

Unfair contract terms bulletin 19

Case reports January to March 2002

One of a series of bulletins giving details of cases where the OFT or another body has secured significant changes in contract terms.

The purpose of the bulletins is to enable consumer advisers and consumers to monitor whether businesses are honouring the changes they have agreed to make.

August 2002

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Contacting the OFT

If you think that any of the standard terms in a consumer contract are unfair you may contact 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
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London EC4Y 8JX
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Unfair contract terms bulletins

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

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The Regulations

Copies of the *Unfair Terms in Consumer Contracts Regulations 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 19 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 January to March 2002. Chapter 2 contains reports of 19 cases completed by the OFT. 162 contract terms were abandoned or amended as a result of enforcement action by the OFT under Regulation 10, in all cases by means of acceptance of undertakings. This bulletin also includes details of three cases completed by other bodies, in which a further 17 terms were revised.
- 1.3 As mentioned above, the bulletins now include cases taken by Qualifying Bodies. There are three in this bulletin: British Telecommunications plc (case report 3) taken by Oftel, Focus (DIY) Ltd (case report 8) taken by Cheshire County Council, and Gillett & Johnston (Croydon) Ltd (case report 9) taken by Croydon TSD.

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 that 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 Berkeley Sweetingham International

Name of business	Berkeley Sweetingham International	Lead TSD	City of Westminster
Trading sector	Other personal goods and services (dating agency)	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	1(b): had the potential for the company to exclude liability for failing to carry out the service with reasonable care and skill.	Revised to make clear that the company will apply the consumer's requirements as accurately as possible and undertakes to provide eight introductions and act upon the consumer's behalf until a partner is found.	1
5	1(b), 1(d) and 1(e): had the potential for the company to exclude its liability for failing to carry out the service with reasonable care and skill, to retain pre-payments and to penalise consumer unfairly.	Deleted.	

Other information	The Director General's position was reserved in respect of terms 3 and 4 on the understanding that further action would be taken if complaints were received. The company removed the words 'without refund of fee' in term 3 and 'no refund of fee' in term 4 when challenged under the Regulations. However, neither term has been revised sufficiently to remove the OFT's concerns or make clear to consumers that they may receive a refund in certain circumstances.
Undertakings accepted	11 February 2002 Two terms revised or deleted

2 British Telecommunications plc ('BT')

Name of business	British Telecommunications plc ('BT')	Lead TSD	Corporation of London
Trading sector	Telecommunications	Contract identifier	Conditions for BT Chargecard service

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2.2	1(b): excluded liability for the supplier's delay.	Revised so that the supplier undertakes to use reasonable endeavours to provide the service by the agreed date.	2.2
2.3	1(b): excluded the supplier's liability for poor service.	Revised to state that the supplier will provide the service with reasonable care and skill.	2.3
6.1	1(k): allowed the supplier to vary the service at will without notice.	Revised to state that the consumer will be advised of changes to his or her account number or PIN.	6
7.1	1(k): allowed the supplier to vary limits on calls without notice.	Revised to provide the consumer with advance notification of changes.	7.1
10.4	1(b): excluded liability for consequential loss in valid circumstances.	Revised in line with the residential contract so that the supplier only excludes liability for loss that is not reasonable foreseeable.	10.4
10.5	1(b): excluded the duty implied by section 13 of the Supply of Goods and Services Act 1982 to carry out a service with reasonable care. Had the potential to exclude other terms implied by law.	Deleted.	

10.6	Transferred inappropriate risks to the consumer.	Revised in line with the residential contract so that the term only applies to business use.	10.6
11.1	1(k): allowed the supplier to vary the terms of the contract, including call charges, without prior notice.	Revised to state that regular users will be informed of changes to charges relevant to them and of significant changes to the terms of the agreement.	11
19	1(q): restricted the agreement to the sole jurisdiction of the English courts.	Deleted.	

Other information	<p>The OFT corresponded previously with BT over the terms in its residential agreement, the results of which are published in <i>Bulletin 7</i>. The OFT took this into account when looking at BT's Chargecard terms, and some terms have been revised in line with the changes made to the residential contract (terms 2.3, 10.4, 10.6).</p> <p>Term 4.1.3: the supplier confirmed that a consumer can easily change payment arrangements by nominating a new bank account or payment card.</p> <p>Term 8.1: the OFT was concerned that this term potentially allowed the supplier to terminate the service for a trivial breach by the consumer. The supplier has explained that this term would not operate to the consumer's detriment in practice. If BT were notified by the consumer's bank that he or she had insufficient funds, BT would bar the Chargecard while attempting to recover the unpaid amount (the bar would be lifted if the outstanding amount was paid). If the amount remained outstanding, BT would cease to supply the service after giving reasonable notice.</p>
Intelligibility	BT has enhanced the intelligibility of the contract by improving the font, size and spacing of the print.

<p>Specific reservations</p>	<p>Term 5.1 (last sentence) and term 20.2 - references to 'Price List': the Director General reserves the right to take action if it becomes clear that consumers are contracting without knowing the full details of their financial commitment.</p> <p>Term 11.1: the Director General reserves the right to take action if it becomes clear that 'active' consumers are not given prior notice of significant variations in the contract.</p> <p>Term 10.4: the Director General's position has been reserved in relation to this term, pending evidence of consumer detriment.</p> <p>Term 10.6: the Director General's position has been reserved with regards to the use of the word 'indemnity'.</p>
<p>Undertakings accepted</p>	<p>24 January 2002 Nine terms revised or deleted</p>

3

British Telecommunications plc ('BT')

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

Name of business	British Telecommunications plc ('BT')	Lead TSD	Corporation of London
Trading sector	Internet service providers	Contract identifier	BTopenworld narrowband internet terms & conditions

Original term	Application of the Regulations	How changed	New term
17.2	<p>1(b): 'We have no liability (whether in negligence or otherwise) nor for any loss not reasonably foreseeable by us when this contract starts, nor for any loss of opportunity, goodwill, reputation, business, revenue, profit, or savings you expected to make, wasted expenditure or data being lost or corrupted.'</p> <p>This term was very broad and suggested that liability for foreseeable economic loss suffered by consumers was excluded. Oftel advised that this term be revised to exclude unforeseeable and business losses.</p>	Revised to read: 'We have no liability (whether in negligence or otherwise) for any loss not reasonably foreseeable by us when the contract starts, nor any loss of opportunity, goodwill, reputation, business, revenue, profit, or savings you expected to make, wasted expenditure or data being lost or corrupted.'	17.2

Other information	The position of the Director General of Telecommunications ('DGT') has been reserved in respect of term 17.2. The DGT will revisit this term in the event that any evidence arises of potential or actual unfairness to the detriment of consumers.	
Undertakings accepted	8 February 2002	One term revised

4

Cleveland Travel Ltd t/a Africa Travel Centre

Name of business	Cleveland Travel Ltd t/a Africa Travel Centre	Lead TSD	City of Westminster
Trading sector	Holidays	Contract identifier	Booking Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Compulsory travel insurance	Regulation 7: legal terminology ('absolve') might not have been understood readily by the consumer.	Deleted.	
Declaration	Unfair use of 'read and understood' declaration.	Deleted.	
2(b) The deposit	1(d): unbalanced term provided that deposits were non-refundable regardless of when or why the consumer decided to cancel the contract, while the company was able to cancel more than 42 days before departure without needing to compensate the consumer.	Deleted.	
2(d) Prices	1(l): provided for the company to increase prices to take into account exchange rate variations, increases in airfares or surcharges, at any time, without the possibility of a downward revision of prices if these changes were in the company's favour.	Deleted.	

