

Unfair contract terms bulletin 20

Case reports April to June 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.

November 2002

OFT607

Contacting the OFT

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

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Unfair contract terms bulletins

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

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The Regulations

Copies of the *Unfair Terms in Consumer Contracts Regulations 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.hmso.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.hmso.gov.uk/si/si2001/20011186.htm

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1 INTRODUCTION

- 1.1 This is issue 20 of the quarterly *Unfair contract terms bulletin* ('the bulletin') in which the Director General of Fair Trading ('the Director General') 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 ('qualifying bodies'). 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 Office of Fair Trading ('OFT').
- 1.2 This bulletin covers the period from April to June 2002. Chapter 2 contains reports of 21 cases completed by the OFT. There were 228 contract terms abandoned or amended as a result of enforcement action by the OFT under Regulation 10, in all instances by means of acceptance of undertakings. This bulletin also includes details of one case completed by a qualifying body, in which a further 11 terms were revised.

Cases of note

- 1.3 As mentioned above, the bulletins now include cases taken by qualifying bodies. There is one in this bulletin: Lockwood Corporation t/a Sparplas Direct (case report 15) taken by Cornwall County Council.

FIRST STOP NOW ORDER ON UNFAIR TERMS

- 1.4 On 19 April an Order was made by Manchester County Court against George Brown, Vance Miller, Nicola Brodie and Sadiya Hussein under the Stop Now Orders (Injunctions Directive) Regulations 2001, Part III of the Fair Trading Act, and the Unfair Terms in Consumer Contracts Regulations 1999. The individuals were all company officers in Craftsman Kitchen Manufacturing Ltd and Craftsman Kitchens Ltd.
- 1.5 The Order requires the individuals not to enforce or rely on two unfair contract terms in agreements with consumers, and not to include them in future consumer contracts. The effect of these terms was to create a significant imbalance in cancellation rights between the companies and the consumer by imposing unfair charges on consumers who cancelled contracts.

- 1.6 In a separate action by the Department of Trade and Industry, both of the companies were wound up in the High Court on 27 March 2002. However, the Order is attached to the named individuals and it applies to contracts used by them in any other business or company.
- 1.7 This is the first Order obtained under the Stop Now Regulations. The case report is at Chapter 7 and the text of the Order is included at Annexe A.

PACKAGE HOLIDAY CONTRACTS

- 1.8 The Director General has accepted undertakings from the four largest tour operators in the UK: TUI (Thomsons), My Travel (Airtours), First Choice Holidays and Thomas Cook (JMC). The contracts of these major operators contained a large number of terms that OFT objected to under the Regulations, including many that did not properly reflect the requirements of the *Package Travel, Package Holiday and Package Tours Regulations 1992*. The contracts variously included terms that allowed the imposition of a surcharge if certain costs rose without entitling the consumer to a reduction if the same costs fell; excluded refund of an insurance premium where the consumer cancels as a result of a significant change made by the tour operator including an increase of more than 10 per cent of the price; required the consumer to pay the difference in price if taking a more expensive substitute holiday when the original holiday was cancelled through no fault of the consumer or when the tour operator significantly altered the original holiday; excluded payment of compensation for significant changes by the tour operator above a set scale, even if the consumer could prove a greater loss; excluded compensation for changes made more than 56 days before departure; denied liability for complaints received more than 28 days after the holiday ended; and limited liability for lost baggage to £400 per person (raised to £1000).
- 1.9 The standard terms in these companies' contracts are indicative of the sorts of unfair terms commonly found in booking conditions for package holidays. OFT is dealing with a large number of package holiday cases under the Regulations and expects that these smaller companies will now amend their own contracts more readily following the success of this action. This expectation is strengthened by the fact that the Director General has also accepted an undertaking from the Association of British Travel Agents (ABTA) to revise a number of terms in the model contract that it recommends to its members. The new ABTA terms were introduced in October 2002 as a result of OFT action and will provide a very helpful steer to their members in reviewing their contracts.
- 1.10 Full case reports will appear in the next bulletin.

- 1.11 There are two reports in this bulletin that detail terms revised by package tour operators: Malta Bargains Ltd t/a Sunshine Bargains Ltd (case report 16) and Page & Moy Ltd (case report 17). These reports contain a number of terms broadly similar to those removed from the major tour operators' contracts.

2 CASE REPORTS

- 2.1 The purpose of the case reports is to give enough information about significant changes in terms secured by the OFT and qualifying bodies to enable consumers, consumer advisers, and other agencies to see whether undertakings to drop or amend terms in line with the Regulations are being honoured.
- 2.2 When a case ends in undertakings, formal or otherwise, the OFT invariably makes clear to the supplier that revised contracts, and even individual terms that have been revised, are not immune from future action. Only the courts have the power to determine whether a term is unfair. The Director General remains under a duty to consider complaints that any standard terms are unfair. In some cases, however, the OFT's willingness to consider future action in the light of the possibility of subsequent complaints may be more specifically indicated. This usually occurs where the OFT has concerns about the potential unfairness of a term, but lacks sufficient evidence of a real possibility of harm to the consumer to warrant pressing a demand for it to be dropped. The terms on which the Director General's position has been specifically reserved are identified in the case reports, so that consumers and other agencies can monitor their use and report any unfairness.
- 2.3 Any title of the contract is given under 'Contract identifier' together with any reference numbers. The number of any revised term is given as well as the original term, except in some cases where the contract has been so comprehensively redrafted that the replacement terms cannot be readily distinguished. Reasons why terms were considered unfair are indicated, and, where they were amended rather than simply deleted, the nature of the changes introduced is summarised. To avoid uncertainty, the date on which final revisions were agreed is also given in the case report. The intention is to say enough to enable monitoring authorities to check whether old terms are still in use or have been replaced.
- 2.4 Please note that it cannot be assumed that any term apparently matching the description of a revised term will necessarily be fair. The aim is to illustrate the OFT's line on the fairness of different kinds of terms as concisely as possible. For convenience, the reasons for considering terms unfair are generally indicated by reference to the nearest example of unfair terms given in Schedule 2 to the Regulations – the so-called 'grey list'. This is not a full explanation. Fairness is assessed by reference to the test embodied in Regulations 5 and 6, not 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 AGFA (Agfa-Gevaert Ltd)

Name of business	AGFA (Agfa-Gevaert Ltd)	Lead TSD	London Borough of Hounslow
Trading sector	Photography (film processing)	Contract identifier	Warranty

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Warranty details inside	1(i): had the potential to bind consumers unfairly to terms printed on the inside of film boxes.	Revised to inform UK consumers that the warranty terms inside the box only apply to films purchased in the US, Canada or Mexico.	Limitation of Warranty

Other information	The OFT expressed concern at the potential for unfairness in a number of the terms printed on the inside of film boxes. AGFA provided an explicit undertaking that none of the terms inside boxes will be used with UK consumers, and has inserted a statement above the terms informing UK consumers that they do not apply to them. The packaging will be revised in 2002.		
Undertakings accepted	25 June 2002	One term revised	

2 Countrywide Residential Lettings Ltd

Name of business	Countrywide Residential Lettings Ltd	Lead TSD	Southend-on-Sea Borough Council
Trading sector	Letting and management agencies	Contract identifier	Good Faith Letter (containing terms and conditions of holding deposit), consumer's holding deposit receipt, and Tenant's Guide

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Good Faith Letter (containing terms and conditions of the holding deposit):			
Third paragraph	1(d): provided that the consumer's fee of intent was non-refundable if the consumer withdrew from the proposed letting.	Revised to provide that there will be a charge to cover any reasonable costs, up to a maximum of the full deposit, where the consumer withdraws from the agreement or where the tenancy does not start within one month of the agreement being signed, due to any action by the consumer.	Third paragraph
Third paragraph	1(f): provided that the consumer's fee of intent was non-refundable if the consumer's references were considered unsatisfactory.	Revised to provide that the consumer's deposit will be refunded if the landlord decides to withdraw for any reason or is unable to enter into the tenancy. Provides that there will be a charge to cover any reasonable costs, up to a maximum of the full deposit, where the consumer's references show that the consumer gave misleading or incorrect information that cannot be construed as a mistake.	Third and fourth paragraphs

Fifth paragraph	1(d): provided that the reference fee was non-refundable.	Deleted.	
Eighth paragraph	Provided that the consumer confirmed his or her understanding of the terms by signing the agreement.	Deleted.	
Final paragraph	Required the consumer to declare that he or she had understood the terms of the agreement and had received a copy of the Tenant's Guide.	Revised to inform the consumer that it is important he or she read and understand the terms of the agreement and that any terms not understood should be discussed with a member of staff before the agreement is signed.	Final paragraph
The consumer's holding deposit receipt:			
	Regulation 7: the receipt given to the consumer when paying the holding deposit provided that the money was 'accepted on a without prejudice basis'. The OFT considered that such unexplained legal jargon was unlikely to be intelligible to an ordinary consumer.	Deleted.	
Tenant's Guide:			
Tenancy Application /References	1(f): provided that the consumer's deposit was non-refundable if the application was unsuccessful.	Revised to provide that the consumer's deposit is non-refundable in certain circumstances, the details of which are set out in the confirmation letter.	Tenancy Application/References
Tenancy Application /References	1(d): provided that the consumer's deposit was non-refundable if the application was withdrawn.	Revised to provide that the consumer's deposit is non-refundable in certain circumstances, the details of which are set out in the confirmation letter.	Tenancy Application/References

When do you sign and what do you pay?	Provided that administration expenses were payable by the consumer but did not specify how much the charges would be or how they would be calculated. The OFT considered that the term therefore had the potential to impose an unfair financial burden on the consumer.	Revised to provide that the administration expenses will be a maximum of £58.75 and that the exact amount will be detailed in the confirmation letter.	When do you sign and what do you pay?
Rent Payment	Provided for an unspecified charge to be levied on late payment of rent. The OFT considered that the term therefore had the potential to impose an unfair financial burden on the consumer.	Deleted.	
The Inventory and Schedule of Condition	Provided that an inventory and schedule of condition would be checked and agreed at the start of the tenancy and that an unspecified charge would be made to the consumer. The OFT considered that the term therefore had the potential to impose an unfair financial burden on the consumer.	Revised to make clear that the charge was the same as the check-in fee detailed under the term entitled 'When do you sign and what do you pay?'.	Inventory and Schedule of Condition
Property Visits	Provided for an unspecified charge to be levied on the consumer for any abortive property visits. The OFT considered that the term therefore had the potential to impose an unfair financial burden on the consumer. In addition, there was no provision for the consumer to receive similar compensation if the supplier failed to keep an appointment.	Deleted.	

