

# Unfair contract terms bulletin 26

Case reports October-December 2003

One of a series of bulletins giving details of cases where the OFT has secured significant changes in contract terms. The purpose of the bulletins is to enable consumer advisers and consumers to monitor whether businesses are honouring the changes they have agreed to make.

May 2004

OFT720

## 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 your local trading standards department. To change your details on our mailing list, please contact us at the address below.

The Contract Regulation Unit  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX  
email [cru@oft.gov.uk](mailto:cru@oft.gov.uk)

## Unfair contract terms bulletins

The explanatory OFT briefing note *Unfair Standard Terms* (ref: OFT 143) and other OFT publications such as most previous bulletins are available, free of charge, from:

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

## 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 issue 26 of the quarterly *Unfair contract terms bulletin* in which 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 bulletin covers the period from October to December 2003. Chapter 2 contains reports of 27 cases completed as a result of enforcement action by the OFT under Regulation 10 by means of acceptance of undertakings.
- 1.3 This issue is in a slightly different format to previous issues as it is the first one produced using case reports taken directly from the public area of the Consumer Regulations Website (CRW) [www.crw.gov.uk](http://www.crw.gov.uk). We have however made some adjustments to the layout to improve the appearance of the case reports on the printed page.
- 1.4 We will no longer publish statistical breakdowns of action on cases by the OFT in bulletins, but some statistical information will be made available periodically on the CRW.
- 1.5 Details of cases completed as a result of enforcement action taken by other bodies can also be found on the CRW.

## **Glass and Glazing Federation**

- 1.6 The Glass and Glazing Federation (GGF) asked us for comments on its draft model terms. Following discussions it has recommended a clearer and fairer model contract to its members. The GGF is a trade association whose members work across the industry supplying and installing products such as windows, doors and conservatories. It currently has approximately 500 members.
- 1.7 The improved model contract gives consumers a fairer deal with better cancellation rights and greater prominence to the GGF dispute resolution procedures. The model contract provides a blueprint for fairer terms in the sector covering matters such as those set out below.

### **The survey process**

1.8 The GGF's old model terms did not deal adequately with the survey process. Some 'subject to survey' clauses are potentially unfair because they can be used by suppliers to get out of agreed contracts without proper justification. The new model terms limit the scope for unfair use by including the following safeguards:

i) the supplier commits to carrying out a survey at the time agreed with the consumer, but no later than 14 days after signing the contract;

ii) full details of the survey findings are to be given to the consumer;

iii) both consumer and supplier have equal cancellation rights if the survey reveals unforeseen additional work at extra cost, or that the property is unsafe or unsuitable for the work to be carried out; and

iv) where the contract is cancelled following an adverse survey, any deposit will be returned to the consumer.

If there is a dispute between the parties, the consumer can use the GGF's independent dispute resolution service.

### **Delay in commencement of the installation**

1.9 The old term provided that before being able to cancel without penalty, the consumer should allow the supplier a further six weeks after the date agreed in the contract to complete the installation. The consumer was also entitled to a refund for work paid for but not completed. The revised term now enables the consumer to require completion after the date agreed in the contract, within any shorter period that may have been agreed between the supplier or salesmen, either verbally or in writing. In addition, the revised term also provides that the consumer is entitled to recoup additional costs of getting another supplier to complete the work.

1.10 Here too, the consumer is free to use the GGF's dispute resolution service if agreement can't be reached on how much is due to the consumer, or due to the supplier for work done.

### **Payment on satisfactory completion**

- 1.11 Previously the model contract required payment of the balance when the products had been properly installed in accordance with the contract. This term has been improved to ensure that the consumer is not restricted from withholding a proportionate amount until the installation is completed. The new term provides that payment of the remaining balance is now required only when the consumer is reasonably satisfied with the completed work.

### **Damage caused to property**

- 1.12 The supplier now accepts liability for any damage caused to property, over and above that necessary for the completion of the work, if it were caused by his lack of reasonable care and skill.

### **Cooling-off period**

- 1.13 The Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987, commonly known as the Doorstep Selling Regulations (DoSRs) provide that the consumer can serve a cancellation notice on the supplier within the period of seven days following the making of the contract. This means that the seven days is counted from the day after the contract is made or signed. The old terms were open to the interpretation that the seven days counted from the day on which the contract was made thus depriving consumers of a day of their cooling-off period. The new terms remove the ambiguity and meet the cooling-off period provided in the DoSRs.

## 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.

## Airtours Holidays

Investigation	Airtours Holidays		
Trading Sector	Package holidays		
Action Taken By	OFT	Local Authority	Lancashire County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Booking conditions		
Original term	Application of regulations /Enforcer view	How changed	New term
3	1(l)	Deleted and replaced with a guarantee that once the holiday is booked the price will not change.	N/A
	1(l) – Only provided for an upward but not downward revision of the price where certain costs change after booking, as required by Regulation 11(1) of the Package Travel, Package Holidays and Package Tours Regulations 1992 ('the PTRs').		
3	1(l)	Deleted (no longer relevant following deletion of the surcharge provision above).	N/A
	1(l) - Failed to provide that the first 2% of any increase is to be met by the tour operator and no increases are to be made in the 30 days before departure, as required by Regulation 11(3) of the PTRs.		
3	1(l)	Deleted (no longer relevant following deletion of the surcharge provision above).	N/A
	1(l) - Failed to provide for the relevant options under Regulation 13 of the PTRs where there is a significant change of an essential term, defined as being an increase in the price of more than 10%.		

3	1(d)	Deleted (no longer relevant following deletion of the surcharge provision above).	N/A
	1(d) - Excluded refund of any insurance premium paid where a consumer cancels following an increase of more than 10% of the holiday price, contrary to Regulations 12 and 13 of the PTRs.		
4	1(b)	Revised to allow for greater compensation if the consumer can show greater loss.	4
	1(b) - Excluded compensation for significant changes to a holiday before departure above a set scale, even if a consumer could prove greater loss.		
5	1(k)	Term revised to offer the consumer the full range of options in Regulation 14 of the PTRs.	5
	1(b) and 1(k) - Provided that the consumer had no right to cancel in the event of changes to the holiday after departure where a suitable alternative was offered. This was inconsistent with the consumer's rights under Regulation 14 of the PTRs.		
9	1(k)	In the event that the consumer cannot be notified of a significant change to the holiday in advance of departure, compensation will be offered where appropriate.	9
	1(b) and 1(k) - Excluded liability for the unavailability of facilities outside the peak season, thereby excluding liability for the particulars in the brochure, which are implied warranties by virtue of the Regulation 6 of the PTRs.		
12	1(f)	Revised to give this right.	12
	1(f) - Prevented the transfer of bookings to another person where the consumer is prevented from travelling (on certain types of holiday), contrary to Regulation 10 of the PTRs.		

12	Reg_5	Revised so that no more than the actual costs will be charged.	12
	Regulation 5 - Allowed the imposition of cancellation charges within 8 weeks of departure where the consumer wishes to transfer a booking to another where s/he is prevented from travelling even if the cost of making the change was less than the cancellation charge, contrary to Regulation 10 of the PTRs.		
18	1(b)	Exclusion removed. The term now provides that complaints should be made in resort or within a reasonable time of return, and that failure to do so may affect the company's ability to investigate the complaint and in turn may impact on the way the consumer's complaint is dealt with.	18
	1(b) - Excluded liability for complaints received more than 28 days after the holiday had ended, contrary to Regulation 15(5) of the PTRs.		
Outcome Reached	Formal Undertaking Obtained	Date Effective	20 September 2002

<p>Specific reservations</p>	<p>The OFT reserved position on the following terms.</p> <p>Term 1 ("Our agreement") had allowed the company to levy a cancellation charge for failure by the consumer to pay the balance of the holiday price eight weeks before departure, while giving the company discretion over when to regard the cancellation as having occurred. The term was amended to provide expressly that the company did have discretion to charge the amount set out in the cancellation scale if the period for payment was extended at the consumer's request. However it was considered that the term could be used to charge more than the deposit if the consumer failed to pay by the due date without the period being extended at his/her request.</p> <p>Term 6 ("Our responsibility") defines the circumstances in which the company will not accept liability more widely than prescribed in Regulation 13 of the PTRs.</p> <p>Term 8 ("Flight delays") had excluded liability for independent arrangements made by consumers, without permission, in the event that a flight was delayed. The term was amended to offer compensation.</p> <p>Term 16 ("Baggage"), which limited liability for lost baggage to £400, was amended to increase the limit to £1000.</p> <p>Term 17 ("Special requests") had excluded liability for failure to meet any special request. The term was amended to offer compensation, where appropriate, for failure to provide items essential to enjoyment of the holiday.</p> <p>Term 18 ("If you have a problem") excludes liability for changes to the contract by the travel agent without the company's specific agreement.</p> <p>OFT examined data and supporting information supplied by the company in relation to the cancellation charges referred to in term 11, and concluded that the overall level of the charges did not appear to represent more than a genuine pre-estimate of the company's overall losses from cancellation in the period examined. We reserved the position on whether at points on the scale the charge exceeds a genuine pre-estimate of loss at the time of cancellation. The OFT will revisit these terms if we receive complaints from consumers or other evidence about how they work in practice.</p>
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**Alco Glass Ltd t/a City Glass Company**

Investigation	City Glass Company		
Trading Sector	Double glazing products and installation		
Action Taken By	OFT	Local Authority	Bristol City Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Terms and Conditions		
Original term	Application of regulations /Enforcer view	How changed	New term
1	1(n)_14(a)	Deleted.	
	1(n): allowed the supplier to disclaim liability for oral or written statements made by employees and for variations or amendments to the contract unless written agreement was obtained from the company.		
3, first, second and third sentences	1(k)	Revised to provide that goods may have minor and technical modifications but only when they are unavoidable deviations from the original specification.	14
	1(k): potentially gave the supplier the right to supply goods different from those ordered by the consumer.		
4	1(b)_2(a)	Revised to reflect the company's obligation, as a member of the Glass and Glazing Federation (GGF) to supply glass which complies with the visual quality standard of the GGF.	3
	1(b): excluded liability for any imperfection or variation in the glass making process.		
5	1(b)_2(f)	Revised so that the supplier will not be responsible for delays caused by circumstances beyond its control. Legal jargon removed.	4
	1(b) and Regulation 7: excluded liability for the consequences of any delay to the estimated date of installation. Use of legal jargon ('time for installation is not the essence').		

6, second sentence	<p>1(b)_2(e)</p> <p>1(b): excluded the consumer's right of set-off by stating that if as a result of delay by the consumer, installation has not been completed within 13 weeks, the balance of the purchase price would become payable.</p>	Revised to provide that the balance less labour charges for installation will become payable if the customer 'unreasonably' delays installation beyond 13 weeks, thereby allowing the consumer to withhold an amount in the case of problems with installation.	5
6, third sentence	<p>1(l)</p> <p>1(l): allowed the supplier to increase the price should installation take place at a later date.</p>	Revised to limit the potential for such a price increase to circumstances requiring an increase.	5
9, second and third sentences	<p>1(b)_2(e)</p> <p>1(b): excluded the consumer's right of set-off by stating that consumers must pay the company in full before it would repair any defects in the products supplied. Also stated that defects would be rectified under the company's guarantee. However the guarantee in term 10 appeared only to relate to the repair or replacement of defective components of a window and did not cover defects in the finishing such as surrounding brickwork.</p>	<p>Revised to provide that the consumer can withhold a small amount of money in the case of minor defects.</p> <p>Revised to provide that the guarantee covers the repair of defective rendering or brickwork.</p>	8 and 10
10	<p>1(b)_2(e)</p> <p>1(b): constituted set-off penalty by providing that consumers would not benefit from the guarantee until they had paid in full, when the guarantee covered consumers' statutory rights in addition to other rights under the guarantee.</p>	Revised to make it clear that statutory rights are unaffected by limitations in the guarantee.	10

12	Reg_5_18(f)	Revised to omit the requirement to use recorded delivery.	12
	Regulation 5: excluded consumers' non-contractual rights where contracts are negotiated away from business premises by requiring that if they wished to cancel the contract and obtain a refund of the deposit, notice should be given in writing and sent to the company by recorded delivery within seven days of signing the contract. Please refer also to 'Other information' box.		
13	1(b)_2(f)	Deleted.	
	1(b): excluded liability for delay where the company had exceeded its own estimate for completion of the work by requiring the consumer to serve a notice on the company allowing a further minimum period of six weeks before they could obtain redress.		
Statement on front of contract	Reg_5_18(e)	Revised to advise the consumer to read and understand the terms and conditions before signing the contract.	Statement on front of contract
	Regulation 5: unfair 'read and understood' declaration.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	24 September 2003

Other information	Where consumers have the right to cancel under the terms of the Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987, they can validly cancel when they serve a written notice on the trader, but there is no requirement to use recorded delivery.
Intelligibility	Some legal jargon removed.
Specific reservations	<p>The position of the OFT was reserved in respect of terms 1, 7 and 11 in the supplier's revised terms and conditions:</p> <p>Term 1 allowed the company, following the survey, to cancel the contract at its own discretion. There was concern that such a term could be used to adjust an unprofitable price by using the survey as a pretext to present a price increase to the consumer.</p> <p>Term 7 provided that neither the company nor its agents had authority to represent that condensation on glass surfaces or frames could be eliminated by installation of the company's products. During negotiations, the OFT received confirmation from the company that such representations are not made by its sales representatives.</p> <p>Term 11 excluded liability for damage resulting from already existing structural defects 'whether visible or not'. The OFT considered that the operation of this exclusion, irrespective of the visibility or otherwise of the defect, conflicted with the supplier's duty to exercise reasonable care and skill in carrying out the survey by identifying such problems unless he was unable to do so because of restricted access. There was also concern about the limit of seven days for claims of any damage resulting from such defects which appeared to seek to undermine the time limits set for bringing an action under the Limitation Act 1980.</p> <p>While it is considered that the potential for unfairness remains in the above terms, further enforcement action was not warranted, subject to receipt of further complaints or other evidence suggesting that these terms are operating unfairly in practice.</p>

## All dun Property Maintenance Services (Mid Beds)

Investigation	All dun Property Maintenance Services (Mid Beds) Ltd		
Trading Sector	House maintenance, repairs and improvements		
Action Taken By	OFT	Local Authority	Bedfordshire County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Customer Registration Agreement, T&Cs of Business of Appointed Tradesperson		
Original term	Application of regulations /Enforcer view	How changed	New term
Customer Registration Agreement - Term 3	1(b)	Deleted	
	1(b): allowed the Company to exclude its liability for poor service by refusing to carry out the service at its own discretion.		
Customer Registration Agreement - Term 8.3	1(b)	Revised to accept liability not exceeding the amount of £2,000,000.00.	7.3
	1(a) and 1(b): unfairly excluded Company's liability for death and injury through its negligence.		
T&Cs of Business Appointed Tradesperson (The Contract) - Term 1.5	Reg_7	Deleted	
	Regulation 7: language was contradictory and confusing to a consumer.		
2.1	1(i)	Deleted	
	1(i): may have bound the consumer to hidden terms, as the consumer was referred to a price list, a copy of which was only available on request.		
2.2	1(b)	Revised to make clear that liability will not be accepted for delays beyond the direct control of the Company.	2.1
	1(b): excluded liability for the Trader's delay for factors within its control.		

4.1	Reg_7	Deleted	
	Regulation 7: term unclear as to when the chargeable period started.		
4.2	Reg_7	Deleted	
	Regulation 7: term unclear as to how charges were calculated if a job was done in both normal and overtime periods.		
4.3	1(n)	deleted	
	1(n): required the consumer to make a written request for the parts price list.		
4.4	1(l)	Deleted	
	1(l): allowed the Trader to charge for the hire of special tools without the consumer being made aware.		
4.6	1(b)	Deleted	
	1(b) and Regulation 7: excluded consumer's right to set-off and was unclear as to the amount of the charge for late payment.		
6.4	1(l)	Revised to accept that the agreed price quotation shall expire after 30 days of the date of issue.	5.2
	1(l): gave the Trader an unfair right to vary the price on an agreed fixed price quotation.		
6.7	1(e)	Revised to allow the Company to charge a reasonable amount of money upon consumer cancellation.	5.7
	1(e): required the consumer to pay a disproportionate sum on cancellation.		
7.2	1(b)	Revised to state that the goods become the property of the consumer after the invoice amount is paid.	6.2
	1(b) and 18(h): excluded consumer's right to set-off by requiring the consumer to pay for goods before work has been carried out and imposed an unreasonable obligation to keep goods in new unmarked condition.		

