

Undertaking

Introduction

As a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations) we, the Financial Services Authority (FSA), can challenge firms that are using terms which we view as unfair. We review contract terms referred to us by, among others, consumers, enforcement bodies and consumer organisations. Our review of Barclays Bank PLC's terms and conditions – 'Barclays Fixed Rate Savings Bond' – has led to the firm undertaking not to use certain terms which we consider are 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 and they appear on its Consumer Regulation Website. We also publish details on our website. Both publications will name the firm, identify the specific terms and explain why we think they are unfair under the Regulations.

Even if firms have not given an undertaking or been subject to a court decision under the Regulations, they should remain alert to undertakings or court decisions concerning other firms as part of their risk management. While this undertaking reflects our concerns with the terms in the contracts specified below, it may provide a useful steer as to our views on the fairness of terms in consumer contracts for financial products and services with similar characteristics and, in relation to some terms, generally.

For FSA corporate pages

(<http://www.fsa.gov.uk/Pages/Doing/Regulated/consumer/index.shtml>):

Barclays Bank PLC undertaking

Name of business	Barclays Bank PLC	Lead organisation	The FSA
Trading sector	Investment	Contract identifier	Fixed Rate Savings Bond Terms and Conditions – 2004 and 2006 versions

Original terms

Our first concern:

Terms and Conditions of Barclays Fixed Rate Savings Bond (2004 version)

10 'General'

'We may alter the terms of this agreement and introduce changes to our services for the following reasons:

...

d) 'Changes in legal, tax, regulatory requirement or other requirements affecting us or *any other good reason*.'*

* Emphasis added

Our second concern:

Terms and Conditions of Barclays Fixed Rate Savings Bond (2006 version)

8.1 'Changes will *normally** be caused by ...

...

8.3 'We will *normally** give you at least 30 days' advance notice of any changes which are to your disadvantage...'

* Emphasis added

Similar wording is found in the 2004 version of the Barclays Fixed Rate Savings Bond Terms and Conditions.

Application of the Regulations

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 1(j) of Schedule 2 to the Regulations states that a term which has the object or effect of 'enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract' may be unfair.

We believe that the terms that we have concerns with are inconsistent with our May 2005 Statement of Good Practice on 'Fairness of Terms in Consumer Contracts'. Paragraph 3.8 states that: 'We would expect a 'valid reason' to be, amongst other things, clearly and unambiguously defined'. Paragraph 3.5 states that a term 'which confers an unnecessarily broad discretion on the firm or could be used to the advantage of the firm, rather than the consumer, is likely to be unfair'.

Our first concern:

We think that allowing the firm to vary the terms of its contract with consumers for 'any other good reason' gives it excessive discretion to unilaterally vary the contract.

We also think a reference to 'any other good reason' is not a clearly and unambiguously defined valid reason. We think that by including this open-ended phrase in the term, the firm has not specified a valid reason for varying the contract.

Our second concern:

We believe that the word 'normally' in condition 8.1 introduces ambiguity about the valid reasons for which the contract terms may be varied, and in condition 8.3 introduces uncertainty about the notice period to be given to consumers.

We believe that the use of the word 'normally' in condition 8.1 to qualify the list of reasons is not appropriate as it means the firm has not given an exhaustive list of valid reasons. In reaching this view one of the factors that we have taken into consideration is that the consumer is not free to dissolve the contract.

How the term has changed

Our first concern:

The firm has removed the reference to 'or any other good reason' from the terms in contracts issued after April 2006.

Our second concern:

The firm has agreed to remove the word 'normally' from the terms when it next reprints them. In the meantime, the firm has agreed, with immediate effect, not to rely on the word 'normally'.

The firm has agreed to give customers at least 30 days' advance notice of any changes which are to their disadvantage.

New term

Our first concern:

'Variation'

'We may change these Terms and Conditions and introduce changes to our services at any time. Changes will be caused by changes in the cost of providing a service to you, predicted changes in legal or other regulatory requirements affecting us, or any system or product development. We will not change the contractual rate of interest payable to you during the term of your bond'.

Our second concern:

'Variation'

'We may change these Terms and Conditions and introduce changes to our services at any time. Changes will be caused by changes in the cost of providing a service to you, predicted changes in legal or other regulatory requirements affecting us, or any system or product development. We will not change the contractual rate of interest payable to you during the term of your bond'.

'We will give you at least 30 days' advance notice of any changes which are to your disadvantage. We may introduce changes immediately and advise you within 30 days of the change if we reasonably consider the change is not to your disadvantage.'

Other information

The firm was fully co-operative in agreeing to this undertaking.

In May 2005, we published a [Statement of Good Practice](#) on the 'Fairness of Terms in Consumer Contracts', which set out how firms may approach drafting fair variation clauses in standard-form consumer contracts.

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