Insurance	Term may have been interpreted as imposing an unreasonable ancillary obligation on the consumer by requiring him or her to obtain household contents insurance through the supplier.	Revised to state that the supplier is able to provide a competitive quote should the consumer require insurance.	Insurance
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Other information	<p>The OFT was concerned that it was not made clear in any of the documentation supplied that the consumer was given a real opportunity to become acquainted with the terms and conditions of the tenancy agreement before paying a holding deposit for a property. The supplier gave assurances to the OFT that a copy of the tenancy agreement would be given to the consumer before the consumer paid a holding deposit and became bound to the terms of the 'Good Faith Letter'.</p> <p>Throughout the terms of the Tenant's Guide, fees were expressed as exclusive of VAT. All fees were revised to include VAT.</p>		
Specific reservations	<p>The position of the Director General was reserved in respect of the provision, under the heading 'Tenancy Agreement' in the Tenant's Guide, that any agreed extension of the tenancy agreement subsequently entered into would incur a charge of £52.87 payable by the consumer. The OFT considered that the charge could be regarded as unreasonable in view of the limited costs that were likely to be involved in arranging such an extension. The supplier was made aware that the OFT would reopen the matter if complaints were received that indicated the term was operating unfairly to the detriment of consumers.</p>		
Undertakings accepted	18 June 2002	13 terms revised or deleted	

3 easyRentacar (UK) Ltd t/a easyCar

Name of business	easyRentacar (UK) Ltd t/a easyCar	Lead TSD	London Borough of Camden
Trading sector	Other motoring costs (car hire over the internet)	Contract identifier	Website terms and conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1.2.1	1(d) and 1(e): allowed the supplier to retain full payment in advance where the consumer wished to shorten the hire period.	See comments in 'Other Information' box and at term 1.6.	1.2.1
1.4	1(d) and 1(e): allowed the supplier to retain full payment in advance where the vehicle was returned early.	See comments in 'Other Information' box and at term 1.6.	1.4
1.6	1(d) and 1(e): provided for the supplier to retain full payment in advance in cases where the consumer wished to cancel the agreement.	Revised to allow Customer Services managers discretion to provide refunds in circumstances including those listed in the 'Our Policies' section of the website and similar unforeseen circumstances.	1.6 and 1.7 Our Policies
2.2	1(b): allowed the supplier discretion to choose whether to provide a replacement vehicle or a refund of the unused portion of the hire charges where the vehicle became unroadworthy for any reason.	Revised to say that if attempts to provide alternative transportation fail, easyCar will pay compensation for reasonable inconvenience caused by the vehicle's breakdown.	2.2

2.3	<p>1(b): allowed the supplier discretion to terminate the rental agreement if a suitable replacement vehicle could not be supplied.</p> <p>1(m): allowed the supplier discretion to determine the suitability of a possible replacement vehicle.</p>	Revised so that if easyCar cannot provide the type of car booked or an alternative acceptable to the consumer, the supplier will end the rental agreement and refund the rental cost.	2.3
3.3	1(d) and 1(e): allowed the supplier to cancel the hire agreement and retain all prepayments where the consumer did not provide all requested documentation when collecting the vehicle.	Advises the consumer that he or she will not be able to drive the vehicle and is unlikely to receive a refund of any prepayments if he or she cannot provide the listed papers when collecting the vehicle.	3.3
4.1	Regulation 7: use of jargon ('procure').	Reworded to explain that the hirer must ensure all additional drivers are aware of their obligations under the agreement.	4.1
4.7	1(n): advised the hirer that he or she could not rely on information provided by the supplier.	Deleted.	
4.8	Regulation 7: use of jargon ('indemnify').	Deleted.	
5.1	Required the hirer to keep a copy of the rental agreement and insurance documents in the vehicle at all times.	Challenge discontinued. In some parts of the EU it is a legal requirement that vehicle papers are kept in the vehicle at all times.	
5.4	Regulation 7: referred to hirer not being able to take the vehicle out of the country where it was hired, which might have meant not being able to take it into England, Scotland or Wales if the agreement related to car hire within the United Kingdom.	Revised to make it clear that vehicles hired within the UK can be taken into all UK countries except Northern Ireland.	5.4

5.5	Regulation 7: implied that the hirer would be responsible for penalties incurred as a result of the supplier's negligence (for example fines for bald tyres).	Revised to make clear that any fines or penalties imposed during use of the vehicle will be in addition to any administrative fee but will not be imposed if caused by the supplier's negligence or breach of statutory obligations.	5.5
5.15	Regulation 7: the term was too widely drafted with regard to the hirer permitting work on or interference with the vehicle whilst in possession of the vehicle.	Redrafted to clarify that the hirer should not permit the removal of any components or any work altering the vehicle's specifications or appearance.	5.15
6.1	1(g): allowed the supplier to demand the early return of the vehicle if the agreement was terminated by the supplier.	Explains that the supplier will only terminate the agreement early if, under term 15.1, the hirer is in, or is believed to be in, serious breach of the agreement.	6.1 and 15.1
7.4	Permitted the supplier to debit further payments from the hirer's credit card for an indefinite period without notice following termination of the agreement.	Rewritten to ensure that the hirer will receive prior notification of any further payments, such as excess mileage, damage or fines, to be debited from the hirer's account.	7.4
8.1	Required the hirer to agree that the supplier would suffer loss if the vehicle was returned later than the specified end date of the agreement.	Rewritten so that the hirer is not asked to agree to statements of fact about which he or she has no direct knowledge.	8.1
9.1.1	1(e): allowed the supplier to decide the basis on which to charge consumer the fee for repairs regardless of how much the repairs would cost the supplier.	Revised to incorporate an end-of-hire inspection by the Service Team. Provides for four categories of damage and corresponding charges that will also be displayed prominently in all hire depots and returns areas.	9.1.1

9.1.1 and 9.1.2	1(m): allowed the supplier unlimited discretion to decide whether damage to the vehicle meant that the vehicle was acceptable for rehire or could not be hired again until repairs had been undertaken.	Redrafted to allow for vehicles with minor cosmetic damage to be rehire, but vehicles with major damage or structural damage listed in the four categories are to be repaired prior to rehire.	9.1.1 and 9.1.2 Our Policies
9.4	1(e): allowed the supplier unlimited discretion to charge for lost or damaged extras.	Deleted.	
12.4.1(c)	Regulation 7: time limit of seven days for submission of the Incident Report Form conflicted with the requirement in term 12.4.1(d) to return the form immediately.	Redrafted term makes clear that an Incident Report Form should be completed within seven days of the incident or at the end of the rental period if this is sooner.	12.4.1 (c)
12.4.1(d)	Regulation 7: requiring immediate return of the Incident Report Form conflicted with the seven-day time limit in term 12.4.1(c).	Incorporated into terms 12.4.1(b) and (c). Term (b) requires the hirer to notify Customer Services within 24 hours by phone. Term (c) requires the completion of an Incident Report Form within seven days or at the end of the rental period if sooner.	12.4.1 (b) and (c)
13.2	Indicated that loss or damage caused to a third party as a result of negligence by the supplier was the hirer's liability.	Rewritten to clarify that liability for loss or damage to third parties caused by the supplier's negligence rests with the supplier not the hirer.	13.2
13.4	1(b): allowed the supplier to refund the unused portion of the fee for the rental period even where this was not to the advantage of the consumer.	Rewritten to incorporate references to termination under terms 2.2 and 2.3.	13.4

14.1	1(g): allowed the supplier unlimited discretion to terminate the agreement where the hirer was believed to be in breach of the agreement.	Deleted.	
15	Regulation 7: the definition of 'Incident Report Form' gave a deadline for return that was not consistent with the strict deadline in term 12. The definitions of 'rentable' and 'non-rentable' were unclear.	Deadline removed from this term, but see revised terms 12.4.1(b) and (c). The definitions of 'rentable' and 'non-rentable' were removed from the contract.	16
17	1(q): restricted the hirer's legal remedies to those available in the English and Welsh courts.	Revised to permit the consumer to pursue his or her legal remedies in the Scottish courts where the hire agreement is entered into in Scotland.	18

Other information	<p>The contract required the consumer to make full payment in advance (by credit card) over the internet. It clearly stated that no refunds would be given in any circumstances. Revised terms 1.6 and 1.7 allow Customer Services managers discretion to offer a full refund in unusual or unforeseen circumstances that prevent the consumer from using the vehicle during the pre-booked hire period.</p> <p>In addition, a statement explaining the new policy and providing a non-exhaustive illustrative list of circumstances under which refunds will be offered has been added to the 'Our Policies' section of the website.</p>
Specific reservations	The Director General's position has been reserved in respect of the one-hour waiting time for post-hire examination under revised term 6.6, pending receipt of complaints that consumers suffer detriment because this period is too long.
Undertakings accepted	26 April 2002 25 terms revised or deleted

4 **Elegant Resorts Ltd**

Name of business	Elegant Resorts Ltd	Lead TSD	Cheshire 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
Booking conditions (Introductory paragraph)	<p>Regulation 7: provided that 'all the holidays in this brochure are sold subject to the following conditions, which comply with the Tour Operator's Code of Conduct drawn up by ABTA and approved by the Office of Fair Trading'.</p> <p>The statement was considered inaccurate and misleading. Consumers may have been misled into believing that they may not challenge the booking terms as unfair.</p>	Reference to approval by the Office of Fair Trading removed.	Booking conditions

Other information	The company has agreed to withdraw all references to the OFT from future brochures. It also gave an undertaking not to rely on the statement in the intervening period.		
Undertakings accepted	9 May 2002	One term revised	

5

English Country Cottages

Name of business	English Country Cottages	Lead TSD	Lancashire County Council
Trading sector	Holidays	Contract identifier	Conditions of Hire 1999

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Conditions of hire	Regulation 7: it was unclear whether the company was a party to the contract or was acting as an agent on behalf of property owners in the provision of accommodation.	Revised to clarify that the consumer is entering into a contract with the property owner, and that the company is responsible for the administration of the booking but does so solely on behalf of and as an agent for the property owners.	Conditions of hire
1. Your booking (2001 brochure)	Regulation 7: unclear reference to the terms and conditions that would apply where the consumer made a booking for a date in the future not covered in the brochure.	Deleted.	
2. Paying for your holiday	1(l): included a provision for the increase of prices as a result of changes to certain taxes or levies while excluding the possibility of a decrease.	Amended to allow for both increases and decreases in prices.	2. Paying for your holiday

<p>3. Cancellations or changes to your holiday by us</p> <p>(2001 brochure)</p>	<p>1(b): provided that the consumer must pay the difference in price if the original holiday is cancelled or changed and an alternative property offered is more expensive.</p> <p>1(b): had the potential to be regarded as an inappropriate limitation of liability for breach of contract.</p> <p>1(b): provided that information given by the consumer at the time of booking would be used to decide whether or not a change to the booking by the company would be considered minor.</p>	<p>Revised to state that the consumer may be able to claim any price difference from the owner of the original property.</p> <p>Revised to state that a minimum compensation of £20 will usually be paid upon a significant change or cancellation by the company.</p> <p>Revised to state that a minor change is one that the property owner could not reasonably expect to have a significant effect on the booking.</p>	<p>3. Cancellations or changes to your holiday by us</p>
<p>5. Brochure details</p> <p>(2001 brochure)</p>	<p>1(n): excluded liability for oral representations made by employees and that the consumer may have relied on when entering into the contract.</p>	<p>Deleted.</p>	
<p>6(i). If you change or cancel your holiday - Changes</p>	<p>1(n): provided that changes to accommodation details after reservation may be treated as a cancellation and that the company would inform the consumer if that was the case. The consumer was required to contact the company within 48 hours if he or she agreed to the cancellation charges or wished to proceed with the original booking. Failure to do so resulted in cancellation of the booking.</p>	<p>Revised to state that the consumer should inform the company of his or her decision to cancel as soon as reasonably possible.</p>	<p>7(i). If you change or cancel your holiday - Changes</p>

