

Notice of Undertaking

esure Insurance Limited

Summary

esure Insurance Limited has agreed to change two of the terms and conditions in its home insurance and car insurance policies.

esure has given us an undertaking¹ in relation to its cancellation terms. This is because we had concerns that the terms were likely to be unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations); we felt that the terms gave the firm too much discretion to cancel a customer's insurance policy.

esure has also acknowledged that its automatic renewal terms were unclear.

We summarise our concerns and the action that the firm has taken below.

Cancellation terms

Why did we think the terms were unfair?

esure's policy documents contained cancellation terms that allowed it to cancel a consumer's home or car insurance policy at any time, with seven days' notice in writing, without the firm having to explain why it had done this. The policy documents only specified customers missing a premium payment as grounds for a potential cancellation. Also, both policies contained terms that allowed the firm to cancel the policy and charge an administration fee if a customer missed a premium payment, irrespective of why this had happened.

In our view these terms meant that without good reason consumers could be left uninsured and perhaps find it difficult to arrange insurance elsewhere following a potentially unjustified cancellation.

We also considered that, in situations where a consumer's direct debit may fail for reasons outside their control, it would be disproportionate to cancel the policy if the consumer could easily rectify the situation if given the chance.

¹ If we consider a contract term to be unfair under the Unfair Terms in Consumer Contracts Regulations 1999, we can ask a firm to give us an 'undertaking' that it will stop using the term in its contracts.

How has the firm responded to our concerns?

The firm has explained to us that the cancellation term was generally only used when a customer missed a payment, or failed to provide evidence of a no-claims record. In these cases the firm would contact the customer and give them more than seven days to resolve the matter. The firm has told us that the use of the term otherwise arose only in exceptional circumstances as a result of customers behaving inappropriately (e.g. where there is a reasonable suspicion of fraud).

esure has agreed to change its cancellation terms in order to:

- restrict the firm's discretion to cancel policies for 'valid' reasons. Its new term sets out examples of the 'valid' reasons it may rely on; and
- clarify the process the firm follows in practice when cancelling policies. As part of this process, esure gives consumers the opportunity to take action to address its concerns.

These changes will be in place for new policies from 3 November 2013.

Automatic renewal terms

In addition to the above undertaking, esure has acknowledged that its automatic renewal terms were unclear.

Why did we think the terms were unclear?

The firm's automatic renewal terms suggested that esure could renew a customer's home or car insurance policy with a different insurer. We considered that this could cause confusion, as consumers would generally expect 'renewal' to mean continuing with the same insurer.

How has the firm responded to our concerns?

The firm explained that it had not relied on this renewal term in any way.

For car insurance policies entered into on or after 27th January 2013 and home insurance policies entered into on or after 14th April 2013, esure has deleted the term relating to automatic renewal with different insurers.

How does this affect existing customers?

For both the cancellation terms and automatic renewal terms the firm has also agreed to:

- treat existing customers as if the new terms applied to their home and car insurance policies; and
- write to existing customers when their home or car insurance policy is up for renewal to tell them about the new terms.

esure has clarified the wording of cancellation terms in recently issued policies. The firm will, however, treat all customers as being subject to the new terms set out in this Notice of Undertaking.

Undertaking

Name of business	esure Insurance Limited	Lead organisation	FCA
Trading sector	Insurance	Contract identifier	Terms and Conditions for: <ul style="list-style-type: none"> • Home insurance; and • Car insurance.

Term 1
<p>Original term</p> <p><u>Home insurance terms and conditions:</u></p> <p><i>"Cancelling your policy</i></p> <p>...</p> <p><i>c) we have the right to cancel your policy at any time by giving you seven days' notice in writing. We will send our letter to the latest address we have for you.</i></p> <p><i>d) if you are paying by installments and you miss a payment, we may cancel your policy. We will give you seven days' notice in writing before we do this as set out in paragraph (c) above. You will still have to pay any outstanding premium and any administration fees due to us and we may take any outstanding premium and any administration fees due to us from any claim payment we make to you"</i></p> <p><u>Car insurance terms and conditions:</u></p> <p><i>"11. Cancelling your policy</i></p> <p>...</p> <p><i>We also have a right to cancel your policy at any time by giving you seven days' notice in writing. We will send our letter to the latest address we have for you. If we do cancel your policy, we will refund the part of your premium you have not yet used less an administration fee to take into account of our costs in providing your policy. The fees are detailed in your schedule. If you or we cancel your motor insurance at any time, we will automatically cancel any motoring legal protection or breakdown assistance cover purchased with it.</i></p> <p><i>If we cancel your policy because we have been unable to collect the premium by direct debit installments, we may charge an administration fee to take account of our costs in providing your policy and for recovering any premium owed to us for the period of cover. The fees are detailed in your schedule."</i></p>

Applying the Regulations

Regulation 5(1) provides that a contractual term that 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, to the detriment of the consumer.

