

Guidance on unfair terms in health and fitness club agreements

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March 2002

This is the first issue of a guide to what the OFT believes to be potentially unfair terms in health and fitness club agreements.

It is based on several agreements that were in use and OFT's experience of enforcing the Unfair Terms in Consumer Contracts Regulations 1999.

Scope

It is aimed at health and fitness clubs, consumers, trading standards advisers and other Qualifying Bodies.

OFT 373

Contacting the Office of Fair Trading (OFT)

If you think that any of the standard terms in health and fitness club agreements are unfair you may contact OFT at the address below or your local trading standards department. If you have any comments on this guidance please write to:

The Unfair Contract Terms Unit
Office of Fair Trading
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX
Email: unfair.terms@oft.gov.uk

You can find this guidance and other OFT publications about unfair contract terms at <http://www.oft.gov.uk/>

Copies of the general guidance document Unfair Contract Terms Guidance (ref: OFT 311), the explanatory OFT briefing note Unfair Standard Terms (ref: OFT 143) and this guidance (ref: OFT 373) are currently available, free of charge, from:

E C Logistics
Swallowfield Way
Hayes
Middlesex UB3 1DQ
Tel: 0870 60 60 321
Fax: 0870 60 70 321
Email: oft@eclogistics.co.uk

The Regulations

You can buy a copy of the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083), price £2, from Stationery Office bookshops, or by post from:

The Stationery Office Publications Centre
PO Box 29
Norwich NR3 1GN

The Regulations are also available free of charge on OFT's website at <http://www.oft.gov.uk/>

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Part I: Introduction

- i** The Office of Fair Trading (OFT) has drawn up this guidance to explain why it considers some standard contract terms used in health and fitness club agreements to be potentially unfair under the Unfair Terms in Consumer Contracts Regulations 1999 ('the Regulations'). The guidance represents OFT's views and explains the basis on which it is likely to take enforcement action. It also offers positive suggestions for achieving fairness. It is, of course, ultimately for the courts to decide whether any term is unfair.

Aim of guidance

- ii** The aim of the guidance is to help ensure that the standard contract terms used in health and fitness club agreements are fair and clear. Its purpose is to encourage clubs to revise their contracts so that they comply with the Regulations. The Regulations set a minimum standard not only of fairness but of transparency. Transparency helps potential members to make well-informed and confident decisions about joining clubs.

Scope of the guidance

- iii** The guidance deals only with potential unfairness in standard contract terms used in health and fitness club agreements. But it may also apply to other types of clubs offering services to members who are consumers for the purposes of the Regulations. It is organised under headings which match the sub-paragraphs of the indicative and illustrative list of "terms which may be regarded as unfair" contained in Schedule 2 to the Regulations.

Use of the guidance

- iv** This guidance is designed to help health and fitness clubs and their advisers to meet the requirements of the Regulations. It will also assist trading standards departments, and other Qualifying Bodies, in their role as consumer advisers and regulators. OFT expects those using or recommending standard pre-formulated health and fitness club agreements to review their terms and conditions in the light of the guidance and amend any unfair terms or remove them from their contracts.

The shape of the guidance

- v Part II of the guidance explains the test of fairness set out in the Regulations. Part III sets out the main areas of complaint/concern. Part IV discusses the types of unfair term listed in Schedule 2 to the Regulations in the same order as they are listed in Schedule 2. Part V covers additional categories of unfair terms not listed in Schedule 2. Annex A is an index of the types of unfair terms discussed in the guidance.

The Regulations

- vi The Regulations implement the EU Directive on unfair terms in consumer contracts. The Regulations came into force on 1 July 1995 and were re-enacted in 1999 (coming into force on 1 October 1999).

Enforcement

- vii The Director General has a duty to consider any complaint sent to him about unfair terms. Since October 1999 other bodies (known as Qualifying Bodies or QBs) have shared enforcement powers with OFT. These include most of the main national regulatory bodies, all local authorities providing a trading standards service, and the Consumers' Association.
- viii The Stop Now Orders (E.C. Directive) Regulations 2001 came into force on 1 June 2001. These provide a swifter mechanism for enforcing existing consumer protection legislation by providing OFT and certain specified bodies (known as Qualified Entities or QEs) with a more rapid means of acting against suppliers. OFT and QEs are able to secure undertakings from or take injunctive action against suppliers who breach the legislation that implements ten existing EU Directives. This includes the Directive on unfair terms in consumer contracts, where those breaches harm the collective interests of consumers. These regulations give OFT lead enforcement responsibility.

Part II: The test of fairness

- i The test of fairness 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 the term is not used unfairly in practice is therefore not enough to persuade OFT that it is immune from challenge under the Regulations. Claims like this usually show that the supplier could redraft the term more precisely both to reflect its intentions and to achieve fairness.
- ii When OFT assesses fairness, it also has 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, OFT is likely to conclude that it has potential for unfairness if it is likely to mislead, or be unintelligible to consumers. Those taking up health club contracts do not normally seek legal advice, so contracts should use language that is plain and intelligible to ordinary people.
- iii The example terms given in Part IV are taken from standard contracts referred to OFT by complainants. OFT considers these terms to have potential for unfairness. Where possible, we have included revised terms. OFT took the view that these were sufficiently improved to require no further OFT action, on the evidence available at the time. But the Director General has a statutory duty to consider complaints about any terms brought to his attention, including the revised terms or those with a similar effect.
- iv New complaints and other evidence can and do shed new light on the potential for unfairness of terms that were formerly reviewed by OFT. The assessment of 'fairness', under the Regulations, requires consideration of all the circumstances and of the effect of other terms in the contract - Regulation 6(1). A form of words considered acceptable in one agreement is not necessarily fair in another. Furthermore, 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, OFT believes that by applying the principles set out in this guidance, and other relevant guidance such as the Unfair Contract Terms Guidance (OFT 311), businesses can produce terms that are less likely to be found unfair by a court.

