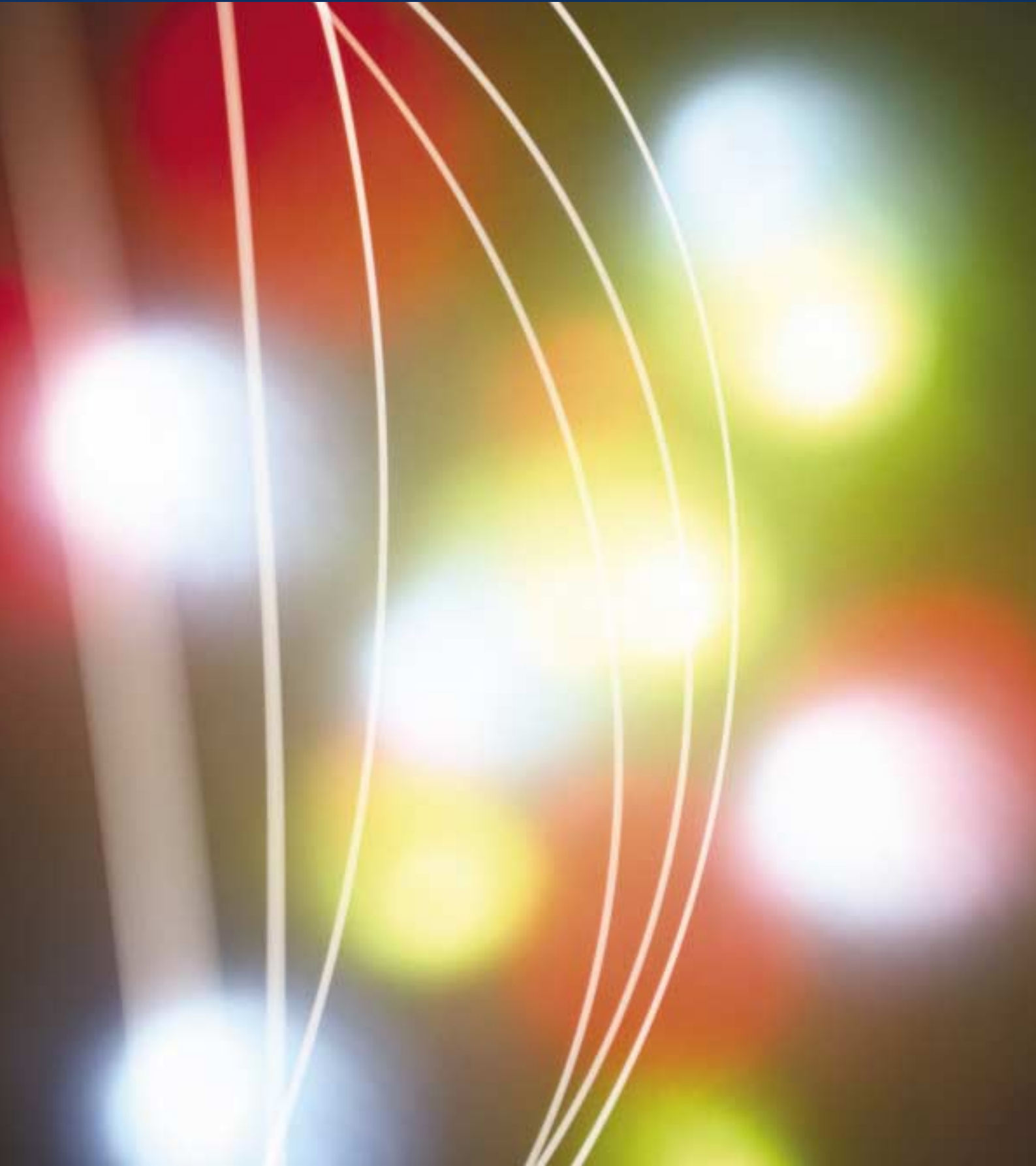


Guidance on unfair terms in consumer entertainment contracts



FOREWORD

This is the OFT's guidance on potentially unfair terms in consumer entertainment contracts. It replaces earlier guidance on some consumer contracts of this type. This guidance covers our views on unfair terms in contracts relating to the purchase of tickets for entertainment (for example concerts, shows and sport events), the hiring of performers (for example singers, entertainers), and leisure activities (for example paintballing, balloon rides).

This guide is based on a review of sample contracts and our experience of enforcing the Unfair Terms in Consumer Contracts Regulations 1999 ('the Regulations').

CONTACTING THE OFT

If you think that any of the standard terms in a consumer contract are unfair you may contact the OFT at the address below or your local trading standards department.

If you have any comments on this guidance, please write to:

The Contract Regulation Unit
Office of Fair Trading
Fleetbank House, 2-6 Salisbury Square
London EC4Y 8JX
email cru@oft.gov.uk

Unfair contract terms bulletins

Copies of bulletins, the explanatory OFT briefing note *Unfair Standard Terms* (ref: OFT143), and other OFT publications are available, free of charge, from:

EC Logistics
Swallowfield Way
Hayes, Middlesex UB3 1DQ
tel 0870 60 60 321
fax 0870 60 70 321
email oft@eclogistics.co.uk

The OFT is moving to electronic distribution, and back issues of earlier bulletins will not always be available. If you have received a paper copy of bulletins but have electronic access, you are invited to send us your email address for future issues.

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 also available on the internet at: www.hmso.gov.uk/si/si1999/19992083.htm

Copies of the amendments to 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 on the internet at: www.hmso.gov.uk/si/si2001/20011186.htm

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CONTENTS

▶1	Introduction	4
▶2	Test of unfairness	7
▶3	Tickets for entertainment: main areas of concern	9
▶4	Hiring performers: main areas of concern	10
▶5	Leisure activities: main areas of concern	12
▶6	Analysis of unfair terms in Schedule 2	13
▶7	Other types of unfair term	29
Annexes		
A	Resale of tickets Regulations	35
B	Distance Selling Regulations	37
C	E-Commerce Regulations	39
D	Premium rate phone services	40



1 INTRODUCTION

- 1.1 This guidance explains why the Office of Fair Trading ('the OFT') considers that some kinds of standard contract terms used in entertainment contracts have the potential for unfairness under the Unfair Terms in Consumer Contracts Regulations 1999 ('the Regulations'). The guidance represents the OFT's current views and explains the basis on which we are likely to take enforcement action. It is, of course, ultimately for the courts to decide whether any term is unfair.
- 1.2 The OFT's views are subject to development in the light of its experience in enforcing the Regulations and its duty to consider complaints about the unfairness of terms. A term with the potential for unfairness has to be reviewed both on its own and with regard to the other terms of the contract and other circumstances prevailing at the time.

Aim of the guidance

- 1.3 The primary aim of this guidance is to help ensure that standard terms used in contracts for entertainment are fair and clear. While the final decision on whether a term is unfair rests with the courts, suppliers can greatly reduce the risk of a legal challenge by reviewing their agreements.

Use of the guidance

- 1.4 This guidance is intended for our partners in consumer law enforcement, particularly trading standards departments in their role as consumer advisers and regulators. It is also designed to help suppliers to meet the requirements of the Regulations. The OFT expects those using or recommending standard contracts for entertainment related products and services to review their terms in light of this guidance and amend any unfair terms or remove them from their contracts.