8.2	Reg_5_18(c)	Revised to state that if payment is not received a notice will be issued requesting the reason for non-payment and a confirmation of the date by which the account will be settled. If such non-payment is not received within 7 days of the agreed date, a charge will be made.	7.2
	18(c): onerous enforcement clause which required the consumer to pay an administration charge for late payment, whatever the reason.		
8.3	1(e)	Revised to state that if full payment is not received by the agreed date, a further statement will be sent charging an administration fee of £10.00 and an interest rate of 1% per month from the date of the invoice.	7.3
	1(e): term imposed a high financial penalty of 5% per month if full payment was not received within 7 days upon completion of the work.		
8.4	1(e)	deleted	
	1(e): term imposed penalty charges to recover expenses incurred to employ services of solicitors and/or debt collection agencies.		
8.6	1(e)	Revised stating that in the event of payment made with a cheque that is subsequently dishonoured or unpaid, a letter will be sent advising the consumer (charging £10.00 administration costs and bank charges actually incurred by the Tradesperson or his authorised Agent.	7.4
	1(e): term levied charges on payment made by a dishonoured or unpaid cheque.		
9.1	1(n)	deleted	
	1(n): Confirmation sought that this term was applicable not to consumers as it potentially excluded the supplier's liability for oral statements.		

9.3	1(e)	deleted	
	1(e): term imposed a high financial penalty of 5% per month if payment was not received within the agreed credit period.		
10.2	1(b)	Revised to state that the consumer should highlight items of high value to enable the Trader to consider consequential losses should they become damaged.	8.2
	1(b) and 18(g): had the potential unfairly to exclude liability for damage to the consumer's caused to consumer's property by poor workmanship or negligence and gave the trader the right to determine how its obligations were to be performed.		
10.3	1(b)	Revised to state that the trader will take reasonable measures to remove or protect floor coverings, furniture & decoration, with additional charges notified to the consumer in advance, enabling the consumer to make alternative arrangements if desired.	8.3
	1(b) and 18(g): as above re flooring.		
10.4	1(b)	deleted	
	1(b) and 18(g): as above re furniture.		
10.5	1(b)	deleted	
	1(b) and 18(g): as above re cupboards.		
10.6	1(b)	deleted	
	1(b) and 18(g): as above re spillages and scorch marks.		
11.4	1(b)	Revised to accept liability for delays that are within the control of the Trader, and listing those that are genuinely outside its control.	9.4
	1(b): the term excluded liability for delay caused by factors within the control of the Trader.		

12.1	Reg_5_18(b)	Re-drafted in plain and intelligible language.	10.2
	18(b) and Regulation 7: use of the legal jargon 'indemnity' 'indemnify'.		
12.2	Reg_5_18(b)	Re-drafted in plain and intelligible language.	10.2
	18(b) and Regulation 7: as above		
13.2	Reg_7	deleted	
	Regulation 7: the term was unclear on the trader's liability for repairs after the 90 days have passed.		
13.3	Reg_7	deleted	
	Regulation 7: the term was unnecessarily long and complicated.		
14.1	1(b)	deleted	
	1(b): excluded the consumer's right to redress if a part caused damage to other goods.		
14.4	1(b)	deleted	
	1(b): as above.		
14.5	1(b)	deleted	
	1(b): as above.		
15	1(b)	deleted	
	1(b): excluded liability under the Supply of Goods and Services Act 1982.		
16.1	1(b)	deleted	
	1(b): excluded liability for poor service.		

16.2	1(b)	deleted	
	1(b): excluded liability where the Company was at fault and denied consumers the benefit of statutory rights under the Supply of Goods and Services Act 1982.		
17	1(l)	Revised to state that the additional charges are as specified in quotations/ estimates.	12
	1(l): term allowed for extra potentially hidden charging for removal of bulky or heavy parts.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	14 October 2003
Other Information	In the letter of 2 April 2003, the Company confirmed that it trades in England and Wales. We asked the Company to take note that Term 13 in the Agreement, and terms 6.4 and 13.1 in the Contract would have the potential for unfairness under para 1(q) if the Company began to acquire customers in Scotland.		
Specific reservations	<p>The OFT's position has been reserved in relation to:</p> <p>General Comment: as the Agreement and Contract are still drafted in legal language and open to challenge under Regulation 7.</p> <p>Terms of the Agreement:</p> <p>Term 3 - contains a consumer declaration;</p> <p>Term 7.4 - meaning may not be clear to a consumer;</p> <p>and Term 12 - has the potential to exclude liability for oral statements.</p> <p>Terms and Conditions of Business of Appointed Tradesperson:</p> <p>Term 1.2 &amp; 1.4 - both have the potential to exclude liability for oral statements; Term 1.5 - unfairly excludes the trader's liability for breach of implied terms; Term 2.2 - excludes/restricts liability for delay;</p> <p>Term 6.1 - transfers inappropriate risks to consumer for insuring goods after delivery.</p> <p>Term 9.2 &amp; 9.3 - both have the potential to exclude liability for loss resulting from any breach of contract by the Company.</p>		

## Automobile Association Developments

Investigation	Automobile Association Developments Ltd		
Trading Sector	Other motoring costs inc car hire (driving lessons, ass'n membership...)		
Action Taken By	OFT	Local Authority	Hampshire County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	AA Car Data Check- UCD 301 (04/01)		
Original term	Application of regulations /Enforcer view	How changed	New term
2nd Part, 1st Paragraph	<p>Reg_5_18(f)</p> <p>Term potentially prevented a claim being made against AAD where the contract had been entered into for the benefit of a third party and that third party suffered loss as a result of the information negligently provided by AAD.</p>	<p>Revised to state that the contract under which the AA Car Data Check is provided is entered into with the individual named in the Vehicle Status Check Certificate (VSCC), who where the check is carried out in contemplation of a proposed vehicle purchase, should be the intended owner of the vehicle. AAD gave an assurance that a consumer who requested a check on behalf of a third party with a view to purchasing a vehicle is informed that the details of the prospective purchaser of the vehicle of the vehicle must be inserted in the VSCC so that the purchaser will be able to enforce the terms of the agreement.</p>	<p>1st Paragraph 2nd Part</p>

4th Paragraph, 1st & 4th sentence	1(b)	Revised to delete the exclusion of liability in "tort, contract and otherwise" and to provide that the term will not negate AAD's duty to accurately relay the information supplied by third parties.	4th Paragraph, 1st & 4th sentence
	1(b): had the potential to absolve AAD of its statutory duty to check third party database with reasonable care and skill by excluding liability in "tort, contract and otherwise" for information that turns out to be inaccurate.		
4th Paragraph 3rd & 4th sentence	1(a)	Revised to remove such provision. Revised to make clear that such this exclusion applies to business losses only by providing that AAD shall not be liable for losses relating to any business interests- including lost data and lost profits.	Paragraph 5 last sentence & Paragraph 7
	1(b): provided that the only redress available to the consumer is under an insurance policy which itself contained numerous exemptions. Also excluded liability for consequential loss and therefore prevented the consumer from seeking redress in certain circumstances when it ought to have been available.		
Para 5, 1st Sentence	Reg_7	Revised to improve prominence by placing under a clear highlighted heading.	Para 4
	Reg 7: Required more prominence because of its significance in relation to written off vehicles.		
Exclusion 6, AA Data Check Insurance	Reg_7	Revised to explain what is meant by consequential loss	Exclusion 6, AA Data Check Insurance
	Regulation 7: use of the legal jargon "consequential loss"		
Conditions 7	Reg_7	Revised to explain indemnity.	Condition 9
	Regulation 7: use of the legal jargon "indemnity."		

4th Paragraph, latter part of last sentence	1(a)	Revised to reflect the law on liability for death and personal injury caused by negligence. Also revised to make it explicit that Motorfile is a party to the contract.	Paragraph 8 & paragraph 1, 2nd sentence.
	1(a): had the potential to exclude liability for death and personal injury except where caused directly by AAD's negligence. Also had the potential to exclude the right of consumers from seeking redress against a disclosed principal – Motorfile.		

Outcome Reached	Informal Undertaking Obtained	Date Effective	6 October 2003
Other Information	<p>AAD agreed to amend its terms to comply with The Consumer Protection (Distance Selling) Regulation 2000 (DSRs) with respect to the following:</p> <p>"The consumer is provided prior information as required under Regulation 7."</p> <p>Written confirmation of the order - Regulation 8</p>		
Specific reservations	<p>The OFT reserved its right in relation to the requirement under Regulation 8(3) of the DSRs.</p> <p>In addition, the OFT reserved its right to revisit the AA Data Check Insurance once planned amendments to this have been made.</p> <p>Similarly, the OFT's position was reserved in relation to the limitation of liability under Paragraph 5 of the terms and conditions, which was introduced during discussions with the trader. AAD agreed to delete this limitation with the proviso that it may revisit the issue in the light of future claims experience. The OFT, therefore, reserved its right to revisit the matter if the limitation is reinstated.</p>		

## B.J.S. Properties

Investigation	B.J.S. Properties		
Trading Sector	Letting agencies		
Action Taken By	OFT	Local Authority	City of Manchester
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	House Rules and Administration Charges		
Original term	Application of regulations /Enforcer view	How changed	New term
2	Reg_5_18(h)	Revised to provide that the tenant must notify the landlord of items requiring attention as soon as is reasonably practical.	2
	Imposed a potentially unfair obligation on the tenant by requiring them to immediately notify the landlord of items in the house requiring attention.		
3	1(b)	Deleted.	n/a
	1(b): had potential to exclude the landlord's liability for the state of the property by providing that the tenant would be charged for costs arising from defects in the property not reported to the landlord in writing within the first week of the tenant having possession of the property.		
4	1(e)	Deleted.	n/a
	1(e): imposed a potentially unfair financial penalty on the tenant by stating that costs arising from any damage would be deducted from the tenant's deposit, when the tenant may not have been responsible for this damage.		

10	1 (e)	Revised to make clear that the landlord may only use the tenant's deposit to pay utility bills when the bills have been left unpaid at the end of the tenancy.	8
	1 (e): had the potential to impose an unfair financial penalty on the tenant by providing that the landlord may use the tenant's deposit to pay utility charges during the tenancy.		
11	1 (b)	Revised to make clear that the landlord must give 24 hours' written notice when they require access to the property.	9
	1 (b): allowed the landlord access to the property without providing that they must give the tenant notice that they require access.		
13	Reg_5_18(h)	The reference to the drains was deleted. Revised to make clear that the tenant would only have to pay the landlord's reasonable costs incurred as a result of the tenant's breach of their obligations.	11
	Imposed an onerous obligation on the tenant to ensure that the drains are clean at the end of the tenancy. 1 (e): required the tenant to pay an unspecified charge in the event that the drains and pathways were not left in the appropriate condition at the end of the tenancy.		
14	1 (i)	Revised to state that all tenants should sign the documents relating to the tenancy.	12
	1 (i): had potential to bind tenants to terms that they had not seen before signing the agreement, by providing that individual tenants could sign any documents relating to the tenancy on behalf of all of the tenants in the group renting the property.		
17	Reg_5_18(h)	Revised to provide that the landlord's condition for works to be carried out would not be unreasonably withheld.	15
	Imposed a potentially unfair restriction on the tenant by requiring them to get the landlord's permission to carry out any building, repair or decorating works.		

18	1(e)	Deleted.	n/a
	1(e): required the tenant to pay unspecified charges for damage to the carpet.		
19	1(e)	Deleted.	n/a
	1(e): required the tenant to pay unspecified charges for damage caused by their 'wilful neglect' of the property.		
21	1(e)	Revised - the reference to charges for replacing lamps was deleted from the term.	17
	1(e): required the tenant to pay unspecified charges if the landlord should have to replace lamps in lighting outlets.		
24	1(e)	Revised to state that the landlord may recover any reasonable costs incurred due to call-outs to the property resulting from changes to the alarm code or the tenant's friends or relatives not knowing the code.	20
	1(e): required the tenant to pay a fixed charge in the event of the alarm at the property being activated due to the tenant changing the alarm code without informing the landlord, or the landlord being called out because of false alarms caused by the tenant or their friends or relatives.		
26	1(e)	Revised to state that the landlord would be entitled to charge the tenant for the reasonable costs incurred when the landlord was called out because the tenant had locked themselves out.	22
	1(e): required the tenant to pay a fixed charge in the event that the landlord was called out to the property due to the tenant locking themselves out.		
27	1(e)	Revised to provide that the landlord may recover their reasonable costs incurred if they have to sort out returned keys.	23
	1(e): required the tenant to pay a fixed charge for lost keys and unspecified further charges should the landlord have to sort out returned keys.		

28	1(e)	Revised to provide that the tenant would only have to pay costs for damage to the alarms or lights when the lack of electricity supply was caused by the tenant.	24
	1(e): required the tenant to pay for any damage caused to the burglar alarm, fire alarm or emergency lights at the property due to a lack of electricity supply.		
Administration Charges	1(e)	Deleted.	n/a
	1(e): required tenants to pay fixed charges for a number of different breaches of the agreement, when the charges may not have reflected a reasonable pre-estimate of the losses that the landlord would incur as a result of the breaches. 1(e): made tenants liable to pay all court and legal fees incurred by the landlord in respect of the tenancy. Regulation 7: not written in plain and intelligible language. It was not clear what was meant by 'accounts that are not conducted properly', for which tenants would be charged.		
30	1(b)	Revised - the statement that the landlord would not be responsible for loss or damage to the tenant's belongings was deleted.	27
	1(b): had the potential to unfairly exclude the landlord's liability by stating that the landlord would not be held responsible for any loss or damage to the tenant's personal belongings.		

Outcome Reached	Informal Undertaking Obtained	Date Effective	2 September 2003
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Other Information	<p>The 'House Rules and Administration Charges' document was retitled 'Useful Notes, Terms &amp; Guidelines for Tenants' during the OFT's discussions with the supplier.</p> <p>The supplier issues the document alongside a standard assured shorthold tenancy agreement. The supplier was advised that the tenancy agreement they were using was an old version of a set of model terms that the OFT had previously reviewed for fairness, and agreed to obtain and use the revised version of the tenancy agreement in future.</p>
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## British Vehicle Rental and Leasing Association (BVRLA)

Investigation	British Vehicle Rental and Leasing Association		
Trading Sector	Other motoring costs inc car hire (driving lessons, assn membership...)		
Action Taken By	OFT	Local Authority	Buckinghamshire County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Model Terms		
Original term	Application of regulations /Enforcer view	How changed	New term
Front Sheet - personal information	Reg_5_18(f)	The revision to previous term 11 has removed this potential.	Front Sheet Personal Information
	Term in conjunction with previous term 11 had the potential to exclude rights under the Data Protection Act.		
Front Sheet - Box 30	Reg_5_18(a)	Code of Conduct to instruct Lessors to provide written notification where consumers are not present. The notification will include details of how the charges are calculated and why the charge has arisen. Revised to warn consumers that they should read and understand the contract before signing it.	Front Sheet - Box 30 & Page 6 Codes of Practice
	Potentially allowed the supplier to impose an unfair financial burden by allowing the trader to make a debit on the consumers card without prior notification. Also required that consumers make a declaration that may not be true.		
3f	1(e)	Revised to state that the consumer will only be asked to pay reasonable costs Revised to give an indication of when the consumer may incur additional valeting related costs.	3g
	1(e): had the potential to allow unspecified and therefore potentially unreasonable charges. Regulation 7: unclear as to circumstances in which the vehicle will require "more than standard valeting".		

