



## **BANK-CUSTOMER RELATIONSHIP**

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### **ABSTRACT**

There is no day that passes without the incidence of bank/customer relationship. Bank/customer relationship does not begin and end with paying in and withdrawal by customers. In actual fact and in law the relationship is more complex. In this paper we dealt with the meaning of bank (or banker) and customer, the nature of Bank/Customer relationship, banker's duties to his customer, duties of the customer and proffered some solutions on how to create awareness about the nature of bank/customer relationship.

**Keywords:** bank, customer, law of banking

### **INTRODUCTION**

The law of banking is concerned not only with the legal framework of banking business but also with the legal relationships which subsist between bankers and their customers.

Many Nigerians just go to the bank and transact business without thinking of any relationship between them and their banks. They think that customer's relationship between him and his bank begins and ends with paying in and withdrawing. But in actual fact and in law, the relationship is more complex than that. An average Nigerian feels unconcerned or unaffected or does not bother about such relationship. It is necessary to define the basic concepts for a proper understanding of this phenomenon. Specifically, we need to understand the two most important components of banker/customer relationship, which are the terms "bank" (or "banker") and "customer".

### **THE MEANING OF BANK (OR BANKER)**

For the purpose of the law of banking the terms "bank" and "banker" are frequently employed interchangeably. The term is commonly employed to signify that the person being referred to is an individual rather than an incorporated company for which the term "bank" is more appropriate. Thus for example, the Chartered Institute of Bankers of Nigeria Decree No. 12 of 1990 defines a "banker" as any person employed by a bank or whose duty wholly or substantially includes banking business<sup>1</sup>. This distinguishes between a bank and a banker, the one referring to an institution and an employer while the other refers to an employee. It is pertinent to point out here that an individual or a natural person is prohibited under Section 2(1) of the Bank and other financial institutions Decree now Act (BOFID) from carrying on the business of banking, except as an employee of a bank licensed to carry on such business. Halsbury's Laws of England<sup>2</sup> defines a "bank" as an individual partnership or corporation whose sole or predominant business is banking, that is the receipt of money on current or deposit account and the payment of cheques drawn by and the collection of cheques paid in by a customer.

However no statutory enactment has ever stated precisely what a bank is. Existing statutes merely describes or explains the term but only for its limited purpose. Thus for example, Section 1 of the Bills of Exchange Act<sup>3</sup> describes a "bank" as "including a body of persons, whether incorporated or not, who carry on the business of banking."

<sup>1</sup> Section 15

<sup>2</sup> Halsbury's Law of England, 8<sup>th</sup> Ed, Vol. 3 para 30

<sup>3</sup> Cap b5 Laws of the Federation 2004

Section 2(1) Evidence Act<sup>4</sup> defines the term bank as any person, persons/partnership or company carrying on business of banker and also includes any savings bank established under the Federal Savings Bank Act and also any banking company incorporated under any charter heretofore or hereafter granted, or under any Act heretofore or hereafter passed relating to such incorporation.

The BOFID in Section 61 merely states that the term means a bank licensed under the Decree, which is not at all useful.

Section 41(1) of the Banking Decree No. 1 of 1969 appears more useful having defined the term as “any person who carries on banking business, and includes a commercial bank, an acceptance house, discount house and financial institution”. From the above definitions it may well be that there could be no satisfactory statutory definition of the term “bank” without reference to banking business. The question may therefore be narrowed down to what is “banking business”.

Section 61 of BOFID defines “banking business” as meaning the business of receiving deposits on current account, saving account or other similar accounts, paying or collecting cheques drawn by or paid in by customers, provision of financial or such other business as the governor may by order publish in the gazette as banking business.

It is well known that banks perform other functions, financial and otherwise and the definition cannot be presumed to have exhausted such functions.

### THE MEANING OF CUSTOMER

Ordinarily, the term customer refers to any person who enters into a contract of sale for the purchase of goods, or who has established a continual service with that shop, business entity or person.

