

Suspending (or freezing) accounts

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When you instruct your bank to make a payment, it must carry out your instructions. In some circumstances, however, your bank can refuse to follow your instructions. It can suspend the operation of your account. This is called suspending, or freezing, an account and means you cannot make any withdrawals.

A bank's powers to suspend an account are set out in its standard terms and conditions (as well as in the Code of Banking Practice, which specifies minimum standards of good banking practice for New Zealand banks). You can view these online or at your bank.

In general, a bank's terms and conditions allow it to freeze an account:

- to comply with a court order
- when you have been declared bankrupt
- when there isn't enough money in your account
- when it has been notified of a dispute over either who owns the money in the account or who has use of the account
- to protect either one or all parties to the account, the bank or a third party with a reasonable claim to an interest in the account.

Sometimes a bank may simply freeze a certain sum of money in your account, such as when a court order applies to a specific sum that is less than the total amount in your account.

A bank may also partially suspend the operation of an account and allow some payments to be made – such as when a bank suspends a business account but allows payment of wages to employees.

Suspending an account during a dispute

A bank can suspend an account if there is a dispute about how an account is used or who owns the funds in it. For example, one of the account holders to a joint account may be in dispute with another account holder and ask the bank to suspend the account. Or, a bank may suspend a company account when one director tells the bank he or she is in dispute with another director. The bank may also suspend an account at its own discretion if it becomes aware of a dispute.

In such cases, it is not the bank's role to consider or resolve the dispute. The disputing sides must work it out themselves. The suspension will stay in place until that happens.

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We do, however, expect a bank to take certain steps when there is a dispute about an account. It must:

- check whether there is a genuine dispute, and if so
- suspend the account in accordance with the account terms and conditions
- notify the disputing sides of:
 - the suspension and why it has been put in place
 - what they must do before the bank will lift the suspension (usually reach an agreement and complete a new mandate).

A bank may also advise the disputing sides that they may have to take the matter to court if they cannot reach an agreement.

A bank does not have to tell account holders *before* suspending an account. This is mainly to protect the funds in it. Telling an account holder in advance would give him or her the opportunity to withdraw money. However, a bank must tell the account holder or holders *after* it has frozen the account, ideally as soon as possible afterwards. This notification extends to every account holder. A bank cannot simply rely on one individual telling the others.

Suspending accounts with insufficient funds

A bank may suspend an account because the customer has insufficient funds to make payments or is in arrears. Banks may also put a hold or stop on the customer's card. The customer needs to either transfer funds, if available, into that account, or arrange to repay the money. The bank will then lift the freeze.

Case 1: Bank failed to follow up with notification

Three executive committee members of the ABC Sports Club were account signatories to the club's bank account. This allowed them to operate it for club purposes.

A dispute arose within the club. Several members instructed a lawyer to write to the bank asking it to freeze the account. When the bank received the letter, it froze the account to allow the dispute to be resolved. However, it failed to tell signatories it had frozen the account. Signatories found out only when cheques bounced.

When we investigated a complaint from some members, we found that the account's terms and conditions allowed the bank to freeze the account, but that the bank had failed to notify account holders. We decided this failure had caused the club inconvenience, and recommended the bank pay it \$1,000 compensation.

Case 2: Bank followed proper process

Mr and Mrs D were members of a church congregation. The church had two constitutions, one apparently a replacement for the other. A conflict arose within the church's governing committee and wider congregation about control of the church and which constitution applied. Both groups engaged lawyers.

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A law firm acting for one of the groups advised the church's bank of the dispute, and asked it not to accept instructions from other group. The bank suspended the account and advised both law firms of its action. It said it would lift the suspension either when both sides notified it that the dispute had been resolved or, failing that, a court had issued a ruling on the dispute.

Both groups contacted the bank with their views on who could give instructions about the account and explained why they considered their group to be correct. The bank repeated that the account would remain suspended until the dispute was resolved. However, it was prepared to process individual transactions if both groups gave their approval. Neither group was prepared to give such approval.

