

# Unfair contract terms bulletins 24 and 25

Case reports April to September 2003

Part 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.

December 2003

OFT686

## Contacting the OFT

If you think that any standard terms in a consumer contract are unfair you may contact the OFT at the address below or contact your local trading standards department. If you wish to change your details on our mailing list, please contact us at the address below.

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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 available on the internet at: [www.hmsso.gov.uk/si/si1999/19992083.htm](http://www.hmsso.gov.uk/si/si1999/19992083.htm)

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

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# 1 INTRODUCTION

- 1.1 This is a combined issue – 24 and 25 of the quarterly *Unfair contract terms bulletin* in which the Office of Fair Trading (the OFT) publishes reports of cases where standard contract terms have been changed or dropped as a result of its enforcement action under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations). Where the OFT considers that a term drawn up for general use is unfair it has power to seek an order forbidding any further use of it. However, cases are normally resolved informally when it accepts undertakings in lieu of court proceedings. It also has the power to publish information about the Regulations and the work of the OFT.
- 1.2 This combined bulletin covers the period from April to September 2003. Chapter 2 contains reports of 48 cases completed by the OFT. Six hundred and twenty three contract terms were abandoned or amended as a result of enforcement action by the OFT under Regulation 10, in all cases by means of acceptance of undertakings.
- 1.3 A list of cases completed by other bodies with powers under the Regulations, again by means of acceptance of undertakings, is at Annexe B.
- 1.4 In some cases the reports cover action taken not only under the Regulations but in respect of other consumer protection legislation including the Consumer Protection (Distance Selling) Regulations 2000 (see for example Virgin Wine Online Ltd, case report 46) or the Package Travel, Package Holidays and Package Tours Regulations 1992 (see for example Travel 2 Ltd, case report 42).

## **The Regulations and interests in land – Khatun v London Borough of Newham**

- 1.5 On 10 October 2003 judgment was handed down in this judicial review case. The High Court decided, in line with the OFT's views, that the Regulations apply to tenancy agreements and other contracts relating to a transfer of an interest in land.
- 1.6 The OFT was acting as an interested party in a case about the London Borough of Newham's housing policy for homeless persons.
- 1.7 The Council claimed that the Regulations did not apply to land, including the terms of its agreements, that it was not a supplier for the purposes of the regulations, as it was fulfilling a statutory duty, and that the tenant was not a consumer, as she was seeking a benefit from the state.

- 1.8 Mr Justice Newman ruled that the Regulations do apply to contracts for the transfer of an interest in land (including tenancy agreements), that the Council can be considered a supplier and the tenant a consumer. The judge also accepted the OFT's argument that exempting contracts relating to land would significantly reduce the protection for consumers. The judge did not rule on whether the terms in the contract were fair. Permission to appeal the judgment was given to the London Borough of Newham on the ground that the case raises issues of public importance.

### **Land-related cases**

- 1.9 Several cases relating to interests in land including house construction, tenancies and licences to occupy are reported in this bulletin: Allsop Residential Investment Management Ltd (case report 5), Bellway Homes Ltd (case report 9), Blyth Valley Housing Ltd (case report 10), the Estates Gazette (case report 22), Leeds City Council (case report 28), Oaktree Property Services Ltd (case report 33) and the University of the West of England (case report 43).

### **Package travel and airlines**

- 1.10 We continued to make significant progress with package travel contracts and include reports of Balkan Tours Ltd (case report 8), Bowen Travel Ltd (case report 12), Cosmosair t/a Cosmos (case report 18), Mark Warner Ltd (case report 30), Titan Travel Ltd (case report 41) and Travel 2 Ltd (case report 42). Also included are reports of work completed on two further international airline contracts: Aer Lingus Ltd (case report 2) and Virgin Atlantic Airways Ltd (case report 45).

### **Air Miles Travel Promotions Ltd**

- 1.11 On 13 October 2003 we announced the completed of the Air Miles case, also reported in this bulletin (case report 4). We were particularly concerned at the the company's contractual assertion of an absolute right to terminate a consumer's Air Miles account in certain situations, its right to pay compensation in miles rather than cash and the provision for surcharges.
- 1.12 Air Miles is a wholly-owned subsidiary of British Airways with more than six million members who collect miles by shopping at high street stores and online. The miles can be used for full or part payment of travel.

## **Breakdown services and car warranties**

1.13 We also completed work on contracts of the AA (case report 7) and RAC (case report 36) and on a group of car warranty contracts: Citroën UK Ltd (case report 14), Dealer Guarantee Ltd (case report 20) and Vauxhall Motors Ltd t/a Network Q (case report 44).

## **Other cases of note**

1.14 Detailed reports are published of cases mentioned in previous bulletins including Craftmatic UK Ltd (case report 19), Scan Computers International Ltd (case report 48) and Pratt Developments Unlimited (case report 35).

## 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 OFT 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 OFT'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                      Advanced Hair Studio (Group) Ltd**

<b>Name of business</b>	Advanced Hair Studio (Group) Ltd	<b>Lead TSD</b>	London Borough of Camden
<b>Trading sector</b>	Toilet articles, perfumery, hairdressing and beauty care	<b>Contract identifier</b>	Contract for supply and fitting of the AHS stand-by-strand/hairfusion hair replacement units

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
'You will need to return to an AHS studio approximately every four to eight weeks...'	Regulation 7: lack of clarity regarding whether the 'maintenance programme' (after service care) formed part of the contract, how long it should be used for and whether it was subject to a separate charge.	New term added that prominently warns consumers that although the 'maintenance programme' is strongly recommended it does not form part of the contract, but failure to follow it may invalidate the warranty offered over and above consumers' statutory rights. A schedule that provides the separate price charged for the service is always attached to the agreement.	'Whilst not being a condition of this contract ...recommended to use the AHS maintenance programme'
1(b)	1(b): potentially excluded liability for faults on the part of the company in providing the service, which were discovered only after fitting. 1(d): potentially permitted the company the right to retain more than a reasonable pre-estimate of loss on consumer cancellation.	Revised to clarify AHS's obligations under the contract. No longer requires consumers only to voice concerns at time of fitting. New term 5 added that provides a sliding refund scale proportionate to when (during the manufacturing process) the consumers cancel.	1B and 5
2	Regulation 7: lacked clarity regarding when the balance for treatment was due.	Revised to explain clearly when balance will be due.	2

'Note: The deposit paid is not refundable ...'	1(b): attempted to exclude the company's responsibility to refund consumers in circumstances where a refund might be legitimate. 1(d): potentially permitted the company the right to retain more than a reasonable pre-estimate of loss on consumer cancellation.	Deleted.	
3(a)	Regulation 5: consumer declaration that the Consultation Video had been viewed and understood. Regulation 5: consumer declaration that it was fully understood it was necessary to use the maintenance programme.	See 'Other information' box.  Revised to warn consumers of the importance of using the maintenance programme.	7
'Your statutory rights are not affected'	Regulation 7: referred to a consumer's statutory rights without explaining what they are or where more information about them can be obtained.	Revised so that consumers are informed of the existence of these rights and where they can seek further details about them.	'AHS will perform its obligations... contact your local authority ...'

<b>Other information</b>	Advanced Hair Studios was reported in <i>Bulletin 3</i> . It had re-introduced two terms that had previously been raised with it as unfair, and has since agreed to revise one and delete the other from its agreement. On the basis of an assurance from the company that consumers are always shown the 'Consultation Video', the OFT withdrew its challenge to the declaration term that requires consumers to confirm they have seen it (term 6).
<b>Specific reservations</b>	The OFT's position was reserved regarding a term that requires any variations to be confirmed in writing by an officer of the company.
<b>Undertakings accepted</b>	21 May 2003 <span style="float: right;">Six terms revised or deleted</span>

## 2 Aer Lingus Ltd

<b>Name of business</b>	Aer Lingus Ltd	<b>Lead TSD</b>	Office of the Director of Consumer Affairs, Dublin
<b>Trading sector</b>	Road, rail, air and sea travel	<b>Contract identifier</b>	General Conditions of Carriage

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1	Regulation 7: definition of 'events beyond your control' contained the words 'events beyond your control'. This was regarded as failing to comply with the requirement for plain language.	Definition redrafted in more accessible manner.	1
10.1.1	Regulation 5: gave the airline an unfair option to decide to whom a refund should be made when two different people were entitled to it.	No longer gives airline this option.	10.1.1
15	Regulation 7: was unclear about whose contract terms applied where carriage was to be performed by more than one airline.	Made clearer.	15
15.2.2	Regulation 7: an indication of the value of 100,000 SDRs (Special Drawing Rights, a unit of account used by the International Monetary Fund) was needed to make the term comprehensible to consumers.	Indication of the value of 100,000 SDRs provided.	15.2.2

<b>Other information</b>	The contract was revised to reflect the changes made to IATA's Recommended Practice 1724.	
<b>Undertakings accepted</b>	19 June 2003	Four terms revised

### 3 Aerofone (UK) Ltd

<b>Name of business</b>	Aerofone (UK) Ltd	<b>Lead TSD</b>	Bedfordshire County Council
<b>Trading sector</b>	Mobile phones and services	<b>Contract identifier</b>	Consumer Airtime Terms & Conditions of Cellular Telephone Agreement

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
3	1(h): did not make clear that the two-year minimum period of the contract could be extended by the 90-day notice period, which was potentially unfair.	Minimum contract period and notice period (to end the contract at the end of the minimum period) are reduced. Further, such notice can expire after the expiry of the minimum contract period.	3
5(G)	Regulation 5: consumer potentially liable for all charges, including call charges, if the phone was lost or stolen, regardless of whether the consumer had notified the supplier of such loss or theft (in accordance with the contract).	Consumer liable for call charges until the supplier is notified of loss or theft.	6
7(D)	1(e): consumer was liable for a wide variety of costs that the supplier may incur as a result of the consumer's breach, whether reasonable or not. Word 'indemnify' considered legal jargon.	Deleted.	
7(E)	1(b) and 1(n): the requirement to notify the supplier of the loss or theft of the phone within 48 hours and in writing may have constituted an unfair time limit on claims and an unnecessary formality.	Term no longer requires written notification of loss or imposes time limit on notification.	6

8(A) and 8(B)	1(b): potentially allowed the supplier to limit its liability when in breach of contract by placing a potentially unfair limit on the amount of compensation payable.	The limit on the amount of compensation payable deleted and liability accepted except in defined and limited circumstances such as business losses.	10(a)
8(D)	1(b): had potential unfairly to prevent consumer from seeking all the redress that the law allows if supplier is in breach of its obligations.	Revised to state that this agreement will not affect the consumer's statutory rights, and the consumer is told where he or she can obtain more information about these.	10(b)
9(A)(1) and 9(B)(1)	1(f) and 1(o): when considered together the terms had the effect of obliging a consumer to continue to pay for a service that had been terminated or suspended, without receiving a pro-rata refund as appropriate.	Consumer will receive a credit against line rental charge where the service is suspended.	7
11	Regulation 5: allowed the supplier unreasonably to restrict the consumer's right to assign the contract.	Revised to provide that the supplier's consent for the consumer to assign the agreement will not be unreasonably withheld.	11(a)
13(C)	1(n): unfair 'entire agreement' clause as the term provided that the agreement is the complete agreement between the parties and supersedes any other representations made to the consumer.	Revised to provide that it is the supplier's intention that the agreement contains all terms.	2

<b>Specific reservations</b>	The OFT's position was reserved in respect of term 9(c). The OFT's view was that if charges are increased above the Retail Price Index, fairness is more likely to be achieved if the consumer is given the opportunity to cancel the contract without penalty. The OFT remained concerned that the contractual terms failed to reflect clearly this position by making the consumer liable for the balance of the agreement.
<b>Undertakings accepted</b>	7 May 2003 11 terms revised or deleted

**4 Air Miles Travel Promotions Ltd**

<b>Name of business</b>	Air Miles Travel Promotions Ltd	<b>Lead TSD</b>	West Sussex County Council
<b>Trading sector</b>	Holidays	<b>Contract identifier</b>	Terms and Conditions 2002

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Collecting Air Miles	Regulation 5: provided that consumers should contact the company or its suppliers to check that the terms and conditions of the offer had been not changed.	Deleted.	
Using Air Miles	Regulation 7: used the term 'authorised mailing', the meaning of which may not have been understood by consumers.	Deleted.	
Security	1(n): provided that air miles could not be replaced if they were lost by consumers.  1(b): provided that the company did not accept liability for unauthorised use of consumers' air miles through possession of their details.	Revised to provide that air miles cannot be replaced if lost, unless consumers can provide the serial numbers of the lost air miles and they have not already been spent.  Revised to provide that the company would not accept liability for unauthorised use of consumers' air miles as a result of consumers not taking appropriate care of their account details.	5. Security
Termination of rights	Regulation 5: provided that the company had the absolute right to terminate consumers' accounts if they were earning or spending air miles in a manner detrimental to the company or its distributors.	Revised to provide that the right to terminate the account will be exercised reasonably.	6. Termination of rights

	<p>Regulation 7: the circumstances in which the company could terminate consumers' accounts included earning or spending miles on behalf of third parties, which was allowed under another part of the booking conditions.</p> <p>1(f): failed to provide that consumers could recover the value of their booking if their account was terminated and the booking cancelled.</p>	<p>Deleted.</p> <p>Revised to provide that any refunds due for cancelled bookings will be processed in accordance with the booking conditions.</p>	
Booking an offer	<p>1(b): provided that while an additional charge may be levied for a special request, the request was not guaranteed.</p> <p>1(n): provided that verbal quotes were not binding, thereby excluding liability for statements about the offer that were not in the contract.</p>	<p>Revised to provide that if the supplier is able to confirm the request, an additional charge may apply.</p> <p>Revised to provide that verbal quotes regarding price enquiries before booking are not binding and are subject to change.</p>	8. Booking an offer
Price & payment	<p>Regulation 7: provided that the price was not fixed until full payment was received, while also providing that full payment must be made at the time of booking.</p> <p>1(l): price revision clause failed to comply with Regulation 11 of the Package Travel, Package Holidays and Package Tours Regulations 1992 ('PTRs') with regard to changes in prices for package holidays, and failed to provide consumers with the options they are entitled to in the event of a significant price increase.</p>	<p>Deleted.</p> <p>Revised to clarify the circumstances in which the prices of packages could be revised, to provide for both upward and downward revision of prices, and to provide that in the event of a significant price increase consumers will be entitled to the options set out under term 14.</p>	10. Price & payment
If you change or cancel your booking	<p>Regulation 5 and 1(e): provided that airlines did not allow the company to transfer tickets, contrary to consumers' entitlements, under Regulation 10 of the PTRs, to transfer their</p>	<p>Revised to include a reference to consumers' entitlements under Regulation 10 of the PTRs.</p>	11. If you change or cancel your booking

	<p>booking to another person if they are prevented from travelling.</p> <p>1(e): provided that in addition to suppliers' charges, the company would charge an amendment or cancellation fee of £35 per booking.</p> <p>Regulation 5 and 1(e): provided that cancellation of bookings made partly or wholly with Air Miles would result in the loss of the air miles.</p> <p>1(e): provided that cancellation of car hire or hotel bookings within 14 days of departure would be subject to a 100% cancellation charge, which may have exceeded a genuine pre-estimate of the net losses incurred by the company as a result of cancellation.</p>	<p>Revised to remove the reference to additional suppliers' charges.</p> <p>Deleted.</p> <p>Revised to provide for lower cancellation charges.</p> <p>Note the reservation of the OFT's position with regard to this term.</p>	
Insurance	<p>1(b): provided that the company and its suppliers were not liable for circumstances that caused consumers to cancel or amend their booking, whereas under the PTRs the company could have been liable in some situations.</p>	<p>Deleted.</p>	
If Air Miles changes or cancels your booking or the scheme	<p>1(b) and 1(k): failed to provide consumers with the options they are entitled to under the PTRs in the event of a significant change to or cancellation of a booking.</p>	<p>Revised to provide that, if a package is cancelled or subject to a significant change, consumers will be entitled to a substitute package of equivalent or superior quality at no extra cost, a substitute package of lower quality and receive a difference in price if applicable, or receive a refund of all monies paid.</p>	<p>14. If Air Miles changes or cancels your booking</p>

	1(b): provided that the company was not required to take any action if a change or cancellation was due to circumstances out of the company's control, which conflicts with consumers' rights under the PTRs.	The exclusion of liability has been deleted, and the definition of force majeure has been revised to reflect more closely the definition provided in the PTRs.	
Liability	<p>1(a) and 1(b): provided that the company would only be liable for direct losses arising from its failure or improper performance of the contract where it was acting as the tour operator.</p> <p>1(b): reserved the company's right to pay any settlement or compensation due in air miles.</p> <p>1(q): provided that the contract was subject to the jurisdiction of the English courts.</p>	<p>Revised to provide that the company will be liable in respect of package holidays for damage caused as a result of the failure or improper performance of the obligations under the contract by the company or its suppliers.</p> <p>Deleted.</p> <p>Revised to provide that the contract is subject to the jurisdiction of the English courts unless the consumers live in Scotland or Northern Ireland, in which case the local courts will have jurisdiction.</p>	15. Liability and 7. General

<b>Other information</b>	The layout of the booking conditions was revised to clarify the company's responsibilities in its roles of agent and tour operator.	
<b>Intelligibility</b>	The print size of the booking conditions was considered small, and the terms were difficult to read and understand.	
<b>Specific reservations</b>	The position of the OFT was reserved in respect of term 11 of the new booking conditions. Information supplied to the OFT in relation to term 11 was not considered sufficient to establish that the new scale of cancellation charges for car hire and hotel bookings represents a genuine pre-estimate of loss incurred by the company as a result of cancellations. However, the cancellation scale used is consistent with what we would expect that information to reveal. In the absence of other evidence and complaints, no further enforcement action was considered warranted.	
<b>Undertakings accepted</b>	9 July 2003	21 terms revised or deleted

## 5 Allsop Residential Investment Management Ltd

<b>Name of business</b>	Allsop Residential Investment Management Ltd	<b>Lead TSD</b>	Brighton & Hove Council
<b>Trading sector</b>	Letting and management agencies	<b>Contract identifier</b>	Assured Shorthold Tenancy Agreement

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Rent	1(l): provided that the rent agreed by the tenant could subsequently be varied.	Withdrawn.	
Front page 2	Regulation 7: referred to statutory reference that the tenant may not be familiar with and provided no further explanation.	Withdrawn.	
1.1	Regulation 7: not written in plain and intelligible language, using the phrase 'jointly and severally'.	Withdrawn.	
2.1	1(e): allowed the landlord to cover more than his or her reasonable costs.	Withdrawn.	
3.1	1(b): had the potential to exclude the tenant's right to set-off by requiring that he or she pay the rent without deduction.	Withdrawn.	
3.2	Regulation 5: imposed a potentially unfair financial burden on the tenant by not specifying that the tenant is only responsible for service charges during the term of the tenancy.	Withdrawn.	
3.4	Regulation 5: imposed a vague charge by referring to the tenant's obligation to pay 'other charges'. Regulation 7: used legal jargon ('indemnified').	Withdrawn.	
3.5	Regulation 7: used legal jargon ('indemnify').	Withdrawn.	
3.6	1(b): transferred some of the landlord's repairing obligations to the tenant.	Withdrawn.	

3.7	Regulation 5: imposed an unfair obligation on the tenant by requiring him or her to clean all glass and internal and external windows at least once a month.	Withdrawn.	
3.8	Regulation 5: imposed an onerous obligation on the tenant by requiring him or her to obtain the landlord's written consent before effecting repairs or replacing items. 1(b): potentially transferred the landlord's repairing obligations.	Withdrawn.	
3.9	Regulation 5: imposed an onerous obligation by requiring the tenant to pay for the laundering and cleaning of any soiled soft furnishings and linen, without first giving the tenant an opportunity to put right the breach.	Withdrawn.	
3.10	1(b): potentially transferred the landlord's repairing obligations to the tenant.	Withdrawn.	
3.11	1(n): unfair formality requirement as the tenant was required to inform the landlord in writing of any want of repair. Regulation 7: not written in plain and intelligible language.	Withdrawn.	
3.12	1(e): imposed a potentially unfair financial penalty by allowing the landlord to recover more than his or her actual costs.	Withdrawn.	
3.14	1(b): potentially transferred the landlord's repairing obligations to the tenant.	Withdrawn.	
4.1	1(b): did not provide that 24 hours' written notice must be given before the landlord may enter the property.	Withdrawn.	

4.2	1(b): did not provide that 24 hours' written notice must be given before the landlord may enter the property.	Withdrawn.	
4.3	1(b): did not provide for at least 24 hours' written notice to be given before the landlord enters the property.	Withdrawn.	
5.2	Regulation 5: excluded the tenant's right to assign or sublet the property.	Withdrawn.	
5.4	Regulation 5: went beyond the statutory grounds for possession by referring to the tenant causing nuisance or annoyance to the landlord. 1(i): bound tenant to hidden terms by referring to the landlord's insurance, which the tenant may not have seen.	Withdrawn.	
5.5	Regulation 5: went beyond the statutory grounds for possession by referring to the tenant causing nuisance or annoyance to the landlord.	Withdrawn.	
5.6	Regulation 5: imposed an unfair obligation on the tenant by requiring him or her to obtain the landlord's written consent. Term also did not specify that this consent should not be unreasonably withheld.	Withdrawn.	
5.7	Regulation 5: imposed an unfair restriction on the tenant by not stating that the landlord's consent must not be unreasonably withheld and should only be withdrawn on reasonable grounds.	Withdrawn.	

5.9	Regulation 5: imposed an unfair obligation on the tenant by requiring him or her to obtain the landlord's written consent. Term also did not specify that this consent should not be unreasonably withheld.	Withdrawn.	
5.10	Regulation 5: imposed an unfair obligation on the tenant by requiring him or her to obtain the landlord's written consent. Term also did not specify that this consent should not be unreasonably withheld.	Withdrawn.	
6.4	Regulation 5: imposed an unfair restriction on the tenant.	Withdrawn.	
6.5	1(n): unfair formality requirement as the tenant was required to notify the landlord in writing if the property were to be left vacant where oral notice would suffice.	Withdrawn.	
7.1	Regulation 5: unfairly ousted the court's discretion by requiring the tenant to pay the landlord's legal costs. Term also imposed an unfair financial burden on the tenant. Regulation 7: not written in plain and intelligible language.	Withdrawn.	
7.2	Regulation 5: was too widely drafted and had the potential to impose an unfair financial burden on the tenant.	Withdrawn.	
7.3	Regulation 5: was too widely drafted and had the potential to impose an unfair financial burden on the tenant.	Withdrawn.	
8	Regulation 5: imposed an unfair obligation on the tenant.	Withdrawn.	

8.1	1(e): imposed an unfair financial penalty on the tenant.	Withdrawn.	
8.2	Regulation 5: gave the landlord excessive powers to dispose of the tenant's property at the end of the term.	Withdrawn.	
10.1	Regulation 5: did not refer to the landlord's obligation to obtain a court order before re-entering the property.	Withdrawn.	
10.2	Regulation 5: potentially imposed an unfair financial burden on the tenant and also constituted an unfair enforcement power. Regulation 7: used legal jargon ('indemnity').	Withdrawn.	
10.3	Regulation 5: constituted an unfair enforcement power.	Withdrawn.	
11.1	Regulation 7: used legal jargon ('vitiating').	Withdrawn.	
11.2	1(q): compulsory arbitration clause.	Withdrawn.	
11.3	1(i): bound the tenant to obligations in the head lease, which the tenant may not have seen.	Withdrawn.	
11.4	1(e): imposed a financial penalty on the tenant by setting interest on unpaid rent at 10% per annum.	Withdrawn.	

<b>Other information</b>	The contract was withdrawn from use and replaced with a customised version of the ARLA (Association of Residential Letting Agents) model terms.	
<b>Undertakings accepted</b>	2 April 2003	41 terms withdrawn

## 6

## Athena Windows Ltd

<b>Name of business</b>	Athena Windows Ltd	<b>Lead TSD</b>	Warwickshire County Council
<b>Trading sector</b>	Home maintenance, repairs and improvements	<b>Contract identifier</b>	Terms and conditions

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Statement on front of contract, second sentence	1(f): provided that the contract was not subject to cancellation.	Deleted.	
Statement on front of contract, third sentence	Regulation 5: stated that the consumer had read the terms and conditions.	Revised to state that it is important for the consumer to read and understand the terms and conditions of the contract before signing, that any term that is not understood or that the consumer does not wish to agree to should be discussed with the supplier's representative before signing, and that the consumer should sign the agreement only if he or she wishes to be bound by the terms and conditions.	Statement on front of contract, first, second and third sentences
1	1(n): stated that the contract was 'not subject to cancellation' except by the supplier under term 2. The term also contradicted term 21.	Revised to provide that neither the supplier nor the consumer can change the terms of the contract without the agreement of the other party except as provided by clauses 2 and 3.	1

2	1(f): allowed the supplier to cancel the contract if the surveyor's report recommended that the installation could not be successfully carried out. This potentially gave the supplier the freedom to cancel the contract for reasons that could reasonably have been taken into account at the time the initial quote was given.	Revised to provide that, after signing the contract, the supplier will undertake a survey within 14 days (or by a mutually agreed date). In the event of an unsatisfactory report, the supplier reserves the right to cancel the contract after giving a full written explanation of the adverse structural conditions.	2
3	1(e): provided that cancellation of the contract prior to manufacture of the goods could only be considered if the supplier was reimbursed for all expenses plus anticipated gross profit, and made no reference to the duty to mitigate. Please refer also to the 'Other information' box.	Revised to provide that if the agreement is cancelled by the consumer more than seven days after signing the contract any reasonable losses and costs suffered by the supplier, including loss of profit, must be paid.	3.2
4, second sentence	1(b): had the potential to exclude liability for supply of goods that were not of satisfactory quality, contrary to the Supply of Goods and Services Act 1982.	Deleted.	
6	1(k): allowed the supplier unilaterally to change the characteristics of the product to be supplied without a valid reason.	Deleted.	
7, second sentence	1(b): excluded the consumer's right of set-off by providing that, in the event the consumer had failed to fix an appointment for installation 28 days after confirmation that the products were ready, the balance of the purchase price was due and payable.	Revised to provide that, if an appointment has not been fixed within 28 days, the supplier reserves the right to request 60% of the outstanding balance.	5

9, first sentence	1(b): provided that the balance of the purchase price became payable on delivery or completion of the installation or as specified in term 7, thereby excluding the right of set-off.	Revised to provide that the balance becomes due on completion of the installation and that in the case of alleged minor defects the consumer is not entitled to withhold more than a proportionate amount.	7
10	1(b): excluded the consumer's right of set-off by not allowing payment to be withheld in the event of defective products.	Revised to remove exclusion of right of set-off and states that in the case of alleged minor defects the consumer is not entitled to withhold more than a proportionate amount.	7
12	Regulation 7: reference to rights under common law unclear to consumer.	Deleted.	
13	1(b): excluded liability for 'consequential loss'. The phrase was unclear to consumer and may have been interpreted as meaning that consumer had no claim for any loss caused as a result of the breach.	Revised to allow the supplier to exclude liability for consequential loss or damage only where such loss is not a reasonably foreseeable result of the breach.	10.2
16, second sentence	1(b): limited liability caused by a failure to undertake the work with reasonable care and skill as required by Sale of Goods and Services Act 1982.	Revised to state that the supplier will make good any damage caused during installation to the area immediately surrounding the window or door being installed.	13
17, second sentence	1(b): required complaints to be made in writing by consumer within seven days of installation. Also gave the impression that consumer would not be able to make a claim for breach of contract if the claim was not made within the specified period.	Deleted.	

