

STATEMENT OF CLAIM

Case ref:

in causa

[YOU]

v.

[INSERT NAME OF BANK]

1. The parties are designed in the instance. This pursuer is a consumer within the meaning of paragraph 3 to schedule 8 of the Civil Jurisdiction and Judgments Act 1982 as amended. The pursuer is domiciled within the Sheriffdom. This court accordingly has jurisdiction. No proceedings are pending elsewhere between the parties hereto in respect of the subject matter of this action. To the knowledge of the pursuer, no agreement exists between the parties prorogating jurisdiction of the subject matter of the present cause to another court.

2. The pursuer has a current account with the defenders with an agreed overdraft limit of [insert amount]. [Insert details of how charges were applied i.e. how much was charged, how much were you over your agreed limit and how long for (hereinafter referred to as 'charges')].

3. The defenders state that charges are necessary to cover their costs. The defenders are called upon to lodge in process a statement indicating how much annual pre-tax profit is generated from applying bank charges to current accounts, identifying the income generated from applying charges to current accounts as against the expenditure incurred in processing unauthorised overdrafts. Their failure to do so will be founded upon. The amount of charges applied does not represent the defender's actual costs in providing unauthorised lending on the pursuer's current account under explanation that a substantial proportion of the defenders' pre-tax profits are believed to be earned from bank charges.

4. The defenders charges represent a contractual penalty or fine and as such are irrecoverable at Scots common law. In the 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 which flowed from a breach of contract. The defenders charges are not liquidated losses and therefore the pursuer is entitled to be reimbursed in the sum craved.

5. *Separatim*, the defenders charges represent an unfair penalty charge in terms of the Unfair Terms in Consumer Contracts Regulations 1999 (SI. 1999/2083) (the 'UTCC'). The pursuer's contract falls within the ambit of Regulation 5 of the Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083) as the pursuer is a consumer. The defenders 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’.

Reference is made to the following three cases from the Office of Fair Trading’s Unfair Contract Terms Bulletin 21 (July to September 2002), issued in May 2003:

OFT case 15 – Kids of Wilmslow Ltd.

Clause 7 of the company provided for the supplier to charge interest on unpaid fees at an excessive rate above the bank base rate. Also unclear as to how the interest would be charged. The OFT amended the clause so interest was charged on unpaid fees at 3% per annum above the bank base rate. Further, an administration fee of £10 per letter sent concerning unpaid fees was deleted.

OFT case 18 – Legal & General Franchising t/a Parker Estate Agents.

A commission clause had the potential to allow the estate agent to charge a penalty fee for late payments. The OFT revised the clause to reflect the company’s practice of charging 8% per annum or the current rate of county court interest on late payments.

OFT case 4 – Dampcure-Woodcure/30Ltd.

Clause ‘W’ had the potential to impose a high financial penalty of payment was not received within seven days of the date of invoice. The OFT revised same to make clear that interest will be charged at 4% above a high street bank rate per annum if payment not received within 7 days of the date of invoice.

Accordingly, the defenders are fairly compensated for unauthorised lending by the imposition of their unauthorised overdraft interest rate. The imposition of further charges is unfair in terms of the UTCC. Reference is made to guidance issued by the OFT on 26 July 2005, which 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'. The court is asked to declare the imposition of the defender’s charges as unfair and irrecoverable in terms of the UTCC.

6. The pursuer being entitled to reimbursement of the defender’s charges, decree as craved should be granted with expenses.