Part III: The main areas of concern

Significant level of complaints

- i OFT has received significant numbers of complaints about health and fitness club contracts. The complaints relate mainly to private health and fitness clubs, with a few about local authority leisure centres.

Areas of concern to members

- ii The main terms that concern members are those:
- that seek to exclude a club's liability for death or personal injury, or for loss or damage to members' property
 - that are unclear about the minimum membership period, and the notice period for cancellation
 - that are unclear about cancellation charges
 - that are unclear about a members' ability to terminate a linked consumer credit agreement, and the consequences of doing so
 - that allow clubs to make unrestricted changes to the services that are contracted for.

The need for fairness and clarity

- iii Many clubs need to revise their contracts into plain and intelligible language, and to be more open and transparent about the main contractual commitments which members take on when joining a club. This guidance is intended to help clubs with the process of revising their contracts so that they are fair and clearly expressed.

Potential Unfairness in Minimum Membership Periods

- iv Terms setting minimum membership periods attract many complaints to OFT. We consider that an initial period is in most cases likely to be a 'core term'. Core terms define what is supplied and the price to be paid, and are exempt from the test of fairness under the Regulations if they are written in plain and intelligible language. Such terms should therefore be extremely prominent and be clearly expressed.
- v Complaints indicate that members are often unaware of the full implications of the minimum membership period until they decide to terminate their membership early. In addition, we have found that they are, for example, sometimes used to deter members from cancelling when the club is in breach of its obligations.

"Complaints indicate that members are often unaware of the full implications of the minimum membership period until they decide to terminate their membership early."

Notice Periods for Cancellation in Rolling Membership Agreements

- vi We have seen that members often mistakenly associate the notice period for cancellation with the length of the contract. But members are generally tied-in for the whole of the minimum period. Rolling membership agreements, however, allow cancellation on notice at any point and do not stipulate a minimum membership period.
- vii In such contracts, long notice periods have potential for unfairness. However, a relatively longer period of notice in a rolling membership agreement (compared to a shorter notice period in a fixed term membership agreement) may offer a way to a fairer balance for clubs and members (see Part V). That is because they provide more flexibility for members overall, while protecting clubs from the consequences of sudden cancellation by members. Naturally, however, each such term will have to be assessed on its own merits in the context of the whole contract.

Consumer Credit Agreements

- viii A number of clubs use finance companies and consumer credit agreements for collecting annual subscriptions from members. Members have complained that they are 'locked' into such finance agreements. Some are unaware that in agreeing to pay a joining fee or annual subscription in monthly instalments they may also have signed a credit agreement. Some have been told that they cannot cancel the agreement, even when the club is in breach of its membership contract.
- ix Consumers should not be misled about the nature of the agreement(s) they are entering into, nor, indeed about the consequences for termination. For regulated consumer credit agreements, such consequences are set out in the Consumer Credit Act 1974 ('the Act').
- x On this point, please note that such activity is likely to constitute consumer credit activity regulated by the Act and for which a consumer credit licence may be required. It is the responsibility of clubs to ensure that they are complying with the requirements of the Act and, if necessary, they may obtain further information from OFT or their local authority trading standards service.

"Consumers should not be misled about the nature of the agreement(s) they are entering into, nor, indeed about the consequences for termination."

Part IV: Analysis of unfair terms

1 Exclusion and limitation clauses

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

- 1.1 Terms which seek to exclude or limit liability (also known as disclaimers or exemption clauses) are common and take many different forms. They are discussed in detail in section 2. However, the following observations apply to all of them.
- 1.2 Rights and duties under a contract are not appropriately balanced unless both parties are equally bound by their obligations under the contract and the general law. Any term may be unfair if it hinders members in seeking redress from clubs that have not complied with their obligations.

Exclusion of liability for implied terms

- 1.3 A disclaimer will often exclude or limit liability for breach of the 'implied' terms. These are terms that the law **presumes** are included in a contract in the absence of express agreement on the issues. They help ensure that agreements are workable, and generally reflect what the law considers a reasonable person would have agreed. Excluding them can have the effect of allowing one party to act unreasonably or negligently to the other with impunity. Any term which can have that effect, in a consumer contract, is particularly likely to be considered unfair.

Effect of other legislation affecting the validity of terms

- 1.4 Many disclaimers are deprived of legal validity by other legislation. For example, exclusions or restrictions of liability for death or personal injury caused by negligence are in general legally ineffective. But the fact that a term is void under other legislation, and so unenforceable before a court, does not make it fair under the Regulations. Not only is such a term pointless, it is also potentially misleading.

Ineffective arguments used to justify wide disclaimers

- 1.5 The following arguments are often used to justify wide disclaimers, but are ineffective:

- **'It is intended only to deal with unjustified demands.'** If a disclaimer **could** be used to defeat legitimate claims as well, it is likely to be unfair. The Regulations are concerned with the effect that terms can have, and not just with the intentions behind them. If the potential effect of a term goes further than intended, it may be possible to make it fair by cutting back its scope.
- **'It does not actually operate by excluding liability.'** If a term achieves the same effect as an unfair exemption clause, it will be unfair whatever its form or mechanism. This applies, for instance, to terms which 'deem' things to be the case, whether or not they really are, with the aim of ensuring no liability arises in the first place.
- **'Liability is excluded only so far as the law permits.'** The purpose of the Regulations is to give consumers additional protection against terms which may be unfair even though the common law or statute does not prevent their use. Terms which exclude liability 'so far as the law permits' are no more likely to be fair than those which are not worded in this way. They are also open to objection because they are unclear to those without legal knowledge.

