

INQUIRY INTO UNFAIR TERMS IN CONSUMER CONTRACTS

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Your ref
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Date 4 October 2006

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Dear Ms Robinson

INQUIRY INTO UNFAIR TERMS IN CONSUMER CONTRACTS

Please find attached a submission from the Office of Fair Trading (OFT), United Kingdom in respect of the above named inquiry.

You are aware that in the UK use of standard contract terms is regulated by the Unfair Terms in Consumer Contracts Regulations 1999 (these came into force on 1 October 1999 and replaced the 1994 Regulations). The OFT shares powers with other enforcers (known as qualifying bodies) including most of the main national regulatory bodies and all local authorities providing a trading standards service.¹

In enforcing the Regulations the OFT follows general principles that include that action is necessary and proportionate where there is evidence of a breach and of potential consumer harm stemming from the breach. Business will normally be given a reasonable opportunity to put matters right before OFT considers court action. In the vast majority of cases under the Regulations, revisions to terms are achieved through negotiation. These cases are published, and a summary of the revised terms, as required by Regulation 15(1) in OFT Bulletins.² OFT has only taken one case to court under the Regulations since the 1994 Regulations came into force July 1 1995³

Since 1994, the OFT has considered a vast number (well over 1000) standard form consumer contracts for goods and services across a wide range of business sectors⁴. We are therefore able to answer your specific questions as follows:

¹ Qualifying bodies listed in Unfair Terms Briefing note available at <http://www.oft.gov.uk/NR/rdonlyres/720A136C-9435-40C4-8549-7BDFCCF85B70/0/oft143.pdf>

² Bulletins can be viewed at <http://www.crw.gov.uk/Other+legislation/Unfair+contract+terms/unfair+contract+terms+%2D+bulletins.htm>
A list of concluded cases can be viewed at http://www.crw.gov.uk/Other+legislation/Unfair+contract+terms/list_of_+concluded_unfair_terms_cases.htm

³ OFT v First National Bank

⁴ A list of concluded cases can be viewed at http://www.crw.gov.uk/Other+legislation/Unfair+contract+terms/list_of_+concluded_unfair_terms_cases.htm



- (a) *whether consumer contracts contain terms which cause a significant imbalance in the rights and obligations arising under a contract, to the detriment of the consumer, including the incidence of*

We do not have to hand a total number for terms of a particular nature that have been amended through OFT enforcement but this could be ascertained from our Bulletins should you wish. When challenging terms, where appropriate, reference is made to the indicative and non-exhaustive list of terms which may be considered unfair (Schedule 2 Regulation 5(5)). The OFT has also produced a comprehensive guide to unfair contract terms which sets out our views on certain standard contract terms and provides examples of terms that have been considered as unfair with the amendment made (OFT311)⁵.

As an indicator of numbers of potentially unfair terms found in the categories that you list, we have calculated that between the years 2000 and 2005 we have secured amendment to the following:

- i) *terms that allow the supplier to unilaterally vary the price or characteristic of the goods or services without notice to the consumer*

Under the Regulations terms of this nature would be caught by Schedule 2 paragraph 1(k) as to characteristics and 1(l) as to price. Between the years 2000 and 2005, 164 terms were amended under 1(k) challenge and 151 under 1(l) challenges.

- ii) *terms which penalise the consumer but not the supplier when there is a breach of the agreement*

Under the Regulations terms of this nature would be variously caught by Schedule 2 paragraphs 1(b), (c), (d), (e) and (o). Between the years 2000 and 2005, 1142 terms were amended under 1(b), 12 under 1(c), 107 under 1(d), 380 under 1(e) and 10 under 1(o) challenges.

- (iii) *terms which allow a supplier to suspend services supplied under the contract while continuing to charge the consumer*

Under the Regulations terms of this nature would be caught by Schedule 2 paragraph 1(o). Between the years 2000 and 2005 10 terms were amended under 1(o) challenges.

- (iv) *terms which permit the supplier but not the consumer to terminate the contract*

Under the Regulations terms of this nature would be caught by Schedule 2 paragraph 1(f). Between the years 2000 and 2005, 149 terms were amended under 1(f) challenges.

⁵ OFT 311 is:

[Introduction \(55 kb\)](#)

[Analysis of unfair terms in Schedule 2 \(135 kb\)](#)

[Analysis of other terms considered potentially unfair \(59 kb\)](#)

[Analysis of terms breaching Regulation 7 \(56 kb\)](#)

[Annexe A: Examples of fair and unfair terms \(294 kb\)](#)

[Annexe B: The Unfair Terms in Consumer Contracts Regulations 1999 \(98 kb\)](#)

[Annexe C: Index of types of term \(87 kb\)](#)

(b) whether the use of standard form contracts has increased the prevalence of the above terms in consumer contracts.

The OFT has not commissioned any research into this academic point so it does not have any empirical or anecdotal data to provide an answer, though instinctively we would suppose the answer to be 'Yes'.

(c) and (d)

For a highly authoritative, full consideration of the UK law on unfair terms in consumer contracts we would refer you to the UK Law Commission's report available at http://www.lawcom.gov.uk/unfair_terms.htm.

(d) no other relevant matters arise.

I trust this is helpful.

Yours sincerely

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