



OFFICE OF FAIR TRADING

The Unfair Terms In Consumer Contracts Regulations 1999¹ (UTCCRs) & Enterprise Act 2002 (EA02)

A Concordat between the Office of Fair Trading (OFT), and the Financial Services Authority (FSA)

The purpose of this statement is to record our agreement to co-ordinate enforcement action and to co-operate in all ways permitted by law to ensure the effective and consistent delivery of consumer protection in relation to unfair terms in consumer contracts under the UTCCRs and the EA02. Working arrangements are summarised in the Annex, but may be developed further by agreement between the OFT and the FSA within the terms of this concordat.

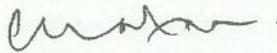
We agree to co-operate, by sharing information, and in all other ways, as permitted by law, with each other and with other UK qualifying bodies responsible for the enforcement of the UTCCRs and EA02. We will have regard to any guidance on unfair contract terms which has been discussed with each other and published².

We will ensure that in deciding upon any enforcement action in respect of a potential breach of the UTCCRs causing potential consumer harm, we will have regard to the principles that regulatory activities should be carried out in a way which is proportionate, consistent, transparent, accountable and targeted only at cases in which action is needed. The OFT will enforce the UTCCRs in line with published statements of enforcement principles; the FSA will enforce the UTCCRs in line with the Unfair Contract Terms Regulatory Guide in its Handbook.

The OFT and the FSA will work together to ensure that a consistent and co-ordinated approach is taken under the UTCCRs and the EA02 in relation to unfair terms in consumer contracts and to agree which of them is best placed to lead in each case. This will be the body best placed to deliver swift and effective protection of consumers having regard to its expertise, knowledge, and priorities among other matters.

The concordat has effect from 1 November 2009 and replaces the 2008 concordat between the OFT and FSA.³

Signed by.....  Date... 23.11.09
Daniel F Waters, Director of Conduct Risk, Financial Services Authority

Signed by.....  Date... 26.11.09
Clive Maxwell, Senior Director, Markets and Projects, Services, Office of Fair Trading

¹ SI 1999/2083

² Such as OFT's 'Unfair Contract Terms Guidance' (OFT 311), the FSA's May 2005 Statement of Good Practice on 'Fairness of terms in consumer contracts' and other sectoral guidance published from time to time

³ http://www.fsa.gov.uk/pubs/other/concordat_fsa_oft.pdf

Annex

The division of responsibilities between OFT and FSA

The FSA has agreed with the OFT that the FSA will consider the fairness within the meaning of the UTCCRs of standard terms in financial services contracts issued by authorised firms or appointed representatives when they are undertaking any regulated activity (as specified in Part II of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and subsequent amending legislation (RAO)) in the United Kingdom.

This will include contracts for:

- mortgages and the selling of mortgages;
- insurance and the selling of insurance;
- bank, building society and credit union accounts;
- life assurance;
- pensions; and
- investments.

In addition, the FSA will consider the fairness within the meaning of the UTCCRs of terms in standard form contracts of payment service providers when providing payment services (as specified in Schedule 1 to the Payment Services Regulations 2009) save as set out in the paragraphs below.⁴ The FSA shall also address any issues arising under the UTCCRs with firms to which it has issued a Small E-Money Issuer Certificate under Article 9C of the RAO.

The FSA will not have responsibility for considering the application of UTCCRs for firms it registers under the Friendly Societies Act 1974 or 1992 to the extent that they are not also authorised firms under FSMA.

The OFT will consider the fairness within the meaning of the UTCCRs of standard terms in financial services contracts where activities are governed by the Consumer Credit Act 1974 and subsequent amending legislation, including credit card agreements (unless the issues raised fall within the FSA's remit as competent authority under the Payment Services Regulations 2009), second charge secured loans, and unsecured loans. Further, the OFT may consider fairness under the UTCCRs in respect of financial services contracts where the firm concerned is **not** an authorised firm or an appointed representative under FSMA.

The body to which the complaint has been referred will consider who is best placed to review the matter. In doing so consideration will be given to matters such as which body is responsible for most of the contract, or the particular focus of the term complained about, and whether either body is already considering the same or similar issues.

⁴ The FSA, as competent authority, will also consider any issues arising under the revised Regulation on Cross Border Payments in Euro (Regulation (EC) No. 3665/09) when it is implemented in the United Kingdom.

If the FSA considers the OFT is better placed to deal with the matter, it will pass the case to the OFT for it to decide whether, in its view, action by the OFT is required and, if so, what action is appropriate. If the OFT considers the FSA is better placed to deal with the matter, the OFT will act reciprocally.

Principles of working arrangements under UTCCRs/EA02 in relation to unfair contract terms to be followed by OFT and FSA

Subject to any legal obligations and/or restrictions on disclosure and having regard to any overriding policy aims, we will follow the principles set out below in our working arrangements.

FSA will, in addition to its statutory obligations to the OFT under the UTCCRs and EA02:

- consult and liaise with the OFT to reduce duplication of effort and promote appropriate action by the body best placed to lead on the issue (subject to any legal requirements or restrictions);
- have regard to the Primary Authority Principle and/or any Home Authority arrangements applicable;
- consider the use of all appropriate methods of resolution, whether statutory or not, before taking formal enforcement action under the UTCCRs or the EA02;
- provide copies of material for publication on the Consumer Regulation Website (CRW) or OFT website if such publication is considered lawful and appropriate by the FSA and OFT;
- use its powers under the EA02 if it considers it necessary and appropriate and notify and consult with the OFT in accordance with the EA02;
- consult with the OFT on any new guidance issued on unfair contract terms; or change in policy on unfair contract terms where that would be relevant to the OFT's role under this concordat.

OFT will, in addition to its statutory obligations under the UTCCRs and EA02:

- consult and liaise with the FSA to reduce duplication of effort and promote appropriate action by the body best placed to lead on an issue;
- have regard to the Primary Authority Principle and/or any Home Authority arrangements applicable;
- provide training on the notification process;
- disseminate case and other material of wider interest, including: preparing, consulting on and publishing guidance from time to time on the application of the UTCCRs and the EA02, both generally and to particular sectors;
- publish details of successful enforcement action on the Consumer Regulation Website (CRW); and
- consult with the FSA on any new guidance issued on unfair contract terms; or change in policy on unfair contract terms where that would be relevant to the FSA's role under this concordat.