2(e) Amend- ments	1(e): provided no indication of the amount that would be charged for amendments to the booking.	Revised to provide that if the company is successful in making the requested amendment a charge of £50 will be payable. If the company is not successful there will be no charge.	3(i) Amend- ments
2(f) Cancell- ation by the client	1(d): provided that for a cancellation by the consumer of a flight-only booking the consumer would incur charges detailed in the term. The OFT considered that the cancellation charges might have exceeded genuine pre-estimates of the net losses incurred by the company as a result of cancellation.	The term was revised to provide for different levels of cancellation charges depending on the number of days before departure that the cancellation was advised. Note the specific reservation of the Director General's position in relation to this amended term.	3(ii) Amend- ments and cancell- ation
2(g)(i) Cancell- ation by the company	1(f): provided that the company could cancel, suspend, alter or withdraw the booking without the need to pay compensation to the consumer.	Revised to provide that the company may cancel the contract or make a significant change to the booking without paying the consumer compensation only in the event of unusual and unforeseeable circumstances beyond the company's control, the consequence of which neither the company nor its suppliers could avoid even if all due care had been exercised.	3(iii) Amend- ments by the company
2(g)(ii) Cancell- ation by the company	Regulation 7: use of the legal term 'force majeure' without a clear definition in the appropriate part of the booking conditions.	Definition of 'force majeure' revised to reflect more closely the definition given in the Package Travel Regulations ('PTRs') in the appropriate part of the booking conditions.	3(iii) Amend- ments by the company
3(b)(i) and 3(b)(ii) Surcharges	Regulation 7: unclear wording as to the specific circumstances in which prices may be subject to variation.	Deleted.	

3(b)(ii) Surcharges	1(l): provided for upward revision of prices while excluding the possibility of downward revision. Also provided for an administration charge of £10 per person where a surcharge was levied, contrary to the provisions of the PTRs.	Deleted.	
3(b)(iii) Surcharges	1(l): failed to reflect accurately the consumer's entitlement when there was a surcharge of 10% or more of the cost of the holiday.	Deleted.	
3(b)(iii) Surcharges	1(d): allowed the company to retain payments made for travel insurance when the consumer had cancelled the holiday as a result of a surcharge of 10% or more of the cost of the holiday.	Deleted.	
3(e) Local conditions which can affect your arrangements	1(b): required the consumer to accept that local conditions might affect the holiday arrangements. This may have misled the consumer into believing that he or she had signed away his or her rights even if his or her legitimate and reasonable expectations had not been met.	Deleted.	
3(g)(ii) If the client cancels the booking	1(d): provided that a consumer who cancelled would incur the charges detailed in the term. The OFT considered that the cancellation charges might have exceeded a genuine pre-estimate of the net losses incurred by the company as a result of cancellation.	The term was revised to provide for different levels of cancellation charges depending on the number of days before departure that the cancellation was advised. Note the specific reservation of the Director General's position in relation to this term.	3(ii) Amendments and cancellation

<p>3(h)(i) Alterations to arrangements by the company</p>	<p>1(e): provided that the company could treat the holiday as cancelled and charge full cancellation charges if the balance of the holiday price was not received by the due date.</p>	<p>Deleted.</p>	
<p>3(h)(ii) Alterations to arrangements by the company</p>	<p>1(b) and 1(k): failed to reflect fully the provisions of Regulation 13(2) of the PTRs upon a significant alteration to an essential term of the contract by the company.</p>	<p>Revised to provide that in the event of a significant change to arrangements by the company the consumer may take a substitute package of equivalent or superior quality at no extra cost, take a substitute package of lower quality and recover the difference in value from the company, or receive a full refund, as well as receiving compensation, where the change did not occur for a 'force majeure' reason.</p>	<p>3(iii) Amendments by the company</p>
<p>3(h)(iii) Alterations to arrangements by the company</p>	<p>1(b): did not provide for adequate compensation payments upon significant changes or cancellation by the company.</p>	<p>Revised to state that the compensation levels payable are minimum levels.</p>	<p>3(iii) Amendments by the company</p>
<p>3(h)(iv) Alterations to arrangements by the company</p>	<p>1(f): provided that the company could retain payment in the event of cancellation by the company due to 'force majeure', and failed to give the consumer the options set out in Regulation 13 of the PTRs where a significant alteration or cancellation occurred.</p>	<p>Revised to reflect accurately the Regulation 13 options (see (h)(ii) above). The reference to the retention of prepayments has been deleted.</p>	<p>3(iv) Cancellation by the company</p>

3(l)(iii) The company's responsibility to the client	1(b) and 1(f): provided that the company could not be held liable in exceptional circumstances such as but not limited to 'force majeure' circumstances.	Revised to provide that, if the company becomes unable to provide a significant proportion of the holiday after it has commenced, either suitable alternative arrangements will be made or the consumer will be returned to his or her point of departure and given a pro rata refund for ground arrangements not received. Compensation may also be payable.	3(iii) Amendments by the company
3(l)(iv) The company's responsibility to the client	1(i): provided that flights were subject to conditions of carriage that the consumer would be unaware of at the time of booking.	Revised to include a statement providing that copies of the applicable international conventions and conditions of carriage are available on request.	3(v)(iii) The company liability
3(l)(v) The company's responsibility to the client	1(a) and 1(b): provided that a consumer wishing to participate in certain activities might be asked to sign an additional waiver form by the local supplier. 1(i): may have bound the consumer to hidden terms as the consumer would not have known the contents of the waiver when signing the contract.	Deleted.	
5(i) Jurisdiction and amendments to this contract	1(q): provided that the contract was made subject to English law and would be interpreted and constructed in an English court of law.	Deleted.	
5(ii) Jurisdiction and amendments to this contract	1(n): provided that booking conditions could only be varied by written agreement between the director of the company and the consumer.	Deleted.	

5 Close House Ltd

Name of business	Close House Ltd	Lead TSD	Northumberland County Council
Trading sector	Entertainment, catering and accommodation (weddings and banqueting)	Contract identifier	Wedding Terms & Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
6	1(e): the cancellation fees in this term were extremely high and made no allowance for the company's duty to mitigate its loss.	Revised to provide that the company will endeavour to re-hire the room but may be entitled to some compensation for loss of profits incurred as a result of cancellation. Cancellation fees no longer specified in the contract.	6
9	Regulation 7: did not make clear when the five-month notice of price increases would take effect.	Revised to make clear that the price increase will affect events to be held at least five months after date of notification to the consumer and that the increase will not exceed 4% of the contract price.	9
13	1(b): excluded liability for any damage caused by employees or agents of the company at the function as a result of the company's failure to perform its contractual obligations.	Revised to make clear that the company will take responsibility for loss or damage unless such loss or damage has been caused by an intentional, reckless or grossly negligent act of the consumer.	13
15	1(b): excluded the company's liability for its breach of contract or negligence.	Revised to make clear that the company will take responsibility unless events are beyond its control.	15

Declaration	Declaration that the consumer had agreed to the terms, whether understood or not.	Revised to encourage the consumer to read, understand and discuss any terms not understood in the contract before signing it.	Final paragraph
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Undertakings accepted	22 March 2002	Five terms revised or deleted
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Name of business	Fashion World Ltd t/a The Value Catalogue	Lead TSD	City of Manchester
Trading sector	Clothing and clothing fabrics (mail order)	Contract identifier	Terms and conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
It's cheaper to pay by Direct Debit	1(e) and Regulation 7: included an administrative charge that appeared to be a late payment penalty, and was unclear as to the actual amount of the penalty.	Revised to make clear that in the event of late payment the supplier will make a charge to cover the cost of sending a reminder or seeking payment. The charge is currently £10 but is subject to variation when reasonable notice is received by the supplier.	It's cheaper to pay by Direct Debit
Price Policy	Regulation 7: contained a statutory rights disclaimer ('This does not affect your statutory rights') and failed to provide information about the consumer's rights.	Wording removed from term.	Price Policy

