



## Banks and Building Societies

### What the law says

When you open an account with a bank or building society or use any of their services, you are entering into a contract. The terms of the contract will be set out in a number of places, for example, the account or loan application form, notices displayed in the bank and leaflets. Over and above the terms of your contract, the law says the bank or building society must carry out its business:-

- **with reasonable care and skill.** This means, for example, that the bank or building society must act responsibly and keep accurate records of your finances; *and*
- **in a reasonable time**, unless a specific time has been agreed. What is reasonable would depend on the service the bank was carrying out (for example, it should give a decision on a loan within a couple of days); *and*
- **at a reasonable cost**, unless a definite price has been agreed.

### Remember:-

- **The bank or building society doesn't have to give you an account or a loan**, and it does not have to give you any reasons if it refuses to do so. However, it cannot refuse you because of your race, sex, religion, sexuality or disability
- the bank or building society will want proof of your identity including your full name, date of birth and address before allowing you to open an account
- If you use a **cheque guarantee card** to buy goods or services, you will **not** usually be able to cancel (stop) the cheque if they turn out to be unsatisfactory
- Your bank or building society can transfer money from your **personal** account into your **joint** account, to cover a debt on an account held jointly **without** your permission. But it **cannot** transfer money from your **joint** account to your **individual** account without the permission of all the joint account holders, or unless the terms and conditions of your contract with the bank or building society say this can happen. The terms and conditions must have been clearly and specifically brought to your attention
- Even if your account is overdrawn, you can choose how any further money you pay into the account is used (for example to pay your mortgage or rent). This is called **first right of appropriation**. You'll need to write to them with new instructions each time you make a deposit.

### The Banking Code

The Banking Code sets out minimum standards of service for banks, building societies and credit card companies providing personal banking services to their customers. A bank, building society or credit card company does not have to sign up to the Code, but if it does, it must follow the Code's standards of service.

A bank, building society or credit card company which has signed up to the Banking Code must act fairly and reasonably in all its dealings with customers. This includes how it should deal with a customer in financial difficulties. If it breaches the Code, you



can complain using the bank or building societies' own complaints procedure, and if you are still not satisfied, you can complain to the Financial Services Ombudsman (FOS) – see below.

### Bank charges

Banks and building societies charge for some services. These charges must be set out in the bank's or building society's terms and conditions.

Banks charge when you go overdrawn without an arranged overdraft facility, when you go over any agreed overdraft limit or when there isn't enough money in your account to cover a withdrawal, for example a cheque. This is called an unauthorised overdraft. Unauthorised overdrafts are often considered to be very high. Many people have complained that they are unfair and have asked for refunds.

Because there have been so many complaints about unfair overdraft charges, the Office of Fair Trading (OFT) is taking a test case to the High Court. Until the outcome of the court case is known, it has been agreed that dealing with all complaints about overdraft charges will be placed on hold, although your complaint should still be considered if you are in genuine financial hardship. To find out what happens now if you want to make a complaint about unauthorised overdraft charges or if you are someone who has already complained, go to [www.moneymadeclear.fsa.gov.uk/](http://www.moneymadeclear.fsa.gov.uk/). You can find a sample letter for making a complaint about unauthorised overdraft charges at: [www.which.net/campaigns](http://www.which.net/campaigns).

## Your rights if the service is unsatisfactory

### Compensation

You may be entitled to compensation if:-

- the contract has been broken (**breach of contract**), for example, if the bank or building society fails to honour a cheque or pay a standing order or direct debit when you have sufficient money in your account to cover it; *or*
- the bank or building society has been **negligent** in the way it has handled your account. As it is very difficult to prove negligence, you may find it easier to claim breach of contract, for example, that it has not handled your affairs with reasonable care and skill.

You will have to show that you have suffered a loss before you can claim compensation and the amount you can claim will usually be limited to the amount you have actually lost.

