

Guidance on unfair terms in holiday caravan agreements

September 2005

Contacting the OFT or local trading standards services

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 service. You can find contact details for your local trading standards service in the telephone book or at www.tradingstandards.gov.uk

Enquiries Unit
Office of Fair Trading, Fleetbank House
2-6 Salisbury Square, London EC4Y 8JX
Tel 08457 22 44 99

Unfair contract terms publications

The explanatory OFT briefing note *Unfair standard terms* (ref: OFT143) and other OFT publications such as most previous bulletins are available, free of charge, from the OFT mailing house:

Tel 0800 389 3158
Email oft@ecgroup.uk.com

The Regulations

Copies of the Unfair Terms in Consumer Contracts Regulations 1999 (ref: SI 1999/2083) can be purchased, current 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 via the internet at: www.hmso.gov.uk/si/si1999/19992083.htm

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

© Crown copyright 2005

This publication (excluding the OFT logo) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as crown copyright and the title of the publication specified.

CONTENTS

<i>Chapter</i>		<i>Page</i>
1	Introduction	1
2	The test of fairness	7
3	Issues in holiday caravan contracts	10
4	Analysis of unfair terms in Schedule 2	17
5	Analysis of other terms considered potentially unfair	48
<i>Annexe</i>		
A	Index and types of term in holiday caravan agreements mentioned in this guidance	65

1 INTRODUCTION

- 1.1 This guidance explains why we consider some standard contract terms used in holiday caravan agreements to be potentially unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations).¹ It represents our views in light of recent complaints and explains the basis on which we are likely to take enforcement action. It also offers suggestions for achieving fairness. Ultimately it is for the courts to decide whether any term is unfair.

Aim of the guidance

- 1.2 We want standard contract terms (those that have not been individually negotiated), used by park owners or operators in pre-formulated agreements with holiday caravan owners, to be fair and clear. Our aim is to encourage park owners or operators to revise their contracts to comply with the Regulations. These set a minimum standard not only of fairness but of transparency.

Scope of the guidance

- 1.3 The guidance deals only with potential unfairness of standard contract terms used in agreements for holiday caravans, also known as caravan holiday homes or lodges. These are static caravans that are stationed on a plot on a caravan site licensed for this purpose. In general, a person who wishes to use land as a caravan site has to have planning permission and to be licensed by the local authority under the Caravan Sites and Control of Development Act 1960 or the Caravans (Northern Ireland) Act 1963. The guidance does not apply to touring caravans or motorhomes. It also does not apply to mobile homes, known as residential park homes, where the occupier is occupying the mobile

¹ The Unfair Terms in Consumer Contracts Regulations 1999 SI 1999/2083.

home as his or her residence and is on a protected site.² Occupiers of mobile homes may have additional protection under the Mobile Homes Act 1983, the Caravan Sites Act 1968, and recent housing legislation³.

- 1.4 The guidance applies to all agreements made on standard terms between park owners and owners of holiday caravans (referred to as 'caravans' in the remainder of this document). These agreements take various forms and include agreements for the sale of caravans, pitch licences, and other supplementary agreements and notices covering applications, renewals, fees and services. The guidance also applies to park rules where they are incorporated into the licence (see paragraph 4.50 for further information on incorporation).
- 1.5 The scope of this guidance does not extend to other consumer protection legislation. It is not intended to provide a complete guide to compliance with all aspects of the law in the drafting of holiday caravan contracts, or to serve as a substitute for independent legal advice.

The Regulations

- 1.6 All suppliers using standard contract terms with consumers must comply with the Regulations, which implement EU Directive 93/13/EEC on unfair terms in consumer contracts. They came into force on 1 July 1995 and were re-enacted in 1999 (coming into force on 1 October 1999). Chapter 2 of the guidance explains the test of fairness set out in the Regulations. Chapter 4 contains an analysis of unfair terms in Schedule 2 to the Regulations. Schedule 2 is an indicative and non-exhaustive list of terms that may be regarded as unfair.

² See section 1(2) of Caravan Sites Act 1968.

³ Housing Act 2004. See also ODPM paper - *Park Home Statutory Instruments: Consultation on Implied Terms and Written Statement* July 2004.

- 1.7 We have issued extensive guidance on the Regulations, in particular the briefing note *Unfair standard terms* (OFT143, reissued 2005), and the comprehensive *Unfair contract terms guidance* (OFT311, published 2001). These documents give a fuller explanation of certain points made below about the Regulations and consumer contract terms in general.

Enforcement

- 1.8 Unfair terms are not binding on consumers and it is open to consumers themselves to challenge terms they consider unfair. Under the Regulations, the OFT has a duty to consider any complaint it receives about unfair standard terms. Where the OFT considers a term to be unfair, it has the power to take action on behalf of consumers in general to stop the continued use of the term, if necessary by seeking an injunction in England, Wales and Northern Ireland or an interdict in Scotland. Since 1999 we have shared these powers with a range of other enforcers. These include certain national regulatory bodies,⁴ all local authorities providing a trading standards service, and Which?.
- 1.9 In addition, Part 8 of the Enterprise Act 2002, which came into force on 20 June 2003, gives the OFT, local trading standards services and other bodies specified by order a new enforcement mechanism against traders that breach consumer legislation. The new legal framework introduced by Part 8 enables the OFT and other enforcers to seek enforcement orders against businesses that breach UK laws giving effect to EC Directives listed in Schedule 13, where the collective interests of consumers are harmed. These include EU Directive 93/13/EEC on unfair terms in consumer contracts. In addition, the Enterprise Act gives the OFT a co-ordinating role to ensure that action is taken by the most appropriate enforcement body. More information on the Enterprise Act can be found on the OFT's website www.offt.gov.uk

⁴ See Schedule 1, Part One, of the Unfair Terms in Consumer Contracts Regulations 1999.

- 1.10 The OFT exercises its enforcement powers under the Regulations or the Enterprise Act in line with general enforcement principles of an Enforcement Concordat, promoted by the Cabinet Office in partnership with the Scottish Executive and various local authority associations. For example, we take account of the level of actual or potential consumer detriment and take only necessary and proportionate action, having given businesses a reasonable opportunity to put things right. Any publicity will be accurate, balanced, and fair.
- 1.11 The OFT and enforcers may take action against unfair terms under either the Regulations or the Enterprise Act (or both) and may accept an undertaking from the business that it will stop the infringing conduct, for example using or relying on unfair terms. But if our concerns are not satisfactorily addressed by this means or otherwise, we can apply to the courts and seek an enforcement order. If the infringement needs to be tackled urgently, the court may make an interim enforcement order. In very urgent cases, where we think that an enforcement order should be sought immediately, an enforcer can start court proceedings without entering into consultation. If an enforcer other than the OFT proposes to take such action, we must authorise it.

Use of the guidance

- 1.12 This guidance is designed to help park owners and their advisers to meet the requirements of the Regulations. It will also assist other bodies with powers to enforce the Regulations. We expect those using or recommending standard pre-formulated agreements to review their conditions in light of the guidance and amend or remove any unfair terms from their agreements. A leaflet *A fair pitch for your holiday caravan – A guide to agreements for static holiday caravans* (OFT770), published in September 2005, provides advice to consumers.
- 1.13 This guidance focuses specifically on the caravan sector, and is not intended to provide a comprehensive statement of our views on the interpretation of the Regulations. Users are advised to read the guidance in its entirety, as more than one part of the commentary may apply to a

particular term. Discussion of general issues regarding unfair terms can be found particularly in our *Unfair contract terms guidance* (OFT311), to which reference⁵ is made in the body of the guidance.

- 1.14 Although we have included examples of terms that we would be unlikely to object to and that are more likely to achieve fairness, in the before and after versions of sample terms in Chapters 4 and 5, the Regulations deal with unfairness of terms. So this is the aspect on which we have to concentrate. We have no power to determine what park owners include in their agreements, only what they should not include.
- 1.15 The main types of agreement discussed in this document are contracts for the sale of caravans and pitch licences. As many of the points raised in the guidance apply to both types of agreement, we have not dealt with them separately, to minimise repetition. We have tried to specify where the comments relate to just one type of agreement.
- 1.16 The guidance contains a number of references to 'reasonable', for instance in respect of costs and time periods. Only a court can decide what is reasonable, taking into account all the circumstances of a case.
- 1.17 Because unfair terms are not legally enforceable against consumers, it is in suppliers' as well as consumers' interests that terms should be fair. The final decision about fairness lies with the court, but we believe that, by applying the principles set out in this guidance, including the guidance referred to in paragraph 1.7, park owners should be able to produce terms that are less likely to be found unfair by a court.

⁵ The main guidance is separated into 'groups' and we follow this format in this guidance, although not all the groups are mentioned.

Consumer advice

1.18 Purchasing a caravan is a long-term commitment and we advise potential buyers of caravans to check the following carefully before entering the agreement, and make sure they are satisfied that it meets their needs:

- how long the park owner has agreed they can keep their caravan on the park and the rules for using the park
- the full breakdown of the price of the agreement
- what services are provided, if these services may change, and the cost of utilities such as gas or electricity
- what other charges arise, and the basis and frequency of any review of these charges and fees
- what the insurance requirements are
- whether there are restrictions on the use, sale, disposal or age of the caravan
- details of maintenance obligations and what happens if the caravan is not maintained to a certain standard
- how either party can terminate the contract and what notice periods are needed, particularly for the sale, disposal or removal of the caravan
- how disputes can be handled.

1.19 It is advisable to obtain all this information in writing. Consumers should be aware of the degree and rate at which the value of the caravan can depreciate. We also advise consumers to check whether the park owner is a member of a trade association and whether it has an arbitration or conciliation scheme that caravan owners can choose to use in the event of a dispute.

2 THE TEST OF FAIRNESS

- 2.1 The Regulations apply a test of fairness to most standard terms (terms that have not been individually negotiated) in agreements used by businesses with consumers. The test does not apply to terms that set the price or describe the main subject matter of the agreement (usually referred to as 'core' terms) provided they are in plain and intelligible language.
- 2.2 Both types of core term are terms that are genuinely central to the bargain between the supplier and the consumer. Stating the term in plain vocabulary alone does not mean the term is core. If a term is illegible or hidden away in small print as if it were unimportant the test of fairness is likely still to apply. The OFT believes that the exemption for core terms will apply only to terms that are expressed or presented in such a way that they are, or are at least capable of being, at the forefront of the consumer's mind in deciding whether to enter the agreement.
- 2.3 Terms stating the length of the licence, the pitch licence fee and the price of the caravan are likely to be considered core terms.
- 2.4 We take a narrow view of what is a core term. A term setting the price is core but a term allowing the supplier to vary fees and charges is not core and can be unfair. The more precise, transparent, objectively based and predictable a variation clause is, the more likely it is to be considered fair. A term giving a park owner a broad discretion to review pitch fees in a long-term licence, for example, is likely to be unfair – see paragraphs 3.14 to 3.15 on pitch fees and paragraphs 4.70 to 4.77 on price variation clauses. We discuss core terms further at paragraphs 5.55 to 5.56.
- 2.5 Regulation 5(1) provides that a standard term is unfair if, 'contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer'.