In banking, the situation is different and the question remains relevant and important today as it was in the eighteenth century when it first arose for determination.

No statutory attempt has been made to define who is a “customer” of the bank and the question has been left to judicial interpretation.

Ordinarily, a customer of a bank is a person who maintains an account in the bank. It has been argued that the relationship of banker/customer can hardly come into existence on the basis of mere causal dealings<sup>5</sup> and that it is arguable that it can hardly come into existence for such purpose as giving financial or investment advice without an account being opened. Rather the business relation, the facilities for depositing moneys and the convenience of the cheque book on the one hand are at the root of the conception of the word “customer”.

But this practical or casual definition raises a number of questions begging for answers, such as what kind of account, current or deposit; whether it is necessary that the account should have been opened and or operated for a certain or minimum length of time; and whether a certain or minimum number of lodgments into or withdraws from the account should have been made. Judicial decisions have tried to provide answers to some of these questions.

It has been held that for a person to be considered as a customer of a bank, it is essential and indispensable that the person should have opened an account in the bank.

In **Great Western Railway Company v London and County Banking Co**<sup>6</sup> it was held that a person who for about twenty years had been cashing a bank’s cheque payable to him over the counter without opening an account with the bank is not a customer of the bank. It is also necessary that the account concerned was opened in the name of the supposed customer either by himself personally or by some other person with his authority to do so.

In **Robinson v Midland Bank Ltd**<sup>7</sup> the plaintiff brought an action against the defendant bank for £25,000 for money had, and received for his use. In support of his case he alleged that an account was opened in his name at the defendant’s bank by someone else, that a cheque of £150,000 payable to his order was paid into the account and that on the following day a

<sup>4</sup> Cap E 14 Laws of the Federation 2004

<sup>5</sup> Lord Chorley., Law of Banking, Swer & Maxw well; London; 6<sup>th</sup> ed.;1974; P.12

<sup>6</sup> [1901] A.C.414

<sup>7</sup> [1925] T.L.R. 401

forged cheque purporting to have been drawn by himself for £130,000 was cashed by one H, the balance being afterwards withdrawn by H also by means of forged cheques. The defendant bank in their reply alleged that the cheque of £150,000 was obtained by a black mailing conspiracy from one A., who was discovered by one N with the plaintiff's wife in compromising circumstances, and that the proceeds were shared between the conspirators, whom the defendant alleged to include, among others, the plaintiff and the plaintiff's wife, N and H. It was held inter alia, that it was not indeed as between those who opened the account and the bank, to refer to, still less to represent, the plaintiff as a customer of the bank, the fact disclosed no evidence of a contract between the defendant bank and the plaintiff to enter into the relationship of banker and customer.<sup>8</sup>

The question has also arisen as to whether it is necessary for the person to operate the account for a minimum period of time before he can properly qualify as a customer of the bank where the account was opened. This matter came up for determination in the case of **Commissioner of Taxation v English, Scottish and Australian Bank Ltd**<sup>9</sup> where the Judicial Committee of the Privy Council held that a person whose only connection with the defendant bank, at the material date, was the payment into his account of a single cheque for collection was a customer of the bank.

Another relevant matter that has been considered relate to whether it is necessary that a minimum number of lodgments into or withdrawals from the account concerned should have been undertaken.

In **Woods v Martins Bank Ltd**<sup>10</sup> negotiations have been completed between the plaintiff and the defendant bank from which it could be inferred that the plaintiff would open an account (which he did subsequently), and that the defendant bank was willing to allow him to do so. However, before the account was actually opened, the defendant bank accepted an instruction from the plaintiff to collect money from a third party on his behalf to pay part of the proceeds to a fourth party and "to retain that the plaintiff was the defendant bank's customer and that a person becomes a customer as soon as arrangements for opening an account are completed and that whether a deposit has actually been made is immaterial."

