

Undertaking

Introduction

As a qualifying body, if we (the FSA) consider a firm is using an unfair term, using our powers under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations) we can challenge the use of that unfair term. We have been reviewing contract terms which consumers, enforcement bodies and consumer organisations have referred to us, as well as those terms which have come to light through our internal reviews. This has led to the following firm undertaking not to use the term in the table below.

We have a duty under the Regulations to tell the Office of Fair Trading (OFT) about the undertakings we receive. The OFT must publish details of these undertakings. It does this on its Consumer Regulation Website. We also publish each undertaking and its details on our website. Both websites will name the firm and identify the specific term and the part of the Regulations which relate to the term's fairness.

In general, firms should regularly assess whether their terms and conditions in consumer contracts meet the standards of fairness set out in the Regulations and consider what steps they need to take to comply with the Regulations.

Please be aware that publishing the undertakings may attract more consumer complaints both to us and direct to firms, which will need to be addressed. We encourage firms to consider the undertakings we publish when reviewing their terms and conditions.

Hayburn Rock Undertaking

Name of business	Hayburn Rock Associates Ltd	Lead organisation	The FSA
Trading sector	Retail Intermediaries	Contract identifier	Private Client Agreement

Original term	Application of the Regulations	How changed	New term
'Remuneration' 'Our income is derived from commission paid to us by Life Assurance Companies with which policies are written. Before you sign any	We did not think how the firm charges consumers for its services in plain and intelligible language. For	The new term lays out more clearly how the firm will charge consumers for its services. For example, it is clear that the	'How we charge you for our services' 'Our income comes from either commission from the product providers we write business with or fees

<p>application or proposal, we will inform you of the amount of commission that we will receive on any proposed transaction. We normally retain that commission and, therefore, make no charge to you. In circumstances where the work that we undertake does not attract commission we may make charges to you, such charges being in the form of either a flat fee or at an hourly rate. If we propose to make a charge, we will agree its basis with you in writing before we carry out any chargeable work. We act as your agent in advising you and arranging mortgages. If we receive a commission or other form of benefit from the issuer or from another intermediary, we will inform you but we will not tell you its amount unless you ask us to do so. If commission paid to ourselves is subsequently reclaimed due to non payment of premiums, then we reserve the right to invoice you for the amount reclaimed. We will take account of any enforced change of circumstances, which may render the said contract ineligible, prior to invoicing in these circumstances.'</p>	<p>example, we thought the term was unclear as to whether the consumer is told the amount of commission. At one point it states that the amount of commission will be disclosed, but later on states that the consumer will not be told the amount unless they ask for it.</p> <p>Regulation 7(1) provides that a firm shall ensure that any written term of a contract is expressed in plain, intelligible language.</p>	<p>amount of commission the firm receives will be disclosed to the consumer.</p> <p>The firm have amended the term with immediate effect.</p>	<p>paid to us by our customers. Whenever commission is available to us, you can choose whether to pay us by allowing us to keep the commission, or by paying us a fee instead. This is in line with standard industry practice. We will tell you how much the commission is before the transaction. If you choose to pay us by commission, we will keep the commission and not charge you a fee. If you choose to pay us a fee, we will charge either a flat-rate or an hourly-rate fee. We will agree this fee with you in writing before we carry out any work that we charge you for.</p> <p>We may also receive some form of benefit if we introduce business to a product provider or another firm. We will tell you before the transaction if we are likely to receive some form of benefit from recommending any product to you, or from working with any product provider or firm.'</p>
<p>Other information</p>	<p>The firm was fully cooperative in agreeing to this undertaking.</p>		

	<p>To demonstrate their dedication to both achieving fair and clear contract terms, and to treating their customers fairly, the firm has chosen to give up any power to recover commission from consumers where they have not paid their life assurance premiums.</p> <p>The firm will apply this new term to its existing customers with immediate effect and has agreed to write to its existing customers to tell them this.</p> <p>The original term was not consistent with post-depolarisation FSA Handbook rules. The term indicated that consumers would only be offered the option of paying by fee when commission was not available to the firm. Independent Financial Advisers (IFAs) should always offer consumers the option of paying a fee. The wording of the new term is consistent with post-depolarisation FSA Handbook rules.</p> <p>The original term was in the Mortgage Terms of Business, but now appears in the Private Client Agreement.</p>
Date Published	6 August 2007