supplier to terminate the contract for any breach upon seven days' notice to remedy the breach.	Redrafted so that the supplier can only terminate the contract for specific breaches of the contract.	4.1.1

4.2.2 (TPBRE)	Regulation 7: the consumer's liability upon termination of the contract before the expiry of the minimum period was unclear.	The redrafted term makes it clear that the consumer will not be required to pay the remaining line rental for the minimum contract period if he/she terminates the contract under terms 4.3 and 15.1.	4.2.2
6.2 (TPBRE)	Regulation 7: it was unclear whether interest was charged at a daily rate or at an annual rate.	Revised to make it clear that interest is charged on a per annum basis which is calculated daily.	6.2
17.1 (TPBRE)	1(p): supplier sought to retain unlimited freedom to assign while restricting that of the consumer.	The supplier will not unreasonably withhold its permission to assign the contract to a third party. The supplier will only assign the contract to a third party on terms at least as favourable as those it operates.	17.1
Warranty C (IWD)	Regulation 7: use of legal jargon ('warranty' and 'statutory rights') without further explanation.	The term has been revised in plain and intelligible language and has been highlighted to give greater prominence in the contract.	3b
Replacement: last paragraph (IWD)	Regulation 7: the limited scope of the warranty would not have been clear to consumers given the presentation.	The term was highlighted and thus given greater prominence in the contract.	10n

Specific reservations	<p>The Director General's position has been reserved in relation to terms 3.3, 18.1(c) and 18.2 of TPBRE, and term 13.1.3 of Just Talk in the absence of evidence of the significant risk of consumer detriment. Term 3.3 allows Orange to suspend the services and credit consumers for the period of suspension without confirming general circumstances in which a credit would be made upon submission from Orange that this would be addressed on an individual basis. Terms 18.1(c) and 13.1.3 mention 'loss of use' while seeking to exclude liability for other losses e.g. business and profits which were not considered to be unfair exclusions. Term 18.2 imposes a limit on liability for particular kinds of damage.</p>	
Undertakings accepted	12 September 2001	Eight terms revised

Name of business	Retail Motor Industry Federation (RMIF)	Lead TSD	City of Westminster
Trading sector	Motor vehicle sales (new and secondhand)	Contract identifier	Standard terms and conditions for use by RMIF members

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
6	1(d): allowed the supplier to retain the deposit when the consumer was in breach of the contract by failing to take delivery and pay for the vehicle within the time specified (14 days from notification that the vehicle was ready for collection).	Revised to provide that in the event of the consumer failing to take delivery within 21 days, the supplier will refund the deposit minus expenses incurred where applicable.	3c
8a	1(b) and 1(i): excluded liability where the supplier was in breach of the contract, and sought to bind the consumer to the manufacturer's terms about which he/she had no prior knowledge.	Deleted.	
9e	1(l): allowed the supplier to reduce the agreed part-exchange payment for the consumer's vehicle if delivery of the replacement vehicle was delayed, thereby increasing the amount the consumer had to pay for the replacement.	Deleted.	

Name of business	Servicecare Ltd	Lead TSD	London Borough of Sutton
Trading sector	Electrical goods: repairs and servicing	Contract identifier	Jobsheet/invoice

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
'Job completed to my satisfaction'	1(b): required consumer to accept repaired goods as satisfactory on delivery, without having had the opportunity to inspect them, thereby excluding the consumer's right to pursue a remedy if the repair was not adequate.	Deleted.	

Undertakings accepted	14 August 2001	One term deleted
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Name of business	Skills Motor Coaches Ltd and Skills Worldwide Ltd	Lead TSD	Nottingham City Council
Trading sector	Holidays	Contract identifier	Booking Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Headnote	1(q): provided that the contract was subject to English law and jurisdiction at all times.	Revised to provide that the contract is subject to the law and jurisdiction of the part of the UK in which the consumer is domiciled.	Head-note
Your contract with Skills:			
1) Payment	1(e): provided for supplier to charge cancellation fees of up to 100% of the holiday price if the final balance was not paid four weeks prior to departure.	Revised to provide that if the balance is not paid on time then the supplier will send a reminder to the consumer. If no reply is received within three days of the reminder, the supplier will treat the holiday as cancelled and retain the consumer's deposit.	2) Your holiday price
2) Holiday insurance	Provided that the supplier could refuse the consumer's choice of insurance cover if it believed it to be inadequate, without stating the criteria which the supplier would use to make such a judgment.	Deleted.	

3) If you change your holiday booking	Provided that any amendments made to the booking on the request of the consumer within four weeks of departure would be treated as a cancellation and would incur appropriate cancellation charges.	Revised to provide that changes to travel arrangements will incur administration charges of £5 plus any further costs incurred in making the change. Also advises that costs are likely to increase the closer to the departure date the changes are made.	4) If you change your holiday booking
4) If you have a complaint	1(b): excluded the supplier's liability for complaints not made in accordance with the complaints procedure.	Revised to provide that a failure to follow the complaints procedure may affect the consumer's rights under the contract.	7) If you have a complaint
5) If you wish to cancel your booking	1(d): provided that a cancellation by the consumer would incur charges detailed in the term. The OFT considered that the cancellation charges may have been in excess of reasonable pre-estimates of the net losses incurred by the supplier as a result of cancellations.	The term was revised to provide for different levels of cancellation charges depending on the type of holiday being cancelled. Note the 'specific reservation' of the Director General's position in relation to this term, below.	5) If you cancel your booking
6) Carriers and international conditions	1(i): provided that transport was subject to the conditions of carriage of the individual carriers and that liability might be excluded or limited by international conventions, without providing that copies of the relevant conditions of carriage and international conventions would be made available on request.	Revised to provide that copies of the relevant conditions of carriage and international conventions will be made available on request.	9(b) Our liabilities and responsibility to you and 11) Conditions of carriage

