

Notice of Undertaking

Introduction

As a qualifying body, we, the Financial Services Authority (the FSA), can challenge firms using terms that we view as unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations). So we review contract terms referred to us by consumers, enforcement bodies and consumer organisations. This has led to AXA Insurance UK plc undertaking not to use certain terms that 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 publishes on its 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.

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 FSA, 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. When we accept an undertaking given to us from a firm to revise a term, this means that, on the evidence available at the time, we consider the term to be improved enough so that further regulatory action is not required.

AXA Insurance UK plc undertaking in relation to the contents and buildings insurance policies that it underwrites

Name of business	AXA Insurance UK plc	Lead organisation	FSA
Trading sector	Contents and Buildings Insurance	Contract identifier	‘Home Insurance’ for policy numbers beginning 42000 and new policies in 2011. ‘Home Insurance Policy Booklet January 2009 edition’ for policy numbers beginning ADH000.
Terms requiring provision of information and assistance			
Original term			
‘Home Insurance’ policy, 2011 edition – “What you must do when making your claim” <i>"You must give us, at your reasonable expense, all the information, reports, certificated plans,</i>			

specification information and assistance that we may need in progressing your claim."

'Home Insurance Policy Booklet January 2009 edition' – "What you must do after making your claim"

"Provide at your own expense all reports, certificated plans, specification information and assistance that we may need."

Application of the Regulations

Generally, 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. In our view, the above terms were likely to be unfair under the Regulations.

The 2009 term appeared to require consumers to provide ongoing and unlimited assistance and documentation to the firm. We were concerned that the term had the potential to cause a significant imbalance to the detriment of the consumer by being an unreasonable and excessive requirement for consumers to comply with.

The term in the 2011 insurance policy limited the scope of the requirement for the consumer to provide assistance and documentation by referring to it being at the consumer's "reasonable expense". However, we were concerned that this term still had the potential to cause a significant imbalance to the detriment of the consumer because it might not be clear to the consumer what would be thought reasonable in the circumstances. The consumer's obligation to provide information and assistance remained otherwise unlimited by any reference to relevance or reasonableness.

The extent of the consumer's obligations under the terms were also unclear because the terms appeared to contradict other terms in the policies that indicated that the firm would pay for costs including reports and plans. This lack of clarity and the potentially excessive obligations for the provision of assistance and documents meant that, in our view, the terms may have been contrary to the requirement of good faith.

How the term has changed

The firm has agreed to amend the terms to make clear what information and assistance consumers need to provide to help prove their claim and to help the firm deal with their claim. The scope of the requirement to provide assistance and information has now been expressly limited to being relevant to the consumer's claim.

In addition, the firm has agreed to amend the terms to reflect how it says it operates the terms in practice, by making clear that, in line with the other terms of the policy, the firm (and not the consumer) will pay for any reasonable expenses incurred by consumers in providing any of the required information and assistance.

New term

"What you must do when making your claim

- *To help prove your claim we may require you to provide original purchase receipts, invoices, bank or credit card statements, instruction booklets, photographs, utility bills, pre-purchase surveys or plans and deeds of your property;*
- *To help assist in dealing with your claim we may require you to obtain estimates for the replacement or repair of damaged property;*

We will only ask for information relevant to your claim and we will pay for any reasonable expenses you incur in providing us with the above information as part of your claim.”

Terms providing for a discounted cash settlement

Original term

‘Home Insurance’ policy, 2011 edition – page 24 “How we settle claims”

“We may repair, reinstate or replace the lost or damaged property. If we cannot replace or repair the property we may pay for the loss or damage in cash. If we do pay cash the amount we pay will reflect the cost we would have paid for replacement or repair through our preferred suppliers.”

‘Home Insurance Policy Booklet January 2009 edition’ – page 16 “How we settle claims”

“We may at our option repair, reinstate or replace the lost or damaged property. If we can not replace or repair the property we may at our option pay the loss or damage in cash. If we do pay cash the amount we pay will reflect any discounts we may have received had we replaced the property.”

