

[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]

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).

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).

On a separate note, your charges appear to represent an unfair term of contract which is contrary to the *Unfair Terms in Consumer Contracts Regulations* 1999 (SI. 1999/2083). My account falls within the ambit of Regulation 5 of the *Unfair Terms in Consumer Contracts Regulations* 1999 as I am a consumer. Your charges constitute an unfair penalty under reference to paragraph 1(e) of schedule 2 of the said regulations:

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

On 26 July 2005 the OFT stated that 'a charge is likely to be disproportionately high if it is more than a court would be likely to award if the lender sued the cardholder for breach of contract'. Because your charges include a large profit margin, in addition to actual loss, they are irrecoverable as an unfair term in contract. I believe that your charges require me to pay a disproportionately high sum in compensation for incurring a transaction(s) which was ultimately declined by an automated computer system.

In addition, it is unfair to require me to subsidise your global debt recovery costs and debt write-off.

Please refund these charges to my account within the next 7 days. I reserve the right to commence court proceedings without any further notice.

Yours faithfully

[SIGNATURE]