

Undertaking

Introduction

As a qualifying body, we, the Financial Services Authority ('the FSA'), can challenge firms using terms which we view as unfair under the Unfair Terms in Consumer Contracts Regulations 1999 ('the Regulations'). So we review contract terms which are referred to us by consumers, enforcement bodies and consumer organisations. This has led to Homecare Insurance Limited undertaking not to use the Fonesafe, Care3Insurance, CPP Phonesafe, Citi Plus and First Directory terms which we consider may be 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, 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 which relate to the term's fairness.

If your firm has not given an undertaking or been subject to a court decision, you should remain alert to undertakings or court decisions concerning other firms as part of your risk management. These could show the likely attitude of the courts, the FSA, the OFT or other qualifying bodies to similar terms or terms with similar effects.

Publishing undertakings may attract more consumer complaints both to the FSA and direct to firms, which the firm will need to be address.

Homecare Insurance Limited undertaking in relation to Fonesafe, Care3Insurance, CPP Phonesafe, Citi Plus and First Directory Terms and Conditions

Name of business	Homecare Insurance Limited ('Homecare')	Lead organisation	FSA
Trading sector	Insurance – Mobile Phone	Contract identifier	Monthly / Annual Policies: 1. Fonesafe – T-Mobile Terms and Conditions - 2005 version 2. Fonesafe – T-Mobile Terms and Conditions - 2006 version 3. Care3Insurance – Hutchinson 3G CPP Phonesafe Terms and Conditions - before December 2007 4. CPP Phonesafe Terms and Conditions – before 17 September 2007 Other Policies:

			<p>1. Citi Plus - Citibank Mobile Phone Insurance Terms and Conditions – from February 2007</p> <p>2. First Directory - First Direct Mobile Phone Insurance Terms and Conditions – from January 2004</p>
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Original term

Using the T-Mobile Fonesafe terms and conditions as an example:

Part 4 of Term F in the Fonesafe – T-Mobile 2005 Terms and Conditions ('2005 contract') stated:

F) Conditions of the Insurance

4. What to do if your phone is damaged:

- Call the insurer on 0845 120 2097 within 48 hours of the incident or contact your nearest T-Mobile store and you will be advised of the procedure'

Under the title of 'Main Benefits' in the Fonesafe – T-Mobile 2006 letter to consumers which accompanied the terms and conditions ('2006 accompanying letter'), it stated:

'You must notify the insurer of the loss/theft/damage within 48 hours'

In the Fonesafe – T-Mobile 2006 Terms and Conditions ('2006 contract'), Term F entitled 'What to do if your phone is lost or stolen' and Term G entitled 'What to do if your phone is damaged or breaks down outside of warranty' contained the phrase:

'within the time period specified in your schedule of cover'

The other contracts contained the same terms or similar terms with the same effect.

Application of the Regulations

We were concerned about the 2005 contract because it contained a term which required customers to notify the firm of damage to the phone within 48 hours of the incident occurring. We believe this may be unfair. This is because a time limit of reporting within 48 hours of the **incident**, as opposed to within 48 hours of **discovery** is an unduly limited period of time as customers may not have realised their phone had been damaged within this period.

We were also concerned about the clarity of the 2006 contract. Two terms stated that the time limit for claims was to be found in the 'schedule of cover'. However, there was no term, section or document entitled 'schedule of cover'. In fact, the relevant information was in the 2006 accompanying letter to customers, under the heading 'Main Benefits'. Further, the 2006 accompanying letter did not specify whether customers had to report the loss, theft or damage within 48 hours of either incident or discovery.

Regulation 5(1) states:

'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'.

Paragraph 2.4.2 of the OFT's Unfair Contract Terms Guidance states:

'The OFT is likely to object to a term that frees the supplier from his responsibilities towards the consumer where the consumer does not make a complaint immediately or within an unduly short period of time. This applies particularly where: (a) a time limit is so short that ordinary persons could easily

miss it through mere inadvertence, or because of circumstances outside their control; and (b) faults for which the supplier is responsible which could only become apparent after a time limit has expired'.

Regulation 7(1) states:

'A seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language'.

How the term has changed

Homecare has amended the terms so customers have 48 hours from when they **discover** the theft, damage or breakdown of the phone to notify the firm instead of 48 hours from when the **incident** occurred.

Homecare made these amendments to all of its monthly and annual contracts issued from mid-September 2007. These are contracts issued by Homecare and its business partners – currently T-Mobile and before December 2007 Hutchinson 3G ('H3G') – and CPP, all in the name of Fonesafe or Phonesafe.

Homecare has contacted T-Mobile, H3G and CPP's existing monthly customers via text message to inform them of the change to their policies. Where Homecare did not have a mobile telephone number for a customer, it sent a letter.

T-Mobile, H3G and CPP's existing annual customers are being contacted as part of the renewal process.

For Homecare's other mobile phone insurance policies, where customers of Citibank and First Direct have a bank account that includes free mobile phone insurance, it has arranged for existing customers to be notified of the changes to the contracts from July 2008. Citibank customers will be notified by a statement insert and First Direct customers will be notified with new terms and conditions.

Homecare has also amended the relevant heading in its cover letter, so it refers to 'Your Schedule of Cover'. This makes it consistent with the rest of the contract.

New term

The new term states that if customers are in the UK and they need to claim, they must report the incident to the Airtime Provider, for example T-Mobile or H3G (for theft only) and to the police (for theft and malicious damage), both within 24 hours of discovery. They must report the incident (theft, malicious or accidental damage and breakdown) to the insurer Fonesafe within 48 hours of discovery (as shown below):

Using the T-Mobile Fonesafe terms and conditions as an example:

'H) Claims: how to claim

If you are in the UK and you need to claim, you must report the incident in accordance with the following timetable:

Action Required:

Report to fonesafe

Incident:

Theft/Malicious Damage/Accidental Damage or Breakdown Within 48 hours of discovery'

The new term states that if customers are abroad and need to claim, they must report the incident to the Airtime Provider (for theft only) and to the local police (for theft and malicious damage), both within 48 hours of discovery. They must also report the incident (theft, malicious or accidental damage and breakdown) to the insurer Fonesafe within 48 hours of return to the UK (as shown below):

Using the T-Mobile Fonesafe terms and conditions as an example:

H) Claims: how to claim

If you are abroad and you need to claim, you must report the incident in accordance with the following timetable:

Action Required:

Report to fonesafe

Incident:

Theft/Malicious Damage/Accidental Damage or Breakdown Within 48 hours of return to the UK'

The other contracts contain the same terms or similar terms with the same effect.

Other information

We have not considered the fairness or otherwise of the number of hours the firm has given as a time limit. However, we would remind firms that they must not unreasonably reject claims, in line with the Insurance: Conduct of Business sourcebook ('ICOBS'), 8.1.1R(3).

In addition, firms must give consumers appropriate information about the contract in good time and in line with ICOBS 6.1.5R. Appropriate information includes information about the main benefits, exclusions, limitations and conditions of the contract.

The firm was cooperative in agreeing to this undertaking.

Undertaking published 8 July 2008