

Dear Sir/Madam

Re: Your refusal to refund bank charges

I write in response to your letter refusing my request for a refund of bank charges. I note your position is that I am not entitled to a refund because the terms and conditions of my account allow you to impose charges where I have insufficient funds in my account.

I also note your suggestion that I can complain to the Financial Services Ombudsman if dissatisfied with this decision. However, please be advised that it would be inappropriate to complain to the Financial Services Ombudsman where the only forum which can determine a dispute on the legality of charges is my local court. I would ask you to note the following.

Your bank insists it can impose charges in accordance with its terms and conditions of contract. However, those terms and conditions are subject to the common law and the *Unfair Terms in Consumer Contract Regulations 1999* (UTCCR). Indeed, the UTCCR takes precedence over any contractual term where the court finds a term to be 'unfair'. The court can then treat that term of contract as having no legal effect.

The question that arises is this: are your charges unfair in terms of the UTCCR? 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'*. On 5 April 2006 the OFT stated that default charges which are set at more than £12 will be presumed to be *unfair and unenforceable* in terms of the UTCCR. 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>).

So what would the court award your bank for my minor breach of contract? As you will be aware, the court will only award (in a non-negotiated consumer contract) a sum to reimburse actual loss. Your charges do not reflect actual loss. Rather, they include a massive profit margin or penalty. Alternatively, they subsidise the bank's global debt recovery costs and lending losses. There is parliamentary evidence for this assertion.

When the UK banks gave evidence to the House of Commons Treasury Committee on how bank charges were calculated they said:

"[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 here: <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmtreasy/274/27405.htm>).

Accordingly, your charges do not reflect the actual loss in my case. They are an illegal penalty charge designed to recover money unconnected with the conduct of my account. Please advise whether you have an appeals procedure, and if so, please treat this letter as a request for an appeal against your decision not to refund charges.

If I do not hear from you within the next 7 days, I will –

- (a) raise an action of payment at my local court. In that eventuality, I would require you to lodge in court financial vouching for the actual loss sustained in my case, together with

your full financial accounts revealing how much income is generated from your bank charges, as against the cost of administering dishonoured transactions; and

- (b) submit a Consumer Credit Act 1974 complaint to the OFT upon the basis that you have failed to comply with the OFT's direction of 5 April 2006 and are therefore not a *'fit and proper person'* to hold a consumer credit licence under the 1974 Act.

I look forward to your urgent response.

Yours faithfully

(signed)