Ineffective disclaimers for death or personal injury

- 1.6 Contract terms, including 'at your own risk' disclaimers, cannot be used to exclude or restrict a club's liability for death or personal injury caused by its negligence. They are always void for that purpose under section 2 of the Unfair Contract Terms Act 1977 (although the Act does not prohibit their use). An exclusion of liability like this cannot be enforced in any circumstances but such a void and unenforceable term is misleading and has no legitimate purpose. Where the Regulations also apply, OFT may take action to prevent the term from being included in consumer contracts. It would be difficult to conceive of any circumstances in which use of a term of this kind would not be considered unfair.

"Contract terms, including 'at your own risk' disclaimers, cannot be used to exclude or restrict a club's liability for death or personal injury caused by its negligence."

- 1.7 In any event, note that the Regulations go beyond the 1977 Act. Paragraph 1(a) of Schedule 2 applies not only to terms which would apply where the club was negligent, but to exclusions of liability for death or personal injury caused by the club (whether by an act or an omission). This includes breach of a duty, for example a duty to provide safe equipment, whether this arises by statute or in any other way. We therefore do not consider that terms which exclude liability for death or injury can be made safe from challenge simply by accepting liability for loss or damage caused by negligence.

The following are examples of unfair exclusion and limitation terms:

- 1 'Members and their guests use the exercise facilities at their own risk and the Club does not accept the responsibility for any harm or injury to any member or guest **howsoever caused**'.
2. **'I accept full responsibility for my use of any and all equipment and facilities operated by the club at my own risk and shall hold the club, its Directors and employees harmless from any and all loss, claim, injury, damage, or liability sustained or incurred by me resulting therefrom'**.
3. **'All members and guests use the facilities and equipment provided by the Club at their own risk and the club does not accept responsibility for any harm or injury to a member or guest howsoever caused'**.
4. 'The company will use its best endeavours to ensure that all equipment & machines are maintained in full working order but the company shall be under no liability to the member in respect of any failure or breakdown of any equipment, machinery or service & such failure or breakdown shall not relieve the member of the obligation to fulfil the payment terms as agreed above'.
5. 'The Company will use its best endeavours to ensure that all equipment and machinery is maintained in full working order but the company shall be under no liability to the Member in respect of any failure or breakdown of any equipment or machinery and such failure or breakdown shall not relieve the member of the obligation to make payments in clause 2 hereof. The company will have no liability for any injury or illness caused to the member whilst using the equipment or attending any premises owned or used by the Company'.
6. 'The use by the member of any of the Company's equipment or the facilities of any gymnasium owned by or occupied by the Company is entirely at the member's own risk'.

All of the above terms were deleted from the particular contracts, but the following example was revised:

Original term

'Neither the Proprietor or the Manager, or any employee or agent of the Proprietor or Manager shall be responsible for any death or injury occurring upon the Club premises or as a result of the use of the facilities and/or equipment provided by the Club'.

New term

'We will compensate you for any loss or damage you may suffer if we fail to carry out our obligations under this agreement or to a reasonable standard or breach any duties imposed on us by law (including if we cause the death or personal injury to you by our negligence) unless that failure is attributable to:

- (i) your own fault;
- (ii) a third party unconnected with our provision of services under this agreement; or
- (iii) events which neither we nor our suppliers could have foreseen or forestalled even if we had taken all reasonable care'.

2. Exclusion of liability for breach of contract

(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.

- 2.1. For a contract to be fully and equally binding on both supplier and consumer, each party should be entitled to full compensation, if the other fails to honour its obligations. Terms which limit liability are just as open to objection as those which exclude it altogether.

Terms excluding liability for the supplier's own negligence

- 2.2 Terms that exclude liability for damage or theft of member's property are likely to be unfair. A club should not exclude liability for damage or theft resulting from its own negligence. And any exclusion clauses should make clear that they do not do so. For example,

"A club should not exclude liability for damage or theft resulting from its own negligence."

members should have some redress

even where they might be partly at fault, for loss or damage contributed to by the failure of the club to take elementary security precautions.

Terms excluding legal obligations

- 2.3 Suppliers who provide services to consumers accept certain contractual obligations as a matter of law, such as carrying out services to a reasonable standard. A term which could allow the supplier to refuse to carry out his side of the contract or any important obligation under it, at his discretion and without liability, has the potential to imbalance the contract to the consumer's disadvantage. This applies not only to terms that allow the supplier to refuse to carry out his side of the bargain altogether, but also to those which permit him to suspend the supply of any significant benefit under the contract - see paragraph 15.2.

'No refund' clauses

- 2.4 'No Refund' terms are likely to be considered unfair, as they deny the member the right to a refund if the club is in breach of contract. It may be fair to refuse members a full refund in circumstances where they simply do not wish to attend any more. But if they cancel their membership because, for example, the club is unhygienic or unsafe, then they should be entitled to a pro rata refund. Likewise, we take the view that members should be entitled to a refund if the club suspends or cancels membership unreasonably. See also our views on Minimum Membership Periods at Part III.

"'No Refund' terms are likely to be considered unfair, as they deny the member the right to a refund if the club is in breach of contract."

Disposal of members' property

- 2.5 Terms which seek to allow clubs to dispose of members' property with impunity are also likely to be considered unfair as exclusions. The law, in particular the Torts (Interference with Goods) Act 1977, prescribes how such goods should normally be treated. A contract need not reflect these rules in detail, provided it does not override or contradict them. Terms are unlikely to be considered fair if they state that goods may be sold immediately, or without adequate notice of the date and place of the sale. This is particularly the case if they exclude the duties to obtain the best price that can reasonably be got and to refund any surplus obtained.

The following are examples of unfair exclusion of liability (for breach of contract) terms:

Original term

The club will not be responsible under any circumstances for loss or damage to the property of whatever description of members, guests or visitors, whether caused wilfully, accidentally, by theft or otherwise'.

New term

Our liability to compensate you (in the case of loss or damage other than death or personal injury) is limited to a reasonable amount having regard to such factors as whether the damage was due to a negligent act or omission by us'.