Other information	The original complaint largely concerned the lack of notice that an administrative charge would be made. In addition to amending its terms and conditions to specify the amount of the charge, the supplier agreed to include notice of the term on the Advice Note sent to consumers with their order and on the reverse of the first and second statements. The supplier also indicated that it was its practice to waive the full £10 charge where the balance owing was less than £10 and that, in those cases, only £1 would be charged.	
Undertakings accepted	2 August 2001	Two terms revised

8

Focus (DIY) Ltd

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

Name of business	Focus (DIY) Ltd	Lead TSD	Cheshire County Council
Trading sector	DIY materials and tools	Contract identifier	Cash Sale Invoice D24 (10/00)

Original term	Application of the Regulations	How changed	New term
Front of contract	1(b): reminded consumer not to book a tradesman or fitter until the goods on order had been received and checked to be in good condition. This potentially excluded liability for consequential loss arising out of goods being delivered in an unsatisfactory condition.	Amended to recommend to consumer that the products ordered are received complete and in good condition before consumer books a tradesman or fitter.	Front of contract
Front of contract	Consumer declaration that his or her signature confirmed that the agreement had been fully understood and accepted.	Deleted.	

Undertakings accepted	15 February 2002	Two terms revised or deleted
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Gillett & Johnston (Croydon) Ltd

(this case was taken by the London Borough of Croydon and not by the OFT)

Name of business	Gillett & Johnston (Croydon) Ltd	Lead TSD	London Borough of Croydon
Trading sector	Jewellery, silverware, clocks and watches	Contract identifier	Terms & Conditions for Private Consumer

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	1(n): an 'entire agreement' clause allowing the supplier to disclaim liability for oral promises.	Deleted.	
3	1(n): 'entire agreement' clause.	Deleted.	
4.2	Written quotation excluded VAT.	Revised to remove 'excludes VAT' from term.	2.2
4.4	1(k): allowed the supplier to increase prices and vary the work agreed.	Revised to allow the consumer the right to cancel.	2.4
4.5	1(l): allowed the supplier to increase charges for undue delays.	Revised so that the supplier may charge for any undue delay or extra site visits at its hourly and travelling time rate.	2.5
5.3	1(b): exclusion of liability for supplying or installing any electrical components made by a third party.	Deleted.	
5.4	1(n): obliging consumers to notify the supplier of any problems in writing was an unfair formality requirement.	Revised so that reference to 'notification in writing' removed.	3.4
5.7	1(b) and Regulation 7: limitations on liability for consequential loss, and cap on liability; lack of clarity.	Deleted.	

7.2	Regulation 7: may have been unclear to consumers.	Deleted.	
8.2	1(b): exclusion of liability by the supplier.	Revised so that the supplier may claim payment of any reasonable costs incurred if the consumer cancels the contract and the supplier is not at fault.	6.2
9.1	1(e): unfair penalty clause as rate of interest charged for late payment (at 2% per month) was onerous.	Revised so that reference to 'right of set-off and interest of 2% per month' deleted.	7.1
9.2	1(l): potentially permitted the supplier to increase its prices or charges for services in the case of changes to the law, regulations, tax regime or insurance duties.	Revised so that the term only refers to changes in the VAT rate.	7.2
9.3	1(b): appeared to require full payment in advance for contracts priced under £1000 with no provision for the consumer to withhold a percentage of the contract price, and 33% deposit and payment on delivery in contracts over £1000.	Revised so that a deposit of 33% of the contract value is required, with the balance due 30 days after satisfactory completion of the work.	7.3
10	Term was unsuitable for a consumer contract as it sought to exclude any greater rights, or more extensive remedies, that the consumer may have under common law or statute.	Deleted.	

Other information	Croydon TSD gave advice to the supplier after receiving initial advice on the contract from the OFT. The supplier has made clear in the revised contract that the terms and conditions are intended only for consumers.
Undertaking accepted	14 terms revised or deleted

Name of business	Gordon & Keenes	Lead TSD	London Borough of Lambeth
Trading sector	Estate agency, house purchase, surveying and valuation	Contract identifier	Terms and conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Sole Agency	Regulation 7: not written in plain and intelligible language.	Revised to explain that the company's fee will be at an agreed percentage rate of the sale price, exclusive of VAT and agreed expenses, and to make the duration of the sole agency agreement clearer.	Sole Agency

Undertakings accepted	4 March 2002	One term revised
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11 Homehunters

Name of business	Homehunters	Lead TSD	Worcestershire County Council
Trading sector	Estate agency, house purchase, surveying and valuation (relocation agent)	Contract identifier	Standard conditions of service

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Fees	1(i): referred to fees as 'described elsewhere'.	Changed to refer to fees 'as stated in the enclosed literature'.	Fees
Liability for defects	1(b): excluded liability for poor service.	Revised to state that the supplier will act with due diligence and be responsible for his actions.	Liability for defects
Liability for statements	1(n): disclaimed liability for employees' statements.	Deleted.	
Termination costs	1(e): sought to impose additional unspecified costs, expenses and charges in addition to the standard fees where the consumer failed to notify a subsequent purchase, lease or rent at the stated time.	Wording deleted. The costs to be charged are limited to the stated fees where a consumer buys, leases or rents a property introduced by the agency within one year of termination.	Costs after termination

Other information	The supplier was reminded of his responsibility to ensure compliance with any applicable requirements of the Estate Agents Act 1979.
Specific reservations	The Director General's position was reserved in respect of a term relating to recovery costs, added to the agreement during discussions, on the basis that the costs should be specified. The Director General's position was also reserved in respect of the general clarity of the agreement.
Undertakings accepted	17 December 2001 Four terms revised or deleted

Name of business	The Insignia Blind Company Ltd	Lead TSD	Dorset County Council
Trading sector	Home maintenance, repairs and improvements (blinds)	Contract identifier	Terms and Conditions of Sale

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1 (third sentence)	1(n): excluded liability for any oral or written statements save those contained in the contract or made in writing and signed by a director.	Deleted.	
3	Regulation 7: use of legal jargon ('common law or statute').	Deleted.	
5	1(l): permitted the supplier to charge any amount for its work after the survey was carried out, without allowing the consumer to withdraw from the contract should the final price be too high.	Deleted.	
6	Regulation 7: cross-references to other terms did not make sense.	Deleted.	
8	1(b): excluded liability for delay.	Deleted.	
9	1(b): permitted the supplier to demand the full balance owing if the consumer could not accept delivery of the goods within 21 days of entering into the contract.	Deleted.	
11	1(e): imposed a high penalty for late payment.	Deleted.	

13	1(f): precluded cancellation by the consumer.	Deleted.	
15	1(b): excluded liability for damage to the property as a result of poor service.	Deleted.	
16	1(n): excluded oral and written statements that could form part of the agreement.	Deleted.	
17	1(k): permitted the supplier to make significant changes to the goods ordered with no right for the consumer to cancel and receive a full refund if dissatisfied with those changes.	Deleted.	
18	Regulation 7: use of legal jargon ('concession, latitude or waiver').	Deleted.	
19	1(n): provided that any alterations to the contract would invalidate it.	Deleted.	
21	1(n): had the potential to exclude liability for oral statements.	Deleted.	
22	1(i): referred to a separate guarantee containing terms that the consumer was required to comply with, a copy only being made available on request.	Deleted.	