7. Your holiday accommodation	Not in good faith as provided that any security deposit paid would not be refunded immediately after the holiday.	Deleted.	
8. Complaints	1(b): excluded liability for complaints not notified in writing to the company within seven days of consumer returning from the holiday.	Revised to state that failure to notify the company of complaints within seven days may affect the consumer's entitlement to claim compensation.	9. Complaints

Specific reservations	<p>The position of the Director General was reserved in respect of terms 7(i) and 9 of the 2001 booking conditions.</p> <p>Term 7(i) provided that the company may consider a change of accommodation or date by the consumer to be a cancellation of booking and a cancellation charge may be applied. This may be an unfair penalty under paragraph 1(e) of the Regulations. However, in light of the complicated nature of the business sector, in which the company often has little control over the circumstances, the position of the Director General was reserved pending further evidence or complaints that the term is operating unfairly.</p> <p>Term 9 provided that the contract was subject to English law. The Director General's position was reserved with regard to the potential unfairness for consumers living in Scotland and Northern Ireland.</p>		
Undertakings accepted	16 May 2002	10 terms revised or deleted	

Name of business	Flightform Ltd t/a Thrifty Car Rental	Lead TSD	Buckinghamshire County Council
Trading sector	Other motoring costs (car hire)	Contract identifier	Rental Agreement and Insurance Application Form - Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1. Definitions (Agreement)	1(j): sought to incorporate into the agreement other literature (that was extra to the Terms and Conditions) before commencement of the rental period. This in effect was a variation with no right of termination. 1(n): no variation of terms allowed unless in writing and signed by a director.	Withdrawn.	
1. Definitions (Hirer)	Regulation 7: unexplained use of legal jargon ('jointly and severally liable').	Withdrawn.	
2.d)	Unfair transfer of risks to consumer in respect of costs that may arise through no fault of consumer. Regulation 7: use of legal jargon ('indemnify').	Withdrawn.	
2.f)	1(b) and Regulation 7: unfair exclusion of liability for unsatisfactory vehicle by reference to the qualification 'to the extent permitted by statute', which does not comply with the requirement for plain language.	Withdrawn.	

2.g)	1(b): unfair limitation of liability for loss or damage (other than death or personal injury) arising from the supplier's negligence or breach of contract in failing to provide a satisfactory vehicle.	Withdrawn.	
4.a)	Regulation 7: ambiguity and lack of clarity about the scope of and exclusions from the Collision Damage Waiver cover, and 'overhead damage' not defined. Use of legal jargon ('indemnify' and 'consequential') that a consumer would be unlikely to understand.	Withdrawn.	
5.a)	1(b): exclusion of liability for a poor service. The supplier charged a fee to check the adequacy of the consumer's insurance policy (term 5.e) but effectively denied any responsibility for any advice given to the consumer about the adequacy of that policy.	Withdrawn.	
5.c)	Gave the supplier an unrestricted right to communicate with the consumer's insurance company instead of just on matters arising from the vehicle hire.	Withdrawn.	
5.e)	<p>The supplier had the discretion to decline to accept the consumer's insurance without disclosing the reasons and with no requirement to exercise the discretion reasonably.</p> <p>Regulation 7: the charge for checking the adequacy of the consumer's insurance policy required prominence.</p>	Withdrawn.	

6.a)	1(e): required the consumer to pay the supplier's legal fees on an indemnity basis, which had the effect of a financial penalty. The term contravened the Civil Procedure Rules for small claims, was potentially misleading to District Judges, and would deter consumers from going to court.	Withdrawn.	
6. b)	1(b): excluded the right of set-off. Payment was required on demand without set-off or reduction, which could mislead consumers into thinking that the deposit or other payment could not be counted toward the charges.	Withdrawn.	
6.c)	1(e): outstanding amounts were subject to 2 per cent per month compound interest, which potentially had the effect of an unfair financial penalty.	Withdrawn.	
6.g)	The term allowed the supplier too much discretion to decide the condition of the vehicle at the end of the hire period and assess the consumer's liability. In particular, no allowance was made for fair wear and tear.	Withdrawn.	
6.l)	Regulation 7: made no sense as unconnected words were included at the start.	Withdrawn.	
7.	1(f): did not address the consequences of the supplier's breach, so potentially gave the supplier the right to cancel without refund.	Withdrawn.	

8.	1(e): had the effect of an unfair financial penalty. The supplier was not required to demonstrate any actual loss of use or profits if the vehicle were lost or damaged, and the consumer's liability to pay for any loss or damage was open-ended financially and not time-limited. There was also potential for double-recovery.	Withdrawn.	
9. (final two paragraphs)	1(f): allowed the supplier too much discretion about when to terminate and what to charge the consumer, including where the supplier was in breach.	Withdrawn.	
10.	1(q): allowed the supplier to decide the court to start proceedings in, which is contrary to the Civil Procedure Rules, making the term a potentially unfair exclusive jurisdiction clause. Regulation 7: used legal jargon about the application and validity of the terms, which would not be understood by consumers.	Withdrawn.	

11.	<p>1(b): provided the supplier with too wide an exclusion of liability for failure to perform its obligations. The consumer would not know the circumstances in which this could be exercised.</p> <p>1(f): also allowed the supplier the ultimate discretion to cancel and whether to refund payments already made.</p> <p>Regulation 7: used legal jargon that consumers would not understand ('force majeure').</p>	Withdrawn.	
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Other information	<p>The supplier was originally approached in 1996 in respect of the terms it was then using. Those terms were withdrawn later and replaced with others that continued to raise concerns. The supplier is a franchised network, which presented difficulties in deciding the way forward in response to the OFT's concerns. However, the supplier ultimately decided to withdraw its existing terms and adopt the British Vehicle Rental and Leasing Association's (BVRLA) model terms in their entirety. In due course the supplier expects to introduce adjustments to the BVRLA model to suit its own particular business needs.</p>		
Intelligibility	<p>The language and the presentation of the supplier's existing terms needed attention. The BVRLA terms to be adopted were drawn up in consultation with the Plain English Campaign and set a high standard of clarity and intelligibility.</p>		
Undertakings accepted	29 April 2002	19 terms withdrawn	

7

Gale's Estate Agency & Financial Services

Name of business	Gale's Estate Agency & Financial Services	Lead TSD	London Borough of Croydon
Trading sector	Letting and management agencies	Contract identifier	Letting & Management Terms & Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Fees and Fee Payment	1(b): provided that the initial charge was non-refundable. Regulation 7: the term was not drafted clearly and was confusing.	Revised to provide that the initial charge is non-refundable except where the supplier is in breach of the agreement. Revised in language more likely to be understood by an ordinary consumer.	3. Fees & Fee Payment
1. Appointment Instructions (f)	Provided the supplier with excessive discretion to act to limit damage to the property in the event of an emergency, regardless of the costs involved, and then to deduct the cost from rental income.	Revised to provide that the supplier may act to limit damage to the property in the event of an emergency, up to a maximum cost limit of £500 that the supplier would use best endeavours not to exceed.	2. Appointment - Instruction to Let (6)
3. Deposits	Provided the supplier with absolute discretion to decide whether a deposit should be paid to the consumer or the tenant in the event of a dispute. Regulation 7: provided that the consumer would 'indemnify' the supplier against any claims for the return of the deposit.	Revised to provide that the consumer must provide the supplier with written instructions regarding the disposal of any deposit held by the supplier. Revised to provide that the consumer accepts responsibility for the return of any deposit.	6. Deposits

8. Indemnity	Regulation 7: provided that the consumer would 'indemnify' the supplier against costs incurred by the supplier as a result of non-payment of outgoings by the consumer.	Revised to provide that the consumer accepts responsibility for costs incurred by the supplier as a result of non-payment of outgoings by the consumer. (See also the comments under 'Specific Reservations' on page 28.)	15. Indemnity
9. Frustration /Termination of Appointment	1(b): provided that if the agreement was terminated for any reason by the consumer or became frustrated after management had commenced, then the total fees for the full length of the original agreement would be due to the supplier. Regulation 7: use of unexplained legal jargon ('frustrated').	The terms were generally revised to make it clear that sums will not be due where the supplier is in breach of contract. Term 19 was also revised to provide that both the consumer and the supplier may terminate the agreement by giving one month's notice in writing to the other party. The word 'frustrated' was deleted from the term.	3. Fees & Fee Payment and 19. Termination of Management Appointment
10. Renewal or Sale	1(b): provided that if the tenancy was renewed on either the same or different terms with the original tenant or an associated party, then the supplier would be entitled to a further fee on the same basis as the original tenancy. When read with term 9, this appeared to prevent the consumer from cancelling an ongoing management contract earlier.	Revised to provide that the agreement may be terminated upon one month's notice.	18. Renewal of Tenancy and 19. Termination of Management Appointment

10. Renewal or Sale	Provided that the supplier would be entitled to commission at 2.25 per cent of the sale price plus VAT where the sale of the property was agreed between the consumer and a tenant introduced by the supplier.	Revised to provide that the supplier will not make a charge where sale of the property is agreed with any previous or existing tenant.	18. Renewal of Tenancy
11. The Property Condition	The term had the potential to mislead consumer landlords as to the extent of any tenant's responsibilities by stating that the tenant would have to maintain the property to the same condition as at the start of the tenancy.	Revised to provide that the tenant is responsible for maintaining the property in the same condition as at the start of the tenancy with the exception of fair wear and tear.	11. The Property Condition
13. Tenants Leaving Prior to End of Agreed Term	<p>1(b): provided that the consumer would not receive refunds of the commission from the supplier in the event that tenants left before the end of the agreed tenancy period.</p> <p>Regulation 7: what was referred to by 'commission' was unclear as it was not defined within the agreement.</p>	<p>Revised to provide that fees paid will not be refunded to the consumer in the event that tenants leave before the end of the agreed tenancy period except where the supplier is in breach of his agreement with the consumer.</p> <p>The clarity of the term was improved.</p>	16. Tenants Leaving Prior to End of Agreed Term

8 Gulliver's Travels Self Drive Ltd

Name of business	Gulliver's Travels Self Drive Ltd	Lead TSD	Bristol City Council
Trading sector	Other motoring costs (car hire)	Contract identifier	Rental Agreement/Invoice

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Declaration on proposal for insurance (on front of invoice)	Regulation 7: not prominent that by signing the agreement the consumer was agreeing to the terms and conditions on the reverse. Also, key information about the consumer's liability for, and level of, the insurance excesses did not appear.	Makes clear that by signing the agreement the consumer is agreeing to the terms on the reverse that he or she has been advised to read carefully. Also, the consumer's liability for, and the level of, the insurance excess has been prominently added with a cross-reference to the insurance term.	Declaration
Terms and Conditions:			
1(d)	1(j) and 1(b): allowed the company to increase the amount of the excess and held the consumer liable for the excess even if the damage was the company's fault.	Right to increase the excess deleted and consumer's liability revised to exclude damage arising from the company's default or negligence.	7(d)
1(e)	Unfairly transferred the risk to the consumer in the event that the insurance policy failed.	Deleted.	
1(f)	1(i): bound the consumer to the terms of the insurance policy, a copy of which was only available on request, placing the onus on him or her to request sight of the terms.	Deleted.	