Application of the Regulations

We took the view that the above terms were likely to be unfair under the Regulations.

The terms indicated that, if the firm was unable to repair or find a suitable replacement for an item, the firm would reimburse the consumer for the loss in cash which would be reduced to reflect any discounts the firm could have received through replacing or repairing the item through their suppliers.

We took the view that it was unfair for the terms to provide for a discounted cash settlement that reflected a supplier discount, when the decision to pay cash was based on the firm’s inability to meet its obligation under the contract to replace or repair the item.

In our view, the terms providing for discounted cash settlements in circumstances where the firm was unable to replace or repair the item would cause detriment to consumers by not providing for consumers to be fully reimbursed for their insured losses. This indicated to us a significant imbalance in the parties’ rights and obligations under the contract and a lack of good faith.

In addition, the terms did not reflect what the firm says it did in practice, which was to offer a full cash settlement in cases where the firm was unable to replace or repair the insured item. In our view, this did not remove the potential of the term to cause detriment. The inclusion of the terms that did not reflect what the firm did in practice demonstrated a lack of transparency.

How the term has changed

To reflect how the firm says it operates the term in practice, the firm has amended the terms to state that the firm will pay a full cash settlement where no equivalent repair or replacement item is available.

The terms also now explain the circumstances in which the firm will offer a discounted cash settlement; namely, where the firm is able to offer to repair or replace the item through a preferred supplier but where it instead agrees to pay a cash settlement at the consumer’s request.

Where consumers request a cash settlement even though they could have received a repair or

replacement, in our view, there are less likely to be fairness issues for the terms to allow the firm to discount the settlement to reflect any discount they would otherwise have received from their supplier. This is because the firm has offered an option that allows the consumer to be fully reimbursed for their loss under the insurance, but the consumer has instead chosen to receive a cash settlement.

New term

“We may repair, reinstate or replace the lost or damaged property. If we cannot replace or repair the property we may pay for the loss or damage in cash.

Where we can offer repair or replacement through a preferred supplier, but we agree to pay a cash settlement, then payment will not exceed the amount we would have paid the preferred supplier.

If no equivalent replacement is available then we will pay the full replacement cost of the item with no discount applied.”

Other information

The firm has changed its own contracts to reflect the amended terms about the cash settlement of claims and will make the changes to the terms about the provision of information to assist in making a claim by no later than 30 March 2012 in each case for new customers of insurance sold directly to customers through the AXA and Swiftcover brands.

The firm has agreed not to rely on the original terms in an unfair way in its own contracts with existing customers. Instead the firm will treat existing consumers as though they were subject to the new terms. The firm has told us that it has not relied on these terms in an unfair way with its existing customers.

In addition, the firm has a number of partner relationships with organisations that are not part of AXA, but where AXA is responsible for the policy wording. These are home contents and buildings insurance contracts offered by: Abacus, Dunfermline, John Lewis, Prestige, Egg, Rossborough, R K Harrison, Cherish, MMM, Towergate, Countrywide, ING, Marks and Spencer, JBI and Northern Rock. The firm also has a number of AXA branded home contents and buildings insurance contracts that are sold through intermediaries (including ABC, Extra and Exclusive).

The firm has agreed to amend the contracts with these partner organisations and AXA branded policies sold through intermediaries to reflect the amended terms for new customers. It is taking steps to ensure that the changes are included in any reprints of policy wordings when the stocks of existing policy wordings are replenished. The firm has also agreed not to rely on the original terms in an unfair way in existing or new contracts and will instead treat these consumers as though they were subject to the new terms. The firm has told us that it has not relied on these terms in an unfair way with its existing customers. The firm has also agreed to ensure that contracts with new partners (in circumstances where the firm will be responsible for the management of the policy wordings) will also contain the new terms described in this undertaking.

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

Undertaking published 29 February 2012