- 2.6 The requirement of 'good faith' embodies a general principle of fair and open dealing.⁶ It means that terms should be expressed fully, clearly and legibly and that terms that might disadvantage the consumer should be given appropriate prominence. But transparency is not enough on its own - good faith relates to the substance of terms as well as the way they are expressed and used. It also requires a supplier not to take advantage of the weaker bargaining position, or lack of experience, of consumers in deciding what their rights and obligations shall be. Agreements should be drawn up in a way that respects consumers' legitimate interests.
- 2.7 In assessing fairness, we take note of how a term could be used. A term is open to challenge if it is drafted so widely that it could be relied on in a way that harms consumers. It may be considered unfair if it could have an unfair effect, even if it is not at present being used unfairly in practice or does not have an unfair object. In such cases park owners could redraft the term more precisely, both to reflect their intentions and to achieve fairness.
- 2.8 Transparency is also fundamental to fairness. Regulation 7 introduces a further requirement that standard terms must use plain and intelligible language. Terms should not just be clear for legal purposes. When we assess fairness, we also have to consider what a consumer is likely to understand by the wording of a clause. Even if a clause would be clear to a lawyer, we will probably conclude that it is potentially unfair if it is likely to mislead or be unintelligible to consumers. Agreements should be in language that is plain and intelligible to people without legal knowledge. Consumers should also have the chance to read all the terms before entering into the agreement.

⁶ Per Lord Bingham of Cornhill in *Director General of Fair Trading v First National Bank plc* [2001] UKHL 52, [2002] 1 All ER 97, HL.

- 2.9 The example terms given in Chapters 4 and 5 are taken from standard caravan agreements referred to us by complainants, including agreements where we have secured changes. We consider these terms to have potential for unfairness. For the sake of clarity we have summarised the terms or their effect and, where possible, we have included ways of revising terms. But we cannot guarantee the fairness of these example revisions. We have a statutory duty to consider complaints about any terms brought to our attention, including the example revisions or terms with a similar effect.
- 2.10 New complaints and other evidence can, and do, shed new light on the potential for unfairness of terms that we have previously reviewed. The assessment of fairness requires consideration of all the circumstances and of the effect of other terms in the agreement – Regulation 6(1). This means that a form of words that is considered fair in one agreement is not necessarily fair in another.
- 2.11 As noted above, the OFT is no longer the sole enforcer of the Regulations. Several other bodies have enforcement powers under the Regulations. Enforcement powers under the Enterprise Act are similarly shared. The legislation contains mechanisms to help us promote co-ordinated enforcement action, but the other enforcers are legally entitled to form their own views on what is fair and unfair and to take action accordingly. In addition, consumers are able to use the Regulations to protect them from unfairness and to take action themselves to challenge terms. The court is the ultimate arbiter of whether a term is unfair.

3 ISSUES IN HOLIDAY CARAVAN CONTRACTS

Background

- 3.1 Holiday caravans are stationed on plots (pitches) on seasonal holiday parks that are for recreational use and, normally, are not open all the year. In general, these caravans are too large to be towed by a car and require a transporter to move them. Prospective caravan owners usually buy their caravans, whether new or second-hand, through the park owner and enter into a sale contract for the caravan and a pitch licence to station it on the park and occupy it as a holiday home. Rules for the use of the park may be included in the licence or contained in a separate document. The licence may last for one year or a number of years. The park owner is paid an annual pitch fee.
- 3.2 For consumers the choice of caravan, location and facilities are all important, and they may invest substantial amounts in buying and stationing their caravans. They enter into a long-term relationship with the park owner and expect to remain on the pitch for some time. Holiday parks differ in character and park owners provide different levels of service to their caravan owners.
- 3.3 Holiday caravan parks are not protected sites under caravan park legislation, but are licensed by the local authority. Local authority site licences provide details of the identity of the park owner and their various site management and maintenance responsibilities, which include the provision of adequate amenities, site lighting, access, fire precautions, gas, water and electric supplies and drainage, and also control the density and positioning of caravans on the park. Park owners also have to comply with the general law such as occupiers' liability legislation.⁷

⁷ Occupiers' Liability Acts 1957 and 1984, and Occupiers' Liability (Scotland) Act 1960.

3.4 Following a report issued in 1983⁸ we agreed a voluntary code of practice with the National Caravan Council (NCC) and the British Holiday & Home Parks Association (BH&HPA), and they jointly promote a model pitch licence. Some park owners do not adhere to certain important conditions of the code and many park owners operate outside the code altogether. Our codes regime⁹ was reviewed in 2001, and with effect from 31 December 2001 we withdrew support from all 42 existing codes. We have now adopted a revised approval scheme for codes of practice and there is no presumption that codes supported in the past will be approved. For further information about the new Codes regime see the OFT's *Consumer Codes Approval Scheme Guidance for consumer organisations, enforcement bodies and advisory services* (OFT631) and our website www.offt.gov.uk

Main areas of concern to consumers

3.5 Caravan owners have complained that park owners use terms and conditions that allow park owners to treat them arbitrarily. Caravan owners who are in dispute with park owners may be reluctant to take action on their own account in case of reprisals. Caravans are of little benefit to caravan owners without the right to station them on pitches, and they fear losing their licences and being unable to find another pitch.

⁸ Report of The Monopolies and Mergers Commission *Holiday Caravan Sites in Northern Ireland* Cmnd. 8966.

⁹ The Enterprise Act 2002 gives the OFT increased powers to help develop effective self-regulation through approving and promoting consumer codes of practice that meet the OFT's core criteria. The aim of this scheme is to promote and safeguard consumers' interests by helping consumers identify better businesses and to encourage businesses to raise their standards of customer service.

Complaints to us and other bodies indicate that the main areas of concern that consumers have in this sector are:

- lack of written agreements
- short duration of pitch licences
- potential requirement to move the caravan to a different pitch
- age limits on caravans
- restrictions on assignment and sale
- pitch fees
- restrictions on use
- charges
- tying in
- variation in services
- exclusions of liability.

Lack of written agreements

3.6 We consider it important for the terms and conditions of any agreement to be in writing for the protection of both parties because oral agreements open the door to confusion and misunderstanding. The Regulations can apply to oral contracts for caravans and pitch licences. Consumers can seek to have a court rule an oral term unfair, where they can show that it is a standard term. But we advise consumers to think very carefully before entering into any holiday caravan agreement without a written contract.

Short duration of pitch licences

- 3.7 A number of park owners choose to provide annual licences that give very little security to caravan owners, but this is not a matter we can address under the Regulations because we expect that the courts are likely to consider the length of the licence period to be a 'core' term of the agreement.¹⁰
- 3.8 Planning and site licence conditions imposed on park owners by local authorities usually prohibit the use of holiday caravans for permanent residential use. We are aware that sometimes holiday caravans are used or sold, for instance by way of informal oral agreements, as permanent homes, which may have serious consequences for caravan owners. Consumers who sell their permanent homes and occupy static holiday caravans throughout the year, in violation of planning and site licence conditions, may be in breach of their own licences with park owners and risk being treated as 'intentionally homeless' under local authority planning controls and becoming ineligible for rehousing by the local authority.

Potential requirement to move the caravan to a different pitch

- 3.9 Some park owners seek to rely on terms allowing the caravan to be moved at their discretion. We discuss this at paragraphs 4.65 to 4.69.

Age limits on caravans

- 3.10 Park owners have an interest in protecting the appearance and amenity of the park. Ensuring that caravans are kept in good repair may be a requirement of the site licence. It is common for park owners to limit the

¹⁰ See paragraphs 2.1 and 5.55 to 5.56.

acceptable age of the caravans on their sites and require caravans exceeding that age limit to be removed.

- 3.11 Complaints show that some park owners have attempted to introduce terms about the acceptable maximum age of a caravan on a site where such terms did not previously exist – these terms could be open to challenge as unfair variations to the original licence. See paragraphs 4.55 to 4.61 on variation of terms.
- 3.12 Many park owners will not permit caravans in poor condition to remain on the park, but an aged caravan may be in good condition. Although age can be a useful indicator of condition, we consider that terms allowing the licence to be terminated by the park owner should focus on the condition of the caravan rather than age. Terms limiting the age of the caravan, on pain of cancellation of the pitch licence, may be capable of causing significant detriment to caravan owners. Although such terms may be less objectionable if they are prominent and expressed in plain and intelligible language, we doubt that simply making them transparent will achieve consistency with the requirement of fairness in most cases. We would expect any assessment of condition to be objective and for the terms to allow consumers a reasonable time to put defects right. Where there is a dispute about the condition of a caravan, terms about condition are less likely to be open to challenge if consumers could refer the matter to an independent arbitrator for resolution.

Restrictions on assignment and sale

- 3.13 It is common for park owners to rely on terms that restrict the caravan owner's ability to transfer the licence to another person. Some park owners seek sole agency rights to control the sale of second-hand caravans or permit sales only to themselves. We discuss this at paragraphs 5.30 to 5.34.

Pitch fees

- 3.14 The pitch fee is payment for the use of the land on which the caravan is sited and for services provided by the park owner, including maintenance and improvement of the site and its infrastructure, such as gardening and lighting, or other services for the caravan owner's convenience, such as car parking. It should be made clear to the consumer whether the pitch fee covers only the hard standing on which the caravan is sited or also the area immediately around it.
- 3.15 The pitch fee at the start of the licence is regarded as a core term,¹¹ as in many cases is an escalator clause in a long-term licence that precisely specifies future fee increases. But a term conferring a discretion to impose unspecified increases will not be seen as core. Some park owners use a different fee structure for pitches where caravans are bought direct from them, but terms providing for this will, in our view, generally be outside the test of fairness as core terms. Core terms should be expressed or presented in such a way that they are, or are at least capable of being, at the forefront of the consumer's mind in deciding whether to enter the agreement and need to be in plain and intelligible language. We discuss pitch fees reviews at paragraphs 4.72 to 4.77.

Restrictions on use

- 3.16 The park owner controls who uses the park but we discuss unreasonable restrictions on the use of caravans at paragraph 5.41 to 5.42.

¹¹ See paragraphs 2.1 and 5.55 to 5.56.

Charges

- 3.17 The pitch licence should make clear which services and charges are included in the pitch fee, and those for which extra charges will or may be made. Park owners usually make other charges to caravan owners, for instance for utility supplies such as LPG (liquefied petroleum gas), connection and disconnection of services, local authority rates, letting fees, winter storage, equipment hire, cleaning costs, and leisure and other services such as membership fees for clubhouses. The need for transparency in fees is discussed at paragraphs 4.70 to 4.77 and unfair financial burdens at paragraphs 5.2 to 5.4.