19, first sentence	1(k) and Regulation 7: provided that the information shown in the contract in respect of specification was only a guide. The term was not given sufficient prominence so that it was clear to the consumer.	Revised to provide that the supplier will not make any significant variations to products without the consumer's agreement.	16
21	1(n): excluded liability for 'oral promises' made by anyone other than a director of the company. The cancellation period referred to was inconsistent with terms 1 and 3.	Deleted.	

<b>Other information</b>	In the event that the Consumer Protection (Cancellation of Contracts concluded away from Business Premises) Regulations 1987 ('Doorstep Selling Regulations') applied to contracts, the supplier was requested to confirm that the statutory right to cancel would need to be stated as provided for in those Regulations. The supplier has inserted term 3.1 to provide that if the Doorstep Selling Regulations apply, the consumer may cancel the contract within seven days and exercise such a right by presenting a written notice, or the cancellation form provided with the contract, to the supplier.
<b>Undertakings accepted</b>	22 May 2003 16 terms revised or deleted

**7 The Automobile Association Ltd (AA)**

<b>Name of business</b>	The Automobile Association Ltd (AA)	<b>Lead TSD</b>	Hampshire County Council
<b>Trading sector</b>	Other motoring costs (breakdown services)	<b>Contract identifier</b>	AA Five Star Europe – Edition 2002

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Page 11, What we will not cover, term 4	Regulation 7: unclear as to the purpose of the term.	Revised to make clear, through cross-referencing, the circumstances in which the term will apply.	Page 11, What we will not cover, term 4
Pages 13-14, term 6	1(b): potentially excluded liability for any loss suffered by the consumer, particularly in relation to consequential loss.	Revised to state that liability is only excluded in certain acceptable circumstances, ie when the loss is due to a consumer's breach or where the loss or damage is not reasonably foreseeable.	Pages 13-14, term 6
Page 14, term 8	Regulation 7: had the potential to bind the consumer unfairly to a term he or she had not had the opportunity to see.	Repositioned under a separate heading to give more prominence.	Transportation of animals, page 1
Pages 26-27, term 4	1(q): had the potential to prevent a consumer from starting legal proceedings in his or her local court.	Revised to remove restriction on jurisdiction.	Pages 26-27, term 4

<b>Undertakings accepted</b>	22 July 2003	Four terms revised
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**8 Balkan Tours Ltd**

<b>Name of business</b>	Balkan Tours Ltd	<b>Lead TSD</b>	Department of Enterprise, Trade and Investment (DETI), Belfast
<b>Trading sector</b>	Holidays	<b>Contract identifier</b>	Booking conditions 1997

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1. Booking and deposit	1(n): provided that changes to the booking conditions could only be made with written authorisation from a company director.	Deleted.	
3. Payment	1(d): provided that if the consumer failed to pay the balance of the holiday by the due date the company reserved the right to cancel the holiday and charge a cancellation fee. The term also gave the company discretion as to the exact date of cancellation, giving it control over the level of cancellation charges levied.	Deleted.	
5. If you change your booking	1(d): provided that changes to the booking by the consumer would be charged at £40 per person, which may have been excessive. 1(b): provided that all changes to the booking within six weeks of departure, including a name change, would be treated as a cancellation and cancellation charges would be levied.	Deleted.  Deleted.	



9. Balkan Tours prices	1(l): failed to comply with Regulation 11 of the PTRs and failed to provide the consumer with the options he or she is entitled to in the event of a significant price increase.	Revised to provide for both upward and downward revision of prices, for no surcharges to be levied less than 30 days before departure, and that in the event of a significant price increase the consumer is entitled to the options set out under term 8.	9. Balkan Tours prices
10. Complaints	1(b): provided that the company could not undertake to investigate inquiries into complaints that were not reported in the resort.  1(q): implied that the company could refer the consumer to arbitration against his or her will.	Deleted.  Revised to clarify that the consumer may be referred to arbitration, except in the Republic of Ireland where complaints will be settled by arbitration in accordance with the jurisdiction of the Republic of Ireland.	10. Complaints
11. Your holiday flights	1(b) and 1(k): provided that the company reserved the right to cancel or rearrange flights.	Deleted.	
13. Important notes	1(b) and 1(k): provided for changes or cancellations to advertised facilities, amenities and entertainment.	Deleted.	
22. Liability	1(b): limited the company's liability further than permissible by international conventions.	Deleted.	

<b>Specific reservations</b>	<p>The position of the OFT was reserved in respect of terms 6 and 19(a) of the new booking conditions. Information supplied to the OFT in relation to term 6 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, after careful consideration, further enforcement action in relation to the term was not considered warranted, subject to receipt of further complaints or other evidence suggesting that the charges were excessive. The position of the OFT was reserved in respect of term 19a regarding the compulsory payment of additional charges for Christmas and New Year celebrations at hotels. The company has stated that consumers are made aware of these charges in advance, and further enforcement action was not considered warranted, subject to receipt of complaints from consumers about this term.</p>
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<b>Undertakings accepted</b>	2 April 2003	14 terms revised or deleted
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## 9 Bellway Homes Ltd (Wales Division)

<b>Name of business</b>	Bellway Homes Ltd (Wales Division)	<b>Lead TSD</b>	City of Newcastle-upon-Tyne
<b>Trading sector</b>	House construction	<b>Contract identifier</b>	Wales Division sales reservation form and contract for sale

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
<b>Sales Reservation Form:</b>			
'In the event of your being unable to proceed ... extras will be forfeited'	Regulation 7: confusing statement about purchaser's rights on cancellation and company's retention of sales reservation fee.	Revised to give a clear indication that if the purchaser withdraws from the contract the company will retain up to the maximum of the sales reservation fee to cover costs entered into on the purchaser's behalf, unless cancellation is a result of the company's liability to fulfil its obligations under the contract, even where these may be due to causes beyond the company's control.	
'The reservation period is ... will be reviewed'	Regulation 7: see comments above.	See above. The uncertainty has been removed and a specific date is included by which contracts have to be exchanged.	
'These particulars do not... offer or contract'	Regulation 7: see comments above.	Deleted.	
'The Bellway Homes policy is... without notice is reserved'	1(k): stated that Bellway Homes has a continuous policy of improvement and reserved the right to change specifications without notice.	Deleted.	

Contract for Sale:			
5b	1(k): allowed the company to vary plans or specifications without allowing the purchaser to withdraw from the contract, and prevented the purchaser from claiming any damages or compensation.	Revised to ensure that any amendments will not use inferior methods of construction, inferior materials will be used in certain specified circumstances only and any changes will be notified to the consumer wherever possible and agreed with the purchaser.	5b
7b	1(n): required the purchaser to agree that he or she had not been influenced to enter the contract because of any information provided by the company.	Revised to state that the company intends relying on the written terms and any variations to the terms should be agreed in writing and inserted into the contract before it is signed.	7b
8	1(b): excluded the purchaser's right of set-off by requiring that payment for any additional or better quality fittings was made in full prior to completion and that payment could not be withheld for any reason.	Revised so that where the works have not been completed satisfactorily or at all the purchaser can withhold a reasonable proportionate part of the sum due and the company cannot exclude the purchaser taking possession of the property in this situation.	8
9	1(b): excluded the purchaser's right to delay completion where minor defects or outstanding works that could be dealt with after completion were unfinished. The OFT considered that the scope of outstanding and minor works was too wide and therefore too weighted in favour of the supplier.	Revised so that the outstanding works that would prevent the purchaser exercising the right to set-off are much narrower in scope and relate only to minor works. The supplier undertakes to complete the works as soon as is reasonably practicable and expressly states that nothing in the term prevents the purchaser from withholding a reasonable proportionate part of the sum payable in respect of outstanding works.	9

15	1(q): any dispute over construction would be automatically referred to the National House Building Council's ('NHBC') compulsory arbitration scheme.	Revised so that only disputes as to whether the house conforms to the mandatory requirements under the NHBC scheme will be referred to the NHBC's resolution scheme.	15
16b	1(b): had the potential to exclude compensation claims for death or personal injury caused by the company constructing foundations or laying pipes, drains or sewers for new properties adjacent to the purchaser's property.	Revised to make clear that claims for compensation cannot be made for nuisance as a result of the reasonable exercise of the seller's rights.	16b

<b>Other information</b>	The contract for sale related to homes sold by Bellway Homes Ltd's Welsh Division.
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<b>Undertakings accepted</b>	4 June 2003	10 terms revised or deleted
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<b>Name of business</b>	Blyth Valley Housing Ltd	<b>Lead TSD</b>	Northumberland County Council
<b>Trading sector</b>	Letting and management agencies (local authority)	<b>Contract identifier</b>	Tenancy Agreement; Housing Business Plan 2002-07

<b>Subsequent enforcement action</b>	<p>It was reported in <i>Bulletin 18</i> (pages 7-8) that the OFT had secured undertakings from Blyth Valley Borough Council, with regard to its Tenancy Agreement TA1, on 7 December 2001. Blyth Valley Borough Council subsequently set up an Arms Length Management Organisation, Blyth Valley Housing Ltd, to manage its housing functions. Blyth Valley Housing Ltd used the Tenancy Agreement previously adopted by Blyth Valley Borough Council after the OFT's previous action.</p> <p>Some months later, the OFT received a complaint that Blyth Valley Housing Ltd had claimed in its Housing Business Plan 2002-07 document that the Tenancy Agreement '...is the first in the Country to have the backing of the Office of Fair Trading...', and that the Council had '...worked closely with the OFT with the aim of ensuring the Council's tenancy agreement is fully compliant with the Unfair Terms in Contracts Regulations...'. The OFT therefore sought and received confirmation from Blyth Valley Housing Ltd that it would not publish any statement or indication in the future that the OFT had given its approval or backing to the Tenancy Agreement, or that Blyth Valley Housing Ltd had worked with the OFT to ensure that the Tenancy Agreement complied with the Regulations. The OFT also sought and received confirmation that Blyth Valley Housing Ltd would amend or make recipients aware of the incorrectness of these statements when distributing existing copies of the Housing Business Plan. Blyth Valley Housing Ltd provided this confirmation on 6 January 2003. The OFT also asked that Blyth Valley Housing Ltd write to previous recipients of the Housing Business Plan, where possible, to advise them that the reference to the OFT was incorrect.</p>
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<b>Name of business</b>	Bobbington Estates Ltd t/a Halfpenny Green Airport	<b>Lead TSD</b>	Staffordshire County Council
<b>Trading sector</b>	Road, rail, air and sea travel (aerodrome services and facilities)	<b>Contract identifier</b>	Rules, Procedures, Conditions and Terms of Use

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1.8.1	1(a) and 1(b): unfairly excluded the company's liability for injury and damage to property.	Revised to make clear that the Certificate of Insurance refers to personal injury and property damage caused by the owner of the aircraft.	1.8.1
1.8.3	1(e): allowed the company to impose a financial penalty of £100 on owners that have deposited fuel on tarmac areas.	No change. The company explained why it is necessary to impose the penalty and we accepted its comments.	1.8.3
1.8.4	1(e): allowed the company to impose a parking fine of £200 for illegally parked vehicles.	Revised to make clear that a parking fine of £100 plus VAT is charged for the first day and £25 plus VAT per day thereafter.	1.8.4
1.10.4	1(a) and 1(b): unfairly excluded the company's liability for injury and damage to property.	Revised to make clear that the owner will be responsible for all damage and costs that arise through his or her fault or negligence.	1.10.4
2.1.2	1(l): allowed the company to increase charges for supplies, services or facilities from time to time.	Revised to make clear that the owner will be given 28 days' notice of any changes in the charges and the right to cancel the agreement if the price increase is not acceptable.	2.1.2
2.1.5	1(e): allowed the company to impose an unfair penalty for late payment.	Revised to make clear that, in the event that charges are not paid within 21 days of demand, the company is able to exercise a lien against the aircraft.	2.1.5

2.1.6	1(a) and (b): unfairly excluded the company's liability for injury, or loss or damage to property, in the course of landing or take-off at the aerodrome.	Revised to make clear that the company will be liable for loss or damage to the owner's property that is due to its negligence.	2.1.6
2.1.7 and declaration in Appendix B	1(a) and (b): unfairly excluded the company's liability for injury and damage to property.	Appendix B revised to make clear that the company will be liable for loss or damage that is due to its negligence.	Appendix B
2.1.8	1(a) and 1(b): unfairly excluded the company's liability for loss or damage.	Revised to make clear that the company will accept liability for loss or damage.	2.1.8
2.1.11	1(e): allowed the company to impose an unfair penalty for an owner's failure to comply with an order in the time specified.	Revised to make clear that the company will give reasonable notice for an aircraft to be removed to a new position before charges become payable.	2.1.11
3.1.1	1(a) and 1(b): allowed the company to exclude liability for death or personal injury.	A minor revision. We queried why the company should be named as an Insured on the owner's Insurance Policy. The company clarified why this is necessary and we accepted its comments.	3.1.1
4.1.5	1(j): allowed the company to alter the terms of the agreement at its absolute discretion and without giving prior notice to the owner.	Revised to make clear that the company will give 14 days' notice of such proposed changes.	4.1.5
5.1.4	1(e): allowed the company to impose an unfair penalty for late payment.	Revised to make clear that the company has the discretion to impose a late payment penalty not exceeding £15 plus VAT.	5.1.4
Appendix A	1(a) and 1(b): allowed the company to exclude liability for death or personal injury.	Revised to make clear that the company will be liable for any damage or costs due to its negligence.	Appendix A



12 Bowen Travel Ltd t/a Bowens

<b>Name of business</b>	Bowen Travel Ltd t/a Bowens	<b>Lead TSD</b>	Leicestershire County Council
<b>Trading sector</b>	Holidays	<b>Contract identifier</b>	Booking Conditions 1999

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
2.	1(n): provided that by signing the booking form the consumer was deemed to have accepted the booking conditions. 1(n): provided that the terms and conditions could not be varied by agents or representatives.	Revised to warn consumer to read and understand the booking conditions before signing the contract.  Deleted.	We reserve your holiday
3.	1(n): provided that the consumer should send correspondence to the company by recorded delivery.	Deleted.	
4.	1(n): provided that agents or representatives could not vary the terms and conditions or make representations about the holiday other than as set out in the brochure.	Deleted.	
5.	1(i): provided that the booking conditions might be overridden by the ABTA (Association of British Travel Agents) code of conduct. Regulation 7: included the wording 'mandatory statutory provisions', the meaning of which may not have been readily understood by a consumer.	Deleted.  Deleted.	
6.	1(q): provided that proceedings by the consumer against the company must be brought in Tamworth County Court.	Deleted.	

7.	1(a) and 1(b): appeared to provide that the company did not accept liability for a consumer who became ill during the holiday.	Deleted.	
8.	1(a) and (b): provided that the company did not accept liability for complaints not notified in accordance with the complaints procedure.	Deleted.	
9.	1(n): provided that compliance with the term was a precondition of the company accepting liability for any claim.	Deleted.	
10. and 11.	1(a) and (b): limited the company's total liability to the cost of the holiday, and provided that the consumer must notify the company at the time of booking if he or she required the company to have greater liability. 1(n): provided that the company did not accept liability for any claims unless the consumer had complied with the complaints procedure.	Deleted.  Deleted.	
14.	1(a) and Regulation 7: excluded the company's liability for death or personal injury not resulting from negligence as defined under the Unfair Contract Terms Act 1977, which the consumer was unlikely to be aware of. 1(b): provided that the company was not liable for loss, inconvenience or damage due to transport delays unless caused by negligence of the company or its suppliers, contrary to Regulation 15 of the Package Travel, Package Holidays and Package Tours Regulations 1992 ('PTRs'),	Deleted.  Deleted.	

	which provides that the company is liable for the proper performance of the contract by the company's suppliers.		
15.	1(b): provided that where bookings were cancelled for reasons beyond the company's control the company would endeavour to offer suitable alternative holidays, and referred the consumer to the limitations of liability in terms 16, 17 and 18.	Revised to provide that, in the event of cancellation of the booking by the company for reasons beyond its control, the consumer will be offered an alternative holiday at a discount that will not exceed the price of the original holiday or accept a full refund of all monies paid.	If we cancel your holiday
16.	1(b): reserved the company's right to cancel bookings without good cause, failed to provide the consumer with the options he or she is entitled to under Regulation 13(2) of the PTRs upon cancellation of the holiday by the company, and excluded the payment of compensation.	Revised to provide that the company will only cancel bookings after the due date if the consumer has failed to pay the balance by the due date or as a result of unusual circumstances or for reasons of force majeure. The term also offers consumer the options he or she is entitled to under Regulation 13(2) of the PTRs.	If we cancel your holiday
17.	1(b) and (k): provided that the company could alter departure times and dates without notice and with no liability unless the holiday length is shortened by more than 24 hours.	Revised to provide that, in the event of a material change to the booking by the company, the consumer may if available take a substitute holiday of equivalent or superior quality, take a substitute holiday of lower quality and receive a refund of the difference in price, or receive a refund of all monies paid. In addition, the consumer will be entitled to receive compensation where appropriate.	If we change your holiday

	1(b): excluded liability for delays on the consumer's return from holiday due to the failure of the company's suppliers to perform the obligations of the contract, contrary to Regulation 15 of the PTRs.	Deleted.	
18.	1(b): provided that the company was not liable for delays or cancellations arising from circumstances outside the company's control or through mechanical breakdown of coaches.	Deleted.	
20.	1(b): provided that the company could not guarantee the availability of facilities booked by the consumer.  Regulation 5: provided that communication issued by the company in respect of facilities booked by the consumer meant that the facility had been requested rather than confirmed.	Deleted.  Deleted.	
21.	1(b) and (k): failed to reflect fully the consumer's entitlements under Regulation 13(2) of the PTRs upon a material change to the holiday by the company.  1(b): failed to provide for adequate compensation payments and provided that no claims for compensation in addition to the amounts stated in the term would be considered.	Revised to provide that in the event of a material change to the booking by the company the consumer may if available take a substitute holiday of equivalent or superior quality, take a substitute holiday of lower quality and receive a refund of the difference in price, or receive a refund of all monies paid.  Revised to provide that the consumer will be entitled to receive compensation where appropriate, and that claims for compensation in addition to the amounts provided will be considered where the losses were foreseeable by	If we change your holiday

		both parties when the contract was formed.	
23.	1(l): price variation clause failed to provide for upward and downward revision of prices, contrary to Regulation 11 of the PTRs, and failed to provide consumer with the options he or she is entitled to in the event of a significant price increase.	Revised to provide for both upward and downward revision of prices, and provides that in the event of a significant price increase consumer is entitled to the options under Regulation 13(2) of the PTRs.	Price Promise
24.	1(f): provided that if the consumer failed to pay the balance by the due date the company could cancel the booking at its discretion and levy cancellation charges. The term gave the company discretion as to the date of cancellation, giving it control over the cancellation charges levied.	Revised to provide that the decision to cancel a consumer's booking upon the consumer's failure to pay the balance by the due date will not be taken less than 10 days before departure, limiting the charge levied to 60% of the cost of the booking. Note the reservation of the OFT's position with regard to this term.	Paying the balance of the holiday

<b>Specific reservations</b>	<p>The position of the OFT was reserved in respect of the terms 'Special requests', 'Paying the balance of the holiday' and 'If you cancel your holiday' in the new booking conditions.</p> <p>'Special requests' provided that the company was unable to guarantee special requests made by the consumer that were not included in the holiday price.</p> <p>The OFT reserved its position on 'Paying the balance of the holiday', which was revised to provide that the decision to cancel a consumer's booking due to non-payment of the balance would be taken no less than 10 days before departure, thereby limiting the cancellation charge to 60%.</p> <p>Information supplied to the OFT in relation to the term 'If you cancel your holiday' was not considered sufficient to establish that the new scale of cancellation charges represents a genuine pre-estimate of loss incurred by the company as a result of cancellations. However, after careful consideration, further enforcement action in relation to the term was not considered warranted, subject to receipt of further complaints or other evidence suggesting that the charges were excessive.</p> <p>While it is considered that the potential for unfairness remains in the above terms, further enforcement action was not considered warranted.</p>	
<b>Undertakings accepted</b>	13 August 2003	25 terms revised or deleted

<b>Name of business</b>	Bromley Adult Education College	<b>Lead TSD</b>	London Borough of Bromley
<b>Trading sector</b>	Other professional services (further education)	<b>Contract identifier</b>	Bromley Adult Education Refunds Policy

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated) or DSRs breach</b>	<b>How changed</b>	<b>New term</b>
'If you cancel the enrolment in writing...'	1(d): potentially enabled the supplier to retain more than a reasonable pre-estimate of loss following cancellation by the consumer.	Revised to provide that, where the supplier is able to sell the space left vacant by a cancelling consumer, a refund of course fees (less a small administrative fee) will be offered.	'For cancellations after...'
'Refund... will only be given in exceptional circumstances' 'Refunds are not paid for other reasons'	1(b): potentially unfairly limited the supplier's liability for failure to provide the service with reasonable care and skill.	Revised to provide that a consumer with a legitimate complaint about service will be entitled to a refund of fees paid.	'Request for refunds relating to service failure...'
Cancelled courses	DSRs Regulation 7(1)(a)(vi): failed to inform consumer who entered contract with the supplier by distance means about the existence of a right of cancellation and how to exercise it. DSRs Regulation 14(4): ignored a consumer's right to a full refund where a consumer exercised his or her right to cancel during the cooling-off period.	Revised to provide a cooling-off period that complies with the DSRs.  Revised so that a full refund is provided where a consumer cancels during the cooling-off period.	'Cooling off period'

<b>Undertakings accepted</b>	12 August 2003	Two terms revised or deleted
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<b>Name of business</b>	Citroën UK Ltd	<b>Lead TSD</b>	Slough Borough Council
<b>Trading sector</b>	Extended warranties and guarantees	<b>Contract identifier</b>	Hallmark Citroën Approved Policy Booklet – 300601 Rev 06/00; Citroën Maintenance and Guarantee Guide - ENT-GB-9002, 02/02

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Page 2, Hallmark Warranty, first sentence	1(n): had the potential to result in the denial of liability for oral statements made by the supplier's employees or agents.	Deleted.	
Page 4	Regulation 7: use of legal jargon ('indemnity').	Deleted.	
Page 12	Regulation 7: use of legal jargon ('condition precedent').	Deleted.	
Page 12, term 5	Regulation 7: it was unclear to whom the term referred.	Deleted.	
Page 13, term 9	Regulation 7: use of legal jargon ('indemnity').	Deleted.	
Insurance Agreement term 1(a)	Regulation 5: allowed the potential for Citroën to inspect the vehicle at unreasonable times, therefore imposing an unfair enforcement power.	Deleted.	
Page 13, term 10	Regulation 5: had the potential to operate as a financial penalty by imposing a charge on consumers where the company was unable to carry out an inspection of the vehicle.	Deleted.	

Insurance agreement page 14	Regulation 7: referred to statutory rights without giving a flavour of the rights involved.	Revised to give an indication of the type of rights involved and to inform consumers of where to obtain further information about their statutory rights.	Guarantee Agreement second paragraph, page 2
Page 13, term 15	1(q): had the effect of a compulsory arbitration clause.	Deleted.	
Page 15	Regulation 7: referred to statutory rights without giving a flavour of the rights involved.	Revised to give an indication of the type of rights involved and to inform consumers of where to obtain further information about their statutory rights.	Page 15
Citroën Maintenance and Guarantee Guide, Corrosion inspection, page 52, term 10	Regulation 7: referred to statutory rights without giving a flavour of the rights involved.	Revised to give an indication of the type of rights involved and to inform consumers of where to obtain further information about their statutory rights.	Citroën Maintenance and Guarantee Guide, page 52, term 10

<b>Other information</b>	In response to the concerns we raised regarding its Hallmark approved terms and conditions, Citroën radically revised and simplified its terms and conditions.
<b>Undertakings accepted</b>	4 August 2003 11 terms revised or deleted

<b>Name of business</b>	Club Active at Hyatt Regency Birmingham Ltd	<b>Lead TSD</b>	Birmingham City Council
<b>Trading sector</b>	Entertainment, catering and accommodation	<b>Contract identifier</b>	Release and Waiver document; Terms and Conditions

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
6 (second bullet point)	1(a) and 1(b): unfairly excluded club's liability for injury and poor services due to acts of its employees, agents, suppliers and subcontractors.	Deleted.	
7 (fourth bullet point)	1(a) and 1(b): unfairly excluded club's liability for injury and poor services due to acts of its employees, agents, suppliers and subcontractors.	Deleted.	

