

# The Consumer Council's Stop Unfair Charges Campaign: Your guide to challenging your bank



The Consumer Council cannot provide legal advice and the information in this guide is not intended as such.

The Consumer Council believes that banks are charging their customers excessive penalty charges when they stray into the red accidentally.

## What is a penalty charge?

If you break a term of your contract with the bank, for instance by going overdrawn without their permission, the law allows the bank to charge a penalty but they are not allowed to charge more than what it cost them to put your wrong to right (Unfair Terms in Consumer Contract Regulations 1999).

The Consumer Council does not dispute that a penalty charge may be applied – **what we do dispute is the level of that charge**. To date none of the banks have provided the information to a judge or the Financial Ombudsman to prove that their charges are justifiable.

## What can I do to get my money back?

Many customers have challenged their bank and have been given a refund of some or all of the money. If you feel you have been unfairly penalised you have the right to ask your bank to justify their charges and if they won't do that you can ask the Financial Ombudsman or a judge to decide. Follow this two-step guide to challenge your bank on unfair penalty charges.

### Step 1

Use the Consumer Council's sample letter (page 2) to complain to your bank about their charges and ask them to refund you. The bank should acknowledge receipt of your complaint within five working days and they must provide their final response to you within eight weeks.

### Step 2

If you are not happy with the banks response to your complaint you can either make a complaint to the Financial Ombudsman's Service or take a case to the Small Claims Court. (See pages 3 and 4.)

## What charges can I claim for?

You can challenge any penalty charge applied to your account. Banks give these charges different names but they are charges for not having enough money to pay a direct debit, for instance, or if they paid a direct debit on your behalf. They are not charges for setting up a direct debit or any other normal account service. If you are not sure which charges are penalty charges contact us on 028 9067 2488.

## How far back can I claim?

The law allows you to make a claim for charges over the past six years or within three years of when you realised you had a reason to complain. Ultimately it is up to the judge or the Financial Ombudsman to decide how far back you can claim but you need to have the information from your bank to prove that you were charged. Banks are only obliged to hold this information for six years. **In short, if you have your statements to prove you were charged more than six years ago you may as well try to challenge the charges.**

## I don't have my statements anymore, what do I do?

If you don't have your statements any more you can ask your bank to give you the information contained in those statements under the Data Protection Act. (See pages 5 and 6.)

## Will the bank close my current account?

A bank can close your current account as long as they give you 30 days notice. Some banks have closed the accounts of customers who have challenged the penalty charges. We think these banks are treating their customers unfairly. The Financial Ombudsman has recently required one bank to compensate a customer because they closed his account.

## I have already closed my account can I still claim?

Yes.

## Step 1 – Complain to your bank

Step 1 of the process of challenging your bank on the penalty charges applied to your account is to write to your bank. You must do this first so that your bank has the opportunity to respond to your challenge. Use the sample letter below to write your own letter to your bank.

Enclose with your letter photocopies of the relevant statement(s) that show:

- When you went overdrawn without permission and the amount; and
- The charges that were applied to your account.

It is important that you keep the original documents and only send photocopies. If you are challenging your bank on charges applied over a long period of time be sure to attach photocopies of **all** the relevant statements.

Remember, we can help if needed, telephone 028 9067 2488.

[Your name]  
[Your address]

[Date]

[Bank's registered office name]  
[Bank's registered address]

Dear Sir/Madam

### **Complaint about unfair penalty charges – request for refund for [Name of Account, Sort Code / Account Number]**

I wish to complain about the disproportionately high penalty charges you have applied to my account. *[Give a total amount of the penalty charges applied to your account, the length of time you were overdrawn without permission and the amount by which you were overdrawn. For example: On 24 March 2006 you charged me £75 for becoming overdrawn by £12 for 2 days.]* I enclose a copy of the relevant statement(s).

It is my view that the charges imposed on my account were excessive and I request that you refund these charges to my account within the next seven days.

These penalty charges can be challenged under the Unfair Terms in Consumer Contracts Regulations 1999 (SI. 1999/2083) that states in paragraph 1(e) of schedule 2:

'Indicative and non-exhaustive list of terms which may be regarded as unfair - 1. Terms which have the object or effect of - (e) requiring any consumer who fails his obligation to pay a disproportionately high sum in compensation'.

