

Change of interest rate for a Pillar 3a account

Topic: **Pension products** Case number: **2018/28**

The customer held a Pillar 3a account with the bank's pension foundation. He complained that the interest rate for said account had been reduced twice without him being informed about the changes individually and giving his consent to the same. He asked the bank and its pension foundation to apply the same rate of interest to his account as that which would have been valid when the account was opened. The bank informed the customer that its pension foundation does not offer any assurance of a fixed rate of interest but, rather, changes the interest rate in line with current market conditions, as do all other such pension foundations. Notice of the changes was given by means of notices in the branches and corresponding information was displayed on the bank's website. The customer did not agree with this response and referred the matter to the Ombudsman. The latter did not find any wrongdoing in the conduct of the bank or its pension foundation and closed the case with a notice to this effect to the customer.

Referring to an article in a consumer magazine, the customer argued that interest rate changes constituted a contractual amendment that the bank must provide notice of and obtain consent to in each individual instance otherwise the contract would continue to be valid in its original version, in other words with the original interest rate, and must be adhered to by the bank.

The Ombudsman firstly stated that the Pillar 3a account is not based on a conventional account agreement with the bank but on a so-called pension scheme agreement with the bank's pension foundation which is partially regulated by law (tied Pillar 3a pension). As a pension fund member, the customer also does not have a direct payout entitlement in respect of his pension assets. Instead, he merely has an entitlement in respect of the pension foundation to the future payment of certain benefits in specific scenarios provided for by law and regulations.

The Ombudsman obviously shared the customer's view that contracts should essentially be adhered to in the form concluded between the parties. This ought to also apply regarding the issue of interest applied to contributions and pension assets such that what has been specifically agreed upon, or deemed to have been agreed upon, regarding the interest applied to a credit balance must be adhered to in each individual instance. In the Ombudsman's observation, the following alternatives are likely to be prevalent in practice:

- A specific fixed interest rate is agreed upon in the contract by the parties.
- It is agreed upon in the contract that the interest to be applied will be based on a specified reference interest rate.
- A variable interest rate is agreed upon in the contract and one party, typically the bank or a pension fund, is granted the right (a so-called right to alter a legal relationship by unilateral declaration) to adapt the interest rate to different circumstances (for example adaptation to current market conditions).
- No obligation to apply interest to the contributions is provided for in the contract but interest is granted unilaterally by the bank.

For the issue of interest applied to the Pillar 3a account, the pension scheme agreement and pension plan regulations primarily formed the relevant contractual basis. After all, this was stated as such in

the pension foundation's confirmation of the account opening sent to the customer under the "Agreement" section. The pension agreement did not contain any provision regarding the issue of interest applied to the pension assets, whereas the regulation contained a provision stating that interest would be applied to the assets at a preferential rate over and above the relevant interest rate for conventional savings accounts. The relevant contractual documents therefore did not contain any agreement on a specific fixed interest rate. In the Ombudsman's view, it was clear that the savings accounts being used as a reference are normally, in other words where no different agreement has been concluded as an exception, subject to variable interest. This was also reflected in the fact that the original interest rate asserted by the customer was specified under "Current interest rate" in the account opening confirmation. If the intention had been for this rate to be deemed agreed upon as fixed, this section heading would not make sense. The simple heading of "Interest rate" would have been sufficient instead.

Add to that the fact that this involves a pension scheme agreement with a pension foundation falling under the statutory framework for occupational pensions and not a conventional savings account. The Ombudsman assumes that such a pension institution must essentially treat all beneficiaries the same, which leaves no scope for the option of negotiating the rate for interest applied to the pension assets individually or for the application of interest dependent on the individual consent of a pension fund member.

In view of the above, the Ombudsman had no choice but to close the case with a corresponding notice. Although this outcome was not what the customer expected, he hoped that the explanations given might prove useful anyway.