FINANCIAL CONDUCT AUTHORITY

Notice of Undertaking

Policy Excess Insure Limited T/A Nova Direct

Summary

Policy Excess Insure Limited trading as Nova Direct, has made changes to terms in its insurance broker contract (for the sale of Motor Breakdown, Home Emergency, Home Appliance, Gadget, Bicycle and Travel Insurance policies) entered into from 1 October 2015.

Policy Excess Insure Limited has given us an undertaking, under the Consumer Rights Act 2015 (the CRA), in relation to three terms:

- Continuous Payment Authority (CPA) term: which did not clearly reflect that the CPA is only in relation to collecting sums due for insurance premiums, as and when they fall due;
- Cancellation term: which stated that the premium would not be refunded to consumers for automatically renewed policies, where consumers cancelled in advance of the policy start date. In addition, the term stated that there would not be a 14-day cooling off period for policies which had automatically renewed; and
- Automatic renewal term: which purported to allow the firm to charge consumers with an administration fee for not renewing the policy.

We summarise our concerns and the action the firm has taken below.

Why did we have concerns?

Continuous Payment Authority (CPA): One of the terms stated that if consumers authorised a CPA) *"…you permit us to charge any sums due to your card and to take payments as and when they fall due".* We were concerned that as drafted, the term was likely to be considered unfair because it had the potential to give the firm the ability to charge consumers unspecified amounts at the firm's discretion.

Cancellation: A second term stated that if consumers chose to cancel their automatically renewed policies before the start date, then the premium paid would not be refunded. We were concerned that this term was likely to be considered unfair because as drafted, it allowed the firm to retain premiums paid by consumers for a service they would not receive. We were also concerned that the term was likely to be insufficiently transparent as it did not reflect how the firm acted in practice. In addition, we had concerns that the term did not allow a 14-day cooling off period for policies which had automatically renewed which, is not in line with our ICOBS rules.

Automatic renewals: A third term we had concerns with, allowed the firm to charge a fee to consumers who chose not to renew the policy. We were concerned that this term was likely to be considered unfair as, consumers would not expect to pay a fee to exit their contracts at the end of their policy and, should not have to pay a fee to avoid being entered into a new

contract, especially as it was a process consumers were automatically enrolled into, when purchasing a policy.

What has the firm done?

Policy Excess Insure Limited has:

- Agreed that the continuous payment authority (CPA) lacked transparency and has amended the term so that it clearly specifies, that the CPA permits the firm to charge the consumer only for insurance premiums due.
- Agreed to amend the cancellation term to state that when a premium has been taken before the start date of the automatically renewed policy, then the premium will be refunded in full if the policy is subsequently cancelled by the consumer before the start date.
- Agreed to amend the renewal term to remove the fee for consumers who choose not to automatically renew their policy.
- Implemented an online “My Account” section which provides consumers with details of their policy and, options to opt out of renewal of policies free of charge.
- Amended the fees and charges page to remove any inconsistencies with the terms and conditions and to clearly reflect what fees and charges may apply, including when a charge may apply to renewed policies.
- Confirmed that they intend to redraft their terms and conditions with the assistance of a compliance firm.

What does this mean for consumers?

The changes that the firm has made to its terms and conditions should ensure consumers are aware of the following:

- the CPA permits the firm to only charge for insurance premiums due,
- the charges consumers will need to pay if they cancel outside of the cooling-off period, where this applies,
- how consumers can opt out of automatic renewal of contracts, free of charge; and
- Policy Excess Insure Limited has included the new wording in its new insurance broker contracts from **18 August 2022**

Undertaking from Policy Excess Insure Ltd T/A Nova Direct

Policy Excess Insure Ltd trading as Nova Direct has given this undertaking to the FCA under the Consumer Rights Act 2015 (the CRA) in respect of terms in its insurance broker contract (for the sale of Motor Breakdown, Home Emergency, Home Appliance, Gadget, Bicycle and Travel Insurance policies) entered into from 1 October 2015.

Applying the CRA

Under section 62(4) of the CRA, a term is unfair if: "…contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer."

Section 68(1) of the CRA states that firms are required to "ensure that a written term of a consumer contract … is transparent." Under section 68(2) of the CRA, a term is transparent if "… it is expressed in plain and intelligible language and it is legible."

Policy Excess Insure Ltd Terms and Conditions

Policy Excess Insure Ltd has committed to making changes to its terms and conditions as follows:

Continuous Payment Authority

Term 26 stated: *"Continuous Payment Authority is a recurring payment process where you authorise Nova Direct to take money from your debit or credit card whenever we are owed money. Due to the nature of insurance products and payments can vary in frequency and amount depending on what is owed at the time. In authorising Continuous Payment Authority which you will do in accepting these terms and conditions you permit us to charge any sums due to your card and to take payments as and when they fall due. You may cancel the Continuous Payment Authority by notifying us in writing."*

We considered the fairness of term 26 in light of the CRA and relevant case law.

In our view, term 26 was likely to be considered unfair under the CRA. This was because the term as drafted caused a significant imbalance to the detriment of consumers as it had the potential to allow the firm to charge any fees and did not limit the firm to charging only the insurance premiums due under the policy. In our view, the significant imbalance was caused contrary to the requirement of good faith, since the firm could not reasonably have assumed that a consumer would have agreed, in individual negotiations, to terms that gave the firm sole discretion to charge unspecified amounts.