It is pertinent to point out that the definition of "banking business" as contained in Section 61 of BOFID envisages some sort of account into which money may be paid or withdrawn from. It is however difficult to accept that where a bank is bound by contract to perform one of those traditional banking functions or services for or on behalf of a person, that person is not to be regarded as a customer of that bank. The reason is that once there exists some contractual relationship on a banking business between a bank and a person, ordinarily, that person is entitled to feel and be treated as a customer of the bank. It should therefore be accepted that it is not easy to proclaim principles for determining who is a customer of a bank. We are therefore inclined to think that each case must be approached and determined on its own peculiar facts and circumstances.

### **THE NATURE OF BANKER/CUSTOMER RELATIONSHIP**

The relationship which subsists between a banker and his customer is basically contractual and fundamentally that of the debtor and creditor. It consists of general and special contracts arising from the particular requirements of the business of banking. This relationship is unwritten and inferentially that of a loan agreement in which the customer lends money to the bank which the latter accepts with an undertaking also to accept future ones. But the bank accepts the loans not as a trustee but as a debtor and promises to repay them as and when required by the customer. In some cases, this relationship is reversed as for example when the account of the customer is overdrawn or where a specific loan or overdraft is granted to the customer by the bank.<sup>11</sup>

<sup>8</sup> **Ademuluyi and Lamuye v.A.C.B.** [1964] N.M.L.R. 137

<sup>9</sup> [1920] A.C.683

<sup>10</sup> [1959] 1 Q.B.D.55

<sup>11</sup> **Foley v Hill**[1848] 2 H.L.O at p. 28; **Joachimson v Swiss Bankk Corporation** [1921] 3 K.B.110

Sometimes the relationship between a banker and its customer is that of a trustee or an agent of the customer. Thus if a customer deposits some treasury bills with his bank and the latter undertakes to receive the interest upon them or to renegotiate or make sale of them and to credit the customer's account with the proceeds, the bank may well be in the position of a trustee and might partly sustain a fiduciary character. Again where a customer draws on his account with his bank by means of a cheque and the latter honours it, this sustains a relationship of principal and agent.<sup>12</sup>

### **BANKER/CUSTOMER RELATIONSHIP (ACCOUNTS)**

We have seen that one of the essential prerequisites for the existence of banker-customer relationship is the maintenance of an account. There are various types of accounts which a customer can open and maintain with his or her banker.

(1) Current and (2) Deposit

#### **Current Accounts**

These are "running" accounts on which cheques are drawn and into which cheques are paid. Withdrawals from current accounts are made by cheques, bank drafts, certified cheques, orders given to the bank to transfer a stated amount to some other account belonging to the account owner or to the third party, or by "standing orders" instructing the bank to pay a certain sum to a named person or account on stated dates.

To open a current account, the prospective customer applies in writing to the bank by filling a prescribed form, giving full details of his/its name, name of the account, his/its address, occupation, name of the signatory and his specimen signature. Particulars of any previous bankers are also given. The customer usually submits a letter of introduction from a reputable person or institution. He must also bring two referees to the bank, sign his signatures before them, while they witness it as correct by signing their own signatures and stating their names. After satisfying themselves that the applicant is a suitable person to maintain a current account, the bank opens an account for him and issues him with a cheque book. Charges are made by the bank in respect of current account transactions.

However, some banks make no charges in respect of current "salary account" i.e. accounts into which workers' salaries are paid.

The bank must honour a customer's cheque or order provided that his account is in credit. Otherwise the bank will be liable to the customer for breach of contract (or even for defamation of character where the banker's remark on a rejected cheque falsely imputes that the customer does not have sufficient funds in the account to cover his cheque).

