

Banks and building societies

What the law says

Before you open an account with a bank or building society, you must be told about the terms and conditions in order to help you decide whether to open the account. **After** you open the account, the bank must bring any changes to the terms and conditions to your attention, so that you can decide the best way to use your account.

When you open an account with a bank or building society and use their services, you are entering into a 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:-

- you **don't have to be given an account or a loan**, and the bank or building society 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
- 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.

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.

Your bank or building society must co-operate with the new bank or building society to help the transfer of your account to take place as smoothly as possible. If your old bank has an arrangement with the new bank, your bank must transfer any account balance and make arrangements in respect of direct debits and standing orders. If there is no arrangement in place, your bank or building society is only required to provide a prompt and efficient service to help you close your account and it must return any deposit due. This includes any interest. If there are mistakes or delays in the transfer process which lead to bank charges, you shouldn't have to pay for them.

Bank charges

Banks and building societies charge for some services. You must be told about these charges before you become a customer. If there is any change to the charges, these must also be clearly and specifically brought to your attention.

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 were so many complaints about unfair overdraft charges, the Office of Fair Trading (OFT) took a test case through the courts and existing complaints were put on hold.

The Supreme Court decided that the OFT did not have the power to decide if the charges are unfair. It is likely that your complaint will now be rejected, although your bank should treat you sympathetically if you can show financial hardship.

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. You should follow each stage of the complaints procedure by writing to the relevant manager, giving full details of your case 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, you can progress your complaint to 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 0300 123 9 123 or visit the website at www.financial-ombudsman.org.uk.

Financial Services Authority

The Financial Services Authority (FSA) is the body responsible for regulating banks and building societies. They aren't able to get involved in individual complaints, recommend firms or give legal or financial advice. However, the FSA is interested in hearing about cases where a bank or building society appears to be in breach of its obligations. The FSA may, where appropriate, fine the bank or building society.

The Money Advice Service

The Money Advice Service is a free, independent service. Their website www.moneyadvice.org.uk has lots of useful information about financial products such as bank accounts, including comparison tables for different savings accounts. Their Money Advice Line (0300 500 5000) can answer general enquiries about financial products and services.

Other fact sheets that might be helpful

- Starting court action (England and Wales)
- Borrowing money

This fact sheet is produced by [Citizens Advice](#), an operating name of The National Association of Citizens Advice Bureaux. It is intended to provide general information only and should not be taken as a full statement of the law on the subject. Please note that the information applies to England, Wales and Scotland.

This fact sheet was last updated on 1 May 2012, and is reviewed regularly. If it is some time since you obtained this fact sheet, please contact your local Citizens Advice Bureau to check if it is still correct. Or visit our website - www.adviceguide.org.uk - where you can download an up-to-date copy.