Scope of the guidance

- 1.5 The guidance deals with potential for unfairness in consumer contract terms used in tickets for entertainment, hiring performers and leisure activities. Our advice is based on a sample of existing contracts and may not identify all kinds of potentially unfair terms in this area. Comprehensive general advice on unfairness in consumer contracts can be found in our *Unfair Contract Terms Guidance* (OFT311), and briefing note, *Unfair Standard Terms* (OFT143).



The content of the guidance

- 1.6 The guide is divided into the following sections:
- **Chapter 1** is this introduction
 - **Chapter 2** explains the test of unfairness set out in the Regulations
 - **Chapters 3, 4 and 5** set out our main concerns about terms used in tickets for entertainment, hiring performers and those for leisure activities respectively
 - **Chapter 6** discusses certain types of unfair term specified in Schedule 2 to the Regulations (which contains a non- exhaustive list of terms likely to be considered unfair)
 - **Chapter 7** covers additional example categories of unfair terms identified by OFT. The types of unfair terms listed in Chapters 6 and 7 are referred to as groups, corresponding to those used in the *Unfair Contract Terms Guidance*
 - **Annexe A** outlines the application of the Resale of Tickets Regulations 1994 to tickets for entertainment
 - **Annexe B** outlines the application of the Distance Selling Regulations 2000 to some kinds of contracts featured in this guidance.
 - **Annexe C** outlines the application of the E-Commerce Regulations 2002 to some kinds of contracts featured in this guidance
 - **Annexe D** refers to the controls on premium rate phone services.

The Regulations

- 1.7 The Regulations implement the EC Directive on unfair terms in consumer contracts (93/13/EEC). The Regulations came into force on 1 July 1995 and were re-enacted in 1999 (the re-enactment coming into force on 1 October 1999). Please note that this guidance is not a substitute for the Regulations and should be read alongside them.

Enforcement

- 1.8 The OFT has a duty to consider all complaints made to us about unfair terms. Since October 1999 this enforcement role has been shared with other Qualifying Bodies, including most of the main national regulatory bodies, all local authorities providing a trading standards service and the Consumers' Association.

1.9 The OFT has the power, where it considers a term to be unfair, to take action on behalf of consumers in general to stop its continued use, if necessary by seeking a court injunction (or an interdict in Scotland). The OFT cannot take action on behalf of nor seek redress for individuals. However, the Regulations do give individual consumers certain legal rights in respect of unfair terms, independent of any action by the OFT or other Qualifying Bodies. A term found by a court to be unfair is not binding on consumers.

1.10 In addition, Part 8 of the Enterprise Act 2002, which came into force on 20 June 2003, gives the OFT and certain other bodies ('enforcers') separate powers against traders who breach consumer legislation.

1.11 Under the new legal framework introduced by Part 8 (which replaces the Stop Now Orders (EC Directive) Regulations 2001), the OFT and other enforcers can seek enforcement orders against businesses that breach UK laws giving effect to specific EC Directives, including the Directive on unfair terms in consumer contracts, where the collective interests of consumers are harmed. In addition, the Enterprise Act formalises the OFT's coordinating role to ensure that action is taken by the most appropriate enforcement body in each case. More information on the Enterprise Act can be found on OFT's website: www.of.gov.uk

2 TEST OF UNFAIRNESS

2.1 The Regulations apply a test of unfairness to standard terms (terms that have not been individually negotiated) in contracts used by businesses with consumers. There is an exemption for terms which set the price, or describe the main subject matter of the contract (both known as 'core terms') provided they are in plain and intelligible language (see Chapter 7).

2.2 The test of unfairness takes note of how a term **could be** used. A term is open to challenge if it is drafted so widely that it could be used in a way that harms consumers. Protestation that a particular term is not used unfairly in practice is therefore not enough to persuade the OFT that it is immune from challenge under the Regulations. Claims like this usually indicate that the supplier could redraft the term more precisely, both to reflect its intentions and achieve fairness.

2.3 When the OFT assesses fairness, it also considers what a consumer is likely to understand by the wording of a term. Even if a term would be clear to a lawyer, the OFT is likely to conclude that it is potentially unfair if it is likely to mislead or be unintelligible to consumers.

Consumers entering into a contract for the supply of entertainment related products or services are unlikely to seek legal advice, so contracts should use language that is plain and intelligible to ordinary people (see pages 32-34).

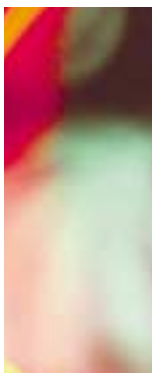
2.4 The example terms given in Chapter 6 derive from standard contracts referred to the OFT. The OFT considers these terms to have the potential for unfairness. Where possible, we have included revised terms that we considered were sufficiently improved, within the context of the contract in which they appeared and surrounding circumstances, to require no further action on the evidence available at the time. Thus, they do not constitute 'model' or 'fair' terms in all circumstances. The OFT has a statutory duty to consider complaints about any terms coming within the remit of the Regulations, including complaints about previously revised terms or those with a similar effect.

2.5 New complaints and further evidence, can and do shed new light on the potential for unfairness of terms already reviewed by the OFT.

The assessment of unfairness under the Regulations, requires consideration of all of the circumstances surrounding the conclusion of the contract, and of the effect of other terms in the contract. Therefore, a form of words considered acceptable in one contract may not necessarily be considered fair in another.

Furthermore, the OFT is no longer the sole authority with powers to enforce the Regulations. Several Qualifying Bodies enforce the Regulations and they are legally entitled to form their own views on what is fair and unfair and to take action accordingly.

Ultimately only a court may decide whether a term is unfair. However, the OFT believes that by applying the principles set out in this guidance, together with other relevant guidance such as the *Unfair Contract Terms Guidance* (OFT 311), suppliers can produce terms that are less likely to be found unfair by a court.



3 TICKETS FOR ENTERTAINMENT

Main areas of concern

Areas of concern to consumers

3.1 The main terms that concern consumers are those:

- that seek to exclude liability for death or personal injury, or for loss or damage to consumers' property (see pages 13,14 and 17)
- that seek to deny consumers the right to a refund in all circumstances (see pages 15 and 16)
- that seek to allow the event supplier to make changes to the event that has been contracted for (see pages 26 and 27)
- that seek to provide the supplier with an unfettered right to refuse admission (see page 22).

The need for fairness and clarity: with whom is the consumer contracting?

3.2 The OFT looks at the legal relationships between all parties to the transaction with the consumer. Contracts need to be clear so that the consumer knows who carries the legal responsibility for the performance of the contract. Consumers should be able to identify and establish the role of all the parties to the contract and any related contracts, including event organisers/promoters. Contracts should not seek to exclude liability of such parties by contending that they are not parties to the contract,

when they are, nor should they attempt to place the onus on the consumer to pursue agents or sub-contractors for breaches of contract that are the responsibility of principals or main contractors.

Booking charges

- 3.3 Booking charges are charges that are levied in addition to the face value of a ticket.
- 3.4 Who is responsible for providing or obtaining the provision of a refund of these booking charges (in addition to the face value of the ticket) when an event is cancelled or the consumer is justified in cancelling will depend on all the circumstances of that contract and any related contracts (see also paragraphs 6.10 - 6.14).

Resale of tickets

3.5 The resale of tickets for certain entertainment events is covered by the Resale of Tickets Regulations (see Annexe A for more details of the separate obligations imposed by these Regulations).

'Recommending' terms

3.6 A contention that the terms being used in a contract have been supplied or imposed by others does not confer immunity under the Regulations. Regulation 12 permits action against suppliers using or recommending unfair terms, and usage of terms supplied or imposed by others may fall into one or both of these categories.

