businesscompanion
trading standards law explained

Part 1. Contract law and unfair terms

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Types of contracts

In this first part of the guidance, we will look at the contracts (agreements) that you agree with owners. Generally, there are likely to be two contracts when you sell a holiday caravan / lodge:

- A purchase agreement for the holiday caravan / lodge
- A pitch licence agreement (referred to as a licence agreement) to site a holiday caravan / lodge on a holiday pitch

These may be combined into a single document. Regardless of whether presented as a single contract or not, owners are only likely to realise benefits from the contract(s) in combination. This may limit a park owner's ability to rely on termination to mitigate the effects of an unfair price variation, for example.

There may be additional contracts that you agree with an owner - for example, for you to rent out their holiday caravan / lodge to other consumers for holiday use, or when you carry out additional services such as the installation of decking or other pitch improvements, or moving their holiday caravan / lodge in circumstances not already provided for in the licence agreement.

The sale of the holiday caravan / lodge, the supply of services, and unfair contract terms are covered by the Digital Markets, Competition and Consumers Act 2024 (DMCCA), the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs) and the Consumer Rights Act 2015 (CRA); we will look at these in part 2.

A binding agreement

A contract is a binding agreement between you and the owner. Your contracts must be clear and their terms must be fair. They should also set out all the parties' rights and obligations, along with the consequences if the contract is not complied with, for the lifetime of the agreement.

However, it is important to realise that all of the pre-contract information you provide may form part of the contract. Anything that you or your staff say about yourself or the service you provide, which is then relied on by the owner when deciding whether to enter into the contract (or in relation to the service after they have entered into the contract), may also form part of the contract. You must not exclude these types of statements from your contract.

Your pitch licence agreement may seek to allow you to make changes to your contract - for example, to increase fees or to move pitches due to holiday park improvements. Such terms risk being found to be unfair, especially where they might be used to make changes during a fixed term of a contract.

Any variation term must, as a minimum, set out very clearly what changes may be made. Before the contract is entered into, you will need to set out in detail how any changes will take place, the reasons for the changes and the method for calculating the increase / cost that is to be imposed on the owner. Fairness is more likely to be achieved if you use an external index to set the new price - for example, if price rises are restricted to increasing a pitch fee in line with the Consumer Price Index.

In addition, the term must require you to give plenty of notice to the owner and give the owner the right to exit the contract without being left worse off if they do not agree with the change. This right to exit must be genuine: it must be capable of being exercised in practice without loss or serious inconvenience. For example, in assessing the fairness of a term that you want to rely on to increase the price of a pitch fee, it would be relevant to consider whether the owner could have predicted what the new price would be, how much notice they are given of the price rise, and whether they can end their contract without suffering loss. If the owner would need to move their caravan to another site, or pay you to sell it, or there is not a comparable pitch that they can move to, fairness is less likely to be achieved.

If you have purchased a holiday park, and you and the former park owners have agreed to the licence agreements being novated to you (either expressly or impliedly), you will take on the benefits and obligations of existing pitch licence agreements. This means that you can only make changes that the existing agreement will allow you to make. Whilst those agreements remain in force, you cannot make changes that the agreements do not allow for, nor impose new agreements upon existing owners.

User-friendly, clear and unambiguous terms

When purchasing a holiday caravan / lodge, owners are entering into a large financial transaction. In addition, they will usually be agreeing to a long-term contract regarding the siting of their purchase. As we have already indicated, the model for your sector is unusual; it is therefore vital that owners have a clear understanding of their rights and what they are committing to. Failure to get this right may lead to the relevant provision being unfair. We will look at the consequences of using unfair terms later on in this part of the guidance.

The following checklist may help you to assess the clarity of your contract. Contract terms must not only be fair, they must also be transparent. A lack of transparency will be taken into account when considering the fairness of a term.