7) Rights of refusal	Provided that the supplier could, at its absolute discretion, terminate a consumer's holiday if the consumer's behaviour caused distress, damage, danger or annoyance to other passengers, staff or third parties.	Revised to provide that the supplier will exercise its right to terminate a consumer's holiday reasonably.	17) Rights of refusal
8) People with disabilities	1(n): provided that the supplier could not guarantee any requests relating to a booking from a consumer with disabilities even where the consumer had notified the supplier of any special requirements and had subsequently received a confirmation letter from the supplier.	Revised to advise that a consumer requiring special assistance should contact the supplier for advice on the suitability of the supplier's holidays.	12) People requiring special assistance
Our obligation to you:			
(2) Your holiday price	1(l): provided for the supplier to surcharge in circumstances outside of those permitted by Regulation 11 of the Package Travel Regulations 1992 (PTRs).	Surcharging term replaced with a statement that the prices shown on the confirmation invoice are fully guaranteed and will not be subject to any surcharges.	2) Your holiday price
(3) If we change your holiday	1(b): failed to reflect accurately the consumer's entitlements, under Regulation 13 of the PTRs, where the supplier made a significant change to the consumer's holiday booking. Regulation 7: unclear definition of 'force majeure', ie events for which the supplier is not generally liable to the consumer under the PTRs. In particular, the term included matters which might, in some circumstances, be within the control of the supplier.	Revised to provide for the consumer's entitlements as detailed in Regulation 13 of the PTRs. Definition of 'force majeure' revised to reflect more closely the definition given in the PTRs, ie unusual and unforeseeable circumstances beyond the control of the supplier, the consequences of which could not have been avoided even if all due care had been exercised.	6) If we change or cancel your holiday

<p>(4) If we cancel your holiday</p>	<p>1(b): restricted the supplier's liability for the cancellation of a consumer's holiday booking to a refund of monies paid by the consumer under the contract.</p> <p>1(b): failed to provide for the consumer's entitlement, under Regulation 13 of the PTRs, to take an alternative holiday where the supplier cancelled the consumer's holiday booking.</p> <p>Regulation 7: as above.</p>	<p>Revised to provide that, in addition to a full refund of all monies paid, the consumer is also entitled to be compensated by the supplier for non-performance of the contract.</p> <p>Revised to provide for the consumer's entitlement to take an alternative holiday.</p>	<p>6) If we change or cancel your holiday</p>
<p>(6) Our liabilities and responsibility to you</p>	<p>1(b) and 1(k): provided that the availability of amenities, services and entertainment described in the brochure was subject to change and excluded the supplier's liability for failure to provide the holiday as it was described in the brochure.</p> <p>Regulation 7: as above</p>	<p>Revised to exclude the supplier's liability only where the failure is due to circumstances beyond the supplier's control.</p>	<p>9(b) Our liabilities and responsibility to you</p>

<p>Specific Reservations</p>	<p>The position of the Director General was reserved in respect of terms 5, 6, 13 and 16(g) of the new booking conditions.</p> <p>Limited information was supplied to the Director General in relation to term 5, but this was not considered sufficient to establish that the new scales of cancellation charges represent a genuine pre-estimate of losses incurred by the supplier as a result of cancellations. However, after careful consideration of the information supplied and the level of the charges imposed by the term, further enforcement action in relation to the term was not considered warranted at this time, pending complaints or other evidence suggesting that the charges were excessive.</p>
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	<p>The OFT considered that the examples of 'minor changes' to a booking set out in term 6 had the potential to operate as an unfair exclusion of the supplier's liability to provide the holiday as booked by including matters which could, in certain circumstances, have a significant effect on the enjoyment of the holiday. The position of the Director General was reserved in relation to this aspect of the term for the OFT to monitor complaints carefully for any abuse of the discretion allowed by the term.</p> <p>Term 13 provides that the supplier does not guarantee special requests made on the booking form by the consumer. Term 16(g) provides that where the supplier changes or supplements the information contained in the brochure, then the consumer must ensure that a revised confirmation invoice is issued or, where time does not allow, an amendment number is provided by the supplier. The Director General's position was reserved following clarification of how these terms operate in practice and the giving of assurances by the supplier in respect of the training given to staff and the remedial action that is taken in the case of disputes.</p>
Undertakings accepted	21 September 2001 13 terms revised or deleted

Name of business	Spicer haart Group (formerly Spicer McColl)	Lead TSD	Essex County Council
Trading sector	Letting agents	Contract identifier	Agreement for prospective tenants of residential lettings (2000)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Securing the property	1(e): potentially allowed the agent to retain the whole administration fee on consumer cancellation when only minimal costs had been incurred.	Withdrawn.	
The tenancy agreement	1(i): provided that a copy of the draft tenancy agreement was not given to the consumer at the time of this agreement.	Withdrawn.	
Inventory	Regulation 7: meaning of part of term unclear.	Withdrawn.	
Consumer declaration	Declaration that the consumer had read and understood the agreement.	Withdrawn.	