4 HIRING PERFORMERS

Main areas of concern

Areas of concern to consumers

4.1 The main terms that concern consumers are those:

- that seek to exclude liability for non-performance of the contract (see page 17)
- that are unclear about when the consumer becomes bound by the contract (see page 34)
- that seek to impose excessive cancellation charges (see page 21)
- that seek to avoid liability for any pre-contractual statements made by the supplier (see page 28).

The need for fairness and clarity: with whom is the consumer contracting?

4.2 The role (and related liability) of all parties to the transaction must be clear and the contract should not seek to exclude or restrict liability by any party unfairly. It should also be clear, where more than one party is involved in the transaction with the consumer, which of the parties is the principal and which is the agent.

All the terms of the contract and the surrounding circumstances will be assessed closely by OFT. Provisions that have the effect of excluding liability unfairly are likely to be challenged by OFT.

4.3 Entertainment agency contracts often include terms that govern both the relationship between the entertainment agency and the consumer, and the entertainment agency and performer. It is then difficult for consumers to understand what is expected of them under the contract and indeed what they can expect from other parties to it. Moreover, entertainment agencies often provide a hiring service for both consumers and businesses (such as pubs), and use one contract to apply to both types of customer. In such cases the agency needs to take special care to separate the terms applying to businesses from those applying to consumers, to eliminate any scope to confuse the consumer about his/her rights and obligations.

4.4 Consumers should be provided with clear information about how to cancel, and to whom cancellation notices should be addressed.

What has each party contracted to do?

- 4.5 The lack of clarity in these contracts often makes it difficult to understand exactly who is legally responsible for performance of the contract. Contracts should make very clear what is expected of the consumer, and equally what the consumer can expect from different parties such as entertainment agencies and performers. It may be that the entertainment agency is legally responsible for administration only. If so, the terms should make this clear, and liability cannot be excluded if the entertainment agency fails to perform such an obligation, for example by making a mistake about dates. The OFT will assess all the circumstances surrounding the contract to ensure that there is no attempt to exclude liability for services actually performed/represented as being performed, by the entertainment agency or indeed any other party.

When is the contract formed?

- 4.6 Suppliers often send out contracts to consumers after receiving a telephone enquiry from them. Such contracts can be ambiguous about how and when they are deemed to become binding on the consumer. For example, they may suggest that after the telephone call, perhaps in a manner not made clear during

the call, that the contract becomes binding even when the consumer does not respond to the contract document when it is sent out. The OFT considers that the contract should make such a fundamental point very clear and in a way that has been fully and accurately reflected in the preceding telephone call (see pages 23 and 24).

Recommending terms

- 4.7 Entertainment agencies sometimes claim that their only function is to facilitate a contract between a performer and the consumer, as an agent of the performer. However, the entertainment agency that requires consumers to sign a pre-drafted contract provided by it is using/recommending the terms of that contract. The entertainment agency may therefore be open to action from the OFT or another Qualifying Body should such terms not comply with the Regulations.

5 LEISURE ACTIVITIES

Main areas of concern

Areas of concern to consumers

- 5.1 The main terms that concern consumers are those:
- that seek to exclude the supplier's liability for death or personal injury or damage to property (pages 13, 14 and 17)
 - that seek to deny consumers refunds in all circumstances (pages 15 and 16)
 - that seek to impose excessive penalties on consumer cancellation (page 21)
 - that seek to allow the supplier the right to make changes to the leisure activity (pages 26 and 27)
 - that require consumers to confirm contractual matters including facts that may not be within their knowledge (see pages 29 and 30).

Vouchers

- 5.2 Vouchers entitling consumers to participate in a leisure activity (for example paintballing, balloon rides) may be supplied by the provider of the activity or by someone else. The OFT considers that vouchers should make clear who is responsible for supplying the activity as well as who is responsible for the provision of the voucher.

Clarity: how long does the voucher last for?

- 5.3 Vouchers are often valid for a fixed period. Terms that describe a voucher's duration are generally considered exempt from being assessed for unfairness to the extent that they are expressed in plain, intelligible language (Regulation 6(2)). That is because they can be regarded as forming part of the main subject matter of the contract. Voucher suppliers need to make the validity period of the scheme absolutely clear, since this is a fundamental aspect of what is being purchased by the consumer.

Clarity: who is legally responsible for the supply of what is promised by the voucher?

- 5.4 The division of legal responsibility between the supplier of the voucher and the supplier of the activity it promises (if different) will depend on individual contracts and surrounding circumstances. But contracts should be free of unfair exclusions/restrictions of liability and should clearly identify the contracting parties and their respective legal responsibilities.



6

ANALYSIS OF UNFAIR TERMS IN SCHEDULE 2

GROUP 1: EXCLUSION AND LIMITATION TERMS FOR DEATH AND PERSONAL INJURY

Schedule 2, paragraph 1(a), states that terms may be unfair if they have the object or effect of:

excluding or limiting the legal liability of a seller or supplier in the event of the death of a consumer or personal injury to the latter resulting from an act or omission of that seller or supplier

Ineffective disclaimers for death or personal injury/terms that seek to exclude liability for the supplier's acts/omissions

- 6.1 **'Enter at your own risk'**
contract term disclaimers cannot be used to exclude or restrict liability for death or personal injury caused by a supplier's negligence. They are always void for that purpose under Section 2 of the Unfair Contract Terms Act 1977 (although it does not prohibit their use).
- 6.2 An exclusion of liability like this cannot be enforced in any circumstances. Such a term may mislead consumers and discourage legitimate claims in the event of death or personal injury. Where the Regulations apply, the OFT may take action to prevent the term from being included in consumer contracts.
- 6.3 In any event, the Regulations go beyond the 1977 Act. Paragraph 1(a) of Schedule 2 applies not only to terms which seek to exclude liability for death or personal injury where caused by the supplier's negligence, but

to terms which seek to exclude liability for such consequences where caused by any act or omission of the supplier.

For example, in addition to negligence this can include breaches of statutory duty. We therefore do not consider that terms which seek to exclude liability for death or injury can necessarily be made safe from challenge simply by accepting liability for such matters when caused by negligence, while continuing to maintain the exclusion in other respects.

Revision tips

- 6.4 To avoid the potential for unfairness, such terms should make it clear that the supplier does not seek to exclude liability for death or personal injury where caused by its negligence or other kind of act or omission.

Examples of unfair disclaimers for death or personal injury

Tickets for entertainment

Original term

'It is a condition of admission that all persons having connection with the promotion and/or organisation and/or conduct of the meeting, including the owners of the land and the drivers and owners of the vehicles and passengers in the vehicles are absolved from all liability arising out of accidents causing damage or personal injury (whether fatal or otherwise) however caused to spectators or ticket holders.'

This term was deleted.

Original term

'The supplier shall in no circumstances be liable for any loss, damage, cost or expense or any consequential or indirect loss or damage of any kind, except in respect of death or personal injury from negligence of the supplier...'

New term

'In the event of a breach of this contract by the supplier, the supplier shall not be liable for any loss, damage, cost or expense arising out of the breach which was not reasonably foreseeable by the supplier at the date of this contract, except in respect of death or personal injury resulting from any act or omission on the part of the supplier.'

Leisure activities

Original term

'...company, nor any of their respective employees, officers, agents or assigns...may be held liable or responsible in any way for any injury, death, or other damages to me or my family, heirs, or assigns that may occur as a result of my participation in this diving course.'

This term was deleted.

