



Bulletin No 12

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DEBIT ORDERS

Distribution to:

Members of Banking Association of South Africa
Representative Bodies
Other Financial Service Ombudsmen
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Press

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1. Introduction

Debit order payment facilities are used by the majority of banking customers as it serves as a very convenient and useful manner of paying accounts.

In relation to the number of debit orders which are processed each month, we receive a very low number of complaints regarding this issue. From complaints received by our office, we have noted that in some instances when a debit order is disputed, customers encounter problems regarding the reversal or cancellation of a debit order.

The vast majority of bank customers use the debit order facility on a daily basis and rarely encounter any problems. It is however when a debit order is disputed that we noted from complaints received by our office that bank customers sometimes encounter problems with their bank regarding the reversal or cancellation of a debit order.

Based on the complaints we receive, it has become apparent that certain bank staff are unaware of the process to follow when dealing with a disputed debit order. This could create the impression that bank customers have no control over their accounts and are left at the mercy of unscrupulous companies that abuse the debit order facility.

We have dealt with matters where bank customers were merely told to take the matter up with the company that is debiting the customer's account even though the customer had already attempted to do so. The reason why the customer eventually turned to the bank is because the customer could either not track down the company making the debit or the company unjustifiably refused to assist.

Therefore, it is important to educate bank customers about the debit order dispute process and to make banks aware of the types of complaints received and our approach to same.

The Code of Banking Practice and the PASA (Payments Association of South Africa) rules indicate how the bank should handle a debit order dispute. This Bulletin considers the application of the Code of Banking Practice and the PASA rules in resolving debit order complaints.

The Code of Banking Practice encourages a customer to report a debit order dispute to his bank and the bank to reverse an unauthorised debit order. In doing so, the bank is obliged to handle the debit order dispute in accordance with the applicable PASA rules.

2. The Code of Banking Practice

The Code of Banking Practice contains the following provisions relating to debit orders, which the banks undertook to adhere to:

9. Payment Services

9.4 Debit Orders

We are committed to improving our systems to ensure the reliable operation of the debit order system, the prevention of unauthorized debit orders and the reliable stopping of debit orders where instructed.

9.4.1 Use of debit orders

You may use debit orders as a means of payment for a range of services. A debit order is an instruction by you to a third party (including a bank) to allow that third party to collect a payment from your account on a regular basis (e.g. monthly or annually). You can choose whether it will be a fixed amount (e.g. a loan repayment) or a variable amount (e.g. monthly cell phone charges).

When completing your instruction, you should select a date for the debit order deduction on which you will always have sufficient funds to cover the amount to be withdrawn (for example pay day). Ensuring that you have sufficient money to fund the debit order will enable you to avoid any fees for rejected debit orders from your bank.

Authority for the debit order can be given in paper form or by using your debit card and PIN, if your bank allows for it. In exceptional cases voice mandates may be given to the third party provided that it is followed up by written confirmation from you within the stipulated period.

9.4.2 Types of debit orders

There are two main categories of debit orders namely: EFT Debit Orders and Early Debit Orders (EDO).

*The difference is that **Early Debit Orders** are collected from your account shortly after midnight immediately after the processing of EFT credit payments such as salary payments.*

If unsuccessful, the third party can re-attempt to collect the debit order from your account for a number of days or automatically present the debit order when a deposit is made into your account (so-called “tracking”).

*On the other hand, **EFT debit orders** are processed later in the day (on the date which you chose), mainly after normal business hours.*

If an EFT debit order is returned “Not provided for” on two consecutive mandated action dates the beneficiary or third party must remove the debit order from the system, unless they get a new instruction (mandate) from you for future payments.

9.4.3 Stopping a debit order

You must cancel a debit order by providing written or other appropriate notification to the third party whom you authorized to make the deductions.

You may also stop a future debit order payment for a given period by requesting that your bank places a stop payment instruction on your account. Your bank will advise you regarding the period for which the stop payment instruction will be effective, and how it operates. You may also be charged a fee for implementing this stop payment instruction.

You must be aware of any impact cancelling or suspending a debit order payment may have on your contractual commitments with the third party.

9.4.4 Disputes about debit orders

You should report any disputes relating to your debit order to your bank.

In particular, you should raise a dispute when the third party:

- has withdrawn an amount before the date specified in your instruction;*
- continues to collect a debit order that you have cancelled or is subject to a stop payment instruction;*
- debits your account for an incorrect amount;*
- has collected a debit order you did not authorise or in a manner you did not authorize (e.g. split the collection amount or consolidate several debit orders); or*
- has collected a debit order that is not consistent with your instruction.*

Your bank may request you to provide proof of identity and to confirm the dispute.

If your bank determines that the debit order is not authorised by yourself, your bank may reverse the transaction and any related fees.

You will not be able to dispute a debit order if the authorisation was done by you using your debit card and PIN.

