



The Consumer Council

Unfair bank charges

The Consumer Council has said consumers should never again pay the price for inadequate legal protection.

What has the Consumer Council done to help consumers?

The Consumer Council has worked on two fronts. Firstly, we have helped consumers challenge their bank charges and as a result have got nearly £170,000 as goodwill gestures back into the pockets of bank customers here.

Secondly, we continue to work closely with the Office of Fair Trading (OFT) to make sure that personal current accounts are fairer for consumers. In 2006 we asked the OFT to investigate unfair bank charges. Three weeks later, the OFT began an investigation process which resulted in them taking seven of the UK's biggest banks and a building society to the High Court. This was known as "the test case" and was to establish whether the charges for going into an unauthorised overdraft can be tested to see if they are fair.

On 25 November 2009 the Supreme Court overturned previous High Court and Court of Appeal rulings that bank charges for slipping into the red can be tested for fairness. The Consumer Council is deeply disappointed at the outcome of the test case, as are the many thousands of consumers who also believe that the charges they incurred are disproportionate and unfair.

On 22 December 2009 the OFT announced that it will not continue its investigation into banks' charges for slipping into the red under the Unfair Terms in Consumer Contracts Regulations (1999) but that it still believed changes are needed in consumers' interests.

We support the Government's commitment to take action if banks do not change voluntarily. Legislation takes time to draft and implement so the Consumer Council believes this work needs to begin now.

I've already made a complaint, what do I do?

The Financial Services Authority (FSA) waiver which allowed banks and building societies to put complaints about bank charges 'on hold' while the test case was ongoing has come to an end. If your complaint was on hold with your bank or building society then they will be in touch with you in due course.

The FSA says:

The Supreme Court judgment effectively draws the test case process to an end. We now expect firms to resume dealing with consumers' complaints in line with the FSA's complaint handling rules.

The Financial Ombudsman Service (FOS) also put complaints on hold while the test case was ongoing. It is now beginning to process and review each individual complaint and will get in touch with you in due course.

The FOS says:

The ombudsman has to take the law into account when we decide cases. This is why the Supreme Court's ruling is very important in our work on bank charges.

So we are now considering the Supreme Court's decision – and its implications – very carefully. Our initial view is that the legal ruling means we will now be unlikely to be able to help with cases we had put on hold that involve "template" or "standard letter" complaints about unauthorised overdraft charges.

But in keeping with our usual approach to complaints that are referred to us, we will review each case individually – to see whether there are any one-off circumstances that may apply. For example, we would expect current-account providers to deal positively and sympathetically with a consumer in financial hardship – including where bank charges had added to their difficulties.

If you had applied to the Small Claims Court your court action will also have been put on hold. We have asked for clarification from the Northern Ireland Court Service on what happens next and we will update this section of our website as soon as possible.

I'm still unhappy with the amount I've been charged, is there anything I can do?

As always, if you are unhappy about any aspect of the service you have received from your bank or building society you can make a complaint. You should first make your complaint directly to the bank or building society so that they have the opportunity to explain or put it right. If you are not happy with their response you can take your complaint to the Financial Ombudsman Service (visit www.financial-ombudsman.org.uk for more details).

Other useful websites:

Financial Services Authority:

http://www.fsa.gov.uk/Pages/consumerinformation/product_news/banking/unauthorised_overdraft_charges_index.shtml

Office of Fair Trading:

<http://www.offt.gov.uk/OFTwork/markets-work/completed/personal/personal-test-case/>

Financial Ombudsman Service:

<http://www.financial-ombudsman.org.uk/faq/bank-charges.html>

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