5	1(b)	Revised to remove this potential.	5
	1(b): potentially excluded liability for losses suffered by the consumer through the Lessor's breach of contract.		
7 c	1(e)	Revised to state that consumers should replace the quantity of fuel originally supplied. Trader undertook that individual Lessors will inform consumers that refuelling charges are higher.	8c
	1(e): unfairly required the consumer to replace more fuel than was originally supplied by the Lessor. Regulation 7: there was lack of clarity as to the potentially higher cost of refuelling charges compared local pump prices		
7 e	1(e)	Revised to state that any such cost will be reasonable. The term now include a reference to term 4 to give an idea of the circumstances in which a consumer would pay repair costs.	8e
	1(e): had the potential to require unreasonable repair costs. In addition, the term did not give an indication of the circumstances in which a consumer would be required to pay repair costs		
11	Reg_5_18(f)	Revised to make clear why such information would be passed on.	12 Data Protection
	Term was not sufficiently clear why information about consumer would be passed on to members of the association.		
12 a	Reg_5_18(c)	Revised to provide that the this term only applies in relation to the main requirements of the contract.	13a
	Had to potential to act as an onerous enforcement clause by allowing the trader to end the agreement in the event of a non-material breach		

12 c	1(e)	Revised to state that any repossession cost will be reasonable Revised to state that Lessor will not cause damage or/and use reasonable force.	13c
	1(e): Potentially allowed the Lessor to charge unreasonable costs for repossession. Had the effect of an onerous enforcement clause as it had the potential to allow the Lessor to use force and cause damage in the process of repossessing the vehicle		
4- 2nd para	1(a)	Revised to state the Lessor is responsible for injury or death caused by act or failure to act.	4- 2nd para
	1(a): had the potential to restrict liability for death and personal injury caused by the Lessor's act or omission as opposed to negligence.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	11 September 2003

## Brittany Ferries

Investigation	Brittany Ferries		
Trading Sector	Road, rail, air and sea travel excluding car hire (inc bus..		
Action Taken By	OFT	Local Authority	Plymouth City Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Booking Conditions		
Original term	Application of regulations /Enforcer view	How changed	New term
Fares & General Information	1(l)	now makes clear that no increase will be made after consumer has paid in full	Fares & General Information
	1(e): term potentially unfairly allowed supplier to charge the full cost of the appropriate fare where the consumer has breached the terms of a ticket. 1(l): term gave supplier a potentially unfair right to increase the price of the fare. 1(j): term unfairly allowed supplier to vary terms of the agreement, for instance by providing a service other than that which had been booked.		
Check In	1(m)	term now makes clear that supplier will exercise discretion fairly	Check In
	1(m): term gave the supplier an unfettered discretion as to whether or not to accept passengers.		
Cancellation & Refunds	Reg_7	Term now states that applications for refunds must be made within 4 weeks of the cancellation taking place.	Cancellation & Refunds
	Regulation 7: term required applications for refunds to be made within 4 weeks. It was not clear what 4 weeks referred to.		

Conditions of Carriage	1(b)	Term now states that no written notice is needed in these circumstances	Conditions of Carriage
	1(b): the term, dealing with personal injury and damage to consumers' property, failed to make clear that there is no need for the consumer to provide written notice of damage to luggage where the goods have been inspected by the consumer and supplier at the time of receipt.		
Brittany Ferries Customer Service	1(q)	This aspect of clause deleted	Customer Service
	1(q): potentially unfair exclusive jurisdiction clause.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	13 October 2003
Specific reservations	<p>OFT's position reserved re: 2 aspects of 'Fares &amp; General Information' clause. Firstly that whilst the term allows the supplier to exclude its liability for costs or inconvenience to consumers where it is prevented from providing the service due to 'force majeure,' no reciprocal benefit is provided for consumers who are prevented from travelling for reasons beyond their control.</p> <p>The second aspect was the list of factors beyond supplier's control, some of which may have been within the supplier's control.</p>		

## Byrom Consultants

Investigation	Byrom Consultants Ltd		
Trading Sector	Entertainment, catering and accommodation		
Action Taken By	OFT	Local Authority	Stockport
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Terms and conditions of sale		
Original term	Application of regulations /Enforcer view	How changed	New term
1.3	1(k) Potentially unfairly allowed the supplier to alter the confirmed booking at its discretion.	Revised to make clear that any amendments would be in accordance with the consumer's instructions.	1.3
	Reg_5_18(a) Potentially unfairly allowed the imposition of unclear additional charges.		
2.2	Reg_5_18(a) Potentially unfairly allowed the imposition of unclear additional charges.	Amended to provide examples of the type of additional charges covered by the term.	2.2
	Reg_5_18(a) Unclear as to which taxes apply to the agreement.		
2.3	Reg_5_18(a) Unclear as to which taxes apply to the agreement.	New term refers the consumer to the Proposal document which identifies the applicable taxes.	2.3
	1(e) Potentially imposed unfair financial penalties for late payment.		
2.5	1(e) Potentially imposed unfair financial penalties for late payment.	Revised to provide that the supplier will claim the reasonable costs and losses it suffers as a result of non payment or late payment.	2.5
	Reg_5_18(c) Potentially permitted the supplier to impose a disproportionate penalty by providing that vouchers specifying the details of the confirmed hotel rooms that needed to be presented upon check-in would not be replaced if lost or stolen.		
2.6	Reg_5_18(c) Potentially permitted the supplier to impose a disproportionate penalty by providing that vouchers specifying the details of the confirmed hotel rooms that needed to be presented upon check-in would not be replaced if lost or stolen.	Revised to provide that the supplier will take reasonable steps to replace vouchers that are lost or stolen but warned that it cannot guarantee replacement if it receives notice less than 14 days before the confirmed date. New term added that the consumer will be liable for the reasonable costs incurred in replacing vouchers.	2.6
	Reg_5_18(c) Potentially permitted the supplier to impose a disproportionate penalty by providing that vouchers specifying the details of the confirmed hotel rooms that needed to be presented upon check-in would not be replaced if lost or stolen.		

3.1	Reg_5_18(e)	Deleted	
	Required the consumer to state they agree certain facts whether or not this is true.		
3.2	1(e)	New graduated scale of cancellation charges provides for lower cancellation charges that more accurately reflect a genuine pre-estimate of the costs and losses suffered by the supplier.	3.4
	Potentially unfairly allowed the supplier to impose charges that exceeded a genuine pre-estimate of the losses it incurred as a result of the cancellation.		
3.4	Reg_5_18(c)	Term amended to provide that the supplier can only reduce the number of rooms booked if the consumer commits a serious breach of contract.	3.5
	Permitted the supplier excessive discretion to reduce the agreed number of rooms where the consumer commits only a minor breach of the terms.		
4.1	1(b)	Potentially unfairly allowed the supplier to exclude liability where it had failed to act with reasonable care and skill.	4.1
	Potentially unfairly allowed the supplier to exclude liability where it had failed to act with reasonable care and skill.		
4.3	Reg_5_18(h)	Deleted	
	the requirement that all prices and sales information must be kept confidential was inappropriate for use in a consumer contract.		
4.4	Reg_5_18(h)	Revised to provide that the supplier will not be held responsible for the acts and omissions of the consumer or other voucher holders covered by the contract, and that the consumer bears responsibility for claims arising out of such acts or omissions provided such claims are not without foundation.	4.2
	Required the consumer to cover the supplier against liability in circumstances where the consumer was not at fault, for example where damage was caused by an individual without permission to be in the hotel room.		

4.5	1(a)	Revised as to no longer limit the supplier's liability for death or personal injury caused by its, or its staff's, negligent act or omission. Amended to exclude liability only for; losses unforeseeable to both parties when the contract was made, losses not caused by any breach on the part of the supplier and business losses.	4.1, 4.3
	permitted the supplier to unfairly exclude its liability in negligence or where it failed to act with reasonable care and skill. It also constituted an exclusion of the supplier's liability for death or personal injury caused by its negligence.		
4.7	1(n)	Revised to state that neither party can alter the terms and conditions without the other's agreement. Furthermore a new term also makes clear that both the supplier and consumer intend to rely on the terms and conditions and if either party wishes to make any amendments they should ask that these are put in writing.	4.4, 4.11
	Excluded liability for oral representations made by the supplier by providing that no amendment of the agreement would be valid unless put in writing.		
4.8	1(f)	Revised to provide that the consumer is entitled to terminate the agreement if the supplier commits a serious breach of its terms.	4.5
	Caused an imbalance in the rights of the parties by failing to outline the consumers corresponding right to cancel the agreement if the supplier committed a serious breach of it.		
4.9	1(n)	Amended to state that the terms and conditions can only be waived with the consent of both parties.	4.6
	Excluded liability for oral representations made by the supplier.		
4.12	Reg_5_18(h)	Revised to provide that all notices must be sent by either first class mail, fax or hand delivery.	4.9
	Required the consumer to forward any notices to the supplier by telecopy followed by confirmation via first class mail or overnight delivery.		

4.14	1(n)	Deleted	
	Potentially unfairly allowed the supplier to disclaim representations not included in the agreement. Furthermore, the term disregarded that under the Regulations where a term is ambiguous the interpretation most favourable to the consumer will prevail.		
4.15	1(n)	New term states that both the supplier and consumer intend to rely on the terms and conditions and if either party wishes to make any amendments they should ask that these are put in writing.	4.11
	Unfairly excluded liability for all prior representations, promises and undertakings, whether oral or written, not included in the agreement.		
Proposal form	Reg_5_18(e)	Revised to warn the consumer to carefully read the terms and conditions before signing the Proposal.	Before signing the agreement ....
	Required consumers to confirm that they understood the terms and conditions when they may not have.		

Outcome Reached	Informal Undertaking Obtained	Date Effective	3 December 2003
Other Information	<p>The terms considered by the OFT were for the provision of accommodation during the FIFA World Cup 2002. While the contract was specific to this single event, the revisions agreed between Byrom and the OFT are for use in a template set of terms and conditions to be employed for future events.</p> <p>The new section entitled 'Cancelling Your Services', which includes the graduated scale of cancellation charges in Term 3.4 (The Cancellation Fee), was submitted by Byrom in light of the OFT's concerns with the old Terms 3.1 (Terms) and 3.2 (Attrition schedule (Partial cancellation)) and is bespoke and applies only to the 2004 Ryder Cup Competition. This section was consequently not included in the general template for future events; however Byrom was cautioned that it must be mindful of its responsibilities under the Unfair Terms in Consumer Contracts Regulations 1999 when adapting the provisions included in this section for use in agreements for future events.</p>		

<p>Specific reservations</p>	<p>Term 3.1 (b) (Terms) of the original contract provided that in circumstances where the consumer cancelled a confirmed room he/she would be liable to pay a processing fee equal to 10% of the total amount, potentially in addition to liquidated damages. The term was challenged under paragraph 1(e) of Schedule 2 to the Regulations on the basis that it potentially allowed the supplier to impose an unfair financial penalty. Subsequently the term was revised (new Term 3.3 (The Processing Fee)) to provide that cancellation by the consumer after confirming a booking but before a certain date would result in the consumer having to pay a processing fee of £100.</p> <p>The OFT remains concerned that the term could potentially unfairly allow Byrom to impose an unfair financial penalty. However, in light of assurance from Byrom that the fee reflects the reasonable costs it incurs as a result of cancellation by the consumer, the OFT will refrain from taking further enforcement action subject to evidence of potential or actual unfairness to the detriment of consumers.</p> <p>Term 4.18 (Force Majeure) of the original contract was challenged under paragraph 1(b) of Schedule 2 to the Regulations as it allowed Byrom excessive discretion to determine whether or not performance of the service could take place. Furthermore the term potentially allowed Byrom to refuse to carry out its obligations for reasons within its reasonable control. The term was subsequently revised (Term 4.15 (Force Majeure)) to provide that Byrom can only exclude liability where performance of the contract is frustrated for reasons beyond its control which make provision of the service illegal or impossible.</p> <p>The OFT is concerned that the amended term potentially allows Byrom to deny consumers the right to a full refund in the event of cancellation of the contract by reason of Force Majeure. However, in light of further revisions made to the term which provide that Byrom will refund to the consumer such monies that, having used its reasonable efforts, it is able to recover from its service providers, the OFT will refrain from taking further enforcement action subject to receiving evidence of detriment caused to consumers.</p>
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## Carrington Park

Investigation	Carrington Park		
Trading Sector	Holiday caravan renting and caravan sites		
Action Taken By	OFT	Local Authority	Hampshire County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Park Rules		
Original term	Application of regulations /Enforcer view	How changed	New term
Park Rules A - 4	1(b)_2(b)	Deleted.	
	Excluded liability for negligence or failure to exercise reasonable skill and care during the removal of a caravan.		
6	1(n)_14(a)	Deleted.	
	Excluded liability for any verbal commitments that have been made.		
12	1(k)	Revised to confirm that consent could only be withdrawn in the circumstances specified in the park rules, after promptly providing the caravan owner with their reasons for declining the request.	
	Allowed the park owner to withdraw consent at any time for the lending of a caravan to immediate/close friends.		
15 (a)	1(b)_2(b)	Deleted.	
	Excluded liability for poor service or damage caused by the park owner's negligence or other breach of duty.		
15 (b)	1(a)	Deleted.	
	Excluded liability for illness or injury to the caravan owner, even if caused by park owner's negligence.		

16	1(f)	Deleted.	
	1(f) and Reg 5: provided the park owner an unfair right to cancel the contract at his absolute discretion.		
Park Rules B - 4	Reg_5	Revised to exclude reference to the decision of the management being final.	7.4
	Allowed the park owner the sole right to determine whether the caravan owner was in breach of contract, in respect of causing a nuisance to neighbouring residents.		
7	Reg_5	Revised as in term 4.	5.2
	Allowed the park owner to determine whether the caravan owner was in breach of contract.		
10	Reg_5	Revised as in term 4.	7.8
	This raises the same concerns as terms 4 and 7.		
12	1(i)	Revised to state that further copies of the licence agreement are available on request, and that a copy should be displayed within the caravan.	Opening paragraph of Park Rules
	The term appeared to bind caravan owners to the site licence, which they may not have had the opportunity to read.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	2 October 2002
Other Information	The OFT challenged various terms in the licence agreement relating to a holiday pitch (1999) version, but the park owner introduced a new licence agreement in line with the Code of Practice for Selling and Siting Holiday Caravans. The park owner also undertook not to enforce unfair terms in the old contracts which were still in force.		
Specific reservations	The OFT reserves its position in respect of the reference to the requirement to insure through the park owner, referred to in the licence agreement for a holiday caravan pitch. The OFT therefore reserves its position in the event of further evidence of consumer detriment being received.		

## Centurion Installations

Investigation	Centurion Installations Ltd		
Trading Sector	Double glazing products and installation		
Action Taken By	OFT	Local Authority	Bristol City Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Terms & Conditions		
Original term	Application of regulations /Enforcer view	How changed	New term
1, last sentence	1(f)	Revised to provide that the contract can be cancelled only if the company is in breach of its obligations to the consumer.	1
	1(f): stated that the contract was not subject to cancellation. Also was inconsistent with term 2 (which allowed cancellation at the company's discretion – please refer to term 2, second sentence below).		
2, first sentence	1(f)	Revised so that the company commits to carry out the survey within 21 days. In the event that the company wishes to cancel because of an adverse survey, a copy of the report with an explanation of the structural conditions encountered will be given to the consumer and all prepayments will be refunded.	2, second, third and fourth sentences
	1(f): following an adverse survey, permitted the company to cancel the contract without giving written reasons why the work could not be carried out.		

2, second sentence	1(e)	Revised to clarify that in the event of cancellation, the consumer is required to pay all reasonable costs borne by the company. Legal jargon removed.	2, sixth sentence
	1(e) and Regulation 7: imposed disproportionate penalties for breach of contract, by agreeing to cancellation only if the company could claim all costs and expenses, not just net costs. The amount the consumer would be required to pay in the event of default was unclear. Use of legal jargon ('without prejudice').		
3, third and fourth sentences	1(b)_2(e)	Revised to allow the consumer to retain a proportionate amount of the total sum in the case of alleged defects.	3, third sentence
	1(b): excluded the consumer's right of set-off by stating that the consumer was not allowed to withhold payment in the case of alleged minor defects and that full payment must be made before such defects would be investigated.		
3, fifth sentence	1(e)	Revised so that if payment has not been received in accordance with the condition relating to the revised term immediately above, the consumer is charged interest for outstanding payments. Interest rate to be charged on late payments reduced.	3, fourth sentence
	1(e): imposed an excessive rate of interest if the consumer had not paid on the due date because he or she had exercised their right of set-off. (Please refer to the term immediately above).		
3, sixth sentence	Reg_7	Deleted.	
	Regulation 7: meaning of reference to third party costs unclear.		
3, eighth sentence	Reg_7	Revised to clarify that ownership of goods supplied remains with the company until full payment has been made.	3, sixth sentence
	Regulation 7: meaning of reference to ownership of goods unclear.		

4(b), second and third sentences	1(b)_2(e)	Revised to require the consumer to pay 90% of the balance if access has not been given within 30 days of notification that the goods have been manufactured, the remaining 10% to be paid upon fitting at the consumer's premises.	4(b), second sentence
	1(b): if access for installation was not given within 30 days the consumer was required to pay the outstanding balance within a further seven days.		
5, first sentence	1(b)_2(b)	Revised so that if installation causes damage to internal decorations, the company will take all precautions to minimise disturbance.	5, first sentence
	1(b): excluded liability for damage to surrounding wallpaper or paint work which may have been caused by the company's negligence.		
5, second sentence	1(b)	Revised so that liability is excluded only for damage resulting from defects which could not reasonably have been foreseen by the company's surveyor.	5, fifth sentence
	1(b): excluded liability for damage resulting from structural or other defects.		
5, second sentence	1(b)_2(d)	Revised to provide that any complaint or claim for compensation relating to damage must be made in writing to the company as soon as practicable after discovery.	5, fourth sentence
	1(b): unfairly limited consumers to a period of 14 days after installation to make claims for damage caused by the company.		
6(a), second sentence	Reg_5_18(e)	Requirement deleted.	6, second sentence
	Regulation 5: required the consumer to acknowledge that condensation may occur.		
6(b)	Reg_7	Deleted.	
	Regulation 7: meaning of reference to '...the installation complies with B.A.A. or similar Authority's specifications' unclear to consumers.		

