

Unfair contract terms bulletin 18

Case reports October to December 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.

May 2002

OFT388

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:

The Unfair Contract Terms Unit
Office of Fair Trading
Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX
email unfair.terms@oft.gov.uk

Unfair contract terms bulletins

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

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

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The Regulations

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

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

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

Copies of the amendments to the Regulations, the *Unfair Terms in Consumer Contracts (Amendment) Regulations 2001* (ref: SI 2001/1186) are also available from the Stationery Office as above, price £1.50, or on the internet at:
www.hmsso.gov.uk/si/si2001/20011186.htm

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1 INTRODUCTION

- 1.1 This is issue 18 of the quarterly *Unfair contract terms bulletin* in which the Director General of Fair Trading publishes reports of cases where standard contract terms have been changed or dropped as a result of his enforcement action under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations). The bulletin also includes reports he has received of cases taken by the other bodies that have powers to enforce the Regulations. Where he considers that a term drawn up for general use is unfair he has power to seek an order forbidding any further use of it. However, cases are normally resolved informally when he accepts undertakings in lieu of court proceedings. He also has the power to publish information about the Regulations and the work of the OFT.
- 1.2 This bulletin covers the period from October to December 2001. Chapter 2 contains reports of 23 cases completed by the OFT. As a result of these cases, 194 contract terms were abandoned or amended - in all cases by means of acceptance of undertakings. This bulletin also includes details of three cases completed by other bodies, in which a further 33 terms were revised.

Cases of note in this bulletin

- 1.3 As mentioned above, the *bulletins* now include cases taken by Qualifying Bodies. The three such cases in this bulletin are: Guildford Spectrum Leisure Centre (case report 10) taken by Surrey County Council, Key Discount Club Ltd t/a KDC (case report 13) taken by London Borough of Camden, and One.Tel (case report 19), taken by OFTEL.

Recent developments (after the end of the reporting period)

UNFAIR TENANCY TERMS

- 1.4 We published a consumer leaflet *Unfair tenancy terms – don't get caught out* on 23 April 2002. The leaflet aims to give consumers guidance on terms likely to be unfair in assured and assured shorthold tenancy agreements in England and Wales. In it we also provide advice on where to go for further information. Its publication follows the issuing of guidance for landlords in November last year - *Guidance on unfair terms in tenancy agreements* (ref: OFT356 - see *Bulletin 16*).

UNFAIR TERMS IN HEALTH AND FITNESS CLUB AGREEMENTS

- 1.5 On 4 April 2002, we published guidance and a consumer leaflet on unfair terms in health and fitness club agreements. The guidance and leaflet are available on our website www.offt.gov.uk

Guidance

- 1.6 The aim of the guidance is to help ensure that the standard contract terms used in health and fitness club agreements are fair and clear:
- by encouraging clubs to revise their contracts so that they comply with the Regulations, and
 - by helping trading standards departments and other Qualifying Bodies in their role as consumer advisers and regulators.

We expect those using or recommending standard pre-formulated health and fitness club agreements to review their terms and conditions in the light of the guidance and amend or remove any unfair terms from their contracts.

- 1.7 As explained in the guidance, the Regulations set a minimum standard not only of fairness but of transparency. Transparency helps potential members to make well-informed and confident decisions about joining clubs.
- 1.8 The guidance deals only with potential unfairness in standard contract terms used in health and fitness club agreements. But it may also apply to other types of clubs offering services to members who are consumers for the purposes of the Regulations.

Consumer leaflet

- 1.9 The consumer leaflet entitled *Are they fit to join?* complements the guidance and is designed specifically to help consumers spot unfairness for themselves. We have asked local authorities to help us in promoting this leaflet by making it available in local authority health clubs and libraries.

OFT action

- 1.10 We have already contacted a number of health and fitness clubs about unfair terms in their agreements and we will progress these cases with those clubs. Details of such cases will appear in future *bulletins*. The most recent example of a health and fitness club contract of the type discussed in the guidance and on which work has been completed is David Lloyd Leisure (case report 8 in *Bulletin 17*).

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 Abbotts Estate Agents Ltd

Name of business	Abbotts Estate Agents Ltd	Lead TSD	Essex County Council
Trading sector	Estate agents	Contract identifier	Marketing Contract (amended to Agency Agreement)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Payment of Fees	1(e): imposed a very high financial penalty (additional 1% of selling price plus VAT) on the vendor if the commission was not settled within the specified period.	Revised to make clear that in the event of any account remaining unpaid for more than 10 days from the date on which settlement becomes due, Abbotts reserve the right to charge interest on the balance at the rate of 3% above the National Westminster Bank plc base rate prevailing at the time of completion.	Payment of Accounts

Undertakings accepted	5 December 2001	One term revised
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Name of business	Alias Windows	Lead TSD	Wolverhampton City Council
Trading sector	Home maintenance, repairs and improvements	Contract identifier	Terms and Conditions

Other information	The OFT originally considered the supplier's terms after a referral by the above Trading Standards Department whom the OFT advised on those terms which it considered unfair. The OFT subsequently approached the supplier with a view to assessing his terms for unfairness and he agreed to remove all the terms in question from his contract documents.		
Undertakings accepted	16 October 2001	Eight terms deleted	

Name of business	Borough of Blyth Valley	Lead TSD	Northumberland County Council
Trading sector	Letting agencies (local authority)	Contract identifier	Tenancy Agreement - TA1

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1i	1(i): bound the tenant to the provisions of the tenant's handbook which the tenant may not have seen.	Reference to handbook deleted.	2i
1iv	1(l): provided for the Council to increase price by varying rent without any indication of the frequency and basis of the rent reviews.	Revised to clarify that rent reviews are normally annual, in April, and that the tenant has prior written details of the variation and an opportunity to end the tenancy before the variation takes place.	2iv
2i	1(b): required fixtures and fittings to be left intact and in good condition without their state having been established at the start of the tenancy.	Revised to provide that the fixtures and fittings are left intact and in the condition as at the start of the tenancy, subject to fair wear and tear.	3i
2ii	1(e): potential penalty clause provided for the tenant to be charged for missing or damaged items or unsatisfactory alterations, and gave the landlord sole discretion in deciding this. The second part of the term did not comply with the requirements of the Torts (Interference with Goods) Act 1977.	Revised so that reasonable costs are recoverable and to clarify the objectionable alterations. The second part of the term has been revised to refer to clearly discarded furniture and effects.	3ii

3ix	1(j): provided for an unrestricted right of the Council to vary the terms of the tenancy agreement.	Revised so that the tenant may end the tenancy before the changes come into effect.	4ix
3xv	Regulation 7: use of legal jargon ('curtilage').	Revised to refer to 'boundaries'.	4xiv
4iii	Term unfairly allowed the Council excessive discretion to decide the condition of the property.	Revised to remove the element of discretion.	5iv
4ix	Term allowed Council employees access to the property without giving notice.	Revised so that the Council gives at least 24 hours' notice in writing.	5viii
4x	Term unfairly allowed the Council to transfer to the tenant a risk in the costs of repairs which the Council could insure against.	Revised so that the Council is responsible for insuring those items for which it is responsible.	5ix
4xi	1(i): bound the tenant to hidden terms, and also potentially allowed the transfer of certain of the Council's repair obligations to the tenant.	Revised to delete the reference to a separate list. Term clearly indicates the tenant's liability to carry out minor acts and repairs necessary to keep the premises in reasonable condition.	5x

Other information	The Council has an operational procedure for dealing with items left behind accidentally.	
Undertakings accepted	7 December 2001	10 terms revised

4

British Gas Trading Ltd t/a British Gas LP Gas

Name of business	British Gas Trading Ltd t/a British Gas LP Gas	Lead TSD	Oxfordshire County Council
Trading sector	Domestic fuel (supply)	Contract identifier	Agreement for the exclusive supply of propane and/or butane in cylinders by British Gas - static fixed installations

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
4.2	1(l): although the term provided for notice of non-index-linked price increases to be given, the amount of notice given by the supplier was not stated. However, a consumer was required to give 90 days' notice to terminate the agreement. These unequal notice provisions potentially bound consumers to paying non-index-linked price increases.	Term provides for 28 days' written notice to be given to consumer of a non-index-linked price increase. If a consumer gives notice to terminate, the pre-increase price applies during the remainder of the consumer's notice period.	5.2

