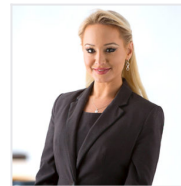


Take Care on What You Put in Your Contracts With Customers

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Care needs to be taken when drafting terms and conditions if a business wants to be able to rely on such terms in the case of a dispute. Contractual obligations must be drafted with clarity and certainty particularly where your customer is a consumer as a substantial amount of legislation applies to consumer contracts. It becomes an issue particularly for online businesses where terms and conditions may be accepted in a click of a button. Care should therefore be taken to make key terms like exclusions clauses very apparent to customers before they enter into a contract.

In a recent case a business was unable to rely on its terms and conditions because the courts found that the meaning of the terms was unclear and exclusion clauses which the business sought to rely on had not been sufficiently brought to the attention of the customer and therefore had not been incorporated into the contract.

Mr Green played an online gambling game provided by [Betfred](#). He was informed he had won £1,722,500. When he sought to claim his prize, he was unable to and contacted Betfred. Upon investigation, Betfred informed Mr Green that a glitch in the game had meant that Mr Green had effectively won the jackpot several times as the game had failed to re-set itself. This glitch had increased Mr Green's chances of winning the jackpot due to the number of certain types of cards he received, which he should not have been allowed to receive had the game reset itself properly. Betfred then refused to pay out Mr Green's winnings relying on exclusion clauses in its terms and conditions, an End User Licence Agreement and Game Rules citing the fact that there had been a defect in the game.

Mr Green argued back on three grounds: firstly the meaning of the exclusion clauses did cover the actual technical glitch that had occurred with the game. Secondly, the exclusion clauses had not been incorporated into the contract with Betfred as he had not been made sufficiently aware of them before contracting. And thirdly, even if the exclusion clauses were found to have been incorporated into the contract, they were not fair or enforceable under consumer legislation.

Mr Green was successful and Betfred was unable to rely on its exclusion clauses. The court highlighted the following particular reasons for Betfred not being able to rely on the exclusion clauses:

- Firstly a consumer contract should be simple and easy to understand. The Betfred terms and conditions were found to be unclear, containing typographical errors, conflicting clauses, difficult terminology and

complex layout.

- Secondly, the exclusion clause Betfred sought to rely on was found not to cover the glitch which had actually occurred in the game (neither party was aware of such glitch at the time it occurred). The court took the view that the glitch was 'a hidden defect' and found this to be different from a 'malfunction, breakdown or interruption in service' which were the circumstances to which the exclusion clause referred.
- Thirdly, the terms had not been successfully incorporated into the contract because they had not been sufficiently brought to the attention of Mr Green before he entered into the contract with Betfred. The court found that putting exclusion clauses in small print or in several paragraphs of capitalised letters was insufficient to properly draw them to Mr Green's attention, particularly on a gambling site where a customer was unlikely to look through pages of terms and conditions.

Mr Green was therefore entitled to claim his full winnings from Betfred.

This case highlights why businesses should take great care when drafting their terms and conditions and contractual documentation. Where a business wishes to rely on terms and conditions, particularly against a consumer, they must be clear, transparent, address the issue which has arisen and any exclusion clauses must not be hidden away.

If you would like advice on drafting a new set of terms and conditions or you would like us to review your current terms and conditions or contracts with customers, please do not hesitate to contact our Corporate & Commercial team by emailing online.enquiries@la-law.com or calling 01202 786188.