I reserve the right to start court proceedings without any further notice.

Yours faithfully

[Your signature]  
[Your name printed]

## Step 2 – Take your bank to the Financial Ombudsman Service

If you are not satisfied with the bank's response you could either take your complaint to the Financial Ombudsman Service or to the Small Claims Court. Only a court can finally decide whether a charge is fair or not.

### What is the Financial Ombudsman Service?

The Financial Ombudsman Service helps settle individual disputes between banks and their customers. This is a free service for consumers.

They are not a regulator ("watchdog") or a trade body or a consumer champion. Their role is to settle disputes as an alternative to the courts and it is completely impartial.

### How do I complain to the Financial Ombudsman Service?

You will have to fill in a complaint form. You can get the form by:

- telephoning 0845 080 1800; or
- downloading it from their website, [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

The Financial Ombudsman Service can help you fill in the complaint form over the phone (0845 080 1800).

You must post the form to the Financial Ombudsman Service because it is very important that it has your **handwritten signature** on it. You will also have to send copies of the letters written to you and from you to the bank. The Financial Ombudsman Service address is:

The Financial Ombudsman Service  
South Quay Plaza  
183 Marsh Wall  
LONDON  
E14 9SR

### What happens after I fill in the complaint form?

The Financial Ombudsman Service will investigate the complaint and decide what is fair and reasonable.

If the Financial Ombudsman Service finds that the bank charged you too much they will require the bank to pay back the difference between what they should have charged and what they did charge.

### How long will it take?

The Financial Ombudsman Service usually resolves most complaints within six to nine months.

## Or take your bank to the Small Claims Court

### What is the Small Claims Court?

The Small Claims Court allows certain types of claims to be decided informally by the county court, usually without the need for a solicitor or barrister. Not all claims will result in a court hearing. In general, a small claim is one where the value of the claim is not more than £2000.

A guide to the Small Claims Court, including examples of completed forms, can be downloaded from [www.courtsni.gov.uk](http://www.courtsni.gov.uk) (search for "small claims") or posted to you by telephoning the Court Service on 028 9072 4566.

### How much will it cost?

The Small Claims Court fees are tiered according to how much you are claiming:

You are claiming:	The fee will be:
Up to £150	£16
£150.01 — £300	£36
£301.01 — £500	£52
£500.01 — £2000	£62

If you win your case the Small Claims Court fee will be added to the amount you receive in compensation, but if you lose you forfeit the Small Claims Court fee. The only other cost to you, whether you win or lose, is if you choose to get legal advice, legal representation or bring a witness to the Small Claims Court.

### Where do I get an application form?

An application form can be downloaded from the Courts Service's website, or it can be filled in online: [www.courtsni.gov.uk](http://www.courtsni.gov.uk) (search for "small claims"), or posted to you by telephoning the Court Service on 028 9072 4566.

### What should I put in the Small Claims Court application form?

Use the information below to help you fill in the form.

#### The addresses

Fill in your own name and address in the box under the title: Applicant.

Fill in the address of the bank's registered office in the box under the title: Respondent. You will find this address printed on leaflets or statements from your bank. If your bank's registered office is outside of Northern Ireland then include an address for service in Northern Ireland, for example, the box would read:

X BANK, 1 Road, City, Postcode.  ADDRESS FOR SERVICE IN NORTHERN IRELAND AT: [your branch address] X BANK, 1 Local Road, Local City, Local Postcode
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#### Name of the court

In the gap in the next sentence write the name of your local court – all the courts are listed in the Small Claims Court handbook, which can be obtained online, [www.courtsni.gov.uk](http://www.courtsni.gov.uk), or by telephoning the Courts Service, 028 9072 4566.

#### The amount of the claim

Fill in the amount you want from the bank. It is your choice as to whether to apply for interest – we cannot advise on how much interest is appropriate.

Fill in the amount of the court fee.

Fill in the total amount you are claiming.