Other information	<p>The whole contract was challenged under Regulation 7 as the terms were printed in very pale grey print, making them difficult to read.</p> <p>The supplier gave undertakings not to rely on any of the terms listed above or similar in effect in respect of contracts entered into before the terms were deleted. Future sales invoices will not show any terms and conditions of sale.</p>	
Undertakings accepted	19 March 2002	15 terms deleted

Name of business	MESH Computers plc	Lead TSD	London Borough of Brent & Harrow
Trading sector	Personal computers and related hardware	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1.15	1(n): the supplier was considered only to have received goods once it had acknowledged receipt, making its commitments subject to compliance with a particular formality.	Deleted.	
2.1, 2.2, and 2.3	1(n): excluded liability for oral representations and specially agreed changes to the terms. Variations had to be agreed by a director.	Revised to allow consumer to contract on terms specially agreed with the employees of the supplier.	2.1
2.4 read together with term 7	1(o): excluded liability for late delivery.	Revised to allow the consumer to cancel the contract without penalty when the supplier cannot provide the goods ordered or there is an unreasonable delay in supplying the goods.	5.2 and 7.3
3.2	1(l): unclear as to what was included in the price and allowed unspecified 'standard charges' to be added to the price quoted.	Definition of contract price revised to make it clearer that it covers goods and ancillary services.	1.3
4.2 and 4.3	1(b): where the price quoted included installation charges, the terms excluded the consumer's right of set-off by requiring the whole amount to be paid in advance.	Revised to require consumer to pay the whole amount for goods only.	4.4

4.4	Regulation 7: how interest was calculated was unclear.	Deleted.	
6.1 read together with term 7.1.	1(e): making a charge of 25% of the invoice value payable in all cases of cancellation before or after delivery and whether goods were used or unused was a penalty. 1(b): potentially limited liability for defective goods by requiring consumer to pay 25% of invoice value upon rejection of goods.	Deleted.	
6.3	1(b): excluded liability for defective software.	Revised to oblige supplier to replace defective software.	6.3 Licensed Software
6.4	1(b): included a guarantee that was not clearly stated to be additional to statutory rights. Term contained wide-ranging exclusions and limitations of liability for defective or mis-sold goods. 1(m): supplier had final decision whether goods were faulty. 1(j): appeared to permit the supplier to make charges in unlimited circumstances where the terms stated that they would not be made.	Guarantee term revised to make it clearer that warranties and guarantees do not affect consumer's statutory rights.	6
6.6	1(b): limited liability for defective goods by charging carriage costs and other charges when putting right faulty goods.	Revised to remove the charging of carriage costs when goods are faulty.	6.4 and 6.6

6.9	1(b): excluded liability for upgrading of goods by placing onerous responsibility on consumer to notify the supplier of all current faults whether known to consumer or not.	Deleted.	
6.10	Transferred inappropriate risks to consumer for third party claims.	Deleted.	
6.11	1(b): excluded liability for consequential losses even where foreseeable.	Revised so that supplier limits liability but only if the losses are not a reasonably foreseeable consequence of the breach of contract.	12.1
6.12	1(b): limited liability for defective goods by charging fees for storage of goods held for repairs.	New term restricts supplier to charging for storage of goods only if the consumer prevents delivery.	6.7
6.13	Onerous enforcement clause: supplier reserved the right to dispose of unclaimed goods without any obligation to obtain the best selling price and pay the net balance to the consumer.	Deleted.	
7.1 read together with term 1.3.	1(b): excluded liability for delay in providing goods by preventing time ever being made of the essence.	Revised to allow the consumer to cancel the contract without penalty when there is an unreasonable delay in supplying the goods.	7.3
7.1 read together with terms 7.3 and 6.1.	1(o): prevented consumers from cancelling where delivery was indefinitely delayed (although payment had to be made in advance).	As comments at 7.1 above.	7.3
7.4, 7.5 and 7.6	Allowed the supplier to impose discretionary unfair financial burdens that did not appear to reflect likely losses.	Storage charges can be made at £10 per week or, when goods are stored off supplier's premises, at the cost to the supplier.	6.7

7.6	1(b): imposed a blanket 25% charge where any goods were rejected.	Deleted.	
8 (first paragraph)	1(b): imposed time limits on consumers making claims in respect of faulty goods.	Revised to allow a 'reasonable period of time', for the consumer to reject faulty goods.	9.3
8.1	1(b): limited liability for defective goods by requiring consumer to return faulty goods in original packaging and by charging a fee for damaged goods and use of rejected defective goods.	Exclusions generally removed. The consumer should pack the goods in the original protective packaging if available or, if not, appropriately for transit.	9.4
8.2	1(m): supplier reserved right to decide whether the goods were faulty. Onerous enforcement clause: supplier reserved the right to enter consumer's property to recover goods.	Both consumer and supplier have a right to an independent inspection.	9.3
9.2	Regulation 7: used legal jargon ('property shall not pass').	The term has been made clearer.	10.2
10.2	Transferred inappropriate risks to consumer by requiring consumer to verify that computer designs did not infringe copyrights.	Revised to advise the consumer to take reasonable precautions to avoid infringing third party copyrights of plans and specifications, and limits supplier's losses if a consumer fails to take such precautions.	11.2
11	1(b): excluded liability for delay in providing goods where the reason may have been within the supplier's control. This term was stated to apply even where it conflicted with a specially agreed term.	Revised to allow the consumer to cancel the contract without penalty when there is an unreasonable delay in supplying the goods.	7.3

12	Regulation 7: statutory rights clause using legal jargon such as 'common law' and 'statute'.	Statutory rights references made clearer.	13
13.2	1(o): obliged the consumer to make payment, but allowed the supplier to perform its service in instalments.	Revised to allow the consumer to cancel the contract without penalty when there is an unreasonable delay in supplying the goods.	7.3
13.3	Onerous enforcement clause forcing consumer to permit access by the supplier into the premises.	Deleted.	
13.4	1(b): excluded liability for poor service.	Deleted.	
15	1(q): provided for the exclusive jurisdiction of the courts of England and Wales.	Deleted.	
Entire contract	The contract was used for all business concluded by the supplier, including distance contracts. A large number of the terms were inconsistent with the consumer's rights under the Consumer Protection (Distance Selling) Regulations 2000.	The supplier has included a new term 8 that refers to the relevant rights, particularly the right to cancel in circumstances in which the Consumer Protection (Distance Selling) Regulations 2000 apply to the purchase.	8

Other information	A large proportion of the terms and conditions were unfair, and MESH Computers plc elected to implement a completely new contract.	
	Undertakings were given under the Consumer Protection (Distance Selling) Regulations 2000 on 18 April 2001.	
Undertakings accepted	20 February 2002	31 terms revised or deleted

Name of business	MSF Gas Ltd	Lead TSD	Worcestershire County Council
Trading sector	Domestic fuel (supply of LPG)	Contract identifier	Installation Rental and Sale Agreement - Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
7	1(l): provided for the price of fuel to be set on delivery. Effectively allowed the supplier to increase the price without giving consumers the option to withdraw from the contract.	<p>Revised to state that prices can fluctuate during the agreement.</p> <p>The supplier has reduced the minimum term of the contract from five years to 12 months (term 10), and consumers are permitted to cancel following a price increase as long as they pay the tank removal costs the supplier incurs on consumer cancellation.</p> <p>New term 10d added to state that consumers can cancel giving seven days' notice following an increase in price if that price increase is higher than the price of the last supply or any supply within the previous three months.</p>	7, 10 and 10d

