

The Financial Services Authority statement

The Financial Services Authority (FSA) today (Friday 27 July) issued a 'waiver' from its complaints handling rules that apply to unauthorised overdraft charges complaints. This follows the decision by the Office of Fair Trading (OFT) and some firms to initiate a test case in the High Court to resolve legal uncertainties on the application of the law to these charges.

This action means that, until the test case is resolved, any bank or building society that applies for the waiver will not be required to handle complaints relating to unauthorised overdraft charges within the time limits set out in the FSA rules. The Financial Ombudsman Service (FOS) has adopted a similar approach and the county courts are expected to follow.

Clive Briault, Managing Director, Retail Markets, said:

"The FSA supports the test case on unauthorised overdraft charges as the current situation does not provide certainty or consistency for consumers or firms.

"We have granted the waiver to help facilitate this test case. We believe it is not in the interests of all consumers for complaints to continue to be dealt with in the current inconsistent way. Once there is certainty on these charges, complaints can be dealt with fairly and consistently. To ensure consumer protection we have imposed a number of conditions on the waiver that firms must adhere to."

The conditions in the waiver include dealing promptly with complaints once clarity is achieved and communicating clearly with consumers throughout the process. The FSA also expects firms to continue to help their customers avoid incurring unauthorised overdraft charges in the first instance and to continue to deal with hardship cases.

The FSA will review the waiver in two months time to ensure, among other things, that firms are complying with its conditions. The FSA can also revoke the waiver at any time if it considers that the waiver is no longer appropriate, for example if progress on the test case is not being made or if a delay in the resolution of the test case is likely to cause undue risk to consumers.

The FSA will publish later today the results of thematic work on how firms are currently handling complaints on unauthorised overdraft charges. Practices varied across the visited firms, but in some the FSA found significant deficiencies and important areas of weakness in their approach. These included:

- a failure to respond to complaints fairly and consistently; to address adequately the subject matter of complaints; or to ensure complaints are resolved at the earliest possible opportunity;
- unfair closure of accounts, or threats to do so; and
- false or misleading statements made to complainants.

1. What is a waiver?

A 'waiver' from a rule means a firm does not have to comply with the requirement being waived.

2. What is being waived?

In the main, we are waiving our rules that specify time limits for dealing with any complaint about the level, fairness or lawfulness of unauthorised overdraft charges. This means firms will not have to deal with these complaints within the normal time periods required by our rules.

A firm will still have to record the complaint and acknowledge it within 5 days of receipt, but the normal time limit for handling complaints will not apply. Time will be treated as not running in relation to complaints on charges for the duration of the waiver.

Normal time periods:

- within 4 weeks of receiving the complaint, the firm must issue a written response or a holding reply; and
- within 8 weeks of receiving the complaint, the firm must issue a written response or reply informing the complainant of the reason for delay, expected date of final response and right to go to FOS.

The waiver is initially being granted for one year, or until the resolution of the test case. We will review it after two months to ensure that there is a stay of proceedings in the courts of England, Wales, Scotland and Northern Ireland; the FOS is not proceeding with cases about unauthorised overdraft charges until resolution of the test case; that firms granted the waiver are complying with the conditions; and, more generally, the continuation of the waiver remains appropriate.

3. Why has the FSA granted a waiver?

We have granted the waiver to help facilitate this test case. We believe it is not in the interests of all consumers for complaints to continue to be dealt with in the current inconsistent way. Once there is certainty on these charges complaints can be dealt with fairly and consistently. To ensure consumer protection we have imposed a number of conditions on the waiver that firms must adhere to.

4. What does it mean for consumers and banks and building societies?

Consumers:

- **Consumers with complaints outstanding (currently with a bank/building society)**
The complaint will remain with the bank/building society; normal time processing rules will not apply. Complaints will be dealt with as quickly as possible once the test case is concluded.
- **Consumers who have just been given an offer from the bank/building society**
Consumers will have two months to decide whether to accept the bank or building society's offer or to wait for the outcome of the test case. If consumers choose to accept the offer, it is unlikely that they will be able to complain again later regardless of the

outcome of the test case. If consumers choose to wait for the outcome of the test case, they will not be able to take up the firm's original offer and the firm will only deal with the complaint once the test case is concluded.

- **Consumers who may wish to complain from today**
Consumers can still complain now or they can wait until the test case is complete - they will not be disadvantaged. The complaint will be recorded and stored by the firm and will be dealt with as quickly as possible once the test case is concluded.
We will still require any new complaints to be acknowledged within 5 days.
- **Consumers for whom Scotland is the most likely jurisdiction**
Consumers may choose to take their complaint to the FOS or the courts in Scotland. The right to refer the complaint to the FOS will not be affected. However, if the customer wants to bring a claim to the courts in Scotland, the timing of when the claim is raised may be important. They are advised to seek independent advice on filing a claim now to protect their rights (although a court fee will be payable).
- **Consumers who have already had a settlement and think they may want it reviewed**
A full and final settlement stands. In some exceptional circumstances the complaint can be reviewed, for example, if there is evidence of coercion or bullying.
Consumers can still complain about new charges incurred.
- **Consumers who have received a final response from the bank/building society which does not include an offer**
Consumers still have the option of complaining to FOS. However, the banks and building societies have also requested that the FOS does not consider any complaints about unauthorised overdraft charges until resolution of the test case.
- **Consumers who are in very difficult financial circumstances - 'hardship cases'**
Banks and building societies will have to conduct a filtering process to ensure that cases of genuine hardship are still dealt with during the waiver period. Cases of hardship would still be entitled to be referred to, and dealt with by, the FOS.
- **Consumers who want to complain to the bank/building society about other issues**
Consumers can continue to use the existing complaints process to seek redress about other financial matters, such as insurance, mortgages and current accounts. However, if their complaint relates to the level, fairness or unlawfulness of unauthorised overdraft charges, that element of the complaint will be registered but not dealt with until a resolution has been achieved.

Banks/building societies:

- Banks/building societies will not have to meet the requirements on time limits for dealing with any complaint which relates to unauthorised overdraft charges during the duration of the waiver.
- A bank/building society will still have to acknowledge the complaint within 5 days of receipt, but the normal time limits for handling complaints will not apply.
- Banks/building societies will have to comply with a number of conditions set out by the FSA in the waiver, including:
- Banks/building societies must communicate with complainants, potential complainants and other customers in a way that is clear, fair and not misleading;
- Banks/building societies will have to keep proper records; and

- Banks/building societies need to have processes in place to deal with complaints in an orderly and efficient manner once the waiver expires and complaints handling restarts.

5. How will the FSA ensure all the conditions of the waiver are being met?

We will review the waiver in two months to ensure the criteria for granting the waiver are being met, including whether banks and building societies are complying with the conditions set out in the direction. If we are not satisfied that these criteria are being met after two months or at any time after that, we can revoke the waiver.

For individual firms, senior management is responsible for its activities and for ensuring its business complies with our regulatory requirements and this will be monitored through our normal supervisory procedures.

6. How long could the waiver ultimately last - will the FSA withdraw it if the case continues for years?

We cannot predict how long this will last. The waiver has been initially granted for 12 months or until the resolution of the test case (whichever comes sooner). After this period, the FSA will consider whether renewal of the waiver is necessary and appropriate in the light of the prevailing circumstances at the time.