

Unfair Terms In Consumer Contracts

Recently both the UK banking industry as a whole and Foxtons estate agents have been subject to court proceedings brought by the Office of Fair Trading (“OFT”) under the Unfair Terms in Consumer Contract Regulations (“the Regulations”). Any business which deals with consumers should be aware of the Regulations. When do the Regulations apply, what do they say, and what should businesses be doing?

When do the Regulations apply?

- Broadly, the Regulations apply where any business is dealing with consumers on standard terms of business.
- The Regulations will not apply to the ‘core terms’ of the contract, provided that those terms are in clear, intelligible language. Equally, they do not apply to the price of goods or services or the quality of the goods or services received for that price (but the Sale of Goods Acts will apply).

What do the Regulations say?

- All written terms must be in plain, intelligible language. If there is any ambiguity in a term (i.e. if there are two or more possible meanings) then the interpretation most favourable to the consumer will apply. Any term which is unfair will not be binding on the consumer. There are also provisions allowing the OFT to investigate unfair contracts and apply for injunctions to prevent their continued use.
- So what is an unfair term? The Regulations state that a term will be unfair if it creates **“a significant imbalance in the rights and obligations of the parties”** to the detriment of the consumer. This is not particularly helpful - it effectively says that a term will be unfair if it is unfair. However the Regulations do contain a useful list of examples of unfair terms including:
 - binding a consumer into a contract where the business has a choice as to whether or not to perform its obligations;
 - giving the business rights to terminate the contract without providing similar rights to the customer;
 - allowing the business to unilaterally vary the goods or services to be provided;
 - allowing for a consumer deposit to be forfeit if the contract is terminated by the business.

What should businesses dealing with consumers be doing?

- Make sure your terms are in clear plain English.
- Ensure that your terms are readily available to customers, and provided to your customers before a contract is entered into.
- Any terms which a consumer might object to should be clearly identified (and preferably highlighted).
- Consider each of your terms from the point of view of your customer. If you think that the term might be unfair, consider whether you really need to include it. If you do, then check the term with your local trading standards office, or speak to a solicitor.

If you would like any further advice on these matters, please contact:

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