

The Consumer Council's Stop Unfair Charges Campaign: Your guide to challenging your bank or building society



The Consumer Council

The Consumer Council cannot provide legal advice and the information in this guide is not intended as such.

Campaign update – Court decision to be appealed, 22 May 2008

The High Court judgement that bank charges can be tested for fairness is to be appealed by the banks and building society involved in the Office of Fair Trading (OFT) test case. It is likely that the appeal will be heard in the autumn.

The High Court judgement on 24 April 2008 agreed with us that unauthorised overdraft charges can be tested for fairness. It is disappointing news for the thousands of consumers here who led this consumer revolution by challenging their banks and building societies.

In mid-July 2008 the OFT will start discussing with the seven banks and building society involved in the test case how much their charges should be. This will happen even though an appeal is going ahead. It should keep any delay to the minimum, but a final decision on whether the charges are fair or not is some way off.

In the meantime, people are still paying outrageous amounts of money for slipping into the red. You can make your complaint now if you're unhappy about the charges and if they are found to be unfair then you will be in line for a refund. This pack tells you more about unauthorised overdraft charges and how to make a complaint. If you need any more information or help contact our team on 0845 601 6022 or email complaints@consumercouncil.org.uk.

The Consumer Council believes that the charges made by banks and building societies (referred to as 'banks' in this guide) when their customers accidentally stray into the red are excessive. We have produced this free guide to help consumers challenge these charges. Nearly £170,000 has been put back into the pockets of customers so far and we believe this is just the tip of the iceberg.

As well as helping consumers challenge their charges we also made a formal complaint to the Office of Fair Trading (OFT). The OFT took seven of the UK banks and a building society to the High Court. **The test case** began in January 2008 to establish some of the important legal principles.

What charges can I challenge?

You can complain about unauthorised overdraft or returned item charges. These are charges made by your bank if you do not have enough money in your account to pay your bills and they either pay a bill for you or bounce it. If you are not sure which charges to challenge contact us on 0845 601 6022.

What about the Financial Services Authority's waiver?

When the OFT announced they were taking banks to the High Court, the Financial Services Authority (FSA) gave banks a waiver which meant that they don't have to respond to complaints until the test case is resolved. The waiver is still in place but it doesn't stop you from making a complaint.

When will the OFT look at whether my bank's charges are fair?

The OFT has to look at the charges of the banks involved in the test case first. If they can agree with the bank on the level of those charges, like they did with the credit card companies, they can begin looking at other banks and building society charges. If there isn't agreement then the case will go to court, which will take longer and be more expensive. The Consumer Council will continue to work with the OFT to make sure that the interests of consumers in Northern Ireland are protected.

Can banks continue to charge unauthorised overdraft charges?

Yes, they are still allowed to make these charges but if the charges are proved to be unfair you will be able to ask for a refund of what you have been unfairly charged plus an interest payment.

How do I make my complaint?

First of all, you need to find out how much you have paid in unauthorised overdraft charges. Then, you need to write to your bank to complain. Use our sample letters to ask your bank for information on what they have charged you and to complain about those charges.

How far back can I claim?

The law allows you to make a claim for charges over the past six years or within three years of when you realised you had a reason to complain. Ultimately it is up to the judge or the Financial Ombudsman Service (FOS) to decide how far back you can claim but you need to have the information from your bank to prove that you were charged. Banks are only obliged to hold this information for six years. **In short, if you have your statements to prove you were charged more than six years ago you may as well try to challenge the charges.**

I can't pay off my overdraft, what should I do?

Banks have to deal with cases of genuine hardship sympathetically and positively. If you are in financial difficulties let your bank know and if you are not happy with how they handle your case you should complain to the FOS. If you are worried about money or struggling to make ends meet, contact a money adviser at your local advice centre, Citizens Advice or the Consumer Credit Counselling Service.

Will the bank close my current account?

A bank can close your current account as long as they give you 30 days notice but they can not close your account just because you have made a complaint. If you think your account was closed just because you complained you should complain to the FOS. Contact us for more information on 0845 601 6022.

I have already closed my account can I still claim?

Yes.

I have a complaint about my bank on another issue, what should I do?

Make your complaint in the normal way ie complain to the bank and if you are not satisfied with their response, take your complaint to the FOS.

Requesting information from your bank

You can get information about what you have been charged using the Data Protection Act.

The Information Commissioner's Office has told us:

Individuals can use the Data Protection Act 1998 to request information relating to their bank statements. If this information is held on a computerised system, the bank is required to provide it to the individual. They can charge a maximum of £10 for this, and have 40 days to provide the information.

If the bank holds the information purely manually, for example in an extremely unsophisticated microfiche system, the

bank may not be obliged to provide the information under the Data Protection Act. However, bank microfiche systems examined by the Information Commissioner's Office have been found to be covered by the Act.

Individuals seeking access to bank statements should contact their bank in the first instance. Any request for information contained in bank statements should be made in writing. If a response has not been received within 40 days, the Information Commissioner's Office (ICO) recommends that a follow-up or reminder letter is sent. If no response is received to the reminder letter an individual can make a complaint to the ICO.