11	Required consumers to pay the company unspecified and possibly un-notified costs following cancellation by consumers under terms 10(a) or 10(c).	Revised to state the amount to be charged on cancellation to cover the costs incurred in disconnecting and removing equipment. Provision made for this charge to increase on every anniversary of the contract by no more than the Retail Price Index.	11
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Other information	The OFT also investigated the supplier's requirement for consumers to insure equipment (term 5c). The supplier has clarified that consumers are required to obtain insurance only to provide cover for accidental damage to the tank or other equipment and not for any damage caused by the supplier.
Specific reservations	The Director General's position was reserved in respect of term 10d. This is because it was considered that in particular circumstances the term might lead to a potentially unfair penalty being imposed on consumers wishing to cancel upon price increases. The term may be revisited if justified. On this point it should be noted that the nature of the product is such that significant and unpredictable price fluctuations during the currency of the contract are a particularly high risk. The OFT reserves the right to take further action pending future evidence.
Undertakings accepted	13 February 2002 Two terms revised

Name of business	Motability Finance Ltd	Lead TSD	London Borough of Southwark
Trading sector	Hire and credit (unsecured)	Contract identifier	Hire Agreement regulated by the Consumer Credit Act 1974

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2.5	1(e) and Regulation 7: making punctual payment 'of the essence' potentially acted as an unfair penalty by allowing the supplier to treat the agreement as repudiated for what amounted to a minor breach. Used legal terminology ('of the essence') that the consumer may not understand.	Amended to state that the consumer must ensure that payments are made on time, thus restricting the supplier's right to treat the agreement as repudiated for a delay in payment.	2.5
3.3	Regulation 7: contained legal terminology that the consumer was unlikely to understand ('lien').	Legal terminology removed to improve the consumer's understanding of the term.	3.3
5.4	1(n): required written authority from the supplier to allow anyone other than the 'Maintenance Agent' to carry out work on the vehicle. This may have constituted an unnecessary formality and restricted the consumer's freedom to use other suppliers to carry out work on the vehicle.	Amended to permit work to be carried out on the vehicle by persons other than the 'Service Agent' if they contact the supplier for accreditation. The supplier has given assurances that accreditation can be given immediately by telephone if the alternative service personnel meet the supplier's requirements.	5.3

6.1	1(n) and Regulation 7: in excluding from the contract any written or oral representations (other than those implied by law), the term operated as an entire agreement clause. The language used throughout the term and the references to statutory rights were unlikely to be understood by a consumer.	Amended to set out properly the consumer's rights under statute in respect of guarantees, warranties, representations and other terms relating to the vehicle's quality and fitness for purpose.	6.1
6.2	1(n) and Regulation 7: in excluding any representations or warranties given by parties who would, by law, be held to be the supplier's agent, the term had the potential to operate as an entire agreement clause. The term was misleading as to the relationship between the various parties mentioned in it and how such relationships are treated under the Consumer Credit Act 1974.	Deleted.	
6.3	Regulation 7: contained incomplete references to legislation. This could potentially mislead the consumer as to his or her statutory rights.	Amended to include a more accurate reference to the consumer's statutory rights and explicitly to accept liability where the supplier is at fault.	6.2
6.4	Regulation 7: contained a misleading reference to the consumer's statutory rights.	Amended to include a fuller reference to the consumer's statutory rights and advice on obtaining further information about these rights.	6.3

7.3	Placed an unfair financial burden on the consumer by restricting his or her freedom to have a party other than the supplier's agent carry out work to remove modifications from the vehicle at the end of the hire term.	Amended to limit the costs recoverable by the supplier for removing modifications to the vehicle to costs and expenses reasonably incurred when the consumer has failed to reinstate the vehicle to its original condition.	7.3
8.1.1	Had potential to operate as an unfair enforcement power by allowing the supplier to terminate the agreement if the consumer provided any information that was false or misleading. At common law the supplier would need to show that the false information had induced it to enter into the agreement and that it had suffered an actual loss as a result of the false information for the claim to succeed.	Amended to restrict the right to terminate to instances where the consumer has provided information that is materially misleading or false, thus reflecting the common law position.	8.1.1
8.1.6	1(f): granted the supplier too much discretion to terminate the agreement, creating unequal cancellation rights between the parties.	Deleted.	
8.2	Had potential to operate as an unfair enforcement power by allowing supplier to terminate the agreement with just seven days' notice when consumer was in default.	Amended to give consumer 14 days' notice of supplier's intention to terminate, during which time the consumer has the opportunity to remedy the default.	8.2

8.4.4	1(e): method of calculating consumer's liability on termination of the agreement was unclear, appeared to fail to take into account the supplier's duty to mitigate its losses, and had potential to allow unjust enrichment by the supplier.	Amended to make method of calculating consumer's liability clearer in the event of early termination. Clarity also improved by adding definition of 'original estimated residual value' at term 1.4. As concerns still exist, the Director General's position has been reserved on term 8.4.5.	8.4.4 and 8.4.5
8.4.5	1(e) and Regulation 7: allowed an unfair penalty to be levied by permitting recovery of any costs or expenses incurred in recovery, storage or disposal of the vehicle on termination. It was unclear why costs should be incurred for the disposal of the vehicle under a hire agreement.	Amended to limit costs and expenses recoverable to those that are reasonable and relating only to recovery and storage of the vehicle.	8.4.6
8.5	Regulation 7: imposed a time limit for the recovery of the consumer's (or another's) property found in the vehicle when it was repossessed, after which the property would be destroyed or sold, and did not require the supplier to provide written notification of its intention. This amounted to an unfair exclusion of the consumer's rights under statute. The term also used legal terminology ('indemnify' and 'pass good title').	Amended to require the supplier to write to the consumer informing him or her of the supplier's intention to sell or destroy the property and granting the consumer 21 days within which to collect it.	8.5

10	1(b) and 1(h): excluded the consumer's right to terminate the agreement in the event of the supplier's breach. The term failed to take into account changes to the consumer's physical condition during the course of the hire period (a factor for a number of the supplier's clients) leaving him or her unable to use the vehicle, thus having the potential to bind the consumer unfairly to the agreement.	Amended to grant the consumer an express right to terminate in the event of the supplier's default. Although a consumer's request to terminate the agreement when the supplier is not in breach is only granted at the supplier's discretion, advice received from the supplier about how this discretion is exercised has allayed the OFT's concerns about the term. The Director General has reserved his position on this matter.	10.1.1 to 10.1.3
12	1(e) and Regulation 7: had potential to impose an unfair penalty on the consumer by failing to restrict adequately his or her liability to the supplier in respect of damages, costs and expenses incurred as a result of the consumer's actions. Term also included legal terminology ('indemnity' and 'indemnify').	Amended to limit the consumer's liability to reasonable costs and expenses caused by his or her actions, and expressly excludes those costs incurred where the supplier is at fault. Legal terminology removed.	12

Other information	<p>Concern was raised over excess mileage payments being levied annually whereas the consumer's total mileage over the three years that the agreements run for may not exceed the total permitted. Amendments to term 2.4 make it clear that in these circumstances the consumer would receive a refund of any excess fees paid.</p> <p>Further concerns were raised over the provisions of terms 8.1.3 to 8.1.5, listing circumstances where the supplier is entitled to terminate the agreement. The Director General is satisfied with the supplier's explanation as to why these terms are necessary.</p>
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Partner to Partner Ltd

Name of business	Partner to Partner Ltd	Lead TSD	Warrington Borough Council
Trading sector	Other personal goods and services (dating agency)	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
3	1(e): provided that if the supplier had no contact with the client for two months it could treat the agreement as ended by the client and the client would pay the fees for that period.	Revised to allow the supplier to keep only such costs and fees reasonably incurred as a direct result of the client's breach.	3
4	1(e): stated that if the client was found to have supplied false or misleading information the supplier would terminate the agreement with no refund.	Revised so that where the client provides information that is false or misleading in any material way the agreement will be cancellable by the supplier and no refund payable.	4
5	1(b): excluded the supplier's legal liability and responsibility for any loss or damage that the client might sustain during the period of the agreement.	Revised to accept responsibility for any loss or damage caused by the supplier's negligence or breach of legal duty to the client.	5
7	1(d) and 1(o): allowed the supplier to retain prepayments upon the client's cancellation in circumstances where the supplier could not provide the service.	Revised to provide that the supplier will use best endeavours to provide at least two introductions every three months. If it cannot deliver this service then the client can cancel and may receive a refund.	7
11	1(d) and 1(o): as above.	Deleted.	