Original term

'For security reasons, members and guests are asked to store personal belongings and valuables in the lockers provided. Keys for use of lockers are on a coin return basis or will be provided at reception. Lockers are provided on a daily basis only and items left overnight will be removed from the lockers and disposed of accordingly'.

New term

'We can remove the contents from any locker used overnight which has not been paid for. You can claim the contents we have removed, from the club reception for up to six weeks after removal. After this time, we will not be responsible for any contents we remove from the locker'.

Original term

'In consideration of the Club accepting his/her application for membership of the Club, and for he/she becoming and remaining a Member of the Club, the Member agrees that neither the Proprietor, the Manager or the employees or agents of the Proprietor or the Manager shall be liable for any loss, damage or theft of personal property belonging to the Member, or any guest of the Member occurring upon the Club premises'.

New term

'Our liability to compensate you for any loss or damage (in the case of loss or damage other than death or personal injury) is limited to a reasonable amount having regard to such factors as whether the damage was due to a negligent act or omission by us'.

3 Binding members while allowing the club to provide no service

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

(c): making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will alone.

3.1 Contract terms of this type could be used to force the member to pay while the club is able to opt out of performing its contractual obligations and are likely to be considered objectionable. They create significant imbalance in the contract to the detriment of the consumer (regardless of underlying intention). OFT is unlikely to object to a term that allows a club to take reasonable steps to deal with specific threats or circumstances outside its control - where that is unavoidable and kept to a minimum. But the following conditions will normally need to be met:

- such a term must be clear about the basis on which the member can be deprived of any benefits normally available under the contract;
- wherever possible such benefits should be only partially and/or temporarily denied, rather than stopped altogether;
- members should not be made to pay for what they are not getting, or suffer any unfair loss of pre-payments or other penalty through the operation of such a clause.

4 Cancellation by the member - effect on joining fees and other pre-payments

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.

Exclusion of rights to refunds where the contract does not go ahead

4.1 Terms will generally be considered unfair if they exclude the member's basic rights under contract law to the advantage of the club. Consumers are entitled to a refund of prepayments made under a contract which does not go ahead, or which ends before they have enjoyed any significant benefit. In some circumstances, consumers are entitled to a refund even where they are responsible for bringing the contract to an end.

"Terms will generally be considered unfair if they exclude the member's basic rights under contract law to the advantage of the club."

Exclusion of rights to refunds where the member cancels

4.2 Terms that deprive members of prepayments when they cancel should recognise their basic right to cancel the contract if the club is in serious default. Terms that do not recognise this are likely to be considered unfair. Where the member cancels with justification, i.e when the club is at serious fault and the member has not received anything of value, he may well be entitled to a full refund of any prepayments and compensation as well. A term penalising member cancellations in any circumstances, whether by loss of deposit or other means, is open to objection on this basis.

Potential right to some refund even where the member has cancelled without cause

4.3 Where members cancel without any such justification, and the club suffers loss as a result, they cannot expect a full refund of all prepayments. But a term under which they always lose everything they have paid in advance, regardless of the amount of any costs and losses caused by the cancellation, is at risk of being considered an unfair penalty. It is important to note the comments on penalty clauses generally in the section that follows, in particular the discussion of the club's duty to mitigate and where the member has to cancel for reasons beyond his control. The discussion of Minimum Membership Periods and Notice Periods for Cancellation in Part III are also relevant.

5 Financial penalties on members

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.

Excessive sanctions

5.1 It is unfair to impose excessive sanctions for a breach of contract. A term is a penalty if it requires the member to pay more in compensation for a breach than a reasonable pre-estimate of the loss caused to the club. Under common law this type of term would normally be void as a penalty.

Termination on member's default

5.2 Terms which allow a club to terminate the contract of a member who is in default in some way, and require the balance of the annual subscription to be paid immediately are potentially unfair penalty clauses under the Regulations. Such terms can be used unfairly to force the member either to continue the contract, or to pay an excessive amount to bring it to an end. See also Part III for our views on Minimum Membership Periods.

Mitigation

5.3 Such terms are open to challenge because they take no account of the club's duty to mitigate its loss. In law, the club has a legal duty to do so, for example by seeking replacement business. If the club has a closed membership with a waiting list of potential new members, each new member could count as a replacement. This would not necessarily be the case where the club's membership is not full.

Other factors affecting unfairness

- 5.4 Many factors influence the fairness of terms that require full payment of the subscription from the member who cancels early. For example, does it reflect the supplier's reasonable losses in such circumstances, were other membership options available to members, was the term clear and prominent, was the member misled, and what is the effect of other terms in the contract? Some of these factors may be relevant only to individual disputes, in cases where a term that is generally fair may nevertheless be unfair in a particular case in light of the actual circumstances. Sections 2, 4, and 18 of this guidance are also relevant, together with the discussion of Minimum Membership Periods in Part III.

Circumstances beyond a member's control

- 5.5 The fairest terms allow members to transfer their membership or to cancel the contract without penalty if the member, for example, has to relocate, or has suffered redundancy, or has a medical condition that prevents his use of the gym. Such terms take positive account of the interests of the member.

Examples of unfair financial penalty terms:

Original term

'The Manager may terminate the membership of any Member if any part of the Monthly Membership Subscription remains unpaid 30 days after the date due for payment, whereby all monies owing to the Club in accordance with the contractual agreement will become due immediately'.

New term

'We may terminate this agreement in the following circumstances:

- (a) if you commit a serious or repeated breach of this agreement or the club's rules of membership and the breach, if capable of remedy, is not remedied within 7 days of receipt of a default notice;
- (b) if any part of your membership fee remains unpaid 30 days after its due date for payment; or
- (c) if you provide us with details which you know to be false when applying for membership and the false declaration would have reasonably affected our decision to grant you membership.

