Fee increases during probate proceedings

Topic: **Charges and commissions** Case number: **2018/20**

> The three sons and heirs of a deceased customer in South America claimed that the bank had refused to allow them access to the account documentation during the probate proceedings following the death of their father, which went on for several years. During this time, the bank had charged fees amounting to around 22,000 CHF to the account. They demanded the reimbursement of the majority of these fees which the bank refused. During the Ombudsman proceedings, the bank eventually agreed to pay a total of 13,100 CHF in fees back to the heirs.

The three complainants stated that their father had died a few years ago at his former residence in a South American country. Since his second wife, the complainants' stepmother, also died shortly afterwards before the father's estate could be settled, some complicated inheritance disputes arose which went on for several years. For the duration of these proceedings, the bank refused to allow the complainants any access to the account even though one of the sons had been appointed administrator of the estate by the relevant South American court. Once the court was finally able to issue the definitive legal heir certificates, the heirs were confronted with the fact that the bank had been charging fees to the account during the period since their father's death of approximately 22,000 CHF in total. Fees were also applied for the held mail and these had been increased substantially in several increments. The custody fees and account management fees had also been increased during the probate proceedings. It eventually transpired that the bank had terminated the account relationship in the meantime on the grounds of strategic changes to its business model. Since no one responded to the termination, because they had no knowledge of it, the bank charged penalty fees to the account which alone amounted to 2,000 CHF.

On the strength of this, the complainants remostrated to the bank and asked it to reduce the fees, which they felt were exorbitant, to a reasonable level. The bank refused to accommodate this request. It stated that, after a thorough review of its business strategy, the bank had decided to withdraw from certain markets and segments. The fees charged to the account were in line with the normal charges applied by the bank and which it was free to change at any time. The heirs had been kept informed about these changes through the service of notice to the held mail. The bank therefore could not understand their criticisms.

The heirs did not agree with this response and referred the matter to the Ombudsman. With regard to the bank's response which did not address the issues raised by them, they voiced the suspicion that this was probably a standard letter from the department that dealt with the termination of unwanted account relationships. The bank knew about their father's death and about the probate proceedings in South America and did not allow them access to the account. They therefore did not have access to the necessary information. They felt that the fee increases since their father's death, and the associated information, could not be justified by the agreements between the bank and their father. They also considered the fees excessive for an account blocked due to probate proceedings. The heirs would have had no knowledge of the termination of the account and could not have responded to it.

On this basis, the Ombudsman intervened with the bank. Given the information provided, he asked the bank to reconsider its position as a matter of principle and consider offering the heirs a

substantial gesture of goodwill. To his great surprise however, the bank maintained its position for the most part. It now no longer claimed that the complainants would have had all the necessary information and admitted that it had denied them access to such information. The bank now argued however that the complainants had known for some time which documents had to be submitted to prove their status as heirs and were themselves responsible for any delays. It was only willing to refund the penalty fee of 2,000 CHF that it had charged them for failing to provide notice.

The Ombudsman intervened for a second time and pointed out to the bank that it could only apply fee increases on the basis of agreements. Since the heirs had no knowledge of the fee increases, the bank could not rely on the notion of so-called deemed delivery and approval in relation to their taking effect. This was explained by the Ombudsman in the case study on page 13 of his 2017 annual report. The bank's decision to refuse the heirs access to any account information was also open to criticism in the Ombudsman's view since one son had been appointed administrator of the estate by the relevant South American court, and, as such, was a descendant with a protected statutory entitlement and the corresponding right to information both under the applicable South American inheritance law and Swiss inheritance law. Even with the relevant knowledge, the heirs would still have been unable to respond to the notices since the bank consistently refused to allow them to dispose of the assets. Finally, the Ombudsman felt that it was not appropriate to accuse the heirs of being responsible for the slow progress of the court proceedings in the South American country without concrete evidence.

It took a further intervention and escalation to a higher level before the bank eventually agreed to reimburse the heirs for the total fees resulting from the increases made during the proceedings, namely 13,100 CHF. To the Ombudsman's regret, this was done without a word of apology for the laborious and altogether questionable way in which this seemingly legitimate complaint was handled.