4.2 and 4.4	<p>1(l): provided for a consumer to negotiate a low rate ('special price'), but no provision existed to prevent this charge being increased to the current price within a few days of the minimum period or for the consumer to terminate in such a situation.</p> <p>Upon expiry of the special price, the rate reverted to the 'current price' applicable at that date. If the current price had been increased beyond the index, the term did not permit a consumer to terminate.</p>	The 'special price' is stated to be fixed for the special price period. Also, a consumer can cancel at the end of the special price period if the 'current price' has been increased by more than the price indexation.	5.4 and 5.2
4.11	1(j): required consumer to pay a deposit of at least £100 during the currency of the agreement for no specified reasons.	Revised to refer to the circumstances in which such a deposit would be required.	5.11
9.2	1(b): excluded liability for consequential loss or damage.	Exclusion limited to business losses, losses not foreseeable by either party and losses caused by circumstances beyond the reasonable control of the supplier.	10.2
13.1	Supplier was permitted to delay providing a service for certain specified reasons in the contract, some of which may have included circumstances within the control of the supplier.	Revised to state expressly that all circumstances referred to must be beyond the reasonable control of the supplier.	14.1
Acceptance	Consumer declaration.	Revised to state that the consumer should carefully read the terms and conditions.	Acceptance

Other information	The OFT has also investigated the charge imposed by term 5.4 and the refund of only half the price of gas remaining in unused cylinders. Following an explanation from the supplier, the OFT was satisfied that these did represent a genuine pre-estimate of losses incurred by the supplier.
Undertakings accepted	14 June 2001 Seven terms revised

Name of business	Charles Grosvenor Ltd	Lead TSD	Worcester County Council
Trading sector	Home maintenance, repairs and improvements	Contract identifier	Terms of Business

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	1(n): stated that oral agreements were excluded.	Deleted.	
3	1(b): stated that interest should be charged if the balance was unpaid 'for any reason', thereby excluding the consumer's right of set-off in the event of poor service.	Deleted.	
4	1(l): allowed the supplier to increase its prices if work was delayed or took longer than three months, with no right of the consumer to withdraw.	Deleted.	
5	1(b): sought to exclude the consumer's right of set-off by providing that payment should not be withheld pending local authority inspection, and sought to prevent consumer using the loft unless payment was made in full.	Deleted.	
6	1(b): sought to exclude liability for delay and for any consequential loss.	Deleted.	
9	1(e): allowed the supplier to retain a fixed sum, which might exceed the supplier's loss in some cases.	Deleted.	

12, 14 and 15	1(b) and 1(l): enabled the supplier to charge extra for additional works which may have been its responsibility to identify in the first place.	Deleted.	
18	1(m): appeared to give the supplier the exclusive right to interpret 'unreasonable interruption'.	Deleted.	
20	1(b): impliedly excluded liability for damage occurring due to the supplier's negligence.	Deleted.	
24	1(b) and Regulation 7: misleadingly implied that the contract could not be cancelled without the supplier's consent, and suggested that it could not be cancelled in the event of a fundamental breach by the supplier.	Deleted.	
29	1(b): supplier restricted its liability to the amount of the contractual price.	Deleted.	
30	1(b): excluded consumer's right of set-off by stating that the guarantee is void if the balance is not paid in full.	Deleted.	
Guarantee 34	1(b): had the potential for the supplier to exclude its liability for installing faulty plumbing equipment.	Deleted.	
Declaration on front of form	Consumer was required to make a declaration that terms have been 'read and understood'.	Deleted.	

Other information	The company and its directors gave undertakings to the Director General, details of which are to be found at Annexe A.	
Undertakings accepted	1 November 2001	16 terms deleted

6 Computer Cab plc

Name of business	Computer Cab plc	Lead TSD	City of Westminster
Trading sector	Road, rail, air & sea travel (taxi hire)	Contract identifier	Terms and conditions (for Cabcharge account) NALOC2 SM001/04/98

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2.3	1(b): restricted the consumer's right of set-off since the account was already charged for a journey even if the consumer had a valid reason for not paying for the journey.	Deleted.	
3.1(f)	1(m): allowed the supplier unfettered discretion as to whether or not to replace or renew Cabcharge cards.	The supplier's discretion to refuse to renew or replace lost Cabcharge cards is limited to its reasonable belief that there are valid reasons for doing so. These reasons include, for example, if the Cabcharge card was used or lost in circumstances that might cause loss to the supplier. Other safeguards for the consumer include the requirement on the supplier to inform consumers of the reasons for refusal to renew or replace, in writing.	3(e)
4.2	1(b): the consumer was required to notify the supplier of a lost or stolen Cabcharge card immediately he or she became aware of this.	The consumer is required to use best endeavours to notify the supplier of such loss as soon as possible and then to confirm in writing within seven days.	4.2

4.4	1(b): had the potential to exclude the supplier's liability for unauthorised use of the service due to its negligence.	Redrafted so that charges are not payable where unauthorised use of the service results from the supplier's negligence.	4.4
7.2(c)	1(g): allowed the supplier to terminate an ongoing contract without notice if it considered the consumer had breached any of the terms and conditions.	Redrafted to give the consumer seven days' notice of termination where the consumer fails to observe or perform or actually breaches terms and conditions.	7.3
8.1	1(b): the consumer was required to notify the supplier of any dispute concerning the supplier's calculation of its charges within 21 days of the day of invoice, and failure to do so meant the consumer had accepted the charges.	Redrafted so that the consumer can dispute the charges on his or her account at any time and the supplier endeavours to respond within 21 days.	8
8.2	1(q): compulsory arbitration clause.	Deleted.	
9.2(a) and 9.2(b)	1(b): excluded the supplier's liability for death, personal injury and breaches of the agreement caused by its own negligence.	The supplier accepts liability for death, personal injury and breaches of the agreement caused by its own negligence.	9.3, 9.5 and 9.6
10 (last two lines)	1(j): the consumer was allowed 21 days to object to the changes in terms and conditions after which he or she was said to be unable to dispute any such variations, leading to the consumer apparently being bound by such changes and unable to dispute them.	The reference to the consumer being unable to dispute changes was deleted.	10

Other information	In August 1998 the OFT challenged the whole contract as generally unfair and highlighted a few terms as an indication of the types of unfairness contained within the contract. The contract was redrafted and the OFT entered into discussion on the previously highlighted terms and those which appeared in the original contract and still remained in the revised contract. In order to produce a concise summary, only those terms that were discussed individually have been reported.
Specific reservations	The Director General noted that the supplier deals mostly with business customers. In recognition of this, the Director General's position has been reserved in respect of terms 9.5 and 9.6 as they seek to allow the supplier to limit its liability to a specified amount in relation to losses other than those related to death or personal injury.
Undertakings accepted	9 October 2001 10 terms revised or deleted

Name of business	Dreams plc	Lead TSD	Buckinghamshire County Council
Trading sector	Beds (retail)	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	Regulation 7: unclear and potentially inconsistent with Dreams' policy of allowing consumers to change their minds.	Exclusion of liability to make refunds limited to goods that do not fit. It is made clear that although Dreams allow consumers to change their minds, they will not refund where the beds do not fit into properties.	1
1	1(b): there was potential for the term to be misinterpreted to allow the supplier to make a charge when faulty or misdescribed goods were returned.	The inclusion of a new term 4 dedicated to 'Faulty Goods' removes the likelihood that the term would be misinterpreted in this way.	1 and 4
1	1(e): imposed a blanket 20% administration charge for cancellation. It was not clear that the supplier's losses would always amount to this figure, and so could have imposed an excessive charge in some cases.	Revised to state that, upon cancellation, a reasonable cancellation fee or loss of deposit (usually 20%) will be charged.	1
1	1(k): provided for an unlimited right to alter specifications.	Revised to restrict the right to alter specifications to making 'minor and reasonable' alterations.	1
1	1(b): had the potential to be used to exclude liability for latent defects in reduced-price showroom models.	The inclusion of a new term 4 dedicated to 'Faulty Goods' removes the likelihood that the term would be misinterpreted in this way.	1 and 4

1	1(n): excluded liability for verbal assurances by staff or agents if they were significantly different from those in the terms and conditions and were not confirmed by a company director.	Revised to remove the reference to such assurances not forming part of the contract.	1
3	1(b): excluded liability for loss or damage due to negligence by the company or its employees or agents when goods were delivered into properties.	Deleted.	
3	1(b) and Regulation 7: exclusion of liability for 'consequential loss' arising from negligent late delivery. Use of legal jargon.	Deleted.	
4	1(b): imposed delivery and collection charges when faulty goods were collected and a redelivery made.	The new term 4 dedicated to 'Faulty Goods' makes it clear that such charges will no longer be made.	4
4	1(n): the supplier offered a 'Comfort Exchange Guarantee' which allowed consumers to change their minds. However, it required consumers claiming under the guarantee to stop using the bed immediately. In the context of bed purchases, this was likely to operate as an impossible formality.	Deleted.	

