

## **Banks' income and the acceptability of charging a flat fee for late credit card payments**

**Научный руководитель – Тарасова Татьяна Ильинична**

***Кулакова Анна Николаевна***

*Студент (магистр)*

Московский государственный университет имени М.В.Ломоносова, Юридический факультет, Кафедра коммерческого права и основ правоведения, Москва, Россия

*E-mail: kulakovanna2014@yandex.ru*

Most Americans have a bank account that they use to deposit pay checks from employer for safekeeping, pay bills, and save money.

Millions of Americans putting away millions of dollars have you ever stopped to wonder who's paying all these banks to watch over all that money. Well, you are.

Handling all the deposits withdrawals and other services banks provides comes at a cost. According to the Banking Act (2009) banks cover these cost in three primary ways: fees, interchange and loan interest. Banks can charge customers lots of fees whether it's for overdraft or late payments applying for a loan, commission fees (returned deposit, maintenance, lost card, foreign transaction, minimum balance change, overdraft) and of course there ATM fees. In 2016 is bank rate estimated that consumers paid an average of four dollars and 57 cents. Every time they withdrew money from an out-of-network ATM and in 2016 the three biggest banks in the country made six billion dollars from ATM and overdraft fees alone.

But one of the biggest fees banks collect is not paid by you but by the stores you shop out, if you go to your local deli for a sandwich and pay the cars the deli is charged an interchange fee. Some of that fee is paid to the delis bank but most of it is paid to your bank. And if stores want to accept debit or credit card payments they must pay the price of interchange according to The Regulation on Interchange Fees for Card-based payment transactions that entered into force in June 2015. When people put money in the bank they doesn't just sit there waiting for them to take it back out. Banks use this money as a way to make money for themselves by offering loans.

When someone wants to buy a home, car, college education, they can go to a bank for a loan, and the bank will charge interest on that loan. Let's say someone needs a sum of money to buy a car, they ask the bank for a loan and the bank will take money from its customers deposits to purchase the car. In exchange that person will pay back the bank with 6% interest.

This allows the bank to make thousands of dollars in profits and when you consider that millions of people are taking out bank loans all across the country that interest an all those individual loans adds up to billions of dollars. Essentially you're loaning your money to the bank so they can loan it out to other people, but just because the bank is lending your money out doesn't mean you don't access to it.

The well-publicised "class action" challenge to bank fees in the Federal Court (*Paciocco v ANZ Bank*) reached a fresh milestone in April, when 3 judges of the Federal Court decided that banks can charge fixed fees for late credit card payments. However, it seems that the decision is set to be challenged in the High Court.

As the law stands, banks are able to charge fees, under their terms and conditions, for a range of defaults by their customers, including late payments and withdrawals over an account limit. The class action seeks to establish that certain types of fees are unrecoverable by the bank because they are contrary to the legal rule that a party to a contract (such as a credit

agreement) cannot be penalised for breaching it, but need only pay compensation to the other party for any losses it accrues as a result of the breach.

The applicants in the class action assert that credit card late payment fees are unlawful penalties because, taken at the time the contract was made, the fee amounts are extravagant when compared with the losses which a bank would actually suffer as a result of a late repayment. It was argued that the extravagance of the fees is illustrated by the fact that a one day late payment of \$0.01 could attract a \$20 fee, whereas the bank's loss in such a case would be negligible.

However, the court disagreed. It found that assessing whether a fee for late payment is a penalty involves a broad consideration of all of the bank's costs relating to late payments, including collection expenses and extra capital provisions to protect the bank against late paying clients. The court decided that it could not be said that the fees were extravagant when those broader costs were taken into account.

The court also confirmed that agreed fees charged where a bank permits withdrawals over an account limit ("honour fees" or "overlimit fees") were legitimate.

The case is not over, though, as the solicitors representing the claimants in the class action having indicated that they will appeal to the High Court against the latest Federal Court ruling.

Banks must meet reserve requirements - an amount of funds the bank sets aside in case an influx of people withdraw money at the same time. Banks aren't investment vehicles, but they are a safe place to keep money easily available for paying bills and for your emergency safe.

#### **Источники и литература**

- 1) Burnett, M., 'Financial Stability and the United Kingdom's External Balance Sheet', Quarterly Bulletin, Bank of England, 2013.
- 2) Carlo Gola and Alessandro Roselli «The UK Banking System and Its Regulatory and Supervisory Framework» // CPI Antony Rowe, Chippenham and Eastbourne, PALGRAVE MACMILLAN. 2009.
- 3) Bruyère, R., Cont, R., Copinot, R., Fery, L., Jaeck, C. and Spitz, T. «Credit Risk Transfer: Developments from 2005 to 2007» // The Joint Forum, Basel Committee on Banking Supervision, April 2008.
- 4) International Financial Services London (IFSL), Banking, City Business Series // City of London Admiralty Solicitors Group. 2013.
- 5) Barth, J.R., Caprio, G. and Levine, R., Rethinking Bank Regulation, Cambridge University Press, 2006.
- 6) URL: <https://www.gtlaw.com.au/knowledge/paciocco-v-australia-new-zealand-banking-group-limited-2014-fca-35>.