<b>Other information</b>	The club was using an 'own risk' disclaimer of liability in its Release and Waiver document. We wrote to the club and were informed that it intended to carry out a review of its Membership and Release and Waiver documentation. The club submitted its revised documents. However, the revised Release and Waiver document contained terms that excluded the club's liability for death or injury and breaches of contract. We informed the club and it accepted our concerns and agreed to delete the unfair terms from the Release and Waiver document.	
<b>Undertakings accepted</b>	20 March 2003	Two terms deleted

<b>Name of business</b>	Community Education Lewisham (CEL)	<b>Lead TSD</b>	London Borough of Lewisham
<b>Trading sector</b>	Other professional services (further education)	<b>Contract identifier</b>	Enrolment Information

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated) or DSRs breach</b>	<b>How changed</b>	<b>New term</b>
'CEL reserves the right to amalgamate or cancel courses if enrolments are too few...'	1(k): permitted the supplier the right to vary the service supplied without providing for advance notice of changes or a corresponding right for the student to cancel. Term could also have been used to amalgamate courses that should otherwise have been cancelled in an attempt to avoid refunding monies paid.	Revised to provide student with seven days' advance notice and a right to cancel without penalty where the supplier changes the course. Also provides that alternative courses will be offered in these circumstances, but the student can choose whether to opt for them or cancel.	'CEL reserve the right to amalgamate... you have the option... cancelling the agreement without penalty'
'Examinations, registration, assessment and certificate fees...are not included in the fee for your course they will be notified at the first lesson'	1(i): potentially bound student to hidden terms by only providing for examination, registration, assessment and certificate fees to be given in the first lesson of the course, where they were not available before.	Revised so that, where the supplier is unable to provide exact details of such fees before the start of the course, details of the previous year's fees will be provided in the Course Brochure.	'Examination, registration... fees... In these circumstances the previous years fees... fees will be provided in the Course Brochure ...'

<p>'Refunds Policy...we will only refund fees when we cancel a course or prematurely close it, in which case a partial refund will be made'</p>	<p>1(d): potentially permitted the supplier the right to retain more than a reasonable pre-estimate of its loss on student cancellation. 1(f): effectively allowed the supplier the right to cancel the course prematurely at its discretion.</p>	<p>Revised to explain the reasonable amounts the supplier will retain should it cancel the course after some benefit has been enjoyed by the student. Also provides for refunds in the event of ill health, provided a doctor certifies this. Provides cancellation rights to a student who has entered an agreement with the supplier by distance means (see below).</p>	<p>'Refunds will only be available in the following circumstances ...'</p>
<p>Enrolment form/ Student Learner Agreement</p>	<p>DSRs Regulations 7(1)(a)(vi) and 7(2): it appeared that students who enrolled by distance means were not being informed of the existence of a right to cancel under the DSRs or how to exercise it.</p>	<p>The Enrolment Information explains that any student can cancel up until seven days before the start of the course, and that those who entered the contract by distance means will not have to pay the administration fee that will be levied on others.</p>	<p>'...when a written request for withdrawal is received at least seven days before the start date...'</p>
<p>'Refunds Policy...we will only refund fees when we cancel a course or prematurely close it, in which case a partial refund will be made'</p>	<p>DSRs Regulation 19(2)(b): permitted the supplier the right to retain sums where it was not able to perform the contract because the goods or services ordered were not available, contrary to the DSRs under which the supplier must reimburse any sum paid by the consumer in relation to the contract in these circumstances.</p>	<p>Revised so that, where the supplier is unable to perform the contract before or during the start of the course, a full refund will be made.</p>	<p>'If the Course is cancelled by CEL and you have attended less than 20% of the total course, a full refund of payments...'</p>

<b>Other information</b>	<p>The OFT was concerned that the Student Learner Agreement, also used by the supplier in its contracts with students, required students to confirm they had read the Course Guide and Course Information Sheet when this may not be the case. The supplier assured the OFT that copies of these documents would be provided before or at the time of enrolment.</p> <p>With reference to the refunds policy, the OFT expressed concern that the policy did not take into account circumstances where students legitimately cancelled due to poor service. The supplier explained that information about the complaints procedure operated by the Council is widely available on the council's website and in the supplier's buildings.</p>
<b>Undertakings accepted</b>	<p>29 May 2003 <span style="float: right;">Three terms revised</span></p>

<b>Name of business</b>	Continuing Education and Training Service (CETS)	<b>Lead TSD</b>	London Borough of Croydon
<b>Trading sector</b>	Other professional services (further education)	<b>Contract identifier</b>	Enrolment Information

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated) or DSRs breach</b>	<b>How changed</b>	<b>New term</b>
'Cancellation time BEFORE start of course...% refund of total fee paid...'	1(d): refunds policy potentially allowed the supplier the right to retain more than a reasonable pre-estimate of its loss on student cancellation before the start of the course.	Revised so that students can cancel at any time before the start of the course without penalty.	'Students may cancel at any point before the start of the course without incurring a penalty'
'Saturday and Sunday courses... within 10 days of the start of the course fees are non-refundable'	1(d): refunds policy for Saturday and Sunday courses potentially allowed the supplier the right to retain more than a reasonable pre-estimate of loss on student cancellation.	Revised as above.	'Students may cancel at any point... without incurring a penalty'
'The decision of the Head of CETS as regards refunds shall be final'	1(m): permitted the supplier the right of final decision regarding whether students had cancelled in conformity with the contract and whether they merit any refund.	Deleted.	

Course changes	1(k): permitted the right to vary the services supplied without allowing students a corresponding right to cancel without penalty following such a change.	Revised so that students can cancel without penalty following such a change.	'CETS reserves the right to... Should this change not be acceptable to you then a full refund will be offered'
'Cancelled courses and tuition fee refunds'	DSRs Regulation 10: students were not provided with adequate cancellation rights.	Revised so that students can cancel at any point before the course without penalty.	'Students may cancel at any point... without incurring a penalty'
Durable information	DSRs Regulation 7: the Enrolment Form only provided a PO box address for cancellations - this was considered inconsistent with the prior information requirement of the DSRs.	Revised to provide the supplier's full address. Also includes a reference to the fact that cancellations are accepted by email, post and fax.	'Cancellation and requests for refunds ...CETS Head Office...'

<b>Other information</b>	The supplier explained that a term that states 'Refunds after the start of your course will only be given in exceptional circumstances...' is intended to cover legitimate complaints regarding the level of service.
<b>Undertakings accepted</b>	21 May 2003 <span style="float: right;">Four terms revised or deleted</span>

<b>Name of business</b>	Cosmosair plc t/a Cosmos	<b>Lead TSD</b>	London Borough of Bromley
<b>Trading sector</b>	Holidays	<b>Contract identifier</b>	Booking conditions 1999 and 2002

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
'Fair Trading Charter'	Regulation 5: referred to the booking conditions as a 'fair trading charter', which may have led consumers to believe that the terms met the standards of fairness set by some independent body.	Revised to refer to 'Booking Conditions'.	
2. Our price policy (2002 conditions)	1(l): price revision clause failed to comply with Regulation 11 of the Package Travel, Package Holidays and Package Tours Regulations 1992 ('PTRs') and implied that the law may change regarding surcharges. 1(b) and 1(k): failed to provide consumers with the options they are entitled to under Regulation 13(2) of the PTRs in the event of a significant price increase, and excluded the refund of any insurance premium paid where consumers decided to cancel as a result of a significant price increase.	Revised to provide for both upward and downward revision of prices only in the circumstance permitted by the PTRs. The reference to possible changes in law concerning surcharges was removed.  Revised to provide consumers with the options under term 3 in the event of a significant price increase. The term provides for the possibility of a refund of insurance premiums if consumers can show that they are unable to use or transfer their insurance policy.	2. Our price policy
3a. If we change your holiday arrangements	1(b) and 1(k): failed to reflect fully consumers' entitlements under Regulation 13(2) of the PTRs upon a significant change to the holiday by the company.	Revised to provide that in the event of a significant change to the holiday by the company consumers will be offered if available a reasonable alternative holiday at no extra cost, and the company will refund the difference in price if applicable. If consumers do not want to take the holiday offered, they may purchase	3. If we change your holiday arrangements

	<p>1(b): failed to provide adequate compensation entitlements when there was a significant change to the holiday by the company.</p> <p>1(b) and 1(f): excluded compensation payments and the options under Regulation 13(2) of the PTRs for significant changes to the booking when the significant change occurred more than 42 days before departure, consumers did not pay the full brochure price, or the holiday was less than six nights in length.</p> <p>1(b) and 1(k): provided an exhaustive list of significant changes that did not allow for other changes that may have been considered significant in some circumstances.</p>	<p>an alternative holiday available from the company.</p> <p>Revised to state that the compensation levels set out are the minimum levels payable.</p> <p>Deleted.</p> <p>Revised to state that the list provides examples of significant changes.</p>	
3b. If we change your holiday arrangements	1(b) and 1(k): failed to reflect consumers' rights under Regulation 14 of the PTRs in the event that a significant proportion of the services could not be provided.	Deleted.	
6. Flight delays	1(b): provided that consumers were entitled to compensation for flight delays only if they had purchased the company's holiday insurance.	Revised to state that consumers may be entitled to compensation in the event of flight delays.	6. Flight delays
7b. Our assurance on standards and assumption of liability	Regulation 5: provided that the company may recover any costs incurred when it provided consumers with financial assistance with legal costs and consumers made a successful claim, irrespective of the amount the consumers received in their claim.	Revised to state that the company will recover any costs incurred by it, up to a maximum of the amount of costs the consumers receive or are entitled to receive through their claim.	7i. Our assurance on standards and assumption of liability

11. Deposits and special requests (2002 conditions)	1(n): contained a declaration that consumers had read and accepted the booking conditions, irrespective of whether they actually had.	Revised to warn consumers to read the booking conditions before making a booking.	11. Deposits and special requests
12. Booking form and deposits	1(n): provided that the company could not guarantee any special requests and would not be liable for its failure to meet such requests. 1(i): inertia selling: provided that holiday insurance would be added to the booking unless consumers deleted the word 'yes' from the booking form.	Revised to state that special requests that the company has agreed to will be guaranteed.  Deleted.	11. Deposits and special requests
13. Paying for the balance of your holiday	1(e): provided that, if consumers failed to pay the balance of the holiday by the due date, the company could cancel the booking at its discretion and charge a cancellation charge of up to the full cost of the holiday.	Revised to state that the booking will be cancelled and the deposit retained if consumers fail to pay the balance within seven days of receiving a reminder, and that additional cancellation charges will be payable if the company does not cancel immediately due to consumers promising payment.	12. Paying for the balance of your holiday
17d. Your responsibilities	Regulation 5: provided the company with the discretion to terminate the consumers' holiday due to disruptive or dangerous behaviour.	Revised to state that this discretion will be exercised reasonably.	16d. Your responsibilities
18. If you have a complaint	1(b): provided that complaints received more than 28 days after the consumers' return or not made in resort and to the supplier of the service did not have to be considered.	Revised to state that failure to communicate complaints reasonably quickly may affect the consumers' rights to compensation.	17. If you have a complaint

<b>Intelligibility</b>	The print size of the booking conditions was considered small so the terms were difficult to read and understand.
<b>Specific reservations</b>	<p>The position of the OFT was reserved in respect of terms 6, 7e and 14 of the new booking conditions.</p> <p>The circumstances in which the company would provide refreshments and accommodation in the event of a flight delay in term 6 were unclear.</p> <p>Term 7e limited liability for delayed luggage to £100 per person.</p> <p>OFT examined data and supporting information supplied by the company in relation to term 14, and concluded that the overall level of the cancellation charges does not appear to represent more than a genuine pre-estimate of overall losses from cancellations in the period covered by the data. However, the OFT reserved its position on whether at points on the scale the charge exceeds a genuine pre-estimate of loss at the time of cancellation.</p> <p>While it is considered that the potential for unfairness remains in the above terms, further enforcement action was not considered warranted.</p>
<b>Undertakings accepted</b>	12 May 2003 <span style="float: right;">16 terms revised or deleted</span>

<b>Name of business</b>	Craftmatic UK Ltd	<b>Lead TSD</b>	Oxfordshire County Council
<b>Trading sector</b>	Furniture	<b>Contract identifier</b>	Information and Benefits form; Trade-In Certificate

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Information and Benefits form:			
7	Regulation 5: consumer declaration that required consumers to confirm that this and all other documents had been fully explained to them by the sales representative when this may not have been the case.	Deleted and replaced by term that advises consumers to discuss any term they do not understand or do not wish to agree to with the sales representative before signing. See also 'Specific reservations' box.	6
Trade-In Certificate:			
	Regulation 5: required consumers who had part-exchanged their old bed toward the new purchase to confirm that regardless of any promotional allowance that they had been given for their bed the actual cash value would not exceed £1.	Deleted. See also 'Other Information' box.	

<b>Other information</b>	<p>The OFT reviewed this company's terms previously; the results of our discussions are published in <i>Bulletin 6</i>. Following a significant number of complaints from consumers and trading standards authorities, the OFT approached this company under the Stop Now Orders (EC Directive) Regulations 2001 (since repealed and replaced by the Enterprise Act 2002) in August 2002. Included in our action was the reappearance of a term the company previously agreed to delete (term 7, referred to as term 8 in the <i>Bulletin 6</i> report), and the use of its Trade-In Certificate. The company gave assurances on 4 June 2003 that it would:</p> <ul style="list-style-type: none"> <li>• operate an improved refund policy for consumers wishing to cancel;</li> <li>• stop using term 7 in its contracts with consumers;</li> <li>• stop requiring consumers to sign the Trade-In Certificate.</li> </ul> <p>The OFT has told the company that it will continue to</p>
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<b>Name of business</b>	Dealer Guarantee Ltd	<b>Lead TSD</b>	Royal Borough of Windsor & Maidenhead
<b>Trading sector</b>	Extended warranties and guarantees	<b>Contract identifier</b>	Saab Dealer Guarantee BMA161 (03/2002) ('SDG'); Saab Safeguard Guarantee BMA162 (03/2002) ('SG')

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Page 3 SDG and SG	Regulation 5: excluded the consumer's right to assign the guarantee.	Revised to allow assignment subject to an administration fee and notification within 28 days.	Page 3 SDG and SG
Page 5 term (a) SDG and page 8 term (a) SG	Regulation 5: unfairly required consumer to make declarations that might not be true.	Revised to encourage consumer to read the terms and conditions and ask questions if necessary before the guarantee is issued.	Page 5 term (a) SDG and page 8 term (a) SG
Page 5 term (b) SDG and page 8 term (b) SG	1(n): ambit of clause so wide that it had the potential to release the trader from all liabilities where the consumer failed to comply with less important obligations.	Partially revised to state that this term applies where the consumer does not comply with certain listed requirements.	Page 5 term (b) SDG and page 8 term (b) SG
Page 5 term (d) SDG and page 8 term (d) SG	Regulation 7: inadequate reference to consumer's statutory rights without explaining what they are.	Revised to state the relevant statutory rights.	Page 5 term (d) SDG and page 8 term (d) SG
Page 8 SDG and page 11 SG	Regulation 7: required more prominence given the significance of the validity of the overseas breakdown cover.	Revised to give more prominence by boldening.	Page 8 SDG and page 11 SG
<b>Specific reservations</b>	The OFT has reserved its position in relation to page 5 term (b) SDG and page 8 term (b) SG. This is because, despite the partial revision, the term still allows the potential for the subsequent introduction of obligations that consumers have no opportunity to access before entering into the contract.		
<b>Undertakings accepted</b>	20 August 2003		Five terms revised

<b>Name of business</b>	Dignity Funerals Ltd (formerly SCI Funerals Ltd)	<b>Lead TSD</b>	Birmingham City Council
<b>Trading sector</b>	Other professional services (undertakers)	<b>Contract identifier</b>	Conditions of Agreement

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Preamble	1(i): bound the consumer to terms that he or she was not aware of at the time of entering the agreement.	Deleted.	
Terms and conditions:			
2	1(i): bound the consumer to terms that he or she was not aware of at the time of entering the agreement. Regulation 7: used legal terminology that may not be readily understood by the consumer.	Deleted.	
3	1(i): bound the consumer to the rules and regulations of the crematorium or cemetery, which were not supplied to the consumer before entering into the contract and could only be viewed by the consumer during office hours.	Deleted.	
4	1(b): by stating that the agreement was subject to the supplier's right to occupy the crematorium or cemetery the term potentially unfairly allowed the supplier to refuse to perform its part of the agreement at its own discretion and without liability.	New paragraph makes clear that the agreement grants the consumer a contractual licence that is subject to the overriding rights of third parties.	Final paragraph
5	1(k): permitted the supplier an arbitrary right to make substantial changes to the crematorium or cemetery.	Revised to provide examples of the limited types of changes the consumer can expect.	2

7	1(j): potentially unfairly allowed the supplier to vary the terms of the agreement by imposing new requirements regarding the design and size of memorials after the contract had been agreed.	Amended to state that any proposed memorials must be submitted to the supplier for approval and that such approval will not be unreasonably withheld or delayed.	4
9	Regulation 5: unfairly restricted the consumer's right to assign to someone else what he or she had bought.	Deleted.	

<b>Undertakings accepted</b>	14 May 2003	Seven terms revised or deleted
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## 22 The Estates Gazette

<b>Name of business</b>	The Estates Gazette	<b>Lead TSD</b>	London Borough of Camden
<b>Trading sector</b>	Books, newspapers and magazines	<b>Contract identifier</b>	Residential Letting Agreement D24

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Preamble	Regulation 7: used legal jargon defining 'landlord' that was unlikely to be understood by the tenant.	Deleted.	
1, final part	Regulation 7: contained a statutory reference that may not have been clear to the tenant without further explanation.	Deleted.	
3(ii)	Regulation 5: had the potential to impose an unfair financial burden by requiring the tenant to be responsible for all outgoings, which may have included matters that were the responsibility of the landlord.	Reference to 'outgoings' deleted.	3.2
3(v)	Regulation 5: had the potential to impose an unfair financial burden by requiring the tenant to be responsible for other outgoings, which may have included matters that were the responsibility of the landlord.	Reference to 'outgoings' deleted.	3.5

vii)	1(b): had the potential to transfer some of the landlord's repairing obligations to the tenant. Also had the effect of an unreasonable obligation by requiring the tenant to keep the furniture and effects in tenantable repair, which imposed a liability on the tenant that went beyond the tenant's obligation to repair. Had the effect of requiring tenant to put into repair those items not in repair at the commencement of the tenancy where he or she had not contributed to the dilapidations, and failed to make provision for fair wear and tear.	Revised to clarify that the tenant is not liable to put anything into any better repair or condition than it was at the start of the tenancy or liable for fair wear and tear.	3.8
3(viii)	Regulation 5: had the effect of an unreasonable obligation by requiring the tenant to keep the premises tidy when the purely superficial condition of the property is a matter for the tenant.	Reference to keeping the premises tidy deleted.	3.9
3(ix)	1(b): had the potential to transfer certain of the landlord's repairing obligations to the tenant by requiring the tenant to replace broken glass. Also had the effect of an unreasonable obligation by requiring the tenant to take remedial action immediately.	Revised to clarify that the tenant is liable to replace window glass broken by the tenant, or his or her family, employees, guests or other invitees, as soon as possible.	3.10
3(x)	1(b): failed to provide that the requisite notice the landlord used to provide the tenant was in writing.	Revised to provide that the notice will be in writing, except in case of emergency.	3.12
3(xi)	1(e): had the effect of an unfair penalty by requiring payment of all of the costs of the work carried out to remedy the breach. Also had the effect of an	Revised to provide that if it is not possible for the tenant to do the remedial work within a month then the tenant will give the landlord notice in writing of this and	3.13

	unreasonable obligation by requiring all remedial action to be taken within one month.	will carry out the work within such period as is reasonably required. Revised to provide that tenant is liable for the reasonable cost of the work.	3.14
3(xiii)	Regulation 5: had the effect of an unreasonable obligation by requiring the tenant to seek written consent where oral consent could have been sufficient.	Reference to seeking landlord's consent deleted.	3.16
3(xiv) (notices)	Regulation 5: had the effect of an unreasonable restriction by precluding display of notices of any nature.	Revised to preclude notices advertising any profession, trade or business or any goods or services visible from outside the premises.	3.18
3(xv)	1(i): provided that the tenant should prevent anything that might prejudice the landlord's insurance policy or premiums when he or she may not have seen details of the insurance requirements. Allowed the landlord excessive discretion to decide whether the tenant was in breach of the agreement by including a provision that went beyond the statutory grounds for possession for nuisance by referring to annoyance to the landlord.	Reference to landlord's insurance deleted. Revised to provide that nuisance or annoyance to the landlord may apply where he or she is an occupier of adjoining premises.	3.19
3(xvii)	Regulation 5: potentially unfair exclusion of assignment or subletting.	Revised to provide that if the agreement is for a fixed term then the tenant may assign or underlet in accordance with the landlord's prior written consent, which will not be withheld unreasonably.	3.21
3(xviii)	Regulation 5: had the potential to impose an unreasonable restriction on the tenant by banning any kind of pet.	Revised to provide for the landlord's prior written consent, which will not be withheld unreasonably.	3.22

3(xix)	<p>1(b): had the potential to transfer certain of the landlord's statutory repairing obligations to the tenant by requiring downpipes and drains to be kept clear and free from obstructions, when a blocked drain or gutter has been held, on occasions, to amount to 'disrepair' within the meaning of s11 of the Landlord and Tenant Act 1985.</p> <p>Also had the effect of an unreasonable obligation in a fixed term contract of one year by requiring the tenant to keep the chimneys swept.</p>	<p>Revised to provide that the tenant is responsible for unblocking drains, pipes and traps that become blocked by his or her family's waste.</p> <p>Revised to provide that the tenant is liable to sweep any chimney used by him or her after 12 months' occupation of the premises.</p>	<p>3.23</p> <p>3.24</p>
3(xxi)	1(e): had the effect of an unfair penalty by requiring the tenant to pay for the washing and cleaning of items.	Revised to provide that the tenant will wash or clean the items or pay the landlord the reasonable costs of such washing or cleaning.	3.27
3(xxii)	Regulation 5: had the effect of allowing the landlord excessive discretion to require that the tenant join with the landlord in taking action in respect of the premises.	Revised to provide that the tenant will join with the landlord in taking any other action reasonably requested by the landlord.	3.29
3(xxiii)	1(b): allowed the landlord the right of entry to the property without giving notice.	Revised to provide for at least one day's notice.	3.30
3(xxiv)	1(b): by requiring the tenant to deliver up the premises, fixtures, furniture and effects in good and tenantable repair imposed a liability on the tenant that went beyond the tenant's obligation to repair and may have transferred some of the landlord's statutory repairing obligations to the tenant.	Revised to provide for the exception under clause 3.8.	3.31

4	Regulation 7: use of legal jargon ('determined') that a tenant may not understand. Term was not clear about the tenant's legal rights, and the landlord's right to re-enter the property where the premises were left vacant or unoccupied was not sufficiently specific.	Revised to provide that the landlord needs a court order for possession and refers to terminating the tenancy. Provides for re-entry if the premises are left vacant or unoccupied for more than 28 days.	4
6(i)	Regulation 7: referred to 'indemnify' and 'outgoings' without further explanation.	References to 'indemnify' and 'outgoings' deleted.	6.1
6(ii)	Regulation 5: had the effect of an onerous enforcement power by making the tenant's right to quiet enjoyment conditional upon his or her paying the rent and performing and observing his or her obligations when the landlord's remedy is to seek a court order for possession.	Revised to make the tenant's right to quiet enjoyment unconditional.	6.3

**Undertakings accepted**

1 April 2003

22 terms revised or deleted

<b>Name of business</b>	GB Holiday Parks Ltd	<b>Lead TSD</b>	Hampshire County Council
<b>Trading sector</b>	Holiday caravan renting and caravan sites	<b>Contract identifier</b>	Terms and Conditions of Pitch Licence

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1 'Licence Period'	Regulation 7: definition was confusing as it stated that no extensions of the licence period would be granted. However, another term stated that it could be extended.	Definition makes clear that period can be extended.	1 'Licence Period'
1 'Pitch'	1(k): unfairly allowed supplier to change the pitch at its sole discretion.	Reference to sole discretion removed.	1 'Pitch'
3.2	Regulation 7: was unclear as to the length of the agreement for the consumer to keep his or her holiday home or caravan on the site.	Term expressed in plain language.	3.2
4.3	1(b) and 1(k): potentially unfairly allowed supplier to alter what services were supplied by providing that the supplier was not bound to keep facilities open, and allowed supplier to exclude liability for any loss caused by the closure of facilities.	Facilities will only be closed for reasons of repair, refurbishment or maintenance or due to circumstances beyond supplier's control. Supplier will also endeavour to give notice of closures.	4.3
8.1	1(l): gave supplier an unfettered and wide-ranging right to increase the level of certain costs.	Term narrowed in scope so that supplier can vary a reduced number of terms once annually.	8.1
9.1	Regulation 7: the word 'lien' failed to comply with the need for plain language.	Reference to 'lien' removed.	9.1
11.1	1(j): potentially unfairly allowed supplier to alter the terms of the licence agreement by changing the park rules.	Amended to make clear that no change in the park rules shall operate to vary any rights or obligations of the parties under the pitch licence.	11.1

