

## EDITORIAL

### Bank charges and creative lawyering

The devastation that can be caused by bank charges is widely known – almost everyone has a personal story about unreasonable imposition of swingeing charges that lead on to more debt and more charges.

The consumer magazine *Which?* estimates that UK banks charge customers £3bn each year in unauthorised overdraft charges. A few of these customers may be rogues running up overdrafts without any intention of paying but the vast majority are people who are already struggling with low incomes and high debts.

In time, most people are lucky enough to look back on such episodes as examples of their bank hammering them when they were at their most desperate. The ten quid you were charged for drawing on a cheque that had already sat in your account for several days but had not yet cleared, followed by the twenty quid for writing to tell you that, thanks to the charge, you were now overdrawn and so on and on may just be bad memories for those who are no longer living on a student loan, benefits or the minimum wage but they are not easily forgotten.

If you freely enter into a contract then there is generally not much room to complain when the other party seeks to implement the terms of the contract. But few would argue that the customer has the same contractual power as the bank – just try asking them to change any part of a proposed contract, no matter how small, and see if they take you seriously. If one bank refuses then use your mighty consumer power and try another – they'll laugh at you too.

Banks are, of course, entitled to compensation when their customers exceed their overdraft limit without agreement – that's what the high interest rates on unauthorised overdrafts are for. But, it is argued, they are not also entitled to punish the customer with a £30 charge for a letter and a similar fixed charge for having gone overdrawn and to then keep the merry-go-round of charges spinning.

Because of unequal bargaining power, society as a whole eventually steps in and says enough is enough in terms of unreasonable interest rates, unreasonable debt recovery or unreasonable penalties. Yet that is only of any use if people are able to access their rights. To facilitate the operation of existing law Govan Law Centre has launched a website, *Unfair UK Bank Charges* – see web review on page 90.

Having set out the (remote) danger of expenses when raising a small claim in respect of unreasonable penalties the site offers, free of charge, a standard letter. Customers should set out the details of the penalties and then inform the bank -

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.* the House of Lords held that a contractual party can only recover damages for actual or liquidated losses incurred from a breach of contract. ... Your charges do not reflect any actual or real loss, instead they appear to represent a lucrative profit-making scheme.

... 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).

(NB please refer to the site for full text)

There is also guidance on how to raise a claim in the sheriff court.

How will the banks react to their customers asking that they abide by the law? The website takes the view that banks make so much money from these penalties they will try to avoid a test case and so withdraw the unreasonable charges. But the unscrupulous ones (eh?) may also threaten to close the customer's account – banking is still one of those areas where the customer is there to serve the business, not the other way around - how dare you seek the protection of the law?

When lawyers are under constant attack, often in the misused name of the consumer, it is encouraging to note that it is lawyers who are taking a lead in protecting the vulnerable consumer.

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SCOLAG Legal Journal April 2005

ISSN 02648717

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### SCOLAG LEGAL JOURNAL

**Publisher:** Scottish Legal Action Group

**Editor:** Brian Dempsey

**Contact:** 43 Queen Square,  
Glasgow G41 2BD  
editor@scolag.org  
www.scolag.org

**Production:** Andrew Wilson  
production@scolag.org

**Printing:** Culross the Printers,  
Coupar Angus, Perthshire

**Subscriptions:**  
£65 per annum  
£45 voluntary organisations  
£40 individuals  
£17 students & unwaged.

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