Additional revision tips

Insurance provision

As long as such terms do not attempt to exclude the supplier's liability unfairly, the OFT will not generally challenge terms that make clear the supplier's insurance provisions and advise consumers to take out additional insurance should they consider it insufficient.

Restrictions on Provision of Benefits under Vouchers

Where restrictions are applied to the benefits of contracts for participatory leisure activities, including restrictions based on health conditions, these need to be conveyed clearly to consumers in advance of entry into the contract, to avoid the potential for unfairness (see also pages 23-25).

GROUP 2: OTHER EXCLUSION AND LIMITATION TERMS

Schedule 2, paragraph 1(b), states that terms may be unfair if they have the object or effect of:

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, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him

Exclusion and limitation clauses in general

- 6.5 Rights and obligations under a contract cannot be considered evenly balanced unless both parties are equally bound by their obligations under the contract. Terms are likely to be considered unfair if they undermine the value of such obligations by preventing or hindering the consumer from seeking redress from a supplier who has not complied with them.

Exclusion of liability for breach of contract

Disclaimers reducing the amount or availability of redress

- 6.6 Suppliers who provide goods and services to consumers accept certain contractual obligations as a matter of law, such as carrying out services with reasonable skill and care. For a contract to be fully and equally binding on both supplier and consumer, each party should be entitled to compensation if the other fails to honour its obligations.

Disclaimers that deny or limit liability for breach of contract are likely to be considered unfair, particularly if they seek to allow suppliers to carry out the service without reasonable care and skill without consequence. We object equally to terms that limit liability and to those that exclude liability altogether.

'No refunds' terms

- 6.7 Terms that claim consumers are never entitled to refunds are very likely to be considered unfair, as they can be used to deny the consumer the right to a refund even where the supplier is in breach of contract, for example if the event/performer/leisure activity is cancelled or altered in a material way. In OFT's experience, such terms often appear in all kinds of entertainment contracts.

6.8 We consider that consumers should be entitled to a full refund of prepayments if the event, performer or activity is cancelled, rescheduled, or if there is a material change to the subject matter of the contract, that is, what the consumer has contracted to see, hire or participate in. Further OFT views on when a refund should be provided are on pages 26 and 27.

6.9 Where a number of suppliers are involved in the same contract with the consumer, or in a related contract, the terms should not seek to exclude their liability unfairly. See paragraphs 4.2 and 3.2 for our further views.

Booking fees for tickets for entertainment

6.10 Where fairness requires a refund of the face value of a ticket (for example on cancellation, rescheduling or a material change) any booking fees charged should also be refunded.

6.11 Who is legally responsible for providing or obtaining the refund of the booking fee in such cases will depend on all the circumstances of that and any related contracts.

6.12 As suppliers generally, including ticket agencies and event promoters etc, are in a better position to insure against these losses; we consider it unfair that the consumer should bear them.

6.13 OFT will look carefully at the contract(s) involving the consumer to assess whether in the given circumstances suppliers should bear legal responsibility for obtaining the refund on behalf of the consumer from any third parties involved.

6.14 In addition, in its contracts with the consumer a supplier cannot fairly exclude/restrict liability for losses, including those relating to booking/administrative fees, where caused by its own negligence or breach of contract.

Example of unfair 'no refunds' term

Original term

'We regret that tickets cannot be exchanged or refunded after purchase, except in the case of a cancelled performance/event. This does not affect your statutory rights.'¹

This term was deleted.

Terms excluding legal obligations

6.15 Terms that allow a supplier to refuse to carry out its obligations under the contract, at its discretion and without liability, have the potential to disadvantage the consumer and should not be used. This applies not only to terms that allow a supplier to refuse to carry out the contract altogether but also to those that permit it to suspend the performance of its obligations.

¹The OFT also considers unexplained references to a consumer's statutory rights to be potentially unfair under Regulation 7 (see chapter 7).

Where consumers hire performers through entertainment agencies

6.16 Where an entertainment agency contracts with a consumer to supply a performer, terms that seek to exclude the entertainment agency's liability for non-fulfilment of the contract are very likely to be considered unfair.

For example: 'The agency is not responsible for any non-fulfilment of contracts by Proprietors, Managers or Performers...'

Revision tips

6.17 Contracts involving more than one supplier should be clear about the status of the various non-consumer parties; for example, are they equal contracting parties responsible for different parts of the contract(s), or are they principal and agent? OFT will scrutinise such contracts closely to ensure that the descriptions of status accurately reflect the relationship between the parties to the transaction and are not simply devices to facilitate the incorporation of unfair exclusions or restrictions of liability.

Attempts to exclude liability for service

6.18 Terms that exclude a supplier's liability where the performance given differs in any material respect from the way it is described are likely to have the potential for unfairness.

Example term: 'It is your responsibility to know what you are hiring.'

Revision tips

6.19 This term could operate as a broad exclusion of liability. To be fairer it should be redrafted more narrowly. A term can fairly advise consumers to make a careful choice of act to book, providing that it does not seek to exclude liability for statements or representations that can influence the consumer's choice. For our further views on exclusions of liability for representations, see page 28.

Terms excluding liability for loss/damage to a consumer's property

6.20 Terms that purport to exclude liability for damage or loss (including through theft) of a consumer's property are likely to be unfair. Suppliers should not exclude liability for damage or loss resulting from their own negligence. Consumers may have some redress even where they may be at fault in some way, for loss or damage contributed to by the negligence of the supplier, for example by its failure to take safety precautions.

Example terms

Original term

'Neither the venue nor the promoter can accept responsibility for lost or stolen property...'

This term was deleted.

Original term

'No responsibility is accepted by the company for any loss, theft, injury or damage to vehicles, their contents, fittings or accessories, even when such loss, theft, injury or damage is attributed to any negligence on the part of the aforementioned company or its servants.'

New term

'In absence of any negligence or other breach of duty by the company or its servants and agents, you will be responsible for any loss, theft, injury or damage to vehicles, their contents, fittings or accessories.'

Exclusions and limitations of consequential loss

6.21 Terms that exclude claims for consequential loss can sometimes bar consumers from seeking redress where it ought to be available or mislead them into not pursuing legitimate claims.

6.22 Such terms can be intended to protect suppliers from remote or unforeseeable liability. But if drafted widely, they can have the potential for unfairness. Under the ordinary rules of contract law, compensation can be awarded for loss or damage that the parties themselves could reasonably have been expected to foresee, at the time of entering the contract, even if no-one else could have foreseen it. The OFT therefore considers consumers should not be deprived outright of the right to claim for consequential loss.

6.23 Further, consumers will not know the technical meaning of 'consequential loss' and so its

use will generally be considered unfair in any event. That said, use of plainer language to achieve the same exclusion of liability will not make the terms less unfair, for the reasons explained above.

Revision tips

6.24 Suppliers can protect their position in various ways which are in our view unlikely to be considered unfair under the Regulations. For example by excluding liability:

- for losses that were not reasonably foreseeable to both parties when the contract was formed
- for losses that were not caused by any breach on the part of the supplier
- for business losses.

Example of unfair consequential loss term

Original term

'The supplier shall in no circumstances be liable for any loss, damage, cost or expense or any consequential or indirect loss or damage of any kind, except in respect of death or personal injury from negligence of the supplier.'

New term

'In the event of a breach of this contract by the supplier, the supplier shall not be liable for any loss, damage, cost or expense arising out of the breach which was not reasonably foreseeable by the supplier at the date of this contract, except in respect of death or personal injury resulting from any act or omission on the part of the supplier.'

