

**letter to current-account providers with
significant numbers of complaints referred
to the ombudsman about account charges**

October 2009

Dear financial services practitioner

complaints about current-account charges – and hardship cases

I am writing to you in view of the volume and nature of the complaints about current-account charges being referred to the ombudsman service by your business. I am also writing in similar terms to other major current-account providers.

The purpose of this letter is to update you on the progress the Financial Ombudsman Service is making in dealing with these cases – and to ask for your help in ensuring that complaints referred to us can be handled fairly and as efficiently as possible. This may require changes in your current approach to handling these complaints.

our approach

As you know, the Financial Services Authority (FSA) granted a waiver to current-account providers, allowing them to place complaints about the fairness or legality of default charges on hold – pending resolution of the present High Court action brought by the Office of Fair Trading (OFT). The ombudsman service has decided not to progress ordinary bank-charges complaints until the outcome of the legal case is known.

The FSA's waiver makes specific provision for complaints about bank charges to be progressed by banks in the normal way, *where the consumer is suffering genuine financial hardship*. Broadly, this is where the consumer's income is insufficient to cover reasonable living expenses and meet financial commitments as they become due. The ombudsman service is taking these cases on and dealing with them in the normal way.

This does not mean these consumers will receive their charges back if they come to the ombudsman service. Rather, it means that we will look to see whether we think the bank has made a proper assessment of the consumer's financial situation and – where there is financial difficulty – has taken a sympathetic and positive approach in keeping with the bank's responsibilities under the Banking Code.

The key first step is for the bank to ask for – and receive – a reasonable level of financial information about the consumer to enable it to consider what a sympathetic and positive approach would be in that consumer's case.

This is likely to include full information about:

- income and expenditure;
- creditors;
- assets and liabilities.

We look to banks to keep their enquiries focused and proportionate, and we look to consumers (and their representatives) to be cooperative in providing full and accurate information.

Because every consumer is different, what counts as sympathetic and positive will depend on the individual circumstances. We would expect a bank to take a constructive and practical approach to developing a suitable resolution for the consumer. This might include, for example, some combination of one or more of the following:

- a review of existing authorised credit facility limits to avoid recurrent charges;
- suspension of interest or charges;
- debt reduction;
- refund of interest or charges;
- re-scheduling unauthorised current account debt to allow continued use of the bank account.

the fair and effective resolution of cases

Given that these complaints are being brought by consumers who have told us they are trying to cope with financial difficulties, it is particularly important that the complaints are resolved fairly and without any unnecessary delay. Wherever possible, I hope that these issues can be resolved informally by the bank and its customer – without any need for a referral to the ombudsman.

For our part, we undertake to progress the cases referred to us as quickly as we can. But a major obstacle to us achieving this is where there has been little real dialogue between the bank and the consumer – about the consumer's financial circumstances and what a fair approach might be to the situation.

In particular, we see cases where it appears to us that the bank has *not* engaged properly with the consumer (or their representative) to gain a clear understanding of the consumer's financial position. Where banks follow iterative or circular processes, consumers can be left feeling powerless to progress their complaints. This difficult situation is made worse by standard or generic statements (by any of the parties) which do not address the consumer's individual circumstances and may even be inaccurate.

So I am asking you to ensure that you do all you can to avoid unnecessary referrals of cases to the ombudsman service – by promoting the early, fair resolution of your customers' complaints. This will best be achieved by ensuring that your consideration of these cases includes the proper assessment of the consumer's personal financial information *at an early stage* in the complaint.

This should enable the bank to propose a way forward that takes fair account of any financial difficulties the individual consumer is experiencing. If the matter is not satisfactorily resolved by the bank within eight weeks, then the consumer or their representative can refer it to us.

It is in the interests of everyone involved to resolve complaints referred to us as quickly as possible. To help us achieve this, we need the bank to be able to show – from its correspondence with the consumer or their representative (including its final response letter) – that it has:

- made a reasonable assessment of the consumer's financial circumstances – *or* if the consumer has not responded to reasonable requests for information, that it has nevertheless done its best to explain to the consumer *why* it is important to obtain this information; *and*
- proactively developed a proposal to settle the complaint – which takes account of the consumer's financial difficulties and is fair, clear and workable.

You can further help us by making sure you respond promptly to any additional questions we need to ask you as part of our consideration of the case. And if we contact you with an alternative proposal for settlement, you should be prepared to respond quickly and constructively *either* to agree to our proposal *or* to demonstrate why you think our proposal goes beyond what is a sympathetic and positive approach in that consumer's particular case.

I hope you have found this update useful. I have written in similar terms to the claims-management companies through which a significant number of consumers are currently bringing complaints of this type – to ask that they, too, ensure their processes support the prompt and fair resolution of cases referred by people in financial hardship.

Yours sincerely

Caroline Wells
external liaison manager