

**letter to claims-management companies referring
significant numbers of complaints to the ombudsman
about account charges and financial hardship**

October 2009

Dear claims-management company

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 organisation. I am also writing in similar terms to other claims-management companies active in this field.

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 its 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.

For our part, we undertake to progress the cases 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 that situation.

In particular, we see cases where it appears to us that – with the exception of an initial written complaint to the bank about current account charges, citing financial hardship – there has been no discussion between the consumer (or their representative) and the bank. 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 promote the early, fair resolution of your clients' complaints – by reviewing your process to make sure it includes the proper provision of personal financial information to the bank in relation to *each* consumer *before* the complaint is brought to us.

If this does not then result in the matter being satisfactorily resolved by the bank within eight weeks, the complaint can be referred to us. For us to be able to move the complaint forward, we will need:

- A copy of our complaint form, properly completed and bearing the consumer's *own* signature (both account-holders need to sign, where the bank account is in *joint* names).
- Contact details for the consumer, in case we need to contact them direct. A daytime phone number is best.
- A *signed* copy of your authority to act on behalf of the consumer.
- A copy of all correspondence on the complaint between you or your client and the bank – to show that the bank has been given a reasonable opportunity to resolve the complaint, after receipt of the necessary information about the consumer's financial circumstances.

Once cases are referred to us for formal consideration, you can further help by making sure you respond promptly to any additional questions we need to ask you about the consumer's circumstances.

If we contact you with a proposal for settlement, you should be prepared to respond constructively *either* to accept the offer on the consumer's behalf *or* – if the consumer does not wish to accept – to explain why, in your opinion, the offer falls short of 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 current-account providers with significant numbers of complaints referred to the ombudsman about account charges – to ask that they, too, ensure their processes support the prompt and fair resolution of complaints brought by people in financial hardship.

Yours sincerely

Caroline Wells
external liaison manager