

Introduction

As a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations) we can challenge firms that are using terms we view as unfair. We review contract terms referred to us by consumers, enforcement bodies and consumer organisations, among others. Our review of Abbey Life Assurance Company Limited's terms has led to the firm undertaking not to use certain terms that we consider unfair.

Under the Regulations we must notify the Office of Fair Trading (OFT) of the undertakings we receive. The OFT has a duty to publish details of these undertakings and they appear on its Consumer Regulations Website. We also publish details on our website. Both publications will name the firm, identify the specific terms and explain why we think they are unfair under the Regulations.

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 could give an indication of the view that the courts, the FSA, the OFT or other qualifying bodies may take of similar terms or terms with similar effects.

Abbey Life Assurance Company Limited terms and conditions

Name of business	Abbey Life Assurance Company Limited	Lead organisation	FSA
Trading sector	Pensions	Contract identifier	All Open Market Option Application Forms
<p>Old term</p> <p>Open Market Option Application form Discharge</p> <p>I confirm that the details in this form are true and I agree that payment by Abbey Life Assurance Company Limited or Abbey Life Trustee Services Limited of the benefits requested constitutes full discharge of all my claims made in respect of those benefits. I promise to indemnify Abbey Life Assurance Company Limited or Abbey Life Trustee Services Limited against all other claims in respect of the benefits being taken and against any losses and expenses arising from such claims.</p>			
<p>Application of the Regulations</p> <p>Regulation 5 states that a contract term 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". We considered that the term did not explain what costs the consumer was indemnifying the firm against. The conditions were drafted so broadly that it was not clear to us that the firm would only hold consumers responsible for losses or costs it incurred if those losses were directly attributable to the consumer's carelessness or dishonesty. In our view this caused a significant imbalance in the contract to the detriment of consumers.</p> <p>The OFT, in its role as primary enforcer of the Regulations, issued guidance in February 2001 (which was reissued in September 2008) (OFT 311) on its interpretation of the Regulations.</p>			

Paragraph 18.27 explains that "Terms under which the supplier must be 'indemnified' for costs which could arise through no fault of the consumer's are open to...objection particularly where the supplier himself could be at fault".

Regulation 7 states that "A seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language". We consider terms requiring consumers to 'indemnify' are not written in plain and intelligible language. We doubt the average consumer would understand the meaning of the word 'indemnify'.

We note that the OFT's guidance indicates similar concerns regarding the use of terms requiring consumers to 'indemnify' firms. Paragraph 18.27 states "the word 'indemnify' itself is legal jargon which, if understood at all, is liable to be taken as a threat to pass on legal and other costs incurred without regard to reasonableness."

How the term has changed

The new term makes clear that the consumer is responsible for losses and expenses incurred by the firm as a result of the consumer's carelessness or dishonesty. In addition the new term removes the legal terminology that we were concerned consumers may not understand.

New term

I confirm that the details in this form are true and complete. I agree that payment by Abbey Life Assurance Company Limited ("ALAC") and Abbey Life Trustee Services Limited ("ALTS") of benefits in respect of a [policy] arising from this form is in full and final discharge of all my claims on the [policy].

I promise that I will be responsible for any losses and/or expenses which are the result, and which a reasonable person would consider to be the probable result, of any untrue, misleading or inaccurate information carelessly given by me, or on my behalf, either in this form or with respect to benefits from the [policy].

I also promise that I will be responsible for any losses and/or expenses which are the result of any untrue, misleading, or inaccurate information deliberately given by me, or on my behalf, either in this form or with respect to the benefits from the [policy].

Other information

The firm was fully cooperative in agreeing this undertaking.

The firm has advised that it has not and will not rely on the old term, or any term with the same or a similar effect, in this or any other existing contracts in an unfair way. It has also advised that it will treat any former or existing customers as though they were subject to the new term.

The firm is in the process of changing its retirement pack, which includes the Open Market Option Application Form, to include the new term from 31 December 2008.

Undertaking published 6 November 2008

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