Other information	The case arose because the company had breached an informal undertaking not to exclude liability for negligence while in a customer's property by reintroducing old term 3.
Intelligibility	The terms are presented in a few over-long paragraphs. Although helpful headings are used, the document could be set out more clearly.
Specific reservations	The Director General reserved his position on two elements of term 3. Firstly, the term could limit claims to a maximum of £50 when time has been made of the essence. Secondly, there is a reference to delivery being 'only to the door' which could be misleading because the supplier does appear to deliver goods into properties. The OFT was also concerned that this term could be used to exclude liability, for instance when goods are delivered into consumers' properties even though there is no express exclusion of such liability.
Undertakings accepted	21 November 2001 10 terms revised or deleted

8 Eurodebt Financial Services

Name of business	Eurodebt Financial Services	Lead TSD	Cambridgeshire County Council
Trading sector	Financial services	Contract identifier	Debt Management Agreement

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Third bullet point	Consumer declaration that it had been fully explained to the consumer that the supplier would use its best endeavours to secure reduced monthly payments or reduced final settlements with creditors.	Amended so that the form of the term reflects the reality, namely a promise by the supplier.	Third bullet point
Fourth bullet point	Consumer declaration that the consumer understood that the agreement provided for further reviews of the consumer's financial situation in the event of any major change of circumstances.	Amended so that the form of the term reflects the reality, namely a promise by the supplier.	Fourth bullet point (first sentence)
Fifth bullet point	Consumer declaration that the consumer understood that he/she had the option to renew agreement upon completion, if required.	Amended so that the form of the term reflects the reality, namely a statement of the rights of the parties on completion.	Seventh bullet point
Sixth bullet point	Regulation 7: term unclear as to level of charges levied for the service and nature of the service provided. Also used legal terminology ('nominal' and 'pro-rata') which consumer may not have understood.	Amended so that charging structure is clarified and legal terminology removed.	First and second bullet points

Final paragraph	1(b) and 1(e): term was too broadly drafted, preventing consumer from obtaining refund on termination even in the event of the supplier failing to meet its obligations under contract.	Amended to allow consumer to obtain refund, less the supplier's reasonable costs, if consumer decides, or circumstances dictate, that the agreement is cancelled, and consumer will not be responsible for supplier's costs where supplier has failed to provide the agreed services.	Fifth bullet point and fourth bullet point (second sentence)
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Undertakings accepted	17 October 2001	Five terms revised
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9 **Forrest Furnishing Ltd**

Name of business	Forrest Furnishing Ltd	Lead TSD	Glasgow City Council
Trading sector	Furniture (retail)	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Main Terms & Conditions (on front of order form):			
2	1(f): excluded the consumer's right to cancel the contract.	Revised by explaining the bespoke nature of most orders, and by accepting cancellations due to breach of contract.	1
3	1(b): excluded liability for any delays beyond the estimated delivery date.	Revised to accept liability for any cause within the supplier's control and to provide for reciprocal arrangements for compensation. However, see the Specific Reservations box below.	2
4	1(b): excluded the consumer's ability to claim set-off in the event of breach by the supplier by requiring full payment prior to delivery.	Deleted.	
Terms and Conditions (on rear of order form):			
5	Unfair enforcement clause: supplier retained an irrevocable right, following less than full payment, to enter the consumer's property and remove the goods.	Deleted.	

10

Guildford Spectrum Leisure Complex

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

Name of business	Guildford Spectrum Leisure Centre	Lead TSD	Surrey County Council
Trading sector	Entertainment, catering and accommodation (leisure centres)	Contract identifier	Autumn 2001 courses (September-December 2001)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Booking terms - last sentence (page 4)	Potential unfair transfer of risk: prevented consumers from obtaining a reduction in course fees where they had been unable to attend sessions due to circumstances under the control of the supplier.	Revised so that the term no longer excludes the supplier's liability for foreseeable problems.	
Customer cancellation/ requests for refunds - first bullet point (page 4)	The term as such was not unfair, but it omitted to state what the refund policy was if a consumer wished to cancel and obtain a refund less than seven days before the start of the course.	Revised so that the term clearly sets out the refund policy.	
Customer cancellation/ requests for refunds - second bullet point (page 4)	1(m): by requiring that requests for refunds after the start of a course would be at the discretion of the supplier and subject to an administration charge, the term left the decision as to whether or not the supplier was in breach of contract to the supplier.	Deleted.	

General information - third bullet point (page 4)	1(g), 1(j) and 1(k): allowed the supplier to change any aspect of the course, or cancel the course, without giving the consumer any notice. Also deprived the consumer of the ability to cancel the course in the event of the supplier breaching the contract.	Revised to remove the supplier's right to amend courses or cancel without refunding consumers.	
Booking terms (page 4)	<p>Regulation 7: the description of payment terms was unclear and needed clarification.</p> <p>The dates for receipt of payments had been incorrectly printed in the brochure causing confusion. Further confusion was caused by a term on page 3, which stated that 'bookings will only be taken with full payment', leaving those consumers who had chosen to pay by two instalments not sure if they had a confirmed booking or not.</p>	Revised to state that 'bookings will only be taken with payment'. Dates for receipt of payments corrected for the new brochure.	

Undertakings accepted	13 December 2001	Five terms revised or deleted
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Name of business	Hoopers	Lead TSD	London Borough of Brent & Harrow
Trading sector	Estate agents	Contract identifier	Agency Agreement

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Commission Charges	1(e): imposed an extremely high penalty for late payment of commission.	Revised to make clear that in the event of late payment interest will be charged on the outstanding amount at a rate of 5% per annum above the base lending interest rate of Lloyds Bank plc.	Commission Charges
Consumer Declaration	Consumer declaration.	Revised to advise the consumer to read and understand the terms before signing.	Consumer Declaration

Other information	The company was advised that its definition of 'sole agency' did not comply with the Estate Agents (Provision of Information) Regulations 1991. The company revised the definition in accordance with those Regulations.
Undertakings accepted	18 December 2001 Two terms revised

Name of business	Jobrite Landscaping	Lead TSD	Cambridgeshire County Council
Trading sector	Gardens (landscape gardening)	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
iii	1(e): required a 10% non-refundable deposit.	Revised so that the deposit is refundable, subject to deduction of Jobrite's reasonable losses on consumer cancellation.	8 and 9
iv (first sentence)	1(b): potentially excluded the consumer's right of set-off as the contract did not make clear whether all three stage payments were equal or when they were due.	Revised to indicate that the three stage payments are equal, stating when they are due. Final payment not due until the work has been completed.	10
iv (second sentence)	1(e): unfair penalty clause. Charged an onerous interest rate for late payment by the consumer.	Revised to charge reasonable rate of interest for late payment.	11
vii	1(b): excluded liability for materials used.	Revised to state that guarantees offered regarding materials supplied by Jobrite are in addition to the consumer's statutory rights. New term informs consumer of where to obtain more information about statutory rights.	14, 15 and 17
viii	1(e): allowed the supplier to charge an unspecified amount for extra work.	Additional term included in the contract to state the amount charged per hour for extra work. The supplier must obtain the consumer's consent before extra work is undertaken.	2 and 13

ix	1(b): excluded liability for design faults occurring after construction, and for failure to ensure safety of the product.	Revised to provide that measurements cannot be exact, but that Jobrite accept responsibility for matters of safety.	6
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Intelligibility	The clarity of the contract as a whole has been generally improved.		
Undertakings accepted	13 December 2001	Six terms revised	

13

Key Discount Club Ltd t/a KDC

(This case was taken by Camden TSD and not by the OFT)

Name of business	Key Discount Club Ltd t/a KDC	Lead TSD	London Borough of Camden
Trading sector	Discount shopping club	Contract identifier	Key Discount Club Ltd Terms of Membership

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	1(k): 'We reserve the right...by notice to you.' Allowed the supplier to alter without valid reason any characteristic of the service provided.	Revised to explain why the supplier may change the nature of the service provided. Also revised to provide that if a seller is removed a replacement will be found as quickly as possible.	1
3.1 and 3.2	1(h): annual membership was renewed automatically unless consumers notified the supplier otherwise.	Revised so that more than one reminder notice is sent to consumers. Consumers are warned that they must notify the supplier if they do not want to renew membership.	3
4.2	1(l): reserved the right to increase the renewal fee for each renewal. Potentially unfair price variation clause.	Revised so that the supplier will only 'reasonably adjust' fee at renewal. Consumers to be clearly notified of the fee by written notice. Consumers will have the opportunity to cancel their renewal of membership.	4.2
5	Non-transferability of membership.	Specifies that membership is non-transferable unless agreed and authorised by the supplier.	5
6.1	1(b): term attempted to exclude liability for poor service.	Revised to provide that the supplier will make good any errors.	6