12	1(e): allowed the supplier to cancel the agreement without refund where, in the supplier's sole opinion, the client had behaved inappropriately.	Revised amending 'sole opinion' to 'reasonable opinion'.	11
14	1(n): excluded supplier's obligation to respect commitments not incorporated into the written agreement.	Deleted.	

Other information	The Director General's position has been reserved in relation to term 8. The term was revised significantly to provide that a full refund will be given if the client cancels within seven days of the start of the agreement, unless more than one introduction has already been made. However, the OFT was concerned that in other circumstances no refund would be given.		
Undertakings accepted	14 January 2002	Seven terms revised or deleted	

Name of business	Portway Motor Centre Ltd	Lead TSD	Worcestershire County Council
Trading sector	Second-hand motor vehicles (car auctions)	Contract identifier	Terms and Conditions of Sale and Trading

Subsequent enforcement action	A complaint was received from a Trading Standards Department indicating that the trader had reverted to using terms he had previously agreed not to use. (See <i>Bulletin 6</i> for details of original enforcement action). An undertaking was signed by the trader that he would not continue to rely on the said terms. (See Annexe A).
Undertakings accepted	2 February 2002

Name of business	Ramblers Holidays Ltd	Lead TSD	Hertfordshire County Council
Trading sector	Holidays	Contract identifier	Booking conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	1(n): formality requirement stating that variations to the conditions did not form part of the contract unless confirmed in writing by the supplier.	Revised to state that any variation of the contract should be confirmed in writing either by the supplier or the consumer.	1
1 and 11	1(q): provided that the contract was governed by English law and was subject to the exclusive jurisdiction of the courts of England and Wales.	Revised to state that the contract is subject to the jurisdiction of the courts of England and Wales, Northern Ireland and Scotland, and will be governed by the appropriate applicable law.	1 and 11
3	Provided that if the consumer failed to pay the balance of the holiday by the due date the supplier could cancel the holiday at its discretion. Also allowed the supplier discretion as to the exact date of the cancellation, giving the supplier control over the level of cancellation charges applied.	Amended to state that only the deposit and insurance premium will be forfeited if the consumer fails to pay the balance by the due date.	3

6	<p>Provided that cancellation charges would apply if the consumer transferred the booking to another holiday within 42 days of departure. The OFT considered that these charges would be excessive in relation to the cost incurred by the supplier in making the changes.</p>	<p>Revised to state that a consumer wishing to change a booking will have to pay an administrative charge of £12 and any further costs incurred by the supplier in making the alteration. The term also advises the consumer that the costs of alteration are likely to increase the closer to the departure date the changes are made.</p>	6
8	<p>1(l): provided for price increases in circumstances other than those permitted under the Package Travel Regulations ('PTRs'), and failed to provide the consumer with the options he or she was entitled to in the event of a significant price change.</p>	<p>Revised to allow price variations only in the circumstances permitted by the PTRs, including a refund to the consumer where there is a decrease in the relevant costs. Also revised to provide the consumer with the appropriate options in the event of an increase in price of more than 10%.</p>	8
10	<p>1(i): provided that the supplier's obligations and liability were limited with regard to air, sea and rail travel by the provisions of the relevant international conventions, which the consumer was unlikely to be aware of.</p>	<p>Revised to state that copies of the relevant conventions are available on request.</p>	10
13	<p>1(b): provided that the supplier did not accept liability for any complaint received more than 28 days after the consumer had returned from the holiday.</p>	<p>Revised to advise the consumer to make complaints within 28 days of return from the holiday.</p>	13

14	<p>Allowed the supplier the right to exclude a consumer from part or all of the daily programmes of the holiday if in the tour leader's opinion the consumer was either physically unable to participate or behaved in a way that was detrimental to the safety of the party.</p>	<p>Amended to state that the right to exclude is subject to the tour leader's opinion being a reasonable one.</p>	14
16	<p>1(b) and 1(k): excluded the supplier's liability by providing an exhaustive list of major changes that did not allow for other changes that would be considered major in the circumstances.</p> <p>Also did not fully reflect the provisions of Regulation 13(2) of the PTRs upon a major change to the holiday by the supplier. In addition, did not provide adequate compensation entitlements when there was a major change to the holiday after booking.</p>	<p>Wording listing major changes as an exhaustive list has been deleted.</p> <p>Revised to provide that in the event of a major change to the holiday by the supplier the consumer may accept the change, take an alternative holiday or cancel the holiday with a full refund, as well as receiving compensation if appropriate, as provided by Regulation 13(2) of the PTRs. The compensation is stated as being a minimum compensation payment.</p>	16
18	<p>1(b) and 1(k): provided that the availability of facilities described in the brochure was subject to change, and excluded the supplier's liability for failure to provide these services.</p>	<p>Revised to provide that if changes to the availability of facilities constitute a major change to the consumer's holiday the consumer will be entitled to the options under term 16 of the booking conditions.</p>	18

Force Majeure	Regulation 7: inaccurate and unclear definition of 'force majeure' events for which compensation payments would not be made. In particular, the term included events that might be within the control of the supplier in some circumstances.	Definition of 'force majeure' revised to '...unusual and unforeseeable circumstances beyond our control, the consequences of which could not have been avoided even if all due care had been exercised or an event which even we, with all due care, could not foresee or forestall...' to reflect more accurately the definition provided in the PTRs.	Force Majeure
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Specific reservations	<p>The position of the Director General was reserved in respect of term 7 of the new booking conditions.</p> <p>Information supplied to the Director General in relation to term 7 was not considered sufficient to establish that the scale of cancellation charges represents a genuine pre-estimate of loss incurred by the supplier as a result of cancellations. However, after careful consideration, further enforcement action in relation to the term was not considered warranted, pending complaints or other evidence suggesting that the charges were excessive.</p>
Undertakings accepted	<p>22 March 2002</p> <p style="text-align: right;">Eleven terms revised</p>

Name of business	SelClene Ltd	Lead TSD	City of Westminster
Trading sector	Hardware, cleaning materials, other household goods and services (domestic cleaning services agency)	Contract identifier	Terms and Conditions (Agency and Client)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Preamble	1(n): excluded liability for oral statements by the supplier's employees.	Revised to show that the intention is that the standard terms are the only terms of the contract but allowing for variations to be annotated in a designated box.	Preamble
5.1	1(b): excluded liability under free insurance package for loss where the supplier was at fault.	Clarified by the addition of a preliminary sub-clause requiring the consumer to have in place a specified level of employer's liability cover for any cleaner he or she employs. Term also amended to provide that the supplier is liable for loss caused by its negligence.	5.1 and 5.2
5.4	1(i): irrevocably bound the customer to an insurance policy the terms of which he or she had not had a reasonable opportunity to examine.	Revised by the addition of the main terms of the insurance policy.	5.4.1 to 5.4.6
6.2	1(b): excluded liability for any loss or damage caused by the supplier's negligence or breach of contract.	Revised to accept liability in the event of negligence or breach of contract.	6.3