Tying in

- 3.18 Some park owners insist that caravan owners replace the caravans and buy replacement caravans through them if they wish to remain on the pitch. We discuss this at paragraph 5.8.
- 3.19 We discuss potentially unfair terms that tie caravan owners to services supplied by the park owner or other nominated suppliers at paragraphs 5.9 to 5.14.

Variation in services

- 3.20 Caravan owners expect that services, available at the outset and forming part of the agreement, will continue throughout the duration of the licence period. We discuss variation in services and legitimate reasons for variation at paragraphs 4.62 to 4.69.

Exclusions of liability

- 3.21 We discuss terms that unfairly seek to exclude the park owner's liability at paragraphs 4.2 to 4.28.

4 ANALYSIS OF UNFAIR TERMS IN SCHEDULE 2

4.1 Schedule 2 to the Regulations lists some types of standard term that may be found unfair. The list is illustrative only, not a blacklist. A term is not necessarily unfair just because it appears in it. We have identified as unfair a number of other commonly occurring terms that do not directly correspond to those in the Schedule, and discuss these in Chapter 5.

Groups 1 and 2: Exclusion and limitation clauses – paragraphs 1(a) and (b) of Schedule 2¹²

- 4.2 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of
- (a) excluding or limiting the legal liability of a seller or supplier in the event of the death of the consumer or personal injury to the latter resulting from the act or omission of that seller or supplier
 - (b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier (or another party) in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations...

Exclusion and limitation clauses in general

4.3 We are likely to object to disclaimers that try to exclude or limit liability for breach of 'implied' terms. A term will sometimes be implied in an agreement, although it is not expressly included in the written or oral agreement, by a statutory provision or by common law, in order to

¹² Detailed discussion of our views can be found at Groups 1 and 2 in *Unfair contract terms guidance* (OFT311).

protect consumers or to make agreements work. A term excluding liability for these implied terms may allow one party to act unreasonably or negligently.

- 4.4 We are concerned with the effect of terms, and not just the intentions behind them. Terms that seek to exclude or limit park owners' liability may be unfair, particularly if they try to prevent caravan owners from seeking redress from park owners who have not complied with their obligations. Other legislation makes the use of many disclaimers invalid or illegal. We object to disclaimers that could be used to defeat the legitimate claims of consumers even where they may have been introduced to deal with unjustified demands.
- 4.5 We object not only to terms that limit the park owners' liability, but also to those that exclude their liability altogether. We challenge terms that seek to exclude liability 'save as may be prohibited by statute', or qualified by similar forms of words, because such terms purport to exclude liability that is not prohibited but is nonetheless unfair to exclude. These terms are also liable to mislead caravan owners, because they are not likely to be aware of the underlying statutory provisions.

Group 1: Exclusion of liability for death or personal injury

- 4.6 Park owners cannot in law¹³ exclude or restrict their liability for death or personal injury caused by negligence or by their act or failure to act, and cannot rely in court on 'at your own risk' disclaimers. We challenge such void and unenforceable terms as being both misleading and pointless.

¹³ Section 2 of the Unfair Contract Terms Act 1977. Although there is a partial exemption for interests in land, a holiday caravan licence rarely, if ever, confers an interest in land upon the occupier of the caravan.

4.7 The Regulations apply to any exclusions of liability for death or personal injury caused by an act or an omission of the park owner, including breach of duty (for example of health and safety requirements), whether this arises by statute or in any other way. Park owners cannot avoid unfairness in such terms by stating that they accept liability for their negligence, unless they also accept liability for other breach of duty. Park owners cannot exclude their liability for death or personal injury resulting from a breach of their common duty of care under occupiers' liability legislation.¹⁴

Unfair terms

4.8 We regard as potentially unfair terms that:

- state that the park owners, and their agents and employees, do not accept any liability whatsoever in respect of any illness, or injury, from whatsoever cause (including negligence), to the caravan owner, or occupant of any caravan, or other person using the park, or the leisure facilities at any time.

Ways of revising terms

4.9 We are not likely to object to terms that:

- provide that the park owners are not liable for actions resulting in death or injury unless arising from their own negligence or other breach of duty.

¹⁴ Occupiers' Liability Acts 1957 and 1984, and Occupiers' Liability (Scotland) Act 1960.

Group 2(a): Exclusion of liability for faulty or misdescribed goods

4.10 Caravans, and other goods supplied by park owners, should match the description of them, be of satisfactory quality¹⁵ and fit for purpose. We object to terms that exclude liability for the quality, or condition, or fitness for purpose of the goods sold to consumers. We also object to terms that require the consumer to ensure that the caravan meets any standard, or other legal requirement, before the consumer takes delivery, because we consider this to be the supplier's responsibility. Where the park owner breaches the contract by supplying faulty goods, and the caravan owner requests repair or replacement, the park owner must bear any costs arising out of this, including the cost of any labour, materials, postage and transport.

Unfair terms

4.11 We regard as potentially unfair terms that:

- expressly exclude liability under any guarantee of condition or warranty as to the quality or condition or fitness for any purpose of the goods
- exclude liability for errors in the description of a second-hand caravan.

¹⁵ Section 14 (2D) of the Sale of Goods Act 1979, introduced by the Sale and Supply of Goods to Consumers Regulations 2002.

Ways of revising terms

4.12 We are not likely to object to terms that:

- provide that new caravans are sold in accordance with the manufacturer's specification, and recommend that buyers should check that the goods are satisfactory for their particular requirements.

Group 2(b): Exclusion of liability for poor service

4.13 Consumers can normally expect any services to be supplied under the transaction to be carried out to a reasonable standard. We may challenge terms that exclude the park owner's liability for failure to supply agreed amenities or other services, particularly where these have been described in brochures and offered as part of the package to potential buyers. There is unlikely to be objection to clauses that exclude such liability where the failure in supply is caused by circumstances outside the reasonable control of the park owner or its agents, contractors or employees. See also paragraphs 4.26 to 4.28 on exclusion of liability for failure to perform contractual obligations and 4.62 to 4.69 on the right to change what is supplied.

Exclusions of liability for damage

4.14 Park owners should not exclude their liability for damage caused to caravan owners', or other park users', property resulting from park owners' own negligence or that of their agents, contractors or employees. This applies particularly where the park owner is responsible for moving the caravan. Terms permitting this should make clear that park owners accept liability for damage caused by their negligence. Caravan owners should have some redress, even where they might be partly at fault, for loss or damage contributed to by the failure of the park owner to take reasonable precautions.

Unfair terms

4.15 We regard as potentially unfair terms that:

- state that park owners and their agents and employees do not accept any liability whatsoever for any loss or damage to any caravan, or its contents, or to a vehicle, or any other personal property of any caravan owner, or occupier of any caravan, or any other person using the park.

Ways of revising terms

4.16 We are not likely to object to terms that:

- exclude park owners' liability where they have not been negligent or in breach of duty.

Group 2(c): Limitations on liability

4.17 Caravan owners are generally entitled to full compensation if park owners fail to honour their obligations. We object to terms that could restrict or limit park owners' legal obligations and their liability to pay compensation where they are at fault. We challenge terms that limit liability only to the value of the goods sold or to the extent that the park owner can claim against the manufacturer. We also challenge terms that limit the form of redress available, such as those that allow the park owner to choose to make refunds only by means of a credit note.

Consequential loss

4.18 Park owners must expect to pay compensation for loss or damage caused by faulty goods, poor service or other breach of contract. In general, compensation is awarded for loss or damage that the parties themselves could have reasonably foreseen at the time of entering the agreement, even if others could not have foreseen it. We take the view that consumers may claim damages on that basis. We challenge terms that limit the kind of loss for which compensation is paid. Consumers

may be misled by exclusions of 'consequential loss' into thinking that they may not claim compensation at all. See our *Unfair contract terms guidance* (OFT311), paragraphs 2.3.6 to 2.3.10, for further explanation.

Unfair terms

4.19 We regard as potentially unfair terms that:

- seek to exclude liability for 'consequential loss' other than outside the reasonable contemplation of the parties at the time the agreement was formed
- seek to exclude or limit liability solely on the basis that the consumer has not paid
- exclude liability for damage arising in transit regardless of fault
- place an unreasonable cap on financial liability.

Group 2(d): Time limits on claims

4.20 For an agreement to be considered balanced, each party's rights must remain enforceable against the other for as long as is reasonably necessary. In addition, those rights must be adequate in other respects. The law allows a reasonable time for making claims where the parties have not agreed a definite period. A standard term should not impose a shorter time than is reasonable, because caravan owners could be at risk of losing their rights to redress long before they would normally lapse by law.

Group 2(e): Terms excluding the right of 'set-off'

4.21 Where a consumer has an arguable claim under an agreement against a supplier, the law generally allows the amount of that claim to be deducted from, or 'set off' against, anything that the consumer has to pay. We challenge terms that have the effect of depriving consumers of that right. Terms that limit or remove a caravan owner's right to redress

may be unfair. A caravan owner may legitimately exercise a right of set-off to obtain compensation if the park owner has been in serious default.

- 4.22 The caravan owner is generally under a legal obligation to pay promptly and in full on satisfactory completion of the contract for purchase of a caravan. We object to terms that require full payment in advance of delivery, in particular because there is no incentive on suppliers to deliver within a reasonable time. Consumers may be at a disadvantage if they wish to cancel due to excessive delay in delivery. A consumer has the choice to accept a caravan that is unsatisfactory in some way, by exercising the option to pay a reduced price, but terms requiring full payment in advance hinder this choice. Provided that consumers are given proper opportunity to inspect the goods to assure themselves of satisfactory completion of the contract, we would be unlikely to object to terms that require full payment in advance of the consumer using or taking up occupation of the caravan.

Group 2(f): Exclusion of liability for delay

- 4.23 The law requires suppliers to supply goods and services within the timetable agreed, or within a reasonable time where no date has been fixed. We object to terms that seek to exclude liability for delay, and also to terms that allow extended delivery periods or excessive margins for delay after the agreed date.

Unfair terms

- 4.24 We regard as potentially unfair terms that:
- allow the seller to exclude liability for loss or damage suffered by the purchaser through any delay in delivery however caused
 - prevent the consumer cancelling if there is a prolonged delay in delivery.

Ways of revising terms

4.25 We are not likely to object to terms that:

- exclude liability for delay outside the reasonable control of the supplier.

Group 2(g): Exclusion of liability for failure to perform contractual obligations

4.26 Terms that could allow park owners discretion to refuse to carry out their side of the agreement or any important obligation under it, without liability, can potentially distort the balance of the agreement to the disadvantage of the caravan owner. This also applies to terms that allow park owners to suspend provision of any significant benefit under the agreement. The principal services included within the original licence, such as a pitch and the facilities that go with it, can reasonably be expected to continue.

