

## 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). 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 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. 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.

### Scottish Widows Bank plc Undertaking

<b>Name of business</b>	Scottish Widows Bank plc	<b>Lead organisation</b>	FSA
<b>Trading sector</b>	Mortgage - lifetime	<b>Contract identifier</b>	Lifetime Mortgage Conditions 2004
<b>Original term</b>	<b>Application of the Regulations (Schedule 2 paragraph or as indicated)</b>	<b>How changed</b>	
8.4(g) and 8.4(h), under Chapter 8 'Insurance against fire etc.'	The lifetime mortgage conditions contained a chapter on insurance claim monies.  Term 8.4(g) provided that 'any money which becomes payable under a policy ... is used <b>at our option</b> either to pay off or reduce the whole debt or to reinstate the property.'	As well as the lifetime mortgage conditions, the Key Facts Illustration (KFI) Offer document also forms part of the mortgage contract.  The bank agreed, in order to take customers legitimate interests better into account, to amend an existing term in its Lifetime Mortgage KFI document, giving <b>the consumer the option</b> to use	Term E, KFI Offer document, as of September 2006, under 'Standard Conditions', on page 10.

	<p>8.4(h) further provided that 'if you receive money under any insurance policy affecting the property, you will hold the money in trust for us.'</p> <p>It was possible that a consumer had suffered such damage to the property that it was no longer habitable. However, the term appeared to give the bank the discretion to decide whether to use any insurance claim monies to pay off or reduce the mortgage or reinstate the property. If the bank exercised its discretion to pay off or reduce the mortgage, consumers with a lifetime mortgage may be left without a home to live in.</p> <p>Regulation 5(1) provides that a term may be unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations, to the detriment of the consumer. We thought that the term may have been unfair under the Regulations for lifetime mortgage contracts.</p>	<p>the buildings insurance proceeds either to pay off or reduce the mortgage amount or to reinstate the property.</p> <p>The KFI Offer document now states:</p> <p>'All monies which become payable under your Buildings Insurance Policy are to be used <b>at your option</b> either to reinstate the property or pay-off or reduce the whole debt.'</p> <p>The Bank agreed to include the amended term in all new KFI Offer documents that are issued to customers.</p>	
<p><b>Other information</b></p>	<p>In order to put the matter beyond doubt, Scottish Widows Bank agreed to amend the KFI Offer document. For all existing lifetime mortgage contracts, the customer will have the option to use the insurance claim monies to either fully reinstate the property or to pay off or reduce the mortgage amount due to the bank.</p> <p>The KFI Offer document is sent to customers along with the lifetime mortgage conditions.</p> <p>Scottish Widows Bank plc was fully cooperative in agreeing to this undertaking.</p>		
<p><b>Undertakings published</b></p>	<p>September 2006</p>		