2(d)(i)	1(b) and unfair transfer of risks: made the consumer liable for the cost of minor repairs that may have resulted from the condition of the vehicle when hired, for which the company is properly liable.	Deleted.	
2(d)(ii)	Regulation 7: required consumer to obtain authority for major repairs without explaining 'major'.	Prominently states that any repairs must be authorised.	10
3	1(b): effectively made the consumer liable for all losses and claims including those arising from the company's default or negligence. Transferred unfair risks to the consumer by making him or her liable for every expense in event of a breach. Regulation 7: use of jargon ('indemnified').	Consumer's liability revised to exclude losses arising from the company's breach or negligence and qualified to refer to 'reasonable' costs and expenses. Also, 30-day limit for liability for loss of income introduced along with reference to the company's duty to mitigate its losses. Jargon removed.	4
4	Unreasonable requirement to notify any accident immediately and to complete an insurance claim form immediately.	Allows the consumer to notify as soon as reasonably possible and to complete the form as soon as reasonably practical.	6
5	1(b): the company's right to withhold the deposit was too wide.	The right to withhold some or all of the deposit clarified and narrowed.	1
6	1(b): consumer liable for all fines etc for non-compliance with traffic or transport legislation. Regulation 7: use of jargon ('indemnify').	Consumer's liability limited to exclude that arising from company's negligence or breach of contract. Jargon removed.	2

7	<p>1(b): had the potential to exclude the company's liability to provide a satisfactory vehicle by requiring the consumer to satisfy himself or herself that the vehicle was suitable.</p> <p>Regulation 7: use of phrase 'excluded so far as the law permits'.</p>	Deleted.	
8	<p>1(b): excluded liability for losses arising from mechanical breakdown due to the company's negligence or breach of contract.</p> <p>Regulation 7: referred to 'economic or consequential loss', which would not be clear to consumers.</p>	Deleted.	
10	<p>Provided the company with an onerous right of enforcement – to enter the consumer's premises to repossess the vehicle – and permitted it to charge the consumer with all costs and expenses arising from the recovery or repossession of the vehicle.</p>	<p>Right to enter the premises restricted to peaceful means, and costs and expenses qualified by reference to 'reasonable'.</p>	15
13	<p>1(b): effectively denied liability for the loss of or damage to the consumer's goods carried in the vehicle.</p> <p>Regulation 7: referred to 'economic or consequential loss', which would not be clear to consumers.</p>	<p>Accepts liability for loss or damage arising from the company's negligence or breach of contract in contracts with consumers.</p> <p>Reference to economic or consequential loss removed.</p>	13(b)(i)

Specific reservations	The Director General's position has been reserved in relation to term 15 with its right to repossess the vehicle by peaceful means. The Director General's position has also been reserved on the inclusion of the insurance terms and conditions, to ensure that the consumer is not being bound by hidden terms concerned with insurance.
Undertakings accepted	30 May 2002 14 terms revised or deleted

Name of business	Holiday Autos International Ltd	Lead TSD	Surrey County Council
Trading sector	Other motoring costs (car hire)	Contract identifier	The small print (in both the brochure and the website)

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Period of rental/ calculating your rental price	Regulation 7: the information was poorly presented, having the potential to confuse consumers as to what applied to their contract. The provision to charge for late returns and extensions at the local rate was not prominent.	The presentation has been vastly improved by the use of a table, and the provision about the local rates has been printed in bold to give it prominence. (See also 'Specific reservations' box on page 36.)	Period of Rental & Calculating Your Rental Price
Flight information	1(n): disclaimed responsibility for a failed rental if flight information was not provided seven days prior to departure even if it was provided in time to make the arrangements and so the failed rental had not been caused by late provision of the information.	Revised to state that the supplier will do its best to ensure the car is available even where the flight information is not provided seven days in advance, and will not accept liability for a failed rental only when this is caused by late provision of the information.	Flight Information
Special requests	1(b): excluded liability for provision of specially requested items. Ambiguous about whether child seats were guaranteed despite their being mandatory in many countries.	Makes clear that child seats will be guaranteed if requested and confirmed. (See also 'Specific reservations' box on page 36 regarding requests for roof racks, ski racks and snow chains/tyres.)	Special Requests

Cancellation/amendment charges and Cancellation charges	1(e): the scale of charges on cancellation had the potential to be a financial penalty.	The cancellation charges have been significantly reduced. The layout has also been improved to give clarity, including giving prominence to the consumers' liability for a cancellation charge in the event of cancellation.	Cancellation/ Administration Charge and Cancellation Charges
Delivery/ collection	Allowed the supplier to impose an unfair financial burden by providing that a local charge may be payable for delivery/collection, without supplier advising the amount if the service were requested when booking.	Supplier undertakes to advise consumers of the local charge when booking made.	Delivery/ Collection
Rental documents	Regulation 7: the requirement to present the rental voucher needed to be more prominent as failure to present it could have resulted in the booking not being honoured.	Made prominent by printing in bold.	Rental Documents
Provision of cars	Regulation 7: the use of the word 'supplier' to refer to the car provider had the potential to confuse consumers as to the obligations of the company or the local car provider.	Adopts phrase 'local supplier' to avoid any confusion. Also, the contract generally clarifies the contractual arrangements.	Provision of Cars
Number of passengers	Regulation 7: contained duplicate text from another term, which affected the meaning of the term and caused confusion.	Duplicated text removed to make term clearer.	Number of Passengers
Driving restrictions	Allowed the supplier to impose an unfair financial burden by referring to charges that may apply locally for extra insurance, without advising the amount if the consumer's situation and requirements were made clear on booking.	The brochure version advises consumers to check the position with the reservation department at the time of booking, and for web bookings the term provides a number to call to make the necessary enquiries.	Driving Restrictions

Insurance exclusions/ exceptions	Regulation 7: contained an exclusion from the no insurance excess policy for damage caused through 'negligence'. It was unclear what was meant by 'negligence' since this potentially would have the effect of excluding liability to pay out for all accidents.	Revised to refer to damage caused 'recklessly'.	Insurance Exclusions/ Exceptions
Car type/ suitability	1(k): gave too wide a right to vary the type of car booked even where this was an important part of the hire, eg a prestige car was required or a type of car had been guaranteed. 1(b): also required the consumer to notify the local supplier immediately if dissatisfied with the car, otherwise liability excluded.	Limits the right to vary by guaranteeing the booking for a prestige car. Warns consumers that their claims may not be settled if they do not inform the local supplier immediately and Holiday Autos within 28 days in writing.	Car Type/ Suitability
Mechanical difficulties /accidents	Placed an unreasonable obligation on consumers to follow reporting and claims procedures otherwise compensation would not be considered.	Limited to advising consumers that failure to follow the procedures may invalidate the insurance cover and prejudice any claim for compensation.	Mechanical Difficulties/ Accidents
Additional conditions	1(i): it was difficult for consumers to establish which additional terms applied to their rental.	The presentation has been improved. In addition a summary of common provisions together with details of individual conditions that may be applicable to different suppliers in different locations is to be provided.	Additional Conditions
General conditions:			
First paragraph	1(b): had the effect of a wide exclusion of liability.	Deleted.	
Second paragraph	1(n): disclaimed liability for employees' statements.	Deleted.	

Third paragraph	1(i): bound consumers to the local car supplier's terms and conditions without sight of them.	A summary of the important terms of the different car providers in different locations that would apply to consumers hiring a car from those providers is to be provided and a cross-reference to it will be included.	First paragraph
Seventh paragraph	1(b): included a ceiling on liability.	Deleted.	
Eighth paragraph	Regulation 7: used jargon ('indemnify').	Revised to use plain language.	Fifth paragraph

Other information	Holiday Autos International Ltd acts as a car rental broker and agent for various independent rental companies in the countries in which it operates.		
Specific reservations	The Director General's position has been reserved in relation to the period of rental term and the special requests term, pending evidence of potential or actual unfairness to the detriment of consumers. The period of rental term provides that no refunds will be given for cars returned early. An assurance was given that the non-refund policy would not apply if the car were returned early because of the local car supplier's negligence or failure to provide a satisfactory vehicle. The special requests term alerts consumers to the fact that their special requests, eg for roof racks and ski racks, cannot be guaranteed. It was accepted that it would not be possible to meet all such requests for all the fleet and for all consumers and in the absence of evidence of actual consumer detriment the challenge was not pursued.		
Intelligibility	The website version of the terms and conditions was difficult to follow because sentences did not start with an initial capital and paragraphs were often lengthy thereby obscuring important points. The revised contract addresses these shortcomings. It also makes a clear distinction between the two contractual relationships involved – between the consumer and Holiday Autos and between the consumer and the local car supplier.		
Undertakings accepted	7 June 2002	19 terms revised or deleted	

Name of business	Krauses Gym Ltd t/a Krauseworld	Lead TSD	Glasgow City Council
Trading sector	Entertainment, catering and accommodation (health and fitness clubs)	Contract identifier	12 month membership application

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Membership policies:			
First bullet point	Regulation 7: not written in plain and intelligible language.	Deleted.	
Sixth bullet point	Regulation 7: not written in plain and intelligible language.	Deleted.	
Eighth bullet point	1(o): purported to bind consumers to accepting contractual requirements set out in the Members' Handbook, the content of which they were not familiar with at the time of entering into the agreement.	Deleted.	

Other information	Advice on compliance with the Consumer Credit Act 1974 and the Consumer Credit (Agreements) Regulations 1983 was also given.		
Undertakings accepted	10 June 2002	Three terms deleted	

Name of business	Landsdowne (Estate Agents) Ltd t/a Landsdowne Estates	Lead TSD	London Borough of Ealing
Trading sector	Letting and management agencies	Contract identifier	Special Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
'...this is a non-refundable holding deposit...'	1(d): provided that the holding deposit was non-refundable regardless of the circumstances and taking no account of the duty to mitigate losses where possible.	<p>Revised to provide that the consumer's deposit is refundable in full if the consumer instructs the supplier not to commence referencing until 48 hours after the agreement is entered into and the consumer then chooses to withdraw from the agreement within that 48 hour period.</p> <p>Revised to provide that, in other circumstances where the consumer chooses to withdraw from the agreement, a charge will be deducted from the refund of the consumer's deposit to cover the landlord's costs and the supplier's reasonable administration costs. This charge is subject to a maximum of the deposit paid by the consumer.</p>	<p>a)3</p> <p>b)1, b)2, c) and Administration Fee</p>

<p>'...this is a non-refundable holding deposit (except in the case...'</p>	<p>1(f): provided that the holding deposit was non-refundable except where the landlord terminated the agreement for an invalid reason.</p> <p>Regulation 7: what constituted an 'invalid reason' was not specified.</p>	<p>Revised to provide that the consumer's deposit is refundable in full if the offer is not accepted by the landlord, the landlord does not accept the consumer's special conditions, the landlord withdraws the property, or the landlord decides that the reference replies are unsatisfactory.</p> <p>Provides that a charge will be deducted from the refund of the consumer's deposit to cover the landlord's costs and the supplier's reasonable administration costs if the consumer gives false or misleading referencing information.</p>	<p>a)1, a)2, a)4, a)5 and Administration Fee</p> <p>b)4 and Administration Fee</p>
<p>'I/We agree that these monies are non-refundable ...'</p>	<p>The agreement was drafted to include a number of consumer declarations ('I/We agree', 'I understand' etc).</p>	<p>Deleted.</p>	

<p>Other information</p>	<p>Fees were originally expressed as exclusive of VAT throughout the agreement. All fees were revised to be shown as inclusive of VAT.</p>
<p>Undertakings accepted</p>	<p>30 May 2002 Three terms revised or deleted</p>

Name of business	LastMinute Network Ltd t/a lastminute.com	Lead TSD	City of Westminster
Trading sector	Travel agents; other recreational goods and services (internet auctions)	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
General - first paragraph	By using the website the consumer was considered to have read and understood the conditions.	Consumer advised to read the conditions and no longer considered to have understood them.	General Section - 1
Liability - first paragraph	1(b): potentially allowed supplier to provide a poor service by unfairly excluding liability for failing to update information or ensuring that information was accurate.	Deleted.	
Liability - second paragraph	1(b): unfairly excluded supplier's liability in all circumstances for goods and services offered by supplier where acting as agent for third parties.	The exclusion of liability where the supplier acts as agent has been more narrowly drafted.	General Section - 2
Liability - third paragraph	1(b): had the potential unfairly to exclude supplier's liability for negligence in providing inaccurate data.	Term no longer excludes liability for providing inaccurate information.	General Section - 11
Liability - sixth paragraph	1(b): unfairly excluded supplier's obligation to provide goods of a satisfactory standard or that are fit for their purpose and match their description.	Deleted.	

