

## **Banks off the hook – but some customers win too**

**The banking industry breathed a sigh of relief this week when the tide finally turned for them and the Supreme Court ruled in their favour in a test case on overdraft charges.**

Whilst it's disappointing for the customers who hoped for refunds, it is good news for customers who don't run into the red and would otherwise have faced the end of free banking. It may seem that it's just a good day for the banks, but the judgement did look at the public interest too.

The fairness of the charges on unauthorised borrowing had been challenged by the consumer watchdog, the Office of Fair Trading (OFT) because some customers were being charged as much as £39 for a bounced cheque. The challenge followed a lengthy review by the OFT, which resulted in them concluding that the charges were unfair.

The banks argued that the OFT had no power to determine whether their charges were fair but lost their case in the High Court and the Court of Appeal. Things turned for the banks when they appealed to the Supreme Court.

The OFT's case failed on what amounts to a legal technicality, namely whether overdraft charges form part of the core terms of the contract between bank and customer.

Although the question was whether the OFT had the right to rule on the fairness of the charges, one of the reasons given by the Supreme Court for their decision was the public interest in preserving free banking for those who stay within authorised borrowing limits.

If the banks had lost, it's estimated that they would have had to pay back some £20 billion to customers and in the run-up to the hearing had said it would probably mark the end of free banking.

There are around 1.2million customers who have made a claim against their bank on the same grounds, and their cases were frozen pending the outcome of this case.

Following the judgement, the general opinion seems to be that it will be hard for any individual to pursue a claim in the county court. Unfortunately the burden of the charges will continue to fall disproportionately on the poorest members of the public who are more likely to have cash flow problems and may be less financially savvy.

The OFT has said that it is disappointed by the judgment and that it will be considering the detail before making a decision on any further action.

Lady Hale of Richmond, a Justice of the Supreme Court, said: "The banks may not be the most popular institutions in the country at present, but that does not mean that their methods of charging for retail banking services are necessarily unfair when reviewed as a whole."