

Unfair contract terms

August 2023

The [Unfair Contract Terms Act](#) (UCTA) protects parties with less bargaining power from unfair or unreasonable contractual terms. A crucial part of the Act is the “[reasonableness test](#)”, which assesses the fairness and enforceability of exclusion and limitation clauses.

In this article, corporate lawyer Sayem Chowdhury highlights examples of the UCTA's reasonableness test by looking at two examples of case law.

[St Albans City and District Council v International Computers Ltd](#)

Case background

The St Albans council bought a computer system from International Computers Limited (ICL) to collect a new local tax.

St Albans overestimated the number of taxpayers because of a fault in the software and set the rate too low.

It sued ICL for over £1 million in damages for breach of contract.

ICL relied on a clause in its standard terms of business limiting its liability to £100,000.

Decision time

Both the High Court and the Court of Appeal held that the limit of £100,000 was unreasonable under UCTA.

The main reasons for finding the limit unreasonable were:

- ICL was a large company with substantial assets and well insured. Therefore, it was better positioned to bear losses than the St Albans local authority. The

local authority would have to meet losses from increased local taxes, reduced services or both.

- It was reasonable for the person making the profit to carry the risk.
- ICL was in a strong bargaining position. St Albans had no realistic alternative to accepting ICL's terms. St Albans had objected to the limitation clause in negotiations. However, ICL said St Albans had to refer any changes back to its legal department. The resulting delay would have made it impossible to launch the new tax on time.
- St Albans had not been offered any inducement, such as a reduction in price, to accept the limitation.
- St Albans had no opportunity of getting better terms elsewhere because other sellers were offering similar terms (with the same cap on liability).
- The limitation of £100,000 bore no relation to ICL's insurance cover of £50 million, and ICL had not attempted to justify the difference.

As an aside, the Court of Appeal reduced the award of damages on unrelated grounds.

[Phoenix Interior Design Ltd v Henley Homes plc and another](#)

Case background

Interior design services were provided to the defendants by Phoenix Interior Design for the refurbishment and fitting out of the 5-star Dunalastair Hotel in the Scottish Highlands.

Phoenix sought payment of outstanding invoiced sums, representing 50% of the total contract value.

The defendants argued that the contract had not been completed based on various allegations that the goods and services supplied had been defective and counterclaimed for damages for breaches of warranty.

The case was tried over two weeks in the Queen's Bench Division.

The judgment considered the law on the incorporation of standard terms and conditions, UCTA's reasonableness of exclusion clauses, acceptance, and contractual completion.

The defence for the counterclaim related to the following clauses:

"8 Warranties and Liability

8.1 Subject to the conditions set out below, the Seller warrants that the Goods will correspond with their specification at the time of delivery (subject to the Seller's right under clause 3.3 to alter and amend any specification) and will be free from defects in material and workmanship for a period of 3 months from delivery.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price of the Goods has not been paid by the due date for payment. "

Application of the reasonableness test

UCTA's reasonableness test applies here where the terms seek to exclude liability.

The court held that the exclusion was ineffective because it was an unusual clause hidden in the terms and conditions and hadn't been properly highlighted to the customer. It was also unclear and exorbitant, which would bar all rights of redress against the supplier for even a slight delay or deduction.

The following points were raised and should be taken into account when drafting and dealing with limitation clauses in standard terms:

Visibility and Signposting: Ensure that harsh and unusual exclusions and limitations are clearly visible and not hidden in small print. This helps to avoid disputes and challenges regarding their incorporation and enforceability.

Incorporation of Standard Terms: Make it easy for the counterparty to find the standard terms. Clearly state how the terms are incorporated into the contract. Even if the terms are not provided "overleaf" as stated in pre-contract proposal documents, they can still be considered incorporated if they are supplied separately to the customer, both in hard copy and by email.

Reasonableness Test: The same factors that affect the incorporation of standard terms are relevant to the reasonableness test under the Unfair Contract Terms Act (UCTA). If the exclusion or limitation clauses are clearly visible, the supplier is more likely to have a stronger case on reasonableness.

These practical points should help ensure that limitation clauses are effectively drafted and incorporated into contracts, reducing the risk of disputes and challenges.

Key takeaways

Applying the reasonableness test can be complex and highly fact specific. When negotiating your commercial contracts, it is advisable to consult legal professionals well-versed in contract law and who can help navigate UCTA and other relevant statutory and case law.

Speak to corporate lawyer [Sayem Chowdhury](#) for more detailed and accurate guidance on applying the reasonableness test under UCTA. Call him today.

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Note: This article is not legal advice; it provides information of general interest about current legal issues.