Liability - eighth paragraph	1(b): potentially unfairly excluded liability for supplier's poor service/negligence and consequential loss.	Deleted.	
Liability - ninth and tenth paragraphs	1(b): unfairly limited supplier's liability for consequential loss and placed a financial cap on its liability.	Deleted.	
Liability - eleventh paragraph	Regulation 7: stated that the liability section applied 'only to the extent permitted by law'. This was unlikely to be understood by a consumer.	Deleted.	
Gifts - third paragraph	Regulation 7: referred to consumer's statutory rights without providing an explanation of what these entailed.	Revised to inform consumer where he or she can find more information about statutory rights.	Gifts - 4
Gifts - fourth paragraph	1(k): gave supplier potentially unfair right to alter what was supplied.	Deleted.	
Gifts - sixth paragraph	1(b): potentially unfairly excluded liability for inaccurate or misleading descriptions.	Deleted.	
Gifts - tenth paragraph	Term unfairly transferred risk to consumer for goods lost or damaged in transit.	Deleted.	
Auction - second paragraph	1(i): potentially bound consumer to third party suppliers' terms that he or she had not seen prior to contracting.	Term makes clear that consumer can request sight of terms of third party suppliers.	General Section - 2
Auction - eighth paragraph	Gave supplier an excessive discretion to determine how to perform its obligation of providing the auction.	Deleted.	

Auction - tenth paragraph	1(b): the statement that goods are non-refundable and that their condition is not guaranteed may have misled the consumer into believing that he or she could not bring a claim against the vendor.	Deleted.	
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Undertakings accepted	29 May 2002	16 terms revised or deleted
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Name of business	Law Pack Publishing Ltd	Lead TSD	London Borough of Southwark
Trading sector	Other professional services (publishers of standard letting agreements)	Contract identifier	Assured Shorthold Tenancy Agreement

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1.3	1(b): required the items on the inventory and the interior of the property to be kept in good condition, without accounting for fair wear and tear.	Revised to provide that fair wear and tear is excepted.	1.3
1.10	1(b): allowed the landlord the right of entry at reasonable notice without specifying the notice period.	Revised to provide that the tenant is given 24 hours' prior written notice.	1.10
1.11	Term provided that the tenant should pay the landlord legal costs incurred as a result of the tenant's breach without making it clear that these would be legal costs awarded by the court.	Revised so that there is no longer a specific requirement that the tenant pays the landlord's legal costs.	1.11
2.1	Term gave the landlord a potentially unfair enforcement power by making the tenant's quiet enjoyment conditional upon the tenant not breaching his or her obligations.	Revised to allow the tenant unconditional quiet enjoyment.	2.1
3	1(b): sought to exclude the tenant's right of set-off by providing that the tenant's guarantor paid, on demand, any amount that the tenant owed.	Revised to state that the guarantor only pays any money that is lawfully due to the landlord by the tenant.	3

4.3.1	Forfeiture term unfairly allowed the landlord to recover possession of the property if any part of the rent was outstanding for 10 days.	Revised to increase the period to 21 days.	4.3.1
6.4	Term provided that correspondence would be considered as served by either being left at the property or being sent to the tenant by first-class post.	Revised to clarify that this notice provision only applies during the tenancy.	6.4
6.8.4 and front of agreement	Regulation 7: use of legal jargon ('joint and several liability').	Revised to explain that each tenant will be liable for all the sums due under the agreement and not just for a proportionate part.	6.8.4

Other information	Law Pack Publishing Ltd publishes standard agreements for use between landlords and tenants. The agreement reviewed was forwarded in response to the publication of the OFT's tenancy guidance (<i>Guidance on unfair terms in tenancy agreements</i> , ref: OFT356).		
Undertakings accepted	24 May 2002	Nine terms revised	

Name of business	Living In Style Kitchens and Bedrooms Ltd	Lead TSD	London Borough of Ealing
Trading sector	Home maintenance, repairs and improvements	Contract identifier	Terms and Conditions

Other information	The OFT first considered the supplier's terms after a referral by Ealing Trading Standards Department. The OFT approached the supplier to obtain his current terms. The OFT subsequently challenged his terms, and following negotiations he agreed to remove all terms from his contract documents.		
Undertakings accepted	26 June 2002	Six terms deleted	

15

Lockwood Corporation Ltd t/a Sparplas Direct

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

Name of business	Lockwood Corporation Ltd t/a Sparplas Direct	Lead TSD	Cornwall County Council
Trading sector	Double glazing products and installation	Contract identifier	Terms & Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2(a)	1(n): limited the supplier's obligations to the written terms.	Revised to record the supplier's intention that the written terms form the contract.	2
2(b)	1(b): required the consumer to agree that he or she had not been induced into the purchase by anything the supplier, or its agents, might have said.	Deleted.	
5	1(k): gave the supplier a general right to vary the product from the samples.	Revised to make it clear that, except in the case of minor variations, the consumer will be informed of variations before installation takes place.	5
6	1(b): excluded liability for consequential losses.	Revised to restrict the supplier's liability to foreseeable losses.	6
8	1(b): excluded liability for any damage to the area surrounding the installation.	Revised to advise the consumer that the supplier will make good any damage to plaster, floor, rendering or brickwork around the installation but not to decorative finishes, and that redecoration may therefore be necessary. No longer excludes liability for damage to other areas of the premises.	8

11	1(f): unequal cancellation rights.	Revised to ensure that the consumer will receive an explanation for cancellation and a full refund if the supplier cancels. Also revised to make the consumer aware of the duty to mitigate the supplier's losses if consumer cancels.	11
12	1(b): excluded liability for delay and for loss or damage.	Revised so that the supplier will be responsible for ensuring that the items are fitted within a reasonable time.	12
14	1(b): excluded liability for delay and consequential loss, and had potential to exclude liability for supplier's negligence.	Revised to show that the supplier is liable for loss caused by its own negligence.	14
15	1(b): passed risk to consumer for defective goods or services.	Deleted.	
16	1(e): imposed unspecified storage charges where the consumer delayed receipt of goods.	Revised to limit the charges to those that would be reasonably incurred by the supplier.	15
17	1(e): restricted consumer's right of set-off in a dispute, and imposed an unreasonably high rate of interest on unpaid balances.	Revised to allow the consumer to withhold a proportionate amount for defects pending satisfactory completion of the installation. Interest rate reduced significantly.	16

Other information	Term 1 was challenged under the Business Names Act 1986. It has been amended to show the parent company's name.	
Undertakings accepted	8 August 2001	11 terms revised or deleted

**Malta Bargains Ltd t/a Sunshine Bargains Ltd
(previously Malta Sun Holidays Ltd and Bargain Holidays Ltd)**

Name of business	Malta Bargains Ltd t/a Sunshine Bargains Ltd (previously Malta Sun Holidays Ltd and Bargain Holidays Ltd)	Lead TSD	London Borough of Tower Hamlets
Trading sector	Holidays	Contract identifier	Booking conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
2.	Provided that if the consumer failed to pay the balance of the holiday by the due date, the supplier reserved the right to cancel the holiday. Also allowed the supplier discretion as to the date of the cancellation, giving the supplier control over the level of cancellation charges applied.	Revised to state that if the balance is not paid by the due date, the holiday will be cancelled and the deposit will be retained as a cancellation charge.	3. Your holiday price
3.	Considered unbalanced and not in good faith as it provided that any alterations to the booking within five weeks of the departure date would be treated as a cancellation and cancellation charges would be applied.	Revised to state that amendments to the booking will be subject to the payment of an administration charge of £5 and all costs incurred in making the alteration. Also includes a warning that the costs of making alterations could increase the closer to the departure date the changes are made.	4. If you change your booking

4.	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 supplier as a result of the cancellation.	Revised to reduce the cancellation charges payable by the consumer. Note the specific reservation of the Director General's position in relation to this term. (See the 'Specific reservations' box on page 51.)	5. If you cancel your holiday
5.	1(b): reserved the right to make changes to the holiday details contained in the brochure before the booking was made.	Deleted.	
6.	<p>1(b): did not provide adequate compensation payments upon a significant change by the company.</p> <p>1(b) and 1(k): failed to reflect fully the provisions of Regulation 13(2) of the Package Travel Regulations 1992 ('PTRs') upon the company making a significant alteration to the booking.</p> <p>1(b) and Regulation 7: definition of 'force majeure' inconsistent with that appearing in the PTRs.</p>	<p>Revised to state that the compensation levels payable are minimum levels.</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 comparable standard or receive a full refund, in addition to receiving compensation where appropriate.</p> <p>Revised into plain language.</p>	6. If we change or cancel your holiday
7.	<p>1(b): did not provide adequate compensation upon cancellation of the booking by the company.</p> <p>1(b) and 1(k): failed to reflect fully the provisions of Regulation 13(2) of the PTRs upon the company making a significant alteration to the booking.</p>	<p>Revised to state that the compensation levels payable are minimum levels.</p> <p>Revised to reflect the provisions of Regulation 13(2) of the PTRs, as detailed in term 6 above.</p>	6. If we change or cancel your holiday

8(vii).	1(i): provided that the airlines' terms and conditions were incorporated into the consumer's contract with the company.	Revised to state that the conditions of carriage will apply to the contract and may contain terms that could affect the consumer's right to compensation. Copies of the relevant conditions of carriage are available on request.	11. Conditions of carriage
9.	1(i): provided that the terms and conditions of the accommodation were incorporated into the consumer's contract with the company, without providing copies of the terms on request.	Deleted.	
12(iii).	Unbalanced and not in good faith as it allowed the company an unfettered right to terminate the booking due to the disruptive behaviour of the consumer.	Deleted.	
12(iv).	1(n): provided that the company could not guarantee any special requests and would not be liable for its failure to meet such requests.	Deleted.	
13.	1(l): price revision clause did not provide for price reduction in circumstances where Regulation 11 of the PTRs applied, and failed to provide the consumer with the options he or she was entitled to in the event of a significant price change.	Revised to state that the price of the booking is fully guaranteed and will not be subject to any surcharges.	3. Your holiday price
15.	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.	Revised to recommend that complaints are communicated without delay whilst in the resort, and that failure to do so may affect the consumer's rights to compensation.	7. If you have a complaint