Other information	The OFT approached Spicer McColl about the terms and conditions it used in pre-tenancy contracts, and then took action against the replacement agreement used by the Spicer haart Group. The opportunity was taken to remind the supplier that the Regulations apply to standard oral terms.	
Undertakings accepted	13 August 2001	Four terms withdrawn

Name of business	Swiftcall Ltd	Lead TSD	Office of the Director of Consumer Affairs, Dublin
Trading sector	Telecommunications: callback telephony service provider	Contract identifier	Swiftcall Service Terms & Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2b	1(i): by making reference to various pieces of legislation, the term bound consumers to provisions of which they may not have been aware.	References to various pieces of legislation have been removed.	2b
2c	1(b): required consumers to meet all costs without limitation. Regulation 7: reliance on legal jargon ('indemnify').	Changed to 'reasonable costs'. Replaced 'indemnify' with 'to be responsible for any'.	2c
3	1(b): unfairly excluded the supplier's liability for loss suffered by the consumer if the service provided failed.	The supplier will not be liable for loss suffered by the consumer if the service is not provided because of circumstances outside the supplier's reasonable control.	3
4	1(b): may have unfairly excluded the supplier's liability for reasonably foreseeable losses caused by the supplier's negligence.	Revised to state that liability for death or personal injury caused by the supplier's negligence will not be excluded.	4
7	1(b): excluded the supplier's liability when the supplier failed to provide the service.	Revised to state that the supplier accepts in these circumstances an increase in costs incurred by the consumer attributable to using an alternative supplier.	7

9	Provided that credit unused within 182 days would expire and not be refundable. Term lacked sufficient prominence given its importance.	Printed in bold type.	9
11	1(d): provided that a consumer's right to a refund on cancellation might be at the supplier's discretion.	Revised so that if the consumer cancels the right to a refund is unfettered.	11
19	1(n): potentially unfair 'entire agreement' clause, which could have unfairly excluded liability for verbal representations.	Relevant wording deleted.	19
25	1(b): excluded the consumer's right to set-off.	Relevant wording deleted.	25
30	Regulation 7: provided that the supplier could impose a minimum monthly spend commitment. Term lacked sufficient prominence given its nature.	Printed in bold type.	30

Specific Reservations	<p>The Director General's position was reserved in respect of terms 2(a), 8 and 24, on the understanding that further action would be taken if complaints indicated that these terms were operating to the detriment of consumers. Term 2(a) may unfairly give the supplier the right to vary terms unilaterally without giving a reason. Terms 8 and 24 may amount to potentially unfair price variation clauses.</p> <p>The decision to reserve the Director General's position was taken on the basis that consumers are free to cancel the contract without penalty, and, therefore, are not locked into a long-term agreement.</p>
Undertakings accepted	17 July 2001 10 terms revised

Name of business	Timberland Flooring Company Ltd	Lead TSD	Oxfordshire County Council
Trading sector	Flooring (hardwood and softwood)	Contract identifier	Conditions of Sale

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2.0 Basis of the Sale:			
2.1	1(n): appeared to be an 'entire agreement' clause.	Revised to make clear that it is the supplier's intention that all the terms of the contract are contained in the Conditions of Sale. The consumer is advised to seek clarification of any problems before signing.	2.1
2.4	1(n): appeared to be an 'entire agreement' clause.	Revised to make clear that any variations to the contract should be in writing.	2.4
2.5	1(n): appeared to be an 'entire agreement' clause.	Revised to make clear that the consumer should not rely on written or oral promises that are made by anyone other than the supplier or its authorised agents.	2.5
2.6	1(n): appeared to be an 'entire agreement' clause.	Deleted.	

3.0 Description of Goods and Order:			
3.1	1(k): appeared to allow the supplier the right to change what was supplied.	Revised to make clear that the supplier reserves the right to change the specification of the goods (as before) provided that the changes do not affect the appearance or quality of the goods.	3.1
3.2	1(k): appeared to allow the supplier the right to change what was supplied.	Revised to include that the supplier will not make any significant variations to the goods without seeking the agreement of the consumer.	3.2
4.0 Price:			
4.1	1(l): allowed the supplier to vary its prices.	Revised so that the consumer may give notice to terminate the services if the charges have increased. Consumer may also cancel if the increase is due to the supplier's delay.	4.1
4.2	1(l): allowed the supplier to vary its prices.	Revised to allow the consumer to cancel the agreement if the increase in costs is, in the consumer's reasonable opinion, excessive.	4.2
5.0 Terms of Payment			
5.1	Regulation 7: term was unclear.	The revision makes it clearer that the customer shall satisfy his obligation to pay on completion of the installation of the goods by completing the finance company's form authorising payment.	5.1
5.3	1(e): late payment penalties.	Revised by deleting 'part of a month being treated as a full month' to make it clearer how interest is calculated.	5.3