12.4(e)	1(n): the requirement for the consumer to notify the company of a potential buyer by recorded delivery constituted an unnecessary formality.	Requirement for recorded delivery deleted.	12.4(f)
12.4(g)	Regulation 7: the final sentence of the term was not written in plain language.	Final sentence of clause deleted.	12.4(h)
12.4(h)	1(k): potentially unfairly allowed the supplier to re-site the caravan to an alternative pitch in the event of a sale, at its sole discretion.	Circumstances in which the caravan can be re-sited more narrowly prescribed.	12.4(i)
12.4(j)	1(n): requirement for the consumer to get a statutory declaration confirming the family relationships in the event of sale or transfer to a close family member represented an unnecessary formality.	Requirement for statutory declaration deleted.	12.4(k)
12.6	Regulation 5: unfairly allowed the supplier to cancel the pitch licence for breaches of the sale procedure by the consumer.	Deleted.	
15.1	Unfairly allowed the supplier to cancel the contract for breaches by the consumer, without even an opportunity to remedy the breach, regardless of whether the breach was minor or major.	Contract can only be terminated if the consumer commits a serious breach that is incapable of remedy or other breaches that are not remedied in spite of an opportunity to do so.	16.1
15.3	Unfairly allowed the supplier to cancel the contract for minor breaches in relation to behaviour of the consumer.	Term narrowed in scope so that agreement cannot be cancelled for minor breaches.	16.3
17.4	1(k): unfairly allowed supplier to charge a re-siting fee if supplier moved the caravan to another pitch.	Re-siting fee now applies if the consumer requests that the caravan is moved and in very limited circumstances where the park owner instigates the moving of the caravan.	18.4

21	Unfairly allowed the supplier to cancel the contract immediately for minor breaches by the consumer in relation to behaviour standards.	No longer refers to the immediate cancellation of the contract and instead refers to the cancellation procedures at term 16.	14
22.4	1(n): requirement on the consumer in certain situations to serve any notice to the supplier's registered office and the park office constituted an unnecessary formality.	Notice only needs to be posted to the registered office.	22.4

<b>Undertakings accepted</b>	1 August 2003	17 terms revised or deleted
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24 Guardian Lifestyle

<b>Name of business</b>	Guardian Lifestyle	<b>Lead TSD</b>	West Yorkshire Trading Standards Service
<b>Trading sector</b>	Home maintenance, repairs and improvements (awnings)	<b>Contract identifier</b>	Terms & Conditions of Sale

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
3	Regulation 7: referred to the consumer granting the supplier access 'at all the reasonable time'. This wording was considered extremely vague.	Wording of the clause provided for access to be at 'appointed times'.	4
4 and 5	Regulation 7: when read together, terms appeared to be contradictory in respect of unsolicited visits.	Term clarifies the position regarding unsolicited visits and visits arranged by prior appointment.	5
7	1(b): unfairly excluded the supplier's liability for delay by stating that delivery dates were only estimates. The term also sought to exclude liability for delay owing to matters that may not have been beyond the supplier's control.	Term undertakes to provide the consumer with an installation date and only excludes liability for delay for matters outside the supplier's control.	7
9(d)	1(b): may have given a consumer the impression that providing written notice of defects under the warranty was his or her sole right regarding faulty goods.	Term makes clear that the warranty does not affect the consumer's right to reject defective goods.	10
Statement at foot of page	Regulation 7: inadequate reference to consumer's statutory rights.	Indication as to where consumer can obtain further information about statutory rights provided.	Statement at foot of page

<b>Specific reservations</b>	The OFT's position has been reserved in relation to terms 2 and 3. Term 2 requires the consumer to ask for variations to the contract to be put in writing and term 3 deals with cancellation upon adverse survey.
<b>Undertakings accepted</b>	14 March 2003 <span style="float: right;">Five terms revised</span>

25 Highgate School

<b>Name of business</b>	Highgate School	<b>Lead TSD</b>	London Borough of Camden
<b>Trading sector</b>	Other professional services (secondary education)	<b>Contract identifier</b>	Terms and Conditions

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Acceptance Form:			
'In accepting the place offered...'	Regulation 7: use of legal jargon ('undertake').	Legal jargon removed.	'Each parent is asked to read...'
1	Regulation 5: contained a number of consumer declarations that, for example, required parents to confirm they understood the terms and conditions were subject to change. 1(i): bound parents to School Rules, which did not appear to be provided with the contract. 1(j): permitted the school a wide right to vary the terms and conditions without providing for advance notice of such changes.	Revised to advise that the terms and conditions are enclosed with the form, and that also enclosed is a copy of the School Rules, and that parents should ensure their child is familiar with them.  Reference to right to vary terms and conditions removed.	1

3	1(d): consumer declaration requiring parents to agree they were liable for a term's fees and the deposit should they withdraw their child's place at the school, thus ignoring circumstances where parents had a legitimate right to a refund (ie where cancellation is due to the school's breach). Further, where parents cancelled without a legitimate reason, this term ignored the possibility that the school could mitigate its loss by finding a replacement.	Revised in the same way as term 1(a) below.	4
Terms and Conditions:			
1(a)	1(d): provided that deposits would be forfeited in all circumstances where a place is not taken up.	Revised to provide, where parents cancel acceptance of a place (except in circumstances where the school is in breach), that the school will retain the first term's fees and deposit, subject to its ability to mitigate for loss. Advises that it is unlikely that a replacement will be found for an unfilled place after the closing date for acceptance.	5(b)
1(b)	1(l): permitted the school a wide right to charge an unlimited and undefined interest rate on late payments.	Revised so that the maximum rate charged on late payments is provided in the contract.	6(f)
1(c)	1(l): permitted the school a wide right to vary fees at will, without giving adequate notice to allow parents to cancel without penalty.	Revised to provide adequate notice of increases to enable parents to leave without financial penalty.	6(g)



<b>Name of business</b>	Kendall Cars Ltd	<b>Lead TSD</b>	Surrey County Council
<b>Trading sector</b>	Other motoring costs (car hire)	<b>Contract identifier</b>	Self Drive Hire Contract

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1	Regulation 7: lacked clarity due to a very long sentence containing several different points.	Shorter sentences used.	1
3	1(e): made the consumer liable for any extra costs arising from not reasonably assisting in an insurance claim made by the trader.	Qualified to refer to reasonable costs.	3
4	Regulation 5: placed an unreasonable obligation on the consumer to notify faults immediately.	Revised to require urgent notification.	4
5	Regulation 7: used jargon ('time of the essence'), the significance of which would not have been clear to consumer.	Revised to remove jargon and to make the intention clear. See also 'Specific reservations' box.	5
12	Regulation 7: lacked clarity by referring incorrectly to 'British Isles'.	Revised to refer to the countries covered.	12
14	1(j): provided the supplier with a right to vary the amount of the deposit and the hire itself.	Deleted, but see 'Specific reservations' box about the new term 14.	

<b>Other information</b>	The OFT originally approached Kendall Cars Ltd in October 2001 about its contract then in use. During the course of discussions Kendall introduced a new contract for business reasons, taking on board several of the concerns raised. Discussions continued on the remaining issues in the new contract. This bulletin reflects the changes made to that contract.
<b>Intelligibility</b>	Some improvements were made by the repositioning of some related terms that had been scattered around the agreement.

<p><b>Specific reservations</b></p>	<p>The OFT's position was reserved in relation to the following terms:</p> <p>Term 2 – may have the potential effect of making the consumer liable for loss or damage to the vehicle even where it arises from the trader's breach of contract or negligence.</p> <p>Term 5 – may have the potential effect of making the consumer liable for failure to return the vehicle on time where such failure arises from the trader's breach of contract or negligence.</p> <p>Term 7 - may have the potential effect of denying the consumer a refund for an early return where it arises as a result of the trader's breach of contract or negligence.</p> <p>Term 9 - requires the consumer to return the defective part following a repair.</p> <p>The term may also have the potential effect of a limitation of the trader's liability, in the event of a breach of contract, to a refund of the hire period or to the provision of another vehicle. However, there is no evidence that it is being used in that way and it is open to a fair interpretation, that such limit would apply to 'other delays, expenses inconvenience or damage', ie other than for foreseeable losses as a result of breach of contract and the trader's negligence.</p> <p>Term 14 (new term) – may have the potential effect of allowing the trader to cancel the contract if the information supplied by the consumer is incorrect, regardless of the nature of the error.</p> <p>Term 16 (formerly term 17) - limits the trader's liability for property left in the vehicle to loss or damage arising from its negligence only.</p> <p>Term 17 (formerly term 19) – places no qualification on how the trader will exercise its right to enter the consumer's property to repossess the vehicle, eg peaceably.</p> <p>Whilst it is considered that the potential for unfairness remains in these terms, there is no evidence that they are being used unfairly and therefore further enforcement action was not considered warranted.</p>
<p><b>Undertakings accepted</b></p>	<p>19 June 2003 <span style="float: right;">Six terms revised or deleted</span></p>

## 27 King's Security Systems Ltd

<b>Name of business</b>	King's Security Systems Ltd	<b>Lead TSD</b>	West Yorkshire Trading Standards Service
<b>Trading sector</b>	Home maintenance, repairs and improvements (burglar alarms)	<b>Contract identifier</b>	Maintenance Contract

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
3	Regulation 7: second sentence of clause failed to make clear whether the right to install the system outside office hours was solely at the supplier's discretion.	The sentence was deleted.	4
4	1(l): gave the supplier an unfair right to increase the price without notice without the consumer being able to escape from the contract without penalty.	If the price of the work is to increase the consumer will be notified and may escape from the contract without penalty.	5
11(b)	Regulation 5: when taken together with term 13(b), term 11(b) allowed the supplier to terminate the contract without notice if any payments were late.	Revised to refer to term 14, which provides for cancellation to be upon written notice.	12(b)
12	Regulation 7: not drafted in plain language.	Drafted in plainer language.	13
13(a)	1(h): a notice period of 12 months for consumer cancellation was considered too long.	Provides for a cancellation period of 21 days.	13
13(b)	Regulation 5: allowed for the supplier to terminate the contract without notice.	Contract can only be terminated on written notice.	14(a) and 14(b)

13(c)	1(o) and 1(f): allowed for automatic termination of the agreement without notice in the event of bankruptcy, thus allowing the supplier to withdraw services that had already been paid for. The term also stated that in the event of termination no monies paid by the consumer to the supplier would be refunded.	Termination can only be effected upon written notice. Term also allows for refunds if the consumer has cancelled because the supplier is in breach of its obligations.	14
14	Regulation 7 and 1(f): the second sentence of the term was not written in plain language and appeared to conflict with other terms dealing with termination. The sentence also allowed the supplier to terminate the contract for minor breaches without notice to the consumer.	Second sentence of clause deleted.	15
17(c)	Regulation 5: unfairly limited the supplier's liability and required the consumer to insure against loss resulting from the supplier's negligence.	Deleted.	
18	Regulation 5: constituted an unfair attempt to undermine the consumer's statutory protection by stating that the consumer accepted that the limitation on liability was fair and reasonable. Final sentence of the clause was an unfair declaration that the consumer had read and understood certain terms of the contract.	Deleted.	

19	1(b): unfairly sought to exclude the supplier's liability for failure to provide the service for matters that may have been within the supplier's control. Final sentence of the clause was an unfair declaration that the consumer had read and understood this exclusion of liability and accepted it as fair.	Refers to 'force majeure' events, without naming individual factors. Declaration deleted.	19.1
21	1(n): unfair 'entire agreement' clause with potential unfairly to exclude liability for verbal statements.	States that the supplier intends to rely on the written terms of the agreement.	21.1
22	1(n): unfair 'entire agreement' clause with potential to exclude liability for oral statements by requiring the written agreement of a director before terms could be altered.	Consumer is requested to put any variations in writing.	22.1
24	1(n): requirement for the consumer to serve notices by recorded delivery constituted an unnecessary formality.	Requirement for recorded delivery no longer present.	25
Front page of contract:			
Paragraph 2	Regulation 7: unclear reference to potential additional costs.	Deleted.	
A	Regulation 5: potentially unfairly transferred inappropriate risks to the consumer by making consumer liable for events that may be outside his or her control.	Deleted.	
C	Regulation 5: potentially unfairly made consumer liable for matters that may be outside his or her control.	Deleted.	
D	Regulation 5: potentially unfairly made consumer liable for matters that may be outside his or her control.	Deleted.	

F	1(b): potentially unfair exclusion of liability for faulty goods.	Deleted.	
Declaration at foot of page	Regulation 5: unfair declaration that the consumer had read the terms.	Declaration no longer refers to the consumer having read the terms.	Declaration at foot of page

<b>Specific reservations</b>	<p>The OFT's position has been reserved in relation to terms 8 and 11, given their interaction with term 25. Terms 8 and 11 provide that the consumer receives one calendar month's notice of a price increase for a full year's service. The consumer must give 21 days' notice to terminate the contract.</p> <p>The OFT's position has also been reserved in respect of terms 18.2 and 18.3 concerning limitations on the supplier's liability.</p>
<b>Undertakings accepted</b>	13 August 2003 <span style="float: right;">20 terms revised or deleted</span>

<b>Name of business</b>	Leeds City Council	<b>Lead TSD</b>	West Yorkshire Trading Standards Service
<b>Trading sector</b>	Other professional services (local authority tenancies)	<b>Contract identifier</b>	Tenancy Agreement

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
First page	Regulation 5: required tenant to sign declarations that the tenant had been given a copy of a leaflet that was intended to accompany the agreement and that he or she understood the conditions of the tenancy agreement when this may not have been the case.	Revised to warn the tenant to ask for a copy of the relevant leaflet if he or she has not received one, and that tenant should read the terms of the agreement before signing it and ask about anything in it that he or she did not understand.	First page
2.2	Regulation 5: had the potential to impose unfair financial burdens on the tenant by stating that the Council reserved the right to introduce charges for letters and visits needed due to the tenant incurring rent arrears, without giving any details of the charges or when they would be applied.	Revised to make clear that the Council would consult with tenants and tenants' groups before introducing charges relating to rent arrears, giving at least 6 weeks' notice of its intention to do so and the scale of charges to be applied.	2.2
2.10	Regulation 5: allowed the Council a potentially unfair enforcement power by stating that it may dispose of any of the tenant's personal possessions left at the property if it appeared to the Council that the tenant had abandoned the property.	Revised to make clear that the Council would only dispose of the tenant's personal possessions in accordance with the requirements of the Torts (Interference with Goods) Act 1977.	2.10

	1 (e): allowed the Council to charge the tenant for all costs incurred in changing the locks, making the property safe and disposing of the tenant's possessions if it appeared to the Council that the tenant had abandoned the property.	Revised to state that the Council would only charge the tenant for reasonable costs incurred in changing locks, making the property safe and disposing of the tenant's possessions.	
2.15	1 (e): required the tenant to pay for any costs or liability incurred by the Council as a consequence of the tenant's breach of the agreement. Allowed the Council a potentially unfair enforcement power by stating that costs payable under this term would be repayable in full immediately.	Revised to make clear that the tenant will only have to pay for reasonable costs or liability incurred.  The reference to costs being repayable immediately was deleted.	2.15
2.28	Regulation 5: had potential to allow the Council to impose an unreasonable restriction on the tenant by providing that the tenant must not park vehicles on the paved area around the property, in communal parking areas or in public open spaces without first obtaining written permission from the Council.	Revised to provide that the Council would not unreasonably withhold permission to park in the areas specified. The requirement for Council consent to park in public open spaces was deleted.	2.28
2.32	Regulation 5: had potential to allow the Council to impose an unreasonable restriction on the tenant by providing that the tenant must not put up any structures (such as sheds or garages) at the property without first obtaining written permission from the Council.	Revised to make clear that the Council's permission for structures to be put up would not be unreasonably withheld.	2.32
2.38	1 (b): had the potential to transfer the Council's repairing obligations unfairly to the tenant by providing that the tenant must pay for any damage to the property	Deleted.	

	caused deliberately, when the damage may have been caused by a party for whom the tenant is not responsible.		
2.39	Regulation 5: imposed a potentially unreasonable obligation on tenant by requiring tenant to sweep chimneys at the property.	The reference to sweeping of chimneys was deleted.	2.39
2.41	Regulation 5: had potential to allow the Council to impose an unreasonable restriction on the tenant by providing that the tenant must not make improvements, additions or alterations to the property without first obtaining written permission from the Council.	Revised to make clear that the Council's permission for improvements, additions or alterations would not be unreasonably withheld.	2.41
2.43	1(b): had potential to exclude the Council's liability for failure to perform its contractual obligations in relation to its duties to repair the property.	Revised to make explicit that the exclusion of liability in the term did not affect the Council's statutory duties to repair, which are set out elsewhere in the agreement.	2.43
2.48	1(b): had potential to transfer the landlord's repairing obligations to the tenant by requiring the tenant to return the property in good condition at the end of the tenancy when it may not have been in such a condition when the tenant received it. The term allowed the Council a potentially unfair enforcement power by stating that the Council would dispose of the tenant's belongings left behind at the end of the tenancy.	Revised to provide that the tenant must leave the property in reasonable condition at the end of the tenancy.  Revised to make clear that where the Council was to dispose of the tenant's belongings it would do so in accordance with the provisions of the Torts (Interference with Goods) Act 1977.	2.48

3.2	Regulation 5: had potential to allow the Council to impose an unreasonable restriction on the tenant by providing that the tenant must not sublet part of the property without first obtaining written permission from the Council.	Revised to make clear that the Council's permission for subletting part of the property would not be unreasonably withheld.	3.2
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<b>Specific reservations</b>	The OFT's position was reserved in respect of term 2.23, which related to the tenant's compliance with all Council byelaws. The OFT retained some concerns that the term may have the effect of binding tenants to obligations that they do not have a real opportunity to become acquainted with before entering into the agreement, but it was felt that further enforcement action was not justified at this stage.
<b>Undertakings accepted</b>	19 August 2003 <span style="float: right;">12 terms revised or deleted</span>

<b>Name of business</b>	Litchfields Ltd t/a Litchfields Estate Agents	<b>Lead TSD</b>	London Borough of Barnet
<b>Trading sector</b>	Estate agency, house purchase, surveying and valuation	<b>Contract identifier</b>	Litchfields Terms of Business

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
'Unless expressly varied by ...terms of business are set out below'	1(n): excluded liability for oral inducements.	Revised to allow for variation of the contract by both parties in writing (but also see comment below).	'Unless otherwise varied in writing ...'
'We shall require you to...you will be deemed to have accepted all of our terms of business'	1(i): bound the vendor to the contract whether a signed copy of the agreement was returned or not.	Revised so that if the vendor does not return a signed copy of the agreement but nevertheless permits Litchfields to proceed with marketing the property (which could include permitting a viewing of the property) the vendor will be bound by the contract terms.	'If having received the accompanying letter...'
'In addition you will agree to indemnify ... misleading information which you supply to us'	1(e): made the vendor liable to pay Litchfields's costs for claims by a third party when the vendor was only partly responsible for the inaccurate information.	Revised so that the vendor is only responsible for losses claimed by Litchfields that arise as a result of misleading information provided wholly by the vendor.	'You agree to pay to Litchfields... the necessary information'

'Fees: In circumstances where the introduction... this will include indirect introduction'	Regulation 7: did not make clear that the vendor would be liable to pay commission under circumstances other than those outlined in the agency term in the contract.	Revised so that the term makes clear that the agency fees are payable where an introduction is indirect as well as direct.	'Our remuneration is payable ... through our appointed sub-agent'
'Fees: In appointing Litchfields ...you irrevocably authorise your solicitors ...to discharge our remuneration...'	1(b): meant that the vendor could not withhold fees where the agent had not satisfactorily performed its duties under the contract.	Revised so that authorisation to pay Litchfields is not irrevocable.	'...you authorise your Solicitors ...to discharge our remuneration'
Joint sole agency	Regulation 7: did not make clear the difference between, and the different rates of commission charged on, a multiple agency agreement and a joint sole agency agreement.	Revised to clarify the difference between a joint sole agency (two agents working to sell the property) and a multiple agency agreement and the different levels of commission payable under each type of agreement.	
Sub-agents	1(b): reserved the right to appoint sub-agents without referring the decision to the vendor prior to appointment.	Revised to make it clear that Litchfields will only appoint sub-agents to assist with the marketing of the property, but that all appointments and negotiations will be co-ordinated by Litchfields.	'Litchfields may... co-ordinated through Litchfields'
Termination of the Agreement	1(n): formality requirement. 1(b): did not allow for the vendor to terminate the agreement without penalty where Litchfields was in breach of the agreement or had not satisfactorily fulfilled its obligations.	Revised so that the agreement may be terminated by either party giving 21 days' written notice to terminate.	'Upon the expiration of ...are payable immediately'

Direct Approaches	Regulation 7: did not make it clear that commission would be payable if the property was sold to prospective purchasers approaching the vendor directly rather than through Litchfields.	Revised to make it clear that commission will be payable to Litchfields if a prospective purchaser approaches the vendor directly once marketing has been commenced by Litchfields.	'Occasionally vendors are approached... we had introduced that person'
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<b>Other information</b>	The contract was also challenged under s18(2) of the Estate Agents Act 1979 and the Estate Agents (Provision of Information) Regulations 1991 because the definition of a 'ready willing and able' purchaser did not reflect the statutory definition. The contract was amended to correct the typing error in the definition and to allow for the provision of a detailed schedule of additional or enhanced marketing expenses, prior to the expenses being incurred.	
<b>Specific reservations</b>	The OFT's position was reserved with regard to the term indicating that unless the terms of the contract are varied in writing Litchfields will rely on the written terms. In addition, the OFT's position was reserved with regard to the term appointing sub-agents and to the term outlining the requirement of written notification to terminate the contract.	
<b>Undertakings accepted</b>	28 April 2003	Nine terms revised

<b>Name of business</b>	Mark Warner Ltd	<b>Lead TSD</b>	Royal Borough of Kensington & Chelsea
<b>Trading sector</b>	Holidays	<b>Contract identifier</b>	Booking Conditions 1999

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1. Making a booking	<p>1(n): provided that the consumer was deemed to have accepted the booking conditions.</p> <p>1(f): provided that if the consumer failed to pay the balance by the due date the company could cancel the booking at its discretion, retain the deposit and levy cancellation charges. The term gave the company discretion as to the exact date of cancellation, giving it control over the level of cancellation charges levied.</p> <p>1(b): provided that the company did not accept liability for any inaccuracies not notified within 10 days.</p>	<p>Revised to warn consumer to read and understand the booking conditions before entering into the contract.</p> <p>Revised to state that if payment is not received within seven days of the company issuing a reminder the booking will be cancelled and the deposit retained. If the company does not cancel immediately because the consumer promises payment, cancellation charges will be levied if payment is not received.</p> <p>Revised to extend the period to 14 days, and to provide that the company will try to rectify any errors notified outside this period.</p>	1. Making a booking
2. Medical conditions and disabilities	<p>1(c): provided that the company reserved the right to cancel a consumer's booking if the consumer had a medical condition or disability that could not be accommodated even though the consumer was required to provide details of such a condition before booking.</p>	Deleted.	