The firm has amended the term so that it clearly specifies that the Continuous Payment Authority permits the firm to charge the consumer for insurance premiums.

Your cancellation rights

Term 33, paragraph 3 stated: *"If your policy has been renewed the 14-day cooling off period will not apply and no refund of premiums will be given as per your policy wording post cancellation. We will not pay a pro-rata refund of the premium following any cancellation*

outside of the 14 day cooling off period. Verbal requests for cancellation are not accepted. The cancel your policy please go to https://www.nova-direct.com/policy-cancellation/."

We considered the fairness and transparency of term 33 in light of the CRA and relevant case law.

We were concerned that term 33 was likely to be considered unfair under the CRA as it indicated that the firm could retain the full premium upon cancellation of the policy by the consumer, where the policy had automatically renewed, in advance of the start date . In our view, the overall fee for cancelling a policy had the potential to be disproportionately high as it allowed the firm to retain the premium paid in advance by consumers and, also charge a fee for cancelling the policy.

We were also concerned that term 33 was likely to be considered insufficiently transparent under the CRA. This is because the firm informed us that in practice, contrary to what the term states, if a consumer wished to opt out of the auto-renewal prior to the policy starting, the firm would refund the premium taken. We were concerned that the term did not accurately reflect the firm's practices.

The firm agreed to amend the term to state that where a policy has been renewed in advance of the start date, consumers can opt-out of renewal by logging into their account. If a premium has been taken before the start date of the policy, then this will be refunded in full.

Renewals

Term 34, paragraph 3 stated: *"Should you decide not to renew your insurance policy with us, you will still be liable for a £4.99 administration fee, which will be used to take your policy out of the renewal process. You can cancel your renewal at https://www.nova-direct.com/policy-cancellation/. The reason for the fee is, due to our PCI Compliance we convert all online cards to payment tokens in order to guarantee your card's protection. The administration fee charged is for the work required by our staff to destroy this token, secure your card details and ensure that an auto-renewal is not possible."*

Separately, the firm's website contained a fees and charges section. The terms on this web page purported to allow the firm to charge the consumer two different fees: a fee of £4.99 to opt out of renewal more than 7 days before the renewal of the insurance and a fee of £9.98 for cancelling the auto renewal less than 7 days after renewal of the policy.

We considered the fairness and transparency of term 34 in light of the CRA and relevant case law.

In our view, the term purporting to allow the firm to charge a £4.99 administration fee for consumers choosing to not renew a policy was likely to be considered unfair under the CRA. This was because the term caused a significant imbalance to the detriment of consumers, since it derogated from the position of the consumer under national law in the absence of the term. The default position under national law is that when a contract comes to an end, there is no obligation on the parties to pay an amount to end the contract, as the contract simply expires. In our view the significant imbalance was caused contrary to the requirement of good faith as the firm could not reasonably assume that a consumer would have agreed to the term in individual negotiations.

We were also concerned that term 34 was likely to be considered insufficiently transparent under the CRA. This is because the fees listed in the terms and conditions were inconsistent with those listed on the fees and charges section of the website.

The firm has amended the term to delete the administration fee for consumers who choose not to renew the policy. The firm has removed any inconsistencies between the terms and conditions and the fees and charges web page to clearly state what fees and charges may apply, including when a charge may apply to renewed policies.

The firm has also updated its processes to ensure that consumers can opt out of automatic renewal online and free of charge.

Other information

The firm has been fully cooperative in providing this undertaking.

Undertaking published **31 March 2023**.

Legal information

As a Regulator, we, the Financial Conduct Authority (FCA), can challenge firms using terms that we view as not being fair or transparent under Part 2 of the Consumer Rights Act 2015 (the CRA). We review contract terms that we come across in our supervision of firms. This includes contract terms that are referred to us by consumers, enforcement bodies and consumer organisations. This has led to Policy Excess Insure Limited's undertaking to replace the terms that we consider are likely to be unfair or likely to lack sufficient transparency.

The FCA has a duty under Schedule 3 of the CRA to notify the Competition and Markets Authority (the CMA) of the undertakings we receive. The CMA has a duty to publish details of these undertakings, which it puts on www.gov.uk. We also publish the undertakings on our website. Both publications will name the firm and identify the specific term and the part of the CRA that relate to the term's fairness and transparency.

Even if firms have not given an undertaking or been subject to a court decision, they should remain alert to undertakings or court decisions concerning other firms as part of their risk management. These will be of potential value in showing the likely attitude of the courts, the FCA, the CMA or other regulators to similar terms or terms with a similar effect.

Ultimately only a court can determine the fairness or transparency of a term and, therefore, we do not recommend terms that have been revised by a firm to address our concerns as being definitely fair or, transparent. We cannot approve terms for the purposes of the CRA; it is for firms to assess the fairness and transparency of their terms and conditions under the CRA and in the context of the product or service in question.

It is important to bear in mind that wording that is fair or transparent in one agreement is not necessarily fair or transparent in another. Where we accept an undertaking given to us from a firm to revise a term, this means that, on the evidence currently available we consider the term to be improved enough that further regulatory action is not required.