Terms and conditions may not be exciting, but they are important. Here, Sue Wilkin, a Senior Public Protection Officer with Trading Standards, offers some expert advice

If you run an accommodation business, it is vital that you have terms and conditions for all your bookings, because these form a legally enforceable contract between you and the guest. A surprising number of businesses don’t bother with terms and conditions, but without them, they will find themselves in disputes – I receive a lot of complaints every year from both guests and owners.

Many people find it difficult to write fair terms and conditions. The main rule is that the contract shouldn’t contain penalties that are unfair to the guest. Businesses often fail to appreciate the consumer’s point of view – you have to look at it from both sides.

PROBLEMS, PROBLEMS
When you start to draft your terms and conditions, you should think about the problems your business could encounter and how you would deal with them and ensure that they are covered in your terms. Each business will have its own requirements, depending on the type of accommodation and the guests it attracts. For instance, if your B&B is pet-friendly but you don’t want muddy dogs ruining your carpets, include a clause saying: “We welcome well-behaved dogs. We reserve the right to charge cleaning and repair costs if your dog damages furniture and soft furnishings.” But if your accommodation is family-friendly and welcomes children, it would not be appropriate to penalise parents if their children are noisy. One B&B owner told me that if she had to compensate guests for noise from other guests, she would just add the charge to the noisy guest’s bill. But you can’t do that.

CANCELLATION POLICY
Cancellations and refunds are the main causes of disputes between accommodation owners and guests. Consumers are very concerned about cancellations. Many of the larger hotel chains allow guests to cancel up to 24 hours before their scheduled stay, and some up to 6pm on the day of arrival, with no cancellation fee charged. Consumers now expect this, even in smaller establishments. It’s a good idea to be fair and flexible. The contract cannot say “We do not give refunds”, because this does not meet the test of fairness. Consider each situation individually.

If a guest cancels because a wedding is called off, or because of illness or bereavement, be sympathetic. They will book with you again. If a guest cancels several weeks ahead, it is reasonable to try to re-let the accommodation.

What if the guests don’t show up and haven’t paid for the first night? It’s always difficult if you choose not to take any deposit or payment for the first night. The customer is in breach of contract; you are entitled to be compensated for the loss, and can invoice the customer. Again, this should be stated in the terms and conditions. Always confirm these by email to make it clear that it is a binding contract.
It’s a good idea to formulate a clear cancellation policy. I suggest that you use this clause:

When you make your booking and we have received the required deposit/taken a debit or credit card number to secure the booking, a legally binding contract exists between us that is non-cancellable and non-refundable, except in exceptional circumstances. You may still remain liable to pay in full or in part for the booking, even if you are unable to take your holiday. Even where you have not paid in full at the time of cancellation, you will remain liable for the full cost.

If for some reason you do need to cancel, it is important that you tell us at the first opportunity so that we may attempt to re-let your room and minimise your loss. You should take out cancellation insurance to protect you against possible loss.

If you give refunds, you could use this wording:

We will allow you to cancel your booking without penalty, but you must do so within X days/hours of the due date, in writing or by email to X. We will acknowledge receipt of your cancellation by return. Please do not consider your booking cancelled until you receive our confirmation. If you do not cancel, but you fail to arrive for your stay with us, you agree that the sum due for your first night’s stay will be debited from the credit/debit card in full and final settlement.

You may wish to personalise this term – for instance, if you charge an administration fee for cancellation or choose to retain the deposit. Remember that the consumer does not have an automatic right to a refund if they cancel, so anything offered is additional to their statutory rights and the business may, to a certain extent and subject to the unfair terms legislation, dictate the terms on which cancellation is accepted.
> The Payment Card Industry Data Security Standard (PCI DSS) requires businesses to keep cardholder data secure throughout every transaction, and each card company has its own compliance programme. VisitEngland advises businesses to charge a deposit to the card at the time of booking, rather than simply asking for the card number; a refund can be processed later if necessary. It is not good practice to retain the customer’s card details to use at a later date, in the event of a no-show or cancellation. Instead, take the card details at the time of the booking, charge the first night in full, then destroy the card details.

If the customer claims that they cancelled by phone, they should substantiate this with, say, a copy of their phone bill showing the call. If they are unable to provide proof, and had put the payment in dispute with their card provider, the card provider should reinstate the payment. Terms and conditions should always cover these situations and, wherever possible, terms should require that cancellation takes place within a certain time before the due date. It would also be a good idea to require confirmation that the cancellation is accepted, so that the customer cannot claim that they had cancelled if they had not.

**DOUBLE TROUBLE**

Double booking can also cause problems. VisitEngland recently received a complaint from guests who arrived at their B&B to find that their room was double booked, and the owner had arranged for them to stay at a local hotel instead. The room was disappointing and the guests were dissatisfied. They complained to the B&B owner, who refused to provide any compensation.

The customer had a legal contract with the B&B with which they booked, and the B&B was in breach of contract. The owners made the decision to book them into alternative accommodation without prior notification, and the contract for that booking was between the hotel and the B&B, not the customer, so the customer had no choice but to take the matter up with the B&B. The B&B owner was in the wrong in refusing to look at their claim, since if the guests took legal action, they could be awarded compensation for loss of enjoyment. The claim must, however, be reasonable, and if any element of the stay was satisfactory, they should not try to claim for it – for example, if the standard of the room was poor but the food was good, then the claim would be for the room only.

**ARRIVAL AND DEPARTURE**

As I work in trading standards, I frequently receive complaints about unreasonable check-in and check-out times. In some self-catering places, guests aren’t allowed access until 6pm on arrival day and have to leave before 10am. One owner told me she needed the time to clean the house – well, she needs to get help so that she can do it quicker.

Some terms and conditions state that the owner will charge for an extra night if the guest is not out by 10am – you can’t do that.

Make your terms and conditions clear so that you can refer to them if there is a problem. And don’t think that they’re set in stone – they’re a living, breathing document and you can change them. Times change, and terms and conditions need to change with them.

It’s a good idea to use this clause to cover double-booking problems:

We would only cancel your holiday if your accommodation was unavailable for reasons beyond our control. We would, however, attempt to offer you alternative accommodation. If this was not possible or unacceptable to you, then we would refund all monies paid by you for the holiday. Except in exceptional circumstances, our liability would not extend beyond this refund.

**“Terms and conditions are a living, breathing document and you can change them”**

For more help with writing terms and conditions, a revised template is available on VisitEngland’s Accommodation Know-how website, and can be customised to suit your business. Visit accommodationknowhow.co.uk (login is free to all VisitEngland participants).

For more information on PCI DSS, visit pcisecuritystandards.org

If you have an accommodation business in Wiltshire and have written your terms and conditions, Sue is happy to give you advice, but she cannot draft them for you. Email her at sue.wilkin@wiltshire.gov.uk

Outside Wiltshire, some Trading Standards offices may be able to advise you, but not all offer this service.