

Undertaking

Introduction

As a qualifying body, we (the FSA) can challenge firms using terms which we view as unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations). So we have been reviewing contract terms which have been referred to us by consumers, enforcement bodies and consumer organisations. This has led to the following firm undertaking not to use the term which may be considered unfair. They have also informed us that the revised contract containing the new term has been used since 21 January 2004.

We have a duty under the Regulations to notify the Office of Fair Trading (OFT) of the undertakings we receive. The OFT has a duty to publish details of these undertakings. The OFT does so on its Consumer Regulation Website. Our policy is to publish details of the undertakings and the undertakings on our website. Both publications will name the firms and identify the specific term and the part of the Regulations which relate to the term's fairness.

In general, firms should regularly assess whether their terms and conditions in consumer contracts meet the standards of fairness set out in the Regulations and consider what steps they need to take to comply with the Regulations.

Please be aware that publishing the undertakings may attract more consumer complaints both to the FSA and direct to firms, which will need to be addressed. We encourage firms to consider the undertakings we publish when reviewing their terms and conditions.

Absolute Assigned Policies undertaking

Name of business	Absolute Assigned Policies	Lead organisation	FSA
Trading sector	Investment - Asset Management	Contract identifier	Terms of business - Purchase of an Endowment Policy
Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
Paragraph 4	The term stated that 'If for any reason prior to completion of the purchase our clients wish to withdraw from this agreement, then they may withdraw without penalty.' This sentence appeared to grant	The term has been deleted and replaced with a new paragraph which is a combination of what the firm had set out in its 'Notes' section in their old contract and a description	Paragraph 12

	<p>the firm's clients a wide discretion to withdraw from the agreement to buy the endowment at any time before the purchase was completed. In contrast there was no term allowing a similar right of withdrawal to a consumer who was selling the endowment policy.</p> <p>Under 1(f), a term may be unfair if it has the object or effect of authorising the seller or supplier to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer.</p>	<p>of the limited circumstances where the firm would use its discretion to cancel a sale.</p> <p>The new term reads:</p> <p>'This agreement is conditional upon none of the following circumstances applying, and the Buyer may withdraw or vary the offer by giving written notice to the Seller if any of the following circumstances are applicable:</p> <ul style="list-style-type: none"> - 12.1 If premiums increase between the date specified on the contract and the maturity date. - 12.2 If the policy has been altered at any time since inception. - 12.3 If the policy was originally written by a life office which has subsequently been taken over and the contract has been prepared in the name of the latter office and not the original office. - 12.4 If the Seller is currently or has been bankrupt or the Seller does not have good title. - 12.5 If the policy falls within any of the following policy types :- ... - 12.6 If in the opinion of the Buyer market conditions change so as to affect the commercial viability of the transaction. - 12.7 If the existing bonus rates, payable by the issuing life office either annually or at the maturity of the policy, quoted by the issuing life office are altered prior to the completion of the policy 	
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Other information	<p>The firm was fully cooperative in agreeing to this undertaking.</p> <p>We also note that the firm has improved the clarity of the overall terms in the new contract.</p>		
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