12. Useful definitions

Debit order: *An agreement between you and a third party in which you authorise or mandate the third party to collect money from your account for goods or services that the third party provides to you. For example a debit order can be used to pay the premium for your car insurance.*

EFT: *Electronic Funds Transfer – A direct payment to a third party from your account by any electronic means, including ATM, cell phone, telephone and internet.*

Stop order: *An instruction given by you to your bank to pay funds to a nominated third party, at a fixed amount on a regular basis. The bank acts on your instructions and the third party is not given authority to debit your account as is the case with a debit order.*

Stop payment: *An instruction to your bank not to honor the payment of a cheque, stop order or debit order.*

13. Standardised Terminology

Debit order fee: A fee may be charged by the bank when you make a payment by debit order.

Unpaid debit order fee: A fee may be charged when you make a payment by debit order and there is not enough money available in your account to make the payment.

Stop order fee: A fee that may be charged by the bank when you make a payment by stop order.

Stop payment fee: A fee that may be charged by the bank when you request your bank not to pay a debit order or cheque.

3. The Payments Association of South Africa (PASA)

PASA administers the debit order system as it is recognised by the banking industry and the South African Reserve Bank (SARB) as the official, self-regulated Payment System Management Body.

In terms of the National Payment System (NPS) Act, PASA is mandated to “*organise, manage and regulate, in relation to its members, all matters affecting payment instructions*”

All major South African banks are members of PASA and have agreed to comply with the PASA rules and procedures regarding the processing of debit orders and dealing with debit order disputes.

The rules and procedures pertaining to EFT debit orders are documented in an agreement between PASA and the member banks.

In evaluating the merits of a debit order complaint, the OBS will refer to the Code of Banking Practice and the PASA rules to establish if the bank processed the debit order correctly and if it handled a disputed debit order appropriately.

Where further clarity is sought, relating to a complaint about the debit order process or a disputed debit order, the OBS will engage with PASA to obtain further information.

4. Types of Debit Orders

A debit order is an agreement between an individual and a company, whereby the individual authorised and instructed a company to deduct an amount from his bank account in lieu of payment for goods or services.

4.1. EFT Debit Orders

Traditionally, debit orders resorted under a category of banking payment systems known as Electronic Funds Transfer (EFT). EFT debit orders are processed overnight and may be disputed.

4.2. EDO - Early Debit Orders

During 2005, as a result of legislative changes to the NPS Act following the promulgation of the National Credit Act (NCA), the new Early Debit Order (EDO) system was established.

In September 2006, PASA implemented the new AEDO (Authenticated Early Debit Orders) and NAEDO (Non-Authenticated Early Debit Orders) payment systems, in addition to the conventional EFT system, to facilitate the processing of Early Debit Orders (EDO).

Early debit orders are processed earlier in the day than EFT debit orders and aims to avoid unpaid debit order fees as it allows for the ‘tracking’ of credits e.g. a customer’s salary payment made into a customer’s account. The EDO debit will then be processed after a credit was made to the customer’s account.

4.2.1. AEDO – Authenticated Early Debit Orders.

A customer can mandate a debit order for e.g. a loan repayment by swiping his bank card and entering his secret PIN at a physical point of sale terminal.

Since the AEDO debit order was authenticated by the customer in person via the card and PIN, the debit order cannot be repudiated once paid. This gives the service provider and customer certainty of payment and therefore disputes are minimised.

AEDO debit orders may only be disputed on the basis of fraud.

4.2.2. NAEDO - Non-Authenticated Early Debit Orders.

Debit orders up to a R10 000 limit per debit instruction may be collected by the NAEDO process. The limits change from time to time. The NAEDO payments are processed before the conventional EFT debit orders. The 32 day credit tracking system included on NAEDO collections detects credits and will trigger the presentment of a debit order payment. However, the debit order may still remain unpaid due to e.g. insufficient funds.

NAEDO debit orders may be disputed.

5. Who may use the debit order system?

Any organization may use the debit order system to enable it to collect payments from its customers. However, the organization, being the debit order beneficiary, would first need to approach its own bank for approval.

The organization’s bank, known as the “**sponsoring bank**”, will only give its approval once certain laid down criteria are met.

A contract between the organization (which is then known as a “**user**”) and the sponsoring bank is then signed. This contract aligns with the PASA rules.

Customers can then sign a debit order instruction / authority / mandate with the user granting it permission to debit their bank account for payment of services e.g. loan repayments, gym memberships, insurance premiums etc.

The customer's own bank where their account (to be debited with an amount in favour of the user) is held is known as the "**homing bank**".

6. The responsibility of the user

The user must obtain a written authority from the customer before any transactions can be processed through the debit order system.

There is also provision for users to use voice-recorded authority under certain circumstances. However, if a voice recording is used, the user should thereafter confirm the authorization in writing within 30 days.

If an EFT debit order is unpaid for lack of funds, the homing bank will return a debit order marked as "not provided for" to the user's nominated account at the sponsoring bank.