4.27 We would be unlikely to challenge a term that allowed park owners to make changes to services where those changes are necessary for the park owners to comply with legal obligations. Terms allowing park owners to withdraw ancillary services, for example entertainment facilities, at their discretion would be potentially unfair. We would be less likely to challenge a term if it provided that the services will only be altered or withdrawn for valid reasons (that are clear and specific enough to ensure that the power cannot be used at will to suit the interests of the park owner) and that the park owner will provide suitable alternatives unless it is unreasonable to do so.

4.28 If an exclusion clause goes further than is strictly necessary to achieve a legitimate purpose, it could provide scope for abuse and upset the balance of the contract. A provision giving the park owner an excessive right to enter the caravan is an example of this type of term. Terms that have the effect of allowing the park owner unlimited access to the caravan could be unfair. Such terms would be less objectionable if they

stated that the park owner should provide reasonable advance notice of any request to enter the caravan itself, for example to carry out repair obligations, except in the case of emergencies.

Group 4: Retention of prepayments on consumer cancellation – paragraph 1(d) of Schedule 2¹⁶

4.29 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of:

- (d) permitting the seller or supplier to retain sums paid by the consumer where the latter decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the seller or supplier where the latter is the party cancelling the contract.

4.30 We generally object to terms that deny consumers refunds of prepayments made under a contract for a caravan sale or a pitch licence that does not go ahead, or that ends before they have enjoyed any significant benefit. That does not mean caravan owners can cancel their agreements at will and receive full refunds. But it does mean that they should not be deprived of the right to a refund if the supplier breaks the agreement.

Cancellation where the park owner is in breach

4.31 Caravan owners are entitled to cancel the agreement without penalty if the park owner is in serious breach of it. We object to terms that do not recognise this and deprive caravan owners of all prepayments if they cancel where they have received no significant benefit. We object to

¹⁶ Detailed discussion of our views can be found at Group 4 in *Unfair contract terms guidance* (OFT311).

terms that penalise all caravan owner cancellations regardless of circumstances, whether by loss of deposit or other means.

Cancellation where the park owner is not in breach

- 4.32 A term under which caravan owners, although at fault, always lose everything they have paid in advance for a pitch, regardless of the amount of any costs or losses caused to the park owner by the cancellation, is at risk of being considered an unfair penalty. Caravan owners may pay a deposit towards the end of one season for the following season's pitch fees, with the balance payable prior to the start of the new season. Terms that allow park owners to require caravan owners who fail to pay the balance before a specific date to forfeit the deposit in full may be unfair, if the amount of the deposit exceeds a genuine pre-estimate of the loss. We do not object to terms that make a genuine pre-estimate of the costs arising on consumer cancellation.
- 4.33 Pitch licence fees are generally paid in full before the start of the season, although some parks allow payment in several instalments. Even if caravan owners choose to cancel licences where park owners are not at fault, they may still be entitled to recover some of these fees. Some licences include a sliding scale for refunds in the event of cancellation – we do not disagree in principle with the use of such sliding scales, provided they represent a genuine pre-estimate of park owners' losses. The law does not allow park owners to reclaim losses that they could have avoided had they taken reasonable steps to do so, such as attempting to find a new occupier for the pitch. Any provision that all prepayments are lost on consumer cancellation may be regarded as a penalty.
- 4.34 Similarly, where consumers cancel contracts for the purchase of caravans, they may be entitled to a refund, depending on the reasons for cancellation – see paragraph 4.78 on variation of price before delivery. If the park owner is not in breach and has suffered loss as a result of consumer cancellation, the consumer may not be entitled to a full refund of all prepayments. However, a requirement on the consumer to pay

more in compensation than the actual losses recoverable at law, or a reasonable pre-estimate of the loss caused to the park owner, would be considered an excessive penalty.

Unfair terms

4.35 We regard as potentially unfair terms that:

- deny refunds of payments made in respect of pitch fees, or charges for other services, if caravan owners terminate their licences during the course of the season
- state that pitch fees paid in advance are not refundable.

Ways of revising terms

4.36 We are not likely to object to terms that:

- provide that where the caravan owner terminates in breach of the terms of the licence, the park is entitled to charge for reasonable administration costs resulting from the termination and for loss of pitch fee until the plot is re-let by the park.

Group 5: Financial penalties – paragraph 1(e) of Schedule 2¹⁷

4.37 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of:

- (e) requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation.

¹⁷ Detailed discussion of our views can be found at Group 5 in *Unfair contract terms guidance* (OFT311).

- 4.38 It is unfair to impose excessive sanctions for a breach of contract. We consider a term to be a penalty if, at the time the estimate is made, it would require the caravan owner to pay more in compensation for a breach than a reasonable pre-estimate of the loss caused to the park owner. Under common law this type of term would normally be void to the extent that it is a penalty.
- 4.39 Where caravan owners have breached their obligations to pay fees or charges by a due date, there can be no objection to park owners' seeking to charge reasonable annual interest on the overdue account.

Unfair terms

- 4.40 We regard as potentially unfair terms that:
- provide that in addition to the interest stated, the park owner may levy a penalty for persistent late payment
 - provide that outstanding fees will be charged at an excessive monthly rate of interest.

Ways of revising terms

- 4.41 We are not likely to object to terms that:
- provide for a reasonable annual rate of interest on overdue accounts linked to a named clearing bank's interest rate.

Group 6: Cancellation clauses – paragraph 1(f) of Schedule 2¹⁸

4.42 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of:

- (f) authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the seller or supplier to retain the sums paid for services not yet supplied by him, where it is the seller or supplier himself who dissolves the contract.

4.43 Consumers and suppliers should enjoy rights of equal extent and value to end or withdraw from an agreement. The supplier's rights should not be excessive and the consumer's rights should not be too constricted. A formal right to cancel the agreement will generally be of limited benefit to caravan owners, if they suffer significant costs or substantial inconvenience as a result of doing so, particularly if they cannot move to a comparable holiday park close by. It is therefore unlikely to operate effectively to counterbalance a wide right for the park owner to cancel the agreement or change what is supplied.

Unilateral right to cancel by the park owner

4.44 Park owners who cancel agreements may cause caravan owners losses, inconvenience, costs and other problems. There are, in our view, limited circumstances where it may be legitimate for a term to allow park owners to cancel agreements. A unilateral right for park owners to cancel a pitch licence immediately at their discretion, without a valid reason and without any liability, is highly likely to be objectionable. We would be unlikely to object to a term that allowed park owners to

¹⁸ Detailed discussion of our views can be found at Group 6 in *Unfair contract terms guidance* (OFT311).

choose to cancel a licence if caravan owners commit a serious breach of it, for instance one that causes a breakdown in the relationship between the park owner and the caravan owner, such as violence, intentional damage to property or a persistent refusal to remedy a lesser breach after due warning.

- 4.45 We object to terms permitting cancellation for vaguely defined reasons. The purpose of such terms may be to allow park owners to protect themselves legitimately from problems beyond their control, or from serious misconduct by caravan owners, but we consider such broadly worded terms may be relied on unfairly. We also object to terms that allow the park owner to terminate the licence immediately if the fees fall into arrears, as in our view late payment of fees is a breach that is likely to be capable of remedy, for example by charging interest.

Cancellation by the caravan owner where the park owner is in breach

- 4.46 Where the park owner is in serious default, we object to terms that hinder a caravan owner from terminating the pitch licence, or prevent a refund of any portion of the annual pitch fee that has been paid in advance. Where the park owner commits a repudiatory¹⁹ breach of the agreement the caravan owner may be entitled not only to repayment of fees paid in advance, but also to damages in compensation for any loss directly caused by the breach.

¹⁹ A breach of a condition, that is an essential stipulation, of the contract, or a breach of the contract that deprives the innocent party of substantially the whole benefit that it was the intention of the parties he or she should obtain under the contract. If the park owner, by words or conduct, expresses an intention not to perform his obligations under the contract, this may constitute an **anticipatory breach** entitling the caravan owner to terminate it and claim damages.

Cancellation without refund

4.47 Cancellation clauses that allow the park owner to cancel the agreement, without acknowledging any right on the part of the caravan owner to a refund of prepayments, can be particularly open to abuse. Even a restricted right to cancel is likely to be unfair if it could allow retention of prepayments where this is not justified. A retention may be justified if the sum involved does not exceed the reasonable costs incurred. If park owners lawfully require caravan owners to leave their pitches, fairness requires that they make a proportionate refund of the remaining fee where this is due.

Unfair terms

4.48 We regard as potentially unfair terms that:

- reserve to the park owner the right to terminate the licence for any action that would cause inconvenience to other caravan owners
- provide that the park owner may serve notice of termination if there is any breach on the part of the caravan owner, and require the removal of the caravan from the park
- reserve to the park owner the right to terminate the licence on breach of the licence, and forfeit to the park owner any fees paid in respect of the plot.

Group 9: Binding consumers to hidden terms – paragraph 1(i) of Schedule 2²⁰

4.49 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of:

- (i) irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract.

4.50 Consumers should always have an opportunity to get to know all the terms of an agreement before entering it. We object to terms that bind caravan owners to unseen obligations such as those requiring them to comply with conditions in the local authority site licence. There may be less concern if the site licence is displayed on the park in a conspicuous place²¹ and consumers' attention is drawn to it or they are given a written explanation of the most important conditions before they commit themselves. It is unlikely to be sufficient simply to state that the licence conditions are available at another place or are on display. Park rules cover local arrangements, such as speed limits for the site. Copies of the park rules and regulations, where these are incorporated into the pitch licence by specific wording in it, or the park owner wishes the caravan owner to be bound by them, should be provided before the caravan owner signs the pitch licence. It is a fundamental requirement of contractual fairness that consumers should always have an opportunity to read and understand terms before becoming bound by them.

²⁰ Detailed discussion of our views can be found at Group 9 in *Unfair contract terms guidance* (OFT311).

²¹ Section 5 (3) of the Caravan Sites and Control of Development Act 1960 provides that a site licence must contain an express condition that a copy of it will be displayed on the park in a conspicuous place (unless the site licence restricts the number of caravans to three or fewer).

Linked agreements

- 4.51 The above also applies to terms that require caravan owners to accept the terms of linked agreements such as credit agreements. Caravan owners should be given an appropriate chance to read these or to read a summary of those terms affecting the primary agreement.

Cooling-off period

- 4.52 If park owners are unable, for some reason, to communicate important details of the contract to the consumer, they could consider offering a 'cooling-off' period. This gives consumers time to read all the details of the contract as well as the terms and to withdraw without penalty or loss of prepayments if they do not wish to proceed.

Unfair terms

- 4.53 We regard as potentially unfair terms that:
- provide that details of the park rules, binding caravan owners and all persons using the park, are merely on display at the park
 - require a written request to obtain copies of other regulations
 - are 'hidden' in the contract because of inadequate presentation
 - require that caravans must conform to standards laid down by management without supplying the criteria.

