

The Office of Fair Trading (OFT) has today welcomed a landmark High Court ruling that certain terms and conditions used by Foxtons Ltd in its lettings agreements with landlords are unfair.

As a result of this ruling, made in proceedings brought by the OFT under the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR), the OFT will now ask the High Court to go on to grant injunctions preventing the continued use of the terms by Foxtons.

In his judgment given today, Mr Justice Mann accepted that all the terms the OFT brought before the court were unfair, including Foxtons' use of terms:

Requiring a landlord to pay substantial sums in commission, where a tenant continues to occupy the property after the initial fixed period of the tenancy has expired – even if Foxtons plays no part in persuading the tenant to stay, and does not collect the rent or manage the property,

Requiring a landlord to pay commission to Foxtons even after it had sold the property,

Allowing Foxtons to receive a full estate agents' commission for sale of the property to a tenant.

The ruling, following a three-day hearing in April 2009, found that the charging of repeat renewal commission by Foxtons represented a 'trap' or a 'timebomb' for consumers. The judge held that such important terms must be flagged prominently not just in the contract, but also in any sales literature and processes. He said a typical consumer would be unlikely to read standard terms with a great degree of attention and would not expect important obligations to be tucked away in the small print and not specifically brought to their attention. He also found that Foxtons had used language in its contracts which is not 'plain and intelligible'.

On the use of a term providing for sales commission to be payable on the sale of a property to a tenant, the judge said consumers would not merely be surprised but 'astonished' by the potentially large financial liability to Foxtons in relation to a transaction in which Foxtons played

no material part.

The OFT expects the letting industry to comply with this ruling, and will take the necessary steps to ensure this where appropriate.

OFT Chief Executive, John Fingleton, said: 'This ruling sends out a clear and unambiguous message that businesses offering services need to ensure unexpected or surprising terms are not hidden away in small print. Contracts need to be written in clear and straightforward language with important provisions, particularly those which may disadvantage consumers as in this case, given prominence and actively brought to people's attention.'

'The OFT prefers to work with businesses to agree solutions where concerns are raised but we will not hesitate to take court action where this is not possible and especially where there is serious harm to consumers.'

Source: [Mortgage Introducer UK](#)