

Annual media conference of the Swiss Banking Ombudsman, 2 July 2015

Speech by Marco Franchetti Swiss Banking Ombudsman

Ladies and Gentlemen

A warm welcome to our annual media conference. Before launching into the figures I would like to touch on just a few of the issues that fall within the broad remit of the Banking Ombudsman.

Allow me to start with the Financial Services Act, also known as FIDLEG. I spoke at length on this last year. Since we are now moving into the final round, I would like to once again highlight the points that matter directly for the Ombudsman.

As you are aware, last June the Federal Council published a draft version of FIDLEG and opened up consultation proceedings.

One of the aims of FIDLEG is to improve customer protection, an issue that directly concerns the Banking Ombudsman and his activities.

We took part in the consultation and issued a detailed response to the provisions affecting our area of activities.

The full submission, including our proposed amendments, can be found on our website.

In summary, as the Banking Ombudsman's Office has been in place for more than 20 years, we believe the procedural rules in the consultation draft impacting the nature of the Ombudsman procedure as arbitration proceedings, or restricting his freedom of action when acting as an arbitrator, must be rejected.

In a nutshell:

- the mandate of the Ombudsman's Office must remain focused on arbitrating disputes. It is an independent intermediary, not a law enforcement agency or adjudicating body. In a state ruled by law, such functions must remain the prerogative of the judiciary.
- Statutory provisions governing the ombudsman procedure must be kept to what is necessary – acting as an intermediary in disputes. The fundamental principles of procedure should be based on the practice to date: simplicity, speed, fairness and cost.
- The Ombudsman's Office should not be required to form its own legal opinion or make proposals to resolve disputes.
- It should continue to have the discretion to decide whether to start mediation proceedings or break them off and suggest legal action where it feels there is no prospect of a successful outcome to arbitration.

- Communication between the Ombudsman's Office and the parties must continue to enjoy unrestricted confidentiality. This is the only way for each party to be able to speak freely to the Office.

We hope our ideas will be reflected in the new legislation.

You will already have noticed that we have redesigned our annual report. We felt it was time for a little visual updating.

The design was not all we thought about; we have also made the content more reader friendly and informative.

Now, in addition to statistics on arbitration cases and dormant assets, an in-depth review of two focus issues, along with 20 or so selected case studies, you will also find an overview of further matters that occupied the Ombudsman during the year under review.

For example the question of **powers of attorney**. The Ombudsman regularly deals with requests relating to powers of attorney, for example complaints from persons who hold a power of attorney that the bank has wrongfully failed to carry out their instructions.

It is true that banks often carry out checks with people who hold a power of attorney in cases of doubt. This is a precaution which prevents abuse and transactions that are not in the interests of account holders or their heirs.

Another issue in the headlines last year was the **manipulation of prices and markets by banks**. It emerged that this affected shares, exchange rates, precious metals and benchmark interest rates.

Although this generated a media storm, the Ombudsman's Office only received a few individual enquiries and complaints.

Looking at these cases the Ombudsman noticed that it was generally unclear in any particular situation whether the customer in question had actually been affected by the manipulation and actually suffered a loss as a result. In most cases, proving this would have required an extensive forensic investigation – something that is not possible in mediation proceedings.

However, where a bank had manipulated the price of its own shares and actively recommended them to customers at a critical period under particular circumstances, the Ombudsman was able in individual cases to persuade the bank to make an ex gratia payment.

Next issue: the liquidation of a financial institution. Difficulties experienced by a foreign financial group resulting in the liquidation of its Swiss banking subsidiary led to several dozen complaints from customers.

The liquidation of a bank has to follow strict rules to ensure all creditors are treated equally, meaning it was no longer possible for the Ombudsman to mediate in the individual cases brought to his attention.

The liquidators were unable to negotiate specific reparations with the Ombudsman, lest they favour some creditors at the expense of others.

However, thanks to our intervention with the Swiss Financial Market Supervisory Authority FINMA we were at least able to ensure that all customers who had asked for support received detailed information on the liquidation procedure

A further example: exit strategies. In recent years, changes in the business climate have driven many banks to adapt their offerings so as to cease servicing some customer segments or abandon entire markets.

Unfortunately, some banks did not always allow for customers' particular situations when ending relationships.

This resulted in many complaints to the Ombudsman. These mainly related to the lack of professionalism and limited availability of the new bank contact people.

The Ombudsman intervened in cases where the bank was accused of actual misconduct vis-à-vis culpable the customer. He takes the view that customers are entitled to expect an appropriate quality of service, even during an exit process.

Anything else harms not only the reputation of the bank in question but also that of the entire Swiss financial industry.

This makes it evident that huge changes are under way in the world of banking.

Things that were regarded as unobjectionable and smart yesterday are frowned upon or even prohibited today.

Banks are being squeezed by cost pressures and regulatory restrictions, while on the other hand customers' expectations and needs are rising. That's how a modern service economy works.

In such a tense situation, it's not surprising that conflicts spring up between contracting parties. This in turn has a direct impact on the Ombudsman's activity.

Product offerings are becoming more and more distinctive and complex. For the Ombudsman's Office this means that my staff have to have in-depth legal knowledge about the industry so they can keep up with developments.

I have therefore taken the opportunity of personnel changes in the Office to adapt the qualifications staff have for dealing with the new challenges. In the last few months we have brought on board relevant legal expertise and solid knowledge from many years of banking experience.