3. Prices	<p>1(b): provided that the company reserved the right to correct errors in confirmed prices at any time.</p> <p>1(l): price variation clause failed to comply with Regulation 11 of the Package Travel, Package Holidays and Package Tours Regulations 1992 ('PTRs') and failed to provide the consumer with the options he or she is entitled to in the event of a significant price increase.</p>	<p>Revised to provide that the company reserves the right to correct errors in advertised prices before the booking is confirmed.</p> <p>Revised to allow for upward and downward revision of prices, and provides that in the event of a significant price increase the consumer is entitled to the options set out under term 6 below.</p>	3. Prices
6. Alteration/ Cancellation by Mark Warner	<p>1(b) and 1(k): defined significant change as an exhaustive list by providing that all other changes would be treated as 'minor', thereby excluding liability for other changes that could have been considered significant in some circumstances.</p> <p>1(b): failed to provide adequate compensation in the event of a significant change and excluded the payment of compensation where the company made a significant change to the booking more than 10 weeks before departure.</p> <p>1(b) and 1(k): failed to reflect fully the consumer's entitlements upon a significant change or cancellation of the booking by the company.</p>	<p>Revised to state that the list provides examples of significant changes.</p> <p>Revised to provide that the compensation levels stated are the minimum payable. The exclusion of compensation for significant changes more than 10 weeks before departure was removed.</p> <p>Revised to provide that in the event of a significant change or cancellation of the booking by the company the consumer may if available take an alternative holiday of a similar standard, receiving a refund of the difference in price if applicable or paying no more if the substitute holiday is more expensive, or receive a full refund of all monies paid.</p>	6. Alteration/ Cancellation by Mark Warner

	1(b): failed to provide the consumer with the options under Regulation 14 of the PTRs in the event of a significant change or curtailment of the holiday after departure.	Revised to provide that the company will try to make suitable alternative arrangements if a significant proportion of the holiday can not be provided after departure. If this is not possible or the alternative arrangements are rejected by the consumer for good reason, the company will arrange for the consumer to be returned to the place of departure. In addition, the consumer will be entitled to receive compensation where appropriate. Note also the reservation of the OFT's position.	
9. Damage by and behaviour of the client	Regulation 5: provided that the company could charge the consumer for estimated costs of damage caused by the consumer.	Revised to provide that the costs would be estimated reasonably, and that if the actual cost of any damage is less than the estimated amount paid by the consumer a refund of the difference will be payable.	9. Damage by and behaviour of the client
11. Liability of Mark Warner	1(b): limited the company's liability for loss or damage to luggage and other belongings to a maximum of £35 per person.  1(a) and 1(b): provided that the maximum amount of compensation was payable only where the consumer had obtained no enjoyment from the holiday, and that in other situations a proportion of the maximum at the company's discretion would be payable.	Revised to state that the company's recommended insurance policy will be used as a limit for the maximum payable for loss or damage to luggage and other belongings (irrespective of whether the consumer has taken out the policy).  Deleted.  Note also the reservation of the OFT's position.	10. Liability of Mark Warner

12. Personal injury	1(a) and 1(b): provided that the company only accepted liability for complaints made in accordance with the complaints procedure.	Deleted.	
16. Brochure accuracy	1(b): provided that the company could not guarantee the accuracy of information about resorts.	Revised to provide that the consumer will be informed of any material alterations to the resort information that the company is aware of at the time of booking.	14. Brochure information and outside activities
18. Complaints	1(b): provided that the company did not accept liability for complaints (except those concerning personal injury or death) not notified in accordance with the complaints procedure.	Revised to warn consumer that his or her right to compensation may be affected if he or she does not notify the complaint in accordance with the complaints procedure.	15. Complaints
21. Jurisdiction	1(q): provided that the contract was governed by English law and was subject to the jurisdiction of the English courts.	Revised to state that the contract is subject to the jurisdiction of the English courts unless the consumer lives in Scotland or Northern Ireland, in which case claims may be brought in the Scottish or Northern Irish courts and the consumer may choose to have the contract governed by Scottish or Northern Irish law.	18. Jurisdiction

<b>Specific reservations</b>	<p>The position of the OFT was reserved in respect of terms 4, 5, 6, 8 and 10 of the new booking conditions. Term 4 provided that some changes to bookings within 10 weeks of departure would incur cancellation charges. The OFT reserved its position following an explanation of the limited types of changes that would incur cancellation charges.</p> <p>Information supplied to the OFT in relation to term 5 was not considered sufficient to establish that the scale of cancellation charges represents a genuine pre-estimate of the loss incurred by the company as a result of cancellations.</p> <p>The OFT reserved its position on the amended definition in term 6 of minor changes for which compensation would not be payable.</p> <p>Term 8 was amended to provide that, in the event of a change to the destination airport, the company will</p>
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	<p>organise transport to and from the airport at no extra cost to the consumer.</p> <p>The OFT's position was reserved on term 10, which was revised to provide that the company's liability for loss or damage to luggage would be limited to the maximum amount payable under the company's insurance policy. This provides a maximum limit of £1500 per person for summer cover and £1000 for winter cover.</p> <p>While it was considered that the potential for unfairness remains in the above terms, further enforcement action was not considered warranted.</p>
<b>Undertakings accepted</b>	<p>16 July 2003 <span style="float: right;">17 terms revised or deleted</span></p>

<b>Name of business</b>	National Caravan Council Ltd	<b>Lead TSD</b>	Hampshire County Council
<b>Trading sector</b>	Holiday caravan renting and caravan sites (trade association)	<b>Contract identifier</b>	Terms and Conditions

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
4	Regulation 7: legal jargon used ('legal encumbrance').	Jargon deleted.	9.1.2.1
5	Regulation 7: lacked clarity in detailing the circumstances under which a caravan taken in part-exchange is subsequently sold to a third party prior to the cancellation of the original contract.	Revised term 9.2 is now far more transparent and has clarified that the sale of a caravan taken in part-exchange by the seller will not take place before the consumer receives the new caravan without the consumer's authority. It has also made it explicit that the seller has a duty to account to the consumer for all monies it receives upon the sale of the part-exchanged caravan (less a reasonable administration charge).	9.2
6	Regulation 5: created a significant imbalance in the obligations of the parties because it required the purchaser to pay the contract price within 14 days of entering into the contract but was silent on the date of delivery.	Revised terms 4.2 and 4.3 contain more reciprocal provisions as to payment and address the concerns.	4.2 and 4.3

7	1(e): allowed the seller to dispose of the contract goods and recover lost profits and other damages for purchaser's breach of contract without any obligation to mitigate its losses. This constituted a financial penalty.	Revised to provide that, if the purchaser fails to take delivery of the goods within a reasonable time, the seller may store the goods until the purchaser takes delivery of them and charge the purchaser the reasonable costs of storage or may, alternatively, sell the goods or cancel the contract. The new term further provides that, if the seller exercises its power to sell the goods, the seller must obtain the best price readily obtainable and give the purchaser the excess over the contract price, less a deduction for reasonable storage and selling expenses, or may recover a shortfall below the contract price from the purchaser.	8.2.2
8	Regulation 5: created a significant imbalance in the parties' obligations by requiring the purchaser to ensure goods satisfied legal requirements, and prevented the purchaser from collecting goods until such requirements had been met.	Deleted.	
'Hire purchase option'	Regulation 7: term was unclear and contained jargon.	Deleted.	



<b>Name of business</b>	ntl Group Ltd	<b>Lead TSD</b>	Hampshire County Council
<b>Trading sector</b>	Telecommunications	<b>Contract identifier</b>	Terms and conditions for residential telephone, internet, television and interactive services

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
6.2 and 20.1(i)	1(l): permitted the supplier the right to increase charges whilst only providing that advance notice of changes would be displayed in main offices and that the supplier would only attempt to give reasonable notice of any increases likely to affect a significant proportion of customers. If consumers were not provided with adequate advance notice of changes, they could not exercise their rights to cancel in these circumstances (under term 20.1(i)) without penalty, as they would already have been affected by the increases before giving the required 30 days' notice to cancel.	Term 20.1(i) revised so that consumers can cancel following notification of an increase under term 6.2 or receiving their first bill after an increase (whichever is the earlier) without penalty (ie without the increased charged being applied). Term 6.2 includes a cross-reference to the cancellation provisions in term 20.1(i).	6.2 and 20.1(i)

26 and 20.1(ii)	1(j): permitted the supplier a wide discretion to vary the terms and conditions or service whilst only providing rights to cancel if the service was significantly reduced (under term 20.1(ii)). 1(k): also allowed the supplier to change what was supplied.	Term 20.1(ii) revised so that consumers can cancel following a significant reduction in service or significant change to the terms and conditions. Those consumers who have been affected by increased charges following an increase in service can exercise their rights to cancel under term 20.1(i). Term 26 includes a cross-reference to the cancellation provisions in term 20.1(ii).	26 and 20.1(ii)
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<b>Other information</b>	<p>The OFT revisited these terms following complaints that realised the concerns upon which it had previously reserved its position (see case report in <i>Bulletin 11</i>):</p> <p>Term 6.2 - the OFT had reserved its position previously due to concerns that a small number of consumers could be subject to a significant price increase without advance notice.</p> <p>Term 26 - although the OFT was concerned at the wide right the supplier enjoyed under this term to change its service and terms, the OFT previously reserved its position on the basis that the supplier revised the term so that changes would only be made if the supplier considered them necessary, in its reasonable opinion, to maintain or improve the service.</p>
<b>Undertakings accepted</b>	30 April 2003 <span style="float: right;">Two terms revised</span>

<b>Name of business</b>	Oaktree Property Services Ltd	<b>Lead TSD</b>	Sefton Council
<b>Trading sector</b>	Letting and management agencies	<b>Contract identifier</b>	Tenancy Agreement

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Front page - Notice condition	Regulation 5: unreasonable ancillary obligation and restriction.	Deleted.	
Front page - 'Failure to do so may result in the bond being retained ....'	1(e): unfair financial penalty.	Deleted.	
Second page - 'This is a form of legal document ... or a protected occupier'	Regulation 7: contained legal jargon.	Deleted.	
Rent - 'Subject nevertheless...'	Regulation 7: contained unintelligible language.	Deleted.	
'This lease made on ... of the third part'	Regulation 7: use of jargon such as 'successors in title' and 'reversion'.	Deleted.	
'Witnesses As Follows...'	Regulation 7: legal jargon ('demises').	Deleted.	

2	Regulation 7: unexplained statutory references to the Housing Act 1988.	Additional explanation provided.	Second paragraph, page 2
3	1(q): required any disputes to be submitted to arbitration under the Arbitration Act 1950. 1(o): required the tenant to recommence rental payments once the property had been rendered habitable again.	Deleted.	
4a	Regulation 7: unexplained statutory reference to notice served under s13 Housing Act 1988.	Revised to remove statutory reference to notice.	1
4b	Regulation 5: permitted the landlord to impose an unfair financial burden by requiring the tenant to pay for charges that may not be his or her responsibility under the tenancy agreement.	Deleted.	
4d	Regulation 5 and 1(b): imposed unfair transfers of the landlord's repairing obligations by requiring the tenant to keep drains, gutters and pipes clear and to sweep and cleanse the chimneys.	Deleted.	
4e	Regulation 5: imposed unfair repairing and decorating obligations by requiring the tenant to keep the property in 'good and complete repair', regardless of whether it was in this state at the beginning of the tenancy, and requiring the tenant to pay for any work needed to put the property in 'good and complete repair' even where such work was not made necessary by a default on the part of the tenant. Regulation 5: allowed the	Revised to indicate that the tenant should keep the property in as good and clean a state and condition as it was at the beginning of the tenancy, fair wear and tear excepted. The provisions relating to costs for repairing the property and treating such costs as rent arrears were removed.	2b

	landlord an unreasonable enforcement power by providing that any costs charged would be treated as rent arrears.		
4h	1(i): made the tenant liable for doing anything that increased the insurance premium.	Revised so that a copy of the insurance policy will be available so that the tenant can find out what actions may increase the premium.	2g
4i	Regulation 5 and 1(i): unclear drafting permitted the landlord to repossess the property on enforcement grounds outside the Housing Act 1988 and required the tenant to comply with unseen terms of the insurance policy.	Deleted.	
4j	Regulation 5: unreasonably excluded the tenant's right to assign or sublet the tenancy.	Allows tenant to vacate on giving one month's notice if he or she finds a suitable alternative tenant.	5
4k	Regulation 7: required the tenant to deliver up the fixtures and fittings in 'good and substantial repair and condition' instead of in as good a state of repair as they were at the beginning of the tenancy, fair wear and tear excepted.	Requires the tenant to return the property in the same state and condition as at the start of the term, and includes an exception for fair wear and tear.	2c
4l	Regulation 7: unexplained statutory reference to the Local Government Finance Act 1988.	Deleted.	
4n	1(b): failed to state that the tenant should be given 24 hours' written notice where the landlord required access to the property, in accordance with the provisions of the Landlord and Tenant Act 1985, and sought to make the tenant responsible for repairs that the landlord is responsible for. Regulation 5: the term also gave the landlord an unfair	Revised so that the landlord provides 24 hours' written notice (except in emergencies).  Deleted.	2k

	enforcement power, changing the nature of the debt by stating that the costs of repairs were recoverable as rent in arrears.		
4o	Regulation 7: use of legal jargon (see 'Intelligibility' box).	Deleted.	
4p	1(b): failed to specify how much notice a tenant would be given of viewings by prospective purchasers.	Revised so that the landlord is required to give 24 hours' written notice of viewings.	2k
4q, 4qi, 4qii and 4qiii	Regulation 5: sought to impose charges for non-obligatory notices served voluntarily by the landlord under the Law of Property Act 1925.	Deleted.	
4s	Regulation 5: imposed an unfair obligation by requiring the tenant to join with the landlord in opposing notices.	Deleted.	
4u	Regulation 5: imposed an unfair obligation by requiring the tenant to seek the landlord's written consent when oral consent would be sufficient.	Revised to state that the landlord's prior consent to keeping pets or animals at the property will not be unreasonably withheld.	2h
4v	1(b): excluded the landlord's liability for his or her repairing obligations.	Deleted.	
4w	Regulation 7: use of legal jargon (see 'Intelligibility' box).	Deleted.	
4x	Regulation 5: unfair consumer declaration requiring the tenant to acknowledge that the property was in substantial and good repair and order, which the tenant may not be competent to state.	Deleted.	
4z	Regulation 5: imposed an unfair obligation on the tenant by requiring him or her to use curtains that matched those of adjoining flats in colour and design.	Deleted.	

4z1	Regulation 5: imposed unfair and onerous obligations on the tenant. These included a requirement that the tenant cover the floor with carpet or rugs, a prohibition on keeping 'any combustible... materials' (which could include a range of household items), an unfairly prescriptive requirement to clean the windows once a month, and a requirement that the tenant clean the outside of the windows (which may be onerous where these windows are inaccessible).	Deleted.	
6	1(b): made the tenant's right to quiet enjoyment of the property conditional on payment of rent and performance of the tenant's obligations.	Deleted.	
7	Regulation 7: unexplained reference to s11 of the Landlord and Tenant Act 1985 (landlord's repairing obligations).	Revised to explain the landlord's statutory repairing obligations more fully.	3b and 3c
8(i)	Regulation 7: use of legal jargon (see 'Intelligibility' box).	Deleted.	
9	Regulation 5: imposed an unfair financial burden on the consumer with regard to payment for repairs that the tenant might not be responsible for.	Revised so that the tenant will only pay a reasonable amount for repairs for which he or she is responsible.	8
10a	Regulation 7: statutory reference to s13 Housing Act 1988, which cannot be applied to a fixed term tenancy. 1(b): unfair transfer of landlord's repairing obligation where damage was caused by vandals or burglars.	Deleted.	

10b	Regulation 7: not written in plain and intelligible language.	Deleted.	
11a	Regulation 5: unfair enforcement term that made no mention that the landlord must obtain a court order to re-enter the property.	Revised to include a statement that the landlord must obtain a court order when seeking to re-enter the property.	7
11b	<p>1(e): charged interest at a rate of 3% per calendar month.</p> <p>Also sought to charge a prohibitive amount for additional administrative work, which did not reflect the true cost to the agent at the point the charges were made.</p> <p>Regulation 5: the term sought to alter the nature of the debt by stating that costs were recoverable as 'rent arrears'.</p>	<p>Revised so that late payment charges are made at a percentage above the bank base rate.</p> <p>Deleted.</p> <p>Deleted.</p>	2m
11c	1(e): financial penalty that sought to recover excessive costs for service of notice, which in any event can only be allocated by a court. In addition, when combined with term 11b, the term provided scope for double recovery by the landlord.	Deleted.	
11d	Regulation 7: contained legal jargon, and not written in plain and intelligible language.	Deleted.	
11e	1(b): unfair exclusion of landlord's obligations and liability for the premises, including repairing obligations. Term also sought to transfer the landlord's obligations to the tenant.	Deleted.	

Page 6 – first paragraph	Regulation 5: unfair consumer declaration that he or she has read and understood the terms and conditions.	Revised to advise the tenant that the agreement is a legally binding document and that if he or she does not understand it he or she must ask for clarification before signing it.	Page 6 – first paragraph
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<b>Intelligibility</b>	Legal jargon (such as 'demised', 'vitiare', 'indemnity', 'indemnifying', 'estopped', 'reversion', 'determined', 'without prejudice', 'joint and several covenants') throughout the contract was challenged under Regulation 7.
<b>Undertakings accepted</b>	9 July 2003 40 terms revised or deleted

34 Pendragon Promotions Ltd

<b>Name of business</b>	Pendragon Promotions Ltd	<b>Lead TSD</b>	Somerset County Council
<b>Trading sector</b>	Holidays (timeshare)	<b>Contract identifier</b>	Purchase Agreement; Rules of Occupation; The Schedule; Deed of Trust; Regulations relating to the Occupation of the Boats

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Purchase Agreement:			
1	1(i): appeared to bind consumer to the scheme documentation before actually inspecting it.	A summary containing the main terms of the rules of occupation is to be provided to consumer prior to consumer entering into the Purchase Agreement.	1
4	Regulation 7: made reference to the statement 'time of the essence'. The term also made reference to the consumer's statutory rights. 1(e): appeared to state that the consumer's deposit was retained by the company.	Redrafted to clarify the procedure when an agreement is cancelled, and the statutory rights reference has been clarified. The term also refers to the payment of a £275 administration fee, to cover administration time and the preparation of documents that will be retained by the company.	4
5	1(i): referred to the fact that consumer had entered into a contract with an exchange programme company, RCI Europe. Consumer would not have had an opportunity to review the terms of membership of RCI beforehand.	Redrafted to reflect the fact that the consumer is enrolled into RCI, but not bound by RCI terms and conditions until completion of the contract. Completion of contracts can take some time, giving consumer the opportunity to consider the RCI documentation.	5
7	1(n): included reference to a disclaimer for all liability for any written or oral terms not included in the agreement.	Revised to confirm the fact that the company intends to rely only upon the written terms of the agreement.	8

8	Regulation 7: use of the legal term 'force majeure'.	The term has been revised and the reference to 'force majeure' omitted.	9
9	Regulation 7: not expressed in plain and intelligible language in respect of circumstances in which provisions of the agreement would be invalid.	The term has been revised to state clearly the circumstances in which the provisions of the agreement would be unenforceable by law.	10
10	Regulation 7: not expressed in plain and intelligible language, as consumers would not understand the consequences of any conflict between the purchase agreement and the scheme documentation.	Deleted.	
11	1(q): included an exclusive jurisdiction clause with regard to the laws of England and Wales.	Revised to state that parties would submit to the non-exclusive jurisdiction of the English courts.	11
<b>Rules of Occupation:</b>			
2 (d) (ii)	Regulation 7: included the phrase 'mutatis mutandis', which would be particularly incomprehensible to a consumer. 1(i): also attempted to bind the consumer to hidden terms within the booking conditions issued by the reservation agent.	The phrase 'mutatis mutandis' has been clarified in plain language, and the booking conditions will be supplied to the consumer at the presentation.	3 (e)
2	Regulation 7: the whole of the term was particularly legalistic in style, and this important aspect of the agreement may have been unclear to consumer.	Revised generally, in plain and intelligible language, with instructions to consumer on how to apply for a weekly period, and how the weekly periods will be allocated.	3

3 (d) and 3 (e)	1(k): these terms made reference to the fact that the company could change the marina to another location within a 100-mile radius under two different circumstances: - moorings at the marina cease to be available to the company - the cost increases by more than the rate of inflation.	The terms have been revised to include additional reference to the fact that the circumstances referred to would only be imposed for reasons beyond the reasonable control of the company. The reference to increases of more than the rate of inflation has also been amended to substantial increases being in the best financial interests of the consumer, in order for the company to move the moorings of a boat.	4 (d) and 4 (e)
3 (g)	1(b): enabled the company to decide what form of compensation a consumer is entitled to, in respect of the company failing to fulfil its obligations with regard to boat availability.	Reference to any form of compensation for the consumer being at the sole discretion of the company has been deleted.	4 (g)
4 (b)	1(i): referred to the fact that consumer had entered into a contract with an exchange programme company, RCI Europe. Consumer would not have had an opportunity to review the terms of membership of RCI beforehand.	Redrafted to reflect the fact that the consumer is enrolled into RCI, but not bound by RCI terms and conditions until completion of the contract. Completion of contracts can take some time, and therefore the consumer is able to consider the RCI documentation.	5 (b)
5	Regulation 5: appeared to require consumer to pay an annual management charge in connection with management of the boats and, in addition, fees of the management company for performing obligations under these rules. The additional fees did not appear to be qualified as being 'reasonable' as with the annual management charge.	Redrafted to clarify that the management company fees are included within the management charge and are therefore subject to reasonableness.	6

6 (b)	Regulations 5 and 7: made reference to an indemnity clause, stating that the consumer will pay or indemnify the management company against any damage etc of which the company shall be sole judge.	Redrafted to state the consumer will compensate the management company for any damage etc and the company will appoint an independent chartered surveyor to assess any damage etc.	7 (b)
6 (f)	1(j): allowed the company to change the rules 'from time to time'.	Revised to include reference to any changes in any applicable law or that may be changed in any way for the general benefit of the consumer.	7 (f)
6 (g)	1(i): compelled consumer not to render void or voidable the boat's insurance, despite the fact that the consumer did not get an opportunity to see the insurance policy.	Revised to include the fact that a summary of the insurance policy will be provided to consumer at check-in.	7 (g)
7	Regulation 5: considered unfair as it appeared to allow the management company to sell the consumer's 'rights of occupation' for committing a substantial breach.	Deleted.	
9	Regulation 7: unclear reference to 'inter alia' control over rights of occupation.	Revised into plain and intelligible language.	10
11	Regulation 7: as with the term above, it was considered to be incomprehensible.	Revised in plain and intelligible language.	12
13 (a)	1(j): asserted that either the trustee or vendor may modify or add to the rules as and when the trustee or vendor considers it necessary.	Revised to clarify that any amendments would be made in order to comply with any changes in applicable law or other rules to which the trustee or vendor is bound.	13 (a)
13 (b)	1(k): provided the vendor with the flexibility to change the characteristics of the scheme.	Revised as above.	13 (b)
14 (b)	1(q): stated exclusive jurisdiction to the laws of England.	Revised to include reference to the non-exclusive jurisdiction of the courts of England.	14 (b)

Deed of Trust:			
3 (c)	1(b): enabled the trustee not to be liable for any amount in excess of the value of the assets held by the trustee.	Revised with an exception where such liability arose as a result of the intentional, reckless or negligent act of the trustee that has not been caused by another party.	3 (c)
4.4	1(f): allowed the trustee to hold on to the purchaser's money for 12 months if the criteria are not satisfied.	Revised to include reference to any part of the criteria, and the length of time reduced from 12 to six months.	4.4
5.2	Regulation 5: referred to the trustee not taking any legal action unless indemnified by the holiday owner.	Revised to include an exception where the trustee or its officers, employees or agents shall be proved to have been negligent or to have acted in bad faith.	5.2
5.3	1(b): regarded as an exclusion clause in respect of the trustee not being responsible for any loss suffered by the boats, vendor or holiday owner.	Revised to delete reference to loss by the boats, and any loss in respect of any act or omission on the part of the trustee or its employees in respect of the trust property.	5.3
5.5	Regulation 7: referred to the use of the 'force majeure' clause, which was considered to be unintelligible to consumer.	Revised into plain and intelligible language.	5.5
8.7	1(i): appeared to infer that there may be the possibility that the scheme documentation could be sent to the consumer after he or she had entered into the agreement.	Revised to clarify that the documentation is to be provided to consumer on or before the date of signature of the purchase agreement.	8.7
9	1(j): provided for the vendor and trustee to have the ability to vary this document.	Revised to include reference to the fact that the responsibility for certifying that a modification does not materially prejudice a holiday owner would be passed to an independent expert.	9

Regulations relating to the Occupation of the Boats:			
2	1(j): appeared to allow for changes to the regulations.	The term has been cross-referred to term 15 to clarify that any amendment to the regulations is at the request of the majority of the holiday owners or to comply with changes in the law or rules that apply to the scheme.	2
3	Regulation 7: made reference to holiday owners being obliged to pay for, or indemnify the vendor against, any damages etc.	Revised to include reference to holiday owners paying for, or compensating the vendor against, any damages etc.	3
11	Regulation 7: was considered to be incomprehensible to the average consumer. 1(i): did not make clear whether the insurance documents were made available to holiday owners at the time of contracting.	The term was revised in plain and intelligible language, and included reference to the fact that a summary of the insurance policy would be made available to holiday owners at the time of check-in.	5 (g)
20	1(i): appeared to allow the management company the power to introduce new terms previously unseen by the consumer.	Revised to include reference to additional regulations being introduced solely to comply with changes in the laws and rules applicable to the scheme.	13

<b>Undertakings accepted</b>	22 October 2002	35 terms revised or deleted
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<b>Name of business</b>	Dr Peter Leslie Pratt and Pratt Developments Unlimited	<b>Lead TSD</b>	West Sussex County Council
<b>Trading sector</b>	Holiday caravan renting and caravan sites	<b>Contract identifier</b>	Information Sheet and Application Form; Conditions of Acceptance; Conditions of Sale; Agreement for Sale; Park Rules

<b>Original term</b>	<b>Application of the UTCCRs (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Information Sheet and Application Form for Ashley Heath Caravan Park:			
Surcharge: 1 ('Pay the deposit and electricity account')	Regulation 7: lack of transparency about charging.	The term makes it clear that payment required is for electricity account for the previous year.	
Conditions of acceptance for Ashley Heath Caravan Park:			
2	Regulation 5: allowed the park owner to exclude liability for its own negligence in moving the caravan.	Second part of the term provides that the park owner accepts liability for damage to the caravan caused by moving it where the park owner has been negligent.	2
3	Regulation 7: lacked clarity in that the deposit was stated as being payable on submission of the completed application form whereas on the front of the application form it was stated as being payable before 1 October 2000.	Revised so that it clearly states that the deposit is required to be paid before 1 October.	3
4 (second generation term challenged)	1(b) and Regulation 5: allowed the park owner to move the caravan without any liability for its negligence whilst moving the caravan.	Revised term provides that the park owner accepts liability for damage to the caravan caused by moving it where the park owner has been negligent.	4

5	1(e): allowed the park owner to charge a daily storage fee of £10, which was a potentially disproportionate penalty.	Not yet revised, but subject to undertakings.	
10	1(k): allowed the park owner to remove the caravan to another pitch provided 10 days' notice was given.	The term only allows the park owner to move a caravan where this is for the better management of the park as a whole. The term provides a right to terminate if the consumer is unhappy with the relocation, and requires the park owner to pay a proportion of the site licence fee paid if the consumer cancels the agreement as a result of the change.	10
11	Regulation 5: potentially imposes an unfair restriction on the consumer's right to sell the caravan on the park.	Not yet revised, but subject to undertakings.	
12	1(b): allowed the park owner to exclude liability for its own negligence for any property brought onto the park.	Revised term obliges the park owner to accept liability for damage to property where it has been negligent.	12
13	1(d): allowed the withholding of the licence fees paid in advance if the application did not proceed.	Revised term obliges the park owner to provide a full or partial refund when either it or the caravan owner terminates the agreement.	13
14	Regulation 5: potentially allowed the park owner to terminate the consumer's contract for a minor breach of contract.	Revised to allow park owner only to take enforcement action against the caravan owner for serious breach or serious non-observance of conditions.	14

16	<p>Regulation 5: allowed the park owner to retain the caravan and its contents and dispose of the caravan and the contents for outstanding expenses and failed to give effect to the legal process set out under the Torts (Interference with Goods) Act 1977.</p> <p>Regulation 7: use of jargon ('lien').</p>	<p>Not revised but subject to undertakings.</p> <p>Jargon deleted.</p>	
17	<p>Regulation 5: purportedly allowed the park owner to bypass the legal process as set out under the Torts (Interference with Goods) Act 1977.</p>	<p>Revision not satisfactory, but subject to undertakings.</p>	
19 (second generation term challenged)	<p>1(i): subjected consumer to Park Rules that had not been communicated at the outset.</p>	<p>Revised to oblige the park owner to annex the Park Rules to the 'Terms and Conditions of Acceptance'.</p>	
21	<p>Regulation 5: restricted the consumer from using his or her own workmen to carry out repairs or remove storm-damaged caravans.</p>	<p>Deleted.</p>	
Old term 22 re-numbered 20 ('The caravan owner will pay the following estimated charges, before the caravan is removed from the Park...')	<p>Regulation 5: provided a disproportionate penalty for cancelling the agreement in terms of fees payable on departure.</p> <p>1(m): gave the park owner the right of final decision as to whether the condition of the site was acceptable on termination of the agreement.</p>	<p>Not yet revised, but subject to undertakings.</p> <p>Not yet revised, but subject to undertakings.</p>	

Conditions of Sale:			
2	Provided that the contract for purchase of the caravan was in no way dependant upon the buyer obtaining credit facilities and therefore was automatically void pursuant to s173(1) of the Consumer Credit Act 1974 as it was inconsistent with the provisions on linked transactions in the Consumer Credit Act 1974.	Not yet revised, but subject to undertakings.	
4	1(b): excluded liability for the quality or condition or fitness for purpose of caravans sold.	Changed so that liability is no longer excluded.	4
5	1(b): excluded liability for delay in supplying goods.	Changed so that liability is no longer excluded apart from delays beyond the supplier's control.	5
7(a)	1(l): allowed the supplier to increase the price of the goods by up to 20% without giving a right to cancel the contract.	Revised to allow the buyer to cancel the agreement if the price of goods is increased.	7
7(b)	1(l): allowed the supplier to increase the price by more than 20% and provided an inadequate amount of time to cancel the contract.	Deleted.	
7(c)	1(l): gave the supplier greater rights to cancel the contract for a decrease in price than those afforded to the consumer in the event of a price increase.	Deleted.	
8	1(f): unfairly limited consumer's rights to compensation for loss or damage caused by the supplier's cancellation of contract at will.	Not yet revised, but subject to undertakings.	

