

Notice of Undertaking

Clerical Medical Investment Group Limited

Summary

Clerical Medical Investment Group Limited (Clerical Medical), which forms part of Lloyds Banking Group, has agreed to change its form of authority and discharge (FAD). This follows our assessment that a disclaimer used in the FAD is likely to be unfair.

What is the purpose of the Clerical Medical form of authority and discharge?

Clerical Medical requires its customers who have pension funds to sign a FAD when they apply to transfer their fund to a different provider, or to surrender their funds to buy an annuity. The FAD serves to evidence that the customer intends to transfer or surrender their funds and close the pension account, a right that is set out in their original policy with Clerical Medical.

Why did we think the terms were unfair?

We thought that the disclaimer in Clerical Medical's FAD seemed to absolve Clerical Medical from all liability under the customer's original contract. We were concerned that this might deter a customer from making a claim against the firm if they thought that Clerical Medical had done something wrong, such as inappropriately invested or incorrectly calculated their funds before they were transferred or surrendered.

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

Clerical Medical has agreed to change the FAD and remove the relevant wording.

So customers can be sure that signing the FAD does not mean waiving their right to make a claim against Clerical Medical for any wrongful act or omission by them. It will now be clear that paying the transfer or surrender value only ends the contract.

We are also informed by Clerical Medical that it has not used the FAD as a basis for avoiding customer complaints or queries, but has agreed to amend the disclaimer wording to avoid any such perception.

FADs signed after 22 May 2013 will contain the new disclaimer wording. Forms with similar disclaimer wording will be amended in due course, pending completion of the firm's process of identifying those forms in use within Lloyds Banking Group's Insurance business and amending them accordingly.

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

Undertaking

Name of business	Clerical Medical Investment Group Limited (Clerical Medical)	Lead organisation	Financial Conduct Authority (FCA)
Trading sector	Pensions	Contract identifier	Form of authority and discharge (FAD), which customers are required to sign when applying to transfer their pensions to a different provider or to surrender their pensions altogether

Original terms

'I/We agree that such payment shall be in full satisfaction and discharge of all claims and demands on Clerical Medical in respect of the Individual Buy-Out Plan and that the Individual Buy-Out Plan shall hereby be cancelled.'

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' rights and obligations to the detriment of the consumer. If Clerical Medical relied on this disclaimer against the customer as drafted, it would absolve the firm from all liability. Therefore, a consumer may be deterred from making a valid claim (for example, that their funds had been inappropriately invested or incorrectly calculated). In our view, the wording of the disclaimer is too broad when discharging the firm's obligation to pay under the contract.

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

Clerical Medical agreed to amend the disclaimer in the FAD and remove the wording that potentially absolved Clerical Medical of all liability under the contract.

This will make it clear that, by signing the FAD, customers are not waiving their rights to bring a claim against Clerical Medical for any wrongful act or omission by them.

Customers can now be sure that paying the transfer or surrender value only ends the contract.

New terms

I authorise you to transfer the value of my Clerical Medical [name of plan] to the Receiving Scheme/Provider detailed below.

The transfer value is £[x], as at [DD Month YYYY]. This value assumes all premiums are paid to date.

Following receipt of the completed Form of Authority and Discharge, Clerical Medical will calculate the actual transfer value payable to the Receiving Scheme/Provider. The amount will be calculated in accordance with the policy provisions, and may include Terminal Bonus and/or a Market Value Adjuster.

Once the transfer value has been paid to the Receiving Scheme/Provider, my Clerical Medical Pension Transfer Account will then end.

Other information

Clerical Medical has also agreed to:

- treat all customers who have previously signed the FAD (or forms with similar disclaimer wording) as though the new wording applies to them; and
- introduce the new wording into the FAD from 22 May 2013. Forms with similar disclaimer wording will be amended in due course, pending completion of the firm's process of identifying those forms in use within Lloyds Banking Group's Insurance business and amending them accordingly.

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 Clerical Medical Investment Group Limited agreeing to amend the wording of the disclaimer in its Form of Authority and Discharge 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.