7, second sentence	1(k)	Revised to provide that any change in design specification that materially affects the appearance of the goods will be subject to the consumer's agreement. Consumer declaration deleted. Heading revised to omit the word 'Act'.	7, second and third sentences
	1(k), Regulation 5 and Regulation 7: allowed the company to make modifications to specification of materials and design without reference to the consumer. Unfair declaration that the consumer acknowledges and agrees to such changes when they have not been consulted in advance. Also, incorrect heading referring to 'Sales Description Act,' misleading to consumers.		
7, third and fourth sentences	1(n)_14(a)	Third sentence deleted. Fourth sentence revised to advise consumers to read the conditions carefully before signing and in case of uncertainty about those conditions and their rights relating to them, to seek further explanation from the company.	7, fourth sentence
	1(n): allowed the company to disclaim liability for oral or written statements made by employees and for variations to the contract unless written agreement was obtained from the company.		
8(a)	1(i)	Revised to confirm that a 10 Year Warranty Certificate will be issued in respect of the goods.	8(a)
	1(i): unclear whether the company's 'ten year warranty', was a separate document and if so, whether consumers received a copy.		
Final sentence in bold	Reg_7	Revised to inform consumers where to obtain advice on statutory rights.	8(b)
	Regulation 7: reference to statutory or common law rights unclear to consumers.		

Warranty Certificate: Terms and Conditions, final sentence referring to statutory rights	Reg_7	Revised to inform consumers where to obtain advice on statutory rights.	Final sentence referring to statutory rights
Outcome Reached	Informal Undertaking Obtained	Date Effective	16 December 2003
Intelligibility	The overall clarity of the contract has been generally improved and some legal jargon removed.		

## Citalia Holidays

Investigation	Citalia Holidays Ltd		
Trading Sector	Package holidays		
Action Taken By	OFT	Local Authority	West Sussex County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	"The Citalia Charter", Jan-Dec 1999 booking conditions		
Original term	Application of regulations /Enforcer view	How changed	New term
Opening paragraph	1(i)	Revised to warn consumers that they should read and understand the booking conditions before booking.	Opening paragraph
	Regulation 5 and 1(i): deemed acceptance of the booking conditions by stating that payment of the deposit would be taken as acceptance of the booking conditions. This failed to take account of whether the consumer had any real awareness of those booking conditions.		
Your obligations to Citalia - 1. Making a booking	1(n)	The statement that only the details of the holiday confirmed on the invoice can be guaranteed is deleted from the revised term. The revised term warns consumers to check the confirmation invoice carefully and raise any queries within a reasonable time period.	1. Making your booking
	Regulation 5 and 1(n): stated that only the details of the holiday confirmed on the invoice could be guaranteed and required the consumer's queries to be raised immediately.		
Your obligations to Citalia - 2. Your balance payment	1(e)	Revised term states that the balance of the full holiday price should be paid by 8 weeks prior to departure and that failure to pay by this date will result in cancellation of the booking and the consumer's loss of their deposit.	2. Your balance payment
	1(e): the terms dealing with cancellation charges and failure to pay by balance due date, failed to state clearly at what point the company would consider the contract as terminated. This allowed the company to decide when to treat a booking as cancelled		

	and, therefore, to determine how much the consumer was liable to pay.		
Your Obligations to Citalia - 3. Late bookings	1(i)	Revised term warns consumers that they should read and understand the booking conditions before booking.	3. Late bookings
	1(i): bound consumers booking by telephone to the booking conditions, of which they may not have been aware.		
Your Obligations to Citalia - 4. Alterations to your booking	1(e)	The words "including name changes" are deleted from the revised term. Revised term states that only 14 days notice is required for name changes.	4. Alterations to your booking
	1(e): Alterations made within 42 days of departure (including name changes) were automatically treated as cancellations incurring cancellation charges and, therefore, were considered contrary to Regulation 10 of the Package Travel, Package Holidays and Package Tours Regulations 1992 ("PTRs"). Regulation 5: required consumers, wishing to make name changes to the booking, to give a minimum of 21 days notice, which may have been an unreasonable amount of notice, contrary to Regulation 10 of the PTRs.		
Your Obligations to Citalia - 5. Alteration of holidays after departure	1(b)	The words "...you will be deemed to be breaking your contract" are deleted from the revised term. The exclusion of liability is also revised – liability is no longer totally excluded and the term now states "we will do our best to help you..." Revised term states that refunds for unused accommodation will only be refused where the holiday is curtailed through no fault of the company. The revised term also cross-refers to the term on "Quality".	5. Alteration of holidays after departure
	Regulation 5 and 1(b): excluded liability in relation to alterations made by the consumer after departure by providing that the contract would be deemed to be broken and that the company would no longer be liable for any loss, damage or additional expense and that no refunds would be paid. Regulation 5 and 1(d): excluded refunds for unused accommodation when a consumer curtailed the holiday. The clause failed to reflect the provisions of		

	Regulation 14 of the PTRs.		
Your Obligations to Citalia - 6. Cancellation	1(d)	Revised term permits name changes for festival and opera tickets. The revised term also cross-refers to the term regarding name changes in the revised "Alterations to your booking" (please see above).	6. Cancellation
	1(d) and 1(e): the prohibition on ticket transfers in relation to festival and opera tickets imposed an unfair financial burden on the consumer, by excluding the consumer's right to assign. Term also failed to reflect the consumer's rights under Regulation 10 of the PTRs.		
Your Obligations to Citalia - 7. Complaints	1(b)	Revised term no longer totally excludes liability if the consumer fails to comply with the time-limit or formal complaints procedure. It now warns the consumer that such a failure to comply will reduce the consumer's ability to make a claim.	7. Complaints
	1(b): imposed unreasonable restrictions relating to time-limits for making complaints. The time-limit itself was reasonable (the OFT accepts that 28 days is a reasonable time-limit within which the consumer should report their complaint). However, it was not reasonable for the company to exclude liability for all complaints which were not notified within this time-limit – this would conflict with Regulation 15(4) of PTRs.		
Your Obligations to Citalia - 8. Special requests	1(n)	Revised term accepts liability for special requests which have been confirmed verbally/ in writing by the company or its agents.	8. Special requests
	1(n): Excluded liability to meet special requests.		
Our obligations to you - 1. The Price Pledge	1(l)	Revised to allow downward revision of prices as well as upward revision of the price. The reference to an insolvency protection surcharge is deleted from the revised term.	1. The Price Promise
	1(l) and 1(b): failed to allow downward as well as upward revision of the price. 1(b): also provided for possible imposition of a surcharge, for insolvency protection, in a way which contravened Regulation 11.		

<p>Our Obligations to you - 3. If we alter your holiday</p>	<p>1(b)</p>	<p>Revised term limits this right to circumstances where changes have to be made as a result of events which are beyond the company’s control. Revised term makes it clear that the examples of significant changes which it gives are an indicative and not an exhaustive list. Revised term excludes liability, for changes more than 8 weeks before departure, only in cases of “force majeure”. Revised term complies with the provisions of Regulation 13 of the PTRs. Revised term that this compensation is the minimum compensation that will be paid. Revised term no longer suggests that compensation is limited to the compensation available under the consumer’s travel insurance. Revised term states that overbooking of scheduled flights entitles the consumer to claim compensation from the company as well as from the airline. Revised term lists the options for the consumer, reflecting the provisions of Regulation 13 of the PTRs.</p>	<p>3. If we alter your holiday</p>
	<p>1(b): reserved the right to make changes to the brochure details and the holiday arrangements both before and after booking. It promised to advise the consumer if such changes resulted in flight time alteration exceeding 1 hour 30minutes.  1(k): “significant change” was defined by reference to an exhaustive list. 1(b): exclusion of liability for minor and significant changes made more than 8 weeks before departure.  1(k): options for the consumer, in the event of a significant change, failed to reflect the provisions of Regulation 13 of the PTRs.  1(b): the amounts of compensation offered were inadequate as they did not reflect the amount that the consumer could expect to receive under common law. Term excluded liability for compensation in relation to flight delays on the day of travel, on the basis that this was covered by the consumer’s separate travel insurance.  1(b): implied that compensation, in the event of overbooking of scheduled flights, should be claimed from the airline.  1(k): in relation to rail-holidays, this term failed to acknowledge that changes to the class of accommodation could be a significant change and failed to reflect the provisions of Regulation 13 of the PTRs.</p>		

<p>Our Obligations to you - 4. If we cancel your holiday</p>	<p>1(f)</p> <p>1(b) and 1(f): in relation to the consumer's choice of an alternative holiday, this term failed to reflect the provisions of Regulation 13 of the PTRs. 1(k) and 1(b): reserved the right to vary itineraries and programmes without reimbursing the consumer for resulting costs incurred by him. 1(b): reserved the right to curtail the holiday after departure without making any refunds, without paying any compensation and without accepting responsibility for any resulting costs or expenses incurred by the consumer – this contravened the provisions of Regulation 14 of the PTRs.</p>	<p>(b) and 1(f): Revised term lists the options to which the consumer is entitled under Regulation 13 of the PTRs. 1(k) and 1(b): Revised term limits this right to circumstances where changes have to be made as a result of events which are beyond the company's control. 1(b): Revised term lists the options to the options to which the consumer is entitled under Regulation 14 of the PTRs and no longer states that the company will not refund nor be responsible for costs and expenses incurred by the consumer as a result of such changes.</p>	<p>4. If we cancel your holiday</p>
<p>Our Obligations to you - 5. Complaints Procedure</p>	<p>1(q)</p> <p>1(q): referred to compulsory arbitration without making it clear that consumers are, nevertheless, entitled to take court action.</p>	<p>Revised term reminds the consumer that arbitration is not the only form of dispute resolution available and that he may seek independent advice.</p>	<p>5. Complaints Procedure</p>
<p>Our Obligations to you - 6. Our liability to you</p>	<p>1(b)</p> <p>1(b): gave the impression that the company did not accept liability in relation to accommodation-only bookings. 1(b): excluded liability unless the company agreed that enjoyment of the holiday had been affected. This implied that the consumer's entitlement to compensation was subject to the approval of the company. 1(b): limited liability and compensation payments to twice the holiday price which</p>	<p>1(b): The revised term does not give the impression that remedies do not apply to accommodation-only bookings. 1(b): The requirement for the company to agree that enjoyment of the holiday has been affected is deleted from the revised term. 1(b): Revised term states that compensation payments are limited to three times the holiday price. 1(i): Revised term states that copies of the appropriate international</p>	<p>6. Accommodation Only Bookings</p>

	<p>failed to reflect the amount that a consumer may receive at common law.</p> <p>1(i): references to international conventions failed to inform the consumer that copies of those conventions should be made available to the consumer by the company.</p> <p>1(b): the term denied responsibility for travel delays.</p> <p>1(a): the term which dealt with the negligent acts of employees/ agents/ suppliers implied that the actions of the company or agent alone were not enough to found a claim.</p> <p>1(a): could have given the impression that liability for death and personal injury could be excluded – claimed that liability for death and personal injury was subject to the contractual complaints procedure.</p> <p>Regulation 5: the provisions regarding the company’s right to recoup costs incurred in legal assistance of the consumer fails to limit the company to actual costs reasonably incurred.</p>	<p>conventions are available from the company and the company's agents. 1(b): Statement that liability cannot be accepted for travel delays is deleted from the revised term.</p> <p>1(a): Revised term makes it clear that the negligence of the company or its agent alone is sufficient for a claim against the company - the revised term uses the words "via our suppliers" to replace the words "together with our suppliers"</p> <p>1(a): Statement that claims involving death and personal injury must be made in accordance with the contractual complaints procedure is deleted from the revised term.</p> <p>Regulation 5: Revised term limits the right to actual costs reasonably incurred.</p>	
<p>Our Obligations to you - 7. Conditions of Carriage</p>	<p>1(q)</p> <p>Failed to refer to relevant international conventions and fails to inform that the company is obliged to make copies of such conventions available to the consumer.</p>	<p>Revised term refers to international conventions. It also states that copies of such conventions are available upon request.</p>	<p>8. Conditions of Carriage</p>

<p>Our Obligations to you - 8 Motorail/ Please Note</p>	<p>Reg_5</p> <p>Refused to issue duplicate tickets where the consumer's tickets were lost/ stolen and failed to limit this refusal to situations where the motorail ticket supplier was unable to issue duplicates. Regulation 5: the provisions relating to misbehaviour by consumers appear to give the company absolute discretion to terminate the contract and fail to make clear when such discretion can be exercised by the company.</p>	<p>Term deleted. Revised term warns the consumer that they must accept responsibility for their proper conduct and that the company has the right to terminate in cases of serious misconduct. The statement that the company has the right "at our absolute discretion to terminate", is deleted from the revised term.</p>	<p>9. Disruptive Passengers</p>
<p>Our Obligations to you - 11. Please note</p>	<p>1(q)</p> <p>1(q): the provisions detailing the jurisdiction and applicable law stated that the contract was governed by English Law and that both parties should submit to the jurisdiction of the English courts at all times.</p>	<p>Revised term refers to the non-exclusive jurisdiction of the English or Scottish courts and the statement that the contract is governed by English Law is deleted from the revised term.</p>	<p>12. Please note</p>

Outcome Reached	Informal Undertaking Obtained	Date Effective	3 December 2003
Specific Reservations	<p>The position of the OFT was reserved in respect of the scale of cancellation charges used by the company.</p> <p>Information has been supplied to the OFT regarding the cancellation charge scale of First Choice Holidays PLC (the parent company of Citalia). However, the information supplied was not considered sufficient to establish that Citalia's scale of cancellation charges represents a genuine pre-estimate of loss incurred by the company as a result of cancellations.</p> <p>Citalia revised its cancellation charges and the revised charges are less onerous than those of First Choice Holidays PLC. Therefore, after careful consideration, further enforcement action in relation to Citalia's charges was not considered warranted, subject to complaints or other evidence suggesting that the charges are excessive.</p> <p>The OFT's position was also reserved in respect of Term 6. "Our liability to you" and in respect of refunds in force majeure situations. The OFT considered that further enforcement action was not warranted at this time, pending complaints or other evidence suggesting that these terms are operating unfairly:</p> <p>Term 6. Our liability to you: this term continued to include the statement "luggage and personal possessions are at all times your sole responsibility", which could be enforced by Citalia to avoid liability unfairly. The OFT do not expect Citalia to enforce this to avoid liability unfairly and, therefore, decided to reserve the OFT's position in relation to this matter.</p> <p>Refunds and force majeure: this term did not allow for refunds in force majeure situations even when the supplier has refunded Citalia. The OFT believes that if Citalia is able to receive a refund from its suppliers, the consumer is entitled to a refund of the difference in value between the services contracted for and the services provided, as provided under Regulation 14(2) of the PTRs. The OFT decided to reserve its position in relation to this matter.</p>		

## Educational Funding Company Ltd

Investigation	Educational Funding Company Ltd		
Trading Sector	Other recreational goods and services		
Action Taken By	OFT	Local Authority	Swindon Borough Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Credit Agreement & Terms of Agreement		
Original term	Application of regulations /Enforcer view	How changed	New term
2 - Credit Agreement	1(e)	deleted	None
	Term imposed an excessive penalty by recovering the balance of payment and terminating the membership upon default of payment.		
1 - Terms of Agreement	1(e)	Revised to make clear that all reasonable debt collection costs will be payable by the member.	1
	Term sought to recover the full costs of debt collection from a member.		
2	1(e)	Revised to make clear that an Administration Fee of £5.00 will be charged if payment is not received within ten days of the due date. In the event of default the reasonable debt collection costs will be paid by the member.	2
	Term imposed an unspecified late payment penalty and sought to recover the full costs of debt collection from a member.		
4	1(c)	Deleted	None
	and 1(o) challenge: Term had the potential to bind members to the contract while allowing the Club to opt out of its obligations.		

