

[FOR USE WHERE PAYMENT HAS BEEN DECLINED]

[YOUR NAME]
[YOUR ADDRESS]
[DATE]

[BANK'S NAME]
[BANK'S HEAD OFFICE ADDRESS]

Dear Sir/Madam

Penalty & unfair charges – request for refund for [YOUR NAME, SORT CODE, and ACCOUNT NUMBER].

[INSERT DETAILS of how charges were applied i.e. how much was charged, and the how this came about].

On 5 April 2006 the Office of Fair Trading (OFT) announced that default charges which are set at more than £12 will be presumed to be unfair and unenforceable in terms of the Unfair Terms in Consumer Contracts Regulations 1999 (SI. 1999/2083). Charges above this sum will be subject to legal action by the OFT (press release 68/06 – online here: <http://www.of.gov.uk/News/Press+releases/2006/68-06.htm>).

The OFT stated that a charge is not fair simply because it is below this sum, and I believe that a reasonable charge would be 50 pence for the reasons set out below. Please refund my charges as a matter of urgency.

I would respectfully submit that if your organisation does not agree to immediately refund all unfair charges applied to my account, it will not meet the *'fit and proper person'* test to hold a consumer credit licence under the Consumer Credit Act 1974. In that eventuality, I will submit a 1974 Act complaint to the OFT.

Separately, I am of the view that your charges represent a penalty and are therefore irrecoverable at common law. In the Scottish case of *Castaneda and Others v. Clydebank Engineering and Shipbuilding Co., Ltd.* (1904) 12 SLT 498 the House of Lords held that a contractual party can only recover damages for actual or liquidated losses incurred from a breach of contract. This is also the position in English law: *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd* [1915] AC 79.

Your charges do not reflect any actual loss, instead they appear to represent a lucrative profit-making scheme. In particular, charges were applied after I entered into a transaction(s) without sufficient funds in my account. However, payment was declined by you, and therefore, actual loss is the cost of automatically sending me a computer generated letter. I would respectfully submit that is valued at no more than 50 pence.

UK banks have recently given evidence to the House of Commons Treasury Committee on how bank charges are calculated: "*The costs are going to pay for all the people we have who pursue debt, collect debt, speak to customers and chase payments. The way these charges are arrived at is by taking these total costs and making some assumptions about the volume that is going to come through to arrive at the individual charges*" (2nd report, 25 January 2005, paragraph 50 – online here: <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmtreasy/274/27405.htm>).

Accordingly, the charges applied to my account are not a reasonable pre-estimate of the bank's loss in relation to my account. No-one has had to look at my account or telephone me. No one has had to collect anything. Your charges would appear to represent a device to recover global losses (for example, loan defaulters, bad debt write off, including commercial lending in, and outwith, the UK).

Please refund all charges applied to my account within the next 7 days. I reserve the right to commence court proceedings without any further notice, and to seek an additional award for distress and inconvenience, together with legal expenses.

Yours faithfully

(signed)