GROUP 4: RETAINING PREPAYMENTS ON CONSUMER CANCELLATION

Schedule 2, paragraph 1(d), states that terms may be unfair if they have the object or effect of:

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

Exclusion of rights to refunds where the contract is not performed

6.25 Terms are always likely to be considered unfair if they exclude the consumer's basic rights under contract law to the advantage of the supplier. One such basic right is to receive a refund of prepayments made under a contract which is not performed, or which ends before any significant benefit is enjoyed. Moreover, in certain circumstances consumers may be entitled at the very least to a partial refund even where they themselves bring the contract to an end.

6.26 Where the consumer cancels with justification, i.e. because the supplier is at fault and the consumer has not received the benefit of the contract, the consumer may well be entitled to a full refund of any prepayments as well as compensation. Terms that seek to exclude or restrict such rights are very likely to be considered unfair. Therefore, a term penalising consumer cancellations in all circumstances, whether by loss of deposit or other means, will be open to challenge.

6.27 The OFT has often noted these types of terms in contracts for leisure activities.

Potential right to some refund even where the consumer has cancelled without justification

6.28 Where the consumer cancels without any such justification, and the supplier suffers a loss as a result, the consumer cannot expect a full refund of all prepayments. But a term under which they lose all prepayments, regardless of the amount of any losses incurred by the supplier, is at risk of being considered an unfair penalty. Please also note the related discussion of penalty terms below.

Example term:

'Voucher not refundable under any circumstances.'

Vouchers

6.30 Vouchers may entitle consumers to participate in a leisure activity whose availability depends to some extent on external factors which may be beyond the supplier's control, such as the weather. Consumers are often required to make reasonable attempts to book the activity within the voucher's eligibility. But such factors may make performance difficult. Offering extensions where possible can provide consumers with an additional alternative to cancellation.

Revision tips

6.29 Terms governing cancellation by the consumer should not seek to deprive consumers of a refund of all prepayments regardless of circumstance. Where the consumer cancels without justification, the relevant terms may be open to challenge if they seek to retain more than a reasonable pre-estimate of the loss the supplier would expect to suffer. Moreover, fairer terms explicitly recognise a consumer's right to a refund where the supplier is at fault.

GROUP 5: PENALTY TERMS

Schedule 2, paragraph 1(e), states that terms may be unfair if they have the object or effect of:

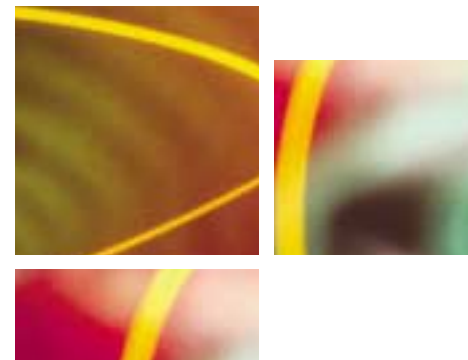
requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation

Cancellation charges

- 6.31 Imposing disproportionate financial sanctions where a consumer breaches the contract is liable to be regarded as unfair. Compensation for a breach should be no more than a reasonable pre-estimate of the loss caused to the supplier.
- 6.32 The OFT has seen a number of consumer contracts that require consumers to pay excessive administration fees where the consumer cancels. Any administration fees should represent no more than a real and fair pre-estimate of the costs or loss of profit the supplier is likely to suffer. Terms allowing excessive recovery are likely to be regarded as unfair penalties under the Regulations.

Mitigation

- 6.33 Under general contractual principles, suppliers are expected to mitigate any loss they suffer when a consumer cancels. The OFT objects to terms that explicitly ignore any real possibility of such mitigation.



GROUP 6: ARBITRARY RIGHTS TO REFUSE ADMISSION

Schedule 2, paragraph 1(f), states that terms may be unfair if they have the object or effect of:

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

Refusing admission

6.34 A unilateral right for the supplier to refuse admission without any liability is very likely to be considered unfair, especially where the supplier can refuse admission without having to give a valid reason. Such terms may be designed to protect the supplier from the consequences of serious misconduct by the consumer. But such broadly worded terms are open to abuse.

6.35 Simply saying that admission will be refused in 'reasonable circumstances' will not remove the potential for unfairness, since such terms may remain open to abuse. They should indicate the kind of conduct liable to trigger this response by the supplier, for example when consumers could endanger themselves or others.

Example term:

Original term

'The management reserve the right to refuse admission.'

New term

'The Promoter reserves the right to refuse admission to the holder if in the reasonable opinion of the Promoter admission of the holder to the Venue might be a risk to the safety of the audience and/or the holder and/or affect the enjoyment of the audience and/or the running of the concert, for example if the holder appears to be under the influence of drink and/or drugs and/or is acting aggressively.'



GROUP 9: BINDING CONSUMERS TO HIDDEN TERMS

Schedule 2, paragraph 1(i), states that terms may be unfair if they have the object or effect of:

irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract

6.36 Contractual fairness requires that consumers should always have an opportunity to read and understand terms before becoming bound by them. Terms that seek to bind consumers to unknown provisions are likely to be considered unfair by the OFT. This applies in particular to terms that indicate that consumers are deemed to be bound by other related documents, rules or regulations (for example safety regulations, rules of an organisation), without being provided with them or an adequate summary of them. It is important to note that under the general law of contract, unknown/hidden terms may not even form part of the contract.

6.37 **Telephone sales:** consumers who order by phone should always be informed of material terms to the contract. The overriding requirement is that consumers are effectively alerted **before** committing themselves to contractual provisions that could significantly affect their contractual interests.

6.38 Further, it is imperative that consumers know when they are considered to cross the threshold and enter into a contract with the supplier. The contract may be concluded during a telephone conversation. On the other hand, if the contract is binding only after a consumer has taken further steps such as signing a form posted to them by the supplier after the telephone call, the supplier should make this clear. The OFT objects to statements such as 'This contract reflects the terms and conditions as verbally agreed' which it considers might be either superfluous or even have the effect, intended or otherwise, of seeking to bind consumers to terms that might not have been disclosed during a telephone booking in the course of which a contract may have been formed.

6.39 **Internet sales:** terms should be accessible from a supplier's internet site before the consumer opts to purchase. However, it is important to note that requiring consumers to tick a box that they have 'read and understood' the terms before they proceed with their order would raise concerns under Regulation 5 (please see page 29).

6.40 **Sales by post:** terms and conditions should be included in any order form that the consumer is required to fill in to place their order.

For information on how the Distance Selling Regulations may apply to the types of distance entertainment contract referred to above, see Annexe B.

6.41 **Sales in person:** consumers entering into a contract with a supplier in person should expect to see the terms of the contract before becoming bound by them. Where consumers are purchasing tickets from ticket booths for example, one way to ensure this is achieved could be to display prominently posters around the point of sale conveying the contract terms that apply to the tickets on sale, with copies of the actual contract available for consumers to take away with them.

6.42 **Cooling off periods:** if, for any reason, important details of the contract cannot be communicated to the consumer, suppliers could consider offering a 'cooling off period' giving consumers time to read the terms and withdraw without penalty or loss of prepayments if they do not wish to proceed.

Revision tips

6.43 Where a contract seeks to bind consumers to terms contained in other contracts or documents, the additional terms, or an adequate summary of them should be provided with the main contract in order to avoid unfairness. More generally, individual terms, particularly material ones, should not be 'hidden' in the contract through inadequate presentation. For our further views on this subject see pages 32-34.

Example terms:

Tickets for entertainment

Original term

'Issued subject to The Rules of Racing and U.R.(H).L. Standard Regulations & Notices, which are available on request...'