The new team is now complete. We now once again have eight permanent employees, equivalent to 7.6 full-time equivalents.

I would like to emphasise: the Banking Ombudsman's Office is not just a one-man show. Without a skilled and committed team the Ombudsman would not be able to perform his broad ranging and challenging duties.

Statistics

In conclusion, I would like to take a look at the numbers for last year.

In 2014 the Ombudsman's Office dealt with a total of 2,002 cases, some 8% fewer than the 2,178 the previous year.

The figures for 2013 were unusually high, however, as a result of enquiries and complaints about retrocessions.

The figures for the year under review are still above the long-term average, but not at the level seen in the financial crisis, when 2008 witnessed 2,839 cases, and 2009 saw 4,198.

Investment advice, asset management

This topic includes enquiries and complaints about errors in advice by banks and lack of due care in asset management. There has been a sharp fall from 30% of total volumes last year to 15% as a result of the decline in submissions regarding retrocessions.

Stock exchange, custody accounts

Cases in this category mostly relate to incorrect or incomplete execution of stock exchange orders and incorrect settlement of fund units, increased by 8%. They therefore rose to account for 15% of total enquiries, after 13% last year.

Loans, mortgages

Here, number of cases remained almost unchanged. Many disputes focused on the early repayment charges levied by banks when fixed-rate mortgages are repaid ahead of schedule.

Current accounts, payments, cards

Cases regarding subject represent the largest group since 2011. The number of cases is in line with last year, the proportional share therefore increased slightly from 32% to 35%. As last year, a significant number of cases involved queries and complaints where the customer's foreign status played a part (fees for foreign customers or banks closing accounts).

Miscellaneous

This covers all the cases that do not fall into one of the other categories. Here too, cases with a foreign angle increased (various tax matters were raised). There was also a rise in enquiries that did not fall within the Ombudsman's field of competence (no bank involved, general queries, miscellaneous legal enquiries, etc.). Consequently, the absolute number of cases went up, as did the percentage of the total they accounted for.

Geographical origin of customers

Traditionally, the largest group of cases the Banking Ombudsman deals with comes from German-speaking Switzerland: 40-50%. In 2008 and 2009, this exceptionally rose to over 60%, when it was mainly customers from this region who had been affected by absolute return products and the Lehman Brothers turbulence.

In 2014, German-speaking Switzerland accounted for 45%, French-speaking Switzerland for 11% and Ticino to 2%. The number of enquiries from abroad leapt from 33% to 42%. As already mentioned, this is related to tax agreements, fees for foreign customers and accounts being closed by banks.

Amount at dispute

The Banking Ombudsman keeps a record of the amount at dispute where possible and meaningful. This applied in half of the cases completed in writing in 2014.

Compared with the previous year, there were more cases where the amount at dispute was less than CHF 100. This underlines how strained relationships are between customers and banks, with people increasingly complaining as a matter of principle.

Cases involving more than CHF 1 million remain the exception.

In 89% of cases, the amount at dispute was below CHF 200,000, and in 81% of the cases dealt with by the Ombudsman it was below CHF 100,000.

Cases completed

The Ombudsman's Office completed a total of 887 cases in writing in the year. For each of these the customer received a written ruling or completion letter.

Many of the cases completed are enquiries where the customer is not asking for the Ombudsman to act as mediator with a bank but requesting information or seeking an opinion on their case by way of guidance. These customers received a detailed written response from the Ombudsman.

He declined to respond to 28% of written requests. This was either because cases were not in the field of responsibility of the Ombudsman (11%) or because the customer had not yet himself approached the bank directly (17%).

A further 8% of cases were closed because the customer failed to provide necessary documents as required by the Ombudsman.

Finally, 5% of cases were ended without result because of the evidence available. These are cases where the parties insist on different interpretations and lack the necessary willingness to compromise, so that the Ombudsman is unable to determine the actual state of affairs.

As per our experience the Banking Ombudsman contacts banks in between 30% and 35% of cases.

In the year under review, the Ombudsman intervened in 275 cases, equivalent to 31%.

In 122 cases the Ombudsman felt, on close analysis of the facts, that a correction by the bank was appropriate. In the great majority of these cases (94%) the bank agreed with the Ombudsman and settled with the customer.

Central Claims Office for Dormant Assets

Since 1996 the Central Claims Office attached to the Banking Ombudsman has supported beneficial owners who suspect dormant assets are held with an unknown bank in Switzerland.

In 2014, 831 questionnaires were requested, which was more than in the previous year (2013: 806). In more than half of these cases (550), the option to order the questionnaire on our website was used.

Over the same period 510 (480) were returned completed and 491 (464) ruled to be sufficiently legitimated. These 491 questionnaires resulted in 530 (504) names, which were entered as searches in the database. Some 5% of these cases related to the period before 1945.

The system produced numerous matches, of which 61 (46) were regarded as plausible by the Claims Office and were forwarded to the reporting bank for closer investigation. An actual match was confirmed in 27 (27) cases.

Assets worth CHF 4.63 million and six safe deposit boxes were made available to beneficial owners .

The system functions soundly, and earlier searches processed by the Claims Office are automatically run against new reports received from banks. Of eight cases which had previously received a negative result, one produced a hit.

Since 2001 the Central Claims Office has identified a total of 357 dormant customer relationships and made available assets worth CHF 52.5 million as well as 42 safe deposit boxes.

This brings my speech to an end.

Thank you for your attention; please do not hesitate to ask any questions you may have.