

Notice of Undertaking

The Equitable Life Assurance Society

Summary

The Equitable Life Assurance Society (Equitable Life) has agreed to change its payment instruction form (the PI Form). This follows our assessment that a disclaimer used in the PI Form is likely to be unfair.

What is the purpose of the Equitable Life payment instruction form?

Equitable Life requires its customers to sign a PI Form when they apply to transfer a life assurance policy, pension fund, savings or investment fund to a different provider, or if they want to surrender a policy or withdraw their money. The PI Form gives the firm the authority to transfer or pay out the funds and close the customer's account.

Why did we think the terms were unfair?

In our view, a disclaimer in Equitable Life's PI Form may have the effect of absolving the firm from all liability under a customer's original contract. We were concerned that this might deter a customer from making a valid claim against the firm if they thought that Equitable Life had done something wrong, such as investing their funds against their instructions, or incorrectly calculating the funds before they were transferred or surrendered.

What has the firm done and what does this mean for customers?

Equitable Life has agreed to change the PI Form so that it makes it clear that:

- Equitable Life's obligation to make payments only ends after it has fully paid the customer what they are due under the policy. Even after signing a PI Form, customers are still able to bring claims if they can show they have been underpaid.
- Signing the PI Form does not remove a customer's right to bring a claim about any other act or omission by Equitable Life.

Anyone who has already signed a PI Form (or a form with similar disclaimer wording) will be treated as though the new wording applies to them.

PI Forms signed after 2 June 2013 will contain the new disclaimer wording.

Undertaking

Name of business	The Equitable Life Assurance Society (Equitable Life)	Lead organisation	Financial Conduct Authority (FCA)
Trading sector	Life Assurance, Savings, Investments and Pensions	Contract identifier	Payment instruction form (the PI Form), which customers are required to sign when applying to transfer their policies to a different provider, or to surrender their policies altogether

Original terms

I/We, the claimant(s), hereby declare that I am/we are the legal owner(s) of the policy specified ('the Policy') and I/we hereby irrevocably and unconditionally authorise and request you pay the lump sum available under the Policy, in accordance with the payment instructions I/we have given in section 2.

I/We irrevocably and unconditionally agree that payment of the lump sum available under the Policy by you shall constitute a full and final discharge and settlement of all claims, liabilities, costs and interests whatsoever arising out of or in relation to the Policy.

I/We hereby also irrevocably and unconditionally agree to waive and release any and all of my/our rights to make any such claim against you in respect of the Policy upon payment of the lump sum available under the Policy.

Application of the Unfair Terms in Consumer Contracts Regulations 1999 ('the Regulations')

Regulation 5(1) provides that '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'.

Schedule 2 to the Regulations comprises an indicative and non-exhaustive list of terms that may be unfair. The indicative list includes terms which have the object or effect of:

'1 (b) inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations, including the option of offsetting a debt owed to the seller or supplier against any claim which the consumer may have against him;'

In our view, the disclaimer in the original terms had the potential to cause a significant imbalance in the parties' respective rights and obligations to the detriment of the consumer. This is because the disclaimer may have the effect of absolving the firm from all liability under a customer's original contract. This might deter a customer from making a valid claim against the firm if they thought that Equitable Life had done something wrong, such as investing their funds against their instructions or incorrectly calculating the funds before they were transferred or surrendered.

We also believe that the disclaimer as originally drafted does not fulfil the requirement of good faith, because the broad wording does not meet the principle of fair and open dealing with consumers.

For these reasons, we believe that the disclaimer was likely to be unfair under the Regulations.

How the term has changed

Equitable Life has agreed to amend the original disclaimer in the PI Form. It will now be clear to customers that:

- Equitable Life's obligation to make payments only ends after it has paid the customer the full lump sum due to them under the policy. Even after signing the PI Form, customers are still able to bring a claim if they can show they have been underpaid under their policies; and
- by signing the PI Form, customers do not waive their right to bring a claim for any other act or omission by Equitable Life.

New terms

I/We, the claimant(s), hereby declare that I am/we are the legal owner(s) of the policy specified ('the Policy') and I/we hereby irrevocably and unconditionally authorise and request you pay the lump sum available under the Policy, in accordance with the payment instructions I/we have given in section 2.

I/We agree that full payment of the lump sum available under the Policy in accordance with its terms by you shall constitute a discharge of your obligation to make payments under the Policy.

For the avoidance of doubt, this release shall not act so as to prohibit me/us from bringing any claim for any act or omission by you.

Other information

Equitable Life has also agreed to:

- treat all customers who have previously signed the PI Form (or forms with similar disclaimer wording) as though the new wording applies to them; and
- introduce the new wording into the PI Form and forms with similar disclaimer wording from 2 June 2013.

The firm was fully cooperative in providing this undertaking.

Undertaking published on 31 May 2013

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 the Equitable Life Assurance Society undertaking to amend the wording of the disclaimer in its payment instruction form that we consider is 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.