



Briefing 11-31 June 2011

# Unfair Gym Membership Contracts

The High Court recently 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 for hundreds of gyms and health & fitness clubs. Whilst Ashbourne have vowed to appeal against the ruling the implications are significant for the gym sector.

## Key findings from the case

- Contract terms for Gym membership in excess of 1 year are unenforceable.
- Opens the possibility that Gym members may now cancel their membership without cost, even within a one-year period, if the member has a genuine dispute about the quality of the gym.
- Confirmation that individual gyms do not require a consumer credit license

## Introduction

On May 27<sup>th</sup> 2011, the High Court ruled on a case brought by the Office of Fair Trading that minimum contract length terms and a number of other key terms in thousands of gym membership contracts, recommended and enforced by Ashbourne Management Services Limited ('Ashbourne'), were unfair and hence unenforceable.

The court also ruled that a number of Ashbourne's techniques for collecting arrears were unlawful.

## Business model

Ashbourne draws up membership agreements, and then collects members' payments, for over 700 gym clubs. Typically, in many cases consumers found that they stopped using the gym after a few months, or their circumstances changed so that continued membership was no longer affordable or practical. Contracts had minimum membership periods of between one and three years and Ashbourne routinely stated consumers could not terminate their membership. If consumers stopped paying Ashbourne demanded immediate payment of the full sum - often many hundreds of pounds - for the whole minimum period.

The OFT reported that if the consumer still refused to pay Ashbourne would threaten to damage their credit rating by referring the debt to a credit reference agency. As of July 2009, Ashbourne had registered nearly 17,000 defaults with credit reference agencies.

### **Ruling**

The Court ruled that Ashbourne's business model '... is designed and calculated to take advantage of the naivety and inexperience of the average consumer using gym clubs at the lower end of the market,' whom the Judge considered that AMS 'exploited.' He also said that the minimum period is 'a trap into which the average consumer is likely to fall.'

The judge considered 13 of Ashbourne's contracts, some dating back to 2000, and ruled that the minimum terms in 10 of them were completely unfair. He considered that the last three, which Ashbourne had created since court proceedings commenced in March 2010, were fairer to consumers, but were still unfair if they tie the consumer in for more than 12 months. The judge decided that it is unlawful to try to enforce or even to include unfair terms in contracts, where doing so could lead the consumer to pay money they would not otherwise have done.

Ashbourne had a number of other practices that the judge also ruled to be unfair.

These included:

- not making clear that the consumer was contracting with the gym, rather than Ashbourne;
- refusing to allow the consumer to cancel the agreement by notifying the gym;
- demanding payment for the full minimum period where the consumer was just a short time late in paying an installment;
- and demanding payment even when the consumer had a genuine dispute about the quality of the gym.
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The judge also ruled that Ashbourne should not report or threaten to report consumers to credit reference agencies, where:

- The term requiring payment is unfair
- The sum demanded is not actually owed or is simply a claim for damages
- The consumer has a genuine reason for disputing their liability to pay.

As a result of this ruling, the High Court has said that it will make an enforcement order against Ashbourne and its directors, granting injunctions preventing them from using or relying on their current standard contracts and from using unfair terms in the future.

### **OFT Comment:**

Jason Freeman, Director in the OFT Goods and Consumer Group, said:

'We have received many complaints about Ashbourne's contracts, and many consumers have felt pressured into paying sums of money that they believed they did not owe. We are pleased that the Court has confirmed that these practices are unlawful, and this should

bring peace of mind to many people who have fallen into the trap of signing up to these lengthy gym contracts.

'Unfair terms that unreasonably bind consumers into long contracts they cannot leave, and heavy-handed collection techniques, have no place in businesses' dealings with consumers. This ruling should help traders to understand where the boundaries lie, and sends a warning that if they cross the line, the OFT and local trading standards services can take action.'

### **Ashbourne Appeal**

Ashbourne have vowed to appealing against the High Court ruling on two points:

1. The OFT chose to submit a number of Ashbourne contracts to the High Court, some going back to 2000. These do not reflect recent more rounded approach to the enforcement of contracts and which are acknowledged in the judgment as "fairer".
2. Although the judge ruled that 12 months was fair, Ashbourne argues that the duration of a contract is a 'core term' of any membership agreement, and that this was acknowledged as such just two years ago by the OFT. 'Core terms' cannot be included within the scope of the Unfair Terms Act and therefore this aspect will be disputed further.

Ashbourne contend that the ruling that membership contracts longer than 12 months are unfair has far-reaching implications for the whole fitness sector. Up until now, 24 and 36 month contracts have been common practice and many clubs and promotions companies will need to look at this ruling closely and consider how best to proceed

### **APSE Comment.**

APSE welcomes the judgement. The vast majority of local authority run gym facilities offer flexible contracts that can be terminated, as circumstances change, without significant cost to the gym user. It is rare for binding contracts in excess of 1 year to be offered and this ruling removes any incentive to do so.

The binding nature of long term membership contracts has become an unfortunate part of the business model for many privately operated gym facilities. Whilst the ruling effectively allows for a yearly term where a discount is given, it prevents enforcement when there is a dispute in regard to quality.

The likely result of the ruling has to be that private operators will seek to recover the lost revenue through higher charges elsewhere. This may make the reasonably priced mid range offerings of local authority gyms considerably more attractive.

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