

unauthorised overdraft charges

The Office of Fair Trading (OFT) is taking a “test case” to the High Court – to get answers to important legal questions about bank charges for unauthorised overdrafts.

The Financial Ombudsman Service and the courts have received very large numbers of complaints from consumers about these charges. We have decided to suspend work on these cases – while we wait to hear the outcome of the High Court “test case”.

This factsheet explains what the “test case” means for consumers – who may be at various stages of complaining about these charges.

1. I haven't complained yet about unauthorised overdraft charges on my account – am I too late now?

The High Court “test case” on unauthorised overdraft charges does *not* mean that you are now too late to complain. But until the outcome of this important legal action is known, banks are putting complaints about these charges on hold. This means that decisions won't be made on these complaints for some time.

The Financial Services Authority (FSA), the regulator for financial services, has agreed that banks can suspend their work on complaints about unauthorised overdraft charges – while the “test case” is running.

But in return, the FSA has set strict conditions that banks must follow – including requiring them to keep customers who have complained about bank charges up-to-date with developments.

Once the legal proceedings are finished and the law is clarified, banks will have to apply the High Court decision to all the complaints they put on hold over this period.

If you want to register your complaint with your bank at this stage – but don't know who to complain to – get in touch with us. We'll contact the right person at the bank for you, telling them you have a complaint that they will need to deal with – once the legal proceedings are finished. Our contact details are at the bottom of this factsheet.

2. My bank's still dealing with my complaint about charges. What happens now?

The Financial Services Authority (FSA) has agreed that banks can suspend their work on complaints about unauthorised overdraft charges – while the High Court “test case” is running. Because of the important legal issues that are being decided, this legal action is likely to take some time.

But the FSA has set strict conditions that banks must follow, if they put complaints on hold over this period – including requiring banks to keep customers who have complained about bank charges up-to-date with developments.

Once the law has been clarified by this important “test case”, banks will have to apply the High Court decision to all the complaints they have put on hold.

3. I’m not happy with my bank’s response to my complaint about charges. Can the ombudsman get involved?

The Financial Ombudsman Service is not able to deal with any new complaints about unauthorised overdraft charges – while we wait for the High Court to answer the important legal questions in this area.

You should let your bank know, if you’re not happy with how it has responded to your complaint about bank charges. Your bank will keep your complaint on hold – until it can deal with it in line with what the High Court decides. This may take some time – but your bank should keep you up-to-date with developments.

After the High Court “test case” – if you remain unhappy with your bank’s response at that stage – you will then be able to refer the complaint to the ombudsman service.

4. My complaint about bank charges is already with the ombudsman service. What happens now?

We need to know the outcome of this important High Court case, before we can make decisions on individual complaints about unauthorised overdraft charges.

This means that where we have already started looking at individual complaints, we will not be able to continue work on the cases until the High Court has answered the key legal questions in this area.

But we will continue to co-ordinate settlements offered by banks – in cases where there is already an offer on the table from the bank that the consumer would like to accept.

And in cases that we put on hold – while we wait for the key legal questions to be answered – we will write to the consumers involved to keep them up-to-date with developments. We will review these cases in the light of the High Court decision.

In some cases (usually where consumers complained to us *before* they gave their bank the chance to deal with their complaint) we have referred complaints to the bank involved, for them to put through their own complaints process. In these cases, the bank will put the complaint on hold – until it can deal with the case in line with what the High Court decides. This may take some time – but your bank should keep you up-to-date with developments.

5. I complained about unauthorised overdraft charges – and my bank has now made me an offer. Should I accept it – or wait and see what happens?

If your bank has already offered you a settlement to resolve your complaint – and the offer is still open to you – you need to decide whether to:

- accept the offer – in which case your complaint will be settled for good. You won’t be able to complain later about the bank charges covered by the settlement – whatever the outcome might be of the High Court “test case” on bank charges.

or

- reject the offer. This means that the current offer will no longer be open to you. But your complaint will be reviewed – when the High Court makes its decision on bank charges. No one can say at this stage what this decision will be.

If you’re not sure on what basis your bank has made you an offer, you should contact your bank for details.

6. I've already accepted an offer from my bank – following my complaint about charges. Is this now the end of the matter?

If you've already accepted an offer from your bank, this means your complaint will almost certainly be settled for good. The case won't be re-opened. You can't complain again about the bank charges covered by the settlement – whatever the outcome of the High Court "test case" on bank charges might be.

7. Why is the ombudsman service putting its work on bank charges on hold?

The law is one of the things that the ombudsman service has to take into account when making decisions on individual cases. The important High Court "test case" on bank charges is expected to clarify the law, so we have decided not to continue our work

on complaints about unauthorised overdraft charges until the outcome of this "test case" is known.

8. What about complaints that involve other banking-related problems, as well as bank charges?

It should usually be possible to deal with all the parts of the complaint *except* the part that relates specifically to whether bank charges are lawful or not. So it's likely that *only* the bank charges issue would be put on hold – while we wait for the High Court to answer the important legal questions in this area.

You would be able to accept a settlement for the other parts of the complaint, *without* affecting your right to have your complaint about bank charges looked at again – when the legal proceedings are at an end.

phone **0845 080 1800** (office hours)

www.financial-ombudsman.org.uk

This factsheet for consumers is only a general guide. It is not legal guidance. We look at each case on its own individual facts and merits. We will always give you the chance to query anything you don't understand or agree with.

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