16.	1(q): provided that the contract was governed by English law and was subject to the jurisdiction of the English courts at all times.	Revised to state that the contract is governed by English law and is subject to the non-exclusive jurisdiction of the English courts. Where consumers reside in Scotland or Ireland, the applicable law and jurisdiction of those countries will apply.	1. Your holiday contract
Revised term 9. Our liability	1(b): provided that liability was limited to a maximum of two times the price of the holiday.	Revised to provide that liability will be limited to a maximum of three times the price of the holiday.	9. Our liability
Complaint form:			
Change of accommodation	1(b): limited liability as it provided that the change of accommodation was at the consumer's request and the supplier was not liable for any further claim.	Wording deleted.	Change of accommodation

Specific reservations	<p>The position of the Director General was reserved in respect of term 5 of the new booking conditions.</p> <p>Information supplied to the Director General in relation to term 5 was not considered sufficient to establish that the new scale of cancellation charges represents a genuine pre-estimate of loss incurred by the supplier as a result of cancellations. However, the cancellation scale used is consistent with what the OFT would expect that information to reveal.</p>		
Undertakings accepted	8 May 2002	16 terms revised or deleted	

Name of business	Page & Moy Ltd	Lead TSD	City of Leicester
Trading sector	Holidays	Contract identifier	Booking Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
A. Booking your holiday:			
4. What about disabilities and medical conditions	Considered unbalanced and not in good faith as it allowed the supplier absolute discretion to refuse to accept a booking if in the supplier's opinion the holiday was not suitable for a particular disability or medical condition.	Revised to state that the supplier has the right to refuse to accept the booking if in the supplier's reasonable opinion the holiday is not suitable for a particular disability or medical condition.	4. What about disabilities and medical conditions
5. What should I do when I receive my confirmation invoice and other documents	1(b): excluded liability for inaccuracies in documents not notified to the supplier within 10 days and inaccuracies in tickets not notified within five days regardless of who was responsible for the inaccuracies.	Revised to extend the notification period for inaccuracies in documents to 14 days. Also, mistakes notified to the supplier outside this period will be rectified if possible, but at the consumer's expense unless the mistake was made by the supplier. Note the specific reservation of the Director General's position in respect of the five-day notification period for inaccuracies in tickets. (See 'Specific reservations' box on page 57.)	5. What should I do when I receive my confirmation invoice and other documents

B. Cancellation and changes by you			
7. What happens if I want to make any changes to my holiday	<p>Considered unbalanced and not in good faith as it provided that any amendments to the booking within six weeks of the departure date would be treated as a cancellation, and cancellation charges would be applied.</p> <p>Regulation 7: unclear definition of maximum amendment charge.</p>	<p>Revised to state that amendments to the booking within six weeks of departure will be subject to an amendment fee of £15 per person and all costs involved in order to make the change. Also states that amendments will not usually be possible within two weeks of departure.</p> <p>Definition revised to state clearly that the maximum amendment charge is per occasion.</p>	7. What happens if I want to make any changes to my holiday
8. What happens if I cannot take my holiday or...do not want to go	<p>Contrary to Regulation 10 of the Package Travel Regulations 1992 ('PTRs'), the term provided that name changes were not possible if there was a waiting list for the holiday.</p> <p>Provided that when an airline refused to make a name change to the booking, contrary to Regulation 10 of the PTRs, 100 per cent cancellation charges would apply for the cost of the flight.</p>	<p>Reference to waiting list was deleted.</p> <p>Reference to circumstances in which an airline refuses to make a name change deleted.</p>	8. What happens if I cannot take my holiday or...do not want to go
C. Changes and cancellation by us:			
11. What happens if you have to make a significant change to my holiday	1(b) and 1(k): failed to reflect fully the provisions of Regulation 13(2) of the PTRs upon a significant change to the booking prior to departure.	Revised to provide that in the event of a significant change to the booking the consumer may take a substitute holiday of equivalent or superior quality at no extra cost, take a substitute holiday of lower quality and recover the difference from the supplier, or receive a full refund of all monies paid.	11. What happens if we have to make a significant change to your holiday

<p>12. Will I receive any compensation if you have to make a significant change</p>	<p>1(b) and 1(k): stated that the compensation amounts shown were the maximum payable where the supplier made a significant change to the holiday.</p>	<p>Revised to state that the compensation amounts shown are the minimum payable and that in addition the supplier will compensate the consumer for reasonable costs and expenses incurred as a result of a significant change to the booking.</p>	<p>12. Is compensation payable if we have to make a significant change to your holiday</p>
<p>13. What about minor changes</p>	<p>1(b) and 1(k): provided that any change of a type not listed as a significant change would be treated as a minor change and no compensation would be payable.</p>	<p>Revised to state that a minor change is any change that the supplier could not reasonably expect to have a significant effect on the holiday.</p> <p>Note the specific reservation of the Director General's position in respect of the definition of 'minor change'. (See 'Specific reservations' box on page 57.)</p>	<p>13. What about minor changes</p>
<p>14. What about changes to flights</p>	<p>1(b) and 1(k): provided that the supplier was not liable for a change in the destination airport.</p>	<p>Revised to add that in the event of a change to the destination airport the supplier will arrange additional transportation at no extra cost.</p>	<p>14. What about changes to flights</p>
<p>16. What happens if you cancel my holiday</p>	<p>1(b): failed to reflect accurately the consumer's rights, where the supplier cancelled the holiday before departure, to take a superior holiday offered by the supplier at no extra cost, as set out under Regulation 13 of the PTRs.</p>	<p>Revised to reflect fully the consumer's rights under Regulation 13 upon cancellation of the holiday by the supplier.</p>	<p>16. What happens if we cancel your holiday</p>

17. Will I receive compensation if you cancel my holiday	1(b): stated that the compensation amounts shown were the maximum payable and excluded liability for compensating the consumer for added expenses or costs due to the supplier cancelling the holiday.	Revised to state that the compensation amounts shown are the minimum payable and that in addition the supplier will compensate the consumer for reasonable costs and expenses incurred as a result of the cancellation of the booking.	17. Will any compensation be payable if we cancel your holiday
18. What happens if you have to cancel my holiday whilst I am away	Regulation 7: failed to provide the consumer's full entitlements under Regulation 14 of the PTRs when the holiday was curtailed.	Revised to state that if the supplier is unable to make suitable alternative arrangements upon curtailment of the holiday, or if the consumer rejects these arrangements for good reason, the consumer will be provided with transport back to the place of departure.	18. What happens if we have to cancel your holiday whilst you are away
D. Our responsibility for your holiday:			
20. What about death and personal injury	1(a) and 1(b): excluded liability for death and personal injury if the services provided complied with applicable local laws and regulations, even if they did not comply with the laws and regulations of the UK.	Revised to state clearly that the supplier will accept liability for death and personal injury in such cases if the complaint concerns the absence of a safety feature and that absence may have led to the consumer refusing the holiday. Note the specific reservation of the Director General's position in respect of the limitation of liability for death or personal injury. (See 'Specific reservations' box on page 57.)	21. When will compensation not be payable

<p>21. Is there anything I must do in return for any compensation you pay me and what about international conventions</p>	<p>1(i): provided that the supplier's liability was limited with regard to the relevant international conventions, the provisions of which the consumer was unlikely to be aware of.</p> <p>1(a) and 1(b): required that the consumer assign his or her rights against the third party to the supplier, thereby removing the consumer's right of action against that third party.</p>	<p>Revised to state that copies of the relevant conventions are available on request.</p> <p>Revised to state clearly that unless it will adversely affect the consumer's claim for compensation the consumer must provide reasonable assistance to the supplier in order for the supplier to recoup the compensation from the third party.</p>	<p>22. Is there anything I must do in return for any compensation paid to me and what about international conventions</p>
<p>24. What should I do if I have a complaint</p>	<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 that the claim for compensation may be affected if the complaint is received more than 28 days after the end of the holiday.</p>	<p>25. What should I do if I have a complaint</p>
<p>25. What happens if we have a dispute</p>	<p>1(q): provided that the contract was made subject to the law of England and Wales only.</p>	<p>Revised to state that the contract is subject to English law unless proceedings are brought in Scotland or Northern Ireland in which case Scottish or Northern Irish law would apply.</p>	<p>26. What happens if we have a dispute</p>

Name of Company	Parkridge Homes Ltd	Lead TSD	City of Westminster
Trading Sector	House construction	Contract identifier	New Homes Reservation

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Reser- vation fee details (in signature box)	1(b): enabled the supplier to retain a reservation fee in all cases where the consumer failed to exchange contracts by a specified date.	Revised to provide that the reservation fee will not be retained by the supplier where failure to exchange contracts is due to the fault of the supplier.	Reser- vation fee details (in signature box)

Undertakings accepted	24 June 2002	One term revised
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Name of business	RDC	Lead TSD	Essex County Council
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 General (third paragraph)	1(n): excluded liability for oral representations and specially agreed changes to the terms. Variations had to be agreed in writing by the seller.	Revised to allow consumer to contract on terms specially agreed with the employees of the seller.	1 General
1 General (fourth paragraph)	1(n): excluded liability for oral representations and specially agreed changes to the terms. Variations had to be agreed in writing by the seller.	Revised to allow consumer to contract on terms specially agreed with the employees of the seller.	1 General
2 Dispatch and Payment	1(i): the consumer's attention was not drawn to additional charges for multiple deliveries on the web page.	Deleted.	
4 Retention of Title (a)	Regulation 7: lack of clarity ('Not withstanding that the risk herein shall pass to the buyer as proved herein').	The offending phrase was deleted.	3 Retention of Title
4 Retention of Title (b)	Onerous enforcement clause: seller reserved the right to enter consumer's property to recover goods.	Deleted.	
5 Risk	Transferred inappropriate risks to consumer by requiring consumer to accept all risks for goods that had not been delivered.	Revised to hold consumer responsible for goods that have been delivered.	5 Risk

6 Loss or Damage in Transit or Non Delivery	1(b): excluded liability for defective goods and imposed time limit on consumer making claims in respect of faulty goods by rejecting claims made three or more days after delivery.	Revised to allow consumer to lodge claims for defects without any time constraints.	4 Warranty
7 Late Delivery	1(b): excluded liability for delay in providing goods where the reason may have been within the seller's control.	Revised to allow the seller to exclude liability for non-performance of contract only if arising from circumstances that were outside its control, and to allow the consumer to cancel the contract without penalty upon such an event.	8 Circumstances beyond our Control
8 Warranty and Defective Products (first paragraph)	1(b): limited liability for faulty goods by restricting the type of redress to a credit note. 1(b): guarantee operated as an exclusion clause.	Revised to provide that the seller will make a full refund for defective goods. Revised clarifying that the warranty does not affect the consumer's statutory rights.	4 Warranty
8(a)	1(b): imposed time limits on consumer making claims in respect of faulty goods.	Revised to allow consumer to lodge claims for defects without any time constraints.	4 Warranty
8(b)	1(b): required consumer to meet the cost of carriage for returning faulty goods. 1(b): imposed time limits on consumer making claims in respect of faulty goods.	Revised to oblige the seller to arrange the return of defective goods. Revised to allow the consumer to lodge claims for defects without any time constraints.	4 Warranty
8(c)	1(n): required consumer to provide original invoice as a condition of redress.	Revised to oblige the seller to accept alternative proof of purchase.	4 Warranty
8(d)	1(m): seller reserved right of final decision as to whether the goods were faulty.	Both consumer and seller have a right to an independent inspection.	4 Warranty

8(e)	Regulation 7: contained reference to statutory rights without explaining what they are or where the consumer may obtain information about them.	Statutory rights statement made clearer by advising consumer that he or she may obtain advice about statutory rights from his or her local Trading Standards Department or Citizens' Advice Bureau.	4 Warranty
8(f)	1(b): excluded liability for defective goods and for consequential loss. Regulation 7: reference to jargon ('tort').	Revised to allow seller to exclude liability for consequential loss only where it was not in breach of a legal duty of care to the consumer, and where such loss was not reasonably foreseeable, or where the loss had been increased by a breach of contract by the consumer. Reference deleted.	6 Liability
8(g)	1(n): claims would not be accepted if the consumer had not included the returns authorisation number on the packaging of the goods being returned.	Deleted.	
8(h)	1(b): excluded liability for damaged goods that may have been damaged during delivery to the consumer.	Deleted.	
8(i)	1(b): excluded liability for goods that may have been lost during delivery to the consumer.	Deleted.	

