

Fee for failing to provide notice due to breach of notice terms and conditions for a savings account

Topic: **Charges and commissions** Case number: **2018/18**

The customer wanted to make larger transfers from a savings account in the bank's e-banking system. He was made aware, by means of an automated notice, that a notice period of 90 days was required for such withdrawals otherwise a fee would be payable for failure to provide notice. The customer then confirmed the transfers again and scheduled them such that they were only done more than 90 days after their entry. He believed that by doing so, he had complied with the stipulated notice period. The bank charged him the fee for failing to provide notice anyway. It held the view that the customer would have needed to give express notice of the sums in question in addition to scheduling the transfers. He would have been able to do this within the e-banking system but also verbally or in writing. In the mediation proceedings, the bank was ultimately willing to refund the fee for failing to provide notice to the customer in full.

The Ombudsman still regularly receives cases in connection with fees for failing to provide notice due to breaching the notice terms and conditions for savings accounts. He explains the background to this issue in detail on page 16 of his 2016 annual report. Also, on page 23 of the same report, is a case study numbered 2016/06. Pursuant to the Swiss Financial Market Supervisory Authority (FINMA) circular on liquidity risks for banks, banks are obliged to charge customers such fees for failure to provide notice where they breach such agreed notice periods for accessing credit balances in savings accounts.

In the present case, the customer is in no way disputing the bank's right to charge such fees for failing to provide notice. Instead, he felt that by scheduling completion of his transfer instructions at just over 90 days, he had complied with the agreed notice period. He scheduled the transfers in this way after having been made aware of the issue by a warning notice in the e-banking system. According to him, this warning notice did not appear again after he entered the instructions with completion scheduled over 90 days in the future. The bank argued that this did not involve any actual notice. In its view, such notice should have been expressly stated. An easily accessible function for this would have been available to the customer in the e-banking system. He could also have given the bank such notice verbally or in writing as well however. The bank claimed that the account manager tried to contact the customer about this by telephone. Finally, the issue had been explained to him in writing. The bank said it would be prepared to refund the fee for failing to provide notice if the customer paid the sum back into the account within a certain period or opted for one of the bank's investment products.

The customer did not agree to this and continued to argue that he had complied with the requisite notice period. He also claimed that the bank had only tried to contact him more than 90 days after completion of the transfer instructions and eventually contacted him in writing. At this point he was no longer able to stop the transfers that led to the fee being charged for failure to provide notice. He was not willing to pay the transferred sums back into the account.

The Ombudsman understood the customer's point of view in principle. Since the terms and conditions

of the savings account in question did not stipulate any particular format for the notice, he asked the bank to explain its view that the notice period for the account balance in question had not been complied with by the scheduling of the transactions again in more detail. The bank explained to the Ombudsman how the customer had been made aware of the breach of the withdrawal terms and conditions when the transaction was originally entered via online banking and how, in its opinion, the customer ought to have correctly given notice of the amount within the system. It argued that its customers would have been clearly notified about the withdrawal terms and conditions and explained again in detail the legal and economic grounds for such terms and conditions. Finally, the bank noted that a system had been put in place to notify the account manager of any customers breaching the withdrawal terms and conditions. These explanations actually revealed that the relevant notifications to the account manager were only issued once the transaction breaching the withdrawal terms and conditions had already been performed. The bank repeated its willingness to consider a gesture of goodwill if the customer were to pay the transferred sums back into the account or invest a corresponding sum in the bank's investment products.

In the Ombudsman's view, these explanations still did not show why the customer could not assume that he had adhered to the notice period by scheduling completion of the transfer instructions. He once again pointed out to the bank that the savings account terms and conditions did not contain any stipulations regarding special formalities for such notice. In addition, in the Ombudsman's opinion, there was no detriment to FINMA's intended purpose behind its Circular since the bank would still have had the sums from the savings account available within the stipulated notice period. The bank then offered to reimburse 50% of the fee for failing to provide notice. After further discussions, it was eventually willing to refund said fee to the customer in full.