If we terminate for any of these reasons, we reserve the right to retain a proportion of the money paid under this agreement, to cover any reasonable costs incurred'.

6 Where the club cancels the agreement

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.

Unilateral right to cancel by the club

- 6.1 A club that cancels a contract may cause a member inconvenience, costs and other problems. A unilateral right for the club to cancel without any liability to do more than return prepayments is very likely to be unfair. This is especially the case with terms that say the club can cancel at will, without having any valid reason. But it also applies to terms permitting cancellation for vaguely defined reasons, or any breach of contract by the consumer (however trivial). The purpose of such terms may be to allow the club to protect itself legitimately from problems beyond its control, or from serious misconduct by the member. But broadly worded terms may be open to abuse and so the potential effect of a term as well as its purpose is relevant to fairness. See also the discussion in the Unfair Contract Terms Guidance (Group 6).F

Terms which undermine the member's right to cancel

- 6.2 A term can also be unfair if it undermines the member's legitimate cancellation rights. An example would be one implying that members cannot cancel in any circumstances, or only with the club's agreement. In law, each party has a right to end the contract if the other commits a breach of it. A term that purports to rule out all possibility of cancellation by members is potentially misleading and unfair.

Terms that reflect the law

- 6.3 OFT would not usually object to terms which merely reflect the common law. It may be fair for the contract to warn members that if they cancel where the club is not in breach they may face a penalty (see also Sections 4 and 5). Further examples of both fair and unfair cancellation clauses of various kinds can be found at Annex A of the Unfair Contract Terms Guidance under Group 6.

"A term can also be unfair if it undermines the member's legitimate cancellation rights."

Examples of unfair cancellation terms:

Original term

'The management reserves the right to terminate the membership of any member upon not less than 30 days notice in writing if the management is of the opinion, in its absolute discretion that the member is not a suitable individual for continued membership of the club'.

New term

'You may terminate this agreement on 30 days notice in writing if you are unable to use the club through serious illness or injury likely to preclude you from using the club for a period of least 2 calendar months. (We will request reasonable evidence of your illness or injury - e.g. a doctor's certificate).

You may also terminate this agreement if:

- (i) we significantly reduce the facilities or opening hours of the club;
- (ii) we change the location of the club; or
- (iii) we close the club for refurbishment for a period of more than 4 weeks at a time.

We will use our reasonable endeavours to give you at least 45 days notice of the change (either in writing or by prominently displaying a sign in the club) and, if you wish to terminate your membership due to reasons stated above, you can give us 30 days notice in writing to terminate.

If you terminate your membership (in accordance with the terms stated above) we will refund any part of your membership fee which you have paid in advance but which relates to a period after termination'.

Original term

'The Manager may terminate the membership of any Member without notice and with immediate effect without refund in the event of a Member committing a serious or repeated breach of the Club rules and may terminate without cause upon refunding the unexpired portion of their current subscription'.

New term

'We may terminate this agreement in the following circumstances:

- (i) if you commit a serious or repeated breach of this agreement or the club's rules of membership and the breach, if capable of remedy, is not remedied within 7 days of receipt of a default notice;
- (ii) if any part of your membership fee remains unpaid 30 days after its due date for payment; or
- (iii) if you provide us with details which you know to be false when applying for membership and the false declaration would have reasonably affected our decision to grant you membership.

If we terminate for any of these reasons we reserve the right to retain a proportion of the money which you have paid us under this agreement to cover any reasonable costs we have incurred as a result'.

7 Cancellation by the club and notice periods

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

(g): enabling the seller or supplier to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so.

Continuing contracts

- 7.1 Terms in contracts of an indefinite duration that give unlimited discretion to a club to cancel without notice are likely to be considered unfair. But terms that restrict the right to terminate to circumstances that amount to "serious grounds" for immediate cancellation are unlikely to have the potential for unfairness.

Examples of "serious grounds"

- 7.2 These may include safety reasons, and clear evidence that the member is abusing the service, allowing others to abuse it, or otherwise behaving in a way that involves serious risk to the club's interests or those of other members.

Example of an unfair cancellation 'without notice' term:

Original term

'The Manager [.....] may terminate membership without cause upon refunding the unexpired portion of their current subscription'.

New term

'..... If we terminate for any [serious reason] we reserve the right to retain a proportion of the money which you have paid us under this agreement to cover any reasonable costs we have incurred as a result'.

8 Excessive notice periods for cancellation by the member

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

(h): automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express this desire not to extend the contract is unreasonably early.

Length of the contract may be a 'core' term

- 8.1 A term which clearly stipulates the length of a contract is likely to be a 'core' term, see paragraphs iv and v of Part III. However, other terms which affect the length of a contract do not necessarily amount to 'core' terms. An example would be a term that automatically extended the contract period and relied on the member's inertia or ignorance to be achieved the extension. Such a term is unlikely to be regarded as a core term, and so could be assessed for unfairness.

Automatic renewals

- 8.2 A term in a fixed period contract which automatically commits the member to a renewed fixed term unless early notice to cancel is given is likely to be considered unfair by OFT.

Unfair requirements to give long notice

8.3 The requirement to give long notice may also be unfair. But in contracts of indefinite duration, with no minimum period of membership, longer than usual notice periods may not be unfair in the context of the whole contract (see the discussion on Notice Periods for Cancellation in Rolling Membership Agreements in Part III). If members are required to make a cancellation decision too far in advance, they may unfairly pay for membership that they do not want or need.

“If members are required to make a cancellation decision too far in advance, they may unfairly pay for membership that they do not want or need.”

Examples of terms with a potentially unfair notice period for cancellation:

Original term

‘You may cancel your membership at any time by giving six months’ written notice to the general manager of the club’.

New term

‘You may cancel your membership at any time by giving three months’ written notice to the general manager at the club’.

Original term

‘Renewal at the current Club fee rate in force at the time of the expiration of the credit terms will automatically occur on a month by month basis until such time you give 30 days advance notice of intent to cancel’.

