

Disputed balancing of youth accounts by the father of the account holders

Topic: **Account / savings book** Case number: **2021/01**

The complainant had opened accounts and fund deposits for her children, who were now in their teens. She was in divorce proceedings with her husband who was the father of the children. He had balanced the accounts and transferred the assets to his own account without informing his wife. Since he refused to repatriate the amounts, the wife's lawyer turned to the bank and claimed that the assets were children's property and had been used by the father in a recognisably improper manner. She asserted a claim for damages against the bank in the amount of the children's assets. The bank denied wrongdoing and did not respond to the claim. In the mediation proceedings, it emerged that the father had asked the competent child and adult protection authority (KESB) for subsequent approval of the transaction. The Ombudsman therefore informed the client that he could not take action in the matter because a decision by the competent authority was pending.

The Ombudsman regularly receives complaints in connection with account products for minors. Not infrequently, these are related to disputes between parents, who are often in divorce proceedings.

In the case at hand, the children were the holders of the accounts which had been opened by their mother. She was listed on the account opening documents as having the right of disposal in her capacity as holder of parental authority. With regard to parental custody, there was no official or judicial measure that deviated from the statutory regulation.

In its correspondence with the client's lawyer, the bank took the view that in the case of client relationships involving young people up to the age of 18, it was to be assumed that both parents were the legal representatives of the young person and thus entitled to dispose of the assets, unless it was informed otherwise. As a rule, the child's assets were administered by the parents. What they were allowed to do with it was regulated in Article 318 et seq. of the Civil Code. These provisions were addressed to the parents and not to the bank. The bank could assume that the parents knew their rights and obligations and did not have to question every action of the parents. The bank denied wrongdoing and rejected the complainant's claim.

The Ombudsman could understand the complainant's displeasure at the balancing carried out by her husband without consulting her. He explained to her that in the present case, it was undisputed that the account balances were children's assets. As the bank correctly pointed out, the management of the child's assets is the responsibility of the parents. If they cannot agree on the manner of administration, a stalemate arises which only the competent authorities, i.e. the KESB or the court, can resolve. As the case was pending before the KESB at the husband's instigation, which had to safeguard the interests of the children and account holders, the Ombudsman informed the complainant that he was unable to intervene with the bank in the manner she had requested.

However, if the proceedings revealed that the husband had misused the funds withdrawn from the accounts at the bank and that the children had suffered damage as a result, the Ombudsman expressed his willingness to re-examine the case if contacted again by the complainant and documented accordingly.