#### **Overdraft Accounts**

These are special current accounts. When a customer opens an overdraft account, there is an express understanding between him and the banker that all cheques drawn on the account shall be honoured, whether the account is in credit or in debit. Usually however, a limit is set by the parties to the amount by which the account may be overdrawn. If so, the bank need not honour any cheque in excess of that limit. Interest is charged on overdraft from day to day.

#### **Overdraft Facilities**

These may also be granted to a customer on his ordinary current account. In that case, the bank allows him to draw a cheque in excess of his current credit balance by an agreed sum, or as and when necessary. The bank honours the cheques and charges interest on the overdraft.

#### **Deposit Accounts**

The chief characteristics of a deposit account are that it yields interest and that it is not operated by cheques. It has three varieties, viz (a) Fixed deposit accounts (b) Short term deposit accounts and (c) Savings deposit accounts.

In a fixed deposit account, money is deposited for a fixed period of time and a receipt for it is issued to the customer. The period may be a quarter, half a year or a year. Interest becomes due at the end of that period, and not from day to day.

<sup>12</sup> *Selangor United Rubber Estates Ltd v Cradock* (No.3) [1968] 2 A II E.R. 1073; *Rowlandson v. National Westminster Bank Ltd* [1978] 1 W.L.R.798

In a short term deposit account, receipt is issued to the account owner for this type of deposit. Also interest is paid directly into the account when it is due.

Receipts issued for deposits must be produced when a withdrawal is made. When all the deposits have been withdrawn, the bank cancels the receipts. Receipts for deposit are not transferable and are not negotiable. However, the banker's debt to the customer represented by the receipt can be assigned to third parties.

In a saving account, the bank issues a passbook to the customer (though recently, some banks began to issue only "paying in" and "withdrawal" slips). Interest accrues from day to day and is calculated at quarterly intervals and paid direct into the account where it forms part of the original deposit and begins to yield interest. In other words, a savings account yields compound interests.

Lost passbook or withdrawal slips may be replaced after the customer has signed an indemnity for any fraud that may be perpetrated with the missing documents.

## **BANKER'S DUTIES TO HIS CUSTOMER**

### **1. Duty to obey Customer's mandate**

The banker must observe the customer's mandate as to the right person or the number of persons that are authorized to sign cheques drawn on the customer's account and their right signatures. So a banker cannot pay out of a customer's account a cheque which is not signed by the customer or his authorized agent. If the mandate is that a cheque is to be signed by two signatories, the banker cannot pay on one signature.

A banker has no right to debit a customer's account if he pays on a cheque on which the customer's signature<sup>13</sup> has been forged, because the payment is made without the customer's mandate.

Payments out of a customer's account must be done in accordance with the customer's direction. So payment made because of a forged endorsement of a cheque cannot be debited by the banker against the customer's account.

However, a bank will not be liable where the banker was misled by the fault of the customer in failing to draw his cheque properly.<sup>14</sup>

### **2. Duty to honour Customer's Cheque**

A banker must honour his customer's cheque to the extent that the account is in credit or to the extent of an agreed overdraft. If a banker misleads a customer into thinking that he has sufficient credit to meet a cheque the banker must honour the cheque.<sup>15</sup>

### **3. Duty to take reasonable care**

Banker has a duty to act with reasonable care and skill so as to ensure that money is not improperly withdrawn from his customer's account.<sup>16</sup>

### **4. Duty to observe secrecy**

Banker has a duty to observe secrecy in respect of his customer's financial affairs. Exceptions

- (a) Where disclosure is under compulsion of law e.g. by court order;
- (b) Where disclosure is expressly or impliedly authorized by the customer e.g. where he authorizes a reference to his bank;
- (c) Where the interest of the bank requires disclosure e.g. where the bank is suing on an overdraft
- (d) Where vital national interest requires disclosure.<sup>17</sup>

### **5. Duty to collect cheques paid in**

Banker has a duty to collect moneys due on cheques paid in by his customer. He is then a collecting bank for that purpose, and is entitled to statutory protections given to collecting banks.

