



**Law
Commission**
Reforming the law

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Protecting consumers from unfair small print

The Law Commission and the Scottish Law Commission have today recommended reforms to provide better protection for consumers from unfair charges in small print.

Price comparison websites put increasing pressure on traders to offer low headline prices, while making profits from other charges. The Law Commissions recommend that the courts should not interfere with prices which are transparent and prominent. But where charges are tucked into small print, the courts should have the power to assess them for fairness.

Since 1994, under an EU directive, the courts have had power to assess the fairness of terms in consumer contracts, but may not look at the amount of the price. In 2009, the issue of what is the price came to the fore in litigation over bank charges for unauthorised overdrafts: the Court of Appeal thought that the bank charges could be assessed for fairness, while the Supreme Court thought that they could not.

David Hertzell, the Law Commissioner leading on the project for England and Wales, says:

“The current law is baffling – so much so that consumers and regulators are reluctant to challenge unfair charges. Both traders and consumers need clearer law. If a price is transparent and prominent, the courts should not interfere – but other charges need to be fair.

“We have consulted widely on our recommendations, and both business and consumer groups agreed on the need for reform. Our approach gives traders control over what charges are exempt from review – provided they put them upfront.”

The issue arises in many fields, from cancelling a wedding to airline excess baggage. Mobile phones, payday loans, estate agents and gyms may all be affected.

Other recommendations include more powers to remove legal jargon in end user licence agreements (EULAs). Typically, a EULA gives a consumer only limited rights to use computer software and software-driven products. As e-commerce in such products expands, so does the variety and importance of EULAs in defining what can be done with them.

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Professor Hector MacQueen, Scottish Law Commissioner, says:

“Consumer law requires contracts to be expressed in plain, intelligible language, but EULAs continue to be written in complex, obscure ways. The examples we looked at were peppered with legal jargon.

“The software industry has argued that consumer legislation does not apply to some EULAs as they are ‘licences’ rather than ‘contracts’. Our recommendations close this supposed loophole.”

More generally, the Law Commissions are recommending simplifying this area of consumer law by bringing together the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 into new legislation. The recommendations also clarify some of the other terms used in the European directive.

Notes for editors

1. David Hertzell, the Law Commissioner leading on this project, is available for interview.
2. The recommendations are published in Unfair Terms in Consumer Contracts: Advice to the Department for Business, Innovation and Skills. A summary is available.
3. The Advice updates a joint report from the two Law Commissions from 2005: Unfair Terms in Contracts (LC292. SLC199), which is available at <http://lawcommission.justice.gov.uk/areas/unfair-terms-in-contracts.htm>.
4. The Unfair Terms in Consumer Contracts Regulations 1999 implement the Unfair Terms Directive 1993. The bank charges litigation culminated in the case of *Office of Fair Trading v Abbey National and others* [2009] UKSC 6.
5. For more details on this project, visit http://lawcommission.justice.gov.uk/areas/unfair_terms_in_contracts.htm or www.scotlawcom.gov.uk. Details of problems with end user licence agreements are available in Appendix C of the Issues Paper:
6. The Law Commission and the Scottish Law Commission are non-political independent bodies, set up by Parliament in 1965 to keep all the law of England and Wales and of Scotland under review, and to recommend reform where it is needed.
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