Ways of revising terms

- 4.54 We are unlikely to object to terms referring to other obligations that:
- provide that the park owner supplies a copy of the site licence, the park rules and a copy of the code (where used) before the pitch licence is signed

- provide that the criteria used for the maintenance standards are supplied before the licence is signed.

Group 10: Supplier's right to vary terms generally – paragraph 1(j) of Schedule 2²²

4.55 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of:

- (j) enabling the seller or supplier to alter the terms of the contract without a valid reason which is specified in the contract.

4.56 We are likely to object to a right for park owners to alter the terms of the agreement in a way that may be damaging to the caravan owner. We would regard as unfair a term that could be used to force the caravan owner to accept increased costs or penalties, new requirements, or reduced benefits, even if the park owners do not intend to use it in that way, and only intend to rely on it to make minor changes. We object to terms that give park owners unilateral and unqualified powers to amend the pitch licence. We do not object to changes that do no more than reflect changes in the law or in the provisions of the local authority site licences or liquor licences. We are unlikely to object to a term stating that park owners may make alterations to ancillary services, if they give valid reasons (clear and specific enough to ensure that the power cannot be used at will to suit the park owner) and provide for suitable alternatives unless it is unreasonable to do so.

4.57 We are unlikely to object to terms that permit changes to be made to park rules (where these are incorporated into the pitch licence – see paragraph 4.50) that are necessary for the safe and efficient running of

²² Detailed discussion of our views can be found at Group 10 in *Unfair contract terms guidance* (OFT311).

the park, provided that they do not seek substantially to alter the existing agreement.

- 4.58 Many pitch licences last for a number of years, but ownership of the park may change during this period. Very often new park owners want to make changes to the park and to the pitch licence arrangements and park rules. The legal position here is complex, and where caravan owners believe there may have been breaches of the original licence they may need to take legal advice.
- 4.59 Caravan owners may have the right to cancel the pitch licence where they object to a fundamental change in the park rules, but this may well not rectify unfair contractual imbalance. The costs and logistics involved may make it difficult or impossible for a caravan owner to move to another comparable pitch on a comparable park.

Unfair terms

- 4.60 We regard as potentially unfair terms that:
- allow park owners to make changes to the rules and regulations at their discretion
 - state that any person entering the park will be subject to the rules which can be altered without notice
 - state that the park owner reserves the right to make additions or amendments to the licence conditions at any time, and these come into effect immediately they are posted on the notice board on the park.

Ways of revising terms

- 4.61 We are not likely to object to terms that:
- reserve the right to make changes in so far as required by law.

Group 11: Right to change what is supplied – paragraph 1(k) of Schedule 2²³

4.62 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of:

- (k) enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided.

4.63 We object to terms that allow a park owner to supply something different from what was agreed. There is no objection to terms that provide for minor or technically unavoidable changes that are of no real significance to the consumer, but caravan owners are legally entitled to receive the service they agreed to purchase. We are likely to object to any term that enables the park owner to alter, without suitably restricting the right to do so, important characteristics of the way the service will be provided, including the length of time for which the service is to be provided.

4.64 Some changes to ancillary services and facilities may be inevitable over the lifetime of a licence, particularly a long-term licence. As stated earlier, we would be less likely to challenge a term if it provided that ancillary services will only be altered or withdrawn for valid reasons (that are clear and specific enough to ensure that the power cannot be used at will to suit the interests of the park owner) and that the park owner will provide suitable alternatives unless it is unreasonable to do so.

²³ Detailed discussion of our views can be found at Group 11 in *Unfair contract terms guidance* (OFT311).

Potential requirement to move the caravan

- 4.65 In deciding whether to move on to the park a consumer will consider not only the park and the caravan but also the location of the pitch, and may pay a premium for a particular type of pitch. We recognise that the park owner needs to provide for moving the caravan in the future, for example for essential maintenance such as repairs to the hard standing or sewage pipe renewal or to respond to external factors such as changes in the local authority site licence requirements. However, we consider it is reasonable for the caravan owner to expect that the caravan will be returned to the original pitch or an alternative pitch of similar quality after the work is completed.
- 4.66 There is no objection to a term providing for the caravan to be moved into winter storage, provided it is clear that it is to be returned to its original pitch or, if that is not possible for valid reasons, to an alternative pitch of comparable quality and amenity.

Park development

- 4.67 Some park owners rely on terms that provide that caravans may be re-sited on different pitches for the better management of the park. We recognise that park owners may need to develop their parks, but many caravan owners invest time and money in improving their pitch surroundings. Where moves are justified, whether during the holiday season or on return of the caravan from winter storage, the caravan owner should be given reasonable notice and the caravan moved to a satisfactory alternative pitch of similar quality. The caravan owner should not suffer any loss of amenity or incur costs.

Unfair terms

- 4.68 We regard as potentially unfair terms that:
- state that park owners may move the caravan to another pitch on the park at their sole discretion.

Ways of revising terms

4.69 We are not likely to object to terms that:

- state that, after giving notice, park owners may move the caravan at their own expense to another pitch on the park of similar quality for agreed redevelopment or maintenance purposes; and that afterwards the caravan will be returned to its original pitch (provided that it is not of lesser quality after the redevelopment or maintenance) or an alternative pitch of similar quality.

Group 12: Price variation clauses – paragraph 1(l) of Schedule 2²⁴

4.70 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of:

- (l) providing for the price of goods to be determined at the time of delivery or allowing a seller of goods or supplier of services to increase their price without in both cases giving the consumer the corresponding right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded.

4.71 We consider that terms allowing the supplier to vary the price, which is the most important of the consumer's contractual obligations, are clearly potentially unfair. We object to terms that allow park owners to vary pitch fees, even though caravan owners may have a right to cancel if they consider the increase excessive. The right to cancel may not be an effective remedy, because of the disproportionate costs, disruption, and loss of amenity in removing the caravan. Caravan owners may be tied

²⁴ Detailed discussion of our views can be found at Group 12 in *Unfair contract terms guidance* (OFT311).

into the arrangement, and may not be free to cancel and move elsewhere if they consider an increase in fees to be too high. In such circumstances, the caravan owner would be compelled to sell the caravan (probably at a substantial loss). A term of this kind could be used arbitrarily to force caravan owners to leave the park. In contracts for the sale of caravans, cancellation of the sale contract and pitch licence before occupation by the consumer may, however, offer an effective remedy to the consumer in the event of an increase in price.

Fee reviews

- 4.72 We recognise that park owners review their pitch fees annually but we are likely to object to terms that allow park owners to increase pitch fees in long-term licences without adequate notice, and at their discretion. Terms that give the park owner an unqualified power to introduce such increases in pitch fees are likely to be unfair, especially if the increases could be disproportionate. The caravan owner might not have entered the agreement at the increased price, and fee variation terms may cause caravan owners serious detriment. A fee variation term should, in our view, be precise and transparent in the agreement, and be based on clearly defined criteria, and make the frequency of future reviews clear. This need for clarity and precision also applies to other charges that the park owner makes that may vary.
- 4.73 The pitch fee itself is regarded as a 'core'²⁵ term, as is an escalator clause in a long-term licence that precisely specifies future fee increases or how they will be calculated. A term that confers discretion to impose unspecified increases will not be regarded as core. Where a new annual licence is entered into, the level of the pitch fee in that agreement is a core term and as such cannot be challenged as unfair. It must be clear and prominent however. A park owner may charge a lower fee, where

²⁵ See paragraphs 2.1 and 5.55 to 5.56.

caravans are bought from him or her, from that charged to existing caravan owners.

- 4.74 Park owners may sometimes wish to improve a site. It may be reasonable for a fee review term to seek to pass on those costs that relate to an improvement for caravan owners and that will not be paid for in other ways such as through entrance fees. A term that allows for an increase that is disproportionate to the original fee is likely to be unfair, as is a term allowing the imposition of unilateral pitch fee increases by the park owner without sufficient justification. We would be likely to object to terms that allowed double-recovery of costs through pitch fees in future years after the work has in fact been paid for.
- 4.75 Pitch fee variation terms are more likely to be fair if they make clear at the start of the licence that increases during the life of the licence are related to a published index, or other precisely stated factors that are in line with relevant specified costs incurred for the benefit of the caravan owners. We would challenge a broad discretion to vary fees during the life of the licence, where there is no restriction on the frequency of fee review, where the review is not based on precise criteria, and where no provision is made for the caravan owners, as a group, to dispute a proposed increase in fees. A pitch fee review is a two-way process and if a caravan owner does not agree with the outcome, he or she should not be prevented from exercising his or her right to take court action for breach of contract. Terms that make arbitration (rather than say court action) compulsory are generally automatically unfair – see paragraph 4.93.

Unfair terms

- 4.76 We consider as unfair terms that:
- provide that the park owner may vary the fees and other charges from time to time.

Ways of revising terms

4.77 We are not likely to object to terms that:

- provide that pitch fees will increase in line with changes to the cost of living or reasonable operating costs
- allow fee increases on stated criteria, if they also provide that the park owner may review and vary specific listed charges once annually, in line with the detailed criteria provided
- provide that caravan owners may seek legal review of a proposed increase they believe to be excessive.

Sale contracts

4.78 Terms that bind, or have the effect of binding, consumers to pay for a caravan, while allowing suppliers to increase the price of goods before delivery, are clearly open to objection. Caravan owners should have the option to cancel the contract for the sale of a caravan, without penalty, where the final price is higher than that originally agreed.

Unfair terms

4.79 We regard as potentially unfair terms that:

- provide that, if the price from the manufacturer changes, the seller may increase the price between contract and delivery
- place excessive time or other restrictions on how a consumer may cancel a contract following an unacceptable price increase.

Ways of revising terms

4.80 We are not likely to object to terms that:

- allow for an increase in the sale price, if they also provide that the consumer may cancel the contract before the increase takes effect.

Group 13: Supplier's right of final decision – paragraph 1(m) of Schedule 2²⁶

4.81 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of:

- (m) giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract.

Right for park owners to determine whether they are themselves in breach

4.82 We will object to terms that allow park owners to take themselves outside the normal rules of law. Disputes over the meaning and application of contract terms can normally be referred to the courts if either party so chooses. If park owners reserve the right to decide whether they have performed their contractual obligations properly, then they can unfairly refuse to acknowledge that they have broken them, and deny redress to the caravan owner. Such terms have a similar effect as clauses unfairly excluding liability for unsatisfactory goods and services.

Unfair terms

4.83 We consider as unfair terms that:

²⁶ Detailed discussion of our views can be found at Group 13 in *Unfair contract terms guidance* (OFT311).

- provide that any dispute will be settled by the park owners, their decision being final.

Group 14: Entire agreement clauses and formality clauses – paragraph 1(n) of Schedule 2²⁷

4.84 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of:

- (n) limiting the seller's or supplier's obligation to respect commitments undertaken by his agents or making his commitments subject to compliance with a particular formality.