<sup>13</sup> **Ligget (Liverpool) Ltd V Barclays Banks** [1972] All E.R.Rep451,[1928] 1 K.B, 48

<sup>14</sup> **London Joint Stock Bank Ltd v. Macmillian & Arthur**[ 1918-19] All E.R.Rep30[1918]A.C.77

<sup>15</sup> **Holland v. Manchester v. Liverpool District Bank Co** [1909] 25 T.L.R. 386;**Hot v Markham** [1922]All E.R. Rep 134; [1923]1K.B 504

<sup>16</sup> **Selabor United Rubber Estate Ltd v Cradock** (No.3) [1968] 2 All E.R. 1073; **Belmont Finance Corporation v Williams Furniture Ltd** (No.2 ) [1980] 1 All E.R.393

<sup>17</sup> **Tounier v National Province & Union Bank of England** [1924] 1 KB.461, [1923] All E.R. 550

#### 6. Duty to ensure payment to the right person

Banker owes a duty to the true owner of a cheque to make payment to him and to no one else. If the cheque is crossed, it must be paid to him through his collecting bank, if not crossed, payment must be to him direct or to his order. Breach of this duty renders the paying bank liable for conversion of the cheque.

The cheque must be presented by the payee or by someone duly authorized by him to do so e.g. by an endorsement at the back.

#### 7. Duty to respect third party's rights over customer's account

If a third party has a superior claim to moneys in a customer's account e.g. under a tracing claim, or under a garnishee order, the payment banker must respect that claim, except in so far as he has given value for that sum by letting the customer take an overdraft.<sup>18</sup>

### DUTIES OF THE CUSTOMER

The customer owes some onerous but very few duties to his banker, the most important being that he must take proper care of the cheque book issued to him by his banker. But he is not liable to the banker for mere carelessness in keeping his cheque book if this enables a third party to obtain a cheque leaf and forge his signature. The *locus classicus* of judicial attitude is found in **Bank of Ireland v Evans Charities Trustees**<sup>19</sup>. In that case, the defendants had allowed their seal to remain in the possession of their secretary who by that event misappropriated certain consoles.<sup>20</sup>

However, the customer is liable where the loss suffered by the banker is a direct result of the customer's negligence. He is also liable where his negligent conduct amounts to estoppel against him or otherwise to a ratification of the negligent conduct of a third party. In such instances, the customer is liable if the carelessness relates to the drawing of the cheque or otherwise the issuing of his mandate. Thus it is a settled law that the customer owes his banker a duty to draw his cheque carefully or not to issue his mandate in a careless manner.

Three distinct obligations flow from this singular implied undertaking by the customer, namely:

- (a) That the customer should not draw his mandate in a manner that would facilitate fraud by third parties.
- (b) That the customer should always draw his mandate in a clear and unmistakable or unambiguous terms; and
- (c) That the customer should inform his banker promptly whenever he discovers that his cheque or mandate has been or is being forged.<sup>21</sup>

### CONCLUSION

We have seen that the relationship between a banker and his customer is twofold; one is that of debtor and creditor the other that of agent and principal. We have also seen that the Banker/Customer relationship does not begin and end with paying in and withdrawing from the customer's account but is more complex than that.

It is to be noted that an average Nigerian bank customer does not bother himself with so complex a web of relationships. He is only interested in paying in and withdrawing because of lack of awareness.

It is suggested that awareness should be created by organizing symposium, seminars or workshops.

It is also suggested that a written agreement specifying the duties and liabilities of the banker and his customers should be introduced.

<sup>18</sup> **Banque Belge v Hambrouck** [1921] 1 K.B 321

<sup>19</sup> [1855] 2hlc 389

<sup>20</sup> **Keptigalla Rbber Estate Ltd v National Bank of India** [1909] 2 K.B. 1010

<sup>21</sup> **London Joint Stock Bank v Macmillian** [1918] All E.R.30