6	1(n)_14(a)	Revised to make clear that if the consumer requires any changes, he/she should ask for these to be put in writing and signed by the school Director.	5
	Had the potential for the Club to exclude liability for oral representations.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	2 April 2003
Other Information	The Credit Agreement was also amended to ensure compliance with the Consumer Credit (Agreements) Regulations 1983 as amended		

## First Choice Holidays

Investigation	First Choice Holidays plc		
Trading Sector	Package holidays		
Action Taken By	OFT	Local Authority	West Sussex County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Booking conditions		
Original term	Application of regulations /Enforcer view	How changed	New term
First Choice Pricing Policy	1(l)	Revised to allow for downward revision in price.	First Choice pricing policy
	1(l) – Only provided for an upward but not downward revision of the price where certain costs change after booking, as required by Regulation 11(1) of the Package Travel, Package Holidays and Package Tours Regulations 1992 ('the PTRs')		
First Choice pricing policy	1(l)	Revised to exclude price increases within 30 days of departure.	First Choice pricing policy
	1(l) - Failed to provide that no increases in the price would be made in the 30 days before departure, as required by Regulation 11(3) of the PTRs.		
First Choice pricing policy	1(l)	Revised to provide for the relevant options under Regulation 13 of the PTRs.	First Choice pricing policy
	1(l) - Failed to provide for the relevant options under Regulation 13 of the PTRs where there is a significant change of an essential term, defined as being an increase in the price of more than 10%.		

First Choice pricing policy	1(d)	Revised to allow the possibility of a refund if the consumer can show that s/he cannot transfer or re-use the policy.	First Choice pricing policy
	1(d) - Excluded refund of any insurance premium paid where a consumer cancels following an increase of more than 10% of the holiday price, contrary to Regulations 12 and 13 of the PTRs.		
Definitions	1(f)	Revised to refer to "unavoidable technical problems with transport".	Definitions
	1(f) - "Force majeure" defined as including "technical problems with transport".		
Payment	1(e)	Revised so that the charge payable by the defaulting customer will be the deposit.	Payment
	1(e) – Term allowed FCH discretion over the amount to charge a customer who fails to pay the balance on time.		
Your security: limitations on our liability	1(b)	Limit on liability other than for personal injury raised to three times the price of the holiday. Reference to consequential, economic or indirect loss or damage removed.	Your security: limitations on our liability
	1(b) - limited liability for loss or damage other than personal injury to twice the price of the holiday; and excluded liability for consequential, economic or indirect loss or damage.		
Your security: limitations on our liability	Reg_7	Deleted.	Your security: limitations on our liability
	Regulation 7 – limitation on liability qualified by the statement that statutory rights are unaffected.		
Your security: Limitations on our liability	1(a)	Deleted.	Your security: Limitations on our liability
	1(a) & (b) – acceptance of liability for loss, damage or injury caused by suppliers conditional on consumer's assignment of rights to FCH.		

Your security: Limitations on our liability	1 (i)	Revised to state that copies of the relevant conventions are available on request.	Your security: Limitations on our liability
	1 (i) - limited liability by reference to international conventions of whose provisions the consumer was unlikely to be aware.		
Your security: if you have a complaint	1 (b)	Revised to allow for the consumer to pursue a claim after the stipulated period.	Your security: if you have a complaint
	1 (b) – limited liability for complaints received more than a stipulated period after the consumer’s return from holiday.		
Booking your holiday: Insurance	Reg_5	Deleted	Booking your holiday: Insurance
	Regulation 5 – term allowed FCH to make a cancellation charge if the consumer had not provided evidence of insurance by 8 weeks before departure and whether or not FCH had reminded the consumer of the need to do so.		
Booking your holiday: Insurance	1 (d)	Exclusion removed	Booking your holiday: Insurance
	1 (d) – excluded refund of insurance premium paid where consumer was entitled to cancel without penalty, contrary to Regulations 12 and 13 of the PTRs.		
Booking your holiday: Flight and Flight times	Reg_5	Revised so as no longer to provide that the captain's authority is absolute, and to provide that the company or the carrier may, in their reasonable discretion, terminate the holiday of a disruptive passenger.	Travel advice: Disruptive Passengers
	Regulation 5 – provided that the captain of the aircraft had absolute authority to refuse to carry anyone who, in the captain’s opinion, was unfit to travel or might pose a danger to the aircraft or other passengers, without providing that the authority should be exercised reasonably.		

Booking your holiday: General	1(q)	Revised to provide for the contract to be governed by the non-exclusive law and jurisdiction of the English or Scottish courts.	Booking your holiday: General
	1(q) - Provided for the contract to be governed exclusively by English law and granted exclusive jurisdiction to the English courts.		
Changes to your booking: Cruise Passengers	1(b)	Revised to reflect the consumer's rights under Regulation 14 of the PTRs.	Changes to your booking: Cruise Passengers
	1(b) - Failed to reflect the consumer's rights under Regulation 14 of the PTRs when FCH significantly changed the holiday after departure.		
Changes to your booking: if we change or cancel your holiday	1(b)	Revised to remove limitation of payment of compensation to named significant changes.	Changes to your booking: if we change or cancel your holiday
	1(b) and 1(k) – Offered compensation for only certain named significant changes made to the holiday before departure.		
Changes to your booking: if we change or cancel your holiday	1(b)	Revised to state that the sums provided are the minimum sums payable.	Changes to your booking: if we change or cancel your holiday
	1(b) - Excluded compensation for significant changes to a holiday before departure above a set scale, even if a consumer could prove greater loss.		
Changes to your booking: if we change or cancel your holiday	1(b)	Deleted.	N/A
	1(b) – required the consumer to waive all rights on receiving a compensation payment from FCH.		
Brochure Accuracy: Building Work	1(b)	Revised to provide for the consumer's entitlements under Regulation 13(2).	Brochure Accuracy: Building Work
	1(b), (f) and (k) – Failed to reflect the consumer's entitlements under Regulation 13(2) of the PTRs where FCH significantly changed the holiday.		

Your accommodation: minimum numbers	1(b)	Revised to provide for the consumer's entitlements under Regulation 13(2) of the PTRs and for a refund of insurance taken out with FCH.	Your accommodation: minimum numbers
	1(b) and (f) – Failed to reflect the consumer's entitlements under Regulation 13(2) of the PTRs and allowed FCH to refuse a refund of insurance premium, if FCH had cancelled the holiday because of insufficient numbers.		
Your accommodation: watersports and your safety	1(b)	Revised to exclude liability for compensation should all or part of a course be commuted by force majeure.	Your accommodation: watersports and your safety
	1(b) - Excluded liability for compensation should weather or local conditions result in the loss of all or part of a sailing or windsurfing course, in contravention of Regulation 15 of the PTRs		
Your accommodation: watersports and your safety	1(b)	Revised to remove exclusion of liability and to make it a condition of the contract that the consumer have adequate insurance.	Your accommodation: watersports and your safety
	1(a) and (b) – Excluded liability for any persons undertaking courses without adequate insurance.		
Outcome Reached	Formal Undertaking Obtained	Date Effective	1 October 2002

<p>Specific reservations</p>	<p>The position of the OFT was reserved in respect of the following terms in the new booking conditions.</p> <p>The term entitled "Special Requests" under "Booking your holiday" excluded all liability for failure to meet special requests. It was revised to accept liability for requests that FCH has confirmed it will meet, but otherwise still excludes liability for requests that FCH has not confirmed it will meet.</p> <p>The term under "Changes to your booking" "If you cancel" requires the consumer to notify cancellation by recorded delivery if booked directly, potentially unfair as a formality requirement under 1(n).</p> <p>OFT examined data and supporting information supplied by the company in relation to the cancellation charges referred to in the term under "Changes to your booking", and concluded that the overall level of the charges did not appear to represent more than a genuine pre-estimate of the company's overall losses from cancellation in the period examined. We reserved position on whether at points on the scale the charge exceeds a genuine pre-estimate of loss at the time of cancellation.</p> <p>The OFT will revisit these terms if we receive complaints from consumers or other evidence about how they work in practice.</p>
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## Hamptons International

Investigation	Hamptons International		
Trading Sector	Other professional services (eg undertakers, advertising..)		
Action Taken By	OFT	Local Authority	Surrey County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	General Conditions, Seller's Conditions & Buyer's Conditions		
Original term	Application of regulations /Enforcer view	How changed	New term
2.1	1(b)_2(a)	Term no longer seeks to exclude liability for default by the parties to the contract of sale.	2.1
	1(b): term purported to unfairly exclude the auctioneer's liability for all defaults by the buyer or seller.		
2.2	1(i)	Deleted	
	1(i): term stated that 'all persons are admitted...on the basis that they have notice of these Conditions.' This potentially unfairly bound consumers to hidden terms.		
2.4	1(b)_2(a)	Deleted	
	1(b): By providing that the auctioneer makes no warranty that the catalogue and description of the lot are accurate, the term had the potential to unfairly exclude the auctioneer's liability for negligent or deliberate misdescriptions.		
2.5	1(b)_2(a)	Term no longer excludes liability for statements made fraudulently, or where the maker of the statement should reasonably have known that it was inaccurate. Term also highlighted in preamble to the contract.	19
	1(b): term excluded liability of the auctioneer, its employees or agents for the accuracy of statements made. Liability was also excluded for the quality of the goods.		

2.7.1	1(b)_2(b)	Term no longer seeks to exclude liability for loss or damage negligently caused by the auctioneer.	2.4
	1(b): term potentially unfairly excluded liability for damage negligently caused to lots by the auctioneer, or its employees or agents.		
2.9	1(n)	Deleted	
	1(n): unfair 'entire agreement' clause with potential to exclude liability for verbal representations.		
2.11	1(q)	Term now states that matter may be referred to arbitration if the parties agree.	9.2
	1(q): potentially unfair compulsory arbitration clause.		
Seller's Conditions - 3	1(i)	The first part of the challenge was deleted. Term 4.1 provides that the seller is responsible for the lot until it is delivered to a representative of the auctioneers or as agreed between the seller and auctioneer.	4.1
	1(b) & 1(i): by stating that 'by delivering any goods to Hamptons each seller agrees to be bound by these conditions,' the term may have unfairly bound consumers to hidden terms. By providing that when the auctioneer collects the goods from the seller the risk in the goods remain with the seller until they arrive at the auctioneer's premises, the term also potentially unfairly may have excluded liability for goods damaged by the auctioneers.		
4.1	Reg_7	Term redrafted in plain language.	10.1.1
	Regulation 7: words such as 'title' and 'liens' failed to meet the requirement of plain language.		
5	Reg_7	Term redrafted in plain language.	11
	Regulation 7: word 'indemnify' failed to meet the requirement for plain language.		

6.1	1(n)_14(a)	Term provides that the reserve needs to be communicated to the auctioneer at a certain time.	12.2
	1(n): whilst it permitted a verbal agreement to change a reserve to be reached, the term potentially unfairly excluded the auctioneer's liability to honour such agreements.		
6.4 & 6.5	1(i)	Term now highlighted in preamble to contract and revised so that the auctioneer can only sell lots below the reserve if instructed by the seller accordingly.	12.1
	1(i): these terms allowed the auctioneer to sell the lots at less than the reserve price. There was a concern that these terms could be easily overlooked by sellers.		
7.1	Reg_7	Term now expressed in plain language.	4.1, 4.4 & 4.5
	Regulation 7: term relating to passing of risk in lots not expressed in plain language.		
7.3	1(b)_2(b)	Deleted.	
	1(b): term potentially unfairly excluded, amongst other things, the auctioneer's liability for damage to glass or picture frames.		
7.4.2	1(b)_2(b)	Deleted	
	1(b): term potentially unfairly excluded auctioneer's liability for damage caused by them, for example by storing a painting at the wrong temperature.		
7.5	1(b)_2(b)	Term no longer seeks to exclude liability for damage caused by the auctioneer negligently or otherwise.	2.4
	1(b): term potentially unfairly excluded liability for damage to lots caused by the auctioneers through negligence or otherwise.		
7.6.1	Reg_7	Deleted	
	Regulation 7: the word 'indemnify' failed to meet the requirement for plain language.		

7.6.3	Reg_7	Deleted	
	Regulation 7: the word 'waive' failed to meet the requirement for plain language.		
7.6.4	Reg_7	Deleted	
	Regulation 7: term contained legal jargon and references to complex insurance law terminology and therefore potentially failed to meet the requirement of plain language.		
9.3	Reg_7	Term redrafted in plainer language.	11
	Regulation 7: word 'indemnify' failed to comply with requirement for plain language.		
12.1	Reg_5	Terms clearly provide that seller will continue to own the lot until he has received the purchase price. Term now refers to 'ownership.'	5 & 13.5
	Regulation 5 & Regulation 7: Term potentially unfairly obliged the seller to pass ownership of a lot to the buyer even if the seller has not received payment for the lot. Word 'title' failed to comply with requirement for plain language.		
14.1	1(e)	Despite the OFT's reservations expressed below, the term was redrafted to more accurately reflect the reasonable costs incurred by the auctioneer, for instance by making provision for the timing of the seller's withdrawal.	15.1
	1(e): Term fixed the method of calculating the fee payable by the seller when he cancels his instructions of sale at any time. Therefore the term may not have reflected the reasonable costs incurred by the auctioneer when the seller withdraws a lot.		
14.3	Reg_7	Deleted	
	Regulation 7: word 'indemnify' failed to meet the requirement for plain language.		

Buyer's Conditions - 17	1(b)_2(a)	Term now advises buyers to examine lots before the commencement of the auction, and in particular refers buyers to Term 4.2 (where the auctioneer's liability for the physical condition of the lot is set out) and Term 19 (where the auctioneer's liability for inaccurate statements made concerning the lot is set out).	18 & 19
	1(b): term potentially unfairly excluded liability by deeming that the buyer, before bidding, had satisfied himself of the physical condition and description of the lot.		
21.1	1(b)_2(b)	Term provides that the auctioneer accepts liability to make a commission bid where it has failed to use reasonable care and skill.	21
	1(b): term disclaimed liability for the auctioneer's failure to process commission bids with due skill and care.		
22.1.1	1(b)_2(a)	Term provides that in selling lots the auctioneer generally acts as the seller's agent.	2.1
	1(b): term potentially excluded the auctioneer's liability for any default by the seller.		
22.1.2	1(b)_2(b)	Term provides that the lot becomes the buyer's responsibility when it is delivered to the buyer or the buyer's representative.	4.4
	1(b): By providing that upon acceptance of a bid the lot will be at the sole risk of the buyer, the term potentially unfairly excluded the auctioneer's liability for damage it subsequently caused to the lot.		
22.2	Reg_7	Term redrafted in plainer language.	5
	Regulation 7: words such as 'title' and 'lien' failed to meet the requirement for plain language.		
25.1	1(b)_2(b)	Term no longer seeks to exclude liability for loss or damage caused by the auctioneer.	2.4
	1(b): term potentially unfairly excluded the auctioneer's liability if it causes damage or loss to a lot.		

26	1(e)	The scope of the potential penalties has been reduced. It is now acknowledged that there may be circumstances in which the buyer lawfully disputes the amount payable.	24
	1(e): Term provided for potentially disproportionately severe penalties if the buyer failed to pay for and remove lots within prescribed timescale. The term may also have restricted the buyer's right to set-off.		
26.5	1(e)	Rate of interest described as 4% per annum over the base rate of National Westminster Bank plc.	24.1
	1(e): term provided for potentially unfairly high rate of interest in the event of non-payment.		
26.7	Reg_7	Term redrafted in plain language.	24.3
	Regulation 7: word 'lien' failed to meet requirement for plain language.		
27.1	1(b)_2(a)	Term no longer seeks to exclude liability for statements made fraudulently, or where the maker of the statement should reasonably have known that it was inaccurate.	19
	1(b): clause potentially unfairly excluded auctioneer's liability for misdescriptions of lots.		
27.2.3	Reg_7	Term redrafted in plain language.	27.1.2
	Regulation 7: Term not expressed in plain language and contained jargon such as 'title.'		