New term

'All persons visiting the property of the company (the Racecourse) are admitted subject to these Regulations and to the Rules of Racing...'

(In addition to this revision, copies of the Regulations and notices are sent to consumers before they book, they are also displayed at the point of sale).

Original term

'...responsible for the performance or event shown on the face and subject to the terms and conditions indicated on this ticket, together with other statements and directives either shown on this ticket or displayed on the premises.'

This term was deleted.

Leisure activities

Original term

'INSURANCE...On acceptance of carriage, passengers are deemed to have read and be aware of the company conditions and agree to abide by them'

This term was deleted.

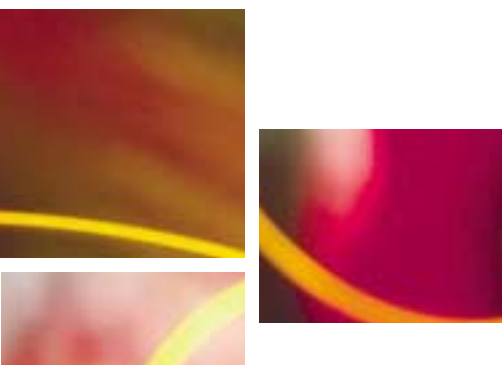
Premium rate phone services

Premium rate phone services are controlled by a separate scheme, operated by the Independent Committee for the Supervision of Standards of Telephone Information Services ('ICSTIS'), that provides for regulation of content and promotion of all phone services charged at a premium rate (see Annexe D).

It will apply in addition to any concerns under the Regulations, where such services are provided as part of a contract.

Resale of tickets

The resale of tickets for certain entertainment events is covered by the Resale of Tickets Regulations (see Annexe A for more details of the separate obligations imposed by these Regulations).



GROUP 10: RIGHT TO CHANGE WHAT IS SUPPLIED

Schedule 2, paragraph 1(k), states that terms may be unfair if they have the object or effect of:

enabling the seller or supplier to alter unilaterally without a valid reason any characteristics of the product or service to be provided

Terms allowing changes in what is supplied

6.44 Terms that allow suppliers to provide something different from what was contracted for, without giving consumers rights to cancel without penalty, are likely to be considered unfair, if they are drafted to allow more than minor or technically unavoidable changes (such as those of no real significance to the consumer/ changes required by a valid reason- for example the law).

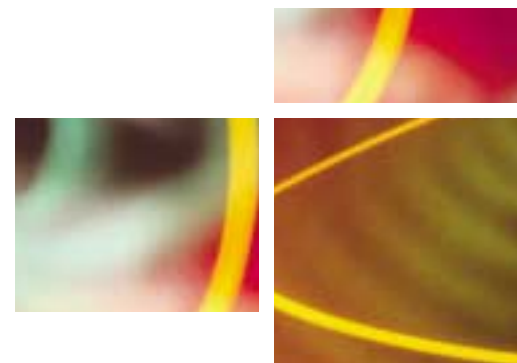
Making changes

6.45 Suppliers often reserve the right to make material variations to the event or activity, whether or not due to matters or circumstances beyond their control. Such terms are likely to be considered unfair unless they include a balancing right for the consumer to cancel without penalty and/or receive compensation where appropriate (see also our comments on consequential loss on page 18).

Tickets for entertainment: what could be a material alteration?

6.46 Change to a headline act or a main star of a performance is likely to be a material change. The matter may be less clear cut in relation to festivals, or events where more than one 'star' or 'band' is billed. Relevant factors include how the event is advertised and the prominence given to an artist or band in promotional material.

Example term: 'The promoter reserves the right to change the bill without prior notification.'



Revision tips

6.47 Consumers should be given notice as soon as possible of any such changes. Once notified they should be free to choose between accepting the change or exercising their right to cancel with a full refund of advance payments (see page 16 for our views on the refund of booking fees) and compensation where appropriate. A term may be limited to changes that are 'reasonable'. However, the OFT does not consider that this gives adequate protection to the consumer, since it includes no warning of what might be considered reasonable and does not effectively limit the discretion of the supplier. It will also be uncertain in its effect.

Leisure activities

6.48 Terms that allow the supplier of a leisure activity an unrestricted right to change a material feature of what is supplied without providing consumers with a balancing right to cancel, are also likely to be considered unfair for the reasons set out above. Where a consumer does not receive the promised service or an appropriate alternative, the OFT considers that he/she should be able to cancel the contract without penalty, i.e. with a refund of prepayments and compensation where appropriate (see pages 19 and 20 concerning our views about the retention of prepayments).

GROUP 14: ENTIRE AGREEMENT CLAUSES

Schedule 2, paragraph 1(n), states that terms may be unfair if they have the object or effect of:

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

Exclusion of liability for representations that are not written down

6.49 Contracts often contain terms that exclude liability for any promises that are not in the contract or not authorised by particular persons, and provide that all the binding terms and conditions are contained in the standard written agreement and supersede oral statements or representations. This presents scope for consumers to be misled. Consumers may be induced to enter into the contract by oral promises or representations that are inconsistent with the written terms. Even if there is no deliberate abuse, such terms can undermine the supplier's incentive to take care in what it says to consumers in securing the contract.

Example Terms: 'I agree that it is the entire agreement'*
'This contract...reflects the terms and conditions of the verbal agreement...'

Revision tips

6.50 Strengthening the legal presumption in favour of written terms may be acceptable, provided there is no attempt to deprive the court of the discretion to decide what the parties actually agreed.

6.51 The supplier could use prominent notices/terms to warn consumers that they should read the contract carefully to ensure that it contains everything they consider to have been agreed, and excludes anything contrary to that.

7 OTHER TYPES OF UNFAIR TERM

Regulation 5: other types of unfair term

7.1 The OFT has found a range of other terms in use in the UK that could be unfair in ways that are similar to those terms listed in Schedule 2, but are not listed there.

GROUP 18 (e): Consumer Declarations

7.2 Consumers may be required to agree with standard declarations, for example that they have 'read and understood' the terms of the contract. Requiring consumers to make such a statement or declaration is likely to be unfair if it could put them at a legal disadvantage or mislead them. Consumers should be permitted to state facts within their knowledge if they wish.

But a prescribed declaration in a standard form effectively forces the consumer to make it whether or not it is factually correct. Consumers are unlikely to realise its significance and may be disadvantaged in a later dispute if it is argued that they have 'signed away their right' to argue that the facts were different.

7.3 Terms of this type are often included where consumers can read the terms and conditions before submitting their order online. Boxes that require consumers to tick that they have 'read and understood' are very likely to be considered unfair for the reasons above.

Example term: 'I have read and understood the agreement.'

Revision tips

- 7.4 Much more likely to be considered fair, is a clear and prominent warning that the consumer **should** read and understand the terms of the contract before entering into it. Such advice may be useful also, because it can alert the consumer to ask for additional information/clarification as necessary before concluding the contract.
- 7.5 Terms that seek only to confirm the consumer's agreement to the terms of the contract (rather than their understanding of them) are unlikely to be considered unfair, if they are merely confirming that the consumer is entering into the contract thus identified.

Leisure activities

- 7.6 Such declarations can also have the effect of excluding the supplier's liability unfairly. Requiring consumers to confirm their understanding of material aspects of an activity (for example its associated risks), regardless of whether such detail is within the consumer's knowledge, could also have the effect of attempting to exclude the supplier's liability to carry out the contract with reasonable care and skill.



