



Bulletin No 3

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Closure of bank accounts

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1. Introduction

The Office has received a number of complaints relating to the unilateral decision of a bank to close or freeze accounts. Typically the complainant complains that his overdraft was frozen and his account was closed without any warning and that he has suffered distress and considerable inconvenience as a result. The bank's version is usually that the bank's staff had regularly warned the complainant that they would close the account if he continues to issue cheques without sufficient funds in his account or if he does not keep his overdraft within the agreed limit. The bank then summarily closes his account after the complainant fails to heed any of the warnings.

The purpose of this information notice is to inform the banks as to how the Office would typically approach a complaint of this nature.

2. The Legal Position

It is accepted that one of the implied terms of the bank-customer contract is that a banker may not cease to do business with a customer "*except upon reasonable notice*". The bank may also not close an account in credit by payment of the credit balance without giving reasonable notice. (See *Joachimson v Swiss Bank Corporation* [1921] 3 KB 110.)

It is also accepted that what constitutes "*reasonable notice*" depends on the character of the account and the special facts and circumstances of each case. (See *Prosperity Ltd v Lloyds Bank Ltd* (1923) 39 TLR 372) In this particular case, a month's notice was considered insufficient.

Whilst a bank is indeed entitled to demand repayment of an overdraft forthwith, this action is different from closing the account.

When closing an account, a bank must bear in mind that alternative arrangements have to be made by the customer.

A bank has a duty to advise their customer that a facility is withdrawn to prevent prejudice to his/her good name and business reputation if further cheques were issued after the facility had been withdrawn.

In *Penderis & Gutman NNO v The Liquidators of the Short-Term Business, A A Mutual Insurance Association Ltd and Another* 1991 (3) SA 342 (CPO), it was held that if there is a change in security given by a customer to his bankers they may stop or freeze the account. The court further held that there is nothing to prevent a bank, after having stopped an account, from authorizing the payment of one or more cheques presented after the account had been frozen if it is of the view that honouring such cheques would be to its advantage or to the advantage of the customer. It does not follow that meeting such cheques amounts to a total "*defrosting*" of an account.

3. The Code of Banking Practice

The *Code of Banking Practice* makes certain references to the bank's obligations to a customer before closing an account.

Clause 4.10 specifically deals with closure of an account and states:

Closure of accounts

We will not close your account without giving you reasonable prior notice at the last address that you gave us.

We reserve the right, however, to protect our interests in our discretion, which might include

- summarily closing your account:
- if we are compelled to by law;
- if you have not used your account for a significant period of time;
- if we have reasons to believe that your account is being used for fraudulent purposes.

Clause 4.6.2 states that:

Should your account go into default, our first step will be to try to contact you to discuss the matter. It is therefore imperative that you inform us at all times of any changes to your address and contact details.

4. Feedback received from the Banks

The first point raised by the banks was the two major different scenarios under which closure or freezing may occur.

The first scenario, namely a dormant account, does not present any problems, so long as sufficient notice of closure is given to the customer. This scenario was not the primary focus of the information notice, and thus will not be dealt with in any great detail.

The second scenario is a misconduct account, namely an account whose balance, is outside the agreed limits and remains as such, despite warnings or where excessive “Return to Drawer” notices have occurred. The steps that banks are taking appear to be as mentioned in paragraph 1 above.

In these circumstances the banks are advised to take only those steps that are necessary so as to ensure that the bank’s interests are protected in terms of clause 4.10 of the Code of Banking Practice. All efforts to give the customer prior notification of actual closure of the account should still be given.

5. The Intended Practice of the Office:

Despite the informative feedback that was received from the banks, the views of the Office remain unchanged since it is clear from the law and Code that it is insufficient to warn a client that the account may be closed if he does not comply with certain conditions. Notice of the actual decision to close the account must be given.

The notice must be in writing and we suggest that it be sent by any means that will provide the Office with sufficient evidence of the notice having been sent within a reasonable period prior to the actual closure. The bank should notify the customer of the date upon which they intend closing the account.

As far as what would constitute a reasonable period, each matter would be looked at on its merits, however, a period of between 2-4 weeks for individual accounts and of between 1-2 months for business accounts would be considered reasonable, depending on the nature of the accounts and the number and nature of transactions on the account.

A bank is at liberty to refuse any instruction to pay a third party if such instruction would result in the customer’s account going beyond the agreed limits. A freezing of debits from an account whilst the account continues to exist beyond the limits is thus acceptable, however, once the decision to close the account is made, actual notice of closure must be given.

It must be stressed that the office would not consider it appropriate for a bank to close a habitually unauthorised overdrawn account as soon as it has a nil or credit balance. Such actions would not be considered as justifiable in terms of clause 4.10 of the Code.

**Adv NJ Melville
Ombudsman**