27.3	1(b)_2(c)	Term makes clear that any remedies provided for in the contract for the buyer when he satisfies the auctioneers that the lot he purchased is a counterfeit, will not restrict the buyer's rights against the auctioneer where the auctioneer has been negligent or is in breach of contract.	27.2 & 27.3
Outcome Reached	Informal Undertaking Obtained	Date Effective	7 July 2003
Specific reservations	<p>The OFT's position was reserved in respect of 3 terms: Term 4.3 which allows the auctioneers to potentially unfairly deduct various expenses when calculating their liability in respect of damaged lots: Term 12.2 which allows the auctioneer to treat a lot as withdrawn if the seller increases the reserve price beyond what the auctioneer considers reasonable. Despite the term's revision, the OFT considered that it could be unfairly used by the auctioneer to restrict the seller from altering the reserve price prior to the auction: Term 15.1 which, other than in the event of a breach by the auctioneer, sets out the sums payable to the auctioneer when the seller withdraws the lot from auction. Despite the improvements made to this term referred to above, the OFT remained concerned that the sums payable may not in all circumstances reflect the reasonable losses reasonably incurred by the auctioneers. The auctioneer's representations were to the effect that the term is a genuine pre-estimate of its loss.</p>		

## Hazlemere Windows

Investigation	Hazlemere Window Company Ltd		
Trading Sector	Double glazing products and installation		
Action Taken By	OFT	Local Authority	Buckinghamshire County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Terms and Conditions of Business		
Original term	Application of regulations /Enforcer view	How changed	New term
2(c)	1(n)_14(a)	Revised to advise the consumer that any changes required by them should be made in writing.	2.1
	1(n): allowed the supplier to disclaim liability for oral or written statements made by employees.		
2(e)	Reg_7	Deleted.	
	Regulation 7: use of the word 'offer' in its legal sense would be unclear to consumers.		
2(f)	1(n)_14(a)	Deleted.	
	1(n): provided that computer drawings produced prior to the survey formed no part of the contract and therefore potentially excluded representations made by the supplier before entering into the contract.		
4, first sentence	1(b)_2(f)	Revised so that the supplier will not be responsible for delays caused by circumstances beyond its reasonable control listed in term 8.12.	5.1 and 8.12
	1(b): excluded liability for the consequences of any delay to the estimated time or date of delivery for reasons within the supplier's control.		

4, second sentence	Reg_7	Deleted.	
	Regulation 7: the provision allowing the company to reserve the right to deliver by instalments, in the absence of the consumer's express instructions to the contrary, was not sufficiently prominent in the contract to allow the consumer to exercise their right to instruct.		
4, fifth sentence	1(k)	Deleted.	
	1(k): potentially gave the supplier the right to vary the goods ordered by the consumer.		
5	1(b)_2(d)	Deleted.	
	1(b) and 1(n): potentially excluded liability for claims in respect of defective goods and failure to deliver by imposing unreasonable time limits for written notifications to both the supplier and the carrier. In certain circumstances, by deeming that the consumer had accepted the goods, the term's effect was to potentially exclude the supplier's liability. Regulation 7: meaning and purpose of fourth sentence unclear.		
6(1)	Reg_7	Deleted.	
	Regulation 7: unclear reference to 'credit rating'.		
6(2)	Reg_7	Revised to make it clear that full payment is required by the consumer on the day that the installation of goods is satisfactorily completed.	6.1
	Regulation 7: reference to being invoiced 'net' may be unclear to consumers.		

6(3)	1(e)	Revised to allow the supplier an interest of 4% per annum on late payments.	6.3
	1(e): imposed a potentially unfair penalty for overdue accounts.		
6(5)	1(e)	Revised to allow the supplier to charge for reasonable costs.	6.4
	1(e): allowed the supplier to recover any costs incurred relating to an overdue account.		
7	Reg_7	Requirements highlighted.	7.2
	Regulation 7: consumer notification requirements for postponing deliveries not sufficiently prominent.		
7	1(f)_6(a)	Revised to allow the supplier to recover only reasonable costs and expenses incurred.	7.3
	1(f) and 1(e): potentially prevented the consumer from cancelling the agreement when the supplier was in material breach and allowed the supplier to claim more than his reasonable losses or expenses arising from the consumer's breach.		
8(a)	1(b)_2(b)	Revised so that liability is not excluded for damage where it is caused by the company's own negligence.	3.7
	1(b): potentially excluded the supplier's liability for damage caused by its own negligence.		
9	1(b)_2(c)	Deleted.	
	1(b): potentially excluded the supplier's liability by requiring consumers to meet the costs for the carriage of returned defective goods.		
10	Reg_7	Deleted.	
	Regulation 7: use of legal jargon ('title and risk') and reference to 'unconditional payment' which may not have been understood by consumers.		

10(b)	Reg_5_18(i)	Deleted.	
	Regulation 5 and Regulation 7: potentially imposed unreasonable ancillary obligations on the consumer including a requirement that goods should be stored separately by the consumer. Use of legal jargon ('bailee').		
10(c)	Reg_7	Deleted.	
	Regulation 7: term appeared to be applicable to businesses rather than consumers but this was not made clear.		
10(d)	Reg_5_18(a)	Deleted.	
	Regulation 5: the term had the potential effect of imposing unfair burdens on the consumer by making him the insurer of the goods, even when the goods were to be installed by the supplier.		
11(a)	1(b)_2(e)	Revised to provide that when the consumer has paid in full, the supplier will provide a written guarantee which will not affect the consumer's statutory rights.	8.2
	1(b): excluded the supplier's liability by providing that the supplier's guarantee would have no effect until the supplier's invoice had been paid.		
11(c)	1(b)_2(h)	Revised so that it is no longer a requirement to produce the guarantee for the supplier to act in the event of a complaint.	8.3
	1(b) and 1(n): in the event of a complaint relating to defective goods or faulty installation, if the consumer was unable to produce the guarantee, the term enabled the supplier to exclude any liability.		
11(e)	1(b)_2(a)	Revised so that the supplier will use reasonable efforts to find replacements similar to the goods being replaced.	8.5
	1(b): potentially allowed the supplier to provide replacement goods of inferior quality to those being replaced.		

11(f)	1(b)_2(a)	Revised so that liability is not excluded where the supplier is negligent in its installation of goods or the goods are defective.	8.6
	1(b): allowed the supplier to exclude liability for circumstances within their reasonable control.		
11(g)(ii)	1(b)_2(a)	Deleted.	
	1(b): by limiting the supplier's liability to that offered by the manufacturer to the supplier, the term limited the supplier's liability for defective goods.		
11(h)	1(b)_2(a)	Deleted.	
	1(b): potentially unfairly gave the supplier the right to determine the type of redress to be given to the consumer and such redress was potentially unfairly limited.		
11(i)	1(b)_2(e)	Deleted.	
	1(b): excluded the consumer's right of set-off.		
11(j)	1(b)_2(h)	Revised so that the supplier excluded liability only where the damage in goods or installation is caused by the consumer or third party.	8.8
	1(b): excluded liability for any defects if adjustments, alterations or additions to goods supplied have been made by third parties.		
11(k)	1(b)_2(c)	Revised so that the supplier is not liable for any loss or damage caused by the supplier where such loss is not a reasonably foreseeable result.	8.11
	1(b): excluded liability for reasonable foreseeable losses arising from the supplier's breach of contract and/or negligence.		
12 (heading)	Reg_7	Deleted.	
	Regulation 7: use of legal jargon ('force majeure').		

12(b)	1(b)_2(f)	Revised to exclude liability only if such delay or failure is due to causes beyond the supplier's reasonable control.	8.12
	1(b): excluded liability for delay in circumstances that would be within the supplier's reasonable control.		
13	Reg_7	Deleted.	
	Regulation 7: use of legal jargon ('waiver') in the heading and the meaning of the term itself was unclear.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	22 May 2003
Intelligibility	Generally improved and some legal jargon removed.		
Specific reservations	The position of the OFT was reserved, following discussions, in respect of the new term 9.1. This term provided that in the event of a dispute that cannot be resolved, either party can pursue Court proceedings and the contract will be governed by English law and such a dispute would be dealt with by the jurisdiction of the English Courts. Although the contract is signed only in England, the OFT considered that if a consumer moved to Scotland, they would be unable to start proceedings in local Courts. After careful consideration, further enforcement action was not considered warranted.		

## Heatshield Windows & Conservatories Ltd

Investigation	Heatshield		
Trading Sector	Double glazing products and installation		
Action Taken By	OFT	Local Authority	Peterborough City Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Terms and Conditions of Contract		
Original term	Application of regulations /Enforcer view	How changed	New term
Initial statement concerning statutory rights	Reg_7	Revised to provide that nothing in the conditions removes any protection a customer may have under any consumer legislation. Also revised to inform consumers where to obtain advice on such legislation.	Initial statement concerning consumer legislation.
	Regulation 7: reference to statutory rights and list of statutes was potentially unclear to consumers.		
1, first and second sentences	1(n)	Reference to cancellation deleted. Revised to provide that if any amendments to the contract are required, it is preferable that they are confirmed in writing.	1
	1(n): allowed the supplier to disclaim liability for oral or written statements made by employees. Also did not permit variations to the contract or cancellation of the order unless written agreement was obtained from the supplier.		
1, third sentence	1(e)	Deleted.	
	1(e): allowed the supplier, in the event of cancellation, to charge an administration fee of £50 in addition to any losses the company sought to claim even if the consumer cancelled the order before any work had been carried out.		

2	<p>1(f)</p> <p>1(f): following an adverse survey, permitted the supplier to cancel the contract without providing a written explanation of the structural conditions encountered to the consumer.</p>	<p>Revised so that the supplier commits to carry out the survey within a specified timescale. In the event that the supplier wishes to cancel because of an adverse survey, a copy of the report will be given to the consumer. In the event of cancellation by the supplier, all prepayments will be refunded.</p>	2
3	<p>1(f)</p> <p>1(f): allowed the supplier to cancel the contract at its discretion where the same facility was not granted to the consumer.</p>	<p>Revised to allow the supplier to cancel the contract only where cancellation is unavoidable due to circumstances beyond its control.</p>	3
5	<p>1(b)_2(f)</p> <p>1(b): potentially allowed the supplier to exclude liability for delay however caused in respect of any proposed delivery date</p>	<p>Revised so that any proposed delivery or installation date may have to change due to factors beyond the supplier's control.</p>	5
6, second sentence	<p>1(e)</p> <p>1(e): required the consumer to pay the total price of the contract before anything was supplied if an appointment date for installation had not been agreed within a period of 28 days.</p>	<p>Revised to provide that the consumer should allow the installation to take place within 21 days of the materials being ready and if within a further 21 days, the consumer had not permitted installation, 60% of the contract price becomes payable, the balance being due on completion.</p>	6
12, first sentence	<p>1(b)_2(c)</p> <p>1(b): excluded liability for consequential loss.</p>	<p>Revised to provide that the supplier is not liable for losses that were actually unforeseeable to the parties when the contract was made or for losses not caused by the company's breach of contract.</p>	13

12, second sentence	1(b)_2(h)	Guarantee revised (see below).	13 and 10 Year Guarantee
	1(b): stated that products carry a Ten Year Guarantee but this guarantee could potentially have excluded or reduced the consumer's statutory rights in the event that the company failed to perform its contractual obligations.		
13, first sentence	1(b)_2(b)	Revised to provide that in the case of defective products, liability is accepted by the supplier, it will offer to replace the goods free of charge. If the consumer is still not satisfied with such an offer, the consumer has the option to reject the goods and rescind under the Supply of Goods and Services Act 1982/Sale of Goods Act 1979. Please refer also to 'Specific reservations' below.	14
	1(b): allowed the supplier to exclude or restrict liability for defects attributable to bad workmanship, defective design or faulty materials by requiring notification within 14 days of becoming apparent. It also provided that if liability was accepted, such defects would be rectified by the supplier.		
14	1(k)	Revised to provide that goods may have an equivalent or improved specification but the consumer will be notified as soon as possible of any changes and will be given the option of accepting those changes or cancelling the contract and receiving a refund of any prepayments.	15
	1(k): potentially gave the supplier the right to supply goods different to those ordered by the consumer.		
Front of contract: text above customer's signature on front of contract	Reg_5_18(e)	Revised to advise the consumer to read and understand the terms before signing the contract and to ensure that they have been given their own copy of those terms.	17 and statement on front of contract
	Regulation 5: unfair 'read and understood' declaration.		

Ten Year Guarantee Terms and Conditions: initial statement about statutory rights	Reg_7	Deleted.	
	Regulation 7: reference to statutory rights unclear to consumers.		
Ten Year Guarantee Terms and Conditions: term 2, second sentence	Reg_7	Clarified to provide that the guarantee will cover faults in all manufactured materials and in the installation of the product.	10 Year Guarantee: term 2
	Regulation 7: meaning of the words '...failure to use operate...' unclear in explanation of what was and was not covered by the guarantee.		
Ten Year Guarantee Terms and Conditions: term 2, third sentence	1(b)_2(h)	Deleted.	
	1(b): excluded 'any further liability' where repairs or alteration of products carried out by third parties.		
Ten Year Guarantee Terms and Conditions: term 4	1(b)_2(f)	Revised to provide that liability is excluded only for delays caused by weather or circumstances beyond the company's control.	10 Year Guarantee: term 3
	1(b): excluded liability for 'any consequence of' delay however caused.		
Ten Year Guarantee Terms and Conditions: term 6	1(b)_2(h)	Deleted.	
	1(b): circumstances in which the supplier would make a service charge for call-outs and the cost of such charges was unclear to consumers.		
Ten Year Guarantee Terms and Conditions: term 7	Reg_7	Deleted.	
	Regulation 7: meaning unclear.		

Ten Year Guarantee Terms and Conditions: term 8	Reg_5_18(d)	Deleted.	
	Regulation 5: excluded the consumer's right to assign the guarantee.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	11 December 2003
Intelligibility	The overall clarity of the contract has been generally improved.		
Specific reservations	<p>The position of the OFT was reserved in respect of term 14 in the supplier's revised terms and conditions.</p> <p>Although the term was amended to allow for rejection of the goods, lines 5 - 9 of the term could be interpreted as providing that the right to reject the goods can only be exercised if the consumer is not satisfied with the replacement already carried out by the supplier. However, under the Sale of Goods Act 1979, the consumer has the right to reject without first having to see if the replacement is acceptable. However, the OFT obtained clarification from the supplier that the meaning of the term, as drafted, is that a consumer who is dissatisfied may be offered a replacement but if he does not wish to accept it, can reject and rescind.</p> <p>There was also concern about the limit of 14 days for claims of any damage resulting from defects which appeared to seek to undermine the time limits set for bringing an action for breach of contract under the Limitation Act 1980.</p> <p>While it is considered that the potential for unfairness remains in the above term, further enforcement action was not warranted, subject to receipt of further complaints or other evidence suggesting that this term is operating unfairly in practice.</p>		

**E C Hodge (MF) Ltd**

Investigation	E C Hodge (MF) Ltd		
Trading Sector	House maintenance, repairs and improvements		
Action Taken By	OFT	Local Authority	Hertfordshire County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Quotation		
Original term	Application of regulations /Enforcer view	How changed	New term
Terms of payment	1(b)_2(e)	Revised so that payment of balance of total contract value less 50% of fitting charge due before delivery and the remainder to be paid upon completion. Consumers entitled to refer disputes over installation to Qualitas, whose decisions will be binding on the supplier but not on consumers (see 'Other information' box below).	Terms of payment (fitted)
	1(b): restricted right to set-off by requiring payment in full before delivery.		
End of the quotation, immediately after the name of the company	Reg_7	Deleted.	
	Regulation 7: consumers unlikely to understand the term 'E & OE'.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	19 March 2003
Other Information	Qualitas is a trade association which operates a conciliation and adjudication service for the furniture industry. While it is adjudicating complaints about E C Hodge under this scheme, it will hold 20% of the contract sums in an independent trust account. Specific reservations: The payment protection scheme appears to be capable of meeting the OFT's continuing concerns about the small retention that consumers are afforded by the requirement for payment of the balance less 50% of fitting charge before delivery and the OFT therefore agreed to it. However, the OFT will be monitoring its effectiveness as a method of remedying any detriment caused by the terms of payment for fitted furniture.		

## Klinexcel

Investigation	Klinexcel		
Trading Sector	House maintenance, repairs and improvements		
Action Taken By	OFT	Local Authority	London Borough of Havering
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Terms and Conditions of Agreement; Information Guide		
Original term	Application of regulations /Enforcer view	How changed	New term
The client agrees to the following ... (Term 3)	1(k)	Notice period is increased enabling the consumer to cancel the agreement before any increase takes effect.	The client agrees to the following ... (Term 3)
	1(k): potentially unfairly allowed the supplier to increase the hourly rate without giving the consumer sufficient notice to allow him/her to cancel the contract before being affected by the increase.		
Failure to pay on time ('We have the right... on time')	1(f)	Amended to make provision that reminders will be issued to the consumer before the agreement is cancelled due to late payment.	Failure to pay on time ('We have the right... being issued')
	1(f): potentially unfairly allowed the supplier to terminate the agreement for a minor breach of the payment terms.		
Failure to pay on time ('We also reserve the right to make additional charges ... payment')	1(e)	Revised by limiting any additional charges imposed to the expenses incurred by the supplier in recovering the late payment.	Failure to pay on time ('We also reserve... late payments')
	1(e): gave the supplier a potentially unfair wide discretion to impose additional charges on the consumer for late payment.		