Contract transparency checklist

Question	Reason
Is the contract easy to read?	Small print may put owners off from reading the contract. Poor layout does not enable owners to get a full understanding of the contract. Avoid headings like 'The small print'. These words may be amusing for lawyers, but they can imply that these sections do not need to be read
Is the contract easy for an owner to understand?	Contracts must be written for owners to read, not lawyers. Avoid jargon. When this is not possible, ensure you have adequate definitions as part of your contract
Are important terms brought to the owner's attention?	Good practice can be to summarise the most important terms at the beginning of your contract, linking to the main content. This may include: i) how pitch fees are reviewed ii) a clear indication that the holiday caravan / lodge cannot be used as a permanent residence iii) which services are included within the pitch fee iv) the transfer fee that may be charged if the owner sells their holiday caravan / lodge privately on its pitch v) restrictions relating to the sale, disposal and age of the holiday caravan / lodge vi) onerous and unusual terms A core term that is not brought to the owner's attention will fail the prominence requirement for the core terms exemption and risk being legally unfair. (See 'The fairness test' below)

Question	Reason
Can the owner understand the consequences of each of the terms of the contract and how they work together?	The requirement of plainness and intelligibility means that the term must not only make grammatical sense but must put the owner in the position of being able to evaluate, based on clear, intelligible criteria, the economic consequences that could arise from it. The relationship to other terms must also be explained in a transparent manner

Consequences of using unfair terms

Where a term is unfair, it is unenforceable against the owner (although the owner can still rely on it against you if they wish to). The rest of the contract remains binding, even if it is less of a good deal for you without the unfair term; you cannot amend an unfair term later to make it more fair. If you have relied on a term to collect money from owners, and this term is later found to be unfair, you may have to refund all of this money. This could have major implications for the operation of your contract and may have a much wider impact on all similar contracts that you have entered into.

In addition, enforcement action can be taken by public enforcers, including local authority Trading Standards services and the Competition and Markets Authority. Both organisations can use a civil injunction to prohibit the use of unfair terms and can secure redress for owners who have been affected by unfair terms or practices.

Blacklisted terms

The CRA states that certain terms, allowing you to exclude or restrict your liability under consumer law, are automatically unfair and not binding on an owner. Terms that would be relevant to your sector include:

- Those that exclude or restrict your liability, under the CRA, with regard to goods that you have sold to the owner - for example:
    - Not accepting any liability when the holiday caravan / lodge is not fit for purpose or is defective
    - Not accepting any liability when there are problems with the holiday caravan / lodge that are caused by your staff or sub-contractors when siting the unit
    - Stating that only the manufacturer is responsible for any faults with the holiday caravan / lodge
- Those that exclude your liability for the workmanship of sub-contractors you have employed to carry out work that you have agreed with the owner. The CRA states that this work must be carried out with reasonable care and skill
- Any restriction of your liability for death or personal injury that has been caused due to negligence of you, your staff, or sub-contractors working on your behalf
- Those that prevent owners from relying on any pre-contractual statements made by your staff

'Grey list' terms

The CRA contains a list of 20 terms that may be regarded as unfair, known as 'the grey list'. However, these terms are not automatically unfair, and all the circumstances relevant to the contract need to be considered when assessing them.

Two examples of terms on the grey list are as follows.

"2. A term which has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the option of offsetting a debt owed to the trader against any claim which the consumer may have against the trader."

This may apply to a term in your contract that attempts to limit your liability when services or facilities, within the pitch licence agreement, are unavailable for reasons that you are able to control.

"11. A term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract."

This may apply to a very generally worded term, allowing you to vary any aspect of the pitch licence agreement without including examples of legitimate reasons when terms of the contract may need to be varied, such as when the law changes.

We will return to the grey list in part 4, when we will look at specific aspects of your contract.

The fairness test

Finally, the CRA applies a test of fairness to your contract terms, which takes account of the following:

- What the contract is about
- All the circumstances existing when a contract was agreed
- All the other terms of that contract and any other relevant contract

The CRA states that a contract term "is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer". For example, this may apply to a term that allows you to carry out more detailed checks on a private buyer of a holiday caravan / lodge than you would carry out on a person that you are selling directly to.

We will return to the fairness test in part 4, where we will look at specific aspects of your contract.

An exemption in the legislation means that a term may not be assessed for fairness to the extent that it specifies the main subject matter of the contract or the appropriateness of the price payable. This is sometimes referred to as the core exemption, or core terms exemption. However, if the subject matter and price terms are not transparent and prominent, the fairness test can be applied to them. As an example, it will be difficult for an owner to argue that the price / pitch fee was unfair if that price / pitch fee was specifically brought to their attention prior to entering the contract and provided it is transparent, although any clause allowing a variation of the price / pitch fee will still be subject to the fairness test.

CMA unfair terms guidance

The Competition and Markets Authority has produced detailed unfair contract terms guidance.

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