6.3	1(b): attempted to exclude liability for any loss, howsoever arising, whether by the supplier's negligence or otherwise.	Deleted.	
6.4	1(b): directed consumers to make any claim for liability against the sellers rather than the supplier.	Deleted.	
6.5	1(b): attempted to limit the supplier's liability and to exclude liability for breach of implied terms.	Deleted.	
8	1(q): provided that the contract be governed by English law and gave exclusive jurisdiction to the English courts.	Reference to English law removed.	8
9	1(q): allowed the supplier to pass information to third parties, possibly contrary to the provisions of the Data Protection Act 1998.	Revised to give consumers the option to deny the supplier permission to disclose information to third parties.	9
11	1(g): 'We may terminate your membership at any time'. Allowed the supplier to terminate membership without valid reason at any time.	Revised to state the grounds for termination.	12

Specific reservations	The company has been advised that the conditions concerning renewal would only be acceptable if the notices of renewal are sent in good time (the company proposes 20 days and seven days) and that the notices are clear as to their purpose.	
Undertakings accepted	27 November 2001	12 terms revised

14 Keys

Name of business	Keys	Lead TSD	Norfolk County Council
Trading sector	Auctioneers	Contract identifier	Terms and conditions (for G A Key - Aylsham Salerooms)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2	1(b): excluded all liability on the part of the auctioneer.	Redrafted to confirm that the auctioneer acts as agent of the seller.	6
3	1(m): gave the auctioneer an unfair absolute right to resolve disputes.	Revised to state that the auctioneer will try to resolve disputes to the parties' satisfaction, with the option of offering the lot in question for sale again if, in his reasonable opinion, it seems appropriate.	5
5	1(b): had potential unfairly to exclude liability for damaged or misdescribed goods.	Term no longer seeks to exclude liability for damage caused by the auctioneer's negligence. Term 12.7 accepts liability under English law and directs consumers to sources of advice on their rights in this respect.	12.6 and 12.7
6	1(b) and Regulation 7: constituted a widely drawn exclusion of liability for misdescriptions and was not drafted in plain language.	Term explains the basis and meaning of any statements made by the auctioneer and has been redrafted in plainer language.	8
7	1(b) and Regulation 7: potentially unfair exclusion of the auctioneer's liability for defective or misdescribed goods. Term not in plain language.	Deleted.	

8	1(i): sought to bind consumers to terms they may not have seen at the time of contracting.	Revised to exclude the reference to altering or withdrawing the conditions of sale.	3
9	1(m): gave the auctioneer a potentially unfair right to determine the amount payable if a purchaser caused damage.	Revised to provide that the sum payable by any person causing damage shall be agreed between the parties after reasonable discussion, with the auctioneer undertaking to consider any reasonable offer or approach.	9
10	1(m): gave the auctioneer a potentially unfair right to determine the amount payable if lots were damaged.	Redrafted to remove the right of the auctioneer to determine the amount payable.	10
11	1(b) and 1(n): potentially unfairly excluded liability for defective or misdescribed goods. Term also had the potential unfairly to exclude liability for verbal statements made by the auctioneer's staff.	Deleted.	
12	1(m): unfairly made the auctioneer the sole arbiter in any dispute.	Deleted.	
14	1(e): the stipulation that if the buyer failed to comply with certain conditions the money paid would be forfeited and the lots resold constituted a potentially unfair penalty.	Deleted.	
15	1(b) and Regulation 7: unfairly allowed for the sale to be rescinded only in the case of deliberate forgery. Term not expressed in plain language.	Term allows for a refund or resort to court proceedings in respect of complaints of any kind.	14.1

16	1(b): unfairly made a rescission of the sale dependent on the auctioneer certifying that the lot was a forgery.	Term requires the buyer to provide written proof of the forgery and the evidence upon which he or she relies.	14.2
17	1(b) and Regulation 7: widely drawn exclusion of liability for forgery in particular circumstances including when the lot in question was not returned. The term was not drafted in plain language.	Term more narrowly drafted and expressed in plainer language. The attention of the buyer is drawn to the basis of the catalogue description. In addition the buyer is not required to return the goods if ownership has been transferred.	14.4 and 14.7
19	1(b): widely drawn exclusion of liability for misdescribed or damaged books.	Term more narrowly drawn and auctioneer undertakes to use his best endeavours to highlight any faults and to incorporate such matters within the catalogue. The buyer is also alerted to the kind of damage that might affect such goods.	15
22	1(b): the statement that the auctioneer would not recognise any complaint about the condition of a lot if it had left the auction room had the potential unfairly to exclude liability for damaged goods.	Deleted.	
24	1(b): potentially unfairly excluded liability for all loss or damage in the conduct of a commission bid, including where such loss or damage was caused by the auctioneer.	Redrafted to remove the specific exclusion of liability for negligence. Buyers are alerted to the need to examine the goods.	11.2

Intelligibility	Contract redrafted in plainer language.
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Other information	Please note that in auction contracts the seller, as well as the buyer, may be classified as a consumer under the Regulations.	
Undertakings accepted	13 November 2001	17 terms revised or deleted

Name of business	Labour Party Website Gift Shop	Lead TSD	City of Westminster
Trading sector	Internet retailing	Contract identifier	Terms and conditions on website

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	1(q): an exclusive jurisdiction clause.	Revised to make clear that the contract is deemed to have been concluded in England and that the parties agree to be subject to the non-exclusive jurisdiction of the English courts.	1
3	1(b) and Regulation 7: appeared to exclude liability for supplying goods that were misdescribed, or not fit for their purpose. Term was also not clear about the meaning of 'substitution'.	Revised to make it much clearer that the company will refund the purchase price but will only refund the costs of returning the goods if they are faulty, or if the company has provided consumers with substitute goods that they are unhappy with. Also a new term (term 5) has been included to make clear that the company may substitute goods of a similar nature and equivalent price if the goods ordered initially are unavailable, but will refund the price and the costs of returning those goods if consumers cancel.	3 and 5

4	1(b): exclusion of liability for supplying goods that were misdescribed, or not fit for their purpose.	Revised to make clear that, if they are not happy with them, consumers may reject the goods and receive at their option either an exchange of goods or a full refund.	4
9	Regulation 7: this appeared to be a 'statutory rights disclaimer'.	Revised so that term directs consumers to local authority TSDs and Citizens' Advice Bureaux for further information about their statutory rights.	9

Undertakings accepted	14 August 2001	Four terms revised
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Name of business	Lawdata Ltd	Lead TSD	Bedfordshire County Council
Trading sector	Motor vehicles (new and second-hand)	Contract identifier	New and Used Vehicle Sales Invoice - NUS4

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Note	Regulation 7: use of legal jargon ('title to the goods will not pass...').	Revised to use plain language relating to ownership.	Note
Consumer Declaration	Regulation 7: use of legal jargon.	Revised to use plain language relating to ownership.	Consumer Declaration
Customer Certificate	Required consumers to sign to acknowledge delivery when they might not have received the vehicle.	Revised to make it clear that the certificate was only to be signed upon delivery.	Customer Certificate

Other information	Lawdata Ltd provides professional legal advice, specialising in the motor trade. As part of that business it provides stationery and related products. The set of terms considered by the OFT would be reproduced on standard invoices used by dealers of motor vehicles to consumers. The terms would therefore be used in numerous consumer contracts.	
Undertakings accepted	7 December 2001	Three terms revised

Name of business	Magnet Ltd	Lead TSD	West Yorkshire Trading Standards Service
Trading sector	Home maintenance, repairs and improvements	Contract identifier	Terms and conditions of sale

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Supply of kitchens, bedrooms and bathrooms:			
2.1 and 2.2	1(n): potentially excluded the supplier's liability for oral statements by providing that the supplier's standard terms and conditions prevailed over variations proposed by consumers, and could be modified only by express written agreement.	Revised to state that it is the supplier's intention that orders should be subject to its standard terms and conditions and that consumers should ask for changes to be set out in writing.	2
2.4	1(k): supplier reserved the right to supply goods different from the ones ordered.	Revised to provide that no significant variations in goods will be made without consumers' agreement.	3
5.1.3	1(b): restricted right of set-off by requiring payment in full nine days before delivery.	Payment in advance still required, but consumers are entitled to refer disputes over delivery and installation to Qualitas, whose decisions will be binding on supplier. Consumers retain right to go to court. See 'Other information' box.	18