Mr and Mrs D complained to us that the bank was acting unreasonably in not accepting their view about which constitution applied and in refusing to allow their group to operate the account. They made detailed submissions in support of their position, and pointed to aspects of the other group's conduct that, in their view, showed the other group was acting in bad faith.

We explained that it was not for the bank or us to decide which constitution applied. This was a matter for the church to resolve itself. Or it could seek a ruling from a court.

We did, however, look at whether the bank acted properly in suspending the account and concluded it had. The account contract stipulated that in the event of a dispute about the operation of an account, the bank could suspend the account until the dispute was resolved. Further, the clause reflected the Code of Banking Practice provision that a bank could suspend an account when it was notified of a dispute. The bank also followed the procedural requirements by notifying both groups of its decision to suspend the account and by setting out the steps required to lift the suspension.

We did not uphold the complaint.

Case 3: Bank on firm ground but made errors of process

Ms K was treasurer of a committee supervised by a trust. Trustees and committee members disagreed about whether trustees were entitled to access financial information held by the committee. One trustee, Mr T, approached the committee's bank for statements and documents about committee accounts. Mr T and a former trustee also expressed concern to the bank about the way the committee accounts were being operated.

In light of these concerns, the bank suspended the committee's accounts. The bank also gave Mr T and the former trustee information about those accounts.

As a result of the suspension, four committee cheques were dishonoured. The committee found out about the suspension from a creditor.

Ms K complained on behalf of the committee that the bank had acted wrongly in suspending the accounts and releasing information to non-signatories. She also complained that the bank failed to advise the committee immediately of the suspension or give a proper explanation for it.

We reviewed the trust and committee governance documents. These showed the trust, as supervisory body, was entitled to access to the committee's financial information. We also reviewed the bank's terms and conditions, which said it could suspend an account if there was a dispute about

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account operations. We were satisfied the bank could suspend the account. Furthermore, we considered the bank had given the committee a proper explanation for the suspension.

However, the bank agreed it had not followed a good process when it suspended the account; it did not immediately tell the committee of its decision to freeze the accounts, and it did not give a timely explanation of the steps the sides had to take to lift the suspension. The bank also acknowledged it should not have given information to the former trustee without discussing the request with the committee.

The bank offered the committee \$1,500 compensation to settle the complaint. We thought this was reasonable. The bank's administrative failures had inconvenienced the committee, but the chief cause of the situation was the dispute between the trust and the committee.

The committee accepted the offer and the case was closed.

Case 4: Customer in dark over blocked card

Mrs B tried to use her debit card several times in a cafe, but each transaction was declined. The receipt said: "Refer to card issuer, declined." Mrs B felt humiliated and embarrassed that she couldn't pay for lunch. She had previously checked her account balance and noted she had sufficient funds to make the purchase.

Mrs B contacted the bank, which said it had blocked her card because she wasn't responding to its attempts to contact her about her credit card arrears. It wanted to prompt her to get in touch.

Mrs B was unhappy the bank hadn't contacted her before stopping her card and complained. The bank said it had contacted her numerous times to discuss repayment options but had been unable to get agreement on a repayment plan. The bank was concerned she wouldn't repay the debt and had followed its standard process in blocking the card.

Mrs B complained to us, seeking an apology and compensation for humiliation and inconvenience. She believed the bank should have informed her before blocking her card.

We explained to Mrs B that the bank did not have to notify her before suspending her card, but that the Code of Banking Practice says banks should advise customers as soon as possible in such circumstances. The bank's terms and conditions also noted it would advise customers as soon as possible after refusing them access to their accounts, along with why it had taken such action and what customers could or must do before they could use the account again.

We considered the bank should have told Mrs B it had blocked her card and that she needed to contact the bank to discuss her arrears to reactivate the card. Also, having reviewed phone calls between staff and Mrs B, we noted that it appeared Mrs B had indicated she would be in a position to repay the arrears when funds became available and that she had not declined to discuss a repayment plan, as the bank had suggested.

The bank accepted it should have contacted Mrs B after it had blocked her card and offered her an apology and \$100 for the stress its actions had caused her. Mrs B accepted the bank's offer and the matter was resolved.

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