

Undertaking

Introduction

As a qualifying body, the FSA can challenge firms using terms which it views as unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations). The FSA has been reviewing contract terms which have been referred to us by consumers, enforcement bodies and consumer organisations. This has led to the following firms undertaking not to use terms which may be considered 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. The OFT does so on its Consumer Regulation Website. The FSA policy is to publish details of the undertakings and the undertakings on its website. Both publications will name the firms 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 the publication of the undertakings may attract more consumer complaints both to the FSA and direct to firms, which will need to be addressed. We encourage firms to consider the undertakings that the FSA publishes in the review of their terms and conditions.

London Capital Group Ltd undertaking

Name of business	London Capital Group Limited	Lead organisation	FSA
Trading sector	Spread betting	Contract identifier	Capital Spreads, Spread betting Terms & Conditions
Original term	Application of the Regulations (Schedule 2 paragraph or as indicated)	How changed	New term
1. First paragraph (no numbers)	<p>The term allowed the firm to interpret the contract if there was an 'obvious mistake' in the terms or if no rule covered the situation.</p> <p>The term attempts to exclude the requirement in Regulation 7(2) which says that if there is doubt about the meaning of a term, the interpretation most favourable to the consumer prevails.</p> <p>The term is vague and it is unclear what 'obvious rule' means. It therefore could allow the firm to effectively bind the consumer to</p>	Deleted	None

	<p>terms with which he has had no opportunity to become acquainted before the conclusion of the contract. This appears to breach Paragraph 1(i).</p>		
2. Entire contract	<p>The contract is not plain and intelligible. For instance:</p> <ul style="list-style-type: none"> -it uses unexplained technical terms; -it says that technical market terminology should be understood by the consumer and refuses to deal with any complaints if terminology is unclear. <p>It appears to breach Regulation 7(1).</p>	Contract being amended to be plain and intelligible	
3. Term 23	<p>The term allowed the firm to interpret the contract if there was any error in the terms 'on the basis of fairness and common sense'.</p> <p>This appears to breach Paragraph 1(m) as it gives the firm exclusive right to interpret any term of the contract and determine if performance of the contract is in conformity with the contract.</p> <p>It appears to breach Paragraph 1(q) as it may exclude/hinder the consumer's right to take legal action or to any other legal remedy.</p> <p>It also appears to breach Paragraph 1(j) as, in effect, it may allow the firm to unilaterally alter the terms and conditions without specifying a valid reason.</p>	Deleted	None
4. Term 4.8	<p>The term says the firm has no duty to enquire about the identity of any person who correctly gives the customer's name and account number.</p> <p>Read with term 4.10 this causes a significant imbalance in the rights and obligations of the parties to the detriment of consumers contrary to Regulation 5(1) as the consumer would suffer loss even if this was due to negligence by the firm in its</p>	Deleted	None

	security procedures.		
5. Term 4.10	<p>The term puts full responsibility on the consumer for any fraud affecting his account even if he is not negligent.</p> <p>This causes a significant imbalance in the rights and obligations of the parties to the detriment of consumers, contrary to Regulation 5(1).</p>	Deleted, replaced with term saying, 'Where LCG Limited has allowed access to any clients' account through negligence by its staff or through abuse by third parties via LCG Limited's online trading platform (i.e. hacking), LCG Limited shall indemnify the client from any losses incurred'.	4.9
6. Terms 12.1 and 12.2	<p>The terms attempt to exclude LCG Ltd's liability for manifest errors.</p> <p>The Supply of Goods and Services Act 1982, section 13 implies a term into consumer contracts, which obliges suppliers to perform services with reasonable skill and care. This duty may not be excluded and any attempt to limit liability for negligence or a poor service is likely to be unfair.</p> <p>The terms appear to breach Paragraph 1(b) as businesses may not inappropriately limit or exclude the rights of consumers.</p> <p>The terms appear to breach Paragraph 1(o) as it obliges consumers to fulfil all their obligations while the supplier does not perform his.</p>	Deleted. A manifest error will now only be defined in the definitions section and listed as a reason for closing a trade.	8.10
Other information	Firm was fully co-operative in deleting and amending terms.		
Undertaking accepted	4 January 2005		