

Summary of Procedures relating to the ability of a Financial Institution to recover funds in the case of a Mistaken Payment

The following relates to 'Pay Anyone' internet payments to which the ASIC ePayments Code applies.

As a general rule, customers should be aware that they are not entitled to money that is accidentally credited to their account and this should be returned via their financial institution.

Mistaken Payments

A Mistaken Payment is a direct entry payment made by a financial institution (FI) on the instruction of a consumer using an internet banking facility, which results in a payment being made to the wrong account, either because the consumer entered wrong BSB or account details or because the consumer had been given incorrect BSB or account details.

The BECS Procedures¹ provide mechanisms available to FIs to assist a consumer with recovery of an alleged Mistaken Payment from the account of an unintended recipient (payee). Which of these may be used depends on the timeframes and circumstances of each case. These mechanisms are consistent with the ePayments Code, developed by ASIC in consultation with APCA and other interested organisations.

Mistaken Payment requests may be made by the consumer's FI to request return of the payment from the payee's FI up to 7 months after the date the alleged Mistaken Payment was made by the consumer. Different requirements apply depending upon the time taken to request return of the payment.

- If a customer reports a Mistaken Payment within 10 business days of the alleged Mistaken Payment and that customer's FI makes a request to the payee's FI, the payee's FI must assess whether the payment is in fact a Mistaken Payment and may, if satisfied that it is a Mistaken Payment, return the funds to the consumer's account usually within 5 business days (10 days where further information is required).
- If a customer reports a Mistaken Payment after 10 business days and within seven months after the date of an alleged Mistaken Payment and that customer's FI makes a request to the payee's FI, the payee's FI must assess whether the payment is in fact a Mistaken Payment within 10 business days. The payee's FI will then place a hold on the funds in the payee's account for up to 10 business days, during which time the payee has an opportunity to substantiate ownership of the funds.

If the payee consents, the payee's FI will return the funds to the consumer within 2 business days of receipt of that consent. If the payee does not consent to return of the funds and makes no substantiated claim within the holding period, the payee's FI may return the funds to the consumer's account within 10 business days.

- If a customer reports a Mistaken Payment after 7 months from the date of an alleged Mistaken Payment, recovery of the funds is subject to the consent of the unintended recipient.

¹ Bulk Electronic Clearing System Procedures administered by APCA (Australian Payments Clearing Association Limited). Financial Institutions subscribe to BECS procedures which govern the processing of direct entry payments as between those institutions.

In all cases, a payee's FI must, within 5 business days of receipt of a Mistaken Payment request, acknowledge the request and advise the consumer's FI whether there are sufficient funds in the payee's account to cover the alleged mistaken payment.

There are qualifications on the application of each of these mechanisms. For example, a Mistaken Payment may not be immediately recoverable if reversing the payment would result in the payee's account being overdrawn, if the Code of Operation for Centrelink Direct Credit Payment applies or if there are other specific account terms and conditions that have the effect of limiting recovery.

Where funds are not available in the payee's account to return the Mistaken Payment, the payee's FI will use reasonable endeavours to retrieve the funds from the payee, for example by facilitating re-payment by instalments.

NB. If it is not possible for a consumer to retrieve a Mistaken Payment through the above action by its FI, then the consumer may be able to take legal action to recover the funds.

The procedures outlined above commenced operation on 20 March 2013.