



Bulletin 3

# Closure of Bank Accounts





## 1. Introduction

The office has received several complaints relating to the unilateral decision by a bank to close or freeze accounts. Typically, the consumer complains that his overdraft was frozen, and his account was closed without warning, and that he has suffered distress and considerable inconvenience as a result.

The banks typically assert that their staff had regularly warned the complainant that the account would be closed if he/she continues to issue cheques without sufficient funds in his account or if he/she does not keep his overdraft within the agreed limit. The bank will also regularly state that the relationship between the complainant and the bank has broken down to such an extent that the bank took a business decision to terminate the relationship/agreement between themselves and the complainant. The bank then summarily closes the complainant's account.

The office is also increasingly receiving complaints regarding the fact that the bank, when freezing the account, still expects the complainant to pay the normal monthly fees associated with that account.

The purpose of this bulletin 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 will need to be made by the customer. A bank has a duty to advise their customer that a facility is to be withdrawn to prevent prejudice to his/her good name and business reputation if further cheques were issued after the facility had been withdrawn.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 authorising 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 honouring such cheques amounts to a total "defrosting" of an account.

In *Bredenkamp v Standard Bank (599/09) [2010] ZASCA 75* the court held that the exercise of a contractual right, which does not involve any public policy considerations or constitutional values, does not have to be 'fair'. The common law did not need to be developed and it was sufficient that the bank gives notice of its intention to close a bank 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.

#### **3.1 Your entitlements**

*As a customer or potential customer, you can expect the following reasonable conduct from your bank as more fully outlined and detailed in the body of the Code. Your bank will:*

- *Not close your account without reasonable prior notice given to you at your last contact details.*

In accordance with clause 3.1, the bank will send the notice of account closure to the customer's address that it has on record. In this regard, the *Code of Banking Practice* reasonably expects customers to ensure that they provide the bank with their most up to date contact details to enable the bank to send the required notice to the correct address:



### 3.2 Your responsibilities

The body of the Code that follows includes a number of responsibilities that your bank expects you to fulfill in your relationship with your bank. For ease of reference these responsibilities include the following:

- It is your responsibility to inform us of any change in your contact details or in your financial affairs as and when this occurs.

Clause 7.3 deals with closure of an account in more detail and states:

### 7.3 Closing an account

7.3.1 We will assist you to close an account that you no longer require.

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

7.3.3 We reserve the right, however, to protect our interests in our discretion, which might include closing your account without giving you notice:

- if we are compelled to do so by law (or by international best practice);
- if you have not used your account for a significant period of time or
- if we have reasons to believe that your account is being used for any illegal purposes.

Your bank will inform you about the implications of abandoning an account (not using it) as opposed to closing it. For instance, there may be unclaimed balances with associated fees, balances may have to be written off and you need to know what the reclaim process is, if it applies to your account.

## 4. The Intended Practice of the office

### a. Sufficient notice

The view of the office remains that it is clear from the law and *Code of Banking Practice* 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, unless the closure without notice is permitted by law as stated in the *Code of Banking Practice*.

The notice must be in writing and we suggest that it be sent by registered mail. This 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 case would be considered at on its merits, however, a period of between 1-2 months for individual accounts and between 2-3 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.

The notice periods were increased to afford the complainant sufficient time to change banks and for the new bank to have sufficient time to transfer all debit orders that existed on the old account to the new 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 3.1 of the *Code of Banking Practice*.

b. Abandonment of account

Paragraph 7.3 of the *Code of Banking Practice* reads as follows:

*... Your bank will inform you about the implications of abandoning an account (not using it) as opposed to closing it. For instance, there may be unclaimed balances with associated fees, balances may have to be written off and you need to know what the reclaim process is, if it applies to your account.*

The bank needs to inform the complainant of the consequences, should an account not be used.

It might occur that there is a credit balance available on the account at the time that the account becomes dormant, which balance could be depleted if the complainant does not close the account. The bank needs to inform the complainant at account opening time of its procedure for dealing with dormant accounts, and what it will do with unclaimed balances.



The bank needs to notify the complainant before the account is classified as dormant. Even though the bank might be entitled to charge monthly fees on the account, the bank needs to inform the complainant

immediately that these fees are still being charged and if the account is not closed the balance on the account will be depleted by any applicable fees.

The notice should inform the complainant of the date on which the account will become dormant, any balances outstanding that will be written off or credit balances and any related fees to which the bank will be entitled if the account is not closed by the complainant before that date. The notice must also explain the process for reclaiming any credit balance on the account.

The notice must be in writing and we suggest that it be sent by registered mail, fax or e-mail which will provide the office with sufficient evidence of the notice having been sent within a reasonable period prior to the account becoming dormant.

As far as what would constitute a reasonable period, each case would be looked at on its merits; however, a period of between 2-4 weeks would be considered reasonable, depending on the nature of the account.

**The Ombudsman for Banking Services**

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