New term

‘Renewal at the current fee rate will be available to all customers rejoining prior to expiration of the membership’.

9 Binding members to hidden terms

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.

Members should have the chance to read and understand terms

9.1 Terms binding members to unseen obligations are likely to be considered unfair by OFT. Contractual fairness requires that members should always have an opportunity to read and understand terms before becoming bound by them. See also Section 18.

Contractual fairness requires that members should always have an opportunity to read and understand terms before becoming bound by them.

Linked contracts

9.2 This also applies to terms which require members to accept the terms of other linked contracts (for example, insurance contracts), rules or regulations. The member should be given an appropriate chance to read these or to read a summary of those affecting the primary contract.

Example of a term that binds members to hidden terms:

Original term

‘A Rules and Regulations leaflet is available to members and all members are required to comply with the same’.

New term

‘As a member you agree to comply with the rules of membership which are displayed prominently in the Club and relate to opening hours, use of the facilities and your conduct. We may (unless stated elsewhere in this agreement) make reasonable changes to these rules at any time provided we give you advance notice of the changes’.

10 A club’s right to vary terms generally (variation clauses)

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 unilaterally without a valid reason which is specified in the contract.

Unfairness of variation clauses

10.1 A right for one party to a contract to alter its terms without a good reason set out in the contract, and in a way that may be damaging to the member, is likely to be considered unfair.

Unfairness of unrestricted right to vary the contract

10.2 We would consider a variation clause to be unfair if it enabled a club to force members to pay unrestricted increased costs or penalties (see Section 12), or enabled it to deprive members of the main benefits under the contract. If it is open to be used in this way, it is not relevant that the clause is intended to permit only minor or technically unavoidable adjustments. The clause should be redrafted to reflect the more limited intention.

10.3 Unrestricted clauses allowing a club to vary the club rules or terms and conditions to the detriment of members are also likely to be considered unfair. In indefinite contracts, it is accepted that a club may need a right to make unilateral changes. However, the club should give the member reasonable notice of changes. One way of limiting unfairness is to give members the right to dissolve the contract without penalty or loss of pre-payments if they are unhappy with the changes.

“Unrestricted clauses allowing a club to vary the club rules or terms and conditions to the detriment of members are also likely to be considered unfair.”

Examples of unfair variation terms:

1. 'Management reserves the right to vary, revoke or add to these Rules from time to time at its absolute discretion'.
2. 'The Club reserves the right to amend these rules at any time and without notice to individual members, but notification of the change will be displayed on club notice boards'.
3. 'I will take steps to make sure that I and any members of my family or other guest introduced by me understand the terms of this contract and complies with the Club Rules (which can be varied at the discretion of the management to maintain the standard of the Club)'.

All of the above terms were deleted from the contracts.

11 Right to change what is supplied

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.

Terms which allow any changes in what is supplied

- 11.1** Clauses which allow a club to supply something different from what was agreed are likely to be considered unfair if they are drafted to allow more than minor or technically unavoidable changes.

Changes in the manner in which services are supplied

- 11.2** Members are legally entitled to receive the service they agreed to purchase and not one which is merely similar. Any term which enables the club to alter the important characteristics of the way the service will be provided is likely to be considered unfair. An example could be a change of opening hours. A change considered 'minor' by the club may be important to the member.

Importance of securing the member's genuine agreement

- 11.3** Any significant change to the contract should be agreed with the member, not enforced by reference to a variation clause. The member should be notified as early as possible of the club's wish to vary the contract, should be free to choose between accepting the change, or exercising a right to cancel with a refund of advance payments.

Any significant change to the contract should be agreed with the member, not enforced by reference to a variation clause.

Fairness of narrowly drafted terms

- 11.4** Terms that allow a club to vary what it supplies should be clearly restricted to genuinely minor and technical matters. Such terms should be carefully drafted so that they cannot be used to permit changes disadvantageous to the member, particularly with respect to costs, access to the facilities, or the member's liability.

Example of unfair 'right to change what is supplied' terms:

Original term

'The Club's normal hours of operation and the hours in which any facility within the Club are available to Members can be obtained from the Manager upon payment. Such hours may be lengthened or shortened at the entire discretion of the Manager, with or without any prior notice to Members being given. The Manager shall however endeavour to give reasonable notice of any lengthening or shortening of such hours'.

New term

'Details of the Club's current opening hours and facilities are displayed in the Club. We may sometimes need to change opening hours or facilities available. If we need to do this we will, where reasonably possible, display notices in the Club notifying you of the change at least 2 weeks beforehand. If we make a significant change to the opening hours or facilities available, you can cancel your agreement in accordance with clause 4. In addition we will refund you for any part of your membership fee for the period since the change was in force'.

Original term

'The Proprietor retains the right to vary, add or eliminate any of the particular services and facilities provided within the Club from time to time'.

Term deleted.

12 Price variation clauses

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.

Unrestricted increases in costs of membership

12.1 Terms allowing the club to make unrestricted increases in the costs of membership are likely to be considered unfair especially if the increases are inescapable. The member may have entered the contract at one price but would not have done so at the increased price. Clauses which allow the variation of such terms have potential to cause members serious detriment because the terms lie at the 'core' of the contract.

"Terms allowing the club to make unrestricted increases in the costs of membership are likely to be considered unfair especially if the increases are inescapable."

Importance of a right to cancel

12.2 The example unfair terms below appear to allow clubs to increase subscription rates, even in the initial fixed membership period. In the first example, various increased or additional charges could be imposed on members without their knowledge. Fair charges are those made clear at the start of the contract and those where adequate notice is given of increases together with a right to cancel membership without penalty if they are unacceptable.

Example of an unfair 'price variation' term:

Original term

'Membership subscription rates may be changed from time to time in accordance with the rules of the relevant Club and the member agrees to pay any increased subscriptions which may be due during the continuance of this contract'.