6.0 Delivery Installation and Completion			
6.2	1(b): exclusion of liability for delay.	Revision made to include that supplier will do all that it reasonably can to meet the date for delivery. Supplier will give notice if it is unable to do so and will arrange a convenient alternative date.	6.2
7.0 Company's and Customer's Right to Cancel:			
7.1	1(d): allowed supplier to retain prepayments upon customer's cancellation.	Revised to give the customer the right to cancel without penalty within seven days of signing any contract.	7.1
8.0 Risk and Property:			
8.2	Allowed supplier to transfer unfair risks to consumers.	Revised to include that the goods delivered to the consumer are expected to be covered by the consumer's property contents insurance.	8.2
9.0 Warranties and Liabilities			
9.1	1(b): excluding or restricting liability via guarantee.	Revised to make clear that in addition to the consumer's statutory rights the supplier warrants that the goods will be free from defects in material and workmanship for 10 years from the date of delivery.	9.2
9.3	Regulation 7: plain and intelligible language.	Revised to make it clearer that if the consumer requires the supplier to work on a particular specification which has not be supplied by the supplier then the supplier is not liable for losses arising from any defect in such specification.	9.3

9.4	1(b): exclusion of liability for poor service.	Revised to make clear that the supplier will be liable for any defects caused by its negligence.	9.4
9.6	1(e): late payment penalty.	Revised to make clear that, in the event of late payment, the supplier will not be liable under the warranty, condition or guarantee form from the date that payment was due until such time as the price is paid in full.	9.6

Other information	Term 9.8 in the original contract has been renumbered to become term 9.1 in the revised contract in order to give it more prominence. The text of this term is in bold and states that 'Where the Goods are sold under a consumer transaction as defined by the Customer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Customer are not affected by these Conditions.'	
Undertakings accepted	5 June 2001	17 terms revised

Name of business	Toys 'R' Us Ltd	Lead TSD	Royal Borough of Windsor & Maidenhead
Trading sector	Children's toys (retail)	Contract identifier	Terms and Conditions (on website)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Heading	Regulation 7: this appeared to be a 'statutory rights disclaimer'.	Unchanged. However, the company has included a new term (10.4) which directs consumers to local authority trading standards departments and Citizens' Advice Bureaux for further information about their statutory rights.	10.4
1.1	1(b): exclusion of liability for supplying goods that did not correspond with the description by which they were sold or that were not fit for their purpose.	Deleted.	
1.2	1(b) and Regulation 7: appeared to exclude liability for supplying goods that did not correspond with their description or that were not fit for their purpose. Term also included a statutory rights disclaimer.	Deleted.	
1.3	1(l): permitted supplier to alter prices without giving consumers notice and, where the prices were too high, a right to cancel the contract.	Revised by deleting the following sentence: 'We reserve the right to change prices listed without notice'.	2.3

1.4	1(b): exclusion of liability for supplying goods that did not correspond with the description by which they were sold.	Deleted.	
1.5	1(b): exclusion of liability for losses caused by transmitting information and payments by e-mail or the internet.	Deleted.	

Undertakings accepted	13 July 2001	Six terms revised
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Name of Company	United Racecourses (Holdings) Ltd	Lead TSD	Surrey County Council
Trading Sector	Racecourses	Contract identifier	Racecourse Regulations and Notices

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	<p>1(m): reserved absolute discretion to the supplier to decide whether someone was flouting the rules or acting in such a way that he/she could be refused admission or expelled from the racecourse.</p> <p>1(i): reference made to Regulations and Rules of Racing.</p>	<p>Revised to specify the kinds of conduct that could lead to a refusal of admission or expulsion and to include a requirement for the supplier to hold a reasonable opinion that such conduct has occurred before taking such action.</p> <p>Supplier undertook to send out copies of the Regulations and Notices to pre-booking consumers (who could then cancel if unhappy with them). Further, at the point of sale, copies of these documents would be displayed. The Rules of Racing were confirmed as setting out unrelated matters save in respect of abandonment of racing. These matters were incorporated into the Regulations document.</p>	1
2	1(b): had the potential to allow the supplier not to provide services contracted for, at its discretion.	Revised to state circumstances whereby racing would be abandoned which amount to circumstances beyond the supplier's control.	2

12	<p>1(a): exclusion of liability for death or personal injury except where caused by racecourse's negligence.</p> <p>1(b): exclusion of liability for all other losses.</p>	<p>Revised to accept liability for death and personal injury when caused by any act or omission by the supplier and for other losses when they are reasonably foreseeable at the date of the contract.</p> <p>Revised to accept liability for loss or damage which is reasonably foreseeable except in cases of death or personal injury.</p>	12
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Undertakings accepted	28 August 2001	Three terms revised
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Name of business	Woburn Abbey	Lead TSD	Bedfordshire County Council
Trading sector	Events venue and catering	Contract identifier	Schedule of terms and conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	The term did not clarify costs and price scales for the consumer before the agreement was signed.	Revised to provide a clear explanation of the booking procedure offered together with costs and price scales offered in additional letter.	2 and 4
2	1(d): retention of consumer's pre-payment. The term provided for retention of the full deposit when the consumer cancelled the agreement and the facilities were not re-let for that date, without indicating whether or not this was an accurate pre-estimate of the suppliers' losses in such circumstances.	Revised to provide for the return of 50% of the initial deposit on cancellation up to six months prior to the date booked for the event.	7
3	1(i): bound the consumer to a percentage of the estimated account to be paid if cancellation occurred less than six months prior to the event without clarification of what this would be.	Revised to make clear the amount payable on cancellation less than six months before the event. In addition the suppliers' duty to mitigate their loss is incorporated into the term. See also the Specific Reservations section.	8a and 8b