Termination	1(f)	Amended to provide that the supplier is entitled to cancel the agreement in circumstances where the consumer commits a serious breach of the contract or behaves unreasonably (including examples of such behaviour), and to state that the notice period for consumer cancellation will be waived in circumstances where the supplier is in serious breach of the contract. Also revised to allow the supplier to recover from the consumer reasonable sums it incurs in the recovery of any outstanding debts.	Termination
	1(f) and 1(e): allowed the supplier to cancel the agreement at any time while the consumer was required to give 30 days notice of cancellation. Also potentially unfairly allowed the supplier to impose a financial penalty on outstanding debts.		
General ('We try to give... beyond our control')	1(b)	Amended to state that liability would only be excluded where delay is caused by industrial action beyond the supplier's control.	General ('We try to give... beyond our control')
	1(b): unfairly excluded liability for delay caused by industrial action within the supplier's control.		
General ('Our office must be notified immediately ... name or address')	Reg_7	Deleted.	Deleted.
	Regulation 7: the provision that consumers must notify the supplier of any change in name or address immediately conflicted with another term in the contract which required consumers to give 30 days notice before any such change.		
Information Guide - Insurance (Term 5)	1(b)	Revised to provide that the supplier will be liable for the first £100 in circumstances where it has been negligent or acted without due care	Insurance (Term 5)
	1(b): by providing that the consumer had to pay the first £100 of any damages caused by the cleaner the term potentially unfairly excluded the supplier's liability where it had acted negligently.		

Outcome Reached	Informal Undertaking Obtained	Date Effective	7 October 2003
Other Information	<p>The OFT sought clarification in relation to the term 'Late payments will be billed at the full monthly rate as opposed to the discounted quarterly or annual rates', included under the subheading 'Failure to pay on time'. The supplier explained that in circumstances where payment is late the consumer is issued with two reminders, if payment is still not forthcoming the cleaner is withdrawn and the consumer is charged only for the work already carried out by the cleaner, but not paid for, at the monthly rate (no annual or quarterly fee is sought).</p>		

## L D Property Management

Investigation	L D Property Management		
Trading Sector	Letting agencies		
Action Taken By	OFT	Local Authority	Hampshire County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Terms and conditions for tenants		
Original term	Application of regulations /Enforcer view	How changed	New term
Deposit	<p>1(f)</p> <p>1(f) allowed the landlord to dissolve the contract and retain the tenant's deposit. 1(d) provided that the tenant's pre-payments were non-refundable in the event of the consumer withdrawing from the contract. 1(d) provided that the landlord had favourable cancellation rights in the agreement. Regulation 7: use of legal jargon ('dilapidations')</p>	<p>Revised to provide that if the landlord withdraws from the agreement through no fault of the tenant, the tenant is entitled to a full refund of their deposit. Revised to provide that if the tenant withdraws from the agreement because of an unreasonable demand from the landlord, the tenant is entitled to a full refund of their pre-payments. Redrafted to provide that should the tenant or landlord withdraw from the agreement at any time, apart from a contribution to the landlord's administration charges, the security deposit will be returned to the tenant. Redrafted to state 'damage to the property'.</p>	Deposit

Insurance	Reg_7	Revised to provide that this is no longer a requirement placed on the tenant.	Insurance
	Provided that the tenant enter into block contents insurance at their own expense.		
Moving In	1 (i)	Revised to provide that an appointment will be made with the named tenants to give them the opportunity to read and sign the agreement when they pay the first month's rent or administration fee.	Moving In
	1 (i) had the effect that prospective tenants may not have had the opportunity to become acquainted with the Terms and Conditions of the tenancy agreement before they pay the holding deposit.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	16 December 2003
Specific reservations	<p>The position of the OFT was reserved in respect of the 'Deposit' term.</p> <p>The term provides that where the tenancy does not proceed because inadequate references have been given the landlord can deduct from the deposit reasonable expenses. The OFT believes this may be unfair because the tenant may not have been at fault where references are received which the landlord deems to be inadequate.</p>		

## Major Travel

Investigation	Major Travel		
Trading Sector	Package holidays		
Action Taken By	OFT	Local Authority	London Borough of Camden
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Booking Conditions (as at 8 March 2001)		
Original term	Application of regulations /Enforcer view	How changed	New term
Booking Conditions	1(q)	References to governing law and jurisdiction are deleted from revised terms.	-
	1(q): Contract governed by English Law only and required to submit to jurisdiction of English courts.		
Surcharge	1(l)	<p>1(l): Revised term provides for downward price revision and reimbursement of consumer. 1(l): Provides that no surcharge will be imposed within 30 days of the departure date.</p> <p>1(e): Revised term no longer permits price revisions other than those permitted under Regulation 11.</p> <p>1(b) and (k): Revised term provides that, when the surcharge increases the price of the holiday by more than 10%, the consumer is entitled to the same options offered in relation to "significant changes".</p> <p>1(e): Revised term no longer imposes cancellation charges in this situation.</p> <p>1(e): Term deleted.</p>	Major Travel Price Policy
	1(l): Failed to provide for upward and downward revision of prices. Therefore, contravened the requirements of Regulation 11 of the Package Travel, Package Holidays and Package Tours Regulations 1992 ("the PTRs").		
	1(l): Failed to provide that no price increase could be made within 30 days of departure date, contravened the requirements of Regulation 11 of the PTRs.		
	1(e): Failed to limit price revisions solely to the permitted variations specified in Regulation 11 of the PTRs.		
	1(b) and (k): Failed to set out all of the options available to consumer under Regulation 13 of the PTRs in "significant		

	<p>change” situations (which could apply to some price variations).</p> <p>1(e): Imposed loss of deposit plus cancellation charges on consumer for failure to pay balance by due date. However, failed to indicate at what point the company would consider the contract as terminated and the amount that would be charged - this gave the company absolute discretion to determine these matters.</p> <p>1(e): Automatically treated alterations made to the booking by the consumer and made within 14 days of departure, as cancellations incurring cancellation charges.</p>		
Cancellation	<p>1(f)</p> <p>1(b) and (f): Failed to inform consumer of his right to transfer his booking under Regulation 10 of the PTRs to another person in the event of being unable to proceed with the package.</p> <p>1(f): Failed to give the consumer the relevant options under Regulation 13 of the PTRs where the consumer cancels as a result of a significant change made by the company before departure.</p>	<p>Revised term sets out transfer rights which are in accordance with Regulation 10.</p> <p>Revised terms reflect the provisions of Regulation 13 of the PTRs.</p>	Major Travel Price Policy Charges
Holiday Problems	<p>1(b)</p> <p>Regulation 7: Made formal complaints procedure a “condition” of the contract - the use of the legal jargon was meaningless in this context and potentially misleading.</p>	<p>Reference to any such “condition” is deleted from the revised terms.</p> <p>Revised term no longer implies that liability will be excluded if consumer fails to comply with formal complaints procedure.</p>	Holiday Problems

	<p>1(b): Also implied that the company could exclude liability if consumer failed to comply with the formal complaints procedure.</p>		
Changes	<p>1(b)</p> <p>1(b) and (k): Reserved the right for the company to make changes at any time which could have appeared to allow the company to exclude liability for supplying different services and accommodation.</p> <p>1(b) and (k): Failed to apply the consumer’s rights under Regulation 13 of the PTRs to situations when the change is made through no fault of the consumer.</p> <p>1(b): Further contravened Regulation 13 by failing to provide that the consumer was entitled to a refund of the difference in price if alternative holiday was less expensive.</p> <p>1(b): Failed to provide that under Regulation 13 of the PTRs, the consumer may also be entitled to receive compensation if he suffers major changes to the booking.</p> <p>1(b) and (k): Limited the situations considered as major changes, by referring to an exhaustive list of major changes.</p>	<p>Term deleted.</p> <p>Revised term reflects the provisions of Regulation 13 of the PTRs.</p> <p>Revised term provides for refunds in accordance with Regulation 13 of the PTRs.</p> <p>Revised term refers to the minimum compensation that will be available.</p> <p>Revised term no longer refers to an exhaustive list.</p>	Changes

Force Majeure	1(b)	Revised term states clearly that force majeure means unusual and unforeseeable circumstances beyond the control of the company, the consequences of which could not have been avoided even if all due care had been exercised. Also states that force majeure circumstances may include but are not limited to the example situations given.	Force Majeure
	Regulation 7 and 1(b): Gave incorrect definition of force majeure and included events which were not beyond the company's control.		

Outcome Reached	Informal Undertaking Obtained	Date Effective	2 December 2003
Specific reservations	The OFT specifically reserved its position on the matter of the company's cancellation charges. It considered the data provided to be insufficient to resolve its concerns that the company's cancellation charges did not represent a genuine pre-estimate of losses incurred by them as a result of cancellations. In light of the insufficient data, the OFT decided to reserve its position on this matter. The OFT did not consider further action to be warranted at this time however, it will look at the matter again if it receives relevant complaints from consumers.		

## Network Automotive Management

Investigation	The Network Group Ltd		
Trading Sector	Other motoring costs inc car hire (driving lessons, ass'n membership...)		
Action Taken By	OFT	Local Authority	Bedfordshire County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Rental Agreement V97.07		
Original term	Application of regulations /Enforcer view	How changed	New term
Invoice - Box 18	Reg_7	Revised to provide that consumers will be given prior notification before the debit goes ahead and revised to highlight authorisation.	Invoice - Box 18
	Reg 5: Allowed the lessor to make a debit on the consumer's card without prior notification. Reg 7: Authorisation to debit consumer account was not adequately highlighted.		
Opening statement	1(q)	Revised to make clear that disputes will be resolved in any local court of competent jurisdiction in accordance with the law of the country in which the agreement is signed.	Opening statement
	Had the potential to prevent consumers from starting legal proceedings in their local courts. Also unclear as to where dispute will be resolved.		
2(a)	1(i)	Revised to provide that the key provisions of the insurance policies referred to will be provided to consumers prior to conclusion of the contract.	2(a)
	Referred to terms of insurance policies which consumers may miss the opportunity to familiarise themselves with before entering into the contract.		
3(b)	Reg_5_18(f)	Limited the consumer's authorization to his insurer to providing any information the Lessor requires in respect of validating the insurance over the vehicle hired.	3(b)
	Potentially unfairly gives the lessor an unfettered right to request any information from the consumer's insurance company.		

5(a)	1(f)	Revised to state that the Lessor is only entitled to terminate the agreement where there has been a material breach on the part of the consumer.	5(a)
	Potentially allowed the lessor to terminate the contract in the case of non-material breach by the consumer.		
5(b)	1(f)	Revised to provide that the vehicle can be recalled early as a result of reasonable health and safety concerns, and that a reasonable replacement vehicle will be given to the consumer at a time and place convenient to both parties.	5(b)
	Allowed the lessor to recall early the vehicle when the consumer was not in breach of contract and without stating circumstances under which this right will be exercised.		
6	1(e)	Revised by stating that where it is fair and proper, consumers will continue to be liable for current hire charges plus any reasonable costs incurred by the Lessor as a result of a breach which falls into term 12 of the contract.	6
	potentially imposed an unfair penalty onto the consumer by claiming compensation and imposing tariff changes for the late return of the vehicle.		
7	1(b)	Revised to provide that the Lessor will seek from the consumer its reasonable costs and expenses incurred arising from third party claims when the consumer is liable.	7
	Allows the potential for the lessor to seek reimbursement from the consumer for third party claims brought against the lessor due to the lessor's negligence. Also unclear as to the meaning of the word "indemnify".		
9	1(n)	Revised to state that the consumer may be required to return replaced parts where it is reasonable and proper.	9
	Unfairly makes the reimbursement of authorised repair cost to the vehicle, in all cases, subject to the production of the parts replaced.		
10	Reg_5_18(c)	Revised to state that such entry will be affected without causing damage or using force.	10
	Potentially allows the lessor to use force in order to enter the consumer's premises to repossess the vehicle.		

12(b)	Reg_7	Revised to state when charges are operated and where they are published.	12(b)
	Unclear as to the operation of charges, for instance, when they come into effect and where they are published.		
12(f)	Reg_5_18(h)	Revised to provide that, in the event of an accident, so far as a consumer is able to do so, consumers should safeguard the interest of the Lessor.	12(f)
	Potentially imposed an unreasonable obligation on the consumer by requiring the consumer, in the event of an accident, to safeguard the lessor's interest when the consumer is reasonably unable to do so.		
12(g)	1(b)	Revised to remove this requirement in relation to automatic transmission oil levels and battery fluid levels.	12(g)
	Had the potential to exclude liability for the lessor's negligence or breach of contract by placing the onus on the consumer to ensure that the automatic transmission oil levels and the battery fluid levels are correct.		
12(i)	Reg_5_18(h)	Revised to state that consumer should so inform the Lessor at the earliest opportunity.	12(i)
	Required the consumer to perform a potentially unreasonable obligation by requiring him to inform the lessor of damage etc immediately.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	25 September 2003
Other Information	Network Automotive Management Ltd supply these rental agreements considered by the OFT to around 150 Lessors throughout the UK, some of which are independent companies and others are linked to a particular manufacturer. The Lessors would use the agreements in contracts with consumers. There were various references to charges and tariffs which consumers may not become acquainted with before they enter into the agreement. The contract was amended to state that consumers will be provided with a copy of leaflets setting out all charges.		
Specific reservations	The OFT reserved the right to contact the supplier concerning the applicability of the Consumer Protection (Distance Selling) Regulation 2000 to this agreement.		

**P & O European Ferries (Portsmouth) Ltd**

Investigation	P & O European Ferries (Portsmouth) Ltd		
Trading Sector	Road, rail, air and sea travel excluding car hire (inc bus..		
Action Taken By	OFT	Local Authority	Portsmouth City Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Terms of business		
Original term	Application of regulations /Enforcer view	How changed	New term
1(vi)	1(i)	passengers can now obtain details of road or rail operator from P & O's Customer Services Dept	1(ix)
	1(i): when booking travel by road or rail, passengers may have been bound to terms with which they had no opportunity to acquaint themselves.		
1(vii)	1(j)	term now provides that passengers will be told of any changes to service or price at time of booking	1(x)
	1(j) & 1(l): term potentially unfairly allowed the supplier to change what was supplied and increase the price of the fare.		
1(ix)	1(l)	deleted	deleted
	1(l): term gave supplier a potentially unfair right to change the fare without notice.		
1(xiv)	Reg_7	term made clearer	1(vii)
	Regulation 7: term, dealing with passengers who travel on P & O having booked with another carrier, was not expressed in plain language.		

3(vi)	1(f)	Term now provides that passengers prevented from travelling due to circumstances beyond their control, will receive a credit against future travel	4(iv)(e)
	1(f): term allowed supplier to cancel the service for reasons beyond its control, but no provision was made for passengers who are prevented from travelling due to circumstances beyond their control.		
4(vii)	1(e)	Passenger now pays difference between the amount paid and the price appropriate to the sailing made	5(viii)
	1(e): term potentially unfairly made passenger liable to pay up to the full standard return fare if he/she failed to comply with the terms of day trip or promotional tickets.		
4(x)	Reg_7	term now makes clear that passenger will pay difference between the price of the original ticket and price of the sailing actually made.	5(vii)
	Regulation 7: term covering instances where the passenger travels on an invalid ticket, failed to make clear the surcharge payable.		
4(xii)	1(l)	Term now makes clear that open return tickets may not be valid on all sailings and if a supplement is payable it will be the difference between the price of the original ticket and price of the sailing actually made	5(viii)
	1(l): term may have unfairly allowed supplier to increase the price of open return tickets.		
4(xiii)	1(e)	Term now makes clear that if passenger does not travel on one part of the booking, the supplier may charge a supplement, i.e. the difference between the amount paid and the price for the standard single fare appropriate to the sailing made	5(vi)
	1(e): allowed supplier to cancel the return journey if passenger does not take the outward journey. This may have constituted an unfair penalty as the supplier's loss is the difference in price.		

