

Verbal contracts can be legally binding

By [Paul Brown](#)

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It's a scene that will be all-too-familiar to South African consumers. You're sitting at your desk, frantically working on a report that was due an hour ago, when your cellphone rings.



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It's your cellphone company, gym, or other service provider, and they have a special offer they want to tell you about to get you to upgrade your service.

You 'uhuh' your way through the conversation, giving a final 'uhuh' when the caller asks if you're interested, hang up and wrap up the report - giving no further thought to the call. Come month-end, however, you notice an odd debit going off your account and immediately assume you've been ripped off.

In reality, that phone call was a legitimate way of signing a contract, and you've given the service provider permission to debit your account for the next two years.

Forms of mandates

Most consumers may expect debit order permissions, what we refer to as mandates, to be backed up by paperwork, but this needn't be the case as there are currently two legal forms of mandates. A telephonic mandate is just as legitimate as a paper one, but all mandates need to contain certain information to be enforceable.

These include:

- The consumer's name.
- Confirmation of the merchant and the authorisation for the debit.
- The amount to be deducted.
- A reference number.
- The first, and subsequent, debit order dates.
- The consumer's identity number.
- A short code that tells the consumer how to identify which company has made the deduction.

In addition, the sector is also working on an automated mandate verification system which will allow it to be more proactive, instead of it having to reactively check mandates should a consumer raise a query. This will allow payment providers and banks to double-check that a debit has been authorised before running it through the system.

The double-opt in system will be implemented next year. This will mean consumers will get a secondary communication via SMS, email or another form - confirming they have inked a deal.

Consumer protection

When this system comes in, it will be harder to lock consumers into a deal without them realising what they are getting into. All these changes will better protect the consumer and ensure that they know what they are getting into when they agree to a contract.

Another protection measure will also be implemented in the near future: electronic mandates. The e-mandate will make it possible for consumers to shop online without having to enter their bank details repeatedly and comes with built-in safeguards. Because it will be electronic, it will also be easier to source the original permission document quickly.

DigiCash has put measures into place to protect consumers and constantly looks for ways to upgrade that system. This includes vetting merchants to make sure their processes and mandates are up to scratch, and holding them accountable if they cannot prove they have permission to debit.

When a consumer queries a debit with us, we give the merchant up to 48 hours to get back to us with proof of the deal, or we reverse the amount and charge the merchant.

ABOUT THE AUTHOR

Paul Brown is CEO and founder of DigiCash. DigiCash, a duly registered Third Party Payment Provider, processes large numbers of payments and collects debit orders from consumers on behalf of merchants.

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