4.85 Consumers decide whether or not to enter a contract for a caravan and a pitch licence on the basis of information and promises made to them at the time of sale. The supplier may make statements, for example about the size of the caravan or the amenity of the pitch, that induce the consumer to accept the agreements. Terms excluding or limiting the park owner's obligation to respect either written or oral communications by his or her sales force have the potential to be unfair.

Exclusion of responsibility for promises that are not written down

4.86 We object to terms that exclude liability for any promises that are not in the agreement, and provide that all the binding terms and conditions are contained in the standard written agreement and supersede oral statements or representations. Good faith requires that parties to the agreement are bound by their promises. Consumers may rely on oral promises reasonably, and in good faith.

²⁷ Detailed discussion of our views can be found at Group 14 in *Unfair contract terms guidance* (OFT311).

4.87 We object to terms that say that changes to the agreement are never permitted unless agreed in writing, or require that variations should be signed by a director of the company, or that no employee has authority to vary the agreement. This would enable park owners to disclaim liability for claims and promises made by their employees and agents to induce consumers to enter the agreement. We are unlikely to object to a cautionary statement that the law favours written terms and that, if a variation to a contract is agreed verbally, the caravan owner should ask for it to be put in writing to avoid misunderstandings.

Unfair terms

4.88 We regard as potentially unfair terms that:

- exclude liability for any oral promises not written in the agreement.

Ways of revising terms

4.89 We are not likely to object to terms that:

- warn caravan owners by prominent notices in the agreement to read the terms carefully to ensure the agreement includes everything they want to be in it, and excludes everything they are not prepared to agree to.

Formality requirements

4.90 In a fairly balanced agreement, the rights of all parties must be secure and enforceable and not at risk of being lost without good reason. We would object to terms that allow park owners to opt out of important obligations, or impose disproportionate penalties where caravan owners commit only a technical breach of contract. Technical breaches include failure to comply with administratively convenient formalities, such as making notifications in writing, or to comply with an obligation by a due date in the future without any reminder.

Group 17: Restricting the consumer's remedies – paragraph 1(q) of Schedule 2²⁸

4.91 Paragraph 1 of Schedule 2 states that terms may be unfair if they have the object or effect of:

- (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

4.92 We object to terms that could be used to prevent or hinder caravan owners from seeking redress when the park owner is in default, because this places the caravan owner at a disadvantage.

Compulsory arbitration clauses

4.93 Section 91 of the Arbitration Act 1996 makes a compulsory arbitration clause automatically unfair under the Regulations, if it relates to claims under a certain limit, currently £5,000 or less²⁹ in England, Scotland and Wales and £3000 or less in Northern Ireland. Such clauses are effectively blacklisted since they are always unfair under the Regulations, regardless of circumstances. A compulsory arbitration

²⁸ Detailed discussion of our views can be found at Group 17 in *Unfair contract terms guidance* (OFT311).

²⁹ Section 91 of the Arbitration Act 1996 'relates to a claim for a pecuniary remedy.' It applies to claims for modest amounts, and creates a power to define a limit for the purposes of the Act. For the purposes of the Act, the limits are currently as stated above. The small claims limit is also £5000 in England, Scotland and Wales, but £2000 in Northern Ireland.

clause forbidden by the 1996 Act is legally ineffective and open to regulatory or enforcement action in all cases.

- 4.94 Removing the element of compulsion from the term removes the unfairness. The term can fairly make clear that both parties are free to choose whether to go to arbitration or not. Arbitration in the UK is fully covered by legal provisions, and so we are unlikely to object to voluntary arbitration clauses, provided they are in clear language and not misleading.

5 ANALYSIS OF OTHER TERMS CONSIDERED POTENTIALLY UNFAIR

Group 18: Other terms

5.1 The list in Schedule 2 to the Regulations includes types of terms commonly used over the EU as a whole, not in any one particular member state. The list is non-exhaustive. We have found a range of other terms in use in caravan contracts in the UK that could be unfair in ways that are similar to those terms listed in Schedule 2, but which operate differently. The most commonly used terms of this type are discussed here. Those that breach the plain language and transparency requirements of the Regulations are discussed at the section about Regulation 7 (paragraphs 5.49 to 5.54). The categories (a) to (h) correspond to the sub-headings 18(a) to 18(h) of Group 18 in *Unfair contract terms guidance* (OFT311).

(a): Allowing the supplier to impose unfair financial burdens

- 5.2 We object to terms that allow park owners to impose unexpected financial burdens on caravan owners. Such terms have a similar effect to a price variation clause and are also not regarded as exempt core terms because they do not clearly set an agreed price. We would object to an explicit right to demand payment of unspecified amounts at the park owner's discretion.
- 5.3 We consider that terms are unfair if they require caravan owners to pay for unspecified outgoings in the future. Where a precise amount cannot be stated at the outset of the agreement, the term should make it clear how it will be set. The basis of the charge, such as where there are identifiable and variable costs that have to be covered, for example local authority rates, should be reasonable and obvious. All charges to which caravan owners could be subject under the agreement should be transparent at the time they are considering whether to enter into it.

- 5.4 Contracts for caravans and pitch licences give rise to a number of specialised issues. In general, we object to terms that give park owners any kind of monopoly over the supply of goods or services that caravan owners are required or have no choice but to buy. Any such monopoly is open to abuse, and is liable to be used as an additional means of raising revenue, and thus to have the effect of imposing an unfair financial burden on caravan owners.

Access

- 5.5 We recognise that it is legitimate for park owners to restrict access to the installations for the supply of utilities to the caravan, such as the electrical supply, on grounds of safety. Similarly, on grounds of collective interests and safety, park owners place restrictions on contractors' commercial vehicles entering the park, but they are expected to act reasonably in doing so. We would object to terms that, in all circumstances, require caravan owners only to use approved contractors or maintenance staff supplied by the park owner, and seek to enforce this by denying competent independent contractors access to the park without a valid reason. The caravan owner is under a duty to maintain the caravan, but should not be restricted in undertaking or organising the work.
- 5.6 Park owners have an interest in ensuring that work carried out by contractors is to a reasonable standard, where this work may affect other caravan owners or the safety or amenity of the park. We would be less likely to challenge terms stating that such work needs the park owner's approval, if the terms provide that such approval is not to be unreasonably withheld.
- 5.7 See paragraph 4.28 on terms allowing park owners access to caravans.

Tying in

- 5.8 Caravan owners can find themselves tied to one agent or manufacturer when seeking to purchase a replacement caravan, and to selling the old

caravan to the park owner at a loss. Any requirement that the caravan owner must buy or sell a caravan only through the park owner or an appointed agent may be capable of causing financial detriment to caravan owners. We doubt that such terms will amount to 'core' terms, but they may do so in certain cases. At any event the relevant terms need not only to be in plain and intelligible language but to be very clearly explained before the consumer enters the agreement to reduce the potential for unfairness.³⁰ See also the comments about age limits on caravans at paragraphs 3.10 to 3.12.

- 5.9 Caravan owners have expressed concerns about arbitrary controls over services and supplies. Park owners may impose restrictions where required to do so by the site licence, health and safety legislation, regulations on electrical installations, codes of practice on the safe handling and storage of LPG and so on, so long as the restrictions properly and accurately reflect the requirements placed on park owners. While park owners may wish to protect the park from unsightly or unsafe additions to the caravans or the pitch, such as sheds or external storage boxes, we consider that they should not seek to be the sole suppliers of acceptable accessories, or restrict the choice of suppliers unreasonably. We object to terms that, without good reason, bind caravan owners to purchase goods or services from specific sources. These may be uncompetitive or otherwise not meet caravan owners' requirements.
- 5.10 Although on parks with underground piped LPG the caravan owner has no choice over this supply, we have received a number of complaints about park owners insisting that LPG cylinders are bought through them, often at an inflated price. While there are maximum resale prices for mains gas and electricity, there are none for LPG supplied in cylinders and bulk tanks. Contract terms controlling the supply of LPG to caravan

³⁰ See paragraphs 2.1 and 5.55 to 5.56.

owners will come under particular scrutiny, as they may impose an unfair financial burden. Park owners will be asked to justify such terms.

- 5.11 Park owners reselling mains gas and electricity should comply with the guidelines for charging set by Ofgem for England, Scotland and Wales (further details can be obtained from the Ofgem website at www.ofgem.gov.uk) and by Ofreg for Northern Ireland (further details can be obtained from the NIAER/Ofreg website at <http://ofreg.nics.gov.uk>).
- 5.12 While it is reasonable for park owners to require that caravans should be insured, we may object to terms that, without a good and legitimate reason, require consumers to use park owners' block or nominated insurance without the option of providing comparable insurance themselves. Tying in to block or nominated insurance may provide park owners with additional income by way of commission at the expense of consumers who have to pay higher premiums than on the open market. In the absence of market forces, consumers will have no protection from unreasonable premium increases. In addition, block or nominated insurance may not meet the needs of all consumers. There is no objection to park owners offering the caravan owner insurance, provided they comply with the new requirements of the Financial Services Authority (FSA) in this respect.³¹ We see no objection to park owners, acting reasonably, stipulating the insurance cover required and also seeking a reasonable administrative fee for checking the cover, if independent cover is taken out by the caravan owner. Terms imposing excessive charges for this are objectionable as penalties.

³¹ With effect from 14 January 2005, the sale of insurance is a regulated activity that requires authorisation by the FSA.

Unfair terms

5.13 We regard as potentially unfair terms that:

- require that all connections and disconnections of all mains services must be carried out by the park owner at an unspecified charge
- place no limit on the charges the park owner makes for the removal of the caravan from the park
- require that all caravans be insured through the park owner's block policy without good reason, and provide that failure to insure the caravan with the park owner will result in loss of the pitch.

Ways of revising terms

5.14 We are not likely to object to terms that:

- specify the additional charges for connections, disconnections and for removal of the caravan, or (if they are not specified) provide that they will be reasonable.

(b): Transferring inappropriate risks to consumers

5.15 We object to terms that make caravan owners carry risks that are more appropriate for the park owner to bear, for example where the risk lies within the park owner's control or it is one of which the caravan owner cannot be expected to be aware or insure against.

'Indemnity' terms

5.16 We consider, as unfair, terms that require park owners to be 'indemnified', that is compensated (by the caravan owner) for costs that could arise through no fault of the caravan owner, particularly where park owners themselves could be at fault. We object to indemnity terms that are too wide in scope. Even where the loss or damage may be the fault of the caravan owner, the person bringing the claim may wish to

name the park owner as jointly liable or liable in place of the caravan owner. It is for the court to determine what proportion of the damage the park owner is responsible for, and this should be paid by the park owner not the caravan owner.