6.3	1(b): excluded liability for 'consequential, indirect or special losses' arising from negligence or breach of contract by the supplier.	Revised so that supplier accepts liability for losses that are a reasonably foreseeable consequence of its negligence or breach of contract.	6.4
6.4	1(b): excluded liability for 'consequential, indirect or special losses' arising from any failure by a cleaner to comply with his or her contract even if such lack of compliance arose from negligence or breach of contract by the supplier.	Revised so that supplier accepts liability for the 'foreseeable consequences' of its negligence or breach of contract.	6.6
6.6	Regulation 7: used legal jargon to mislead consumer about his or her legal rights in relation to liability for faults in the service.	Deleted.	
6.8	1(b): excluded liability for any loss arising from failure by a cleaner to return keys, regardless of any breach or negligence by the supplier.	Revised to clarify that the supplier will accept liability for losses if the cleaner is its employee, as opposed to the usual arrangement whereby the cleaner is the employee of the consumer.	6.9
8.1	1(n): an 'entire agreement' clause limiting liability in respect of acts or omissions by the agents or employees of the supplier.	Revised to show that the intention is that the standard terms are the only terms of the contract but allowing for variations to be annotated in a designated box.	8.1
8.5	1(q): prevented consumers in Scotland from starting legal proceedings in their local courts.	Revised to allow for the application of any 'relevant UK law', and giving exclusive jurisdiction to UK courts.	8.5

Specific reservations	The Director General reserved his position on the second and third paragraphs of term 2.3. The second paragraph does not allow for the refund of an administration fee even in circumstances where the supplier is in breach of contract. The third paragraph does not allow for a full refund, upon termination of the contract, of all money paid.
Undertakings accepted	7 January 2002 10 terms revised or deleted

Name of business	Snows Business Forms Ltd	Lead TSD	Southampton City Council
Trading sector	New and second-hand motor vehicles (standard contract forms for motor industry)	Contract identifier	Sales Invoice - Terms and Conditions (4/00)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
8(e)	1(j): provided that the supplier would reduce the price agreed for the trade-in vehicle if delivery of the vehicle ordered was delayed through no fault of the supplier, with no specific right of cancellation for consumer if reduction unacceptable.	Revised to provide that supplier may reduce the agreed price, and specific right of cancellation without penalty introduced for consumer if unhappy with the proposed reduction.	8(e)

Other information	Snows Business Forms Ltd provides stationery to businesses, including terms and conditions that it has drawn up for use by the motor trade. The set of terms considered by the OFT would be used by dealers of motor vehicles in contracts with consumers. Snows had previously revised six terms as a result of earlier discussions with OFT – see <i>Bulletin 12</i> .		
Undertakings accepted	11 January 2002		One term revised

21 Talacre Beach Caravan Sales Ltd

Name of business	Talacre Beach Caravan Sales Ltd	Lead TSD	Flintshire County Council
Trading sector	Holiday caravan renting and caravan sites	Contract identifier	Licence Agreement for Holiday Caravan Pitch

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Part 1 - Particulars:			
Declaration term	Consumer declaration consisted of an acknowledgement of receipt of the Code of Practice, Site Rules and the Sub-Letting Agreement.	Amended to remove the effect of potentially unfair declaration.	Declaration term
Part 2 - Terms & Conditions:			
1 ('The Caravan Owner')	Regulation 7: lack of clarity.	Revised to make the scope of the term clearer.	1 ('The Caravan Owner')
3	1(k): park owner reserved right to vary the service.	Revised to allow park owner only to relocate a caravan temporarily to carry out essential maintenance.	3
4(c)	1(i): bound consumers to hidden sub-letting terms.	New condition introduced to oblige park owner to provide a copy of the sub-letting agreement to the caravan owner.	4(c)
5	1(l): park owner reserved right to vary the price of services.	Revised to clarify which reasonable expenses will be passed on to the caravan owner.	5(a)

5(c)	1(b): allowed the park owner not to perform its contractual obligations. The clause stated that the caravan owner enjoyed no right to compensation when leisure or other facilities were closed by the park owner.	Deleted.	
5(d)	Regulation 7: lack of clarity - referred to the parties' rights and obligations 'implied by law'.	Reference to 'implied by law' deleted.	5(c)
5(e)	Regulation 7: lack of clarity.	Deleted.	
6(j)	1(i): bound consumers to hidden sub-letting terms.	New condition introduced to oblige park owner to provide a copy of the sub-letting agreement to the caravan owner.	6(j)
11 (italicised paragraph)	Onerous enforcement clause purported to confer on the park owner the exclusive right to remove the caravan from the pitch.	Revised to allow park owner only to recover reasonable costs.	11 (italicised paragraph)
12(a)	Imposed undue financial burdens. The clause did not impose any limit on the charges that could be levied by the park owner for the removal of the caravan from the site and its sale.	Revised to allow park owner only to recover reasonable costs.	12(a)

Undertaking accepted	30 April 2001	11 terms revised or deleted
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Name of business	Woods Travel Ltd	Lead TSD	West Sussex County Council
Trading sector	Other motoring costs (coach hire)	Contract identifier	Conditions of Trade and Booking

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Deposit	1(e): required consumer to pay a non-refundable deposit. There are many circumstances in which it may not be fair for the supplier to retain all of the consumer's deposit if the service is not provided.	Deleted.	
Damage To Company's Property	Inappropriate transfer of risk and Regulation 7: required consumer to 'indemnify' the supplier against third party claims. 'Indemnify' failed to comply with requirement for plain language.	Term no longer holds consumer liable to reimburse the supplier in respect of third party claims. Word 'indemnify' deleted.	18a
Increased Costs	1(l): gave supplier an unfair right to increase the cost of the hire.	Deleted.	
Alterations	1(k) and 1(b): gave supplier an unfettered right to alter what was supplied. This could also have had the effect of unfairly excluding the supplier's liability in respect of inadequate performance.	Deleted.	
Break-downs and Delays	1(b): unfair exclusion of liability for delay.	Term revised so that it excludes liability only for breakdown or delay beyond the supplier's control.	14

Agency Arrangements	1(a) and 1(b): unfairly excluded supplier's liability for death and injury, poor performance and delay when services provided by another supplier.	No longer excludes supplier's liability when services provided by another supplier.	15
Passenger's Property	1(b): unfairly excluded supplier's liability for damage to consumer's property.	No longer seeks to exclude supplier's liability for damage to consumer's property.	17c
Surcharges	1(l): gave supplier an unfair right to increase the cost of the hire.	Revised to refer consumer to the right to cancel.	22
Exclusion	1(a) and 1(b): unfairly excluded supplier's liability for injury, poor performance and delay.	Deleted.	

