

**Complainant:** Leicestershire County Council

**Complaint against:** Vodafone Ltd

**Case opened:** 16 November 2004

**Case closed:** 15 March 2005

**Issue:** Unfair contract terms and misleading promotional literature

**Relevant instrument:**

Part 8 of the Enterprise Act 2002

The Control of Misleading Advertisements Regulations 1988, The Unfair Terms in Consumer Contracts Regulations 1999 and The Consumer Protection (Distance Selling) Regulations 2000

Leicestershire County Council ("LCC") submitted a complaint in relation to Vodafone's:

1. terms and conditions for 18 different Vodafone consumer contracts; and
2. promotional literature for its insurance cover.

This complaint was prompted by various complaints that LCC received from consumers.

LCC's complaint raised concerns relating to the Unfair Terms in Consumer Contracts Regulations 1999 ("UTCCR"), the Consumer Protection (Distance Selling) Regulations 2000, and the Control of Misleading Advertisements Regulations 1988.

Ofcom opened an investigation into the complaint pursuant to its powers under Part 8 of the Enterprise Act 2002 (the "Act").

### **Vodafone contract terms**

Ofcom considered that the following seven of the 18 Vodafone contracts (the "Contracts") contained potentially unfair terms which could breach the UTCCR:

1. Top up transfer;
2. General website terms;
3. Vodafone mail;
4. Airtime;
5. Pay monthly;
6. Vodafone live! Postcard; and
7. M-pay bills.

The terms in the Contracts which Ofcom considered to be potentially unfair are listed below.

## **1. Top up transfer contract**

**Clause 9** - Limitation of liability excluded all liability other than death or personal injury from Vodafone's negligence.

Ofcom regarded this clause as potentially unfair under paragraph 1 (b) of Schedule 2 of the UTCCR as it may inappropriately exclude or limit 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, in particular, by excluding the liability of Vodafone in the provision of the services for any losses, damages, costs or expenses arising from any errors, defects and delays in the provision of the services.

Vodafone has revised the wording of this clause to restrict the exclusion of liability to when it is not Vodafone's fault.

## 2. General website terms and conditions

**Disclaimer and Limitation of Liability** clause was widely drafted with the effect of excluding most claims of liability against Vodafone.

Ofcom regarded this clause as potentially unfair under paragraph 1(b) of Schedule 2 of the UTCCR as it may inappropriately exclude or limit 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, in particular, by limiting or disclaiming liability, subject to such liability which may not be excluded or limited by the applicable law.

Vodafone has proposed to delete from the clause the wording in relation to the exclusions of liability in respect of consumers as soon as is practicable and to not enforce this provision in the meantime.

## 3. Vodafone Mail contract

In the Vodafone Mail contract, Ofcom regarded the following clauses as potentially unfair under the UTCCR:

- Limits on Vodafone's Liability
- Disclaimer
- Termination and Variation Rights
- Miscellaneous representations

Vodafone has submitted that the terms and conditions complained of are an outdated set. The current version does not include those provisions. Vodafone is in the process of removing the obsolete terms and will not enforce those in the meantime.

## 4. Airtime contract

**Clause 5 Liability and Clause 9 Liability** and exclusions were drafted widely with the effect of excluding liability for consequential and indirect losses.

Ofcom regarded those clauses as potentially unfair under paragraph 1(b) of Schedule 2 of the UTCCR as they may inappropriately exclude or limit 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, in particular by limiting or disclaiming liability, subject to such liability which may not be excluded or limited by the applicable law. Please note that Clause 5 is a summary of Clause 9.

Vodafone has revised those clauses to include the wording that liability may be excluded for any business loss or any indirect or consequential loss which is not reasonably foreseeable at the time the contract is entered into.

## 5. Pay-monthly contract

**Clause 5 Liability and Clause 9 Liability and exclusions** are drafted widely with the effect of excluding liability for consequential and indirect losses.

Ofcom regarded those clause as potentially unfair under paragraph 1(b) of Schedule 2 of the UTCCR as they may inappropriately exclude or limit 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, in particular by limiting or disclaiming liability, subject to such liability which may not be excluded or limited by the applicable law. Please note that Clause 5 is a summary of Clause 9.

Vodafone has revised those clauses to include the wording that liability may be excluded for any business loss or any indirect or consequential loss which is not reasonably foreseeable at the time the contract is entered into.

## 6. Vodafone live! Postcard

**Clause 8.4** is drafted widely with the effect of excluding liability for consequential and indirect losses.

Ofcom regarded this clause as potentially unfair under paragraph 1(b) of Schedule 2 of the UTCCR as it may inappropriately exclude or limit 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, in particular by limiting or disclaiming liability, subject to such liability which may not be excluded or limited by the applicable law.