7.7 Further, requiring consumers to declare that they assume all risk or responsibility for any injuries or damage that may occur to them (where they could be due to the supplier's act or omission) causes serious risk of unfairness. Please see our comments on pages 13, 14 and 17 with regard to exclusion and limitation clauses and how to improve fairness.

Revision tips

7.8 The OFT is much more likely to consider fair terms that clearly and prominently advise consumers that they should be aware of important facts about the activity, rather than requiring them to confirm that they are when this may not be the case.

Example terms

Original term

'I... hereby affirm that I have been advised and thoroughly informed of the inherent hazards of skin diving and scuba diving.'

This term was deleted.

Original term

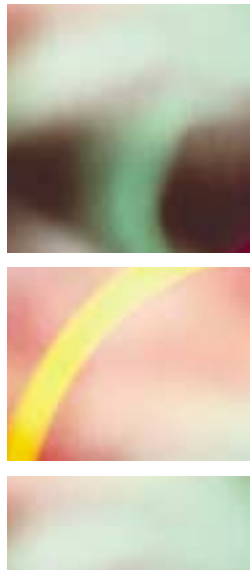
'I have fully informed myself of the contents of this certificate of understanding and express assumption of risk by reading it before I signed it...'

This term was deleted.

Original term

'In consideration of being allowed to enrol in this course, I hereby personally assume all risks in connection with said course, for any harm, injury or damage that may befall me while I am enrolled as a student of this course, including all risks connected therewith, whether foreseen or unforeseen.'

This term was deleted.



GROUP 18: UNREASONABLE OBLIGATIONS AND RESTRICTIONS

7.9 There is a clear risk of unfairness where terms put consumers at risk of incurring contractual penalties that are more severe than is necessary to protect the legitimate interests of the supplier.

7.10 This form of unfairness most obviously arises where a term provides for an excessive financial penalty. Contract terms may, however, impose requirements not required by any legitimate interest of the supplier, so that **any** kind of penalty they entail must be considered potentially disproportionate.

Tickets for entertainment

7.11 Terms that state that duplicate tickets will not be issued for lost or stolen ones are likely to be considered unfair if they permit the supplier to penalise the consumer more than is necessary to protect its legitimate interests such as concerns about fraud. This applies particularly to season tickets or other kinds of contracts where the benefit for which the consumer has paid and may be lost in this way, is on-going.

Revision tips

7.12 Suppliers can protect themselves against fraud in ways that do not unfairly penalise consumers for such losses.

Regulation 7 provides that:

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

The need for transparency

- 7.13 Contracts must be intelligible to ordinary consumers without the need to take legal advice. This involves using plain language and avoiding jargon such as 'warrants and represents' and 'severally liable' wherever possible. If legal terms have to be used they should be fully and clearly explained.
- 7.14 In addition, terms may be less likely to be considered unfair if the consumer has been given a proper opportunity to examine them before entering into the contract. To meet this requirement, efforts should be made to draw the consumer's attention to, and to explain, those provisions which are of particular importance (see also pages 23-25).

Core terms

- 7.15 Terms which define what is being purchased under the contract, or set the price to be paid, are exempt from the test of fairness to the extent that they are written in plain and intelligible language. But the OFT does 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 very likely to be considered to fall foul of Regulation 7.

- 7.16 The exemption for 'core' terms in Regulation 6(2) is therefore conditional on such terms being expressed and presented in a way that will ensure 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.

Small print

- 7.17 The Regulations say nothing directly about print size. However, there is a specific requirement that the contract should be intelligible. Obviously print size must be legible before the consumer is able to read and understand the contract. Thus intelligibility also depends on the size of the print, its colour, contrast with background, the quality of printing and the paper used.

Revision tips

- 7.18 Suppliers may wish to consider whether in order to meet this requirement, mere information as opposed to contract terms, can be supplied separately. Suppliers should be careful when doing this, to ensure that all relevant information is communicated to consumers and that all contract terms are brought to their attention in a manner that avoids unfairly binding them to hidden terms (see pages 23-25).

‘This does not affect your statutory rights’

7.19 The OFT has seen terms of this type on the back of tickets. These terms offer little benefit to consumers unless further explanation is included. Indeed where such terms are included in a contract in an attempt to make an exclusion term acceptable, they are also likely to be considered unfair under paragraph 1(b) to Schedule 2 (see pages 15-18).

performer, and those governing hire of the performer by businesses, are incorporated in the same document as the terms on which the consumer is contracting. Often this has the effect that legal jargon concerning the relationship between entertainment agency and performer and between performer and businesses is included despite the fact it rarely applies to the consumer and may serve to confuse or mislead.

Revision tips

7.20 The OFT considers that the potential for unfairness could be reduced by including a brief explanation of the rights referred to and pointing out to consumers where they can receive more information about them (for example their local authority trading standards department or citizens advice bureau).

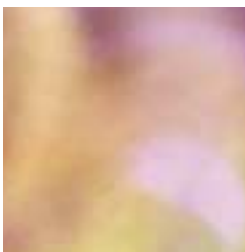
Revision tips

7.22 Where more than one supplier is involved in the transaction with the consumer, the relative positions of these parties, whether as principal or agent, must be clear. OFT is particularly concerned about statements that suggest that one or other of the parties involved is not a party to the contract with the consumer, when that is not an accurate description of the transaction and relationships of those involved. Such statements have the potential to be used to exclude liability for poor or non-performance of a contractual obligation and can have the effects described on pages 15-18. Finally, (as mentioned on page 11) entertainment agencies or other intermediaries should be aware that action can be taken against them where they are using and/or recommending such unfair terms, regardless of whether or not they are themselves a party to the contract in question.

Where consumers hire performers through entertainment agencies

The need for transparency: being clear about whom consumers are contracting with

7.21 The OFT has seen many contracts which seek to cover the relationship between an entertainment agency, performer and the consumer, in a way that obscures this fundamental point. This is particularly so when terms governing the entertainment agency's relationship with the



The need for transparency: being clear about when the contract is concluded

- 7.23 Consumers should not be left in any doubt about the point at which their contract is concluded. This applies particularly where a consumer has made a telephone enquiry to an entertainment agency about the hire of a performer. Contracts that are sent out following such an enquiry should not be ambiguous about when the contract between the agency and consumer is deemed to be made. For example, it will be unfair (in addition to perhaps unacceptable under general contract law principles) to indicate that a contract will be deemed to be concluded whichever of the following two scenarios occur:
- on the return of a completed contract
 - if the consumer does not return the form within a particular time.

References to dispute resolution schemes

- 7.24 We have seen terms in entertainment agency contracts that advise consumers that any disputes could be submitted to a trade association, of which the entertainment agency is a member.

Revision tips

- 7.25 The OFT considers suppliers should ensure that such terms do not mislead consumers either about their rights to take legal or other action, or the way the dispute resolution system works.

Leisure activities

The need for transparency: being clear about what is offered

- 7.26 Terms setting the main subject matter of the contract or price are exempt from the Regulations as long as they are expressed clearly and intelligibly. Vouchers that entitle consumers to participate in a leisure activity should therefore be clear about what they offer; consumers should be in no doubt as to how long the voucher will be usable, and to what it entitles the consumer – for example the leisure activities it can be claimed against.

Particular consumer obligations

- 7.27 Vouchers should also be clear on what is expected of the consumer; if the activity is dependent on an external factor beyond the control of either party and the consumer is therefore required to make reasonable attempts to book within the lifetime of a voucher, it should be clear that this is the case, prior to purchase (see also the section on binding consumers to hidden terms – pages 23-25).