5a	<p>Created a significant imbalance in rights and obligations of the parties in relation to cancellation by the suppliers.</p> <p>1(b) permitted the suppliers to exclude or limit their liability for breaches of contract.</p> <p>1(f): also permitted the suppliers to cancel the agreement without penalty at their discretion.</p> <p>The term did not specify any time limit under which the suppliers could withdraw from the agreement. This meant that the original booking could be cancelled by the suppliers at any time up to the date of the original booking.</p>	Deleted.	
5b	<p>1(b): limited any compensation to be paid to the consumer in the event of the suppliers cancelling the booking to £3000.</p> <p>See also the final paragraph on term 5a.</p>	Deleted.	
5c	<p>1(b): excluded liability for breach of contract by allowing the suppliers to change dates agreed at the time of booking at their complete discretion and without financial penalty on their part.</p> <p>See also the final paragraph on term 5a.</p>	Deleted.	

6	The term permitted the suppliers to pass on any increases in prices for food or beverages up to three months prior to the event without offering a penalty-free cancellation option to the consumer if the revised prices were too high.	Revised to ensure that the final price to be paid will be quoted at six months prior to the event. Increases at this stage from the original estimate will be limited to the lesser of either the increase in the Retail Price Index or 10% of the costs.	4 and 5
8	This term allowed the suppliers to increase the price of the event by an unspecified amount if the numbers were reduced, even though the consumer was already committed to paying a price based on the minimum number of guests originally booked by virtue of another term.	Deleted.	
10	Regulation 7: did not make clear that any payments made more than 30 days after the date of the invoice would be subject to a financial penalty of 5%.	Revised to make it clear than invoices paid within 30 days of the invoice date will not be charged the 5% 'credit charge'.	10
11	1(b): excluded the suppliers' liability for loss or damage by the negligent or deliberate action of their servants or agents.	Revised so that liability for loss or damage caused by the suppliers or their employees will be accepted.	11
12	An unfair obligation in that it required payment on demand for any damage caused by the consumer or any member of his/her party.	Revised so that the consumer is responsible for the cost of making good any loss or damage covered by the wilful act or default of him/her or any of his/her guests. The suppliers are obliged to provide 30 days' notice of such costs.	12

16	The term stated that a fee would be payable if the event were not terminated at the agreed time, with immediate departure from the premises.	Revised to state clearly that a £250 fee will be payable for every hour or part of an hour beyond the agreed finishing time that the booking party, all guests or equipment remains on the premises.	16
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Specific Reservations	The Director General's position was reserved in respect of terms 8a and 8b. These terms address the amount of compensation payable by the consumer upon cancellation of the contract less than six months prior to the event. The Director's position was reserved due to the levy of a 100% cancellation charge when cancellation occurs less than seven days before the scheduled event. This is because, while further action was not considered to be warranted on current evidence, there is a residual concern that this could have the potential to operate unfairly.		
Intelligibility	Term 17 was revised to state in plain English that if any part of the contract is held to be invalid or illegal by a court, the remaining terms will continue to remain in effect.		
Undertakings accepted	17 September 2001	12 terms revised or deleted	

Name of business	World Challenge Expeditions Ltd	Lead TSD	London Borough of Brent & Harrow
Trading sector	Holidays	Contract identifier	Booking Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1.2	Regulation 7: the word 'challenger' was defined so as to include the parent or guardian of the person participating in the holiday. However, it was apparent from other terms in the contract that the word could only refer to the person participating in the holiday.	Revised to define 'challenger' as the person going on the holiday.	1.2
2.2	Deemed that the consumer had read and understood the booking conditions.	Revised to advise the consumer that he/she should read the booking conditions carefully and inform the supplier if he/she does not understand or agree with anything in the booking conditions.	2.2
2.3	1(n): provided that booking conditions could only be varied by written agreement between the supplier and the consumer.	Revised to state that the contract may be varied by agreement between the parties.	2.3
2.4	1(n): provided that no verbal quote was binding on the supplier.	Deleted.	
3.1	Regulation 7: not written in plain language.	Revised in plain English.	3.1

4.3	1(l): permitted price variations in circumstances other than those permitted under the Package Travel Regulations 1992 ('the PTRs'). Also failed to provide consumer with options to which he/she is entitled under the PTRs in the event of a significant price change.	Revised to allow price variations only in those circumstances permitted by the PTRs and to provide the consumer with the options of taking an alternative holiday or cancelling with a full refund if there is a significant price change.	4.3
5.3	1(e): provided that the supplier could terminate the contract, without provision for the return of any pre-payments made, if any payment was made more than seven days after the due date.	Deleted.	
6.1	1(d): provided for the supplier to retain all pre-payments made by the consumer where the consumer chose to withdraw from the contract.	Revised to provide that the supplier may only retain as much of any deposit or other payment as is needed to cover its reasonable costs and losses caused by the withdrawal and that the supplier will take all reasonable steps to keep those costs and losses to a minimum.	6.1
6.2	Regulation 7: meaning of a reference to 'insured events' in relation to cancellation by the consumer was not clear.	Reference to 'insured' events removed from term.	6.2
6.3	1(f): failed to reflect accurately the circumstances - as defined by the PTRs - in which the supplier may cancel the contract without being liable to pay the consumer compensation.	Revised to provide that the supplier may cancel the contract without paying the consumer compensation only in the event of unusual and unforeseeable circumstances beyond the control of the supplier, the consequences of which could not have been avoided even with all due care and attention.	6.3

