

# Early repayment fee in the event of early termination of a fixed-rate mortgage due to loss of confidence

Topic: **Fixed-rate mortgage** Case number: **2019/05**

The customers had a fixed-rate mortgage with the bank and wanted to terminate it prematurely, as they claimed that a breach of banking secrecy had led to a loss of confidence in the bank and that it was no longer reasonable to expect them to continue their business relationship with the bank. The bank charged them a prepayment penalty based on negative reinvestment rates. The clients demanded that the bank at least waive the negative interest rates. The bank refused to comply with them and did not change its position in the ombudsman proceedings. However, after the end of the ombudsman proceedings, it accommodated the customers to the desired extent.

The customers were a married couple. The husband and a partner owned a company that had an account with the bank. The bank's client advisor had discussed a problem in connection with a large payment with the husband's business partner after the latter had already left the company. The payment resulted in the bank terminating the business relationship with the company. Privately, the clients had taken out a fixed-rate mortgage with the bank. The husband was of the opinion that the bank had committed a violation of banking secrecy in the business relationship and had thus fundamentally destroyed his trust to such an extent that he wanted to terminate the private banking relationship which he and his wife maintained with the bank with immediate effect and repay the fixed-rate mortgage early. The bank charged them an early repayment fee for this on the basis of negative reinvestment rates, i.e. they had to pay more interest than if they had let the fixed-rate mortgage expire properly.

The clients were of the opinion that, given the circumstances, the bank would have to accommodate them with the early repayment fee at least to the extent of the negative interest. This was rejected. It informed the clients that the incident involving the alleged violation of banking secrecy, which it denied, was only a pretext. The customers would rather terminate the banking relationship because the new bank had made a larger credit line available to them. She took the view that she had benefited from the early repayment fee in the full amount charged by her. The client did not agree with this and submitted the case to the Ombudsman.

The latter drew the bank's attention to the fact that the District Court of Zurich had meanwhile published a decision according to which a bank was not permitted to demand more than the duly agreed interest due for the remaining term from customers on the basis of the early repayment clause contained in the contract under review. In its statement, the bank informed the Ombudsman that the court decision was not relevant for it, as the contract it had used differed substantially from the one that had been assessed in the court decision, and that it was not bound by the case law of a court of first instance only. The Ombudsman had to close the case without success. In his written notification, he clearly informed the client that he did not agree with the Bank's position. Since the customers' credit balance did not cover the amount of the early repayment fee, the bank should have taken legal action to enforce this fee against the customers.

Shortly afterwards, the husband telephoned and informed the ombudsman that the bank had called

him and offered them a concession that was greater than the proportion of the early repayment fee that was attributable to the negative interest. He asked whether he should accept the offer. The Ombudsman recommended that he accept the offer. Shortly thereafter, the consumer press reported that the bank had been defeated in court in the first instance by an early repayment fee based on negative reinvestment rates. Given the time constraints, the Ombudsman had to assume that the Bank was already aware of this decision when it wrote its statement to the Ombudsman.

The Ombudsman therefore contacted the Bank's management and informed them that, although he was pleased with the solution reached with the customer, he did not see why it was not possible to make concessions in the ombudsman proceedings. The Bank apologised for its actions and stated that the accommodation given to the client had nothing to do with the court decision. It had taken the case to the next instance, as it did not agree with it, and believed that its arguments had not been properly assessed. On the contrary, communication between the region in which the office concerned was located and the head office had not worked properly. Six months later, the next higher court confirmed the decision against the bank. The latter waived its right to continue the case and repaid the plaintiff the overcharged portion of the early repayment fee.