

## ASSURED SHORTHOLD TENANCY AGREEMENTS

An unfair term is a term in an agreement which a court may consider to be unreasonable or unlawful.

Unfair Terms are defined in the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR): <http://www.legislation.gov.uk/ukxi/1999/2083/contents/made>

Ultimately, it will be up to a court to decide if the terms of a contract are genuinely unfair and therefore void.

The UTCC regulations are enforced by the Competition and Markets Authority (CMA) and local Trading Standards departments who have the power to apply to court for a declaration that a term is unfair and order that it be deleted or amended.

The regulations do not apply to terms which have been individually negotiated.

Examples of terms which may be considered unfair are:

- Terms written such a way they are difficult to understand (using jargon or unintelligible language).
- Terms which allow the landlord to change the agreement whenever they like.
- Terms which favour the landlord over the tenant.
- Terms which suggest you have fewer legal rights than you do.
- Terms which do not leave scope for some discretion.
- Terms which bind a tenant to a term that they have not seen before signing the tenancy agreement ( hidden terms).

Unfair terms	Why is this an unfair term?
A term which states the tenant will be required to pay penalty charges that may be greater than the costs incurred by the landlord (for gardening, cleaning work etc.)	Excessive penalty charges are potentially unfair as the landlord would be benefitting financially. The landlord should only cover any costs they have incurred when tidying garden or cleaning required at the end of the tenancy period.
A term which permits the landlord to enter the property at any time of the day.	The landlord should give you 24 hours' notice in writing before visiting the property. The landlord should not use their own key to enter the property unless you give them permission to do so.
A term allowing the landlord to re-enter the property if the tenant does not comply with all the terms in the housing contract.	<p>The landlord cannot simply take over the property if you do not comply with all the terms in the housing contract.</p> <p>The landlord should follow an eviction procedure. Firstly, the landlord must give you written notice to leave.</p> <p>If your landlord has given you written notice to leave, but you have not left by the time the notice expires, landlords usually have to</p>

	apply for a possession order from the county court telling you to leave. Most tenants are entitled to stay in their accommodation until a possession order takes effect.
A term stating the tenant should undertake excessive cleaning practices, such as the tenant should clean the windows every two weeks.	Requests for excessive cleanliness are potentially unfair.
A term which allows the landlord to frequently view the property.	This interrupts the tenants' right to quiet enjoyment which is unfair.
A term which asks the tenants to ensure protective pads are fitted to the legs of all furniture.	This makes tenants responsible for damage that would normally be viewed as fair wear and tear.
A term which states that no guests are allowed	Having guests should be considered reasonable use of the property, although having a friend stay regularly could be viewed as subletting.

## What do I do if I believe the terms are unfair?

If you feel terms are unfair, it is advisable to discuss these with your landlord **before** signing the contract.

Explain why you think the terms are unfair and ask the landlord to remove or change any unfair terms.

Changes to a housing contract can be made but these should be agreed by you and the landlord.

Clearly mark changes in pen and ask for a signed copy of the amended contract.

Contact your local Trading Standards Officer to discuss the terms you believe are unfair.

## Where can I find more information?

Although the Office of Fair Trading has been abolished, their publication Guidance on unfair terms in tenancy agreements September 2005 is still very useful because it can be used to persuade a landlord or judge that a tenancy term should be deleted. It is available online:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284426/oft311.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284426/oft311.pdf)

You can find general housing information on:

- Goldsmiths Students' Union Advice Pages - [www.goldsmithssu.org/advice](http://www.goldsmithssu.org/advice)
- Shelter Website - [http://england.shelter.org.uk/get\\_advice/private\\_renting](http://england.shelter.org.uk/get_advice/private_renting)
- Citizen's Advice Guide - <https://www.citizensadvice.org.uk/housing/>

