

Cash withdrawal limit for customers with dementia

Topic: **Abuse and fraud** Case number: **2018/21**

The customer had been diagnosed with the start of dementia. To protect against con artists, he made an agreement with the bank, with help from his son who is authorised to represent him, that cash withdrawals should be limited to a maximum of 1,000 CHF per withdrawal. The bank made a note of this on their systems. When he did actually fall victim to a con artist later on, the bank allowed him to withdraw a much larger cash sum anyway which he then handed over to the fraudster. Together with his son, the customer claimed back the sum of money over and above the agreed maximum amount from the bank. The bank refused this request and, even with the Ombudsman's intervention, could not be persuaded to accommodate the request. The bank eventually relented however after the son made the case public.

In spite of having been diagnosed with the start of dementia, the bank's customer was not subject to any guardianship measures. He continued to carry out his day-to-day business himself and live in his own home. According to the son however, an agreement had been made with the bank to limit cash withdrawals to a maximum of 1,000 CHF to protect the customer from con artists. For larger withdrawal requests, he claimed that the bank should have consulted him. When tradesmen then emerged and pretended to carry out extensive work on the customer's house, charging him an excessively high price for it and demanded immediate payment, the bank then allowed him to pay the requested sum of almost 20,000 CHF without consulting the son in spite of the warning. In so doing, the son claimed that the bank failed to comply with several fundamental due diligence obligations. Not only did it breach the agreement entered into regarding the restriction of cash withdrawals, it also failed to recognise that the withdrawal amount was unusually high for the customer. The tradesmen's invoice, which in the son's view had several discrepancies, also went unchecked. He asked the bank to refund the portion of the cash sum paid out that was over and above the agreed maximum limit.

The bank refused to accommodate the customer's request. The bank argued that the customer and his son had been informed that the cash withdrawal restriction was not a binding instruction but merely a guideline which could be lifted at any time by the customer who had legal capacity and was not subject to any guardianship measures. They would have known that this was not an effective means and they rejected other measures. The customer had insisted on withdrawing the funds at the counter. Contrary to the son's statement, there was no indication that the bank should have consulted the son in such a situation. The son adhered to his version of the facts and continued to pursue the claim on his father's behalf. Since the parties were unable to reach an agreement, the son asked the Ombudsman to initiate mediation proceedings.

The Ombudsman pointed out to the bank that, in his view, the incident and the customer's personal situation described are part of a social reality that banks are increasingly going to be faced with. Situations arising in business activities due to possible diminishment of customers' mental faculties can be extraordinarily delicate, both in legal and human terms. While it may be true that a customer with legal capacity can, in principle, make full use of his account and lift any withdrawal restrictions imposed on it again, the Ombudsman is of the opinion that a bank that has agreed to accept such restrictions should also then respect them. Such restrictions are, at the very least, an indication of the

fact that the customer's legal capacity could be compromised in certain situations and further clarifications ought to have been sought when he wished to withdraw a significantly larger sum of money than agreed. In the present case, the fraudulent scheme that the customer fell victim to is dealt with in the press on a regular basis however.

In its statement of opinion submitted to the Ombudsman, the bank added to the arguments already raised with the customer and the son authorised to represent him. The bank insisted that the customer, who was not subject to any guardianship measures, had full capacity to act and was therefore able to lift the imposed withdrawal restriction. When accepting the requested instruction, it had informed the customer and the son authorised to represent him in detail that such an instruction could be rendered useless at the crucial moment, and suggested additional measures. At the time of the cash withdrawal, the bank explained the situation to the customer in detail and pointed out to him that he was breaching the cash withdrawal limit. In spite of this, the customer insisted on the payment which was eventually made as requested. The request to contact the son authorised to represent the customer in a scenario of this nature was not included in the instruction. The bank had not encountered the fraud scheme to which the customer fell victim before in its business activities. It continued to refuse to accommodate the customer's request.

In view of the bank's position, and the differing statements regarding the circumstances surrounding acceptance of the cash withdrawal limit, which unfortunately could not be definitively clarified during the Ombudsman proceedings, the Ombudsman regrettably had no alternative but to close the mediation attempts unsuccessfully.

Shortly afterwards, the son went public with the case. In light of this, the bank declared that it would accommodate the customer's request in full even though no arguments had been put forward which had not already been exchanged during the Ombudsman proceedings. The Ombudsman is naturally delighted that it was possible to resolve this case after all. It is not acceptable however, and is damaging to the reputation of the Ombudsman proceedings, for a bank to refuse a solution during said proceedings and then immediately relent when faced with having to make its arguments public. The Ombudsman gave the bank in question a warning in this respect.