7.2	1(b) and 1(n): provided that time and date of delivery were not of the essence of the contract unless agreed in writing, which could have the effect of allowing supplier to override an oral agreement between sales staff and consumers. Term also excluded liability for losses to consumers caused by failure for whatever reason to deliver on agreed date.	Revised to delete requirement for consumers to agree time and date with supplier in writing. Liability for loss to consumers is excluded only where delay is reasonable or unavoidable.	9
7.5.1	1(e): provided that if consumers sought to delay or postpone the delivery date they were subject to unspecified additional charges.	Revised to provide that consumers should notify such delays at least 10 days before delivery. A new delivery date is to be agreed no more than four weeks later than the original date, in default of which consumers might incur costs which would be notified to them within seven days.	12
8.1 and 8.2	1(f) and 1(e): provided that consumers could cancel only if agreed by supplier in writing and on payment of fixed scale of costs.	Revised to delete requirement for supplier to agree to cancellation, and for costs to be paid. Term acknowledges that in some circumstances consumers might be entitled to compensation if supplier fails to perform contract as agreed, and provides that if consumers breach any of the conditions the supplier reserves the right to cancel the contract and to seek compensation.	23 and 24

9.2, 9.3 and 9.4	1(b) and 1(n): required consumers to check goods within seven days and retain the original packaging material; excluded claims for incomplete delivery or damaged goods if these formalities were not complied with, and for costs associated with removal and replacement of faulty goods.	Revised to ask consumers to inspect goods as soon as possible, and to advise them to retain packaging materials until they have done so. Exclusions of liability deleted.	14
11.4	1(b): provided that if delays occurred for reasons beyond the control of the supplier, consumers would bear the cost of personnel not being used.	Deleted.	
12	1(b) and Regulation 7: exclusion of liability for delay caused by circumstances outside supplier's control included some factors, such as strikes involving supplier's employees, which could be the fault of the supplier. Inappropriate use of legal jargon ('force majeure') in heading.	Revised to limit circumstances in which supplier is not liable to those that are beyond its reasonable control.	30
13	1(b): provided that errors or omissions in sales literature or price lists could be corrected by supplier without there being any liability to consumers.	Deleted.	
14	Regulation 7: reference to consumers' statutory rights listed relevant legislation but did not explain its effect.	Revised to state simply that statutory rights are not affected, and that advice about them can be sought from consumer advisers.	31

Supply of windows, doors and conservatories:			
2	1(f): supplier reserved right to cancel contract after survey should it consider satisfaction for either party was unlikely.	Deleted.	
3 (second sentence) and 20	1(n): disclaimed responsibility for oral agreements entered into by sales agents, and provided that no variations could be made unless agreed in writing.	Revised to state that it is the supplier's intention that orders should be subject to its standard terms and conditions.	2
3 (third sentence)	1(l): allowed supplier to make additional charges at its discretion if consumers varied details of contract.	Deleted.	
3 (fourth and fifth sentences)	1(b): restricted consumers' right of set-off by providing that supplier would deal with complaints about installation only if consumers had paid in full.	Deleted.	
4(a)	1(b): provided that supplier had no liability at all for delays in delivery or installation.	Revised to limit circumstances in which supplier is not liable to those that are unavoidable or beyond its reasonable control.	9 and 30
4(b)	1(b): in the event of delay justifying consumers' withdrawal from the contract, supplier's liability was limited to refund of deposit.	Revised to state that in certain circumstances consumers have the right to cancel and to receive compensation.	22 and 23
13	1(i): provided that the Glass and Glazing Federation's standards for glass quality were applicable if there was a dispute, but no description of the standards was given to consumers.	Deleted.	

14	1(k): allowed supplier the right to make any modifications to design, specification or composition it wished, without reference to consumers.	Revised to provide that no significant variations in goods will be made without consumers' agreement.	3
17	1(i) and exclusion of rights under Consumer Credit Act 1974: a provision that the supplier reserved the right to obtain funds for consumers, at normal building society rates, if consumers' own application failed, had the effect of binding them to hidden terms and depriving them of the protection of the Consumer Credit Act 1974.	Revised to provide that consumers can cancel the contract if their loan application is refused.	21
24	1(f) and 1(e): provided that if consumers cancelled their contract after seven days, for any reason, the supplier might require a charge to be paid within 14 days.	Revised to acknowledge that in some circumstances consumers might be entitled to compensation if supplier fails to perform contract as agreed, and provides that if consumers breach any of the conditions, the supplier reserves the right to cancel the contract and to seek compensation.	23 and 24
26 (second paragraph)	Transferred inappropriate risks to consumers by requiring them to indemnify supplier for any costs incurred by supplier if, at consumers' request, it agreed to start work before planning consents etc were received. Regulation 7: inappropriate use of legal jargon ('indemnify').	Deleted.	
Bottom of page	Regulation 7: inadequate reference to statutory rights.	Revised to inform consumers that advice can be sought from consumer advisers.	31

Name of business	Mercury Personal Communications Ltd t/a One-2-One	Lead TSD	Hertfordshire County Council
Trading sector	Mobile phones	Contract identifier	Service/Upgrade Agreement (Transfer Smartcard/Phone number) 3/1097 ('SU'); All-in-One Service Agreement 4/0299 ('AIO'); Up 2 You ('U2Y')

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Declaration (Section 1) SU	The transferee would have to enter into a new 12-month agreement and the transferor would still remain liable for monthly service charges for the minimum contract period. Effectively this meant that the supplier was being paid twice for the remainder of the minimum term.	The transferor is only liable for the monthly service charges during the minimum contract period where these remain unpaid by the transferee.	Declaration (Section 1) Telephone Service Terms and Conditions
2(d) AIO	Regulation 7: the circumstances in which the consumer had to pay a cancellation charge were unclear.	Revised to make clear when a cancellation charge is payable.	2(c) AIO
2(e) AIO, 2(f) SU	Regulation 7: it was unclear why the consumer should not rely on the credit limit set by the supplier as a cap on his/her liability for future charges.	Revised to make clear that charges are not capped by the credit limit set, as call charges incurred prior to exceeding the credit limit may not be recorded against the account immediately.	2(e) AIO, 2(f) Telephone Service Terms and Conditions

4(c) SU/AIO	Regulation 7: the reference to 'on time' in relation to payment of an invoice was unclear. It was also unclear whether interest was charged on a per annum basis calculated daily.	Revised to make clear when the consumer is required to pay a bill and that interest on late payment will be charged on a per annum basis calculated daily.	4(c) Telephone Service Terms and Conditions/ AIO
4(f) AIO	1(l): allowed the supplier to increase charges. As the consumer would already have paid for the phone and line rental he/she would lose the benefit of the remainder of the line rental and have a phone which would be redundant if he/she decided to cancel because of an increase in call charges.	If the consumer withdraws from the agreement because of an increase in charges the supplier will refund the amount proportionate to the remainder of the 12 months.	4(l) AIO
4(j) U2Y	1(l): allowed the supplier to increase charges and change the terms and conditions. As the consumer would already have paid for the phone and call charges he/she would lose the benefit of the remainder of the credit held on the handset if this was not used within the 30 days before the increase in charges take effect.	Revised so that the consumer will be advised of changes to conditions, in writing, where the consumer has registered, thus giving the consumer 90 days in which to use the remaining credit before the new conditions take effect. In the event that charges are increased the consumer still only gets 30 days' notice but he/she does not have to use the remaining credit. Before the new charges take effect the consumer can request a refund and take the handset to another network operator.	4(g) Pay as you go
5(e) SU, AIO, U2Y	1(b): excluded liability for indirect and consequential loss.	Losses are limited to those that were not reasonably foreseeable at the time the contract was made.	5(e) Telephone Service Terms and Conditions, AIO, and Pay as you go

5(g) SU, U2Y, 5(h) AIO	1(b): consumer had a short time limit in which to bring a claim for loss and/or damage.	Claims must be brought as soon as reasonably possible.	5(f) Telephone Service Terms and Conditions, AIO
6(a)(ii) SU, AIO	1(e): allowed the supplier to charge the consumer a reconnection fee in the event that the consumer was suspended for exceeding his/her credit limit.	This term no longer refers to credit limit.	6(a)(ii) Telephone Service Terms and Conditions, AIO
8(f) SU, AIO, 8(e) U2Y	1(q): precluded Scottish and Northern Ireland consumers from taking action in their respective courts.	The courts of the United Kingdom have jurisdiction.	9(f) Telephone Service Terms and Conditions, AIO and Pay as you go
8(h) SU	There was a reference to the eight Data Protection principles without a brief description as to what they are or where the consumer could find out about them.	Deleted.	