9	1(e): allowed the supplier to retain consumer's deposit in the event the consumer cancels the contract for the supplier's breach, and provided that the supplier was not required to take into account the effects of mitigating any breach of contract by the consumer.	Revision unsatisfactory, but subject to undertakings.	9
<b>Agreement for sale:</b>			
Declaration ('I have read these terms and understand them')	Regulation 5: forced the consumer to declare that he or she had read and understood the terms.	Not yet revised, but subject to undertakings.	
<b>Park Rules:</b>			
19	Regulation 5: provided that untaxed vehicles would be removed by the park owner without notice.	Revised to allow removal of untaxed vehicles after due notice.	19
28	Regulation 5: potentially imposes an unfair restriction on the consumer's right to sell the caravan on the park.	Not yet revised, but subject to undertakings.	

<b>Other information</b>	Dr Peter Leslie Pratt owns and runs a number of static holiday caravan parks as a sole trader. Pratt Developments Unlimited also runs a number of static holiday caravan parks. Dr Pratt and Pratt Developments Unlimited used the same terms and conditions. A large proportion of the terms and conditions were unfair. Revisions have been agreed with Dr Pratt in relation to many of the terms; however, revisions have not been agreed in relation to some of the terms on which Dr Pratt was approached. Dr Pratt gave undertakings on his own behalf and on behalf of Pratt Developments Unlimited that he would not use or recommend, for use in contracts concluded with consumers, the outstanding terms and conditions and would not enforce the terms or any term having the same or similar effect in any contract with consumers. The undertaking was to last until the terms are agreed with the OFT. Certain terms have been revised as indicated above and those that have not been revised are subject to these undertakings.		
<b>Undertaking accepted</b>	4 November 2002	26 terms revised or deleted	

**36 RAC Motoring Services**

<b>Name of business</b>	RAC Motoring Services	<b>Lead TSD</b>	London Borough of Hounslow
<b>Trading sector</b>	Other motoring costs (breakdown services)	<b>Contract identifier</b>	Terms of membership

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
General conditions:			
20	1(b): provided that the supplier will not be responsible for any indirect losses consumers incur as a result of the supplier's acts or omissions. The clause therefore had the potential to bar consumers from seeking redress where it should be available.  Regulation 7: inadequate reference to consumers' statutory rights.	Amended to provide that the exclusion only relates to unforeseeable losses and losses not caused by the supplier's negligence.  Revised to explain that this term does not affect consumers' statutory rights regarding faulty or mis-described products and services or any failure by the supplier to provide its services.	23
21	1(q): had the potential to mislead consumers into believing that their right to redress is limited to a 28-day period.	Revised to provide that the requirement to bring a complaint within 28 days does not affect consumers' statutory rights to take legal action or exercise any other legal remedy.	Caring for our customers, second paragraph, second and third sentences
22	1(b): sought to exclude liability for delay.	Revised to limit the exclusion to delays resulting from circumstances beyond the supplier's reasonable control.	24

General exclusions:			
1	Regulation 7: was unclear as to whether consumers were covered for the first 24 hours after an upgrade.	Revised to make clear that, where consumers upgrade their membership, their original membership will continue to apply for the first 24 hours after the upgrade.	1(a) and (b)
4	Regulation 7: was unclear as to whether the activity engaged in and/or the location of that activity determined the extent of the cover.	Revised to make clear that the cover does not extend to vehicles taking part in activities that take place off the road and/or in areas that are not subject to the normal rules of the road.	4 and 5

<b>Undertakings accepted</b>	11 April 2003	Five terms revised
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**37 Royal Windsor Horse Show**

<b>Name of business</b>	Royal Windsor Horse Show	<b>Lead TSD</b>	Royal Borough of Windsor & Maidenhead
<b>Trading sector</b>	Entertainment, catering and accommodation (sporting venues)	<b>Contract identifier</b>	Members' car park passes - Conditions of issue

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
'No responsibility is accepted... for any loss, theft, injury or damage to vehicles... Show or its servants'	1(a) and 1(b): exclusion of liability for loss, theft, injury or damage caused by the supplier's negligence.	Revised to exclude liability for loss, theft, injury or damage only where it is not caused by the negligence or other breach of duty of the supplier.	'In absence of any negligence or other breach of duty by the Royal Windsor Horse Show...'

<b>Undertakings accepted</b>	8 May 2003	One term revised
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<b>Name of business</b>	Sitters	<b>Lead TSD</b>	Hertfordshire County Council
<b>Trading sector</b>	Nursery goods and services (babysitting service)	<b>Contract identifier</b>	Terms and Conditions

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Agency Fees (4)	1(d): allowed the supplier to retain full prepayment in the event of cancellation by the consumer.	Deleted.	
Agency Fees (6)	1(l): permitted the supplier to vary the membership subscription and booking fees, without allowing the consumer to cancel ongoing commitments without penalty.	Revised to provide that the consumer will be given a minimum of 90 days' notice of any change in fees (unless such a change is due to a change in VAT). The consumer is also entitled to cancel membership at any time without penalty.	Fees (5)
Employees' Pay (3)	1(i): bound the consumer to the supplier's published rates of pay, which it was not apparent that the consumer had seen before entering into the contract.	Amended to clarify that the rates of pay are available on the supplier's website or on a freephone telephone number. In addition, see 'Other information' box.	Employees' Pay (3)
Conditions (1)	1(e): had the potential to operate as a penalty by allowing the supplier to retain compensation for all future loss that the agency has or 'might suffer' where the consumer offers individual employment to a carer provided by the supplier.	Revised to provide that the consumer will be liable for all losses that the supplier suffers as a result of the consumer's breach, to a maximum of £1000.	Conditions (1)

Conditions (5)	1(b): excluded the supplier's liability for any damage caused by the carer.	Revised to provide that the supplier will be liable for the carer's acts and omissions where these could reasonably have been identified during the selection procedure or from information received by the supplier.	Conditions (6) and Scope of Service
Conditions (6)	1(b): excluded the supplier's liability for any damage caused by the carer.	See comments for Conditions (5) above.	Conditions (6) and Scope of Service
Conditions (7)	1(b): potentially excluded the supplier's liability where it failed to take reasonable care and skill when selecting carers.	See comments for Conditions (5) above.	Conditions (6) and Scope of Service
Conditions (8)	1(b): allowed the supplier to refuse to carry out its side of the contract at its discretion and without liability.	Revised to provide that in circumstances where a carer cancels at short notice or fails to arrive on time the supplier will endeavour to provide a replacement, but where this is not possible no booking fee will be charged and a refund of the consumer's current membership will be offered. The supplier does not exclude responsibility for any loss suffered where it fails to use reasonable care when confirming the details of the appointment with the carer.	Conditions (7) and Conditions (8)
Conditions (9)	Regulation 7: used jargon ('indemnified') that the consumer may not have understood.	Revised to express the term in plain and intelligible language.	Conditions (9)
Conditions (10)	1(f): permitted the company an unfettered discretion to cancel the consumer's membership without notice, with no liability other than to rebate unexpired membership fees.	Amended to state that the supplier can only terminate the consumer's membership when the current membership expires or by giving 14 days' notice and rebating fees.	Conditions (10)

Conditions (11)	1(f): potentially allowed the supplier to cancel the contract in certain circumstances without acknowledging the consumer's right to a refund of membership fees.	Deleted.	
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<b>Other information</b>	Sitters explained that all potential consumers are informed of the published rates of employee pay before entering into the contract.		
<b>Undertakings accepted</b>	12 June 2003	11 terms revised or deleted	

**The Steeplechase Co (Cheltenham) Ltd t/a Cheltenham Racecourse**

<b>Name of business</b>	The Steeplechase Co (Cheltenham) Ltd t/a Cheltenham Racecourse	<b>Lead TSD</b>	Gloucestershire County Council
<b>Trading sector</b>	Entertainment, catering and accommodation (sporting venues)	<b>Contract identifier</b>	2001-2002 Cheltenham Racecourse brochure and member's guide

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated) or DSRs breach</b>	<b>How changed</b>	<b>New term</b>
Whole contract	DSRs Regulations 7(1)(a)(vi) and 7(2): consumers who enrolled by distance means were not informed of the existence of a right to cancel under the DSRs or how to exercise it.	New term provides consumers the right to cancel with a full refund within seven days of membership commencing. However, if there is a race meeting within this seven-day period members cannot cancel after the race meeting.	Cancellation of Membership
<b>Member's Guide:</b>			
Please Note (third paragraph)	1(b): potentially unfairly excluded the supplier's liability for the cancellation of race meetings.	Revised to provide that refunds will not be given where race meetings are abandoned or postponed due to unforeseeable circumstances, except where caused by the supplier's negligence. The term includes a non-exhaustive illustrative list of 'unforeseeable circumstances'.	Abandonment or postponement of a meeting

2001-2002 Cheltenham Racecourse brochure:			
Despatch of Orders	Regulation 5 and 1(b): unfairly transferred the risk of membership badges and tickets failing to arrive by post. Furthermore, potentially unfairly excluded the supplier's liability where non-arrival was caused by its own negligence.	Amended to recognise the supplier's liability where the non-arrival of badges and tickets is due to its negligence. The term has also been revised to provide that in the case of membership including the Festival the supplier will send all badges by Royal Mail Special Delivery. The term sets out that for membership without the Festival the supplier will send the badges by Special Delivery if the consumer covers the Royal Mail fee and the supplier's administrative costs.	Despatch of Orders by Post
The Open/The Festival/ Group Booking Form (The Steeplechase Company ...'lost in the post' claims)	Regulation 5 and 1(b): unfairly transferred the risk of membership badges and tickets being lost in the post and potentially unfairly excluded the supplier's liability where non-arrival was caused by its own negligence.	Deleted. Also see comments on 'Despatch of Orders' above.	
Membership Application Form ('I understand ...in May 2002')	1(h) and DSRs Regulation 24: provided that membership would automatically be renewed by direct debit.	New term makes clear that members are sent a letter explaining how to renew their membership if they so wish. Also revised to provide that existing members already paying by direct debit will be given adequate opportunity to inform the supplier that they do not wish to renew their membership.	Renewal of Subscription

<b>Other information</b>	Further to the OFT's guidance, Cheltenham Racecourse, for reasons of clarity, now includes all its terms and conditions in one document.
<b>Specific reservations</b>	<p>'If a badge is mislaid, stolen or lost Members will be offered the opportunity of re-subscribing in full for a replacement.' - This term, included in the Member's Guide, was challenged under Schedule 2 paragraph 1(e) and Regulation 5 on the basis that it required consumers to pay the full subscription fee again where a membership badge was mislaid or stolen, irrespective of the actual costs experienced by Cheltenham Racecourse, in order to protect the supplier against false claims. Subsequently, the term was revised to provide that the fee charged for replacing a membership badge would directly reflect the number of races remaining in the season when the badge was mislaid or stolen (after taking the additional value of the annual Festival into consideration).</p> <p>The OFT remains concerned that the term could potentially allow Cheltenham Racecourse to impose an unfair financial penalty in circumstances where membership badges are mislaid, stolen or lost. However, in light of the amendments made to the term, the OFT will refrain from taking further enforcement action unless it received evidence of potential or actual unfairness to the detriment of consumers.</p>
<b>Undertakings accepted</b>	12 June 2003 <span style="float: right;">Four terms revised or deleted</span>

<b>Name of business</b>	Thames & Kennet Marina Ltd	<b>Lead TSD</b>	Oxfordshire County Council
<b>Trading sector</b>	Other recreational goods and services (berthing facilities)	<b>Contract identifier</b>	Berthing Licence and General Berthing Conditions

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Renewal/Application for Berth Contract:			
'No refunds...'	1(d): allowed the supplier to retain all prepayments in full if the consumer cancelled the agreement.	Deleted.	
Credit Card Mandate, 2	1(b): restricted the consumer's right to set-off by providing that the supplier could deduct monies from the consumer's credit card in respect of any money not paid to the supplier 30 days after the date of the invoice.	Deleted.	
General Berthing Conditions:			
2(a)	1(k): allowed the supplier to move the consumer's vessel to any other part of the marina.	Revised: the term makes clear that the consumer will continue to enjoy his or her rights under the licence if the supplier moves the vessel.	2(a)
2(b)	Regulation 7: use of legal jargon ('tort').	Revised: reference to 'tort' removed.	2(b)
(c)	1(e): provided that the consumer would indemnify the supplier against all loss, damage, costs, claims or proceedings incurred by or instituted against the supplier where these were caused by the consumer's vessel, except to the extent that the supplier was responsible. Regulation 7: use of legal jargon ('indemnify').	Revised: the consumer's liability is limited to costs reasonably incurred by the supplier, and the term also explicitly states that the supplier is under a duty to mitigate any loss that it incurs.  The reference to 'indemnity' was removed.	2(c)

2(d)	Regulation 7: reference to 'adequate' insurance requirements without indicating what was meant by 'adequate'.	Revised: the consumer is clearly required to insure his or her vessels and vehicles fully.	2(d)
4(d)	1(e): required the consumer to pay commission to the supplier on sale of his or her vessel, even where the supplier had had no involvement in the sale.	Deleted.	
4(f)	Regulation 5: excluded the consumer's right to assign by stating that the berthing contract could not be transferred. 1(d): provided that no refund of prepayments would be paid to the consumer if he or she chose to end the agreement early.	Deleted (see 'Other information' box).	
5	Regulation 5: allowed the supplier unfair enforcement powers by providing that it could exercise a general lien on the consumer's vessel or other property when the consumer owed any sums to the supplier. 1(e) and 1(i): provided that interest on overdue monies would be payable at an interest rate to be set by the supplier. Regulation 7: use of legal jargon ('lien').	Deleted.	
6(a)	1(g): allowed the supplier to terminate the agreement after an unreasonably short period of notice.	Deleted.	
6(b)	1(e): provided that the consumer must pay all costs arising from the removal and storage of the consumer's property if left at the marina after the termination of the agreement.	Revised term provides that the consumer must pay the reasonable costs arising.	5(a)

9	Regulation 7: unexplained reference to statute (the Torts (Interference with Goods) Act 1977).	Revised term provides the consumer with information as to where to go to get further details of consumer rights under the Act.	8
10	1(k): allowed the supplier wide discretion over whether the consumer's boat should be worked on or moved.	Revised: provides that the supplier must act reasonably in determining whether the consumer's boat should be worked on or moved.	9
14	1(a): unfairly excluded the supplier's liability for death or personal injury where this was not caused by the supplier's negligence or deliberate act.	Revised: accepts the supplier's liability for death or personal injury caused by its negligence, act or omission. The reference to 'deliberate' acts was deleted.	13
15	1(i): bound the consumer to the bye-laws of the harbour and navigation and other authorities, without giving the consumer an opportunity to become acquainted with these provisions.	Revised: provides that details of the bye-laws referred to will be made available to the consumer.	14
24	Regulation 7: not written in plain and intelligible language (unclear reference to cars being left in the car park 'with any type of cover').	The reference to cars left in the car park 'with any type of cover' has been removed.	23
27	1(e): allowed the supplier to claim all costs it incurred in contacting or collecting money from a consumer who had changed his or her contact details without advising the supplier.	Revised: only allows the supplier to claim reasonable costs incurred.	26
28	1(k): provided that the consumer agreed to transfer his or her vessel to a berth at any new marina location should the supplier decide to relocate. Also provided that the consumer must move to the new marina location at or by a time as determined by the supplier.	Deleted.	

29	1(j): allowed the supplier to introduce and amend new regulations relating to the administration of the harbour and marina premises, which bound the consumer as part of his or her contract.	Deleted.	
30	1(d): provided that the supplier would not pay any refunds after the berth was contracted and paid for.	Deleted.	

<b>Other information</b>	The supplier put a revised version of the agreement into use that still contained the provision regarding exclusion of the consumer's right to assign that the OFT had objected to. This provision was originally at term 4(f) but was at term 4(e) in the later version of the agreement. The supplier agreed to delete this provision from the next print run of the agreement, and was warned by the OFT not to attempt to rely on this provision unfairly in the meantime.
<b>Specific reservations</b>	<p>The OFT's position was reserved on term 8 of the agreement (at term 7 in the latest version seen by the OFT). The term provided that consumers may not lend or transfer the berth. It was revised to state that consumers may not lend or transfer the berth without the prior written consent of the supplier, but the revised term does not provide that the marina will not unreasonably withhold this consent. The OFT was concerned that this might lead to consumers being led to believe that the supplier had absolute discretion over whether consumers could assign the benefit of their agreement. However, in light of statements made by the supplier as to its intentions regarding this term, it was decided that further enforcement action in relation to the term was not currently justified.</p> <p>The OFT's position was also reserved in respect of term 12 of the agreement (at term 11 in the latest version seen by the OFT), which provides that the consumer is not entitled to the use of any particular berth. The OFT was concerned that consumers might not be aware that they were not contracting for a particular berth at the marina as this provision was not prominent in the agreement, but in the absence of evidence of consumer detriment arising it was decided that further enforcement action in relation to the term was not currently justified.</p>
<b>Undertakings accepted</b>	13 May 2003 <span style="float: right;">20 terms revised or deleted</span>

<b>Name of business</b>	Titan Travel Ltd t/a Titan HiTours	<b>Lead TSD</b>	Surrey County Council
<b>Trading sector</b>	Holidays	<b>Contract identifier</b>	Booking & Travelling Terms and Conditions 2001

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
1. Your holiday contract	1(q): provided that the contract was subject to the exclusive jurisdiction of the English courts.	Revised to state that the contract is subject to the jurisdiction of the English courts unless the consumer has made the booking in Scotland or Northern Ireland, in which case any disputes may be dealt with by the local courts.	1. Your holiday contract
4. Paying for your holiday	Regulation 7: provided that certain holidays specified in the brochure were subject to an additional non-refundable deposit. The OFT considered that the reference was unclear and confusing.	Deleted.	
5. The Package Travel, Package Holidays and Package Tours Regulations 1992	1(b): appeared to exclude the company's liability for excursions or tours booked through its suppliers or agents.	Revised to state that the company did not accept liability for excursions or tours booked through an independent third party.	5. The Package Travel, Package Holidays and Package Tours Regulations 1992
6. If you change your booking	1(e) and Regulation 7: provided that changes to certain travel arrangements such as Apex tickets could not be made without a 100% cancellation charge.	Clarified to provide that changes to certain arrangements will incur a 100% cancellation charge of that element of the booking.	6. If you change your booking

<p>8. If we change or cancel your holiday</p>	<p>1(b) and 1(k): failed to reflect fully the consumer's entitlements under Regulation 13(2) of the Package Travel, Package Holidays and Package Tours Regulations 1992 ('PTRs') upon a major change or cancellation of the booking by the company. Also failed to provide adequate compensation where appropriate.</p> <p>1(b): definition of minor changes included changes that may have been considered material in some circumstances.</p> <p>1(b): defined major changes as an exhaustive list, which excluded liability for other changes that may have been considered material in the circumstances.</p> <p>Regulation 7: circular and inaccurate definition of 'force majeure' events for which compensation would not be payable.</p> <p>1(b) and 1(k): provided that routings and itineraries could be subject to variation.</p>	<p>Revised to provide that the consumer may accept if available a holiday of comparable or superior quality at no extra cost, a holiday of lower quality and a refund of the difference in price, or a full refund, in addition to receiving appropriate compensation.</p> <p>Definition revised to remove changes that could be considered material in some circumstances.</p> <p>Revised to state that the list provides examples of major changes.</p> <p>Definition of 'force majeure' revised to reflect more closely the definition provided by the PTRs.</p> <p>Revised to include variations to routings and itineraries as examples of major changes.</p>	<p>8. If we change or cancel your holiday</p>
<p>11. Our liability to you</p>	<p>1(a): appeared to exclude the company's liability for death, injury and illness caused by the acts or omissions of employees, agents or suppliers.</p> <p>1(b): liability in all cases was limited to a maximum of the holiday price, and directly attributable expenses were limited to £48 per day.</p> <p>1(i): provided that the company's liability was limited by the relevant international conventions, copies of which were available from the Stationery Office.</p>	<p>Revised to provide that the company accepts liability for death, injury or illness caused by the acts or omissions of employees, agents and suppliers.</p> <p>Revised to state that liability was limited to a maximum of twice the price of the holiday, except for death, injury and illness.</p> <p>Revised to provide that copies of the relevant international conventions are available on request from the company.</p>	<p>11. Our liability to you</p>

	1(q): provided that the company's acceptance of liability was subject to the consumer assigning his or her rights against the third party, thereby removing the consumer's right of action against that third party.	Deleted.	
12. Your responsibilities	1(b): excluded the company's liability for an airline's refusal to carry the consumer if the consumer fails to declare any medical conditions.  Regulation 5: allowed the company a wide right to terminate the holiday due to the disruptive, dangerous or annoying behaviour of the consumer.	Revised to provide that the company does not accept liability if the airline refuses to carry a consumer as a result of his or her failure to declare a medical condition.  Revised to provide that this right will be exercised reasonably.	12. Your responsibilities
13. Insurance	1(a): excluded the company's liability for death or injury due to the consumer's participation in hazardous activities.	Deleted.	

<b>Specific reservations</b>	The position of the OFT was reserved in respect of term 7 of the new booking conditions. Information supplied to the OFT in relation to term 7 was not considered sufficient to establish that the scale of cancellation charges represents a genuine pre-estimate of loss incurred by the supplier as a result of cancellations. However, after careful consideration, further enforcement action in relation to the term was not considered warranted.
<b>Undertakings accepted</b>	29 April 2003 <span style="float: right;">16 terms revised or deleted</span>

<b>Name of business</b>	Travel 2 Ltd t/a Travel 2 and Travel 4	<b>Lead TSD</b>	London Borough of Islington
<b>Trading sector</b>	Holidays	<b>Contract identifier</b>	Booking conditions 2000

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
3. Cancellations by the customer	1(e): provided that a consumer who cancelled his or her booking would incur the charges detailed in the term. The OFT considers that the charges might have exceeded a genuine pre-estimate of the losses incurred by the company as a result of the cancellation.	The scale of cancellation charges was deleted. The term has been revised to state that in the event of cancellation of the booking by the consumer the company will levy a charge that reflects the reasonable costs incurred in arranging and cancelling the booking. The term also warns that the charge is likely to increase the closer to departure that the cancellation is made.	5. If you cancel your holiday
4. Alterations by the customer	1(e): provided that alterations to the booking by the consumer may incur cancellation charges.	Revised to provide that the consumer will be charged for any further cost the company incurs in making the amendment.	4. If you change your booking
5. Surcharges and price alterations	1(l): price revision clause failed to comply with Regulation 11 of the Package Travel, Package Holidays and Package Tours Regulations 1992 ('PTRs'), and failed to provide the consumer with the options he or she is entitled to in the event of a significant price change.	Price revision clause deleted.	