6.4	1(k): permitted the supplier to change the holiday details at its discretion and without subsequently providing the consumer with options to either accept the change, cancel the booking, or choose to take an alternative holiday.	Revised to provide that the supplier may make changes to the holiday details for reasons beyond its reasonable control. Also revised to provide that, in the event of such a change, the consumer may accept the change, take an alternative holiday or cancel the holiday with a full refund, plus compensation if appropriate.	6.4
6.5	1(f): placed constraints upon the consumer's legal entitlements (under the PTRs) to the choice of an alternative holiday or the option to cancel with a full refund in the event of the supplier cancelling or making a significant alteration to the holiday as booked. The term also failed to inform the consumer of the entitlement to be compensated by the supplier for failure to perform its duties under the contract. Regulation 7: included inaccurate references to other terms in the contract.	Revised to remove constraints upon consumer's entitlements to an alternative holiday or the option to cancel and receive a full refund and compensation where appropriate. References to other terms in the contract were corrected.	6.6
6.6	1(b) and Regulation 7: the wording of the term, coupled with the rest of clause 6, appeared to require the consumer to provide written evidence of any event which prevented the consumer from taking the holiday, even where the cancellation was due to a failure by the supplier.	Deleted.	

7.2	<p>Provided the supplier with an unfettered discretion to terminate a consumer's holiday if, in the supplier's opinion, the consumer's presence was likely to disrupt the good order, discipline and safety of the holiday expedition.</p> <p>Regulation 7: term provided that the consumer 'indemnified' the supplier against loss or expense.</p>	<p>Revised to provide that the supplier must exercise its right to terminate a consumer's holiday with reasonable discretion.</p> <p>Revised to provide that the consumer shall pay to the supplier any costs, loss or expenses.</p>	7.2
8.1	Regulation 7: included legal terminology ('tort').	Revised in plain English.	8.1
8.2	1(b) and Regulation 7: stated that supplier was not liable for any consequential costs or losses regardless of how they arose.	Revised to state that the supplier will not be liable for any business-related losses arising from a breach of the contract or for any other losses which were not reasonably foreseeable consequences of the breach.	8.1
8.3	1(b): denied the supplier's liability for delay in performing, or failure to perform, its duties under the contract where the failure was due to circumstances beyond the supplier's reasonable control but within the control of the company's contracted suppliers.	Deleted.	
9.4	1(e): allowed the supplier to terminate the contract and retain all prepayments if any information given by the consumer for purposes of the application was found to be incorrect and the correct information was found to affect the consumer's suitability to take the holiday.	Revised to provide that the supplier may only retain monies sufficient to cover reasonable costs arising from cancellation in such circumstances.	9.4

10	Regulation 7: included legal terminology ('indemnify').	Revised in plain English.	10
12	<p>1(b): stated that the supplier was not in a position at the time that the contract was entered into to confirm the operator, the departure date or the departure or arrival destinations.</p> <p>Regulation 7: made references to the provisions of the Civil Aviation Authority Guidelines and the PTRs, with which consumer was unlikely to be familiar.</p>	<p>Revised to provide that the consumer may withdraw from the contract or choose to take an alternative holiday within 14 days of confirmation of the holiday arrangements if he/she wishes. Revised term provides that the supplier may retain a reasonable amount to cover costs already incurred by the supplier if the consumer withdraws.</p> <p>References to the Civil Aviation Authority Guidelines and the PTRs were deleted.</p>	12.2
13.1	1(f): stated that the consumer could not transfer the contract to any other person without the supplier's agreement. The term failed to indicate that it did not affect the consumer's legal right (under the PTRs) to transfer the contract to another suitable person provided any additional costs incurred by the transfer were met by the consumer.	Revised to provide that either party may transfer the benefit of the contract to a third party provided that the third party satisfies the conditions applicable to the booking and reasonable notice is given to the other party to the contract.	13.1
13.4	1(q): provided that the contract was subject to the exclusive jurisdiction of the English courts.	Revised to provide that the contract is subject to the jurisdiction of the relevant UK court.	13.4

Undertakings accepted	16 July 2001	22 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

Case outcome	July-Sept 2001	All cases to end Sept 2001
Advice or warning:	78	1,350
<i>advice to consumers/solicitors</i>	42	
<i>advice to TSOs and CABx</i>	15	
<i>advice to Qualifying Bodies</i>	17	
<i>advice to trade associations</i>	0	
<i>warning letter</i>	4	
'Core' terms	9	271
Defective cases	2	218
Duplicate cases	42	1,403
Enquiries	9	29
Excluded terms	22	369
'Formal' undertakings given	2	15
'Informal' undertakings given	29	634
Not about a contract term	18	206
Other legislation	3	318
Other reasons:	54	585
<i>approach made</i>	1	
<i>complex</i>	21	
<i>no approach made</i>	32	
Referred to Qualifying Bodies	29	163
Terms not considered unfair	16	568
Total	313	6,129

