

## CUDRC BULLETIN 6 - December 2005

### **Cancelling Direct Debit Authorities**

Over the course of the last 12 months, we have received an increasing number of complaints about credit unions refusing to accept customers' written cancellation of direct debit authorities. Customers complain that they are told to sort the matter out with the third party debit user.

The purpose of this Bulletin is to set out CUDRC's approach to the cancellation of direct debit authorities on transaction accounts. Our approach reflects the provisions of the Australian Payment Clearing Association's rules, the Bulk Electronic Clearing System (BECS) rules which specifically set out rights on the part of accountholders to cancel direct debits in writing with their financial institution and to claim compensation, including re-crediting of funds, through their financial institution.

These rules relate to transaction accounts only. Different rules apply in relation to direct debits to credit card accounts.

#### **Transaction Accounts**

*The authority may be cancelled by written notice to the credit union*

To the extent that a direct debit request is authority to a credit union to debit a customer's account at the request of a third party, that authority may be cancelled by the customer either by notice to the third party and/or by notice to the credit union. The APCA rules expressly state that a credit union may not refuse to accept a cancellation in writing from a customer and must notify the third party of that cancellation.

Failure to accept or act on written notice of cancellation may cause compensable loss to the customer. Details of the different kinds of loss that a customer may claim are outlined overleaf.

#### **Claims in relation to unauthorised debits**

*The credit union is also obliged to process claims in relation to unauthorised debits*

Where a customer claims that a debit has been unauthorised, they should not be told that any dispute is a matter between them and the debit user. While customers may be requested to try to resolve a dispute with the debit user first, they should not be discouraged from claiming against their credit union.

The APCA rules provide for a relatively simple and fast dispute process. A claim form may be completed by the customer at the credit union, the third party's sponsor financial institution is then notified and the third party must provide proof of authority within 7 days.

### *Liability for unauthorised debits*

A credit union will be in breach of the rules and its obligations to its customer if it refuses to either:

- Accept a written cancellation of a direct debit authority; or
- Process a claim in respect of an unauthorised debit on behalf of its customer.

If a debit is unauthorised, then the credit union will be liable to its customer for loss suffered as a result of the breach of contract by the credit union. The loss could include:

- The amount debited to the account;
- Lost interest;
- Dishonour fees – if other transactions are dishonoured because the account balance has been reduced;
- Consequential loss such as opportunity costs;
- Expenditure incurred because of lack of access to funds; and/or
- Non financial loss such as stress and inconvenience.

In other words, the loss could be greater than the amount actually debited, depending on:

- The circumstances;
- The length of time before the customer discovers the error, (which will in part be influenced by the statement cycle for the particular account);
- The length of time taken to reverse the debit; and
- The nature of any transactions on the account in the meantime.

The circumstances in which this office would regard a debit as being unauthorised include the following:

- The third party making the debit request did not hold a current direct debit authority;
- An existing direct debit authority had been rendered ineffective by operation of law;

- The amount debited exceeded the amount authorised by the customer in writing to be debited or was debited in breach of a condition of the authority (such as that a billing advice or notification of debit be sent first);
- The third party debit user had purported unilaterally to increase the amount or frequency of the debit without the express agreement in writing of the customer. To this extent, provisions in service agreements purporting to allow the debit user to change the authority simply by giving notice to the customer, but without the signature of the customer being obtained to the variation, may not be enforceable;
- The third party debit user was not legally entitled to the amount debited; and
- The customer had countermanded the authority in its entirety or stopped the particular debit whether by notice to the third party debit user or notice to the credit union.

### **Credit Card Accounts**

The situation with direct debits to credit card accounts is different. Whether a customer is entitled to cancel the direct debit authority with the credit union will depend on the terms and conditions of the credit card account and relevant card scheme rules. Customers who wish to cancel a direct debit authority on a credit card should be informed to:

- Write to both the credit union and the merchant, cancelling their authority to debit their credit card account; and
- Read their next credit card statement carefully, and if a transaction has been debited to the account, contact their credit union straight away to dispute the transaction;

The credit union should then start the chargeback process, if it is available in the circumstances.



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