

Cancellation of a fund savings plan

Topic: **Investment advice** Case number: **2018/13**

The young customer had signed an application for an actively managed fund savings plan with a financial advisor, working as a sales partner for the bank, under which she was obliged to make regular monthly savings contributions for 10 years in addition to her first deposit. Shortly after signing the application, she wished to cancel this agreement. The bank refused and only accepted ordinary termination of the agreement. It only returned around 2/3 of the customer's first deposit to her as it stated that approximately 1/3 of it had been used on fees due for setting up the fund savings plan. The customer insisted on the reimbursement of the full initial deposit. Once the Ombudsman had intervened with the bank, it accommodated the customer's request in full.

The customer was a young apprentice. She had completed an apprenticeship outside the financial services sector. A colleague on the apprenticeship with her, wanted to continue her career path with a financial advisor and convinced the customer to attend a consultation with her new superior. During a consultation at the customer's home, she entered into a pension plan with insurance. During a second meeting at her home, she signed an application to open an actively managed fund savings plan with the bank. The latter required her to make an initial deposit of 10,000 CHF and contributions of 600 CHF per month thereafter for 120 months. She signed extensive documentation for this plan which she claims she did not receive copies of.

When she began to have doubts about the two transactions, she discussed the matter with her father and then asked for copies of the documentation. She then cancelled both transactions. While cancelling the insurance was straightforward, the bank insisted on fulfilment of the contract. The bank's compliance department informed the lawyer now engaged by the customer that the only option open to her was ordinary termination. The bank eventually terminated the contract and transferred a liquidation sum of 6,703.14 CHF to the customer. The customer insisted on repayment of the full initial deposit paid of 10,000 CHF and asked the Ombudsman for mediation in connection with this.

Based on the documentation, the Ombudsman was able to see four problem areas on which he compiled a comprehensive list of questions for the bank's attention:

First was the question of when the cancellation period for the product opening application signed by the customer commenced. For one thing, when the customer actually received the documentation in question was disputed. It also struck the Ombudsman that the right to cancel was not easy to find in the extensive documentation and the cancellation period was specified as 7 days. Over two years prior to the signature of the product application however, the statutory cancellation period was increased from 7 to 14 days, a fact the bank was evidently unaware of. Finally, whether and when the bank accepted the product application, and thus whether a contract was formed at all, was not clear.

Apart from these points, the Ombudsman had serious doubts as to the suitability of the product for an apprentice with an annual income of approximately 40,000 CHF. Considering the product's key figures, the requirement to make an initial deposit of 10,000 CHF and a 10-year obligation to pay in 600 CHF a month, plus a minimum set up fee of 3,280 CHF, raised the issue of the due care required

by the bank when fulfilling its precontractual duties to provide information and clarification in this respect. This is the case all the more so, given the customer's statement that she informed the financial advisor of her intention to start a second vocational training.

The Ombudsman also requested further information about the relationship between the financial advisor and the bank in connection with the distribution of the fund savings plan managed by it.

Finally, the Ombudsman questioned the legality of the fee of 3,280 CHF, referred to as a setup fee. The bank had demanded this fee for a standardised, fund-based asset management mandate for which its administrative expenses had already been covered by a somewhat inflated administrative fee of 1.8% per annum. Whether or not the fee had overly restricted the right to cancel the asset management agreement, legally classified as a mandate, at any time seemed questionable to the Ombudsman. It was also not clear to him which expenditure this fee was supposed to cover.

The Ombudsman asked the bank for its views on his list of questions. Without wishing to pre-empt the bank's opinion and based on the information available to him, the Ombudsman recommended that the bank consider accommodating the customer's request in full. The bank ultimately refrained from providing a statement of opinion and paid back to the customer the remaining portion of her initial deposit of 10,000 CHF.