New term

'Members who do not wish to accept an increase in subscription may cancel their membership by giving written notice. The member giving notice must continue to pay subscriptions at the rate current immediately prior to any proposed increase until the end of such notice period. The company will refund any subscriptions that have been paid by a member for any period after the expiry of the notice'.

13 A club's right of final decision

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.

Excessive power to decide disputes or to decide what the contract means

13.1 Both types of term illustrated here appear to remove the member's important right to refer disputes about the meaning or application of a term to the courts. They purport to take away the normal rule of law that such disputes can be referred to the courts if either party so chooses. Such terms are normally considered unfair and should either be deleted or should allow for an independent body to arbitrate the dispute, provided of course that this explicitly does not restrict the member's right to go to court.

Example of unfair terms falling within Paragraph 1(m):

1. 'Any dispute or difference which may arise in regard to the interpretation of the Rules shall be determined by the Management, whose decision shall be final'.
2. 'The club reserves the right to immediately expel any member for conduct which in the opinion of the club, whose decision shall be final, or its management, is considered detrimental to the general well being and good order of the club'.

Both of the above terms were deleted from the contracts.

14 Entire agreement clauses and formality requirements

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.

Promises made by club representatives

14.1 It is central to good faith that the parties to a contract will keep their word. Good faith demands that the parties are bound by their promises and by any other statements they or their representatives make to secure the other person's agreement.

"It is central to good faith that the parties to a contract will keep their word."

Exclusion of responsibilities for promises that are not written down

14.2 Contracts often contain terms that exclude liability for any promises that are not in the contract, and provide that all the binding terms and conditions are contained in the standard written agreement and supersede oral statements or representations. A variant with a similar effect is for terms to say that changes to the contract are permitted only if agreed in writing. Other such terms include a requirement that variations should be signed by a director of the company, or that no employee has authority to vary the contract. OFT is likely to object to all such terms.

Scope in such terms for members to be misled

14.3 Terms that exclude liability for unwritten promises and statements are objectionable because they present scope for prospective club members to be misled. Applicants for membership will not generally know enough to detect inconsistency with the written contract and may be induced into the contract by oral promises or representations that are inconsistent with the written terms. If clubs can purport to disclaim responsibility on this basis, the scope for bad faith is clear. Even if there is no deliberate abuse, it weakens the club's incentive to take care in what they say and to train and control their representatives.

Effect of such terms

14.4 A court normally gives effect to written terms but will, if necessary, consider other evidence on what was really agreed, including what was said. It will do so particularly where it is necessary to prevent fraud or bad faith. But the fact that a term may be struck out in legal process does not make its inclusion in consumer contracts fair. A term stating that written terms have precedence also tends to mislead members as to their rights. Such terms have been used to deter members from trying to enforce promises that persuaded them to join.

How to improve such terms

14.5 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. The club may use prominent notices to warn members that they should read the terms carefully to ensure the terms contain everything they want to be in the contract, and exclude everything they are not prepared to agree to.

Examples of unfair terms falling within Paragraph 1(n)

Original term

'The full terms of this contract are contained in this agreement which may only be modified or varied on the part of the Company by writing signed under the hand of a Director'.

Original term

'The member hereby declares that he/she is over the age of eighteen and has read and understood the clauses contained in this contract and has not relied upon any representations whether written or oral made by the Company or by anyone on its behalf'.

Both of the above terms were deleted from the contracts. The following example was revised:

Original term

'It is hereby agreed and declared that any warranty or condition in relation to the Contract is only as contained herein and it is further agreed that this Contract can only be varied in writing signed under the hands of a director'.

New term

'It is the intention of the Club that all terms of a financial contract between the customer and club are contained in this document'.

15 Binding members where a club defaults

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

(o): obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his.

15.1 A term that requires the member to continue paying, while allowing the club to opt out of its obligations, has clear potential for unfairness in our view.

How to make such terms fairer?

15.2 Such clauses are sometimes intended to deal with circumstances beyond the control of a club, such as damage due to a fire or flooding, which prevents the club from being able to provide its services. However, it would be unfair for a club to require its members to continue paying their subscriptions while the services are unavailable. Fairer terms would allow the members either to terminate their membership without penalty, or extend the duration of membership for a period at least long enough to make up for the time that the services were unavailable. A club is able to insure against such losses.

"A term that requires the member to continue paying, while allowing the club to opt out of its obligations, has clear potential for unfairness in our view."

Examples of unfair terms falling within Paragraph 1(o):

Original term

'The company will use its best endeavours to ensure that all equipment and machinery is maintained in full working order but the company shall be under no liability to the member in respect of any failure or breakdown of any equipment or machinery and such failure or breakdown shall not relieve the member of the obligation to make payments in clause 2 hereof'.

Original term

'If through circumstances beyond the control of the proprietors the club is unable to provide the full range of services as advertised, the member shall remain liable for all membership fees'.

Both of the above terms were deleted.

16 A Club's right to assign without consent

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

(p): giving the seller or supplier the possibility of transferring his rights and obligations under the contract, where this may serve to reduce the guarantees for the consumer, without the latter's agreement.

- 16.1 If a club sells its business, or part of it, and members find themselves dealing with someone else, their legal position should be unaffected by the change. The Regulations indicate that one way to protect the members' interests is through consultation, with assignment permitted only if the member consents. Where services are being provided, and payment is being made on a continuing basis, a more practicable approach may be for the consumer to have a penalty-free right of exit if he objects to an assignment. Alternatively, an assignment clause may be considered fair if the consumer's rights under the contract will not be prejudiced by the assignment.

Example of unfair term falling within Paragraph 1(p):

Original term

'This agreement and the benefits and advantages herein contained are personal to the Member and shall not be sold assigned or transferred by the Member but the Company's obligations may be performed by the Company's Agents or assigns and the Company may assign the benefit of this agreement'.