There are two dimensions to the cancellation terms that caused us concern:

1. both policies contained terms that allowed the firm to cancel the consumer's policy at any time on seven days' notice in writing, without providing any valid reasons for doing so (only missing a premium payment was mentioned as a potential reason for cancellation); and
2. both policies contained terms that allowed the firm to cancel the policy and charge an administration fee in the event of a missed premium installment, irrespective of the reason as to why the customer missed the installment.

In our view, the terms had the potential to cause detriment to consumers, as they could be left uninsured and facing significant difficulties to arrange insurance elsewhere following a potentially unjustified cancellation.

Regarding the missed premium installment terms we considered that, for example, in situations where a consumer's direct debit may fail for reasons outside the consumer's control, the firm could still rely on the term to cancel the policy, which in our view was a disproportionate measure in circumstances which the consumer could easily rectify if given the chance.

In our view, the original cancellation terms had the potential to be contrary to the requirement of good faith and cause a significant imbalance to the detriment of the consumer. Therefore we believe that the original terms were likely to be unfair under the Regulations.

How the term has changed

The firm has explained to us that the cancellation term was generally only used when a customer missed a payment, or failed to provide evidence of a no claims discount. In these cases the firm would contact the customer and give them more than 7 days to resolve the matter. The firm has told us that the use of the term otherwise arose only in exceptional circumstances as a result of customers behaving inappropriately (e.g. where there is a reasonable suspicion of fraud etc.).

The firm has therefore agreed to amend the original cancellation terms in order to:

- restrict the firm's discretion to cancel the policies to 'valid reasons', including examples of what may be considered a valid reason; and
- clarify the firm's process for cancelling the policies, including giving consumers the opportunity to rectify issues in some circumstances.

These changes will be in place for new policies from **3 November 2013**.

New term

Home insurance terms and conditions:

"Cancellation of your home Policy

...

All administration fees which include fees for the cancellation and changing of your policy details are specified in your Schedule.

...

c) We have the right to cancel your Policy at any time by giving You seven days' notice in writing where there is a valid reason for doing so. We will send our cancellation letter to the latest address We have for You and will set out the reason for cancellation in our letter. Valid reasons may include but are not limited to:

- Where We have been unable to collect a premium payment. In this case We will contact you in writing requesting payment by a specific date. If We do not receive payment by this date We will write to You again notifying You that payment has not been received and giving You 7 days' notice of a final date for payment. This letter will also notify You that if payment is not received by this date your Policy will be cancelled. If payment is not received by that date We will cancel your Policy with immediate effect and notify You in writing that such cancellation has taken place;
- Where You are required in accordance with the terms of this Policy Booklet to co-operate with us, or send us information or documentation and You fail to do so in a way that materially affects our ability to process a claim, or our ability to defend our interests. In this case We may issue a cancellation letter and We will cancel your Policy if You fail to co-operate with us or provide the required information or documentation by the end of the seven day cancellation notice period;
- Where there is a material failure by You to exercise the duty of care regarding your property as required by the paragraph headed 'Your duty of care' in the General Conditions section applying to Parts A to D of this Policy Booklet;
- Where We reasonably suspect fraud; or
- Use of threatening or abusive behaviour or language, or intimidation or bullying of our staff or suppliers."

Car insurance terms and conditions:

"Our right to cancel your policy

We have the right to cancel your policy at any time by giving you seven days' notice in writing where there is a valid reason for doing so. We will send our cancellation letter to the latest address we have for you and will set out the reason for cancellation in our letter. Valid reasons may include but are not limited to:

- Where we have been unable to collect a premium payment. In this case we will contact you in writing requesting payment by a specific date. If we do not receive payment by this date we will write to you again notifying you that payment has not been received and giving you 7 days' notice of a final date for payment. This letter will also notify you that if payment is not received by this date your Policy will be cancelled. If payment is not received by that date we will cancel your Policy with immediate effect and notify you in writing that such cancellation has taken place;
- Where you are required in accordance with the terms of this Policy Booklet to co-operate with us, or send us information or documentation and you fail to do so in a way that materially affects our ability to process a claim, or our ability to defend our interests. In this case we may issue a cancellation letter and we will cancel your policy if you fail to co-operate with us or provide the required information or documentation by the end of the seven day cancellation notice period;

