

## Undertaking

### 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 In Retirement Services (Reversions) Ltd undertaking not to use the Equity Advance Plan terms which we consider may 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 which relate to the term's fairness.

As part of their risk management, firms that have not given an undertaking or been subject to a court decision should remain alert to undertakings or court decisions concerning other firms. These will be of potential value in showing 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 will need to be addressed.

### **In Retirement Services (Reversions) Ltd undertaking in relation to Equity Advance Plan terms and conditions**

<b>Name of business</b>	In Retirement Services (Reversions) Ltd	<b>Lead organisation</b>	FSA
<b>Trading sector</b>	Equity Release	<b>Contract identifier</b>	Equity Advance Plan – Terms and Conditions of the Shared Growth Option October 2004

## **Term 1**

### **Original term**

Term 6.6 'Between the date of Your death (or the survivor's death if there are two of You taking part in the Plan) and the date that the Property is sold, Your estate (or the survivor's estate) will be responsible for, and bear the cost of complying with, the obligations set out in paragraphs 12.1, 13.1, 16.1 and 17.2.'

### **Application of the Regulations**

Regulation 5: We were concerned the term had the potential to go further than was necessary to protect the legitimate interests of the firm. In particular, as the term meant the consumer's estate was liable for costs such as insurance, repairs and taxes until the property was sold, there was no documented obligation within the terms and conditions on the firm to sell the property within a reasonable timeframe.

### **How the term has changed**

The firm said its practice is to sell the property within a reasonable timeframe. The firm has introduced a new term, term 6.8, to explicitly reflect in the terms and conditions that the firm will take reasonable steps to sell the property within a reasonable period of time, and gives examples of the circumstances in which they might, for a legitimate reason, delay sale of the property. This reflects the requirements of the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) rule 2.6A.15R which requires firms to take reasonable steps to sell the property within a reasonable period of time.

### **New term**

Term 6.6 remains. Term 6.8 'When the circumstances in this Condition 6 arise, We will take reasonable steps to ensure that the Property is sold within a reasonable period of time. In doing this We may delay sale for any legitimate reason where We reasonably consider the selling price can be optimised by such delay. Such legitimate reasons include, but are not limited to, market conditions, expiry of any clawback period of any grant or the period for required remedy of title defects or of defects in the condition of the Property.'

## **Term 2**

### **Original term**

Term 6.7 'We will have absolute discretion about dealing with any management, repair and maintenance of the Property which we consider necessary pending sale.'

### **Application of the Regulations**

Regulation 5: We were concerned the term gave the firm absolute discretion about the maintenance and repair of the property, with no requirement for the discretion to be applied reasonably.

The term was also not explicit with regard to the guidance set out in MCOB 2.6A.11G(1) which states that firms may not be treating their customers fairly if they require consumers to

maintain the property to a standard which exceeds the standard it was in when the contract began.

### **How the term has changed**

The firm said in practice it does not use the term in an unfair way. To clarify the meaning of the term, the firm has added wording which explains both the parties' respective responsibilities for the costs of maintaining and repairing the property and also that the consumer's estate is not liable for any costs to improve the property to a state which exceeds the standard the property was in when the contract began.

### **New term**

The firm has added the following wording to term 6.7: 'Where this involves costs over and above those for which Your estate (or the survivor's estate) is directly liable under these Terms and Conditions, such excess costs will be shared by You and Us in proportion to the percentage shares in the beneficial interest in the Property to which We and Your estate (or the estate of the survivor if there are two of You) are entitled in accordance with the Trust Deed. Your proportion will be paid by way of deduction from the proceeds of sale referred to in paragraph 6.4. For the avoidance of doubt, this term does not extend to your estate (or the survivor's estate) being responsible for any costs involved in improving the Property to a state which exceeds the standard the property is in when the Plan commences.'

### **Other information**

The firm was fully cooperative in agreeing this undertaking.

The firm has told us that it has not relied on the potentially unfair aspect of the two terms and agreed to treat customers fairly in respect of the two terms in existing contracts. The firm has changed its standard contract to reflect these changes for new customers from October 2007. The firm has agreed to contact its affected customers to tell them about the changes by the end of August, and will also inform the estates of customers upon death.

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