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HOUSE OF COMMONS  
LONDON SW1A 0AA

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Dear *Cockle*

**Unfair bank & administrative charges and poverty**

As you know the Scottish Affairs Committee has agreed to undertake a major inquiry into *Poverty in Scotland* once the House returns after the summer recess. One of my local constituents has been campaigning to tackle a major contributing factor to poverty in Scotland, and indeed, the United Kingdom. I would like to draw your attention to this very important issue.

It is now common practice for banks and businesses to impose disproportionate and unfair charges for the most minor of defaults. Such charges are 'penalty charges' which are unenforceable at common law and in terms of the Unfair Terms in Consumer Contract Regulations (UTCCR, SI 1999/2083), yet they are applied as a matter of course in the UK.

A typical example is where a worker's salary is late by a day and they find that three direct debits are unpaid. Many banks will impose a charge of £117 (£39 per unpaid direct debit), together with a monthly charge of £28 and unauthorised overdraft interest at 30% APR. For someone on minimum wage of £5.05 per hour, just one set of these charges can represent almost a week's pay.

That worker still has to pay their direct debits, but their hard earned salary will be taken to meet the bank's charges. Often they cannot catch up and next month will be subject to another set of charges, and so on and so forth until their family has very little to live on and are trapped in a cycle of debt and poverty. Unfortunately, for hundreds of thousands of families in the UK this cycle of 'debt' is a regular occurrence. It is not only banks who impose such charges, many other businesses exploit their customers by levying £15 to £25 'administrative charges' for simple reminder letters.

My constituent, Mike Dailly is Principal Solicitor at Govan Law Centre, Glasgow, a free community legal resource which defends eviction and mortgage repossession actions in Glasgow. The centre's experience is that not only do bank charges result in unnecessary poverty, they also result in homelessness. In order to tackle these problems the centre set up a free self-help website [www.bankcharges.info](http://www.bankcharges.info) last March.

That site has been successful in helping ordinary citizens obtain thousands of pounds in refunds and is currently visited by half a million people each year. There are now several self-help resources in the UK and more and more people are taking action to obtain refunds. Customers can seek refunds going back six years in England & Wales, and five in Scotland. The right of citizens to pursue refunds is now backed by the Office of Fair Trading (OFT).



On 5 April 2006 the OFT stated that default charges which were set at more than £12 would be presumed to be unfair and unenforceable in terms of the UTCCR. Charges above this sum may be subject to legal action by the OFT. Unfortunately, most banks have failed to reduce their charges; some have indicated that they may reduce *credit card* charges but not bank charges generally. The OFT has yet to take enforcement action. The consumer organisation *Which?* estimates that UK banks make £4.7 billion annually from penalty charges. While the law may be clear that penalty charges are unfair and unlawful, the problem is that ordinary citizens continue to be subjected to unfair charges.

It is perhaps worth remembering that UK financial institutions have had several years to address this problem. When the House of Commons Treasury Committee, under the chairmanship of my honourable friend, John McFall MP, examined default charges the banks admitted charges were unrelated to anything a specific customer had done wrong. The banks refused to provide MPs with the precise details of how charges were calculated, but they did say that:

*"[bank charges] 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"*

(House of Commons, 2nd report, 25 January 2005, paragraph 50 – online at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmtreasy/274/27405.htm>).

I do not believe ordinary people should be required to raise court proceedings every time their bank imposes an unfair charge. Firstly, if the level of charges are unlawful then banks should not be applying them in the first place. Secondly, many citizens will be too frightened or worried to raise court proceedings. Indeed, I understand that many banks have started to close the accounts of customers who have enforced their rights. Thirdly, unfair charges are applied by various businesses and not just banks. Finally, as there is now a general consensus that many bank and administrative charges are unlawful and a contributing factor to poverty, a new policy approach is required to deliver a quick and easy solution for all citizens.

My own view is that the Labour Government or a Labour MP should consider introducing a *Bank and Administrative Charges Bill* to make provision on two key areas:

1. **Prevention:** To prevent banks and other businesses from imposing excessive bank and other administrative charges in the first instance. Provision could be made for maximum cap(s) relative to the nature of particular charge(s). This could be done without altering the existing English and Scots law position, as the policy objective would be to prevent the imposition of plainly unfair charges. Thus, a charge at the level of a particular cap could be too high at common law or in terms of the UTCCR, however, at least the imposition of excessive charges would be prevented; and in so doing eliminate unnecessary cycles of debt and poverty. In some respects this is what the OFT has sought to do but with very limited success.



2. All consumers across the UK should be able to pursue a refund of past bank charges without fear of legal costs and expenses. At present this is achieved by way of the Small Claims system, which restricts the level of legal expenses recoverable. That system only permits claims up to £5,000 in England and Wales, £2,000 in Northern Ireland, and £750 in Scotland. As consumers are entitled to pursue a refund going back six years in England, Wales, and Northern Ireland, and five years in Scotland, these limits are prescriptive. Unfair bank charge claims could be permitted up to a maximum of £10,000 under the small claims system across the UK.

I would like to debate these issues before the House, and am committed to introducing legislation, if necessary, to avoid the creation of debt and poverty from unfair charges.

I would greatly appreciate your views on these matters, and would be delighted to meet with you to discuss them further.

Yours sincerely,

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Mohammad Sarwar  
Member of Parliament for Glasgow Central