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 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 (June 2001)	This quarter (July-Sept 2001)	Total at end this quarter (Sept 2001)
Cases received	6,646	256	6,902
Cases completed	5,816	313	6,129
Cases carried over to next quarter	830		773

4 ALPHABETICAL INDEX OF BUSINESSES APPROACHED INDICATING TRADING SECTORS

1	Aerial Systems	TV/FM/satellite service and installation
2	Arun Estate Agencies Ltd t/a Cubitt & West	estate agency
3	Ashbourne Management Services Ltd	financial services: credit facilities for health and fitness clubs
4	Autonet 2000 Ltd	car alarms
5	B-Safe Security Systems	security alarm systems
6	British Trust Hotels Ltd (formerly North British Trust Hotels Ltd)	hotel breaks
-	Cheque Changers – see International Paper Converters Ltd	
7	Classique Windows and Conservatories	home improvements: double glazing
-	Cordula – see Econex Ltd	
-	Cubitt & West – see Arun Estate Agencies Ltd	
8	David Lloyd Leisure Ltd	health and fitness clubs
9	Deltakey t/a Florida Direct	package travel
10	Diamond Seal Ltd	home improvements: supply and installation of windows
11	Econex Ltd t/a Cordula	home improvements: automatic sun canopies
12	1 st National Tradesmen Ltd	emergency household repairs (plumbing, heating, blocked drains)
-	Florida Direct – see Deltakey	
13	Initial Electronic Security Systems Ltd (formerly Shorrock Security)	security alarm systems

14	International Paper Converters Ltd t/a Cheque Changers	financial services
15	Kestrel Alarms Ltd	security alarm systems
16	Lombard North Central plc	financial services: hire purchase finance
17	London Borough of Hammersmith & Fulham	car parks
18	National Pawnbrokers' Association	financial services
19	Nationwide Security Blinds Ltd	awnings and blinds
-	North British Trust Hotels Ltd – see British Trust Hotels Ltd	
20	North Down Borough Council	moorings
21	Orange Personal Communications Services	telecommunications: mobile phones
22	Retail Motor Industry Federation (RMIF)	motor vehicle sales (new and secondhand)
23	Servicecare Ltd	electrical goods: repairs and servicing
	Shorrock Security – see Initial Electronic Security Systems Ltd	
24	Skills Motor Coaches Ltd and Skills Worldwide Ltd	holidays
25	Spicer haart Group (formerly Spicer McColl)	letting agents
26	Swiftcall Ltd	telecommunications: callback telephony service provider
27	Timberland Flooring Company Ltd	flooring: hardwood and softwood
28	Toys 'R' Us Ltd	children's toys (retail)
29	United Racecourses (Holdings) Ltd	racecourses
30	Woburn Abbey	events venue and catering
31	World Challenge Expeditions Ltd	holidays

5 GEOGRAPHICAL INDEX OF BUSINESSES BY LOCAL AUTHORITY

BEDFORDSHIRE

Woburn Abbey

BRENT & HARROW, LONDON BOROUGH OF

World Challenge Expeditions Ltd

BRISTOL CITY COUNCIL

Orange Personal Communications Services

CHESHIRE COUNTY COUNCIL

Econex Ltd t/a Cordula

DORSET COUNTY COUNCIL

Nationwide Security Blinds Ltd

EDINBURGH COUNCIL, CITY OF

British Trust Hotels Ltd (formerly North British Trust Hotels Ltd)

ESSEX COUNTY COUNCIL

Deltakey Ltd t/a Florida Direct

Spicer haart Group (formerly Spicer McColl)

HAMMERSMITH & FULHAM, LONDON BOROUGH OF

London Borough of Hammersmith & Fulham

LANCASHIRE COUNTY COUNCIL

Initial Electronic Security Systems Ltd (formerly Shorrock Security)

LEICESTER CITY COUNCIL

Autonet 2000 Ltd

NOTTINGHAM CITY COUNCIL

Skills Motor Coaches Ltd and Skills Worldwide Ltd

NOTTINGHAMSHIRE COUNTY COUNCIL

B-Safe Security Systems

OXFORDSHIRE COUNTY COUNCIL

1st National Tradesmen Ltd
Timberland Flooring Company Ltd

REDBRIDGE, LONDON BOROUGH OF

International Paper Converters Ltd t/a Cheque Changers

RICHMOND-UPON-THAMES, LONDON BOROUGH OF

David Lloyd Leisure Ltd

SOLIHULL METROPOLITAN BOROUGH COUNCIL

Ashbourne Management Services Ltd

STOCKTON-ON-TEES BOROUGH COUNCIL

Classique Windows and Conservatories

SURREY COUNTY COUNCIL

Aerial Systems
Lombard North Central plc
United Racecourses (Holdings) Ltd

SUTTON, LONDON BOROUGH OF

Servicecare Ltd

WESTMINSTER, CITY OF

National Pawnbrokers' Association
Retail Motor Industry Federation (RMIF)