6(ii)	1(b)	term provides that no written notice is needed in these circumstances	10(ii)
	1(b): term dealing with damage to consumers' property, failed to make clear that there is no need for the consumer to provide written notice of damage to luggage where the goods have been inspected by the consumer and supplier at the time of receipt.		
7	1(e)	deleted	deleted
	1(e): term, purportedly giving the supplier the right to claim the full applicable single fare if a promotional ticket is used on a one-way basis, may have constituted an unfair penalty.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	1 December 2003
Specific reservations	OFT's position reserved re: Term 4(ii) which provides for a sliding scale of charges payable by consumers upon cancellation		

**Parkfield Estates**

Investigation	Parkfield Estates		
Trading Sector	Letting agencies		
Action Taken By	OFT	Local Authority	London Borough of Brent & Harrow
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Letting and management agreement		
Original term	Application of regulations /Enforcer view	How changed	New term
Fees in all terms	Reg_7	Withdrawn	
	Regulation 7: charges in the terms were not set out in such a way that the landlord could easily assess the true costs of engaging the services of the managing agent.		
Management Fee - Additional Fees (vi)	1(e)	Withdrawn	
	Regulation 7: provided that a fee would be payable to the agent for the introduction of a suitable tenant after references had been received, but the prospective tenant was not acceptable to the landlord. The term did not specify who determined that the prospective tenant was suitable which potentially gave the managing agent undue discretion to decide whether its obligation had been fulfilled. 1(e): imposed disproportionate sanctions for breach of contract, the term required the landlord pay a fee to the managing agent when the prospective tenant was unacceptable to the landlord.		

Overseas Landlord	Reg_7	Withdrawn	
	Regulation 7: contained a number of typographical errors which made the term difficult to understand.		
Renewals	Reg_7	Withdrawn	
	Regulation 7: fees laid down in the term were not expressed sufficiently clearly.		
Selling to the Tenant	Reg_7	Withdrawn	
	Regulation 5: imposed a financial burden on the landlord which was not required by any legitimate interest of the company. The term provided that the managing agent could charge commission on the sale of the property under the letting and management agreement.		
Reimbursement of Fees	Reg_5_18(a)	Withdrawn	
	Regulation 5: provided that the managing agent would endeavour to re-let the landlord's property. The OFT considered this to have the potential to impose an unfair financial penalty on the landlord. Regulation 5: potentially imposed an unfair financial penalty on the tenant.		
Reimbursement of Fees - Please Note...etc	1(b)	Withdrawn	
	Regulation 5: provided that no refunds of fees would be made if the landlord terminated the tenancy prior to the end of the agreed term. The OFT considered there to be the potential for this to operate as an unfair exclusion of liability for poor service.		

<p>Safety Checks (Gas, Electricity, Fire And Furnishings)</p>	<p>Reg_5_18(g)</p> <p>Regulation 5: potentially allowed the managing agent to instruct contractors to carry out work without first checking with the landlord. Regulation 7: failed to contain reference to what certificates were being referred to. Regulation 5: failed to state the sum that would be charged by the managing agent for the services outlined in the term.</p>	<p>Withdrawn</p>	
<p>Fire and Furnishings Safety Regulations</p>	<p>Reg_5_18(b)</p> <p>Regulation 5: provided that the landlord would 'indemnify' the supplier regarding breach of the Fire and Furnishing Regulations. A managing agent would only be liable under the Furniture and Furnishings (Fire) (Safety) Regulations where the agent could be considered to be a supplier. Whilst this was unlikely, the indemnity could have effectively constituted a transfer of inappropriate risk to the landlord. 1(b): provided that the tenant would indemnify the landlord. This indemnity potentially had the effect of excluding the managing agents liability where they had failed to adequately perform their contractual duty to arrange safety checks.</p>	<p>Withdrawn</p>	

Gas Safety Check	Reg_5_18(a)	Withdrawn	
	Regulation 5: provided that the landlord may be obliged to pay for checks arranged by the managing agent without confirmation from the landlord. Regulation 5: provided that the managing agent would deduct payment for the services detailed in this term, but did not specify the amount of the charge to be deducted.		
Stamping of Tenancy Agreement	Reg_5_18(a)	Withdrawn	
	Contained a typographical error in the second paragraph.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	30 October 2003

## Scottish Exhibition Centre

Investigation	Scottish Exhibition Centre Ltd		
Trading Sector	House construction		
Action Taken By	OFT	Local Authority	Glasgow City Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Conditions of Sale		
Original term	Application of regulations /Enforcer view	How changed	New term
This ticket is issued on behalf of the organisation ... displayed on the premises	1 (i)	Revised to say only that consumers are bound by the terms and conditions together with all other statements and directives 'shown on the ticket'. The website terms and conditions have a corresponding term that refers to the statements and directives shown on the website rather than those on the ticket.	'This ticket is issued on behalf of the organisation... shown on this ticket.'
	1 (i): had the potentially unfair effect of binding the consumer to terms that he or she had not had the opportunity to become acquainted with before entering the agreement.		
1	1 (f)	Revised to allow the supplier to refuse admission in reasonable circumstances, such as for abusive or threatening behaviour	'Admission Restrictions.'
	permitted the supplier an arbitrary right to refuse admission		
2	1 (k)	Deleted	Deleted
	1 (k): allowed the entertainment supplier to substitute, at its discretion, what it wanted to show, for what a consumer has brought a ticket to see		

4	1(b)_2(c)	Revised to acknowledge that a significant alteration should enable to refund.	'Tickets cannot be returned to the Box Office after purchase, unless the event is cancelled or there is a significant change to the headline act'
	1(b): by saying a ticket could be exchanged or returned only on cancellation, effectively ignored other legitimate circumstances such as significant alteration of the event.		
10	1(b)	Revised to accept liability where the supplier is in breach, and the loss or damage is a direct and reasonably foreseeable result of such breach. Where liable for damage to property, the supplier limits its liability to repair or replacement subject to fair wear and tear.	'Liability'
	1(b): potentially unfairly excluded the supplier's liability for any loss or injury or damage to personal property brought to the venue, regardless of whether it was caused by its negligence.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	11 December 2003
Specific reservations	<p>OFT's position reserved with regard to: 'Please take special care of your tickets as tickets cannot be replaced'.</p> <p>OFT's position reserved on the basis that the ticket agency will not use this term to deny its liability where it has been negligent. Future complaints may require us to revisit this matter.</p>		

## Thomas Cook Tour Operations Ltd

Investigation	Thomas Cook Tour Operations Ltd		
Trading Sector	Package holidays		
Action Taken By	OFT	Local Authority	Trafford Metropolitan Borough Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Booking conditions		
Original term	Application of regulations /Enforcer view	How changed	New term
Introduction	1 (q)	Revised to provide that if consumers live in Scotland or Northern Ireland the courts of Scotland or Northern Ireland may deal with disputes.	Introduction
	1 (q) - Provided for the contract to be governed exclusively by English law and granted exclusive jurisdiction to the English courts.		
Surcharges - Price Increases after booking	1 (l)	Deleted (and replaced with guarantee that, once booked, there will be no surcharges)	N/A
	1 (l) – Only provided for an upward but not downward revision of the price where certain costs change after booking, as required by Regulation 11(1) of the Package Travel, Package Holidays and Package Tours Regulations 1992 ('the PTRs')		
Surcharges - Price Increases after booking	1 (l)	Deleted (no longer relevant following deletion of surcharge provision above).	N/A
	1 (l) - Failed to provide that no increases in the price would be made in the 30 days before departure, as required by Regulation 11(3) of the PTRs.		

<p>Surcharges - Price Increases after booking</p>	<p>1(l) 1(l) - Failed to provide for the relevant options under Regulation 13 of the PTRs where there is a significant change of an essential term, defined as being an increase in the price of more than 10%.</p>	<p>Deleted (no longer relevant following deletion of surcharge provision above).</p>	<p>N/A</p>
<p>Cancellation by us &amp; Changes made by us</p>	<p>1(d) 1(d) - Excluded refund of any insurance premium paid where a consumer cancels following an increase of more than 10% of the holiday price, contrary to Regulations 12 and 13 of the PTRs.</p>	<p>Revised to allow the possibility of a refund if the consumer can show that s/he cannot transfer or re-use the policy.</p>	<p>Cancellation by us &amp; Changes made by us before travel</p>
<p>If you want to change a name on your booking</p>	<p>1(f) 1(f) - Provided that a name change affecting everyone on the booking would be treated as a cancellation and incur cancellation charges, contrary to Regulation 10 of the PTRs.</p>	<p>Replaced by a term allowing name changes..</p>	<p>Name changes before travel</p>
<p>Changes made by us</p>	<p>1(b) 1(b) - Excluded compensation for significant changes to a holiday before departure above a set scale, even if a consumer could prove greater loss; and excluded compensation entirely for changes made more than 56 days before departure.</p>	<p>Revised to state that the sums provided are the minimum sums payable.</p>	<p>Changes made by us before travel</p>

Your responsibility	1(b)	Exclusion removed. Term now provides that complaints should be made in resort or within a reasonable time of return, and that failure to do so may deprive the company of the opportunity to investigate and put right the complaint, which may in turn affect the consumer's rights.	If you have a complaint
	1(b) - Excluded liability for complaints received more than 28 days after the holiday had ended, contrary to Regulation 15(5) of the PTRs.		
Flight delays	1(b)	Exclusion removed.	Flight delays
	1(b) – Excluded liability for flight delays, contrary to Regulation 15 of the PTRs.		
Baggage	1(b)	Revised to provide that compensation will be limited in accordance with international conventions.	Baggage
	1(a) and (b) - limited liability for loss or damage to baggage suffered while travelling or in hotel accommodation to a greater degree than allowed for by international conventions.		
Cancellation by us & Changes made by us	1(d)	Revised to allow the possibility of a refund if the consumer can show that s/he cannot transfer or re-use the policy.	Cancellation by us & Changes made by us
	1(d) - Excluded refund of any insurance premium paid where the tour operator cancelled the holiday or the consumer elected to cancel following a major change by the tour operator		

Outcome Reached	Formal Undertaking Obtained	Date Effective	18 October 2002
Specific reservations	<p>The position of the OFT was reserved in respect of the following terms in the new booking conditions. The terms under "Changes made by us" and "Cancellation by us" - 1(b) and 1(k) - required the consumer to pay the difference in price on taking a more expensive substitute holiday when the original holiday was cancelled through no fault of the consumer or when the company significantly altered the holiday, contrary to Regulation 13 of the PTRs. The terms were revised so that the consumer will not have to pay the difference in price if offered a more expensive holiday. There is the possibility that the new terms could be used to offer only alternatives of lower quality even where substitutes of equivalent or superior quality were available. If implemented in that way the terms would breach Regulation 13 of the PTRs. Hence the OFT's reservation of its position.</p> <p>The term under "Booking your holiday" - 1(n) - stating that verbal confirmation of a special request does not guarantee that the request will be met may allow the company to escape liability for a commitment made by his agent or representative.</p> <p>The OFT examined data and supporting information supplied by the company in relation to the cancellation charges referred to in the term under "Cancellation by you", and concluded that the overall level of the charges did not appear to represent more than a genuine pre-estimate of the company's overall losses from cancellation in the period examined. We reserved position on whether at points on the scale the charge exceeds a genuine pre-estimate of loss at the time of cancellation.</p> <p>The OFT will revisit these terms if we receive complaints from consumers or other evidence about how they work in practice.</p>		

### Towers Kennels & Cattery

Investigation	Towers Kennels & Cattery		
Trading Sector	Pets, pet foods and veterinary goods and services		
Action Taken By	OFT	Local Authority	Devon County Council
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Booking Form		
Original term	Application of regulations /Enforcer view	How changed	New term
1	1 (b) _2(b)	Deleted.	
	1 (b): had the potential to exclude liability for failure to carry out the service with reasonable care and skill.		
4	1 (l)	Deleted	
	1 (l): gave the supplier an unconditional right to increase the price of the service without a corresponding right to cancel.		
Outcome Reached	Informal Undertaking Obtained	Date Effective	12 December 2003

**TUI (UK) Ltd t/a Thomson Holidays**

Investigation	TUI UK Ltd t/a Thomson Holidays		
Trading Sector	Package holidays		
Action Taken By	OFT	Local Authority	London Borough of Camden
Legislation used	Unfair Terms in Consumer Contracts Regulations (1999)		
Contract Identifier	Booking conditions		
Original term	Application of regulations /Enforcer view	How changed	New term
Heading of booking conditions	Reg_7	Replaced with "Our Agreement".	Heading
	Regulation 7 – Booking conditions were headed "Fair Trading Charter", potentially misleading because it might be understood to imply that the conditions were approved by an independent body		
2. "Your Holiday Price"	1 (l)	Revised to allow for downward revision of price.	2. "Your Holiday Price"
	1 (l) – Provided for an upward but not downward revision of the price where certain costs change after booking, as required by Regulation 11(1) of the Package Travel, Package Holidays and Package Tours Regulations 1992 ('the PTRs').		
2. "Your Holiday Price"	1 (l)	Revised to provide that first 2% of any increase is to be met by the tour operator.	2. "Your Holiday Price"
	1 (l) – Failed to provide that the first 2% of any increase is to be met by the tour operator, as required by Regulation 11(3) of the PTRs.		

2. "Your Holiday Price"	1(l)	Revised to provide for the relevant options under Regulation 13 of the PTRs.	2. "Your Holiday Price"
	1(l) – Failed to provide that the first 2% of any increase is to be met by the tour operator, as required by Regulation 11(3) of the PTRs.		
2. "Your Holiday Price"	1(d)	Revised to allow the possibility of a refund if the consumer can show that s/he cannot transfer or re-use the policy.	2. "Your Holiday Price"
	1(d) – Excluded refund of any insurance premium paid where a consumer cancels following an increase of more than 10% of the holiday price, contrary to Regulations 12 and 13 of the PTRs.		
4. "Major changes to your holiday"	1(b)	Revised to remove limitation of payment of compensation to named significant changes.	4. "Major changes to your holiday"
	1(b) and 1(k) – Offered compensation for only certain named significant changes made to the holiday before departure.		
3. "If we cancel your holiday" and 4. "Major changes to your holiday"	1(b)	Revised to remove requirement that consumer should pay the difference.	3. "If we cancel your holiday" and 4. "Major changes to your holiday"
	1(b) and 1(k) – required the consumer to pay the difference in price on taking a more expensive substitute holiday when the original holiday was cancelled through no fault of the consumer or when TUI significantly altered the holiday, contrary to Regulation 13 of the PTRs.		

4. "Compensation"	1(b)	Revised so as not to preclude the possibility of higher compensation than set out in the scale.	4. "Compensation"
	1(b) – Excluded compensation for significant changes to a holiday before departure above a set scale, even if a consumer could prove greater loss, contrary to regulation 15 of the PTRs.		
9. "Your holiday contract"	1(q)	Revised to widen jurisdiction to the courts of the United Kingdom.	9. "Your holiday contract"
	1(q) – Provided that the contract was subject to the exclusive jurisdiction of the English courts.		
13. "If you have a complaint"	1(b)	Exclusion removed. The term now provides that the consumer should report a complaint immediately in resort or, if it cannot be resolved there, within 28 days of return to allow it to be investigated properly.	13. "If you have a complaint"
	1(b) – Excluded liability for complaints received more than 28 days after the holiday had ended, contrary to Regulation 15(5) of the PTRs.		

Outcome Reached	Formal Undertaking Obtained	Date Effective	5 September 2002
Specific reservations	<p>The OFT's position was reserved in respect of the following terms in the new booking conditions.</p> <p>The term under "Compensation" headed "Important Note" included "technical problems with transport" among examples of events beyond the company's control for which it excluded liability for compensation. This example was expanded to refer to "technical problems with transport beyond our control or that of our suppliers".</p> <p>Term 7 headed "Personal injury 1" limited liability for death and personal injury by making payment of damages subject to certain "conditions". The term was amended so as not to use the word "conditions".</p> <p>Term 10 headed "Paying for your holiday" allowed a cancellation charge of up to 100% when consumer failed to pay the balance by 8 weeks before departure while giving the company discretion over when the cancellation should be deemed to have taken place. The term was amended to state that the cancellation charge would accord with the scale in term 12.</p> <p>Term 11 headed "If you change your booking" did not provide for the transfer of a holiday to another person by a consumer prevented from travelling, as required by Regulation 10 of the PTRs. Revised to refer to right to transfer in certain circumstances, but a fee of £50 is charged for the transfer, which may in some cases exceed the cost of making the transfer.</p> <p>Term 11 also makes charges for changes by the consumer and treats as a cancellation a change within 6 weeks of departure to a holiday that is more than 10% cheaper.</p> <p>OFT examined data and supporting information supplied by the company in relation to the cancellation charges referred to in term 12, and concluded that the overall level of the charges did not appear to represent more than a genuine pre-estimate of the company's overall losses from cancellation in the period examined. We reserved position on whether at points on the scale the charge exceeds a genuine pre-estimate of loss at the time of cancellation.</p> <p>The OFT will revisit these terms if we receive complaints from consumers or other evidence about how they work in practice.</p>		