

Unfair contract terms developments in NZ

Speedread

An Australian judgment and UK guidelines inform application of the new law.

Following our article, *Unfair contract terms law: first case is against ISP*¹, which is based on Australian legislation, on which the likely new NZ regime is modelled, the court has entered judgment against the ISP.

Meanwhile, in the UK, the regulator has put out summary material for businesses and specialists on the obligations under their similar regime, while legislative reform ticks away in the background.



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The Australian decision

The ISP consented to judgment against it so there's no extended reasoning. Essentially, this case shows that the regulator – as is likely here – endeavours to educate and then to enforce if suppliers don't fix their contracts.

Said the ACCC about the judgment:²

"The unfair contract terms:

- *enabled ByteCard to unilaterally vary the price under an existing contract without providing the customer with a right to terminate the contract;*
- *required the consumer to indemnify ByteCard in any circumstance, even where the contract has not been breached and the liability, loss or damage may have been caused by ByteCard's breach of the contract; and*
- *enabled ByteCard to unilaterally terminate the contract at any time with or without cause or reason.*

The terms were considered unfair as they:

- *created a significant imbalance in the parties' rights and obligations;*
- *were not reasonably necessary to protect ByteCard's legitimate interests; and*
- *if applied or relied upon by ByteCard, would cause detriment to a customer."*

What's happening in the UK?

The UK material just released by the regulator includes:

- what is called a hub, a website where businesses can get guidance as to compliance with the unfair contract terms regime: guidance that ranges from the simpler end to the more complex;
- a more detailed guide, suitable for specialists, namely, Key issues in ongoing contracts: a practical guide.

The UK is looking to amend its unfair contract terms legislation and regulation, and a draft Consumer Rights Bill has been released.

1. <http://www.wigleylaw.com/assets/Uploads/Unfair-contract-terms-law-first-case-is-against-ISP.pdf>

2. <http://www.accc.gov.au/media-release/court-declares-consumer-contract-terms-unfair>

3. <http://oft.gov.uk/business-advice/unfairterms/>

4. http://www.oft.gov.uk/shared_oft/markets-work/OFT1494_Key_issues_in_ongoi1.pdf

We welcome your feedback on this article and any enquiries in relation to its contents. This article is intended to provide a summary of the material covered and does not constitute legal advice. We can provide specialist legal advice on the full range of matters contained in this article.

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