According to the PASA rules, if an EFT debit order is unpaid on two consecutive occasions for lack of funds, the user must remove it from the system.

If there are not enough funds in the customer's account to meet an EFT and NEADO debit order, the company can re-submit the debit order the next month. However, it cannot adjust the value of subsequent transactions to recover arrears. Separate debit orders must be submitted for the current and arrears payments. They may not exceed 2 debit orders per collection cycle as per the customer's authorization.

If the client closes the account from which the debit order is paid, the debit is returned "account closed". Once the user becomes reasonably aware of the closed account, the user is then not permitted to process any more debits against that account.

Once a customer has authorized a debit order, the user concerned cannot transfer any of its rights to the debit order to a third party without the customer's prior consent.

Users must produce auditor's certificates at request confirming to the banks the existence of their authority to debit the customers' bank accounts.

7. The customer's rights

7.1. Stop payment instruction

A customer can give their bank (homing bank) a written stop payment instruction to prevent a debit order for a specific amount being processed on the account.

When a debit order is returned "payment stopped" on the instruction of a customer, the user may not process further debits under the system.

A stop payment instruction only remains on the bank's system for a limited period (three to six months depending on the bank). After this period, a user may again attempt to debit the account and it will be processed. It is important that clients check their statements regularly for fraudulent debits.

7.2. Disputing a debit order

A customer has the right to instruct his or her bank to reverse a disputed EFT and NAEDO debit order (AEDO only in the case of fraud) if the customer declares in writing that:

1. He did not authorise the debit order in question.
2. The deduction of the debit order was in contravention with his authority.
3. He instructed the user to cancel the debit order authority.
4. He stopped payment of the debit order instruction.

7.2.1. Within 40 days

If the disputed debit order is reported within 40 days of it appearing on the account, the PASA rules state that a bank will reverse it immediately.

7.2.2. After 40 days

If the customer only disputes the debit order more than 40 days after it was debited to his account, he or she may apply to his or her bank (the homing bank) to have it reversed.

The homing bank will query the validity of the transaction with the sponsoring bank that debited the account.

The sponsoring bank will be given 30 days written notice to prove the validity of the transaction after which it will be cancelled if invalid, and the funds manually returned to the customer's account.

If the sponsoring bank does produce a valid mandate for the transaction, then the debit will not be reversed.

It would be unreasonable for a customer to take advantage of the debit order dispute process by instructing his bank to reverse a debit order amount in an attempt to temporarily improve his cash flow situation. Where customers are placed under debt review there is an agreed process for cancellation of debit orders. Yet, the customer is obliged to confirm that the debit orders are cancelled directly with the users.

There should be reasonable indications that a disputed debit order was processed without any authorization or in contradiction to the agreement between the customer and the user, e.g. the debit order was deducted on a date contrary to the debit order instruction.

In the absence of reasonable and comprehensible substantiation that a debit order was deducted incorrectly, a bank may request a customer to present valid reasons for disputing a debit order.

The banks are not generally expected to act as a court in deciding on disputed signatures, services not provided or any other dispute between the user and the client. Disputes of this nature are between the client and user to resolve by litigation or any other legitimate method.

8. Wrong code used

We dealt with a number of cases where the incorrect code was used by the bank when canceling a debit order.

In one typical case, the bank placed a “payment stopped” instruction on a short term insurance debit on request of its client, who did not have enough money for the debit that month.

The bank, in an effort to save the client the penalty fees that are payable for a returned debit order due to lack of funds, placed a code on the instruction indicating that the debit order was cancelled by the client.

The insurance company took this to mean that the insurance was no longer required and cancelled the insurance policy. The client’s claim that occurred in this time was then denied. Although the bank’s intentions were honorable, it led to a substantial loss for the client.

Banks are thus cautioned to apply the correct code to any cancelled debit order and explain the possible consequences to the client. It should be explained that if a client wishes the bank to stop a debit order from being paid the bank must use the code “payment stopped”.

9. Penalty fees

The banks charge a specific penalty fee per debit order that is returned due to a lack of funds. It is mostly within the control of the customer to avoid these penalties.

We have found that the penalty fees charged tend to put the account holder in an even worse financial predicament, from which there is often little hope of recovery. In certain cases we have recommended that the banks reverse the fees in question.

10. Assessment of a complaint

Definite rules and procedures (i.e. the Code of Banking Practice and the PASA rules) are in place to deal with disputed debit orders. The banks have access to this information and should apply it to assist a customer with a debit order dispute.

Banks are able to monitor user accounts for repeated abuse of the debit order system and are encouraged to take appropriate action when necessary.

When receiving any complaint on this issue the OBS will expect the bank to have applied the procedures as mentioned above. Failure to apply the procedure or delay in assisting the customer may result in a finding against the bank and a possible award for the distress and inconvenience the customer suffered. Each case will be evaluated on its own merits.

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