- 5.17 'Indemnify' is legal jargon that, if understood at all, is liable to be taken as a threat to pass on legal and other costs without regard to reasonableness. We consider that where a caravan owner is at fault, causing park owners to incur costs that they seek to recover, such costs should be reasonable costs reasonably incurred.

Unfair terms

- 5.18 We regard as potentially unfair terms that:

- require the caravan owner to indemnify the park owner against all actions, proceedings, and claims by third parties.

Ways of revising terms

- 5.19 We are not likely to object to terms that:

- require caravan owners to pay all reasonable costs resulting from claims, charges and expenses reasonably incurred in relation to their breach of the agreement.

(c): Unfair enforcement powers

- 5.20 We object to terms that allow park owners to impose disproportionately severe non-financial penalties on caravan owners, or misleadingly threaten sanctions, even if not monetary, over and above those that can lawfully be imposed. The caravan owner should have the opportunity to remedy a breach, and should not be subject to sanctions unless there has been a serious breach of the agreement that is not remedied within a reasonable time, for instance prolonged non-payment of fees, or a breach that cannot be remedied once it has taken place, for instance

assaults on staff or other caravan owners or repeated disruptive behaviour.

- 5.21 We object to terms that purport to give park owners rights over the caravan owner's property, the caravan in particular, that they do not have. We consider that terms that purport to allow park owners to take custody and dispose of the caravan owner's property, where the caravan owner is in breach of the agreement, are likely to be unfair.

Remedy for breach

- 5.22 The remedy open to a park owner, where the caravan owner is in breach of the agreement and owes money, will depend on the facts of the case. We object to terms allowing the park owner to detain the caravan and reserve the right to sell both caravan and contents to recover a debt.
- 5.23 Terms that allow a park owner immediately to terminate the agreement of a caravan owner who is in default in some way may be potentially unfair penalty clauses under the Regulations – see paragraphs 4.32 to 4.36. A caravan owner should have the opportunity to amend breaches of the agreement, such as a short delay in payment of fees, without incurring a disproportionate penalty.

Powers of retention

- 5.24 We object to terms that could be relied on to force a caravan owner to pay disputed debts. There is no objection to a park owner exercising a power of retention (also known as a 'lien') over a caravan where there is a substantial debt owing. But this does not give the park owner any property in the caravan. We have accepted terms that provide that the park owner retains a caravan until all outstanding monies lawfully due have been repaid. Park owners may in certain circumstances dispose of caravans, or sell goods belonging to caravan owners, provided they satisfy specific legal requirements. But terms should not seek to allow park owners to take direct action to secure redress that a court would not normally allow, such as entering the caravan to repossess goods or

selling goods belonging to the caravan owner that the park owner has in his or her possession.

Disposal of caravan owners' property, including caravans left on the park

- 5.25 If the caravan owner fails to remove the caravan, or other goods (apart from abandoned items), from the park after the expiry of the licence, then park owners must satisfy specific legal requirements³² if they wish to exercise a statutory power of sale. A licence need not reflect these requirements in detail, provided it does not override or contradict them.
- 5.26 We object to terms that provide that uncollected goods may be sold immediately, or without adequate notice, because this could apply to valuable items. Park owners must give caravan owners notice of their intention to sell the goods and the date of sale, and allow them a reasonable opportunity to remove the goods.

Opportunity to remove the caravan

- 5.27 We take the view that it may be unfair for the park owner to place excessive restrictions on the period allowed for the caravan owner to remove the caravan from the park. We also object to terms that limit unreasonably the period in which the balance of money obtained by the park owner from a sale of the caravan may be claimed by the caravan owner.

³² See sections 12 and 13, Torts (Interference with Goods) Act 1977.

Unfair terms

5.28 We regard as potentially unfair terms that:

- provide that, if sums of money are outstanding on the termination of the licence, the park owner is entitled to sell the caravan and deduct the amount owed from the sale proceeds
- provide that, if the caravan owner cannot be located, the park owner can keep the proceeds of sale unless the caravan owner makes a claim within 3 years of the sale of the property
- provide that the park owner has the unlimited right to remove the caravan from the pitch.

Ways of revising terms

5.29 We are not likely to object to terms that:

- provide that where a caravan owner fails to remove the caravan after having been given a reasonable opportunity to do so the park owner may sell the caravan at the best price he or she can obtain, subject to providing proper notice of the date and place of sale, and may recover his or her reasonable costs and the amounts lawfully due to him or her.

(d): Excluding the consumer's right to assign

5.30 The law ordinarily allows purchasers to sell on, or 'assign', to someone else what they have bought. The position with caravans is not straightforward, as the caravan belongs to its owner but the pitch on which it is sited belongs to the park owner. The caravan owner usually only has a licence to site the caravan on a pitch, and licences may not be assignable. If the caravan owner wishes to sell the caravan with the benefit of the unexpired portion of the licence then the park owner's consent may be required. Terms that prevent the caravan owner from selling, giving or bequeathing the caravan to another suitable person,

with the benefit of the unexpired portion of the licence, may be considered unfair. It is acceptable that any transfer of the licence with the caravan may be subject to the park owner's consent, but we would expect such consent not to be withheld unreasonably.

- 5.31 Park owners have a legitimate interest in preventing caravans on their parks from passing into the hands of unsuitable caravan owners, and may carry out checks as to the suitability of incoming owners. Proper control over the park is in the collective interests of the other caravan owners, but we take the view that such control should be exercised reasonably and not arbitrarily.

Restrictions on sales

- 5.32 We object to terms that completely prevent caravan owners from selling their caravans, with the benefit of the licence to station it on the park, to third parties, as this is open to abuse. By preventing private sales, park owners can purchase the caravans themselves at very low prices. A park owner may reserve the right to approve the prospective buyer, but should not withhold, or delay, approval unreasonably. Although there is no objection to park owners seeking first refusal on the caravan, at a fair price, they are expected to deal fairly with caravan owners and not to hinder private sales. If a park owner reserves a pre-emptive right to buy the caravan at a fair price, that right should only be exercisable for a short time. We would expect any commission for the sale of the caravan or transfer fee for the licence, if charged to the caravan owner, to be clear and prominent in the relevant agreement.

Unfair terms

- 5.33 We regard as potentially unfair terms that:
- prohibit the sale of a caravan on the park by the caravan owner
 - state that the right to station a caravan on a pitch cannot be passed on to anyone

- state that owners are not allowed to sell their caravans with a right to station the caravan and, if sold privately, the caravan must be removed from the caravan park by the owner.

Ways of revising terms

5.34 We are not likely to object to terms that:

- provide that the park owner's consent is required to approve a purchaser of a caravan on site, but such consent will not be withheld unreasonably and will be notified within a short period.

(e): Consumer declarations

5.35 Terms are unfair, in our view, if they require caravan owners to make declarations, for example that they have read and understood the terms of the agreement, or that the terms have been explained to them. The caravan owner could be required to agree to such a declaration for the agreement to proceed, whether or not the declaration reflects the facts and the true position. Caravan owners may consider the declaration is a mere formality, and be unaware of the latent potential for detriment to them in having made such a statement. It may be acceptable to offer caravan owners the option to make declarations about matters wholly within their knowledge, but we are likely to object to standard terms requiring caravan owners to acknowledge that they have received or seen documents, since they may not have had sight of them. There is no objection to a clear and prominent warning in the agreement that the caravan owner should read and understand the terms before signing them.

Unfair terms

5.36 We regard as potentially unfair terms that:

- require caravan owners to state that they have read and understood the agreement

- state that payment of the licence fee constitutes acceptance of the rules.

Ways of revising terms

5.37 We are not likely to object to terms that:

- provide that the caravan owner should read the agreement and discuss any term that he or she does not understand, or does not wish to agree to, before signing.

(f): Exclusions and reservations of special rights

5.38 The Regulations indicate that terms that exclude rights of redress for breach of contract are unfair (see Schedule 2 paragraphs 1(a) and 1(b)). Similarly, we would object to any term that required a caravan owner to contract out of protection offered by other legislation operating in parallel with contract law, such as that dealing with gas safety.

(g): Supplier's discretion in relation to obligations

5.39 Unfair terms described at paragraphs 4.81 to 4.83 permit park owners to have excessive discretion in interpreting the agreement. We have similar concerns about other types of term that give park owners the ability to free themselves from compliance with their presumed obligations, or to penalise caravan owners for what park owners consider to be breaches of contract.

Right to determine how the park owner's obligations are carried out

5.40 We object to terms subjecting the provision of amenities, facilities and entertainment to the discretion of the park owner. Our concerns regarding terms that allow park owners to withdraw services altogether have already been mentioned above. Where it is necessary for the park owner to exercise discretion about the availability of services in any

way, then reservation of discretion should state that it will be exercised reasonably.

Restrictions on use

- 5.41 Park owners may need to restrict the caravan owner's use of the park to a degree and impose obligations in the interests of good site management. However such terms should be reasonable in relation to the type of park, the needs of the other users, and whether the particular term has been introduced as a result of the requirements of the local authority site licence or as a result of changes in legislation.
- 5.42 We would object to terms that simply allow park owners absolute discretion to refuse any person the right to enter the park without a valid reason.

Right to determine whether the consumer is in breach

- 5.43 We object to terms allowing the park owner sole or excessive discretion to decide when caravan owners are in breach of their obligations. We object to such terms because they may be relied on when park owners are in dispute with caravan owners over such matters as tidiness, cleanliness and standards of maintenance. We would be concerned about any terms that give park owners excessive powers to decide about matters leading to caravan owners being penalised, or obliged to make reparation, or deprived of any benefits under the licence.

Unfair terms

- 5.44 We regard as potentially unfair terms that:
- allow park owners sole discretion to ban occupants of a caravan who they consider are likely to cause offence to the park management
 - state that the decision of the park owner whether noise is at a reasonable level, or creating a nuisance, is final at all times

- state that caravans must be maintained to the satisfaction of the park owner
- provide that the park owner may go beyond the requirements of the site licence or other legal obligations in limiting the number who may sleep in the caravan.

Ways of revising terms

5.45 We are not likely to object to terms that:

- allow park owners the right to deny entry to third parties on reasonable grounds related to the security of other caravan owners or enjoyment of their property.

(h): Unreasonable ancillary obligations and restrictions

5.46 We object to terms that put caravan owners at risk of incurring contractual penalties that are more severe than is necessary to protect park owners' interests in safeguarding the park and the interests of the other users – see paragraphs 4.37 to 4.41 and (c) above. Where the contract imposes unreasonable obligations or excessive restrictions on caravan owners, we are likely to consider any penalty demanded as unfair.