Vodafone has proposed to delete from the clause the wording in relation to the exclusions of liability in respect of consumers as soon as is practicable and propose to not enforce this provision in the meantime.

**Clause 8.6** limited Vodafone's liability to amounts paid by the customer for the Services in the year in which an event occurs.

Ofcom regarded this clause as potentially unfair under paragraph 1(b) of Schedule 2 of the UTCCR as it may inappropriately exclude or limit 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, in particular, by limiting liability to the amounts paid by a customer in the year in which the event occurs.

Vodafone has proposed that it will delete this wording from the relevant clauses as soon as practicable and will not enforce the provisions limiting liability under this clause to the amounts paid for the services in the meantime.

**Clause 11.3** limited Vodafone's liability to amounts paid by the customer for the Services in the year in which an event occurs.

Ofcom regarded this clause as potentially unfair under paragraph 1(b) of Schedule 2 of the UTCCR as it may inappropriately exclude or limit 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, in particular, by limiting liability to the amounts paid by a customer in the year in which the event occurs.

Vodafone has proposed that it will delete this wording from the relevant clauses as soon as practicable and will not enforce the provisions limiting liability under this clause to the amounts paid for the services in the meantime.

**Clause 14.4** excluded representations made to the customer by an agent of Vodafone.

Ofcom regarded this clause as potentially unfair under paragraph 1(n) of Schedule 2 of the Regulations as it may limiting the seller's or supplier's obligation to respect commitments undertaken by his agent or making his commitments subject to compliance with a particular formality. In particular, by excluding responsibility under the contract for any previous statements made to the customer.

Vodafone has proposed to delete this clause as soon as is practicable and to not enforce this provision in the meantime.

Ofcom accepted undertakings from Vodafone in respect of the potentially problematic clauses in the Contracts. On this basis, Ofcom decided to close its investigation into the Contracts under the UTCCR.

It should be noted that Ofcom does not have the power to "clear" contract terms under the Regulations. Only a court has the power to determine whether a term is unfair under the Regulations. Ofcom is therefore able to consider any further complaints regarding these Terms and Conditions in the light of the evidence presented to it.

Ofcom has not identified any problematic issues in relation to the contracts under the Consumer Protection (Distance Selling) Regulations 2000.

## **Vodafone promotional literature for its insurance cover**

Ofcom considered that Vodafone's promotional literature for its insurance cover was confusing and potentially misleading under the Control of Misleading Advertisements Regulations 1988.

The literature contains a textbox entitled "What's covered". This textbox purports to detail the insured risks. The actual risks that are insured under the contract of insurance are much more restrictive than are detailed in the textbox. Accordingly, the promotional literature is confusing and has the potential to mislead.

Vodafone submitted revised insurance promotional literature to Ofcom. This literature includes changes to clarify the fact that the cover relates to theft from locked vehicles and does not include loss while unattended. On this basis, the promotional literature no longer raises any concerns under the Control of Misleading Advertisements Regulations 1988.

On the basis of the above, Ofcom has decided to close the investigation.

**Case Leader:** Tanya Rofani (020 7783 4342 e-mail: [Tanya.Rofani@ofcom.org.uk](mailto:Tanya.Rofani@ofcom.org.uk))

**Case Reference:** CW/00801/11/04

## **Text published when the case was opened**

### **Complaint against Vodafone about unfair contract terms and misleading promotional literature**

**Complainant:** Leicestershire County Council

**Complaint against:** Vodafone Ltd

**Case opened:** 16 November 2004

**Issue:** Unfair contract terms and misleading promotional literature

**Relevant instrument:**

Part 8 of the Enterprise Act 2002

The Control of Misleading Advertisements Regulations 1988, The Unfair Terms in Consumer Contracts Regulations 1999 and The Consumer Protection (Distance Selling) Regulations 2000

Leicestershire County Council has submitted a complaint to Ofcom in relation to Vodafone's promotional literature for its insurance cover and the terms and conditions for various Vodafone products and services (including Airtime, Paymonthly and Pay as You Talk). This complaint was prompted by various complaints received by Leicestershire County Council from consumers.

Leicestershire County Council's complaint raises concerns relating to the Control of Misleading Advertisements Regulations 1988, the Unfair Terms in Consumer Contracts Regulations 1999 and the Consumer Protection (Distance Selling) Regulations 2000.

Ofcom is investigating the complaint pursuant to its powers under Part 8 of the Enterprise Act 2002.

**Case Leader:** Tanya Rofani (020 7783 4342 e-mail: [Tanya.Rofani@ofcom.org.uk](mailto:Tanya.Rofani@ofcom.org.uk))  
**Case Reference:** CW/00801/11/04