BISL Limited's motor insurance policies – unclear cancellation terms changed

Who are BISL Limited?

BISL Limited is a car and motorbike insurer that arranges and manages policies under several names that it owns and also for about a dozen other firms.

Why the terms were changed

BISL has agreed to change the cancellation terms in its policies. This is because we believe the original terms were confusing and unfair.

Our assessment is that the original terms did not explain clearly to customers who cancelled their policies early how BISL would calculate any refund of premium due to them. The contract terms allowed BISL to cancel a policy and either refund or keep the premium, depending on the circumstances, which needed to be explained more fully.

Who is affected?

These changes affect all customers who have bought car or motorbike insurance through:

· Auto trader
· Barclays Motor Insurance
· Bennetts
· Budget
· Bradford & Bingley Car Insurance
· Dial Direct
· Ecoinsurance for Cars
· Halifax Car Insurance
· HSBC Car Insurance
· iBuyeco
· Lloyds TSB Car Insurance
· M&S Car Insurance
· Pearl Car Insurance
· Post Office Motor Insurance
· RAC Car Insurance
· Yesinsurance.co.uk

Bennetts, Budget, Dial Direct and iBuyeco are BISL's own 'brands'; they manage policies for the others.

The contract changes

The new terms make it clear that:

· a customer cancelling a policy before the end of 12 months will be refunded on the basis of the number of days of cover remaining, provided no claim has been made;

· the company will charge a fixed cancellation fee, which will be set out in an 'Additional Important Information' document; and

· under certain circumstances BISL can cancel a policy – the new terms now include examples of these, including when the company can keep the premium.

What happens next?

Customers will not need to do anything since the changes will be automatically applied to their policies.

For existing customers, these new cancellation terms were applied to their current policies from:

· 21 August 2011 for BISL's own car policies; and

· 1 July 2012 for BISL's own motorbike policies, and for car and motorbike insurance from companies that have their policies administered through BISL.

Confirmation will be sent to existing customers with annual policy renewal documents, starting 31 March 2013.

New customers will be sent policies that will include the new cancellation terms, also from 31 March 2013.

UNDERTAKING

BISL Limited undertaking in relation to motor insurance terms and conditions for policies administered by it

Name of Business	BISL Limited	**Lead organisation**	FSA
Trading sector	Insurance	**Contract identifier**	Some motor insurance terms and conditions for policies administered by BISL Limited

Original term

<u>'Cancelling this insurance</u>
You may cancel your policy with immediate effect by notifying us by phone or by post. Our contact details can be found on the reverse of your Certificate. We may cancel this policy by giving you at least seven days' notice in writing. Where a policy is cancelled a refund of part of the premium paid may be due. Refunds will only be payable if the Certificate of Motor Insurance is returned to us. Any premium refund due will be calculated as follows, less any deduction shown in the Policy Payment Arrangements.

If you cancel within 14 days of receipt of your policy documentation, we will refund that part of the premium paid which relates to the term of the policy remaining at the date of cancellation, less any deductions as noted in the "Policy Payment Arrangement" section. This amount will be refunded when we receive the Certificate, unless you have made a total loss claim in which case no refund will be given.

<u>Thereafter refunds will only be given if no incident has occurred which has led to a claim, or may yet lead to a claim against the policy and calculated as follows. If you or we cancel within 12 months of the Policy Start Date, we will calculate the premium for the period of cover based on our short period rates in force when we receive the Certificate of Motor Insurance and refund any excess premium you have paid.'</u>

Applying the Regulations

Terms are regarded as unfair under Regulation 5 of the Regulations if, contrary to the requirement of good faith, they cause a significant imbalance in the parties' rights and obligations under the contract, which harms the consumer.

Under the Regulations, a term will be considered according to how it is drafted in the contract, namely its *potential* for unfairness, regardless of how it has been applied in practice.

In our view, the underlined section of the term had the potential to create a significant imbalance in the parties' rights and obligations arising under the contract because it appeared to give the firm too much discretion on cancellation. The term appeared to provide the firm with a wide discretion to decide what the short period rate was and, as a result, what it would refund when either the consumer or the firm cancelled the contract.

The requirement of good faith under the Regulations is one of fair and open dealing. In our view, the term could have contravened the requirement of good faith as it may have lacked openness. The words 'short period rates' in our view were not expressed clearly or fully for a consumer to understand the actual and potential meaning.

In our view, for the term to imply the firm had the discretion to determine the amounts of the 'short term period rates in force' at the time of cancellation had the potential to cause consumers detriment.

Regulation 7 states that 'A seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language'. 'Short period rates' was not a defined term within the contract, and in our view, it may not have been intelligible to consumers what a 'short period rate' was.