5.47 We therefore object to terms that impose obligations and restrictions that are, or could be, wholly unreasonable, or that give the park owner the power to make unreasonable restrictions. The rules of the park may preclude letting or hiring out of the caravan. But we consider terms that preclude guests may be unfair, provided the guests observe the obligations of the contract. Where the use of a restrictive term is justified, then park owners should narrow the scope of the term to address the particular problem it is designed to prevent or resolve. Where the park owner imposes a restriction that applies unless the park owner consents otherwise, then the term should reflect the fact that such consent will not be delayed or withheld unreasonably. We would expect oral consent, confirmed if necessary in writing, to be sufficient in

many circumstances and would object to terms requiring that all consent be obtained in writing.

Unfair terms

5.48 We regard as potentially unfair terms that:

- provide, where the park owner's consent is required, that consent may be withdrawn at the park owner's sole discretion and without good reason.

Group 19: Terms breaching Regulation 7 (plain English and intelligible language)

5.49 Regulation 7 provides that:

- (a) a seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language, and
- (b) if there is a doubt about the meaning of a written term, the interpretation most favourable to the consumer shall prevail...

5.50 The purpose of the Regulations is to protect consumers (including caravan owners) from one-sided agreements. The EU Directive implemented by the Regulations requires that 'the consumer should actually be given an opportunity to examine all the terms'. The Regulations therefore demand 'transparency' in the full sense, so that the caravan owner can make an informed choice. It is not sufficient for terms to be clear and precise for legal purposes, they must be intelligible to the caravan owner. A lack of clarity and openness may be a cause of unfairness in itself, if it unbalances the contract to the caravan owner's disadvantage. We object to jargon.

5.51 Park owners sometimes argue that an unfair term is not unfair because it could have a fair meaning, and that the most favourable interpretation is the operative one. However, the Directive makes clear that this 'most favourable interpretation' rule is intended to benefit consumers in private

disputes, not to give suppliers a defence against regulatory action (see Article 5 of the Directive and Regulation 7(2) of the Regulations). We may also challenge ambiguity in a term if it could disadvantage caravan owners, even if one of its possible meanings is fair.

- 5.52 Ordinary words should be used as far as possible, in their natural sense, and the contract should be organised clearly. Sentences should be short, and the text of the contract should be divided into easily understood sub-headings covering recognisably similar issues. Statutory references, elaborate definitions, technical language, and extensive cross-referencing between terms should be avoided.
- 5.53 Print must be legible. This depends not only on the size of print used, but also its colour, that of the background, and the quality of the paper used. Plain language is of little value unless, as required by the Directive, caravan owners are actually given an opportunity to examine all the terms. Where an agreement is long or detailed, a 'cooling-off' period may be desirable to ensure compliance (see paragraph 4.52).
- 5.54 We object to terms using legal jargon unless there is a clear explanation of the meaning of the phrase. We would challenge commonly used jargon such as 'joint and several liability', 'lien', 'time is of the essence', 'indemnity', 'liquidated damages', 'determine' or 'force majeure'.

Core terms

- 5.55 As mentioned earlier, the price paid for the pitch licence is likely to be regarded as a core term. This also applies to terms stating the length of the licence period and the price paid for the caravan itself. To the extent that a caravan owner can read and understand them, terms that define the main aspects of what is being sold or supplied under the contract, or set the price to be paid, are exempt from the test of fairness. We do not consider that plain vocabulary alone meets this requirement. If a term is illegible, or hidden away in small print as if it were an unimportant term, when, in fact, it is potentially burdensome, then it is open to objection.

See also paragraphs 2.1 to 2.11 on the test of fairness and 4.70 to 4.80 on price variations.

- 5.56 A term should be made prominent at the time of the initial agreement if it is to be regarded as a core term. Core terms should be expressed or presented in such a way that they are, or are at least capable of being, at the forefront of the consumer's mind in deciding whether to enter the contract. They need to be in plain and intelligible language.

ANNEXE

A INDEX AND TYPES OF TERM IN HOLIDAY CARAVAN AGREEMENTS MENTIONED IN THIS GUIDANCE

A	Access	paragraphs 4.28, 5.5
	Age limits on caravans	paragraph 3.10
	Aim of guidance	paragraph 1.2
	Arbitration, compulsory	paragraph 4.93
	Assignment, exclusion of right	paragraph 5.30
B	Balanced right to cancel	paragraph 4.42
	Binding to unseen obligations	paragraph 4.49
	Breach of contract	
	- park owners' right to determine whether they are in breach	paragraph 4.82
	Buying/selling caravans through one supplier	paragraph 5.8
C	Caravans left on park	paragraph 5.25
	Cancellation clauses	paragraph 4.42

- by the caravan owner	paragraph 4.46
- by the park owner	paragraph 4.44
- park owner in breach	paragraph 4.31
- park owner not in breach	paragraph 4.32
- without refund	paragraph 4.47
Change in ownership of park	paragraph 4.58
Charges	paragraph 3.17
Commission on sale of caravan	paragraph 5.32
Compulsory arbitration clauses	paragraph 4.93
Consequential loss	paragraph 4.18
Consumer advice	paragraph 1.18
Consumer declarations	paragraph 5.35
Cooling-off period	paragraphs 4.52, 5.53
Core terms	paragraphs 2.1, 5.55
Credit agreements	paragraph 4.51
D Death and personal injury – exclusion of liability for	paragraph 4.6
Disclaimers	
- of liability by the park owner	paragraph 4.4

	- of liability for death or injury	paragraph 4.6
	- of liability for implied terms	paragraph 4.3
	Disposal of caravan owner's property	paragraph 5.25
E	Enforcement	paragraph 1.8
	Entire agreement clauses	paragraph 4.84
	Exclusion and limitation clauses	paragraph 4.2
	Exclusion clauses	paragraph 3.21
	- of liability in general	paragraph 4.3
	- of liability for damage	paragraph 4.14
	- of liability for death or personal injury	paragraph 4.6
	- of liability for delay	paragraph 4.23
	- of liability for faulty or misdescribed goods	paragraph 4.10
	- of liability for implied terms	paragraph 4.3
	- of liability for oral agreements	paragraph 4.86
	- of liability for poor service	paragraph 4.13
	- of right of 'set-off'	paragraph 4.21
	- of right to assign	paragraph 5.30

	Exclusions/ reservations of special rights	paragraph 5.38
	Exclusion of responsibility for promises that are not written down	paragraph 4.86
	Exclusion of right to refunds	paragraph 4.29
F	Failure to perform contractual obligations	paragraph 4.26
	Fee reviews	paragraph 4.72
	Final right of decision by park owner	paragraph 4.81
	Financial burdens	paragraph 5.2
	Financial penalties	paragraph 4.37
	Formality requirements	paragraph 4.90
H	Hidden terms	paragraph 4.49
I	Implied terms	paragraphs 4.3
	Indemnity terms	paragraph 5.16
	Intelligibility of contract terms	paragraph 5.49
	Issues in caravan contracts	Chapter 3
L	Liability – limitations on	paragraph 4.17

	Linked agreements	paragraph 4.51
M	Main areas of concern	paragraph 3.5
	Moving of caravans	paragraphs 3.9, 4.65
N	Non-return of prepayments on consumer cancellation	paragraph 4.29
O	Opportunity to remove the caravan	paragraph 5.27
	Oral terms	paragraphs 3.6, 4.86
	Other types of unfair term	Chapter 5
P	Park development	paragraph 4.67
	Park rules	paragraphs 1.4, 4.50, 4.57
	Penalties-financial	paragraph 4.37
	Personal injury – exclusion of liability for	paragraph 4.6
	Pitch fees	paragraphs 3.14, 4.72
	Plain and intelligible language	paragraph 5.49

	Potential requirement to move the caravan	paragraphs 3.9, 4.65
	Power of retention	paragraph 5.24
	Prepayments, non return of	paragraph 4.29
	Price variation clauses	paragraph 4.70
	Promises not written down	paragraph 4.86
R	Remedy for breach	paragraph 5.22
	Restrictions on assignment and sale	paragraphs 3.13, 5.30
	Restrictions on use	paragraphs 3.16, 5.41
	Restricting the consumer's remedies	paragraph 4.91
	Right for the park owner to determine	
	- whether he is himself in breach	paragraph 4.82
	- whether the consumer is in breach	paragraph 5.43
	- how obligations are carried out	paragraph 5.40
	Right of final decision	paragraph 4.81
	Right of set-off	paragraph 4.21
	Right to assign	paragraph 5.30
	Right to cancel	paragraph 4.42
	Right to change what is supplied	paragraph 4.62

	Right to increase prices	paragraph 4.70
	Right to vary terms generally	paragraph 4.55
	Rules/Regulations (availability of)	paragraph 4.50
S	Sales of caravans	
	- allowing the supplier to impose unfair financial burdens	paragraph 5.4
	- binding consumer to hidden terms	paragraph 4.49
	- cancellation where the park owner is not in breach	paragraph 4.34
	- consequential loss	paragraph 4.18
	- cooling-off period	paragraph 4.52
	- disposal of caravan owners' property, including caravans left on the park	paragraph 5.25
	- excluding the consumer's right to assign	paragraph 5.30
	- exclusion of liability for delay	paragraph 4.23
	- exclusion of liability for faulty or misdescribed goods	paragraph 4.10
	- opportunity to remove the caravan	paragraph 5.27

- powers of retention	paragraph 5.24
- price variation clauses	paragraph 4.70
- remedy for breach	paragraph 5.22
- restrictions on sales	paragraphs 5.8, 5.32
- retention of prepayments on consumer cancellation	paragraph 4.29
- right for park owners to determine whether they are themselves in breach	paragraph 4.82
- sale agreements	paragraph 4.78
- terms excluding the right of 'set-off'	paragraph 4.21
- time limits on claims	paragraph 4.20
- unfair enforcement powers	paragraph 5.20
Sanctions for breach of contract	paragraph 4.38
Scope of guidance	paragraph 1.3
Short duration of pitch licences	paragraph 3.7
Site licences, display of	paragraph 4.50
Suppliers discretion in relation to obligations	paragraph 5.39

T	Termination of agreement	
	- park owners' right to cancel	paragraph 4.44
	- caravan owners' right to cancel	paragraph 4.46
	Test of fairness	Chapter 2
	Time limit on claims	paragraph 4.20
	Transfer fee for licence	paragraph 5.32
	Transferring inappropriate risks to consumers	paragraph 5.15
	Tying in of services	paragraphs 3.18, 5.8
U	Unclear or unintelligible terms	paragraph 5.49
	Unfair enforcement powers	paragraph 5.20
	Unfair financial burdens	paragraph 5.2
	Unfair Terms in Consumer Contracts Regulations	paragraph 1.6
	Unilateral right to cancel	paragraph 4.44
	Unreasonable ancillary obligations and restrictions	paragraph 5.46
	Use of guidance	paragraph 1.12

V	Variation clauses	
	- in services	paragraphs 3.20, 4.62
	- pitch fees and other charges	paragraph 4.72
	- right to change what is supplied	paragraph 4.62
	- right to vary generally	paragraph 4.55
	- right to vary prices	paragraph 4.70
W	Written agreements	paragraph 3.6