The Consumer Council's guide to requesting information about penalty charges from your bank:

1. Use the Consumer Council's sample letter below to write your letter.
2. Keep a copy of it and any future correspondence with your bank on this matter.
3. Send the letter by e-mail or post or hand deliver it. You may wish to get confirmation that the branch received your letter either by telephoning the branch or sending your letter by recorded delivery. Keep a note of any telephone conversations you have with branch staff about your request.
4. If you have not heard from your bank in 40 days, send a reminder letter.

5. If you still have not heard from your bank, telephone the Information Commissioner's Office for advice on how to make an official complaint with them. Their telephone number is 028 9026 9380.

More information can be obtained from:

- The Information Commissioner's Office website: www.ico.gov.uk.
- Frequently Asked Questions about the Data Protection Act: http://www.ico.gov.uk/Global/faqs/data_protection_for_the_public.aspx
- The Northern Ireland office of the ICO: telephone: 028 9026 9380 email: ni@ico.gsi.gov.uk

[Your name]
[Your address]

[Date]

[Bank manager's name – if you know it]
[Bank's name]
[Branch address]

Dear [Manager's name or Sir/Madam]

Request for information under the Data Protection Act for account:
[Name of Account, Sort Code / Account Number]

I am writing to request, under Section 7 of the Data Protection Act, a full list of the charges applied to my account. If a list of the charges is not easily available I will accept a copy of the information contained in my statements for the same period.

I understand that under the terms of the Data Protection Act you have forty calendar days to respond to my request and that you will inform me promptly of any fee payable (which will not exceed £10).

Yours faithfully

[Your signature]

[Your name printed]

Making a complaint to your bank

Step 1 of the process of challenging your bank on unauthorised overdraft and returned item charges is to write to your bank. You must do this first so that your bank has the opportunity to respond to your challenge.

Use the sample letter below to write your own letter to your bank.

If you choose to send your bank your statements with the charges highlighted make sure you send photocopies and not the originals.

Your complaint will be recorded and stored by the bank and should be dealt with as quickly as possible once the test case is concluded.

[Your name]
[Your address]

[Date]

[Bank manager's name – if you know it]
[Bank's name]
[Branch address]

Dear [Manager's name or Sir/Madam]

Complaint about unfair charges – request for refund for [Name of Account, Sort Code / Account Number]

I wish to complain about the disproportionately high charges you have applied to my account. It is my view that the charges are excessive.

These charges can be challenged under the Unfair Terms in Consumer Contracts Regulations 1999 (SI. 1999/2083) that states in paragraph 1(e) of schedule 2:

‘Indicative and non-exhaustive list of terms which may be regarded as unfair - 1. Terms which have the object or effect of - (e) requiring any consumer who fails his obligation to pay a disproportionately high sum in compensation’.

Please provide me with a comprehensive justification of how these fees are cost-reflective or with a refund of £xxxx [the total amount you have been charged in unauthorised overdraft and returned item charges].

Yours faithfully

[Your signature]

[Your name printed]

Taking your complaint further – to the Financial Ombudsman Service

Complaints to the FOS about unfair charges will be put on hold until the test case is resolved, but you can still complain now. Once the test case is resolved, the FOS will deal with your complaint as quickly as possible.

What is the FOS?

The Financial Ombudsman Service helps settle individual disputes between banks and their customers as an alternative to the courts and it is completely impartial and free.

How do I complain to the FOS?

You will have to fill in a complaint form. You can get the form by:

- telephoning 0845 080 1800; or
- downloading it from their website at www.financial-ombudsman.org.uk.

If you have any difficulties filling out the form the FOS can help. Contact 0845 080 1800.

Post the form with your handwritten signature on it, along with copies of the letters between you and the bank, to the FOS. The address is:

The Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
LONDON
E14 9SR

What happens after I fill in the complaint form?

The FOS will write to confirm that they have received your complaint and to let you know that they will hold your complaint until there is a resolution of the test case.

Or to the Small Claims Court

Another way to get your complaint resolved is to take it to your local small claims court instead.

What is the small claims court?

The small claims court allows claims for sums less than £2,000 to be decided informally by the county court, usually without the need for a solicitor or barrister.

The District Judges have decided to put a hold on cases until the test case has been resolved. If you want more information on the position taken by the small claims court you should contact the Court Service on 028 9072 4566.

Where do I get an application form?

You can get the application form by:

- telephoning 028 9072 4566; or
- downloading it from their website, www.courtsni.gov.uk.

How much will it cost?

The small claims court fees are tiered according to how much you are claiming:

You are claiming:	The fee will be:
Up to £300	£30
£300.01 — £500	£50
£501.01 — £1000	£70
£1000.01 — £2000	£100

If you win your case the small claims court fee will be added to the amount you receive in compensation, but if you lose, you lose the small claims court fee. The only other cost to you, whether you win or lose, is if you choose to get legal advice, legal representation or bring a witness to the small claims court.

If you decide to take your case to the small claims court then contact us for more information on how to fill in the application form. Telephone us on 0845 601 6022 or email complaints@consumercouncil.org.uk.

Let us know

Please let us know if you get your money refunded or if you experience any difficulties. Please contact our banking team on 0845 601 6022 or e-mail: complaints@consumercouncil.org.uk.