### The details of your claim

Below is an example of the explanation of the case, please adapt according to your own circumstances:

*£xxx damage being the fees charged me by X BANK (respondent) by virtue of an unfair term of a contract entered into by me with X BANK (respondent). The fees were debited from my personal current account without prior authority from me by X BANK (respondent). The term is unfair by virtue of Schedule 2 of the Unfair Terms in Consumer Contracts Regulations 1999, which states that a term is unfair if it requires any consumer who fails his obligation to pay a disproportionately high sum in compensation.*

£xxx = the amount of the claim

X BANK = the registered name of the bank

#### Statement of truth

Sign and date the statement of truth.

#### Send the form

Keep a copy of the application form for your own use and send two copies of the application form and supporting evidence (one will be given to the bank) plus the Small Claims Court fee (made payable to the Chief Clerk) to this address:

PO Box 882  
Civil Processing Centre  
Royal Courts of Justice  
Chichester Street  
BELFAST  
BT1 3JF

The form can also be completed online:

[www.courtsni.gov.uk](http://www.courtsni.gov.uk)

#### What happens next?

The Small Claims Court Guide published by the Court Service provides information on the next stages. The staff of the Central Processing Office will keep in touch with you and let you know what you need to do next. You can contact them on 028 9072 4566.

## Requesting information from your bank

If you have not kept your bank statements but suspect that you have had penalty charges applied to your account over the last six years you should be able to obtain the information about the amount of penalty charges applied to your account using the Data Protection Act.

The Consumer Council has been given this advice from the Information Commissioner's Office on how to go about getting copies of your bank statements from your bank:

*Individuals can use the Data Protection Act 1998 to request information relating to their bank statements. If this information is held on a computerised system, the bank is required to provide it to the individual. They can charge a maximum of £10 for this, and have 40 days to provide the information.*

*However, if the bank holds the information purely manually, for example in an extremely unsophisticated microfiche system, the bank may not be obliged to provide the information under the Data Protection Act.*

*Individuals seeking access to bank statements should contact their bank in the first instance. Any request for information contained in bank statements should be made in writing. If a response has not been received within 40 days, the Information Commissioner's Office (ICO) recommends that a follow-up or reminder letter is sent. If no response is received to the reminder letter an individual can make a complaint to the ICO.*

More information can be obtained from:

- The Information Commissioner's Office website: [www.ico.gov.uk](http://www.ico.gov.uk).
- Frequently Asked Questions about the Data Protection Act: [http://www.ico.gov.uk/Global/faqs/data\\_protection\\_for\\_the\\_public.aspx](http://www.ico.gov.uk/Global/faqs/data_protection_for_the_public.aspx)
- The Northern Ireland office of the ICO: telephone: 028 9051 1270  
fax: 028 9051 1584  
email: [ni@ico.gsi.gov.uk](mailto:ni@ico.gsi.gov.uk)

### The Consumer Council's step-by-step guide to requesting information about penalty charges from your bank:

1. Adapt the Consumer Council's sample letter on page 6 to your own circumstances.
2. Keep a copy of it and any future correspondence with your bank on this matter.
3. Send the letter by email or post or hand deliver it. You may wish to get confirmation that the branch received your letter either by telephoning the branch or sending your letter by recorded delivery. Keep a note of any telephone conversations you have with branch staff about your request.
4. If you have not heard from your bank in 40 days send a reminder letter.
5. If you still have not heard from your bank telephone the Information Commissioner's Office for advice on how to make an official complaint with them, their telephone number is 028 9051 1270.

[Your name]  
[Your address]

[Date]

[Bank's name]  
[Bank's branch address]

Dear Sir/Madam,

**Request for information under the Data Protection Act for account: [Name of Account, Sort Code / Account Number]**

I am writing to request, under Section 7 of the Data Protection Act, a full list of the charges applied to my account. If a list of the charges is not easily available I will accept a copy of the information contained in my statements for the same period.

I understand that under the terms of the Data Protection Act you have forty days to respond to my request and that you will inform me promptly of any fee payable (which will not exceed £10).

Yours faithfully

[Your signature]

[Your name printed]

### Let us know

Please let us know how your challenge to the bank is going as we want to monitor how the banks are responding to your concerns. Please contact us by telephone on 028 9067 2488 or e-mail: [bankinfo@consumercouncil.org.uk](mailto:bankinfo@consumercouncil.org.uk).

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