Other information	The contract was largely redrafted on the basis of the contract of the Confederation of Passenger Transport.	
Specific reservations	The Director General reserved his position in respect of term 11a concerning cancellation charges. These are not as generous as those contained in the Confederation of Passenger Transport contract.	
Undertakings accepted	15 February 2002	Nine terms revised or deleted

3 STATISTICAL BREAKDOWN OF ACTION ON CASES BY THE OFT

TABLE 3.1: BREAKDOWN OF CASES CLOSED*

Case outcome	Jan-Mar 2002	All cases to end Mar 2002
Advice or warning:	87	1518
<i>advice to consumers/solicitors</i>	30	
<i>advice to TSOs and CABx</i>	16	
<i>advice to Qualifying Bodies</i>	26	
<i>advice to trade associations</i>	2	
<i>warning letter</i>	13	
'Core' terms	3	281
Defective cases	2	183
Duplicate cases	46	1458
Enquiries	9	42
Excluded terms	11	364
'Formal' undertakings given	1	19
'Informal' undertakings given	24	714
No outcome recorded	0	16
Not about a contract term	8	230
Other legislation	1	292
Other reasons:	51	707
<i>approach made</i>	6	
<i>complex</i>	15	
<i>no approach made</i>	30	
Referred to Qualifying Bodies	51	257
Terms not considered unfair	5	581
Total	299	6662

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 that 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 (Dec 2001)	This quarter (Jan-Mar 2002)	Total at end this quarter (Mar 2002)
Cases received**	7147	252	7399
Cases closed	6363	299	6662
Cases carried over to next quarter	784		737

* From January 2002 cases are counted when closed rather than when 'completed'.

** Cases opened in error are removed from the totals when closed, hence the discrepancy between this figure and that published in Bulletin 18.

4 ALPHABETICAL INDEX OF BUSINESSES APPROACHED INDICATING TRADING SECTORS

1	Berkeley Sweetingham International	other personal goods and services (dating agency)
2	British Telecommunications plc (‘BT’)	telecommunications
3	British Telecommunications plc (‘BT’)	internet service providers
4	Cleveland Travel Ltd t/a Africa Travel Centre	holidays
5	Close House Ltd	entertainment, catering and accommodation (weddings and banqueting)
6	Essex Security Services Ltd	home maintenance, repairs and improvements (burglar alarms)
7	Fashion World Ltd t/a The Value Catalogue	clothing and clothing fabrics (mail order)
8	Focus (DIY) Ltd	DIY materials and tools
9	Gillett & Johnston (Croydon) Ltd	jewellery, silverware, clocks and watches
10	Gordon & Keenes	estate agency, house purchase, surveying and valuation
11	Homehunters	estate agency, house purchase, surveying and valuation (relocation agent)
12	The Insignia Blind Company Ltd	home maintenance, repairs and improvements (blinds)
13	MESH Computers plc	personal computers and related hardware
14	MSF Gas Ltd	domestic fuel (supply of LPG)
15	Motability Finance Ltd	hire and credit (unsecured)
16	Partner to Partner Ltd	other personal goods and services (dating agency)

17	Portway Motor Centre Ltd	second-hand motor vehicles (car auctions)
18	Ramblers Holidays Ltd	holidays
19	SelClene Ltd	hardware, cleaning materials, other household goods and services (domestic cleaning services agency)
20	Snows Business Forms Ltd	new and second-hand motor vehicles (standard contract forms for motor industry)
21	Talacre Beach Caravan Sales Ltd	holiday caravan renting and caravan sites
-	The Value Catalogue - see Fashion World	
22	Woods Travel Ltd	other motoring costs (coach hire)

5 GEOGRAPHICAL INDEX OF BUSINESSES BY LOCAL AUTHORITY

Brent & Harrow, London Borough of

MESH Computers plc

Cheshire County Council

Focus (DIY) Ltd

Croydon, London Borough of

Gillett & Johnston (Croydon) Ltd

Dorset County Council

The Insignia Blind Company Ltd

Essex County Council

Essex Security Services Ltd

Flintshire County Council

Talacre Beach Caravan Sales Ltd

Hertfordshire County Council

Ramblers Holidays Ltd

Lambeth, London Borough of

Gordon & Keenes

London, Corporation of

British Telecommunications plc ('BT') (2 cases)

Manchester, City of

Fashion World Ltd t/a The Value Catalogue

Northumberland County Council

Close House Ltd

Southampton City Council

Snows Business Forms Ltd

Southwark, London Borough of

Motability Finance Ltd

Warrington Borough Council

Partner to Partner Ltd

Westminster, City of

Berkeley Sweetingham International
Cleveland Travel Ltd t/a Africa Travel Centre
SelClene Ltd

West Sussex County Council

Woods Travel Ltd

Worcestershire County Council

Homehunters
MSF Gas Ltd
Portway Motor Centre Ltd

6 CATEGORIES OF UNFAIR TERM

(on cases where action was taken by the OFT)

Schedule 2:	paragraph 1(a) - Excluding or restricting liability for death or injury	3
Schedule 2:	paragraph 1(b) - Excluding or restricting liability for breaches of contract	
	<i>a Excluding liability for defective or misdescribed goods</i>	3
	<i>b Excluding liability for poor services, or work and material</i>	17
	<i>c Restricting amount or type of liability</i>	10
	<i>d Time limits on claims</i>	2
	<i>e Excluding consumers' right of set-off</i>	2
	<i>f Excluding or restricting liability for delay</i>	5
	<i>g Excluding or restricting liability for a supplier's non-performance</i>	4
	<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	0
Schedule 2:	paragraph 1(d) - Non-return of prepayments on consumer cancellation	6
Schedule 2:	paragraph 1(e) - Financial penalties	15
Schedule 2:	paragraph 1(f) - Cancellation clauses	4
Schedule 2:	paragraph 1(g) - Supplier's right to cancel without notice	0
Schedule 2:	paragraph 1(h) - Excessive notice periods for consumer cancellation	1
Schedule 2:	paragraph 1(i) - Binding consumers to hidden terms	7
Schedule 2:	paragraph 1(j) - General variation clause	1
Schedule 2:	paragraph 1(k) - Right to change what is supplied	6
Schedule 2:	paragraph 1(l) - Right to increase the price	10
Schedule 2:	paragraph 1(m) - Supplier's right of final decision	1
Schedule 2:	paragraph 1(n) - Entire agreement and formality clauses	
	<i>a Clauses disclaiming liability for employees' statements</i>	11
	<i>b Formality requirements</i>	4
Schedule 2:	paragraph 1(o) - Binding consumers where a supplier defaults	3
Schedule 2:	paragraph 1(p) – Supplier's right to assign without consent	0

Schedule 2: paragraph 1(q) - Restricting the consumer's remedies	5
Other categories of unfair terms	
<i>a</i> Allowing a supplier to impose an unfair financial burden	7
<i>b</i> Transferring unfair risks (eg: by indemnities) to consumers	4
<i>c</i> Onerous enforcement clauses	6
<i>d</i> Excluding consumers' right to assign	0
<i>e</i> Consumer declarations about contractual circumstances	3
<i>f</i> Excluding consumers' non-contractual rights	1
<i>g</i> Delivery at supplier's discretion	0
<i>h</i> Other	0
Regulation 7 - Plain and intelligible language	21
Total	162

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 that 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).

ANNEXE

A UNDERTAKING GIVEN BY PORTWAY MOTOR CENTRE LTD

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

UNDERTAKING

Portway Motor Centre undertakes to the Director General of Fair Trading that it, whether by its officers, employees or agents or otherwise:

- shall not use, in any contract concluded with consumers after the date of this undertaking, the terms mentioned in the letter from the Office of Fair Trading dated 11 August 1997 and attached to this undertaking and clauses 11(b) and 18 of the attached contract.
- shall not enforce, attempt to enforce or otherwise rely on any of those terms in any contract concluded on or before the date of this undertaking, insofar as it has the effect mentioned as unfair in that Annex.
- shall not recommend for use, in any contract concluded with consumers after the date of this undertaking, any of those terms.
- shall not use, recommend for use, enforce or otherwise rely on any term having the same or similar effect.
- shall, in drawing up any terms for general use in contracts concluded with consumers, have regard to Regulations 5 and 7 of the Regulations and the indicative list of terms contained in Schedule 2 to the Regulations.

Signed:

Steve Bowler

General Manager

Dated: 2 February 2002