

Credit balance fees (1)

Topic: **Fees and charges** Case number: **2021/22**

The complainant represented his two adult children who had accounts with the same bank. His son received a letter from the bank informing him that in future he would have to pay a credit balance fee of 0.75% on the credit balance exceeding CHF 100,000. His bank balance did not reach this threshold. The complainant's daughter did not receive such a letter, although her account had approximately the same balance and the two banking relationships were otherwise comparable. Upon his complaint, the bank explained to the complainant that his daughter had used the bank card more frequently than his son. Therefore, only he was affected by the reduction of the current threshold of CHF 250,000 to CHF 100,000. This measure could not be reversed, even if the son now used his bank card more frequently. The complainant then turned to the Ombudsman. During the ombudsman proceedings, the bank explained the conditions for its balance fees in more detail but maintained the lowering of the threshold for the complainant's son.

The charging of credit balance fees, often also referred to as negative interest, was again an issue in the year under review on which clients contacted the Ombudsman. In the present case, the bank explained to the Ombudsman that its standard threshold for charging a credit balance fee was CHF 250,000. Credit balances above this amount were charged 0.75% p.a. For clients with more than CHF 25,000 in investment assets or a mortgage or life insurance policy, the threshold increases to CHF 500,000.

However, the standard threshold could also be adjusted downwards. For clients who were inactive "secondary bank clients" in the bank's assessment, the standard threshold would be lowered to CHF 100,000. This exception has recently been pointed out on the bank's website. In addition, the clients concerned would be informed individually in writing. However, the bank did not publicly disclose the exact criteria that led to the lowering of the standard threshold. Once a client is classified in this way, he can no longer reach the higher standard threshold of CHF 250,000, even if he uses the bank's products more often again. However, he could increase the threshold to CHF 500,000 with investment assets of over CHF 25,000 or a mortgage or life insurance policy, as was also possible for clients with the standard threshold.

Since negative interest or credit balance fees are not legally interest but charges, the Ombudsman applies to these cases the principles he has developed for dealing with disputed bank fees. These are as follows:

Bank fees are usually owed if they are customary or agreed. Normally, when opening an account, clients accept the bank's general terms and conditions, which refer to fee tables. Or such fee tables are referred to in other general contractual conditions. The banks usually reserve the right to adjust these periodically. If new fees are introduced or adjusted in an ongoing business relationship, this constitutes a change to the contract, which must be communicated to the clients concerned by the usual means of communication in good time so that they can adjust their behaviour and, if necessary, terminate the banking relationship if they do not agree with the change. If a customer is bound in a contract with a fixed term, an adjustment of a fee essential to the contract cannot be enforced

against his will during the term. In the case of credit fees, this means that any notice periods for credit balances, e.g. for savings accounts, must be respected when introducing or changing them. An agreement can also be concluded tacitly, e.g. if corresponding communications from the bank remain unchallenged by the client. If these principles are adhered to, the Ombudsman does not comment on the appropriateness of fees, as questions concerning business policy and tariff issues are excluded from his assessment according to the Rules of Procedure.

In the present case, the bank had not publicly announced before informing the clients individually that the standard threshold of CHF 250,000 would be reduced to CHF 100,000 for clients who met or did not meet certain criteria. The application of this rule, which could not be inferred from the tariff of fees in force at the time, therefore hit the clients concerned unexpectedly, without them having been able to adjust their behaviour to it beforehand. The Ombudsman could understand that this rule was perceived as complicated and not very customer-friendly, especially because an increase to the standard threshold was no longer possible.

However, since the clients affected by the special arrangement were, like the complainant's son, individually informed of this in writing before any credit balance fees were actually charged, this was not legally objectionable in the Ombudsman's view. Following this notification, the client had the option of changing banks or ensuring that his balance at the bank did not exceed CHF 100,000 in order to avoid the imposition of balance charges. The fee principles were thus respected.

The Ombudsman was unable to obtain any concessions from the bank in this case. At the time of the reply to the complaint, however, the bank had already adjusted its credit balance fee model again anyway. The customer was therefore no longer affected by the problem described in the complaint.