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One.Tel

(this case was taken by OFTEL and not by the OFT)

Name of business	One.Tel	Lead TSD	London Borough of Hounslow
Trading Sector	Telecommunications (indirect access telephony service provider)	Contract identifier	Contract for internet services

Original term	Application of the Regulations	How changed	New term
2.3	1(b): made the customer liable for all charges incurred, regardless of how they accrued, even through fraud.	Deleted.	
2.4	1(g): supplier's right to cancel without notice.	Revised by adding: 'We will normally inform you first if we are going to suspend or terminate your access to the Service.'	2.4
3.1	1(k): supplier able to alter unilaterally any characteristics of the service provided without a valid reason.	Revised by adding: 'We shall make all reasonable efforts to inform you if we do so and you may terminate the contract without penalty if the variations are substantial.'	3.1
6.1	1(g): the supplier reserved the right to terminate or suspend access to the service at any time without liability and without prior notice if it considers this reasonable and necessary.	Amended to: 'We can suspend the Service immediately if we are entitled to end this Agreement, if we are required to do so by Government, an emergency services organisation or any other competent body or lawful authority or for repairs, maintenance or improvement.'	6.1

6.2	1(j): supplier's general variation clause.	Amended to 'We can change this Agreement at any time. We will only do this if we have a valid reason, for example, to reflect changing legal, regulatory or business requirements. We will publish any change on this website [and] notify you directly before it takes effect.'	3.2
6.4	1(d): the customer is liable for any charges incurred up until the effective date of termination and no fees will be refunded.	Amended to 'You will remain liable for any charges you incur up to the effective date of termination except in cases of fraud committed against you.'	6.2
7.1 and 8.3	1(j): supplier's general variation clause.	Deleted. A new term provides the conditions under which One.Tel is permitted to change the agreement (see term 6.2 above).	3.2
7.3 and 8.4	The customer must pay all outstanding charges before terminating the service.	Replaced these with the following wording: 'You will remain liable for any charges you incur up to the effective date of termination except in cases of fraud committed against you'; and 'If you lose your password and/or you believe that someone else has obtained this information or accessed your account you should notify us at the first reasonable opportunity. If you do not, you may be liable for any losses which you suffer as a result.'	6.2 and 2.2

7.7 and 8.7	1(l): supplier's right to increase price.	Amended to: 'We can change the rates at any time. We will give you reasonable notice of this before we do so. If we increase our prices by more than the percentage increase in the retail price index you may cancel this Contract with no penalty and the new prices will not apply to you.'	7.5 and 8.7
10.2 and 10.6	1(b): the customer agrees that the service is provided without warranties of any kind unless legally incapable of exclusion.	Amended. Although One.Tel makes 'no warranties, conditions, guarantees or representations as to the quality or fitness for a particular purpose of the Internet Service or other warranties, conditions guarantees whether express or implied, oral or in writing, except as expressly stated in this Contract', term 11 does provide that 'We shall provide the Services with reasonable skill and care...'. In addition, the customer has the right to terminate without penalty under term 3.1 (see above).	10.4.2 and 11
10.7	1(b): excluded or restricted supplier's liability for negligence or breach of contract.	Replaced with 'We will not in any event be liable for: 10.3.1 any business loss (including loss of profit, revenue, contract, anticipated savings, goodwill, data or other financial loss); or 10.3.2 any indirect or consequential loss which is not reasonably foreseeable by us when this contract starts.'	10.3

12.1	Provision for unspecified notice period.	Revised by changing 'notice' to 'reasonable notice' in all the terms which state that notice will be given.	
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Undertakings accepted	7 September 2001	16 terms revised or deleted
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Name of business	Pikes Estate and Letting Agents	Lead TSD	Hertfordshire County Council
Trading sector	Letting agencies (student letting service)	Contract identifier	Guidance Notes for Students 2002

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Rental amounts and period	Regulation 7: lack of clarity.	Revision sets out more clearly the circumstances in which the handling charge is payable and when and how rental payments are to be made.	Rental amounts and period
Guarantor (second paragraph)	Effectively amounted to an unreasonable ancillary obligation/restriction as guarantor forms had to be returned within seven days.	Revision allows 14 days for the completed guarantor forms to be returned.	Guarantor - second paragraph
Reservation (second sentence)	1(d): refund of prepayments ruled out in all circumstances.	Second sentence deleted. New paragraph permits the landlord to retain that amount of a prepayment that reflects the actual loss incurred. Both the landlord and agent will make reasonable efforts to re-let the property if one party is unable to proceed with the tenancy.	PLEASE NOTE

Property Condition (first sentence)	Amounted to a potentially unfair consumer declaration about the condition of property.	Removed. Prospective tenants are encouraged to raise enquiries rather than making assumptions about the condition of the property, its decoration or contents. Prospective tenants are also asked to make enquiries about the condition of the property early on during negotiations rather than when signing the tenancy agreement.	Property Condition
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Undertakings accepted	21 December 2001	Four terms revised
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21 Protim Services Ltd

Name of business	Protim Services Ltd	Lead TSD	London Borough of Hillingdon
Trading sector	Home maintenance, repairs and improvements (timber treatment and damp-proofing)	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2(c)	1(i): referred to the guarantee being provided prior to completion of the treatment.	Revised to make clear that the consumer should read and understand the terms of the guarantee before entering into the agreement.	2(d)
4(a)	1(b) and Regulation 7: term was unclear and sought to deny liability for negligence.	Revised to make clear that the supplier accepts liability as set out in the guarantee.	4(a)
4(b)(iii)	1(b): sought to exclude liability for damage caused by the supplier's negligence.	Deleted.	
4(b)(vi)	1(b): sought to exclude liability for loss or damage arising from delay.	Revised to make clear that the supplier is not liable for any loss or damage that was not foreseeable to both parties when the contract was formed, where such loss is not due to its negligence or breach of contract.	4(b)(iv)
4(b)(x)	1(b): sought to exclude liability for damage caused by the supplier's negligence.	Deleted.	

6(a):	1(q) and Regulation 7: term was unclear and sought to limit or hinder the legal rights of the consumer.	Terms deleted and replaced with a new term that makes clear that consumers should notify the supplier of any claim under the guarantee within three months of the date the fault was detected. Furthermore, the supplier will not be liable for any damages if the consumer fails to allow the supplier to carry out remedial work or take any reasonable measures within six months of the date of inspection of the fault.	5
6(b)	1(q) and Regulation 7: term was confusing and sought to remove the consumer's statutory rights.		
6(c)	Regulation 7: term was unclear and contradictory.		

Other information	In October 1996 the OFT challenged eight terms used by the company. The OFT received no further correspondence from the company until June 2001, when it submitted a 'final draft' of its terms. The OFT provided very detailed views on 25 proposed terms in addition to those originally challenged. The company has revised the whole agreement.	
Undertakings accepted	30 November 2001	Eight terms revised or deleted

Name of business	Springboard Internet Services Ltd t/a LineOne	Lead TSD	Corporation of London
Trading sector	Internet service provider	Contract identifier	'Fly to Los Angeles for just £10' promotional offer - Terms & Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
LineOne's Terms and Conditions:			
8	1(k): reserved the promoter's right to substitute the holiday voucher to be supplied to the consumer for one of a similar nature and value.	Withdrawn.	
13	1(q): provided that the contract was subject to English law and the exclusive jurisdiction of the courts of England and Wales, regardless of the consumer's place of domicile.	Withdrawn.	
£10 Flight:			
1	Regulation 7: use of unexplained abbreviations ('ROL').	Withdrawn.	
2	Regulation 7: use of unexplained abbreviations ('ROL').	Withdrawn.	

9	<p>Provided that no changes could be made once the holiday had been booked. The OFT considered this provision to be an unfair restriction upon the consumer's entitlement – as laid down by Regulation 10 of the Package Travel, Package Holidays and Package Tours Regulations 1992 – to transfer a package holiday booking to another consumer where the consumer is prevented from travelling.</p>	Withdrawn.	
10	<p>1(b): provided that all air travel and hotel accommodation was subject to it being contractually available to the supplier, without providing that confirmed bookings would be guaranteed.</p>	Withdrawn.	
11	<p>1(k): provided that hotels were subject to change without notice.</p>	Withdrawn.	
13	<p>Regulation 7: use of unexplained abbreviations ('ROL').</p>	Withdrawn.	
16	<p>1(a) and 1(b): excluded the supplier's liability for the quality of the services offered and for any loss or personal injury.</p> <p>Regulation 7: use of unexplained abbreviations ('TLC').</p>	Withdrawn.	
17	<p>Provided that the consumer 'fully accepts' the terms and conditions.</p>	Withdrawn.	