WEST SUSSEX COUNTY COUNCIL

Arun Estate Agencies Ltd t/a Cubitt & West
Kestrel Alarms Ltd

WEST YORKSHIRE TRADING STANDARDS SERVICE

Diamond Seal Ltd

WINDSOR & MAIDENHEAD, ROYAL BOROUGH OF

Toys 'R' Us Ltd

NORTHERN IRELAND

North Down Borough Council

REPUBLIC OF IRELAND

Swiftcall Ltd

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	3
Schedule 2:	paragraph 1(b) - Excluding or restricting liability for breaches of contract	
	<i>a Excluding liability for defective or misdescribed goods</i>	10
	<i>b Excluding liability for poor services, or work and material</i>	21
	<i>c Restricting amount or type of liability</i>	24
	<i>d Time limits on claims</i>	1
	<i>e Excluding consumers' right of set-off</i>	6
	<i>f Excluding or restricting liability for delay</i>	8
	<i>g Excluding or restricting liability for a supplier's non-performance</i>	6
	<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	1
Schedule 2:	paragraph 1(d) - Non-return of prepayments on consumer cancellation	9
Schedule 2:	paragraph 1(e) - Financial penalties	11
Schedule 2:	paragraph 1(f) - Cancellation clauses	13
Schedule 2:	paragraph 1(g) - Supplier's right to cancel without notice	0
Schedule 2:	paragraph 1(h) - Excessive notice periods for consumer cancellation	0
Schedule 2:	paragraph 1(i) - Binding consumers to hidden terms	6
Schedule 2:	paragraph 1(j) - General variation clause	1
Schedule 2:	paragraph 1(k) - Right to change what is supplied	7
Schedule 2:	paragraph 1(l) - Right to increase the price	12
Schedule 2:	paragraph 1(m) - Supplier's right of final decision	2
Schedule 2:	paragraph 1(n) - Entire agreement and formality clauses	
	<i>a Clauses disclaiming liability for employees' statements</i>	12
	<i>b Formality requirements</i>	7
Schedule 2:	paragraph 1(o) - Binding consumers where a supplier defaults	0

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</i> <i>Allowing a supplier to impose an unfair financial burden</i>	9
<i>b</i> <i>Transferring unfair risks (eg: by indemnities) to consumers</i>	3
<i>c</i> <i>Onerous enforcement clauses</i>	8
<i>d</i> <i>Excluding consumers’ right to assign</i>	1
<i>e</i> <i>Consumer declarations about contractual circumstances</i>	6
<i>f</i> <i>Excluding consumers’ non-contractual rights</i>	
<i>g</i> <i>Delivery at supplier’s discretion</i>	2
<i>h</i> <i>Other</i>	5
Regulation 7 - Plain and intelligible language	37
Total	236

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).

ANNEXES

A UNDERTAKING GIVEN BY AUTONET 2000 LIMITED

UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999 (COUNCIL DIRECTIVE 93/13/EEC) (‘THE REGULATIONS’)

UNDERTAKING

Autonet 2000 Limited (‘the company’), whose registered office is at First Floor, Kimberley House, Vaughan Way, Leicester, LE1 4SG hereby gives to the Director General of Fair Trading an undertaking under Regulation 10(3) of the Regulations. The undertaking is that Autonet 2000 Limited, in the course of any business, whether by its directors or its officers or servants or agents, or otherwise

1. shall not use or recommend for use in any contract concluded with a consumer

Any terms having potential for unfairness in the company’s standard installation certificate and its terms and conditions or any terms having the same or similar unfair effect. In particular, the negative option clause referred to in the attached letter of 22 December 2000 shall not be used.

2. shall not enforce or attempt to enforce the terms, or any terms having the same or similar effect, in any contract entered into before the date of this undertaking; and
3. shall, in drawing up any term for general use in contracts concluded with consumers for the supply of goods or services in the course of any business, have regard to Regulation 5 and the indicative list of terms contained in Schedule 2 of the Regulations.

Signed:.....
G Wellington

In the presence of:.....
Name.....
Address.....
.....

Dated: 24 August 2001

**B UNDERTAKING GIVEN BY DELTAKEY LTD
T/A FLORIDA DIRECT**

**UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999
(COUNCIL DIRECTIVE 93/13/EEC)
(‘THE REGULATIONS’)**

UNDERTAKING

I, Martin Furner, Managing Director of Deltakey Ltd t/a Florida Direct (‘the company’), registered number 03530302, registered office 24 Chiswick High Road, London, W4 1TE hereby give to the Director General of Fair Trading an undertaking that I, in the course of any business, in any way, by myself, my servants or agents,

1. shall not use or recommend for use in contracts concluded with consumers

(a) terms 1, 3, 4, 5, 7, 8, 9(1), 9(2), 9(3), 9(4) of the company’s standard terms and conditions – Booking conditions and Terms 2, 3, 4, 5 and 6 of the standard terms and conditions of the booking conditions – Your Holiday Contract in so far as they have the effect described in the attached letters of 17 February 1999 and 6 November 2000; or

(b) any term having the same or a similar effect to a term referred to above; and
2. shall not enforce or attempt to enforce the terms, or any terms having the same or similar effect, in any contract entered into before the date of this undertaking; and
3. shall, in drawing up any term for general use in contracts concluded with consumers for the supply of goods or services in the course of any business, have regard to Regulation 5 and the indicative list of terms contained in Schedule 2 of the Regulations.

Signed:.....
Martin Furner

In the presence of:.....
Name.....
Address.....
.....

Dated: 12 July 2001