### Changing your bank or building society

If you decide to change your bank or building society account, you should consider:-

- what **charges** will be involved, for example, for closing your account or cancelling standing orders; *and*
- whether the **services and facilities** provided by the new bank or building society are **better** than those you currently receive; *and*
- **delays** in making **payments** by standing order or direct debit and take this into account when deciding on a date for closure; *and*
- how long **you will have to wait before you can use all the new bank's or building society's services, for example, there may be a delay before you receive a cheque guarantee card.**



You should open a new account before closing your existing one and ensure you cancel any existing standing orders or direct debits. Be sure to return any unused cheques or plastic cards (cut into pieces) to your old bank or building society. If you are transferring a balance to your new account, make sure you have left sufficient money in the old account to cover any uncleared cheques.

If your bank or building society subscribes to the Banking Code of Practice, it must co-operate with your new bank or building society to help the transfer of your account to take place as smoothly as possible. It must give information about regular payments from your account within three working days.

You should not have to pay for bank charges incurred as a result of mistakes or delays in the transfer process.

## How to solve your problem

Once you have decided what your rights are, you will need to contact the bank or building society as quickly as possible. The following steps should solve your problem:-

- **check that the problem has been caused by the bank or building society**, for example, the bank or building society will not be responsible if you give someone else your bank card and pin number and they use these to withdraw money without your consent
- **collect all your documents together**, including your contract, bank statements and cheque stubs
- **contact the bank or building society** as soon as you discover the problem. If you visit, take a copy of all your documents and ask to speak to the **person responsible for dealing with your account** or the branch manager. Alternatively write to the branch manager, enclosing copies of your documents, and **keep a copy** of your letter. Explain your problem calmly but firmly and request the action or compensation that you require
- if you are **dissatisfied with** the branch manager's response, you should ask for details of the bank's or building society's complaints procedure. Find out whether the bank or building society subscribes to the **Banking Code of Practice** (You can obtain a copy from your bank or building society or from the British Bankers' Association, telephone number **020 7216 8800**, website: [www.bba.org.uk](http://www.bba.org.uk)). You should follow each stage of the complaints procedure by writing to the relevant manager, giving full details of your case, including any breaches of the Banking Code of Practice and stating what action you require. When you have completed the internal complaints procedure, you will be sent a **letter of deadlock** if your complaint has not been settled
- if you **cannot reach an agreement** with the bank or building society, find out if it is a member of the **Financial Ombudsman Service** - see below for more information. The Ombudsman can investigate the majority of banking complaints, but there are some exceptions such as where you are questioning the bank's commercial judgement. You must have followed your bank's or building society's complaints procedure, and have made your complaint to the



Ombudsman within six months of receiving its final decision. **You cannot use an Ombudsman scheme after taking court action**

- if the **Ombudsman cannot resolve your complaint**, your only other option is to consider going to court. Remember court is your last resort. Before going to court, you need to consider whether you have sufficient **evidence**. You will also need to find out whether your bank or building society is **solvent**. It is not worth suing a company that has no money. **It is extremely rare for a bank or building society to be sued. If you are thinking about doing this, you should see a solicitor.**

## Organisations that deal with Bank and Building Society complaints

### The Financial Ombudsman Service

Your complaint must be brought to the Ombudsman within 6 months of the deadlock letter. The Ombudsman will try to deal with your complaint informally but if this fails will make a **preliminary decision**. You and the bank or building society can make comments on the decision, which the Ombudsman will consider and then make a **recommendation** or a **ruling**. The bank or building society must comply with the ruling, but if you are not satisfied, you can take court action. However, if you do so, the court would take the Ombudsman's ruling into account when deciding your case. You can contact the Ombudsman on 0845 080 1800 or visit the website at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

### Further help

#### Citizens Advice Bureau

Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. To find your nearest CAB, including those that give advice by e-mail, click on [nearest CAB](#), or look under C in your phone book.

#### Other fact sheets on Adviceguide which might help

- [Credit fact sheet](#)

*Last updated: 26 January 2011*

This fact sheet is reviewed on a monthly basis. The law changes frequently. To confirm you are looking at the most up-to-date version, download the fact sheet from [www.adviceguide.org.uk](http://www.adviceguide.org.uk) or contact your local Citizens Advice Bureau.

Produced by [Citizens Advice Scotland](#) (Scottish charity number SC016637), an operating name of The Scottish Association of Citizens Advice Bureaux. This fact sheet provides general information only and should not be taken as a full statement of the law.