

Credit balance fees (3)

Topic: **Fees and charges** Case number: **2021/24**

The bank informed the customer in writing in September 2019 that it would introduce credit balance fees from November 2019. The client immediately informed the bank that he did not accept this and insisted on the previous fee arrangement. He found out from the 2019 end-of-year statement that he had nevertheless been charged credit balance fees, whereupon he objected to the statement. The client advisor then discussed with him how he could avoid the credit balance fees, but no agreement was reached. In October 2020, the client closed the account and claimed back all credit balance fees charged to him between November 2019 and the account closure. The bank refused to do so. In the ombudsman proceedings, the bank agreed to repay the credit balance fees.

In January 2020, the client informed the bank that he did not agree with the year-end statement sent to him because it showed the debiting of credit balance fees, which, in his view, he had objected to in good time after they had been announced. His client advisor then contacted him and explained that the fees would be refunded to him and would not be charged in future if he made investments. He submitted investment proposals to him, which he discussed with the client again and again in the following months without any investment transactions being concluded. In October 2020, the client terminated the banking relationship because, in addition to the balance fees, he was also notified of a monthly fee for clients domiciled abroad, which would be charged from January 2021. He was of the opinion that the banking relationship was definitely becoming too expensive and was no longer attractive for him.

The customer then turned to the Ombudsman to mediate in the dispute concerning credit balance fees. He was of the opinion that no contractual agreement had been reached with the bank because he had objected to the introduction of such fees in due time. In addition, he had objected to the statement of account within the prescribed period after the bank had charged him credit balance fees despite his objection. As a first step, the Ombudsman invited him to submit his claim for repayment directly to the bank's management, which he had not done so far.

After receiving a negative reply from the bank, the customer contacted the Ombudsman again. In its reply, the bank argued that the client had been informed transparently and in good time about the introduction of the balance fees. The client advisor had also shown him how he could avoid the charge by making investment transactions. It was therefore not prepared to repay the fees to the client.

The Ombudsman then contacted the bank and explained that he applied to such disputes the principles he had developed for disputed bank charges (see case no. 22 above). The core element of these principles is that the introduction of new fees or an adjustment of fees constitutes a contractual adjustment for which an agreement between the bank and the client is required. An agreement can also be reached implicitly, e.g. if the client continues to use the services without reservation. If no agreement is reached on the adjustment, the previous contractual arrangement continues to apply without the adjustment initiated by the bank. However, the bank has the option to terminate the relationship with the contractually stipulated deadlines, usually with immediate effect.

In the case at hand, the client had expressly objected to the contract adjustment. The bank had then

implemented this unilaterally by debiting the newly introduced credit balance fees from his account. It was not evident from the documents that the parties had ever agreed on the credit balance fees. Since the client had expressly objected to them, there was also no tacit agreement. The bank had not given notice of termination. It was the client who finally terminated the banking relationship because he no longer agreed with the pricing.

The Ombudsman shared the bank's view that it had provided transparent and timely information about the new fees. It was undisputed that the customer knew all the details of the new regulation initiated by the bank. However, he did not agree with it and made this known to the bank in due time. A contractual adjustment cannot be made unilaterally. Accordingly, there was no contractual basis for the credit balance fee in the present case. The Ombudsman therefore asked the bank to repay the fee to the client. The bank finally accepted.