

Introduction

As a qualifying body, we – the Financial Services Authority ('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 review contract terms which are referred to us by consumers, enforcement bodies and consumer organisations. This has led to UK Insurance Limited (a member of The Royal Bank of Scotland Group) undertaking not to use the Royalties Gold Travel Insurance Certificate and Policy terms which we consider may be unfair. The Royal Bank of Scotland Group has also agreed not to use these terms where they are contained in other travel insurance contracts underwritten by it.

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, which it puts on its Consumer Regulation Website. We also publish the undertakings on our website. Both publications will name the firm and identify the specific term and the part of the Regulations which relate to the term's fairness.

If your firm has not given an undertaking or been subject to a court decision, you should remain alert to undertakings or court decisions concerning other firms as part of your risk management. These could show the likely attitude of the courts, the FSA, the OFT or other qualifying bodies to similar terms or terms with similar effects.

Publishing undertakings may attract more consumer complaints both to the FSA and direct to firms, which the firm will need to address.

UK Insurance Limited (a member of The Royal Bank of Scotland Group) undertaking in relation to the Royalties Gold Travel Insurance Certificate and Policy terms and conditions.

Name of business	UK Insurance Limited (a member of The Royal Bank of Scotland Group)	Lead organisation	FSA
Trading sector	Travel Insurance	Contract identifier	UK Insurance Limited- Royalties Gold Travel Insurance Certificate and Policy - 2004 version ('the policy')
Original term			
<p>'GENERAL EXCLUSIONS YOU ARE NOT COVERED FOR Anything caused directly or indirectly by: ...</p>			

7. consequential loss of any kind'

Application of the Regulations

We were concerned about this exclusion clause because it contains the phrase 'consequential loss'. We believe that this phrase is not written in plain and intelligible language, as it refers to an expression that has a legal meaning. We do not believe that consumers would understand this terminology, and therefore, what they are, and are not, covered for by the policy.

Regulation 7(1) states:

'A seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language'.

The Office of Fair Trading stated in '*Unfair contract terms bulletin 3*' (March 1997):

'The OFT takes the view that contracts must be intelligible to ordinary consumers without legal advice. Therefore a drafting style which might be normal in a commercial contract is wholly inappropriate. This means using normal words in their normal sense, and avoiding jargon such as "consequential loss" and "time of the essence". Such phrases should preferably not be used at all, and certainly not without explanation'.

We also believe that this term, because it is so unclear and ambiguous, may constitute 'a significant imbalance in the parties' rights and obligations to the detriment of the consumer'.

Regulation 5(1) states:

'A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer'.

How the term has changed

The firm has amended the term so that it no longer contains the phrase 'consequential loss'. Instead, the term now explains what losses are, and are not, covered by the policy. The term also provides two examples to assist consumers in understanding the exclusion clause.

In addition, the firm has considered the losses that may, and may not, be excluded from the policy to determine whether the loss is or is not directly associated with the insured event.

For example, the firm now considers some losses to be directly associated with the insured event and has, therefore, included these in the policy. It will now cover the cost of extended airport car-parking fees, following a medical claim where the return is extended until the policyholder is fit to fly. In similar situations, the policy will now cover the cost of extended kennel or cattery fees incurred by the policyholder.

The firm considers that the cost of phone calls (over and above those to the claims handling agent) and the costs incurred by a policyholder who extends their stay to be with a sick family member may not be losses that are directly associated with the insured event. Previously, the firm relied on the 'consequential loss' exclusion to reject claims for these losses. However, the firm has now agreed to add in specific clauses to exclude these situations. This is to make the policy more transparent.

Between August 2008 and March 2009, the contract wording will be amended to reflect the changes agreed. Customers will be informed of the changes when their policies are due to be renewed.

New term

'We will not pay for any losses that are not directly associated with the incident that caused you to claim. For example, loss of earnings due to being unable to return to work following injury or illness happening whilst on a trip or the cost of replacing locks in the event that keys are lost whilst on a trip'.

Other information

The phrase 'consequential loss' is commonly used in general insurance contracts across the market. This undertaking addresses the concerns that we raised in our recent statement http://www.fsa.gov.uk/pubs/other/consequential_loss.pdf about the industry-wide use of this phrase.

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

The changes will apply to all travel insurance policies offered by Royal Bank of Scotland Group companies. These are contracts offered by:

Direct Line Insurance;

Churchill Insurance; and

Travel insurance policies provided as part of some Royal Bank of Scotland and Natwest bank accounts.

In addition, the Royal Bank of Scotland Group has a number of partnership relationships with organisations which are not part of the Royal Bank of Scotland Group but where the Royal Bank of Scotland Group is responsible for the policy wording. The changes will also apply to the following policies:

Virgin Money Travel Insurance;

Automobile Association (AA) Travel Insurance;

Prudential Travel Insurance;

Tesco Travel Insurance; and

BMW/Mini Travel insurance.

To demonstrate its commitment to achieving clear and fair terms, and to treating its customers fairly, the firm has begun a project to identify whether there are other contracts across its product range which contain the phrase 'consequential loss' and to amend the terms in light of our recent statement and this undertaking.

Undertaking published: 16 September 2008