

Consumer Note 6

Old Savings / Investment account claims





Please note that the information provided does not constitute expert legal or financial advice. You should consult a professional legal or financial adviser for expert advice.

We have only mentioned sections of the National Credit Act (NCA) where they are applicable to the complaints we receive. The Act however contains many other sections and details that may not have been mentioned. There may be other legislation that is also applicable. For more information and detail on other legislation and the Act, you should consult a legal professional.

The purpose of the document is to provide you with practical information based on our experience. Each case we investigate is however assessed on its merits.

Background

We regularly receive complaints from bank customers who discover old savings books or bank investment account certificates and want the bank to prove that the money was paid out to them.

Initially the customer will discover an old savings account book, account card, account statement or investment certificate in their home. They then approach the bank asking for information regarding the account and to the fate of the money in the account. The bank is often unable to produce any information if it relates to an account closed more than 5 years ago.

The customer will lodge a complaint with our office alleging that they had never received the money in the account. They then claim the amount indicated in the book, account statement or certificate plus compound interest over the years.

Savings books

Before banking was computerised it was common for a bank to issue a savings book to its clients. The book served as a type of accounting ledger which was updated manually and stamped by a teller at a bank branch every time a transaction was effected on the account.

When savings books were replaced by ATM cards, they fell into disuse. While many savings books were handed in at the bank in exchange for an ATM card, many savings books were lost or missing at the time and could not be handed in to the bank. The banks may then have required an affidavit at the time confirming that the book had been lost before issuing the card on the account.



It is therefore not unusual for bank customers to discover old savings books that reflect an amount of money in an account. The fact that the savings book may reflect an amount of money in the account does not generally mean that the money remained in the account earning interest over the years.

Investment accounts

It was common in the past for the banks to issue investment certificates to reflect the various types of investment products that were available. When these investments were redeemed or surrendered the banks did not necessarily require the original certificate. If the certificate was missing or lost at the time the banks may have required an affidavit and sufficient proof of identity and then paid out on the investment.

It is therefore not unusual for bank customers to find old bank investment certificates which reflect an amount of money that had been invested in the past.

Assessing claims

Several factors are evaluated when assessing claims of this nature. The conclusion we draw is generally based on a balance of probabilities. This is in accordance with the approach followed by all banking ombudsman offices internationally.

Prescription period for retention of documents

In the past, there was no specific law prescribing the period of time that a bank had to retain investment account or general account information. The National Credit act 34 of 2005 (NCA) now prescribes that information relating to a credit agreement must be retained for a period of 3 years after the credit agreement was terminated (Section 170 and regulation 56).

The Financial Intelligence Centre Act 38 of 2001 (FICA) prescribes that relevant account opening information must be kept for a period of 5 years (section 23).

The Code of Banking Practice states that the banks will retain records for a period of 5 years (clause 3.7.4).

It is therefore not unusual for the bank to be unable to produce account information going back longer than 5 years. There are no laws requiring the banks to retain records for longer periods.



It would clearly be impractical and unreasonable to expect banks to keep records of every single transaction forever in case a client wants information on an account at some point in the future.

Prescription/Account statements

The OBS' terms of reference mean that we cannot deal with a complaint if the problem complained about arose more than three years prior to lodging the claim. When the bank customer reasonably should have been aware of the claim is therefore relevant in assessing a case of this nature.

It is generally common for a bank to send statements on an account while the account is still active. The reasonable account holder will therefore enquire with the bank if no statements are being received. The reasonable account holder would therefore have raised the problem with the bank and enquired about it within the maximum period of three years. Where more than 3 years have passed since account statements or information were received, it can be argued that the claim against the bank has prescribed in law and in terms of our rules.

Claim amount

It is common for the amounts reflected in the savings book/account etc. to be substantial for the time in question. Where a substantial amount of money was left in an account the question must be asked whether the reasonable person would simply forget about a substantial amount of money in a bank account. On a balance of probabilities, it is generally highly improbable that a person would simply forget about this money and never have withdrawn it from the bank. It is generally more probable that the money was legitimately withdrawn by the account holder.

Dormant accounts

It is common for the banks to declare an account dormant if it has not been used for a period of time. These periods generally range from 3 to 6 months. The bank will first try to contact the account holder. If no response is received the bank will close the account. Any funds in credit will be transferred to a suspense account in case the customer should return to claim the funds. If the account holder approaches the bank within a period of 5 years, it should be able to trace this money and repay it to the customer.



No interest is earned when the money is placed in a suspense account. Interest on an account is only paid by agreement between the bank and the client. If an account does pay interest, then it is generally only for a specific period of time or until the account is declared dormant. We have never seen an agreement which states that interest would be paid for an unlimited period even if the account is declared dormant.

There is no specific legislation that prescribes what must happen with unclaimed money held in a bank account. The Banking Association of South Africa did however issue guidelines to the banks on the process to be followed when an account is closed with a positive balance, but each bank has its own internal process to deal with unclaimed credit balances. If there is a probability that the account was closed with a credit balance, then the bank can be requested to check its list of unclaimed credit balances for any record of the account.

Conclusion

Where a bank customer wishes to obtain information regarding an old account he can approach his/her bank for further information if any is still available. The bank is expected to make reasonable attempts to obtain any information it can on the transaction or account even if it took place longer than 5 years ago. If the account was closed more than 5 years ago it is generally unlikely that the bank will be able to provide any information. In assessing claims of this nature, we evaluate the probabilities to determine whether the money might still be with the bank. In the absence of clear evidence to the contrary the probabilities generally favour a finding that the money must have been withdrawn by the customer at some stage in the past.

The Ombudsman for Banking Services

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