6. Flight times	1(b): provided that the company was not liable for flight delays, contrary to Regulation 15 of the PTRs that provides that the company is liable for the proper performance of the contract by its suppliers.	Deleted.	
7. Cancellations by the company	1(b) and 1(k): failed to reflect fully the consumer's entitlements under Regulation 13 of the PTRs upon cancellation of the booking by the company.  1(b): limited the payment of compensation for cancellation of the booking by the company to cancellations that occurred after the balance due date.	Revised to provide that, in the event of cancellation of the booking by the company, the consumer will be entitled to take an alternative holiday of comparable standard, if available, at no extra cost (receiving a refund of the difference if the alternative costs less) or receive a full refund of all monies paid.  Deleted.	5. If we change or cancel your holiday
8. Alterations by the company	1(b) and 1(k): failed to reflect fully the consumer's entitlements under Regulation 13 of the PTRs upon a significant change to the booking by the company.  1(b): limited the payment of compensation for significant changes to the booking by the company to changes that occurred within eight weeks of departure.	Revised to provide that in the event of a significant change to the booking by the company the consumer will be entitled to take an alternative holiday of comparable standard, if available, at no extra cost (receiving a refund of the difference if the alternative costs less) or receive a full refund of all monies pay.  Deleted.	5. If we change or cancel your holiday
9. Force majeure	1(b): inaccurate definition of force majeure events for which compensation was not payable.	Definition of force majeure revised to reflect more closely the definition provided by the PTRs.	6. If we change or cancel your holiday

10. Reasonable compensation	1(b): failed to provide adequate compensation entitlements in the event of a significant change or cancellation of the booking by the company.	Revised to provide that the compensation levels stated do not exclude the consumer from claiming higher amounts if he or she is entitled to do so.	6. If we change or cancel your holiday
12. Your rights	1(b): provided that the maximum amount of compensation was payable only where the consumer had obtained no enjoyment from the holiday, and that in other situations a proportion of the maximum at the company's discretion would be payable. 1(i): provided that the company's liability was limited by the provisions of the relevant international conventions, which the consumer was unlikely to be aware of. 1(b): excluded the company's liability for delays, diversions or rescheduling by air carriers.	Deleted.  Revised to state that copies of the relevant conventions are available upon request.  Deleted.	9. Our liability to you
16. Brochure particulars	1(b) and 1(k): reserved the company's right to change brochure particulars and provided that the company endeavoured to inform the consumer of such changes before departure.	Revised to provide that the company will advise the consumer of any changes to the brochure particulars before booking.	12. Brochure particulars

<b>Undertakings accepted</b>	12 August 2003	14 terms revised or deleted
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<b>Name of business</b>	University of the West of England (UWE)	<b>Lead TSD</b>	South Gloucestershire Council
<b>Trading sector</b>	Other professional services (university accommodation)	<b>Contract identifier</b>	Licence to Occupy Residential Premises

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Acceptance of Terms and conditions; licensee's signature	Regulation 5: contained declarations that the student had read and understood the terms and conditions.	Amended to state that the document creates legally binding obligations and that the student should read the terms and conditions before signing the agreement.	
1.4	Regulation 5: required the student to compensate the University for any licence fee lost if another student left the accommodation due to his or her actions or behaviour, even though the other licensee may have acted capriciously or unreasonably in deciding to leave. Regulation 5: contained potential for double recovery of the licence fee as the student could only terminate the licence early by nominating a replacement student and paying the licence fee until the substitute student entered into a licence agreement with the University.	Deleted.	
1.5	1(e): allowed the University to charge a fixed administration fee of £50 when a request is received from a student to move.	Amended so that the student is not charged for the first request to move accommodation, and on a second request the supplier will only seek the reasonable costs and expenses properly incurred as a result of the request to be moved.	1.4

2.1(a)	1(b): excluded the student's right to set-off.	Revised term does not limit the right to set-off.	2.1.1
2.1(c)	1(e): allowed the supplier to charge an administration fee of £25 for a failed direct debit.	Deleted.	
2.2(a)	Regulation 5: potentially imposed an unfair financial burden on the tenant by requiring him or her to pay unfairly vague charges ('other standing charges').	Revised term is specific as to what standing and other charges the University can levy against the student.	2.1.5
2.3(b)(i)	Regulation 5: potentially imposed an unfair financial burden on the tenant by requiring him or her to pay unfairly vague charges ('costs, charges and/or expenses').	Revised term explains that the student is only liable for reasonable costs and expenses properly incurred by the University.	2.3.1
2.3(d)	1(i): prohibited the student from doing anything that might make void or increase the premium on the insurance of the building, without explaining what behaviour would have this effect. Regulation 7: use of legal jargon ('void or voidable') and not written in plain and intelligible language.	Deleted.	
2.3(g)	Regulation 5: had the potential to impose an unreasonable restriction on the student by prohibiting him or her from having any rubbish in the room.	Revised to prohibit only unreasonable amounts of rubbish.	2.52
2.3(h)	Regulation 5: allowed the landlord unfair discretion to decide whether the student was in breach of the contract by prohibiting the student from causing nuisance or annoyance to the University.	Revised to remove prohibition on causing annoyance or nuisance to the University.	2.6.1

	Regulation 5: imposed an unreasonable restriction on the student by prohibiting him or her from holding 'parties' in the accommodation without the prior permission of the University.	The prohibition on holding 'parties' was deleted.	
2.3(j)	Regulation 7: unclear prohibition on displaying 'any advertisement, sign or notice'.	Revised to make clear that the student may only attach posters, signs and notices to the notice-boards provided by the University.	2.7
2.3(k)	Regulation 5: allowed the University potentially unfair discretion to decide whether the student was in breach of the agreement by prohibiting the student from doing anything that the University considered to be immoral.	Revised to prohibit use of accommodation for any illegal purpose.	2.4.3
2.3(l)	Regulation 5: imposed unfairly wide restrictions on the student by prohibiting him or her from bringing any furniture, fittings or furnishings into the room without the prior written consent of the University, and restricting the right to bring electrical appliances into the room. Regulation 7: the term referred to 'NICEIC' without giving an explanation of what it meant.	The word 'furnishings' and the reference to NICEIC have been deleted from the term. The revised term makes clear that the University will not refuse its consent to the bringing into the room of furniture, fittings or electrical appliances unreasonably.	2.5.3
2.3(p)	1 (i): required the student to comply with rules and regulations made by the University from time to time when it was not clear whether the student would be given the opportunity to read the rules and regulations before entering into the agreement.	Revised to make clear that the student is only required to comply with rules and regulations that were reasonably required by the University for the proper management or improvement of the building and had been notified to the student before the start of the agreement.	2.8.5

2.4 (b)	<p>1(b): had the potential unfairly to transfer repairing obligations to the student by requiring the student to keep the accommodation in good condition and clean repair, when the student may not have received it in this condition.</p> <p>Regulation 7: referred to 'clean repair', which is not plain and intelligible language.</p>	<p>Revised to explain that the student must use the room and building in a responsible, tenant-like manner. It has been made clear that the student does not have to do any repairs that would put the room or building in a better state of repair or decoration than at the start of the agreement, and that the student is not responsible for fair wear and tear.</p> <p>Reference to 'clean repair' deleted from the term.</p>	2.4.2
2.5(a)	<p>1(b): had potential unfairly to transfer the repairing obligations of the University and obligations with regard to electrical, gas heating and cooking apparatus to the student.</p>	Deleted.	
2.6	<p>Regulation 5: imposed a potentially unfair requirement that all reports of disrepair, damage, or defect be made in writing.</p>	Revised to remove the reference to written reports.	2.10.4
2.7(b)	<p>Regulation 7: unclear requirement that the student must not 'affix anything to the Room or Building'.</p>	Revised to make clear that the student may only attach posters, signs and notices to the notice-boards provided by the University.	2.7
2.11	<p>1(b): had the effect of excluding the University's liability for not performing its contractual obligation to allow the student quiet enjoyment of the room by providing that the University would be allowed access to carry out 'other works'.</p>	Revised to make clear that the University's right of entry to carry out 'other works' only applies when such works are necessary to comply with a lawfully imposed obligation or requirement.	2.10.5

2.12	Regulation 7: use of legal jargon ('indemnity').	Deleted.	
2.12(a)	1(b): potentially transferred some of the University's repairing obligations to the student, by requiring the student to reimburse the University for any costs incurred as a result of damage, loss or cleaning required to the room.	Revised to state that the University will only seek to charge the student the reasonable costs properly incurred when damage occurs as a result of the student's failure to comply with his or her obligations under the agreement.	2.13.1
2.12(b)	1(e): gave the University absolute discretion to decide what charges should be levied for damage to accommodation.  Regulation 5: imposed collective liability on students for damage when the individuals responsible could not be identified, and gave the University absolute discretion to decide what proportion of such damage the student should pay for.	Revised to require that the student pay a fair proportion of the reasonable costs and expenses properly incurred by the University in remedying any loss or damage caused to the accommodation where the University is unable to identify those who have caused the loss or damage.  Revised to provide that the student has a right to appeal if he or she believes that the University has acted unreasonably in asking him or her to pay for anonymous damage.	2.13.2
2.12(c)	1(e): allowed the University to charge a flat fee of £25 in the event of University employees being called out because of loss of keys, nuisance or other unreasonable behaviour.	Revised to state that the student would only be liable for reasonable costs and expenses incurred where University staff were called out.	2.13.3

2.14	1(e): potentially sought to transfer inappropriately to students the legal costs incurred in recovering arrears of the licence fee or other sums due.	Revised to provide that the student must pay the reasonable costs and expenses properly incurred by the University in recovering any arrears of the licence fee or other sums due from the student, except where a court decides that the student should not have to pay those costs.	2.13.4
2.15(a)	1(b): may have had the effect of unfairly transferring repair obligations to the student by stating that the room must be returned in good clean condition and order when the room may not have been received in this state.	Revised to state that the room, contents and building should be left in the repair and condition required by the agreement.	2.14
2.15(b)	Regulation 5: had the potential to allow the University unfair enforcement powers as the term was inconsistent with the provisions of s12 and s13 of the Torts (Interference with Goods) Act 1977, because it allowed the University to dispose of goods left behind by the student at the end of the agreement as it saw fit. 1(b): unfairly excluded the University's liability for any damage or loss caused to belongings left behind by the student at the end of the agreement.	Deleted.	
2.15(c)	1(b): unfairly excluded the University's liability for any damage or loss caused to belongings the student may leave behind whilst the building was closed. 1(o): allowed the University to close the accommodation between whatever dates it chose, potentially allowing	Deleted.	

	the supplier unfairly to withdraw services at will.		
4.1	Regulation 5: allowed the University potentially unfair enforcement powers by permitting it to withhold tuition and access to the University's facilities in the event of any breach of the terms and conditions.	Deleted.	
4.2	1(b): sought to exclude the liability of the University for any loss or damage to the tenant's property.	Revised to state that the University would not be responsible for any loss or damage to tenant's property except where the loss or damage is caused by fault on the part of the University.	4.1
4.3	Regulation 5: allowed the University unfair enforcement powers by stating that the University could re-enter the student's room and terminate the licence without informing the student that the University must obtain a court order before evicting him or her.	A statement that the University must obtain a court order to evict the student was added at term 5.	5, 5.3
4.5	Regulation 5: imposed an onerous obligation on the student in requiring him or her to comply with s196 of the Law of Property Act 1925, when common law regarding service of notices would give the University ample protection. Regulation 7: unexplained reference to the Law of Property Act 1925.	Revised so that the term provides that a notice sent to the other party by first class post will be deemed to have been served two days after the letter was posted, provided that the letter is not returned through the Post Office as undelivered. Reference to the Law of Property Act 1925 was deleted.	4.2.3
4.7	1(a) and 1(b): may have unfairly excluded liability for non-performance of contractual obligations on the part of the University by stating that the University was not obliged to provide several essential services (including electricity, gas	Deleted.	

	<p>and telephone). Withdrawal of these services could have interrupted the student's entitlement to quiet enjoyment of the property. Also attempted to exclude liability for accident, injury, damage or loss that may have been the fault of the University.</p> <p>Regulation 7: potentially excluded the University's duty under s4 of the Defective Premises Act 1972. By virtue of s6 of this Act, any term that purports to exclude the operation of s4 is void.</p>		
5.1	<p>Regulation 5: allowed the University unfair enforcement powers by stating that the University could terminate the agreement without informing the student that the University must obtain a court order before evicting him or her.</p> <p>Regulation 7: use of legal jargon ('determined').</p>	<p>A statement that the University must obtain a court order to evict the student was added to term 5.</p> <p>Term 5.1 was rewritten in plain and intelligible language.</p>	5, 5.1
5.2	<p>1(f): when read with term 5.1 this could have allowed the University unfair cancellation rights.</p> <p>Regulation 5: gave the University unfair discretion over whether to accept a replacement student for the accommodation. Potentially allowed the University to make a student liable for the whole term without attempting to mitigate its loss.</p>	<p>Revised to state that the student may terminate the agreement before its end date with the University's prior consent. The new term provides that the University's consent will not be unreasonably withheld or delayed if the student nominates a replacement student enrolled with and acceptable to the University, and that student enters into a new licence agreement with the University.</p>	5.4

	<p>Regulation 5: gave the University unfair rights to impose vague charges on the tenant by billing for the University's outgoings and administration costs.</p> <p>1(e): potentially allowed the University to charge student for outgoings incurred after leaving the accommodation.</p>	<p>Revised to specify that the student will only be charged the reasonable costs and expenses properly incurred by the University, resulting from a request to terminate the agreement.</p> <p>Revised to state that the charges for bills are applicable up to the date when the student leaves. The references to 'outgoings' were clarified. The new term refers instead to 'all Council Tax (if it applies), standing charges and bills for gas, electricity, telephone, television, water and sewage disposal and any other services supplied to the room'.</p>	
5.3	<p>1(e): allowed the University to charge administration costs that were not clearly set out, and therefore may have constituted an unfair financial burden.</p>	<p>Revised to specify that the student will only be charged the reasonable costs and expenses properly incurred by the University, resulting from a request to terminate the agreement.</p>	5.4
5.4	<p>1(e): could potentially have acted as an unfair financial penalty. The term provided that if the licence was terminated by the University as a result of non-payment of the licence fee or other breach of the agreement by the student, the student would reimburse the University for the loss of the licence fee up until the end date of the licence. This did not reflect the University's obligation to mitigate its loss by attempting to find a replacement student to move into the room.</p> <p>The term also allowed the University to impose a vague charge in respect of 'other</p>	<p>Revised to state that if the University, by taking reasonable steps, is able to find another student enrolled with and reasonably acceptable to the University who is willing to enter into a licence agreement in respect of the room, the original student will only be liable to pay the licence fee up to the date that the replacement student enters into a licence agreement with the University.</p> <p>Revised to specify that the student must pay any reasonable costs and</p>	5.3

	outgoings and administration costs' that were not defined in the agreement, and did not specify that the student was only liable for such costs until he or she left the accommodation.	expenses properly incurred by the University resulting from the student's breach of the licence agreement. The revised term is also clear as to what charges are included in 'other outgoings' and provides that the student is only liable to pay such charges up until the date that he or she leaves the accommodation.	
5.6	Regulation 5: allowed the University a potentially unfair enforcement power to retain prepayments made by the student.	Deleted.	
5.7	Imposed a potentially unfair obligation on the student to pay for damage to communal areas of the building that had occurred when the student was not in occupation.	Revised to provide that the University will take note of the date when the student left the premises in assessing repair costs to the room, building or contents resulting from damage that cannot be attributed to any individual.	5.7

<b>Other information</b>	The OFT also reviewed a draft version of the University's Residents' Handbook for fairness under the Regulations, as the Handbook was incorporated into the agreement by the terms of the Residential Licence Agreement. The OFT raised a number of concerns regarding the provisions of the Handbook, most of which related to areas in which the Handbook was inconsistent with the Residential Licence Agreement. The University was advised to ensure that the provisions of the Handbook were consistent with the requirements of the Regulations.
<b>Specific reservations</b>	The OFT's position was reserved on term 2.13.4 of the revised agreement. While significant revisions were made to the term, at 2.14 in the original agreement, the OFT had some residual concerns that the term might unfairly render the student liable to pay legal costs incurred by the University in pursuing court proceedings in situations where the court made no order as to costs. However, in the absence of evidence of consumer detriment arising, it was decided that further enforcement action in relation to the term was not justified.
<b>Undertakings accepted</b>	7 July 2003 <span style="float: right;">38 terms revised or deleted</span>

<b>Name of business</b>	Vauxhall Motors Ltd t/a Network Q	<b>Lead TSD</b>	Bedfordshire County Council
<b>Trading sector</b>	Extended warranties and guarantees	<b>Contract identifier</b>	Network Q Assistance Programme – May 2001

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Page 8, What's guaranteed (first and second paragraphs)	Regulation 7: use of legal jargon ('consequential loss' and 'indemnity').	Revised to remove jargon.	Page 8, What's guaranteed (first and second paragraphs)
Page 12, term 3	Regulation 7: use of legal jargon ('conditions precedent').	Revised to remove jargon.	Page 12, term 3
Page 12, term 6	1(n): unfairly limits the supplier's obligation, and/or that of its representative, to honour commitments made in oral statements.	Revised to ask consumers to ensure that any changes they require are put in writing.	Page 12, term 6
Page 14, term 11	Regulation 5: provided that the guarantee is not transferable under any circumstances, therefore excluding the consumers' right to assign.	Revised to provide that the guarantee can be assigned subject to an administration fee.	Page 14, term 11
Page 14, term 9, bullet point 5	Regulation 7: use of legal jargon ('consequential loss').	Revised to remove jargon.	Page 14, term 9, bullet point 5

<b>Undertakings accepted</b>	7 April 2003	Five terms revised
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<b>Name of business</b>	Virgin Atlantic Airways Ltd	<b>Lead TSD</b>	West Sussex County Council
<b>Trading sector</b>	Road, rail, air and sea travel	<b>Contract identifier</b>	Conditions of Carriage

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
2.1.2	1(n): unfair 'entire agreement' clause with potential to exclude liability for verbal statements.	Deleted.	
3.1.7(a)	1(e): charge of £50 for issuing a replacement ticket was considered disproportionate to the cost incurred.	Charge reduced to £30.	3.1.7(a)
3.1.7(c)	1(e): administration fee of no less than £100 in the event of a lost ticket being used or found was considered disproportionate to the cost incurred.	Revised to refer to a reasonable administration fee.	3.1.7(c)
10.8	1(b): excluded liability for consequential loss if carriage did not take place 'for any reason whatsoever'.	Deleted.	
15.3.2	1(b): contained unfairly low limitations on the airline's liability for damage to baggage.	Limitations on liability for such damage increased to the minimum levels required by the Warsaw Convention.	15.3.2

<b>Other information</b>	The contract was revised to reflect the changes made to IATA's Recommended Practice 1724.	
<b>Undertakings accepted</b>	15 August 2003	Five terms revised or deleted

<b>Name of business</b>	Virgin Wine Online Ltd	<b>Lead TSD</b>	Royal Borough of Kensington & Chelsea
<b>Trading sector</b>	Food and drink	<b>Contract identifier</b>	Terms and Conditions (used on its website)

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
8.2	1(b): unreasonable time limit on claims.	Revised to accept notification within 90 days of bottles delivered in a broken or spoiled state.	7.2
8.5	1(b): imposed an unreasonably short timescale of seven days for claims in respect of faulty or misdescribed goods.	Deleted.	
8.5	1(m): refunds, credits and replacements would only be given in exceptional circumstances at the 'absolute discretion' of the supplier.	Deleted.	
8.5	1(n): had the potential to exclude liability for breakage that became apparent some time after delivery.	Deleted.	
8.6	Regulation 7: a less than helpful statement regarding statutory rights.	Revised to explain clearly the position regarding statutory rights and relevant sources of information.	7.5
10.2	1(b): exclusion of liability for defective or misdescribed goods.	Deleted.	
10.2	1(b): exclusion of liability for poor services or work and materials.	Deleted.	
10.2	Regulation 7: obscure legalistic references to liability being 'excluded to the fullest extent permitted by law'.	Deleted.	

11.1	1(a): exclusion/restriction of liability for death or injury caused by breaches other than negligence or fraudulent misrepresentation.	Revised to remove the limitation on financial liability for all claims for death or personal injury.	10.1
11.2	1(a): exclusion/restriction of liability for death or injury. This was achieved by excluding liability for all 'indirect, consequential or economic...losses'.	Revised to accept liability for 'foreseeable loss or damage'.	10.2 (i)
11.2	1(b): excluded liability for defective or misdescribed goods.	Revised to show that such liability would be honoured in circumstances where supplier is in breach.	10.2 (ii)
11.2	1(b): excluded the consumer's right to monetary compensation, including consequential loss.	Liability for consequential loss and negligence has been clarified.	10.2 (i) and (ii)
15.1	1(b): excluded or restricted liability for failure to perform obligations - certain examples of events likely to be responsible for failures would be within the control of the supplier.	Limitations on liability for failure to deliver have been reduced to circumstances clearly outside its control.	14.1
15.1	1(b): excluded or restricted liability for delay.	Limitations on liability for delay in delivering have been reduced to circumstances clearly outside supplier's control.	14.1
15.2	Regulation 7: seemed to permit the supplier not to perform contractual obligations at all.	Deleted.	
15.5	1(q): restricted the consumer's remedies to English law and exclusive jurisdiction of courts of England and Wales.	Applicable law correctly stated as 'UK law' and relevant courts are the courts of the UK.	14.4
Win your weight in wine:			
2.1	1(a): exclusion of liability for death or injury contained in a wordy and unclear term.	Substituted a clear statement regarding liability. Also added two new clauses clarifying consumer's liability and the risks inherent in handling wine.	2.1, 2.2 and 2.3.

2.1	1(b): exclusion of liability for defective etc goods contained in a wordy and unclear term.	Substituted a clear statement regarding liability. Also added two new clauses clarifying consumer's liability and the risks inherent in handling wine.	2.1, 2.2 and 2.3
2.1	1(b): restriction on amount or type of liability contained in a wordy and unclear term.	Substituted a clear statement regarding liability. Also added two new clauses clarifying consumer's liability and the risks inherent in handling wine.	2.1, 2.2 and 2.3
3.4	1(b): exclusion/restriction of liability for delay.	Limitations on liability for delay or failure to deliver have been reduced to circumstances clearly outside supplier's control.	3.4
3.4	1(b): exclusion/restriction of liability for supplier's non-performance.	Limitations on liability for non-performance have been reduced to circumstances clearly outside its control.	3.4
3.6	1(q): restricted the consumer's remedies to English law and exclusive jurisdiction of courts of England and Wales.	Applicable law correctly stated as relevant 'UK law' and relevant courts are the courts of the UK.	3.6

<b>Virgin Wine Club:</b>			
1.4	1(k): unrestricted right to change structure and benefits of the club.	No longer imposes changes in relation to contracts existing at the time of such change.	1.4
1.8	1(g): supplier's right to cancel without notice.	Allows for a notice period of 30 days upon cancellation.	1.8
1.13	1(b): exclusion/restriction of liability for delay.	Deleted.	
1.14	1(a): exclusion/restriction of liability for death or injury. Applicable to causes other than negligence.	Deleted.	

<b>Other information</b>	<p>Virgin Wine Online Ltd agreed to amend its terms to comply with the Consumer Protection (Distance Selling) Regulations 2000 ('DSRs') with respect to the following:</p> <ul style="list-style-type: none"> <li>• the manner in which notice of cancellation should be given by a consumer to the supplier or other person - Regulation 10(4) (a)-(d);</li> <li>• cancellation period – Regulation 11(2);</li> <li>• cancellation: reimbursement of any sum paid by or on behalf of the consumer – Regulation 14(1), and the period allowed – Regulation 14(3);</li> <li>• cancellation: the consumer's duty to take reasonable care of the goods - Regulation 17(2)(b);</li> <li>• performance of contract – Regulation 19.</li> </ul>
<b>Undertakings accepted</b>	7 May 2003 <span style="float: right;">26 terms revised or deleted</span>

<b>Name of business</b>	your-move.co.uk ltd trading as Your Move Estate Agents	<b>Lead TSD</b>	North Yorkshire County Council
<b>Trading sector</b>	Estate agency, house purchase, surveying and valuation	<b>Contract identifier</b>	EAR 5026 06/2002 Estate Agency Agreement

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	<b>New term</b>
Front Page: 'Please read this agreement ...and understand all of the terms and conditions'	Regulation 5: required sellers to make a declaration that they understood the terms and conditions whether or not this was the case.	Revised to remind sellers that if they do not understand any of the terms and conditions they should seek advice or ask for clarification before signing the agreement. Also see 'Other information' box.	'Please read this agreement... understand all the terms and conditions'
3.1.4	1(e): imposed an excessively high per month interest rate on all payments outstanding seven days after the account became due.	Undertaking accepted that term will be amended when agreement is next reprinted.	Not yet amended
3.2	Regulation 5: required sellers to agree that the agreement was correct rather than confirming that the factual particulars of the property for sale were correct.	Revised to inform sellers about the requirements of the Property Misdescriptions Act 1991.	3.2
4	1(e): could be used to impose a financial penalty on sellers if Your Move considered them to be in breach of their obligations by making the sellers responsible for all costs etc incurred by Your Move. Regulation 7: used legalistic jargon such as 'indemnify'.	Revised to advise sellers that they will be liable for reasonable costs incurred by Your Move as a result of the sellers' wilful or negligent breaches of the agreement.  Removed legal jargon.	3.3
5	1(p): allowed Your Move to sub-contract its duties or freedoms under the agreement to a third party without notifying the seller.	Revised so that Your Move will only appoint sub-agents with the sellers' consent.	4

6.1.2	<p>1(b): permitted Your Move to withdraw from the agreement at its own discretion and without any liability to the sellers.</p> <p>1(f): the term also permitted Your Move to withdraw from the agreement at will by allowing the supplier to give two weeks' notice. The sellers were obliged to give 13 weeks' notice under the terms of the Sole Agency agreement.</p>	<p>Revised to allow both parties to the agreement to terminate on two weeks' written notice after the expiry of the sole agency agreement.</p> <p>Revised to allow Your Move to terminate the agreement at any time with two weeks' notice where the sellers are in breach of the agreement, the branch selling the property closes or there is a change in ownership of the business.</p>	<p>5.1.1</p> <p>5.1.2</p>
7.1	1(p): allowed Your Move to assign the agreement at any time without informing the sellers.	Revised to allow Your Move to assign the agreement in circumstances where the sellers' rights are not materially affected.	6.1
7.2	Regulation 5: restricted the sellers' right to assign the agreement to a third party.	Changed to allow the sellers to transfer all rights and obligations to another person who has a legal right to sell, after they have completed a new agreement.	6.2
7.3	1(n): required any amendments to the agreement to be in writing signed by both parties.	Revised so that the entire agreement stipulation has been removed and acknowledges that the agreement replaces any other agreement between the parties for the sale of the property.	6.3
7.4	1(n): allowed Your Move to exclude liability for pre-sales information or representations made before the sellers entered into the agreement.	Deleted.	
7.6	1(q): prevented consumers outside England and Wales from starting legal proceedings in local courts.	Revised so that agreements for use by Scottish Branches will not exclude Scottish sellers' rights to take action in Scotland.	6.5

<b>Other information</b>	<p>The agreement did not comply with the requirements of the Estate Agents Act 1979 ('EAA') or the Estate Agents (Provision of Information) Regulations 1991. In addition, the term explaining the statutory duty to disclose personal interest in the sale of the property, and term 4 making sellers liable to make financial payment to Your Move if personal interest in the property was not disclosed properly, were misleading. The provision for payment of costs or other charges under term 3.1 did not comply with s18 (2) of the EAA, which requires a breakdown of expenses and charges under separate headings. These terms have been revised and now comply with the requirements of the estate agents legislation.</p> <p>The undertakings included the following:</p> <ul style="list-style-type: none"> <li>• term 3.14 will be amended when the agreement is next reprinted.</li> <li>• the wording on the signature box on the front page, particularly the words 'jointly and severally', will be amended and rewritten in layman's terms so that it is clear and intelligible to consumers signing agreements.</li> </ul> <p>In relation to both of these terms, Your Move will not enforce the clause unfairly so as to prejudice consumers.</p>
<b>Specific reservations</b>	The OFT's position has been reserved with regard to the definition of 'introduced'.
<b>Undertakings accepted</b>	20 August 2003 <span style="float: right;">11 terms revised or deleted</span>

## Action under Stop Now orders

### 48 Scan Computers International Ltd

<b>Name of business</b>	Scan Computers International Ltd	<b>Lead TSD</b>	Bolton Metropolitan Borough Council
<b>Trading sector</b>	Personal computers and related hardware	<b>Contract identifier</b>	Terms & Conditions

<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated) or DSRs breach</b>	<b>How changed</b>	<b>New term</b>
Term at head of contract 'All orders for goods accepted by Scan...'	1(n): excluded liability for oral representations and provided that variations had to be agreed by a director.	Deleted.	
1a	1(l): allowed the supplier to increase the price of goods after the contract had been concluded.	The contract makes it clear that consumer is to be informed if the price has changed from the published price prior to the conclusion of the contract.	Part I (a)
	DSRs Regulations 7(1)(a)(iii), 8(1) and 8(2)(a): allowed the supplier to increase the price of the goods after the contract had been concluded, therefore failing to make the price of the goods clear prior to conclusion of the contract.	The contract makes it clear that consumer is informed if the price has changed from the published price prior to the conclusion of the contract.	
1c	1(e): made an interest charge of 5% above the base rate of Barclays Bank plc on a daily basis on overdue accounts, potentially a disproportionate penalty for late payment.	Deleted.	

