



Financial Services Authority

# Two month review of unauthorised overdraft charges complaints handling waiver

November 2007

# Background

1. On 27 July 2007 the FSA made available to firms a waiver regarding the time limits for dealing with any complaint about the level, fairness or lawfulness of unauthorised overdraft charges (“relevant charges complaints”). The waiver was granted to support the test case on unauthorised overdraft charges brought in the High Court by the Office of Fair Trading (OFT). The terms of the waiver included guidance that we intended to review the continued satisfaction of the criteria for giving the waiver two months after the date it was granted, and that in conducting this review we would have particular regard to whether:
  - a) there was a stay of relevant proceedings in the courts of England and Wales, Scotland and Northern Ireland in materially all cases;
  - b) the Financial Ombudsman Service (“FOS”) had concluded that he should not proceed to consider the merits of the relevant charges complaints referred to him in materially all cases until the resolution of the test case; and
  - c) firms were complying with the conditions set out in the waiver direction.
2. The waiver guidance also stated that if we were no longer satisfied as to the above criteria after two months, or at any time while the waiver remained in force, we would expect to revoke the waiver.
3. The purpose of the test case is to bring certainty about the legality and fairness of these charges. The waiver we granted in July requires complaints to be put on hold until certainty is established. After that, they can be dealt with consistently and fairly. To ensure consumer protection we imposed a number of conditions on the waiver that firms must adhere to.

## Review work

4. In order to give firms time to prepare for the review, we wrote to them in August 2007 to give notice of the information we required in order to conduct the review. This information was required within two months and one week following the date each firm was granted the waiver. During the course of the review work we also asked some firms for additional information and explanations on the material provided, where necessary.
5. While we reviewed the submissions from all firms, we concentrated on the larger firms, which have received the majority of complaints and where issues arising were more likely to be material.
6. As part of the review, we obtained feedback from the FOS, the Banking Code Standards Board (“BCSB”) and leading consumer groups about the operation and effectiveness of the waiver. We received information from various other parties and individual consumers. We also noted the objections to the waiver made in a Downing Street ‘petition’ and in complaints received directly by the FSA. We have had regard to this in considering whether firms were complying with the conditions in the waiver.
7. Our detailed review work included an analysis and assessment of:
  - Firms’ general and specific communications with customers, against the requirements of the waiver direction.
  - Firms’ procedures for compliance with the waiver, including the methodology for filtering relevant charges complaints from other types of complaint, or parts of complaints, which were not covered by the waiver, or related to other issues including cases of financial difficulty.
  - Firms’ co-operation with the OFT in the test case and whether undue delay has been caused to the proceedings so far.
  - Information about firms’ efforts and outcomes in obtaining stays of relevant proceedings before the courts of England, Wales, Northern Ireland and Scotland.
  - Data submitted by firms showing the numbers of cases each firm has dealt with under the various conditions of the waiver.
  - Information relating to any changes or proposed changes to firms’ terms and conditions (including the level or frequency of charges or fees) with regards to unauthorised overdraft facilities.
8. Further monitoring and improvements we expect of individual firms, together with examples of good practices we have observed, will be communicated to the firms concerned.

## Conclusions

9. Overall, we found that the criteria for giving the waiver continue to be satisfied and firms are complying with the conditions set out in the waiver direction.
10. Overall, the courts are staying the majority of the cases. The FOS is no longer considering complaints in relation to unauthorised overdraft charges pending a decision in the test case.
11. We were satisfied that firms' communications with customers were in line with the conditions of the waiver.
12. Firms have established appropriate policies and procedures for filtering relevant charges complaints from other types of complaint, or parts of complaints, which relate to other issues including cases of financial difficulty.
13. We have concluded that it is appropriate for the waiver to continue to apply to complaints concerning current account terms and conditions governed by the laws of Northern Ireland and Scotland<sup>1</sup>.
14. We have identified some specific areas (see below) where we are planning further follow-up work in order for us to be satisfied that the waiver conditions will continue to be met.
15. We are satisfied that the relevant part of the waiver is being complied with in cases where consumers are claiming they are in financial difficulty at the same time as complaining about unauthorised overdraft charges (the waiver requires complaints about other matters such as financial difficulty to be identified and dealt with in the normal way)<sup>2</sup>. But given the importance we and the BCSB attach to these cases, the FSA will undertake, jointly with the BCSB, thematic review work<sup>3</sup> to ensure the processes involved continue to provide appropriate treatment of consumers in genuine financial difficulty who have also complained about unauthorised overdraft charges.
16. Guidance in the waiver states that firms should not make materially adverse changes in the level of their unauthorised overdraft charges which could amount to customer abuse. A number of firms have made changes to their terms and conditions since the waiver was granted. The impact of these changes on their customers is not yet clear. We will closely monitor customer experience, behaviour and reaction in light of these changes, and the implications of this for compliance with the waiver.

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1 Although the waiver applies to complaints concerning personal current account terms and conditions governed by the laws of England and Wales, Northern Ireland and Scotland, the test case is based on terms and conditions governed only by the laws of England and Wales. We are satisfied that the test case is as likely to resolve all relevant disputes in relation to charges levied by banks in Northern Ireland and Scotland as it is in England and Wales.

2 Consumers experiencing financial difficulties are not automatically entitled to a refund of bank charges, however a firm is required under the Banking Code to deal with the situation sympathetically and positively. We have seen that firms are making refunds to some customers in financial difficulty, as part of the normal range of approaches used once they have assessed the individual circumstances of each case.

3 In this work the BCSB will lead on the Banking Code requirements and the FSA will lead on compliance with the relevant waiver conditions and our complaint handling rules.

17. The waiver does not include small business current accounts, because its scope is aligned with that of the OFT's wider investigation which relates to personal current accounts. Firms have agreed to put arrangements in place to ensure that small business customers, including those who thought they were covered by the waiver,<sup>4</sup> are not disadvantaged.

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4 Firms have agreed, in particular, that when handling complaints about unauthorised overdraft charges from small business customers, the complainant will be given the option to accept an offer in full and final settlement, or for their complaint to be deferred and considered following the determination of the test case. This is because of the possibility that the test case might inform the approach to be taken in dealing with complaints from small business customers about these charges. In this situation firms will not seek to rely on any time bars affecting the complaint, or the customer's ability to complain to FOS.



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