<p>Other information</p>	<p>The closing date for the 'Fly to Los Angeles for just £10' promotional offer had expired when the OFT commenced its enforcement action under the Regulations. For this reason, the OFT did not request that Springboard Internet Services Ltd produce revised terms and conditions. In place of revised terms, the company gave an undertaking that it would not enforce, or otherwise rely on, any of the terms listed above in contracts already entered into with consumers. The company also gave an undertaking that it would not use any similar terms, or terms having a similar effect, to those listed above in any future contract with consumers.</p>
<p>Undertakings accepted</p>	<p>6 November 2001 10 terms withdrawn</p>

The Vale Residential Home Ltd (formerly The Vale Nursing Home Ltd)

Name of Company	The Vale Residential Home Ltd (formerly The Vale Nursing Home Ltd)	Lead TSD	Kent County Council
Trading Sector	Residential care homes	Contract identifier	Conditions of Admission and Terms of Business (1999)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
3	1(l): potentially unfair right to increase price.	Withdrawn.	
6	1(b): potentially unfair exclusion of liability for poor service, negligence or other breach of duty.	Withdrawn.	
9	1(e) and Regulation 7: provided for a potentially unfair penalty charge for possessions left behind; significant term not given sufficient prominence; and did not comply with the requirements of the Torts (Interference with Goods) Act 1977.	Withdrawn.	
10	1(b): potentially unfair exclusion of liability for poor service.	Withdrawn.	
13	1(b): potentially unfair exclusion of liability for poor service, negligence or other breach of duty.	Withdrawn.	
Final Declaration	Declaration that the consumer had read the conditions before signing.	Withdrawn.	

Additional terms 1-5	Regulation 7: use of legal jargon ('indemnity' and 'indemnify').	Withdrawn.	
1	Regulation 7: term unclear as to meaning and effect. Placed an unreasonable obligation on the guarantor by making him liable for payments when ignorant of the consumer's default and no steps had been taken to remedy that default.	Withdrawn.	
2	Placed an unreasonable obligation on the guarantor by requiring a guarantee of the consumer's performance of all the terms.	Withdrawn.	
3	Regulation 7: unclear as to the term's effect and scope. Term appeared to create unenforceable liabilities at law inconsistent with the intention of the parties.	Withdrawn.	
4	Placed an unreasonable obligation on the guarantor by extending the liability on the death of the consumer to a person not a party to the contract.	Withdrawn.	
5	Regulation 7: use of legal jargon ('joint and several liability').	Withdrawn.	
Declaration	Declaration that the consumer had read the terms and conditions before signing.	Withdrawn.	

Other information	The supplier withdrew his old contract and introduced a standard agreement in use in this sector which was also revised to meet the requirements of the Regulations.	
Undertakings accepted	12 November 2001	12 terms deleted

Name of business	Vodafone Ltd t/a Talkland Communications Ltd and Vodafone Connect Ltd	Lead TSD	West Berkshire Council
Trading sector	Mobile phones	Contract identifier	VFC/136/S/897-1 ('Vodafone Connect'); SP-TL-STA13 ('Talkland (a)'); MAN-TL-STA10 ('Talkland (b)'); Pay as you Talk ('PAYT')

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Declaration (Talkland (a) and (b) only)	Declaration that the consumer had read and understood the terms and conditions.	The 'read and understood' statement has been deleted.	Declaration
4(d)	Regulation 7: it was unclear whether or not interest was charged at a daily rate of 2% above base rate.	The revised term makes it clear that interest is charged at 2% per annum but is calculated daily.	4(d)
7(a)	1(l): allowed the supplier to increase its charges significantly without giving the consumer the right to cancel without penalty.	Term 7(a) remains as drafted as the introduction of a new term at 8(a) fourth bullet (i) (ii) and (iii) provides for termination of the contract without penalty where call charges to non-mobile numbers are increased by more than 10%.	8(a) fourth bullet (i) (ii) and (iii)
7(b)	1(j): the supplier reserved an apparently unlimited right to change its terms and conditions.	Term revised so that supplier's right to make changes is limited to those dictated by a change in the law or due to a change in the supplier's operating licence. The supplier also undertook to notify consumer of the changes.	7(b)

8(a) third bullet	1(l): had the potential to allow the supplier to increase line rental charges above the Retail Prices Index (RPI) without giving the consumer the right to cancel without penalty.	Term 8(a) third bullet remains as drafted as the introduction of a new term at 8(a) fourth bullet (i) (ii) and (iii) provides for termination of the contract without penalty where the supplier increases the line rental charges by more than the RPI.	8(a) fourth bullet (i) (ii) and (iii)
10(a)	Did not allow the consumer to transfer the contract without the supplier's permission.	Revised so that supplier undertakes that permission to transfer the contract to a third party will not be withheld unreasonably.	11(a)
10(i)	1(q): sought to restrict court proceedings to the English courts thereby precluding Scottish consumers from taking action in the Sheriff's Court.	The reference to court action in the English courts has been removed.	11(k)
Service Rule 12 (PAYT)	The consumer was only credited for the number of days after the service had been suspended and where the service had been suspended for three consecutive days.	Deleted.	
Service Rule 13 (PAYT)	Allowed the supplier to alter the terms of the contract.	The supplier's right to vary the contract is limited to changes required by its licence or those permitted by law.	Variations b)
Your Information (b) para. 3 (PAYT)	Regulation 7: consumer was unaware of whether or not control of personal information was passed to third parties.	Term revised to clarify that control of personal information is not passed to third parties.	Your Information (b) para. 3

Your Information (c) (PAYT)	Regulation 7: term referred to other companies with whom information could be shared, without specification.	The term is more concisely worded and lists some of the group companies with whom the supplier shares its information as well as providing a specific description of all group companies.	Your Information (c)
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Specific reservations	The Director General's position has been reserved in relation to several terms pending evidence of potential or actual unfairness to the detriment of consumers. The terms in question are 3(g), 6(ii), 8(b)(iii), 8(c)(v) and 9(a) of all three agreements, service rule 19 and the lack of a cooling-off period (page 14) of PAYT. Terms 3(g), 6(ii), 8(b)(iii) and 8(c)(v) could allow the supplier to restrict the consumer's right of set-off in the event that charges are in dispute. Terms 9(a) and service rule 19 could allow the supplier to exclude liability for foreseeable losses.		
Intelligibility	The font size used in the Pay as You Talk service guide was very small; this has been increased and is more readable.		
Undertakings accepted	23 November 2001	11 terms revised or deleted	

25 **Vodafone Ltd (Connect)**

Name of business	Vodafone Ltd (Connect)	Lead TSD	West Berkshire Council
Trading sector	Insurance (mobile phones)	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Theft Loss or Damage ... (b)	Regulation 7: an ambiguous term not making it clear that a replacement may be refurbished.	Revised by addition of '(this replacement may be a refurbished phone)'.	Theft Loss or Damage ... (b)

Other information	The OFT has not assessed the other terms for fairness.		
Undertakings accepted	28 November 2001	One term revised	

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

Subsequent enforcement action
<p>It was reported in <i>Bulletin 17</i> (pages 70-74) that the OFT had secured undertakings from this supplier on 16 July 2001. Shortly thereafter, the OFT received a complaint which provided evidence that World Challenge Expeditions Ltd had relied on the original version of term 6.1 in seeking to retain all of the prepayments made by a consumer where the consumer chose to withdraw from the contract prematurely. The OFT therefore sought and received formal undertakings, signed on 8 October 2001, in place of the informal undertakings previously received. See page 74 for the text of the formal undertakings.</p>

Undertakings accepted	8 October 2001
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3 STATISTICAL BREAKDOWN OF ACTION ON CASES BY THE OFT

TABLE 3.1: BREAKDOWN OF CASES COMPLETED*

Case outcome	Oct-Dec 2001	All cases to end Dec 2001
Advice or warning:	107	1,433
<i>advice to consumers/solicitors</i>	41	
<i>advice to TSOs and CABx</i>	17	
<i>advice to Qualifying Bodies</i>	25	
<i>advice to trade associations</i>	1	
<i>warning letter</i>	23	
'Core' terms	6	278
Defective cases	2	181
Duplicate cases	15	1,412
Enquiries	4	33
Excluded terms	12	354
'Formal' undertakings given	2	18
'Informal' undertakings given	23	707
No outcome recorded	2	19
Not about a contract term	12	222
Other legislation	3	291
Other reasons:	35	658
<i>approach made</i>	3	
<i>complex</i>	18	
<i>no approach made</i>	14	
Referred to Qualifying Bodies	11	208
Terms not considered unfair	6	576
Total	240	6,390

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 (Sept 2001)	This quarter (Oct-Dec 2001)	Total at end this quarter (Dec 2001)
Cases received	6,919	230**	7,149
Cases completed	6,150	240+	6,390
Cases carried over to next quarter	769		759

* Periodic adjustment - running totals have been adjusted to tally with those on computer system.

** A figure of 235 was used for the purposes of the 2001 annual report – 1,167 cases received in 2001, but receipts undercounted in *Bulletins 15-17*.

+ Nominally 230 as completions overcounted in *Bulletins 15-17*.