A APPLICATION OF THE PRICE INDICATIONS (RESALE OF TICKETS) REGULATIONS 1994

A.1 These Regulations (which are enforced by local authority trading standards departments) apply where:

- A person is (or could be) prepared to supply a ticket by means of resale
- That person is acting in the course of business (this is unlikely to include, for example, the kinds of activities normally held by local concerns/ for charitable reasons)
- The ticket is for an entertainment event; and
- The reseller provides to consumers an indication of the price at which the ticket (or the ticket together with something else) is/will be available.

Entertainment events

A.2 'Entertainment' is defined broadly under the Regulations, and is likely to cover, for example, theatre shows, concerts, and sporting events (this includes such events held abroad if the ticket is purchased in the UK). Providing the ticket

is for 'entertainment' the Regulations do apply when a price indication is given for a ticket in combination with another element (for example with a transport voucher). But the Regulations do not apply if the combination is covered by the Package Travel, Package Holidays and Package Tour Regulations 1992.

Which resellers are covered?

A.3 Most resellers are covered by the Regulations. But the holders and promoters of an entertainment event, or a person acting on their behalf, are exempted from the Regulations. It is doubtful a court would acknowledge that a person was acting on behalf of a holder or promoter unless evidence of a contractual agreement to that effect was provided.

Requirements of the Regulations:

A.4 Where a seller gives a price indication, he must also give the consumer certain information, before any contract for supplying the ticket is concluded between them:

- In writing (unless in telephone transactions) any information originally printed on the ticket by the event's holder or promoter concerning:
 - the ticket price and
 - the rights it gives (for example any printed details about the location of seating, information such as the date on which the ticket is valid would also be appropriate)
- Orally for all transactions (in a clear and comprehensible manner), details of the location of any seat which the contract provides, together with any information which the reseller knows/might be expected to know about features of the seat which might adversely affect the consumer's use or enjoyment of it (for example a restricted view).

A.5 The information required by the Regulations has to be provided only when a price is given for a particular ticket.

Aims of the Regulations

A.6 The Regulations themselves do not require the price or any other information to be printed on the ticket, nor do they limit the rights of holders or promoters of entertainment to apply conditions to tickets. The Regulations do not forbid any method of ticket resale or place any controls on the level of the price which may be charged for a ticket. Their aim is purely to ensure that the consumer is given sufficient information about the ticket before deciding whether to enter the contract.

Enforcement

A.7 The Regulations can apply to any person acting in the course of business. Proceedings can be brought against an individual employee or the company itself, or a director, manager, secretary, or other similar officer or managing member of the company.

A.8 Complaints under the Regulations should be brought to the attention of the local authority trading standards department.



B APPLICATION OF THE DISTANCE SELLING REGULATIONS

The Consumer Protection (Distance Selling) Regulations 2000 ('DSRs')

- B.1 The DSRs came into force on 31 October 2000, implementing the EC Directive on the protection of consumers in respect of distance contracts (97/7/EC) and giving additional rights to consumers when entering into contracts for goods and services concluded without face to face contact with a supplier. The main thrust of the legislation is to give consumers confidence in purchasing goods and services where there is no face to face contact with the seller, and to ensure that all traders operating distance selling schemes meet the basic requirements laid down in the Regulations. Under the DSRs, consumers shopping for most goods and services by telephone, mail order, fax, digital television and the internet and other types of distance communication now have the right to:
- certain advance information
 - a cooling off period
 - protection against fraudulent use of a credit card.

Partial exemptions

- B.2 Only parts of the DSRs apply to contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific time period. Many entertainment products and services may fall within the partial exemptions although each case would have to be looked at individually.

Compliance with the Regulations

- B.3 If a supplier is providing goods or services which fall in the categories described under partial exemptions, as may be the case in the entertainment sector, they should bear in mind the following requirements of the DSRs which do apply.

Performance of the contract

- B.4 If the supplier is unable to carry out the contract within the contractual period or any such extension as agreed, because the goods or services ordered are not available within the time agreed, they should inform the consumer and refund any monies paid in relation to the contract.

This refund should be made as soon as possible and in any event within 30 days from the day after the original contract should have been carried out. In effect the contract will be treated as if it had not been made, except for any rights or remedies that the consumer has as a result of the non-performance of the contract.

Substitute goods and services

B.5 Goods or services of equivalent value and price may be provided if this was conveyed to consumer in the contract in a clear and comprehensible manner appropriate to the form of distance communication used to conclude the contract. The consumer should also be advised that the costs of returning any such substitute goods to the supplier in the event of cancellation would be met by the supplier.

Outdoor leisure events which cannot be rescheduled

B.6 Where the supplier and consumer have agreed, no refunds shall be made for non performance of such contracts.

Payment card protection

B.7 Consumers whose payment card is used dishonestly or fraudulently for any type of distance contract by a person not acting as their agent or to be treated as such can now cancel the payment and the card issuer must refund all the money lost in this way to their account.

Inertia selling

B.8 The DSRs also now make it an offence to demand payment for the supply of unsolicited goods or services to consumers. Any unsolicited goods can be treated as a gift.

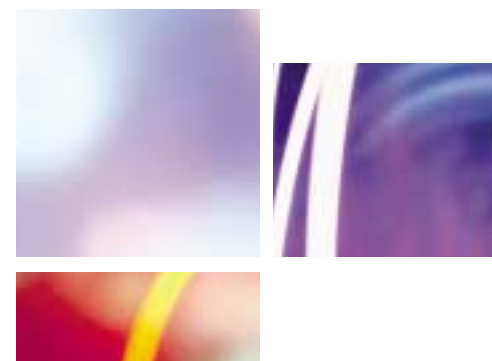
Enforcement

B.9 The DSRs permit the OFT and Trading Standards Departments to apply for an injunction against any person who appears to be responsible for a breach of the provisions.

B.10 A Guide for Business on the DSRs can be found on the Department of Trade and Industry's website at www.dti.gov.uk/ccp/topics1/ecommm.htm. More detailed guidance on the DSRs can be found in the OFT's consumer leaflet entitled 'Shopping from Home' at www.of.gov.uk/Consumer/Your+Rights+When+Shopping+From+Home/default.htm

C E-COMMERCE REGULATIONS

- C.1 The Electronic Commerce (EC Directive) Regulations 2002 (E-Commerce Regulations) implement the main requirements of the EC Directive on Electronic Commerce (00/31/EC). The E-Commerce Regulations seek to encourage consumer confidence in on-line trading and to assist businesses to understand what they have to do to comply with the law. They are not primarily a consumer protection measure. However, OFT and local authority trading standards departments can take action under the Enterprise Act against businesses breaching certain aspects of the E-Commerce Regulations.
- C.2 Recipients of on-line services, including consumers involved in many types of purchases on-line, must be provided with certain specified information about the trader/supplier, the nature of commercial communications and how to complete an on-line transaction.
- C.3 A Guide for Business on the E-Commerce Regulations can be found on the Department of Trade and Industry's website at www.dti.gov.uk/ccp/topics1/ecommm.htm



D PREMIUM RATE PHONE SERVICES

- D.1 The Independent Committee for the Supervision of Standards of Telephone Information Services ('ICSTIS') regulates the content and promotion of all phone services charged at a premium rate.
- D.2 ICSTIS investigates complaints and monitors services and their advertising to make sure they follow its Code of Practice. For example, advertisements of premium rate services should tell the consumer the cost of the call, while the information the consumer receives should not be misleading out of date or delayed.
- D.3 For more information visit ICSTIS website: www.icstis.org.uk

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