2	1(b): excluded liability for delay in providing goods by providing that delivery dates were merely an estimate and were not to be of the essence.	Revised to allow the consumer to cancel the contract without penalty when there is a delay in supplying the goods beyond the period allowed for performance of the contract.	Part II (b)
	DSRs Regulations 19(1) and 19(2): stated that delivery dates were estimates only and provided for Scan not to deliver as agreed.	If Scan is unable to deliver the goods as agreed it will inform the consumer of the delay and will reimburse the consumer in full.	
3	Regulation 5: supplier reserved the right to enter the consumer's property to recover goods.	Deleted.	
4	1(k): allowed the supplier to vary the goods after the contract was concluded.	Consumer is informed if the description of the goods has changed and is given the opportunity not to proceed with the order.	Part I (a)
	DSRs Regulations 7(1)(a)(ii), 7(1)(b) and 7(1)(c): allowed the supplier to vary the goods.	Consumer is informed if the description of the goods has changed and is given the opportunity not to proceed with the order.	
5a, 5b and 5c	1(b): imposed time limits on consumer making claims in respect of faulty or damaged or goods not corresponding to description or for any missing goods.	Deleted. New corresponding term only requires the consumer to report transit damage within 48 hours of delivery. The OFT considers that the revised term still has the potential for unfairness and has reserved its position in respect of the new term (see 'Specific reservations' box).	Part I (b)
5d	Regulation 7: unclear term.	Deleted.	
5e	1(b): obliged consumer to seek redress for faulty goods from manufacturer of products where the manufacturer provided direct product support.	Deleted.	

6	1(b): required consumer to bear carriage, telephone, postal and other charges for pursuing redress for faulty goods.	Deleted.	
7a	1(b): excluded/limited liability for defective goods by providing that if the goods were returned without original packaging in 'stock condition' the company reserved the right at its sole discretion to accept the return of the goods, rectify the goods or issue a credit note and reserved the right to charge a 'restocking' fee'.	Deleted.	Part II (c)
DSRs Regulations 10 and 11: consumer was required to obtain permission from a director before he or she was able to return goods. Term gave Scan sole discretion whether to accept the return of goods. DSRs Regulation 14(1): the contract provided for Scan only to provide a credit note when goods were returned. DSRs Regulation 17(2)(b): consumer was required to return goods in stock condition and in the original packaging.	Consumer only has to send a notice of cancellation during the cooling-off period to cancel the contract.  Upon cancellation consumer will receive a full refund, not a credit note.  Consumer is required to take reasonable care of the goods.		
7b	1(b): limited liability for defective goods by charging carriage costs. Transferred risks associated with the return of faulty goods to consumer.	Deleted.	
DSRs Regulation 14(1): required the consumer to pay for both the cost of the delivery and return in the event that the goods were returned. DSRs Regulation 17(6): provided that goods returned were to be at the			

	risk of the consumer until actual receipt by the supplier.		
7c	1(m): supplier finally determined whether goods were faulty. 1(e): made a charge of 25% of the invoice value where the supplier found that the goods being rejected contained no fault.	Deleted.	Part II (c)
	DSRs Regulation 14(1): provided for Scan to charge a 25% restocking fee when non-faulty goods were returned. Also permitted Scan not to refund the initial delivery charge.	Consumer to receive a full refund including the delivery charge where the cancellation takes place in accordance with the consumer's rights under the DSRs.	
7d	1(m): supplier finally determined whether goods were faulty.	Deleted.	Part II (c)
	DSRs Regulation 14(1): a £10 service charge was added if returns were not found to be faulty by the supplier.	Consumer to receive a full refund where the cancellation takes place in accordance with the consumer's rights under the DSRs.	
7e and 7f	1(b): allowed the supplier not to provide a full refund for rejected goods.	Deleted.	
	DSRs Regulations 10, 14(3) and 17(4): allowed the supplier not to provide a refund for returned goods unless the goods had been received complete within 30 days of purchase.	Deleted.	
7g	1(b): allowed the supplier to charge carriage costs for faulty goods being returned for rejection.	Deleted.	Part II (c)
	DSRs Regulation 14(1): provided that if credit was given the original carriage charge would not be credited.	Consumer to receive a full refund of the original carriage charge where cancellation takes place in accordance with the consumer's rights under the DSRs.	

8	1(a) and 1(b): excluded liability for death or injury and all consequential losses by limiting liability in all cases to the invoice value of goods.	Deleted.	
9b	1(q): made the contract subject to English law.	Deleted.	
9c	Regulation 7: reference to statutory rights without an explanation as to what they are or where consumer may find information about them.	The revised term advises that the consumer may wish to consult a solicitor or the local Citizens' Advice Bureau for an explanation of statutory rights.	Introductory comments

<b>Other information</b>	A large proportion of the terms and conditions were unfair and inconsistent with the Consumer Protection (Distance Selling) Regulations 2000 ('DSRs'). Scan Computers International Ltd elected to implement a completely new contract. Undertakings were given under the Stop Now Orders (EC Directive Regulations) 2001 on 1 May 2002 (see Annexe A).		
<b>Specific reservations</b>	The OFT reserved its position on the revised term replacing term 5(a)(b)(c). The OFT also reserved its position on a provision of the 'Voluntary Code' that provided that where the trader accepts that there was a defect in the goods at the point of delivery in the case of goods returned 28 days or more after the date of delivery it will only replace the goods or provide the consumer with credit. In relation to these terms it was considered that further enforcement action was not warranted and the OFT's position was therefore reserved subject to receipt of further evidence or complaints that the terms were operating unfairly.		
<b>Undertakings accepted</b>	1 May 2002 (under Stop Now orders)	21 terms revised	or deleted

### 3 STATISTICAL BREAKDOWN OF ACTION ON CASES BY THE OFT

**TABLE 3.1: BREAKDOWN OF CASES CLOSED**

Case outcome	Apr - Sept 2003	All cases to end Sept 2003
Advice or warning:	144	2112
• advice to consumers/solicitors	32	
• advice to TSOs and CABx	30	
• advice to Qualifying Bodies	63	
• advice to trade associations	1	
• warning letter	18	
'Core' terms	3	308
Court order	1	1
Defective cases	2	213
Duplicate cases	49	1620
Enquiries	0	57
Excluded terms	43	490
'Formal' undertakings given	4	27
'Informal' undertakings given	58	888
Not about a contract term	20	321
Other legislation	1	314
Other reasons:	49	904
• approach made	3	
• complex	25	
• no approach made	21	
Referred to Qualifying Bodies	63	406
Terms not considered unfair	15	639
<b>Total</b>	<b>452</b>	<b>8300</b>

#### KEY TO TABLE 3.1

**Advice or warning** includes cases where another regulator (for example, a trading standards service) is able, on the basis of OFT advice, to deal with the matter in exercising its own powers, or where the seriousness of the problem does not warrant a full approach.

**'Advice to TSOs and CABx'**  
means that OFT letters to TSOs etc are used to advise consumers.

**'Advice to Qualifying Bodies'**  
means that OFT letters to TSOs etc are used to advise suppliers.

## KEY TO TABLE 3.1 continued/...

'Core' terms	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).
Defective	refers to incomplete complaints, eg a copy of the contract was not sent in when requested, or the consumer was uncontactable.
Duplicate	relates to terms already being dealt with.
Excluded terms	refers to contracts that are not between consumers and businesses, or to terms covered by Schedule 2(2).
Other legislation	refers to complaints where action under other legislation under which the OFT has powers or duties is more likely to be effective.
Other reasons	are cases where, for instance, the supplier has gone (or goes) out of business, or is no longer using the terms complained of.
	<b>'approach made'</b> means that the OFT was in negotiations with the supplier at the time the case was closed.
	<b>'no approach made'</b> 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 (March 2003)	This half-year (Apr-Sept 2003)	Total at end this half year (Sept 2003)
Cases received	8398	424	8822
Cases closed	7848	452	8300
Cases carried over to next quarter	550		522

## 4 ALPHABETICAL INDEX OF BUSINESSES APPROACHED INDICATING TRADING SECTORS

- |     |  |   |
|-----|--|---|
| 1.  | Advanced Hair Studio (Group) Ltd                                 | toilet articles, perfumery,<br>hairdressing and beauty care           |
| 2.  | Aer Lingus Ltd   | road, rail, air and sea travel  |
| 3.  | Aerofone (UK) Ltd  | mobile phones and services  |
| 4.  | Air Miles Travel Promotions Ltd                                  | holidays  |
| 5.  | Allsop Residential Investment<br>Management Ltd                  | letting and management<br>agencies                                    |
| 6.  | Athena Windows Ltd   | home maintenance, repairs and<br>improvements                         |
| 7.  | The Automobile Association Ltd (AA)                              | other motoring costs<br>(breakdown services)                          |
| 8.  | Balkan Tours Ltd   | holidays  |
| 9.  | Bellway Homes Ltd (Wales Division)                               | house construction  |
| 10. | Blyth Valley Housing Ltd   | letting and management<br>agencies (local authority)                  |
| 11. | Bobbington Estates Ltd t/a<br>Halfpenny Green Airport            | road, rail, air and sea travel<br>(aerodrome services and facilities) |
| 12. | Bowen Travel Ltd t/a Bowens                                      | holidays  |
| 13. | Bromley Adult Education College                                  | other professional services<br>(further education)                    |
| -   | Cheltenham Racecourse - see The Steeplechase Co (Cheltenham) Ltd |   |
| 14. | Citroën UK Ltd   | extended warranties and<br>guarantees                                 |

15.	Club Active at Hyatt Regency Birmingham Ltd	entertainment, catering and accommodation
16.	Continuing Education and Training Service (CETS)	other professional services (further education)
17.	Community Education Lewisham (CEL)	other professional services (further education)
18.	Cosmosair plc t/a Cosmos	holidays
19.	Craftmatic UK Ltd	furniture
20.	Dealer Guarantee Ltd	extended warranties and guarantees
21.	Dignity Funerals Ltd (formerly SCI Funerals Ltd)	other professional services (undertakers)
22.	The Estates Gazette	books, newspapers and magazines
23.	GB Holiday Parks Ltd	holiday caravan renting and caravan sites
24.	Guardian Lifestyle	home maintenance, repairs and improvements (awnings)
-	Halfpenny Green Airport - see Bobbington Estates Ltd	
25.	Highgate School	other professional services (secondary education)
26.	Kendall Cars Ltd	other motoring costs (car hire)
27.	King's Security Systems Ltd	home maintenance, repairs and improvements (burglar alarms)
28.	Leeds City Council	other professional services (local authority tenancies)
29.	Litchfields Ltd t/a Litchfields Estate Agents	estate agency, house purchase, surveying and valuation

30.	Mark Warner Ltd	holidays
31.	National Caravan Council Ltd	holiday caravans renting and caravan sites (trade association)
-	Network Q - see Vauxhall Motors Ltd	
32.	ntl Group Ltd	telecommunications
33.	Oaktree Property Services Ltd	letting and management agencies
34.	Pendragon Promotions Ltd	holidays (timeshare)
35.	Dr Peter Leslie Pratt and Pratt Developments Unlimited	holiday caravan renting and caravan sites
36.	RAC Motoring Services	other motoring costs (breakdown services)
37.	Royal Windsor Horse Show	entertainment, catering and accommodation (sporting venues)
-	SCI Funerals Ltd - see Dignity Funerals Ltd	
38.	Sitters	nursery goods and services (babysitting service)
39.	The Steeplechase Co (Cheltenham) Ltd t/a Cheltenham Racecourse	entertainment, catering and accommodation (sporting venues)
40.	Thames & Kennet Marina Ltd	other recreational goods and services (berthing facilities)
41.	Titan Travel Ltd t/a Titan HiTours	holidays
42.	Travel 2 Ltd t/a Travel 2 and Travel 4	holidays

- |     |  |   |
|-----|--|---|
| 43. | University of the West of England (UWE)            | other professional services<br>(university accommodation) |
| 44. | Vauxhall Motors Ltd t/a Network Q                  | extended warranties and<br>guarantees                     |
| 45. | Virgin Atlantic Airways Ltd                        | road, rail, air and sea travel                            |
| 46. | Virgin Wine Online Ltd                             | food and drink  |
| 47. | your-move.co.uk ltd t/a Your Move<br>Estate Agents | estate agency, house purchase,<br>surveying and valuation |

**Action under Stop Now orders**

- |     |                                  |  |
|-----|----------------------------------|--|
| 48. | Scan Computers International Ltd | personal computers and related<br>hardware |
|-----|----------------------------------|--|

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

### **Barnet, London Borough of**

Litchfields Ltd t/a Litchfields Estate Agents

### **Bedfordshire County Council**

Aerofone (UK) Ltd

Vauxhall Motors Ltd t/a Network Q

### **Birmingham City Council**

Club Active at Hyatt Regency Birmingham Ltd

Dignity Funerals Ltd (formerly SCI Funerals Ltd)

### **Bolton Metropolitan Borough Council**

Scan Computers International Ltd

### **Brighton & Hove Council**

Allsop Residential Investment Management Ltd

### **Bromley, London Borough of**

Bromley Adult Education College

Cosmosair plc t/a Cosmos

### **Camden, London Borough of**

Advanced Hair Studio (Group) Ltd

The Estates Gazette

Highgate School

### **Croydon, London Borough of**

Continuing Education and Training Service (CETS)

### **Gloucestershire County Council**

The Steeplechase Co (Cheltenham) Ltd t/a Cheltenham Racecourse

### **Hampshire County Council**

The Automobile Association Ltd (AA)

GB Holiday Parks Ltd

National Caravan Council Ltd

ntl Group Ltd

### **Hertfordshire County Council**

Sitters

### **Hounslow, London Borough of**

RAC Motoring Services

### **Islington, London Borough of**

Travel 2 Ltd t/a Travel 2 and Travel 4

### **Kensington and Chelsea, Royal Borough of**

Mark Warner Ltd

Virgin Wine Online Ltd

### **Leicestershire County Council**

Bowen Travel Ltd t/a Bowens

### **Lewisham, London Borough of**

Community Education Lewisham (CEL)

### **Newcastle-upon-Tyne, City of**

Bellway Homes Ltd (Wales Division)

**North Yorkshire County Council**

your-move.co.uk Ltd t/a Your Move Estate Agents

**Northumberland County Council**

Blyth Valley Housing Ltd

**Oxfordshire County Council**

Craftmatic UK Ltd

Thames & Kennet Marina Ltd

**Sefton Council**

Oaktree Property Services Ltd

**Slough Borough Council**

Citroën UK Ltd

**Somerset County Council**

Pendragon Promotions Ltd

**South Gloucestershire Council**

University of the West of England (UWE)

**Staffordshire County Council**

Bobbington Estates Ltd t/a Halfpenny Green Airport

**Surrey County Council**

Kendall Cars Ltd

Titan Travel Ltd t/a Titan HiTours

**Warwickshire County Council**

Athena Windows Ltd

**West Sussex County Council**

Air Miles Travel Promotions Ltd  
Dr Leslie Pratt and Pratt Developments Unlimited  
Virgin Atlantic Airways Ltd

**West Yorkshire Trading Standards Service**

Guardian Lifestyle  
King's Security Systems Ltd  
Leeds City Council

**Windsor & Maidenhead, Royal Borough of**

Dealer Guarantee Ltd  
Royal Windsor Horse Show

**NORTHERN IRELAND**

**Department of Enterprise, Trade and Investment (DETI), Belfast**

Balkan Tours Ltd

**REPUBLIC OF IRELAND**

**Office of the Director of Consumer Affairs, Dublin**

Aer Lingus Ltd

## 6 CATEGORIES OF UNFAIR TERM (on cases where action was taken by the OFT)

Schedule 2:	paragraph 1(a) - Excluding or restricting liability for death or injury	25
Schedule 2:	paragraph 1(b) - Excluding or restricting liability for breaches of contract	
	a Excluding liability for defective or misdescribed goods	27
	b Excluding liability for poor services, or work and material	12
	c Restricting amount or type of liability	16
	d Time limits on claims	5
	e Excluding consumers' right of set-off	10
	f Excluding or restricting liability for delay	5
	g Excluding or restricting liability for a supplier's non-performance	17
	h Excluding or restricting liability via guarantee	2
	- unspecified	46
Schedule 2:	paragraph 1(c) – Binding consumers while allowing suppliers to opt out on a pretext	1
Schedule 2:	paragraph 1(d) - Non-return of prepayments on consumer cancellation	12
Schedule 2:	paragraph 1(e) - Financial penalties	45
Schedule 2:	paragraph 1(f) - Cancellation clauses	20
Schedule 2:	paragraph 1(g) - Supplier's right to cancel without notice	2
Schedule 2:	paragraph 1(h) - Excessive notice periods for consumer cancellation	3
Schedule 2:	paragraph 1(i) - Binding consumers to hidden terms	25
Schedule 2:	paragraph 1(j) - General variation clause	10
Schedule 2:	paragraph 1(k) - Right to change what is supplied	33

Schedule 2: paragraph 1(l) - Right to increase the price	19
Schedule 2: paragraph 1(m) - Supplier's right of final decision	4
Schedule 2: paragraph 1(n) - Entire agreement and formality clauses	
a Clauses disclaiming liability for employees' statements	14
b Formality requirements	8
- unspecified	13
Schedule 2: paragraph 1(o) - Binding consumers where a supplier defaults	1
Schedule 2: paragraph 1(p) – Supplier's right to assign without consent	2
Schedule 2: paragraph 1(q) - Restricting the consumer's remedies	18
Other categories of unfair terms	
a Allowing a supplier to impose an unfair financial burden	17
b Transferring unfair risks (eg: by indemnities) to consumers	9
c Onerous enforcement clauses	24
d Excluding consumers' right to assign	11
e Consumer declarations about contractual circumstances	13
f Excluding consumers' non-contractual rights	1
g Delivery at supplier's discretion	5
h Other	32
- unspecified	15
Regulation 7 - Plain and intelligible language	101
	<b>Total 623</b>

## 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).

# ANNEXES

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## **A UNDERTAKING GIVEN BY SCAN COMPUTERS INTERNATIONAL LTD**

IN THE MATTER OF SCAN COMPUTERS INTERNATIONAL LIMITED

AND IN THE MATTER OF THE UNFAIR TERMS IN CONSUMER CONTRACTS REGULATIONS 1999 AND THE CONSUMER PROTECTION (DISTANCE SELLING) REGULATIONS 2000 AND THE STOP NOW ORDERS (EC DIRECTIVE) REGULATIONS 2001

UNDERTAKINGS FOR THE PURPOSES OF THE STOP NOW ORDERS (E.C. DIRECTIVE) REGULATIONS 2001

Whereas Scan Computers International Limited has consulted solicitor and counsel and is advised and believes that the Terms and Conditions of Sale (Retail Sales) annexed hereto marked "A" and the Terms and Conditions of Sale (Internet Sales) annexed hereto marked "B" are not inconsistent with the rights of consumers under the Unfair Terms in Consumer Contracts Regulations 1999 or the Consumer Protection (Distance Selling) Regulations 2000 the following undertakings are given by Scan Computers International Limited subject only to the right of Scan Computers International Limited to contract upon the Terms and Conditions annexed hereto marked "A" and "B" as may be amended from time to time to comply with Regulations then in force such amendments to be advised by Scan Computers International Limited to the Director General of Fair Trading and subject to the approval of the Director General of Fair Trading. The inclusion of a penal notice in this undertaking is under protest and does not constitute acceptance that there is any basis for such an inclusion.

Scan Computers International Limited, a body corporate (registered office: 56 Chorley New Road, Bolton, Lancashire BL1 4AP), by its director, Shailendra P Raja and its company secretary, Nilendra Pratap Raja hereby gives to the Director General of Fair Trading written undertakings sought by him pursuant to paragraph 14 of schedule 2 of the Stop Now Orders (E.C. Directive) Regulations 2001 that it, whether by its officers, employees or agents or otherwise:

1. shall not use, in any contract concluded with consumers after the date of this undertaking, any of the terms listed in Annexes 1 & 2 to the letter from the office of Fair Trading dated 24 December 2001 and attached to this undertaking
2. shall not enforce, attempt to enforce or otherwise rely on any of those terms in any contract concluded on or before the date of this undertaking, insofar as it has the effect mentioned as unfair in Annexes 1 & 2
3. shall not use, enforce or otherwise rely on any term having the same or similar effect
4. shall not include, in any distance contract concluded with consumers after the date of this undertaking any of the terms listed in Annex 3 or any other terms which are inconsistent with a consumer's rights under the Consumer Protection (Distance Selling) Regulations 2000 ("DSRs")
5. shall not enforce, attempt to enforce or otherwise rely on any of the terms referred to in paragraph 4 above in any contract concluded on or before the date of his undertaking (but after 15` October 2000) insofar as such action is inconsistent with or in breach of the DSRs
6. Without prejudice to the right of Scan to maintain any dispute of fact or law with a consumer or consumers about the respective rights and obligations of Scan and the consumer under the DSRs, Scan will conduct the business carried on by it in a manner which is consistent with the provisions and requirements of the Regulations and will observe and comply with the Regulations and in particular:

Scan will in good time and prior to the conclusion of any contract with a consumer provide full information as required by Regulation 7(1)(a)(i) to (ix) inclusive.

Scan will provide to consumers all of the information required by Regulation 8 to be provided to consumers in writing or in another durable medium by, at the latest, the time of delivery of the goods, including:

- (i) the information set out in paragraphs (i) to (vi) inclusive of Regulation 7(1)(a);
- (ii) information about the conditions and procedures for exercising the right to cancel under the Regulations;
- (iii) that the consumer is responsible for the cost of returning the goods in the event of cancellation;
- (iv) information about after sales service and guarantees.

Scan will not require a consumer to effectively cancel a contract by doing more than is required by Regulation 10 and whether by requiring a consumer to physically return goods to the supplier and/or obtain written authorisation to do so and/or obtain an RMA number to do so.

Scan will reimburse all sums paid by the consumer under or in relation to "the contract in the event of cancellation in accordance with Regulation 14(1) less any charge which it may be entitled to make under Regulation 14(5).

Scan will reimburse all sums paid by the consumer in the event of cancellation within 30 days beginning with the day on which the notice of cancellation was given in accordance with Regulation 14(3).

Scan will properly inform consumers and make reimbursement in the event that Scan is unable to perform the contract within the time agreed in accordance with Regulation 19(2).

The acts referred to above are "Community Infringements" and if having signed this document, you commit Community Infringements as set out above you may be guilty of Contempt of Court under paragraph 15 of Schedule 2 of the Stop Now Orders (EC Directive) Regulations 2001 and you may be sent to prison.

Signed:  
Shailendra P Raja  
Company Director  
01/05/02

Signed:  
Nilendra Pratap Raja  
Company Secretary  
01/05/02

## **B ACTION ON CASES TAKEN BY OTHER QUALIFYING BODIES**

The following cases have been concluded by other bodies with powers under the Regulations. For more information, please contact the organisation listed. Information on some of these cases can also be found on the Consumer Regulations Website at [www.crw.gov.uk](http://www.crw.gov.uk)

<b>Business:</b>	<b>Action taken by:</b>
Marks & Spencer Financial Services	Information Commissioner
Wisebuy Windows Ltd (formerly Wisebuy Fabrications Ltd, now trading as HomeStyle (Home Improvements) Ltd)	Cornwall County Council
Wunderplas Windows	Cornwall County Council
David Hawkes t/a Hawkes Coaches	Derby City Council
Donazure Ltd t/a Media Atlantic	Derby City Council
Hotel Ristorante La Gondola	Derby City Council
U.Date.com	Derby City Council
Pendant Windows	North Yorkshire County Council
Northern Electric & Gas	Ofgem
Boltblue International Ltd	Oftel
CampusLink Ltd	Oftel
Cellular Operations	Oftel
One.Tel	Oftel
Orange	Oftel
PNC Telecom (Personal Number Company)	Oftel

Singlepoint (4U) Ltd	Oftel
T-Mobile	Oftel
W H Smithnet	Oftel
Telewest	Oftel
Paladone Products Ltd	West Sussex County Council
Mr G Poulter t/a Grand Motoring	West Sussex County Council
F W Shaw & Sons	West Sussex County Council