

Claim for compensation due to delayed execution of a payment

Topic: **Payment transactions** Case number: **2018/05**

During the course of a construction project, the customer had settled a dispute with a contracting partner. As a result, he had to pay a significantly reduced amount in fixed instalments. It was agreed that if he was late paying an instalment, the initial amount would become payable again. The bank made a payment late, meaning that the customer had to pay the initial higher amount. He blamed the bank for the difference between the amount agreed upon in the settlement and the initial amount paid ultimately. The bank referred to its general terms and conditions and stated that it would only pay the interest damage. Despite the fact that the bank expressed its willingness to make more of a gesture of goodwill during the negotiations, the parties were unable to reach an agreement and the customer referred the matter to the Ombudsman. The bank eventually compensated the customer fully.

The customer claimed that he had instructed the bank to pay the agreed upon instalment in question in good time. The bank was aware of the agreement and also of the consequences that late payment would have for the customer. When he noticed that the payment had not been made, he tried to contact his account manager. The latter was absent and no one else was able to help him. The payment was then clearly made late which, under the agreed settlement, resulted in the customer having to pay the full, initial amount and not the reduced amount under the settlement. This cost him a considerable five-figure amount which he claimed back from the bank by way of compensation.

Referring to its general terms and conditions, the bank refused to pay compensation in the amount requested. These terms and conditions stated that, in the case of late execution of an instruction, the bank would only be liable for interest damage, in other words, where the customer had to pay default interest as a result of the late payment. Where there is a risk of greater damage in an individual instance, the customer would have had to notify the bank of the specific details in advance. As a gesture of goodwill, the bank stated that it would reimburse the customer for 20% of the damage. The latter insisted on full compensation however.

The Ombudsman asked the bank to review the case and, in particular, to state its position in response to the customer's assertion that it was aware of the settlement agreement, and therefore that the customer would incur a relatively high loss as a result of the late payment of an instalment. Such loss would be considerably more than any default interest payable for a late payment. In such a case, in the Ombudsman's view, according to the general terms and conditions invoked by the bank, it would have also been necessary to verify the claim for compensation. In particular, if the bank had indeed been informed about the settlement agreement in advance in this case, and that the customer risked greater damage, then this would render the limitation to default interest provided for in the general terms and conditions invalid.

In its statement of opinion to the Ombudsman, the bank denied having knowledge of the settlement agreement. The payment instruction had not been completed by the customer in full and was therefore returned to the account manager for completion by the processing point. This was the main reason for the delay in executing the payment instruction and this delay was attributable to the

customer. Essentially therefore, the bank reiterated its previous stance in the dispute and denied any obligation to pay compensation. It did however acknowledge that the communication on its part after the internal complaint about the payment instruction was not ideal, among other things due to the responsible account manager's absence, and was therefore ultimately willing to offer the customer full compensation as a gesture of goodwill.