- *Where we do not receive evidence of your no claim discount within 21 days from the start date of the policy. If we have not received such evidence by the end of the 21 day period we will issue a cancellation letter and we will cancel your policy if we do not receive evidence of your no claim discount by the end of the seven day cancellation notice period;*
- *Where there is a material failure by you to take care of your car as required by the paragraph headed 'Taking care of your car' in the General Conditions section applying to Sections 1 to 7 of this Policy Booklet;*
- *Where we reasonably suspect fraud; or*
- *Use of threatening or abusive behaviour or language, or intimidation or bullying of our staff or suppliers.*

If we do cancel your policy, we will refund the part of your premium you have not yet used less a cancellation fee to take into account our costs in providing your policy. The fees are detailed in your Schedule.

If we cancel your motor insurance at any time, we will automatically cancel any cover provided by the additional services and benefits you chose with your main policy cover. The premium you have paid for these additional services and benefits will also be refunded less a pro rata charge for the time you have been on cover.

If we cancel your policy because we have been unable to collect the premium by direct debit instalments, we will charge the cancellation fee to take account of our costs in providing your policy and for recovering any premium owed to us for the period of cover. The fees are detailed in your Schedule."

In addition to the above undertaking, esure have also acknowledged that their automatic renewal term was not in plain and intelligible language.

Term 2

Original term

Home insurance and car insurance terms and conditions:

"Renewal information

...

If we are unable to offer you a policy we will let you know and you may be provided with details of the terms (including any changes to existing terms) on which your cover will continue via another insurer. By taking out this policy you agree that your data may be used to allow an alternative insurer to provide you with these terms before your existing policy expires."

Applying the Regulations

Regulation 7 of the Regulations provides that firms should ensure that terms are expressed in plain, intelligible language.

We considered that the above term was not drafted in plain, intelligible language in line with Regulation 7. This is because it provided that the firm could 'renew' a consumer's policy with a different insurer, which we felt could cause confusion to consumers. We considered that consumers would generally expect to 'renew' with the same insurer, rather than with an alternative provider. Therefore describing such a process as 'renewal' did not seem to be in plain, intelligible language in line with the

Regulations.
<p>How the term has changed</p> <p>The firm has deleted this term from its car insurance terms and conditions entered into on or after 27 January 2013 and its home insurance terms and conditions entered into on or after 14 April 2013.</p> <p>In any event, the firm has informed us that the term was never invoked to automatically renew a consumer's policy with another insurer.</p>
<p>New term</p> <p>N/A</p>

<p>Other information</p> <p>The firm has told us that it has not relied on the potentially unfair aspect(s) of the cancellation terms or the potentially unclear aspect of the automatic renewal terms.</p> <p>esure has also agreed to take the following steps to reduce potential consumer detriment arising from the original terms indicated above, including:</p> <ul style="list-style-type: none"> • agreeing to treat existing consumers as if the new terms applied to their policies; and • communicating the new terms to existing consumers as part of the consumers' renewal process. <p>esure's policy wording is used under the following trading names, which are also affected by the changes above: esure, Sheila's Wheels, Sainsbury's Car Insurance and First Alternative.</p> <p>The firm was fully cooperative in providing this undertaking.</p> <p>Undertaking published on 24 September 2013</p>
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Legal information

As a qualifying body, we, the Financial Conduct Authority (FCA), can challenge firms using terms that we view as unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations). We review contract terms that we come across in our supervision of firms that are referred to us by consumers, enforcement bodies and consumer organisations. This has led to esure Insurance Limited undertaking to replace the terms that we consider are likely to be unfair.

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, 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 that relate to the term's fairness.

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 will be of potential value in showing the likely attitude of the courts, the FCA, the OFT or other qualifying bodies to similar terms or terms with a similar effect.

Ultimately only a court can determine the fairness of a term and, therefore, we do not recommend terms that have been revised by a firm to address our concerns as being definitely fair. We cannot approve terms for the purposes of the Regulations; it is for firms to assess the fairness of their terms and conditions under the Regulations and in the context of the product or service in question.

It is important to bear in mind that wording that is fair in one particular agreement is not necessarily fair in another. Where we accept an undertaking given to us from a firm to revise a term, this means that, on the evidence currently available, we consider the term to be improved enough so that further regulatory action is not required.