4 ALPHABETICAL INDEX OF BUSINESSES APPROACHED INDICATING TRADING SECTORS

1	Abbotts Estate Agents Ltd	estate agents
2	Alias Windows	home maintenance, repairs and improvements
3	Borough of Blyth Valley	letting agencies (local authority)
4	British Gas Trading Ltd t/a British Gas LP Gas	domestic fuel (supply)
5	Charles Grosvenor Ltd	home maintenance, repairs and improvements
6	Computer Cab plc	road, rail, air & sea travel (taxi hire)
7	Dreams plc	beds (retail)
8	Eurodebt Financial Services	financial services
9	Forrest Furnishing Ltd	furniture (retail)
10	Guildford Spectrum Leisure Complex	entertainment, catering and accommodation (leisure centres)
11	Hoopers	estate agents
12	Jobrite Landscaping	gardens (landscape gardening)
13	Key Discount Club Ltd t/a KDC	discount shopping club
14	Keys	auctioneers
15	Labour Party Website Gift Shop	internet retailing
16	Lawdata Ltd	motor vehicles (new and second-hand)
-	LineOne	see Springboard Internet Services Ltd
17	Magnet Ltd	home maintenance, repairs and improvements
18	Mercury Personal Communications Ltd t/a One 2 One	mobile phones

19	One.Tel	telecommunications (indirect access telephony service provider)
20	Pikes Estate and Letting Agents	letting agencies (student letting service)
21	Protim Services Ltd	home maintenance, repairs and improvements (timber treatment and damp-proofing service)
22	Springboard Internet Services Ltd t/a LineOne	internet service provider
23	The Vale Residential Home Ltd (formerly The Vale Nursing Home Ltd)	residential care homes
24	Vodafone UK Ltd t/a Talkland Communications Ltd and Vodafone Connect Ltd	mobile phones
25	Vodafone Ltd (Connect)	insurance (mobile phones)
26	World Challenge Expeditions Ltd	holidays

5 GEOGRAPHICAL INDEX OF BUSINESSES BY LOCAL AUTHORITY

Bedfordshire County Council

Lawdata Ltd

Brent & Harrow, London Borough of

Hoopers

World Challenge Expeditions Ltd

Buckinghamshire County Council

Dreams plc

Cambridgeshire County Council

Eurodebt Financial Services

Jobrite Landscaping

Camden, London Borough of

Key Discount Club t/a KDC

Essex County Council

Abbotts Estate Agents Ltd

Glasgow City Council

Forrest Furnishing Ltd

Hertfordshire County Council

Mercury Personal Communications Ltd t/a One-2-One

Pikes Estate and Letting Agents

Hillingdon, London Borough of

Protim Services Ltd

Hounslow, London Borough of

One.Tel

Kent County Council

The Vale Residential Home Ltd (formerly The Vale Nursing Home Ltd)

London, Corporation of

Springboard Internet Services Ltd t/a LineOne

Norfolk County Council

Keys

Northumberland County Council

Borough of Blyth Valley

Oxfordshire County Council

British Gas Trading Ltd t/a British Gas LP Gas

Surrey County Council

Guildford Spectrum Leisure Centre

Westminster, City of

Computer Cab plc

Labour Party Website Gift Shop

West Berkshire Council

Vodafone Ltd t/a Talkland Communications Ltd and Vodafone Connect Ltd

Vodafone Ltd (Connect)

West Yorkshire Trading Standards Service

Magnet Ltd

Wolverhampton City Council

Alias Windows

Worcester County Council

Charles Grosvenor 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	2
Schedule 2:	paragraph 1(b) - Excluding or restricting liability for breaches of contract	
	<i>a Excluding liability for defective or misdescribed goods</i>	17
	<i>b Excluding liability for poor services, or work and material</i>	20
	<i>c Restricting amount or type of liability</i>	15
	<i>d Time limits on claims</i>	1
	<i>e Excluding consumers' right of set-off</i>	8
	<i>f Excluding or restricting liability for delay</i>	7
	<i>g Excluding or restricting liability for a supplier's non-performance</i>	1
	<i>h Excluding or restricting liability via guarantee</i>	0
Schedule 2:	paragraph 1(c) – Binding consumers while allowing suppliers to opt out on a pretext	1
Schedule 2:	paragraph 1(d) - Non-return of prepayments on consumer cancellation	2
Schedule 2:	paragraph 1(e) - Financial penalties	12
Schedule 2:	paragraph 1(f) - Cancellation clauses	6
Schedule 2:	paragraph 1(g) - Supplier's right to cancel without notice	1
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	4
Schedule 2:	paragraph 1(k) - Right to change what is supplied	7
Schedule 2:	paragraph 1(l) - Right to increase the price	11
Schedule 2:	paragraph 1(m) - Supplier's right of final decision	7
Schedule 2:	paragraph 1(n) - Entire agreement and formality clauses	
	<i>a Clauses disclaiming liability for employees' statements</i>	6
	<i>b Formality requirements</i>	2
Schedule 2:	paragraph 1(o) - Binding consumers where a supplier defaults	0
Schedule 2:	paragraph 1(p) – Supplier's right to assign without consent	0

Schedule 2: paragraph 1(q) - Restricting the consumer's remedies	7
Other categories of unfair terms	
<i>a</i> Allowing a supplier to impose an unfair financial burden	3
<i>b</i> Transferring unfair risks (eg: by indemnities) to consumers	3
<i>c</i> Onerous enforcement clauses	2
<i>d</i> Excluding consumers' right to assign	1
<i>e</i> Consumer declarations about contractual circumstances	12
<i>f</i> Excluding consumers' non-contractual rights	1
<i>g</i> Delivery at supplier's discretion	1
<i>h</i> Other	5
Regulation 7 - Plain and intelligible language	23
Total	194

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 UNDERTAKINGS GIVEN BY CHARLES GROSVENOR LTD

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

UNDERTAKING

I, Robert G Annis, Director of Charles Grosvenor Limited, ('the Company'), company number 2593680, whose Head Office & Works is at 300 Birchfield Road, Redditch, Worcestershire B97 4LZ, hereby give to the Director General of Fair Trading an undertaking under Regulation 10(3) of the Regulations that I:

1. shall not use or recommend for use in contracts concluded with consumers:
 - (a) any of the terms referred to in the attached letter of 20 September 1999 insofar as they have the effect described in the attached letter;
 - (b) any terms having the same or similar effect to the terms 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. will, in drawing up any terms 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:.....
Robert G Annis
Director

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

Dated: 1 November 2001

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

UNDERTAKING

I, Russell G Annis, Director and Company Secretary of Charles Grosvenor Limited, ('the Company'), company number 2593680, whose Head Office & Works is at 300 Birchfield Road, Redditch, Worcestershire B97 4LZ, hereby give to the Director General of Fair Trading an undertaking under Regulation 10(3) of the Regulations that I:

1. shall not use or recommend for use in contracts concluded with consumers:
 - (a) any of the terms referred to in the attached letter of 20 September 1999 insofar as they have the effect described in the attached letter;
 - (b) any terms having the same or similar effect to the terms 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. will, in drawing up any terms 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:.....

Russell G Annis
Director and Company Secretary

In the presence of:.....

Name.....
Address.....

Dated: 1 November 2001

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

UNDERTAKING

Charles Grosvenor Limited, ('the Company'), company number 2593680, whose Head Office & Works is at 300 Birchfield Road, Redditch, Worcestershire B97 4LZ, hereby gives to the Director General of Fair Trading an undertaking under Regulation 10(3) of the Regulations.

The Company undertakes that it:

1. shall not use or recommend for use in contracts concluded with consumers:
 - (a) any of the terms referred to in the attached letter of 20 September 1999 insofar as they have the effect described in the attached letter;
 - (b) any terms having the same or similar effect to the terms 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. will, in drawing up any terms 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 for and on behalf of Charles Grosvenor Limited by:

.....
Robert G Annis
Director

.....
Russell G Annis
Director/Secretary

Dated: 1 November 2001

B UNDERTAKING GIVEN BY WORLD CHALLENGE EXPEDITIONS LTD

UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999

**(COUNCIL DIRECTIVE 93/13/EEC)
('THE REGULATIONS')**

UNDERTAKING

World Challenge Expeditions ('the company'), registered number 02173751, whose registered office is at 1 Regent Street, London, SW1Y 4NW, hereby gives to the Director General of Fair Trading an undertaking under Regulation 10(3) of the Regulations. The undertaking is that World Challenge Expeditions 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
 - (a) any standard term whose potential for unfairness has been drawn to its attention in the attached letter of 10 May 2001;
 - (b) any term having the same or a similar effect to a term(s) 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:.....
D Gibson
Director and Secretary

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

Dated: 8 October 2001