

Cancellation of amounts allegedly credited in error to the account of a customer without her consent

Topic: **Payment transactions** Case number: **2020/03**

At the beginning of 2020, the bank informed the client several times in writing within a few weeks about amounts that had allegedly been credited to her account in error and asked her to agree to the chargeback. Although the customer refused to give her consent, the amounts were reversed, and her account ultimately showed a negative balance. When the client was unable to clarify the situation with the bank and no agreement was reached, she submitted the case to the Ombudsman. The Ombudsman informed the bank that he considered the procedure to be unlawful and asked the bank to clarify the problem either with the bank that had transferred the amounts or with the client of the respective bank. As this procedure seemed too time-consuming to the bank, it decided against it and re-credited the cancelled amounts as well as the fees incurred in connection with the reminders to the client's account.

The facts presented to the Ombudsman by the client were initially somewhat confusing and required clarification. It turned out that the bank had contacted the client a total of 13 times at the beginning of 2020 using two different forms and had asked her to agree to the cancellation of amounts between CHF 50 and CHF 700 that had allegedly been credited to her in error over a period of about five years. Overall, the total amount involved was just under CHF 3'000. In one of the forms used by the bank, the client was requested to provide an explicit response, while according to the second form used, her consent to the reversal was assumed if she did not explicitly reject it within a few days. The customer readily agreed to the cancellation of two credit notes she had only recently received. However, with regard to the other credits, which according to the bank had taken place in the years 2015 to 2017, she expressly rejected the requested reversals in a timely manner in each case. The bank nevertheless carried out the reversal, which is why the client's account balance turned negative. The bank then requested the customer to settle the negative balance and charged her reminder fees and debit interest. Finally, the client even received a threat of debt collection from the bank.

The Ombudsman's intervention with the client's bank revealed that the cancellation requests had been made because the former health insurance company of the client's family had given incorrect payment orders to its bank. The insurance company had wanted to transfer money to another insured person and had indeed entered his correct name and address. However, it had mistakenly entered the client's account as the recipient account. The client's bank as the receiving bank, had then credited the amounts to her account. Since, according to her recollection, she had submitted various reimbursement claims for her family to her former health insurance company during the period in question from 2015 to 2017, but no longer had the relevant statements, she was unable to determine whether the amounts had actually been credited to her in error at the time. In the case of the two payments from her family's former health insurance company that had only recently been credited to her account, it was however clear to her that several years after the change of insurance company there were no longer any claims for reimbursement and that there must have been a mistake. It was understandable to the Ombudsman that, under these circumstances, the client did not agree to the other chargebacks and fought back when they were made despite her objection.

Payment transactions are a mass business with a high degree of reliability. Nevertheless, it happens

from time to time that an amount ends up in the wrong account due to a mistake by one of the parties involved and therefore has to be reclaimed from the wrong recipient. In such a case, the originator of the payment usually has to request the instructed bank to reclaim the amount from the recipient bank. The latter contacts its client and asks him to agree to the chargeback. If the client refuses, he is asked to give his consent to the disclosure of his data to the party who ordered the payment, as the latter usually does not know the wrong recipient and the receiving bank is not allowed to disclose the data without his consent. This then allows the party who ordered the payment to contact the recipient directly and clarify the situation.

In rare cases, a recipient refuses to cooperate even though it is clear that he or she is not entitled to the amount transferred. In such a case, the originator of the payment has no choice but to take legal action (see also Annual Report 2018, p. 20). A bank may only cancel the amount credited to a client's account without the client's consent if it is entitled to a right of set-off for its own claim against the client. In the case of payment transactions, the Ombudsman understands that this may be the case if the bank itself has made a mistake in processing the payment and is therefore entitled to a claim for repayment against its client in its own right. Purely on the basis of the instructing bank's claim that the originator of the payment made a mistake, it may not debit the customer's account.

The Ombudsman drew the bank's attention to what he considered to be a clear legal situation and suggested that it contact the ordering health insurance company via its bank and then clarify the matter with the client, who was quite willing to cooperate. However, the bank defended itself with reasons that were incomprehensible to the Ombudsman and, in a first step, was neither prepared to re-credit the debits rejected by the client nor to contact the health insurance company as suggested. The Ombudsman therefore felt compelled to call on the bank in clear terms to make concessions. He then received a call from a lawyer of the bank's legal department, who, although he did not present any convincing legal arguments, maintained the position taken by the bank and argued that the effort required for the proposed clarification of the facts was too great. Finally, however, he stated that he would recommend internally that the disputed amounts be credited back to the client. A few weeks later, the bank informed the Ombudsman that it had followed its lawyer's recommendation. The Ombudsman informed the client accordingly and closed the case.