9 Force Majeure	1(b): allowed the seller to be in breach of contract arising from circumstances that were within its control, and had the potential to allow the seller to render no performance but prevent the consumer withdrawing from the contract in the event of such a breach. Regulation 7: use of jargon ('force majeure').	Revised to allow the seller to exclude liability only for non-performance of contract arising from circumstances outside its control, and to allow the consumer to cancel the contract without penalty upon such an event. Jargon replaced by 'circumstances beyond our control'.	8 Circumstances beyond our Control
10 Cancellation (b)	1(o): allowed the seller to withhold or cancel delivery of goods where a consumer filed for bankruptcy after having paid for the goods.	Deleted.	
10 Cancellation (c)	Onerous enforcement clause: seller reserved the right to withhold or cancel delivery of goods where the consumer had breached the terms of the contract.	Deleted.	
11 Law	1(q): subjected the contract to English law.	Deleted.	

Other information	<p>A large proportion of the terms and conditions were unfair, and RDC elected to implement a completely new contract.</p> <p>The original contract was used by the supplier for all business, including distance contracts. A number of the terms were inconsistent with the consumer's rights under the Consumer Protection (Distance Selling) Regulations 2000 ('DSRs'). The supplier has amended these terms to take into account the DSRs and included new term 7 that contains the relevant rights, particularly the right to cancel when the DSRs would apply to the purchase.</p> <p>Undertakings were given under the DSRs on 14 June 2001.</p>	
Undertakings accepted	11 July 2002	22 terms deleted

Name of business	Sondos Photo Vision Ltd t/a Sony Centre	Lead TSD	City of Westminster
Trading sector	Radio, TV and audiovisual equipment etc; also photography	Contract identifier	Terms and Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1	<p>1(b): had potential to mislead consumer into thinking that he or she could not obtain refunds at all.</p> <p>1(b): potentially denied the supplier's liability to offer consumer a refund in the event that goods failed to correspond with their description or were of unsatisfactory quality.</p> <p>1(b): excluded the supplier's liability to provide a full refund of all monies paid, including deposit, following failure to supply the goods.</p>	Revised to enlarge the scope of the consumer's ordinary legal rights by offering exchanges on a no-fault basis for goods returned within 28 days.	1
3	1(b): excluded the supplier's liability for faulty goods in the event that the goods had also been damaged whilst in the consumer's possession.	Deleted.	
4	Consumer was not informed that his or her rights were not otherwise affected by the guarantee referred to in this term.	Deleted.	

6	1(b): potentially excluded the supplier's obligation to provide a full refund in the event of breach of contract, eg failing to supply goods.	Deleted.	
7	1(e): permitted the supplier to charge a restocking fee for goods returned.	Deleted.	
8	1(b): excluded the supplier's obligation to provide a refund in the event of its breach of contract when supplying 'special orders' and 'spare parts'.	Deleted.	
This guarantee does not affect your statutory rights	Regulation 7: this statement required further explanation.	Consumer is referred to where he or she can receive further information about statutory rights.	Term 4

Other information	The OFT has withdrawn its action subject to the explicit requirement that Sondos Photo Vision t/a Sony Centre always allows consumers the opportunity to read the terms of the agreement before becoming bound by them. If it comes to the OFT's attention that the supplier is failing to meet this basic prerequisite of the Regulations, it will not hesitate in taking immediate action.		
Undertakings accepted	27 May 2002	Seven terms revised or deleted	

Name of business	Spot On Computers Ltd	Lead TSD	City of Manchester
Trading sector	Personal computers and related hardware	Contract identifier	Terms & Conditions

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Front of the sales invoice:			
Returns can only be accepted if they are in original packaging	1(b): excluded liability for defective or misdescribed goods.	Deleted.	
Terms & conditions:			
First paragraph	1(l): prices subject to upward change without notice; failure to provide the consumer with an opportunity to cancel the contract following the increase in contract price.	Deleted.	
Seventh indented paragraph	1(b): excluded the consumer's right of set-off by requiring the whole amount to be paid even in the event of a claim.	Deleted.	
Delivery (first paragraph)	1(b): excluded liability for the supplier's delay in providing goods by preventing time ever being made of the essence.	Deleted.	

Delivery (second indented paragraph, first sentence)	1(b): excluded liability for defective or misdescribed goods.	Deleted.	
Delivery (second indented paragraph, second sentence)	1(e): imposed financial penalty for rejection of goods.	Deleted.	
Returns (first indented paragraph)	1(b): excluded liability for defective or misdescribed goods.	Deleted.	
Returns (second indented paragraph)	1(b): excluded liability for defective or misdescribed goods.	Deleted.	
Returns (second indented paragraph)	1(a): excluded liability for death or injury by limiting liability for consequential loss to the price of goods. 1(b): excluded liability for consequential loss arising out of the supplier's breach of contract by limiting such consequential loss to the price of goods.	Deleted.	
Returns (third indented paragraph)	1(b): excluded liability for defective or misdescribed goods. 1(b): excluded the consumer's right of set-off by requiring the whole amount to be paid in advance of the supplier's performance.	Deleted.	

Returns (fourth indented paragraph)	Regulation 7: lack of clarity: not written in plain and intelligible language.	Deleted.	
Returns (fifth indented paragraph)	1(b): limited liability for defective goods by charging carriage costs for the return of faulty goods.	Deleted.	
Returns (sixth indented paragraph)	1(b): excluded liability for defective goods by providing redress at supplier's discretion. 1(b): excluded liability for defective goods by excluding monetary compensation.	Deleted.	
Returns (seventh indented paragraph)	1(a): excluded liability for death or injury caused by supplier's breach of contract. 1(b): excluded liability for consequential loss arising out of the supplier's breach of contract.	Deleted.	
Returns (eighth indented paragraph)	1(n): the supplier subjected the consumer to its returns procedure as a pre-condition of redress, making supplier's commitments subject to the consumer's compliance with a particular formality.	Deleted.	
Buyer's default	1(b): excluded the consumer's right of set-off by requiring the whole amount to be paid in advance of performance of the contract.	Deleted.	

Other information	The contract contained a number of unfair terms, and was generally unsuitable for use with consumers. The company withdrew the original contract and replaced it with another that was expressly disapplied from consumer transactions.	
Undertakings accepted	20 June 2002	16 terms deleted

Name of Company	Story Construction Ltd t/a Story Homes	Lead TSD	Cumbria County Council
Trading Sector	House construction	Contract identifier	Reservation Agreement

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
First and third paragraphs	1(b): enabled the supplier to retain a reservation fee in all cases where the consumer failed to exchange contracts by a specified date.	Revised to provide that the reservation fee will not be retained by the supplier where failure to exchange contracts is due to the fault of the supplier.	First and third paragraphs

Undertakings accepted	23 April 2002	One term revised
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Action under stop now orders

23 Craftsman Kitchen Manufacturing Ltd

Name of business and/or individuals	George Brown, Nicola Brodie, Vance Miller, Sadiya Hussein	Lead TSD	Rochdale Metropolitan Borough Council
Trading sector	Home maintenance, repairs and improvements	Contract identifier	Craftsman Kitchen Manufacturing Ltd - Conditions of Sale

Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)
16	<p>1(e): the term provided for certain sums, which were excessive in the circumstances of this supply contract, to be payable upon cancellation by the consumer. Consumers were required to pay a £200 administration fee and a £100 survey fee, plus either:</p> <p>50 per cent of the contract value if manufacture of the goods had started;</p> <p>or:</p> <p>90 per cent of the contract price if manufacture of the material for the installation had been completed.</p> <p>The term applied and was enforced in all circumstances including where consumers cancelled through the fault of the supplier. In all cases, the imposition of this level of charging appeared excessive.</p>
17	<p>1(f): the term allowed cancellation by the company at its discretion. Given that the consumer did not have a free right to end the contract and was subject to charges under term 16, the company's right to do so was unfair.</p>

Other information	The OFT took action in the Manchester County Court against Craftsman Kitchen Manufacturing Ltd and the four individuals who were company officers. Before an Order was obtained the company was wound up by the DTI in a separate action, and so an Order was ultimately obtained against the individuals only. The Order applies to them acting in other businesses or companies. The text of the Order is included at Annexe A.	
Date of Order	19 April 2002	Two terms prohibited

3 STATISTICAL BREAKDOWN OF ACTION ON CASES BY THE OFT

TABLE 3.1: BREAKDOWN OF CASES CLOSED

Case outcome	Apr-June 2002	All cases to end June 2002
Advice or warning:	89	1607
<i>advice to consumers/solicitors</i>	31	
<i>advice to TSOs and CABx</i>	11	
<i>advice to qualifying bodies</i>	29	
<i>advice to trade associations</i>	1	
<i>warning letter</i>	17	
'Core' terms	3	284
Defective cases	6	189
Duplicate cases	34	1495
Enquiries	9	51
Excluded terms	22	391
'Formal' undertakings given	0	19
'Informal' undertakings given	17	734
No outcome recorded	0	3
Not about a contract term	27	257
Other legislation	0	292
Other reasons:	34	741
<i>approach made</i>	10	
<i>complex</i>	11	
<i>no approach made</i>	13	
Referred to qualifying bodies	14	272
Terms not considered unfair	8	590
Total	263	6925

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.

KEY TO TABLE 3.1 continued/...

