
Questions and answers for OFT's personal current account work

Updated 22 December 2009

- 1. In light of the Supreme Court Judgment, what has the OFT decided about whether or not to continue an investigation into unarranged overdraft charging terms?**

The OFT has announced it will not continue its investigation into the fairness of unarranged overdraft charging terms under the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). The OFT will continue to work to achieve change in the market and will enter into intensive discussions with banks, consumer groups and other organisations early in January with the intention of seeking rapid change

- 2. Why has OFT taken this decision?**

The OFT has decided not to continue an investigation into UOCs under the UTCCRs as a result of the Judgment. The OFT has considered a number of potential avenues for continuing an investigation under the UTCCRs. Any such investigation would be narrow in scope, would appear to have a low probability of success and, in any event, would appear to make only a limited contribution to achieving the OFT's objectives. When considered against the risks and resources involved, the OFT does not think it appropriate to continue an investigation.

- 3. Where can I find further information on the reasoning behind the OFT's decision not to continue an investigation into banks' unarranged overdraft charging terms?**

Further information can be found in the [press release](#) and [document](#) setting out OFT's reasons for its decision.

4. Why isn't the OFT taking an unfair relationships case?

The OFT has considered the possibility of pursuing a case under the Enterprise Act based on the unfair relationship provisions of the Consumer Credit Act (CCA) 1974 (a collective challenge).

The OFT's initial assessment is that there are not good grounds for concluding that a collective challenge alleging breach of these provisions arising from the use of the Relevant Terms generally would have good prospects of success. This partly reflects an assessment of the wider repercussions of reasoning underlying the Judgment. This reasoning will inevitably be influential in guiding the deliberations of any UK court before which the OFT might bring enforcement action based on the concept of fairness.

An individual challenge might succeed where a collective challenge would not since a case would need to focus on the individual circumstances of each creditor-debtor relationship – including matters relating to the individual debtor.

As such, the OFT has no current intention to start an unfair relationships investigation.

5. What will happen to consumers' complaints?

The OFT is not able to offer advice or assistance to individual consumers. If you make, or have made, a complaint to your bank, it should be processed in accordance with the relevant Financial Services Authority (FSA) rules and principles, see in particular the rules set out in the FSA's Dispute Resolution Manual (DISP).

<http://fsahandbook.info/FSA/html/handbook/DISP>).

If you are unhappy with your bank's response, you may be able to take your complaint to the Financial Ombudsman Service (<http://www.financial-ombudsman.org.uk/>).

The FSA regulates the financial services industry and in particular deals with how banks handle complaints. Like the OFT, it does not handle individual complaints but it does have an interest in ensuring that complaints about past actions are satisfactorily dealt with. Further information on complaint handling can be found on the FSA's www.moneyadeclear.fsa.gov.uk.

If you have a case with the County Court, please contact the Court directly as the decision whether to hear a case or not lies with each individual court.

6. What will the OFT do now regarding unarranged overdraft charges?

The OFT still has concerns with the Personal Current Account (PCA) market. As set out in the 2008 Market Study, banks earn a significant proportion of their PCA revenues from unarranged overdraft charges that are difficult to understand, not transparent, and not subject to effective consumer control.

To address these concerns OFT is seeking improvements around unarranged overdrafts in three critical areas:

- **Control.** Consumers need greater ability to manage their finances, both for their own interests and to ensure that competition operates more effectively in the PCA market. At a minimum, the OFT believes that consumers must have a real choice about whether to have a facility that allows them to go into unarranged overdraft or not.
- **Clarity and predictability of charging for unarranged overdrafts.** Current charging structures are typically not simple to understand and predict. It has also become clearer through the OFT's recent work on high-cost credit that consumers find it

difficult to compare the costs of using unarranged overdrafts with other forms of short-term credit. The OFT will be considering whether there is a simple method of describing the charges for unarranged borrowing that allows these comparisons to be made more effectively and for competition to work better.

- Responsibility. All banks have a duty not to lend irresponsibly, and the OFT can have particular regard to this in administering the licensing regime under the Consumer Credit Act 1974, including assessing fitness to hold a credit licence or deciding whether to impose requirements on individual traders. The OFT will consider as part of this process what expectations are appropriate for lending through unarranged overdrafts, especially to customers for whom other lending arrangements might be more appropriate.

The OFT will discuss these issues urgently with banks, consumer groups and other organisations over the next few weeks, with the aim of reaching a voluntary agreement from the banks to implement the changes sought. The banks have indicated to us that they are willing to enter into such discussions¹.

7. When will the OFT be reporting back on these discussions?

The OFT expects to issue a report on progress in the first quarter of 2010. The OFT will also report back at that stage on the case for further actions, such as the need for legislative change.

8. What other work has the OFT done in relation to personal current accounts?

¹ The BBA statement of 25 November confirms this: "We will also continue to work together with the OFT in connection with its on-going Market study."
www.bba.org.uk/bba/jsp/polopoly.jsp?d=145&a=16922

Since April 2007, as part of its Market Study, the OFT has been looking at how well the PCA market as a whole serves consumers. In July 2008, the OFT published a market study into the state of the PCA market. It established a complete picture of the market. It found that PCA's in the UK have many positive features:

- high levels of customer satisfaction
- many day-to-day services don't incur a charge, and
- internet and telephone banking makes it easier to manage accounts

However it identified a number of concerns which the OFT believed needed addressing:

- complexity in the way that UOCs were implemented, which made it hard for customers to predict when they will be charged, coupled with a lack of mechanisms for customers to exercise control or opt out of situations that incur high charges
- low levels of transparency on UOCs, forgone interest and other fees. These elements were the least visible to customers and were not effectively competed on by providers, and
- a perception amongst consumers that switching was both complex and risky with some real risk of the switching process going wrong.

9. What work has been done in relation to the concerns identified in the market study?

On 7 October 2009, the OFT announced that banks had agreed to make PCA costs more transparent and the switching process more reliable and trustworthy

Transparency of charges

To improve transparency, so that consumers can more easily understand the costs of their accounts and compare with others, banks will:

- introduce an annual summary of the cost of their account for each customer, which will help them to focus on the value they are getting in a similar way to annual car or house insurance renewal quotes
- make charges prominent on monthly statements, so that consumers are more aware of the charges they pay
- provide average credit and debit balances, which will help consumers to estimate the potential benefits of switching bank, and
- produce illustrative scenarios showing unarranged overdraft charges, giving consumers an idea of the costs for different patterns of use.

The OFT has also taken steps to help consumers understand and compare the costs of their accounts through [new advice and tools](#), including an [interest calculator](#), on its Consumer Direct website.

Switching your PCA

To improve the switching process, the following have either been introduced or are being introduced following work with BACS, the payment processor:

- steps to reduce problems that arise from transferring direct debits
- measures to reduce the impact on consumers of any problems with transferring direct debits, and

- a new consumer guide and website as part of efforts to increase consumer awareness of the automatic switching process.

10. Where can I find further information about the OFT's work in this area?

The market study can be found, together with an executive summary and follow up report, on the OFT website at www.offt.gov.uk/pca.

11. How does the OFT's work on PCAs affect consumers in Northern Ireland (NI) and Scotland?

The OFT expects its work to be relevant for consumers right across the UK. The market study covered the whole of the UK and the main UK banks. The OFT has not specifically focused on NI due to the Competition Commission report which looks at the NI market².

² This report found that consumers were not actively searching or switching in the NI personal current account market