The above term was deleted from the particular contract.

Part V: Other types of unfair term

17 Regulation 5: Other types of unfair term

- 17.1 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 which operate differently. The most commonly used terms in this category are discussed here.

Signed statements

- 17.2 Many contracts require the member to sign a statement (usually on the reverse side of the terms and conditions) confirming that the member has read the contract and associated documents. Requiring members to make such a statement or declaration is likely to be unfair if it puts them at a legal disadvantage. Members should be permitted to state facts within their knowledge if they wish. But a prescribed declaration in standard form effectively forces the member to make it whether or not it is factually correct. Members 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.

- 17.3 Even members who have read the contract thoroughly cannot know for certain that they have understood it correctly. The value of definite statements that they have understood the document is therefore often likely to be questionable.

- 17.4 Much more likely to be considered fair, is a clear and prominent warning that the member **should read and understand the terms before signing them**. Such a warning may be useful, because it reminds the member to ask the club for additional information before signing.

- 17.5 For such a warning to be meaningful, terms must be written in plain and intelligible language (as required by Regulation 7) and members must have a real opportunity to examine and if necessary query them.

"Much more likely to be considered fair, is a clear and prominent warning that the member should read and understand the terms before signing them."

Annexe

A TYPES OF TERM IN HEALTH AND FITNESS CLUB AGREEMENTS MENTIONED IN THIS GUIDANCE

a	Ambiguous terms	Part II and Section 18 of Part V
	Assignment by clubs	Section 16 of Part IV
	Automatic renewal by clubs	paragraphs 8.1 & 8.2 of Part IV
b	Binding members to hidden terms	Section 9 of Part IV
	a club's discretion to provide contracted services	Section 3 of Part IV
	Breach of contract	
	a club's right to determine whether it is in breach	Section 13 of Part IV
	exclusion of liability for breach	Section 2 of Part IV
c	Cancellation	
	by the club	Section 6 of Part IV
	by the member	Section 4 of Part IV
	by the club without notice	Section 7 of Part IV
	excessive notice periods for cancellation by the member	Section 8 of Part IV
	Circumstances beyond the control of the club	Section 15 of Part IV
	of the member	paragraph 5.5 of Part IV
	Consumer credit agreements	paragraphs viii-x of Part III
	Core terms	paragraph iv of Part III
d	Death and personal injury	See Exclusion clauses
	Declarations (signed statements) by members	paragraph 17.2 of Part IV
	Disclaimers of liability by the club	Sections I & 2 of Part IV
e	Entire agreement clauses	Section 14 of Part IV
	Exclusion clauses	
	for death or personal injury	Section 1 of Part IV
	for breach of contract by club	Section 2 of Part IV

18 Regulation 7: plain and intelligible language

18.1 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 a doubt about the meaning of a written term, the interpretation most favourable to the consumer shall prevail.

18.2 OFT considers that contracts must be intelligible to ordinary consumers without legal advice. This means using words in their normal sense and avoiding jargon such as 'warrants and represents' and 'severally liable' which we have seen. Such phrases should preferably not be used at all, and certainly not without explanation.

18.3 Terms are, in general, less likely to be unfair if the member has been given a full opportunity to examine them in advance of signing the contract. To meet this requirement, efforts should be made to draw the member's attention to, and to explain, those provisions which are of particular importance.

18.4 A cooling-off period in which the member can withdraw from the contract without penalty is likely to make the terms fairer, since members have an opportunity to reflect on what is being offered. This is especially important in contracts which require the member to join for a minimum period.

19 Small print

19.1 The Regulations say nothing directly about print size. However, intelligibility also depends on how contracts are presented and used. Obviously print size 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.

f	Final right of decision by club	Section 13 of Part IV
	Financial penalties on members	Section 5 of Part IV
	Formality requirements	Section 14 of Part IV
h	Hidden terms	
	binding members to hidden terms	Section 3 of Part IV
i	Information	
	lack of clear information for members	paragraph iii of Part III
	Injury	See Exclusion clauses
	Intelligibility of contract terms	Section 18 of Part V
j	Joining fees	
	retention of joining fees	Section 4 of Part IV
l	Liability	
	limitation of liability	see Exclusion clauses
	Lost property	
	disposal of members' property	paragraph 2.5 of Part IV
m	Minimum membership periods	paragraphs iv and v of Part III
	Mitigation	paragraph 5.3 of Part IV
n	Notice periods for cancellation	paragraphs vi and vii of Part III and paragraph 8.3 of Part IV
o	Oral terms	
	exclusion of liability for statements made by club representatives	Section 14 of Part IV
p	Penalties	
	financial penalties on members	Section 5 of Part IV
	Personal injury	see Exclusion clauses
	Plain and intelligible language	Section 18 of Part V
	Prepayments, non-return of	Section 4 of Part IV
	Price variation clauses	Section 12 of Part IV
	Property left behind by member	
	disposal of members' property	paragraph 2.5 of Part IV

r	Refunds	paragraph 2.4 and Section 4 of Part IV
	Renewal of membership	paragraphs 8.2 & 8.3 of Part IV
	Right to assign agreement	see Assignment
	Right to change what is supplied	Section 11 of Part IV
	Right to increase prices	see Price variation clauses
	Representations made by club representatives	see Oral terms
	Rolling membership agreements	paragraphs vi and vii of Part III
	Rules/Regulations (availability of)	Section 9 of Part IV
s	Serious grounds	Section 7 of Part IV
	Suspension of services	Section 15 of Part IV
t	Termination of agreement	see Cancellation
u	Unclear/Unintelligible terms	Section 18 of Part V
v	Variation clauses	
	a club's right to vary terms generally	Section 10 of Part IV
	a club's right to change what is supplied	Section 11 of Part IV
	right to vary prices	Section 12 of Part IV