



Ministry of
JUSTICE

Claims Management Services Regulation

Claims in respect of bank charges

**Guidance Note
2007**

27 July 2007



**Bank Charge Claims
Guidance Note**

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Claims Management Services Regulation

Bank Charge Claims Guidance Note

Introduction

1. The Office of Fair Trading last night announced that a test case on bank charges is being referred to the High Court. The Financial Ombudsman Service has announced that pending the outcome of the case it has put its own work on hold and has said that a similar response is expected from the county courts. This Guidance Note provides relevant information to those claims management businesses that seek to provide a service in respect of claims to recover bank charges.

The announcement

2. The Office of Fair Trading last night announced that it had agreed with seven banks to take a test case to the High Court to establish whether the provisions of the Unfair Terms in Consumer Contracts Regulations that deal with unfairness apply to unauthorised overdraft charges.
3. In the light of this agreement the Financial Ombudsman Service (FOS) has stated it will put on hold its own work on complaints about these charges, pending the outcome of the legal proceedings. In its statement FOS said that "it is expected that the decision by the ombudsman service to suspend further work on complaints about unauthorised overdraft charges will be reflected by a similar response by the county courts". The Financial Services Authority (FSA) has announced that banks and other current-account providers can also put cases on hold, pending the "test case" decision. Once the law has been clarified by this test case, the banks will have to apply the High Court decision to all the complaints they have put on hold.

Impact on claims management businesses

4. The FSA has issued a 'waiver' from its complaints handling rules which means that until the test case is resolved any bank or building society will not be required to handle complaints relating to unauthorised overdraft charges. It is therefore likely that the banks will put on hold outstanding complaints, whether they have been made directly or through a claims management business, and new complaints will not be accepted until the case is settled.
5. Those businesses that have been advertising and marketing a service in respect of bank charge claims need to change their advertising and marketing, including websites, to take into account these developments and to ensure that a false impression isn't given to consumers about the prospects for reclaiming bank charges in the near future.

6. Where businesses have outstanding cases then these must be handled in accordance with the terms of the contract between the business and the client. In many cases this will mean that the business must put the complaint on hold but then complete dealing with it when the test case is settled.

Communication with clients

7. Under the Rules of Conduct claims management businesses must keep their clients properly informed of the progress of their claims. They will therefore need to communicate directly with clients whose claims they are handling to explain the implications for their claims of the announcements by the OFT, FOS and the FSA. Business may find it useful to send a copy of the FOS consumer factsheet with such communications. The factsheet is accessible at <http://www.financial-ombudsman.org.uk/faq/bank-charges.html>.

Advice to consumers

8. The following statement is being given to people who enquire about the claims management regulatory position –

“On 27 July the Office of Fair Trading announced that a test case on bank charges is being referred to the High Court. The Financial Ombudsman Service has announced that pending the outcome of the case it has put its own work on hold; a similar response is expected from the county courts. This means that where a consumer has made a complaint through a claims management company then no further action is likely to be taken on the complaint until the test case is settled. Claims management businesses are being reminded that they must act in accordance with the contract that they have with clients. In many cases this will mean the claims management company putting the case on hold until the test case is settled. Claims management companies are being advised to communicate directly with their clients when they have considered the implications of the OFT announcement on their contracts.

More details of the effect of the OFT announcement are given in a Financial Ombudsman Service press release which accompanies this statement.”

Further information

9. Claims management businesses in this market should study the FOS and OFT announcements. They are accessible at –
<http://www.financial-ombudsman.org.uk/news/updates/bank-charges-26-07-07.html>
<http://www.offt.gov.uk/news/press/2007/106-07>
10. A further Guidance Note will be issued if necessary when the implications of yesterday’s announcements have been fully analysed.