



Briefing 13-12 April 2013

Unfair Gym Membership Contracts – OFT Update

In 2011, the High Court ruled on a case brought by the Office of Fair Trading against Ashbourne Management Services Limited, a company specialising in the provision of gym membership management, recruitment and retention services. As a result of the ruling, the OFT has secured further recent changes to contract terms from the main leisure operators

Key commitments from leisure operators

- extended rights for members to cancel their contracts early should their circumstances change in a way that makes attendance at the gym difficult or unaffordable - for example if they lose their jobs or suffer an injury
- a commitment not to describe membership as being of a fixed duration, if the contract automatically continues on a rolling basis after the initial membership period has expired
- greater transparency about key membership features, including initial membership periods and cancellation rights, and for these to be provided upfront as part of the sales process.

Introduction

The Office of Fair Trading OFT has been investigating a number of companies that operate gym and fitness club chains or who provide management services to gyms. Under the Enterprise Act 2002, it is considering whether these companies are using or recommending unfair contract terms in breach of the Unfair Terms in Consumer Contracts Regulations 1999 and/or are engaging in any unfair business practices under the Consumer Protection from Unfair Trading Regulations 2008.

This investigation follows the ruling in the High Court in August 2011, which prevented Ashbourne Management Services Limited (AMS), a gym management company, and its directors from recommending, using or relying on certain unfair contract terms and prohibits a number of its debt collection practices which amount to unfair commercial practices. (APSE Briefing 11-31)

Following the AMS court ruling, the OFT continued its investigations into Virgin Active Ltd (concluded 2012), Bannatyne Fitness Ltd, David Lloyd Leisure Ltd and Fitness First Clubs Ltd. The OFT has announced that it has secured undertakings from these companies to make improvements to their standard contract terms and associated business practices.

A summary of the individual changes agreed is included in this briefing. In addition to greater transparency, rights to cancel early due to changed circumstances and restrictions on rolling contracts, it also includes cooling off periods and the removal of further unfair terms, including an attempt to remove liability from personal trainers.

OFT Comment

Cavendish Elithorn, Senior Director of the OFT's Goods and Consumer Group, said:

'Millions of people are members of gyms and a membership contract can easily be a financial commitment of over £500 per annum. We were concerned that contracts could unfairly lock people in if their circumstances changed - forcing them to continue paying even if they had lost their job'.

'We welcome these changes from Bannatyne's, David Lloyd and Fitness First. As well as making contract terms clearer, the revised contracts also grant members, and prospective members, more flexibility'.

Summary of changes:

Health and fitness club	Summary of changes to terms and conditions, associated documents and sales process
Bannatyne Fitness Limited	<ul style="list-style-type: none"> • Extended provision for cancellation during the minimum term in the following circumstances: <ul style="list-style-type: none"> ○ illness or injury which would preclude the consumer from using the gym for two months or more, and ○ loss of employment (redundancy or otherwise). • Bannatyne's contract also provides for consumer cancellation during the minimum term when the company makes material changes or variations to the membership. • The notice period to cancel a contract with a 12-month minimum term has been reduced from three months to one-month before and after the expiry of the minimum term. • Bannatyne's has: <ul style="list-style-type: none"> ○ clarified that it does not roll over minimum term contracts; ○ improved its contract terms to clarify that the contract continues on a month by month basis after the expiry of the minimum term ○ committed to explaining this in the sales process. • Bannatyne's has committed to review its standard debt collection letters and not to use ones that the OFT considers misleading.

David Lloyd Leisure Limited	<ul style="list-style-type: none"> • Extended provision for cancellation during the minimum term where the consumer is: <ul style="list-style-type: none"> ○ suffering from a medical condition ○ made redundant or declared insolvent ○ relocates 10 miles from a club ○ or, for any other reason where the consumer can show his circumstances have changed which makes attendance at the gym or continued membership unreasonable. • David Lloyd's contract also provides that consumers in the minimum term can cancel due to significant changes at club or due to an increase in fees above a specified rate. • Extended provision for consumers to suspend their membership. • Revised membership description – 'flexible membership', which is an initial minimum term of three months and 'standard membership', which is an initial minimum term of 12 months, and improved clarity of associated notice periods: <ul style="list-style-type: none"> ○ 'flexible membership' can be cancelled with one month's notice and ○ 'standard membership' can be cancelled with one month's notice to end at the expiry of the twelfth month, after which (outside of the minimum term) consumers are required to give three months' notice. • David Lloyd has committed to explaining notice periods in the sales process and to notify consumers before the end of minimum term that the membership will continue and that they will be required to give three months' notice to cancel. • Introduced provision for consumers to switch between flexible and standard membership. • Introduced a cooling off period. • Introduced revised important points document to give consumers an overview of the key contract terms.
Fitness First Clubs Limited	<ul style="list-style-type: none"> • Ceased offering contracts with a minimum term of over 12 months. • Extended provision for cancellation during the minimum term in circumstances which make continued use of the gym 'not possible'. Examples given are: injury; pregnancy; move of workplace or house; redundancy. Consumers are also able to freeze their membership contract. • Fitness First has: <ul style="list-style-type: none"> ○ clarified that it does not roll over minimum term contracts ○ improved its contract terms to clarify that the contract continues on a month by month basis after the expiry of the minimum term ○ committed to explain this in the sales process. • Introduced a 'product presenter' to give prospective members an overview of key contract terms.

	<ul style="list-style-type: none"> • Improved clarity that Fitness First will not claim the outstanding balance and will offer pro-rata refunds where the company cancels the membership for serious breaches by the consumer. • Improved clarity regarding the secondary payment mechanism - term revised to make it clear when this will be used and Fitness First has committed not to use where there is a legitimate dispute. • Removed the exclusion for liability caused by its personal trainers.
--	--

APSE Comment.

APSE welcomes the commitment made by the private leisure operators to remove their more onerous terms and conditions. Local authority run gym facilities have always offered flexible contracts that can be terminated, as circumstances change, without significant cost to the gym user. Unfair contract terms, in excess of a year, will hopefully now be consigned to the waste basket.

Participation in physical activity is a key part of ensuring the long term health of the general population and has to be encouraged, even more so with the public health function returned to local authorities.

Local authority gyms already have a reputation for offering reasonably priced and flexible membership options. It is anticipated that the changes will make pricing by private sector operators more transparent and allow the consumer to make a more informed decision in regard to their leisure membership

Rob Bailey
Principal Advisor, APSE