Paragraph 1(f) of Schedule 2 to the Regulations states that terms which have the object or effect of '<u>or permitting the seller or supplier to retain the sums paid for services not yet supplied by him where it is the seller or supplier himself who dissolves the contract</u>' may be regarded as unfair.

In our view, the term had the potential to be unfair under paragraph 1(f) of Schedule 2 to the Regulations because the term may have allowed the firm to retain sums paid by the consumer for services which it has not yet supplied, when it was the firm that dissolved the contract. The firm has informed us that it has only relied on the term when there were serious grounds for doing so.

How and why the term has changed

According to the firm, the original cancellation term does not reflect what the firm did in practice. The firm has explained that the fixed percentages of premium payable on cancellation after particular time periods is set out in a table in the Payment Arrangements section of the documents provided to the customer. According to the firm, it was these percentages that were applied on a cancellation so that the short-period rate was not in fact set or varied after the contract had been entered into. However, in our view, the fact that the documents contained contradictory terms, one of which did not reflect the way the firm operated in practice, meant that the terms were unclear in a way that may have been contrary to the requirement of good faith.

We have been informed by the firm that for commercial reasons the firm changed its approach to calculating premiums for both its own brand and affinity-branded motorcar and motorbike insurance policies administered by it as follows.

Since 21 August 2011, for their own brand motorcar insurance policies, the firm has charged customers cancelling their policies a premium reflecting the time on cover on a pro-rata basis together with a fixed cancellation fee, and has refunded any excess premium paid. The firm's own brand motorcar insurance range includes Bennetts, Budget, Dial Direct and the iBuyeco products.

For its own brand motorbike insurance policies it has, since 1 July 2012, charged customers cancelling their policies a premium reflecting the time on cover on a pro-rata basis, together with a fixed cancellation fee, and has refunded any excess premium paid. The firm's own brand motorbike insurance range includes Bennetts and Dial Direct Bike products.

With regard to its affinity partners, the firm has told us that since 1 July 2012, for all affinity brand motorcar and motorbike insurance policies, it has charged customers cancelling their policies a premium reflecting the time on cover on a pro-rata basis together with a fixed cancellation fee, and has refunded any excess premium paid.

The relevant new cancellation term is set out in the new term box below. The firm has informed us that all new customers of its own brand and affinity branded motorcar and motorbike insurance policies will receive a policy with the new term from 31 March 2013, and existing policy holders will receive the new term at their annual renewal falling on or after 31 March 2013.

New term

How to cancel your policy

You must contact us if you wish to cancel your policy. Our contact details are on the reverse of your Certificate of Motor Insurance.

We will cancel your policy either from the date you contact us, or from any later date you specify. The policy cannot be cancelled from an earlier date than when you contact us.

In all cases the Certificate of Motor Insurance must be returned to us. Not doing so is an offence under the Road Traffic Act 1988. If you have lost your Certificate of Motor Insurance, we will ask you to complete a Statutory Lost Certificate Declaration to confirm this.

If you are paying your premiums by instalments, you must still pay us any balance of premium due. Cancelling any direct debit instruction does not mean you have cancelled the policy. You will still need to follow the instructions above.

In the event of cancellation, a cancellation fee as shown in the Additional Important Information document, will apply.

Cancellation by you within the first 14 days

If you cancel your policy within 14 days of the date you receive your policy documents we, on receipt of your Certificate of Motor Insurance, will refund a percentage of the premium calculated on a daily pro rata basis equivalent to the period of cover left unused, unless you have made a total loss claim in which case no refund of premium will be given and all premiums would be due.

Cancellation by you after the first 14 days

If you cancel this policy after the 14 day period, we, on receipt of your Certificate of Motor Insurance, will refund a percentage of the premium calculated on a daily pro-rata basis equivalent to the period of cover left unused providing no claims have been made. If a claim has been made, or there has been an incident which may lead to a claim, no refund of premium will be given and all premiums would be due.

Where we cancel your policy

We may cancel your policy, if there are serious grounds to do so such as non-payment, failure to supply requested validation documentation (proof of No Claims Discount, Security etc) or you have provided us with incorrect information and you have failed to provide a remedy when requested where we cancel we will provide seven days prior written notice to your last known address unless we are required to cancel earlier. If we cancel your policy you will be required to return the Certificate of Motor Insurance to us. We, on receipt of your Certificate of Motor Insurance, will refund a percentage of the premium calculated on a daily pro-rata basis equivalent to the period of cover left unused, providing no claims have been made. If a claim has been made, or there has been an incident which may lead to a claim, no refund of premium will be given and all premiums would be due.

If we cancel your policy on the grounds of fraud, cancellation may be immediate and we may keep any premium you have paid. We may also inform the police of the circumstances.