

Undertaking

Introduction

As a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations) we, the Financial Services Authority (FSA), can challenge firms that are using terms which we view as unfair. We review contract terms referred to us by, among others, consumers, enforcement bodies and consumer organisations. Our review of The On-Line Partnership Limited's terms of business entitled 'ABOUT US Our Fees, Services and Client Agreement' has led to the firm undertaking not to use certain terms which we consider are unfair.

Under the Regulations we must notify the Office of Fair Trading (OFT) of the undertakings we receive. The OFT has a duty to publish details of these undertakings and they appear on its Consumer Regulation website. We also publish details on our website. Both publications will name the firm, identify the specific terms and explain why we think they are unfair under the Regulations.

Even if firms have not given an undertaking or been subject to a court decision under the Regulations, they should remain alert to undertakings or court decisions concerning other firms as part of their risk management. These could give an indication of the view that the courts, the FSA, the OFT or other qualifying bodies may take of similar terms or terms with similar effects.

The On-Line Partnership Limited undertaking in relation to its "ABOUT US Our Fees, Services and Client Agreement" terms of business

Name of business	The On-Line Partnership Limited	Lead organisation	FSA
Trading sector	Retail Intermediaries	Contract identifiers	'ABOUT US Our Fees, Services and Client Agreement' terms of business 2007 version
Original term			
<i>'I confirm that I have received, read and understood this agreement and agree to the terms set out within.'</i>			
Application of the Regulations			
A term is deemed to be unfair under Regulation 5 of the Regulations if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract, to the detriment of the consumer.			
Firms should draft contracts in plain and intelligible language and must also give consumers a proper opportunity to read all of the terms of the contract. Consumers should check the details of			

the contracts they enter into. But a contract term requiring consumers to declare that they have read and understood the terms of the contract is likely to be unfair because it binds consumers to terms which, in practice, they may not have any real awareness of.

The Office of Fair Trading's *Unfair Contract Terms Guidance*, published September 2008, specifically refers to 'Have read and understood declarations' at paragraphs 18.5.5-18.5.7. The Guidance states:

'...The Regulations implement an EU Directive saying that terms must be clear and intelligible and that consumers must have a proper opportunity to read all of them. Including a declaration of this kind effectively requires consumers to say these conditions have been met, whether they have or not. This tends to defeat the purpose of the Directive, and as such is open to serious objection...'

How the term has changed

In line with the Office of Fair Trading's *Unfair Contract Terms Guidance*, the firm has amended the term to instead give a clear and prominent warning that consumers should read and understand the terms before signing them. The firm has placed this warning in bold text which also states that consumers should ask questions if they do not understand the terms.

New term

'This is our standard client agreement upon which we intend to rely. For your own benefit and protection you should read these terms carefully before signing them. If you do not understand any point please ask for further information.'

Other information

The firm has agreed to amend the term in new contracts with consumers from 1 December 2008 and to not include the same term or a similar term with the same effect in future contracts. They have also agreed not to rely on the term in an unfair way in contracts with existing consumers.

In addition, the firm has taken action to ensure their appointed representatives comply with this undertaking.

The firm was fully co-operative in agreeing this undertaking.

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