



Bulletin 10

Electronic Funds Transfer





We have been receiving complaints relating to the transfer of funds using a bank's internet banking facility. Due to the ever-increasing number of bank customers using this facility we regard it as important to alert the banks and their customers to a specific type of complaint which is occurring in this regard, and what our approach will be in investigating each case of this nature.

Background

The banks all have various systems and processes to enable the transfer of funds from one customer's account to another, using internet banking. Despite the difference in the respective banks' various systems, all of them have certain common features. When creating a beneficiary account, the user is required to complete fields for the beneficiary's name, account number and account branch code. The user, having entered this information, then receives confirmation that the transfer was processed successfully. The problem occurs when the user has entered an incorrect account number. Where the account number entered does exist, payment is made to that account. Normally the user does not realise that payment was made to the wrong account and is only informed at a later stage when the intended recipient denies receiving the funds. The user will then submit that, by requesting the name of the beneficiary, the bank made a misrepresentation to the user that the account number would be cross verified against the beneficiary name. If the two did not match, the transfer would be rejected as unsuccessful.

During discussions with the Payments Association of South Africa (PASA) it emerged that this issue had been canvassed with the banks in their Investigation and Implementation Circular 11 of 2001 sent to all the banks (Annexure 'A'). The circular discussed the issue and contained a legal opinion on the possible liability of a bank in these circumstances (Annexure 'B'). The legal opinion made it clear that the banks could very well be liable in law if they negligently omitted to warn customers of the risks inherent in this facility. The circular suggested that the use of the system must include a full understanding by the customer of the risks involved in providing an incorrect account number. PASA has indicated that they are working on a project aimed at resolving this type of problem. It is not yet known what this resolution will be.

This issue has been canvassed by the Australian Banking and Financial Services Ombudsman in his Supplement to Bulletin 39 dated September 2003. The conclusion drawn was essentially that, while each case would be evaluated on its own merits, the banks were exposed to liability in these types of cases.



In discussions with the banks on this issue they made the following submissions:

- The system required the beneficiary's name for the user's own record keeping purposes. A record only indicating the account number and amount paid without the beneficiary's name would not serve as a useful and user-friendly record of the transaction.
- The account number field is pre-filled with zeros. The account number entered populates the field from the right-hand side. If too few digits are entered, the zero/s to the left of the field remain/s in place. The field is therefore not "padded" to create an account number. Due to the different account number lengths used by the respective banks and account-number-for-life programs this is the only way in which the system can operate.
- It would be impractical to match the account number to the beneficiary's name as this would require the user to enter the name exactly as it is recorded on the system in respect of spelling, spaces, case etc. In practice, most transfers would fail due to the name not matching and this would be counter-productive.
- The banks do warn the users that they would not be responsible for entering incorrect information provided by means of the terms and conditions link on the website.
- The Electronic Fund Transfer Credit Payment Instructions agreement states that only the account number will be used in identifying the beneficiary's account.

Code of Banking Practice

The Code of Banking Practice (the code) contains the following provisions relating to this issue:

9.3 Internet, telephone and cell phone banking

Internet, telephone and cell phone banking services make some banking services and transactions more easily accessible. However, as with all our products, there are certain precautions that you need to take to protect yourself against fraudulent transactions. Ensure that you familiarize yourself with these on our website or Internet banking portal, or with our telephone or cell phone banking departments.

We will take reasonable measures to ensure that our internet banking systems and technology are secure and are regularly reviewed and updated for this purpose. We will further:

9.3.1 provide you with regularly updated information on how to access internet banking services, including details about your customer ID, selection of appropriate passwords and the availability of additional authentication or



- security options, how to maintain your security and what your liability for unauthorized transactions will be;*
- 9.3.2 *inform you of the applicable Terms and Conditions relating to the use of internet banking, including any fees and charges;*
- 9.3.3 *advise you of the current transaction limits that apply to our internet banking services. These limits may change from time to time and are available upon request;*
- 9.3.4 *inform you of what procedures you must follow to report unauthorised access to your information, accounts or disputed transactions using your internet banking service and provide you with effective and convenient means to notify us of security incidents and easily accessible contact points to report such activity as soon as you are aware of it; and*
- 9.3.5 *ensure that transactions of our e-banking services can be traced and checked as long as they are received by our systems.*

Assessment

While we take note that the banks require the name of the beneficiary for record keeping purposes, this practice creates a clear representation that the account number will be cross verified with the beneficiary's name. The user is therefore brought under the false impression that where the account number and the name of the beneficiary do not match, the transaction will be rejected. This is further evidenced by the fact that the entering of the beneficiary name is mandatory: it is not an optional field.

The banks cannot justify the use of the Electronic Funds Transfer agreement against the customer. This agreement is for the internal use of the banks and is only applicable between the banks as parties to the agreement.

The general terms and conditions applicable to a bank's internet banking websites are usually available as a link only. There is generally no evidence to show that a user takes note of these conditions or accepts them. Even if such evidence was tendered that the conditions were accepted, any warnings to the customer regarding the entering of information contained in the conditions are of such a generic nature that they do not excuse the bank from misrepresenting to the user that information will be cross-verified.

In evaluating any complaint of this nature, we will therefore have regard to the following factors:

- PASA warned the banks regarding the possibility of liability for failing to warn customers of the risk of internet transfers in 2001 already.



- Any evidence that the complainant was reasonably informed regarding the sole use of the account number for transfers. In evaluating whether the complainant was reasonably informed, we will note of any direct warning on the website page itself when creating or paying a beneficiary. We have noticed that at least one bank has already placed such a warning on the relevant web page.

Each case is assessed on own merits to determine possible liability.

The draft information note alerting the banks to our proposed approach to complaints of this nature has been sent out to all the banks. The responses received from the four major banks indicated that they had no objections to our proposed approach to these matters.

The Ombudsman for Banking Services

Reviewed January 2018