

Undertaking

Introduction

As a qualifying body, we (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 have been reviewing contract terms which have been referred to us by consumers, enforcement bodies and consumer organisations. This has led to the following firm 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. Our policy is to publish details of the undertakings and the undertakings on our 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 publishing 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 we publish when reviewing their terms and conditions.

London Scottish Bank plc undertaking

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| Name of business | London Scottish Bank plc | Lead organisation | FSA |
| Trading sector | Mortgages | Contract identifier | Legal Mortgage Deed |
| Original term | Application of the Regulations (Schedule 2 paragraph or as indicated) | How changed | New term |

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| <p>The first paragraph of 25.1</p> | <p>The term appeared to give the firm extensive discretion to impose charges on consumers and there was not concept of reasonableness. The words ‘...or charged by the Lender...’ seemed to give the firm particularly wide discretion.</p> <p>The term stated:</p> <p><i>'You must pay on a full and unqualified indemnity basis all fees, expenses, taxes, liabilities and legal and other costs, including VAT if applicable on all such amounts, incurred or charged by the Lender...'</i></p> <p>This may not have met the requirements or Regulation 5(1), which provides that a 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.</p> | <p>Whilst there was no evidence that the firm had imposed charges unreasonably, the firm agreed to amend the term to reduce its discretion and reflect its practice of imposing charges that are reasonably incurred.</p> <p>It now states:</p> <p><i>'You must pay all fees, expenses, taxes, liabilities and legal and other costs, including VAT if applicable on all such amounts, reasonably incurred by the Lender...'</i></p> | <p>The first paragraph of 26.1</p> |
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| <p>Term 25.1(a)</p> | <p>The term appeared to allow the firm to pass on the costs of proceedings (e.g. even if the proceedings began because of the firm's negligence or the firm was unsuccessful in those proceedings).</p> <p><i>"You must pay on a full and unqualified indemnity basis all fees, expenses, taxes, liabilities and legal and other costs ... incurred or charged by the Lender in or incidental to:-</i></p> <p><i>(a) the preparation, completion, registration, administration, protection and enforcement (including the costs of any proceedings) of this mortgage...'</i></p> <p>This may not have met the requirement of Regulation 5(1).</p> | <p>Whilst there is no evidence that the firm had sought to apply the term in the manner suggested, the firm agreed to amend the term to reflect the fact that the firm will not pass on the costs of enforcement proceedings unless they are rightfully and justifiably started.</p> <p>It now states that consumers will only be charged for the '<i>... rightful enforcement ...</i>' of the mortgage.</p> | <p>Term 25.1(a)</p> |
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| None | <p>There did not seem to be any term in the Legal Mortgage Deed which explicitly gave the firm contractual power to impose an early repayment charge.</p> <p>This may not have met the requirements under Regulation 7(1) which provides that any written term of a contract must be expressed in plain, intelligible language.</p> | <p>The firm believed that as its mortgage terms and conditions, as well as the Mortgage Offer and Key Facts document, expressly state its right to apply early repayment charges, it did not need to include them in its Legal Mortgage Deed as well. Even so, the firm has agreed, for the sake of clarity, to amend its Legal Mortgage Deed to include a cross-referencing clause:</p> <p><i>'Should you wish to pay the Secured Amounts early, the Lender has the right to make an early settlement charge. The charges that will apply are set out in the offer relating to this Mortgage and the terms that will apply in relation to early settlement are set out in clause 6 of the Loan Terms and Conditions.'</i></p> | Term 6 |
| Other information | <p>The firm was fully cooperative in amending these terms. Please note that no allegation has been made that these terms have been applied in this manner.</p> <p>The part of the undertaking relating to the first paragraph of term 25.1 was amended following a review conducted by the FSA in light of the Supreme Court's ruling in <i>Office of Fair Trading v Abbey National PLC & Others</i> [2009] EWCA Civ 116. It previously also related to the level of the charges levied by the firm.</p> | | |
| Undertakings published | October 2006 (subsequently amended in September 2010). | | |