	<i>'Advice to qualifying bodies'</i> means that OFT letters to TSOs etc are used to advise suppliers.
<i>'Core' terms</i>	refers to cases where the term at issue sets the price or defines the main subject matter of the contract. Core terms are not subject to the test of fairness provided they are in plain and intelligible language - see Regulation 6(2).
<i>Defective</i>	refers to incomplete complaints, eg, a copy of the contract was not sent in when requested, or the consumer was uncontactable.
<i>Duplicate</i>	relates to terms already being dealt with.
<i>Excluded terms</i>	refers to contracts 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 (Mar 2002)	This quarter (Apr-June 2002)	Total at end this quarter (June 2002)
Cases received	7399	252	7651
Cases closed	6662	263	6925
Cases carried over to next quarter	737		726

4 ALPHABETICAL INDEX OF BUSINESSES APPROACHED INDICATING TRADING SECTORS

1	AGFA (Agfa-Gevaert Ltd)	photography (film processing)
2	Countrywide Residential Lettings Ltd	letting and management agencies
3	easyRentacar (UK) Ltd t/a easyCar	other motoring costs (car hire)
4	Elegant Resorts	holidays
5	English Country Cottages	holidays
6	Flightform Ltd t/a Thrifty Car Rental	other motoring costs (car hire)
7	Gale's Estate Agency & Financial Services	letting and management agencies
8	Gulliver's Travels Self Drive Ltd	other motoring costs (car hire)
9	Holiday Autos International Ltd	other motoring costs (car hire)
10	Krauses Gym t/a Krauseworld	entertainment, catering and accommodation (health and fitness clubs)
11	Landsdowne (Estate Agents) Ltd t/a Landsdowne Estates	letting and management agencies
12	LastMinute Network Ltd t/a lastminute.com	travel agents; other recreational goods and services (internet auctions)
13	Law Pack Publishing Ltd	other professional services (publishers of standard letting agreements)
14	Living In Style Kitchens and Bedrooms Ltd	home maintenance, repairs and improvements
15	Lockwood Corporation Ltd t/a Sparplas Direct	double-glazing products and installation
16	Malta Bargains t/a Sunshine Bargains Ltd (previously Malta Sun Holidays Ltd and Bargain Holidays Ltd)	holidays
17	Page & Moy Ltd	holidays

18	Parkridge Homes Ltd	house construction
19	RDC	personal computers and related hardware
20	Sondos Photo Vision Ltd t/a Sony Centre	radio, TV and audiovisual equipment etc; also photography
-	Sparplas Direct - see Lockwood Corporation Ltd	
21	Spot On Computers Ltd	personal computers and related hardware
22	Story Construction Ltd t/a Story Homes	house construction
-	Sunshine Bargains Ltd - see Malta Bargains	

Action under stop now orders

23	Craftsman Kitchen Manufacturing Ltd	home maintenance, repairs and improvements
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5 GEOGRAPHICAL INDEX OF BUSINESSES BY LOCAL AUTHORITY

Bristol County Council

Gulliver's Travels Self Drive Ltd

Buckinghamshire County Council

Flightform Ltd t/a Thrifty Car Rental

Camden, London Borough of

easyRentacar (UK) Ltd t/a easyCar

Cheshire County Council

Elegant Resorts Ltd

Cornwall County Council

Lockwood Corporation Ltd t/a Sparplas Direct

Croydon, London Borough of

Gale's Estate Agency & Financial Services

Cumbria County Council

Story Construction Ltd t/a Story Homes

Ealing, London Borough of

Landsdowne (Estate Agents) Ltd t/a Landsdowne Estates

Living In Style Kitchens and Bedrooms Ltd

Essex County Council

RDC

Glasgow City Council

Krauses Gym Ltd t/a Krauseworld

Hounslow, London Borough of

AGFA (Agfa-Gevaert Ltd)

Lancashire County Council

English Country Cottages

Leicester, City of

Page & Moy Ltd

Manchester, City of

Spot On Computers Ltd

Rochdale Metropolitan Borough Council

Craftsman Kitchens

Southend-on-Sea Borough Council

Countrywide Residential Lettings Ltd

Southwark, London Borough of

Law Pack Publishing Ltd

Surrey County Council

Holiday Autos International Ltd

Tower Hamlets, London Borough of

Malta Bargains Ltd t/a Sunshine Bargains Ltd
(previously Malta Sun Holidays Ltd and Bargain Holidays Ltd)

Westminster, City of

LastMinute Network Ltd t/a lastminute.com

Parkridge Homes Ltd

Sondos Photo Vision Ltd t/a Sony Centre

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	4
Schedule 2:	paragraph 1(b) - Excluding or restricting liability for breaches of contract	
	<i>a Excluding liability for defective or misdescribed goods</i>	24
	<i>b Excluding liability for poor services, or work and material</i>	18
	<i>c Restricting amount or type of liability</i>	15
	<i>d Time limits on claims</i>	5
	<i>e Excluding consumers' right of set-off</i>	5
	<i>f Excluding or restricting liability for delay</i>	4
	<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	8
Schedule 2:	paragraph 1(e) - Financial penalties	10
Schedule 2:	paragraph 1(f) - Cancellation clauses	5
Schedule 2:	paragraph 1(g) - Supplier's right to cancel without notice	2
Schedule 2:	paragraph 1(h) - Excessive notice periods for consumer cancellation	0
Schedule 2:	paragraph 1(i) - Binding consumers to hidden terms	9
Schedule 2:	paragraph 1(j) - General variation clause	2
Schedule 2:	paragraph 1(k) - Right to change what is supplied	8
Schedule 2:	paragraph 1(l) - Right to increase the price	3
Schedule 2:	paragraph 1(m) - Supplier's right of final decision	2
Schedule 2:	paragraph 1(n) - Entire agreement and formality clauses	
	<i>a Clauses disclaiming liability for employees' statements</i>	7
	<i>b Formality requirements</i>	5

Schedule 2: paragraph 1(o) - Binding consumers where a supplier defaults	2
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	16
<i>b</i> Transferring unfair risks (eg: by indemnities) to consumers	5
<i>c</i> Onerous enforcement clauses	5
<i>d</i> Excluding consumers' right to assign	0
<i>e</i> Consumer declarations about contractual circumstances	5
<i>f</i> Excluding consumers' non-contractual rights	3
<i>g</i> Delivery at supplier's discretion	5
<i>h</i> Other	4
Regulation 7 - Plain and intelligible language	38
Total	228

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 STOP NOW ORDER AGAINST COMPANY OFFICERS OF CRAFTSMAN KITCHENS

IN THE MANCHESTER COUNTY COURT

Claim No. MA1

Before His Honour Judge Holman sitting at Manchester on Friday the 19th April 2002

IN THE MATTER OF THE STOP NOW ORDERS (EC DIRECTIVE) REGULATIONS 2001

AND IN THE MATTER OF THE UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999

AND IN THE MATTER OF THE FAIR TRADING ACT 1973

Between:

THE DIRECTOR GENERAL OF FAIR TRADING

Claimant

-and-

(1) CRAFTSMAN KITCHENS LIMITED
(2) CRAFTSMAN KITCHEN MANUFACTURING LIMITED
(3) GEORGE BROWN
(4) NICOLA BRODIE
(5) VANCE MILLER
(6) SADIYA HUSSEIN

Defendant

ORDER

UPON HEARING counsel for the Claimant and there being no attendance by or on behalf of any Defendant

UPON THE COURT BEING SATISFIED that each of the Defendants is in breach of paragraph 3 of the order made on the 28th March 2002

UPON THE COURT BEING SATISFIED (pursuant to section 39(2) of the Fair Trading Act 1973) that the first and second Defendants have persisted in or engaged in a course of conduct as described in paragraphs 4, 5, 6 and 7 of the Particulars of Claim issued on

13 November 2001

AND UPON the court noting that the first and second Defendants were wound up by order of the High Court on the 27th March 2002 and that these proceedings against those Defendants are stayed pursuant to section 130 of the Insolvency Act 1986

IT IS ORDERED:

1. That pursuant to paragraph 11 and paragraph 13 of Schedule 2 of the Stop Now Orders (EC Directive) Regulations 2001 and section 39 of the Fair Trading Act 1973 each of the third fourth fifth and sixth Defendants shall:
 - 1.1. Refrain from consenting to or conniving at the conduct outlined at paragraph 4 of the Particulars of Claim namely the failure to fulfil obligations imposed by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 and in particular:
 - (a) The failure to ensure that goods supplied to consumers comply with the description given to such goods by the supplier contrary to section 13 of the Sale of Goods Act 1979
 - (b) The failure to supply goods which are of satisfactory quality in accordance with the requirements of section 14 of the Sale of Goods Act 1979
 - 1.2. Refrain from engaging in any similar conduct in the course of any business which may at any time be carried out by any of them
 - 1.3. Refrain from consenting to or conniving at the engaging in any such conduct by any other body corporate in relation to which at any time when such conduct is engaged in any of the said Defendants:
 - 1.3.1. Is a director, manager, secretary or other similar officer of the body corporate or purports to act in such capacity or
 - 1.3.2. Has a controlling interest in such body corporate defined by section 38(7) of the Fair Trading Act 1973 so that regardless of special voting rights or restrictions he is able directly or indirectly to determine the manner in which one-half of the votes which could be cast at a General Meeting of the company could be cast
2. That pursuant to section 39 of the Fair Trading Act 1973 each of the third fourth fifth and sixth Defendants shall:
 - 2.1. Refrain from consenting to or conniving at the course of conduct outlined at paragraphs 5 and 7 of the Particulars of Claim in particular:
 - (a) The failure to deliver goods in accordance with consumer contracts contrary to the requirements of section 27 of the Sale of Goods Act 1979
 - (b) The failure to deliver goods within a reasonable time contrary to the requirements of section 29(3) of the Sale of Goods Act 1979

- (c) The failure to satisfy outstanding county court judgments
- 2.2. Refrain from carrying on any similar course of conduct in the course of any business which may at any time be carried out by any of them
- 2.3. Refrain from consenting to or conniving at the carrying on of any such course of conduct by any other body corporate in relation to which at any time when such course of conduct is engaged in any of the said Defendants:
- 2.3.1. Is a director, manager, secretary or other similar officer of the body corporate or purports to act in such capacity or
- 2.3.2. Has a controlling interest in such body corporate defined by section 38(7) of the Fair Trading Act 1973 so that regardless of special voting rights or restrictions he is able directly or indirectly to determine the manner in which one-half of the votes which could be cast at a General Meeting of the company could be cast
3. That pursuant to regulation 12 of the Unfair Terms in Consumer Contracts Regulations 1999 none of the third fourth fifth or sixth Defendants shall by themselves or through others:
- 3.1. Include the following terms set out at paragraphs 16(a) and 16(b) of the Particulars of Claim in any agreement with a consumer namely:
- " In the event of cancellation of the contract being requested by the customer and the company accepting the same the following charges will be made:*
- (i) Administration charges £200*
- (ii) Survey fee of £100*
- (iii) If manufacture of the goods has started a charge of 50% of the contract value will be made*
- (iv) If manufacture of material for the installation is completed the company will charge 90% of the contract price"*
- and:
- " Subject to the company's discretion or technical surveyor's report the company reserves the right to decline this contract"*
- 3.2. Enforce or seek to enforce or otherwise rely upon any such terms which have already been included in any existing agreement with a consumer
- 3.3. Recommend any such term for use in any agreement with a consumer
- 3.4. Otherwise use, recommend, seek to enforce or rely upon any term in any consumer contract which term has the same or similar unfair effect
4. The third fourth fifth and sixth Defendants shall pay the Claimant's costs of the action to date such costs to be the subject of a detailed assessment in default of agreement.