

Incorrect information in an application form for a Covid-19 loan

Topic: **Other loans** Case number: **2020/15**

The complainant, who was represented by a lawyer, claimed that he had filled in the box in the application form for a Covid-19 loan, which was decisive for the amount of the loan, incorrectly in good faith by entering his company's actual estimated turnover of CHF 1'500'000 for a business year and not taking into account that the maximum amount was limited to CHF 500'000. As a consequence, his company was granted a loan of CHF 150'000 instead of only CHF 50'000, which happened on the same day as the submission of the loan application. The bank then demanded repayment of the overpaid amount. The parties could not agree on the repayment modalities, whereupon the complainant submitted the case to the Ombudsman. The Ombudsman was unable to help the complainant.

The complainant's lawyer argued to the Ombudsman that the error had occurred because the form provided on the bank's website had not electronically limited the maximum turnover in the box in question, which had allowed the excessive amount to be entered in the first place. This had not been possible on the form provided directly by the Confederation and a maximum of CHF 500'000 had been accepted. In addition, the bank had grossly negligently breached its duty of supervision by failing to detect the error during the credit check.

The complainant, who was the managing director of his company, was unable to reach an agreement with the bank on how to settle the situation. He rejected a proposal by the bank to convert CHF 50'000 into a regular Covid-19 loan to his company and to continue the remaining CHF 100'000 as an operating loan, which would have had to be guaranteed not by the loan guaranteeing cooperative but by the complainant privately and would have to be amortised by 31 December 2023. The complainant only agreed to a joint and several guarantee with a maximum amount of CHF 30'000. The bank eventually withdrew its proposal and demanded the prompt and unconditional repayment of the CHF 100'000 overpayment. The lawyer called in by the complainant took the view that the bank had become liable for damages on the basis of the rules on errors in the Swiss Code of Obligations, although it was not clear to the Ombudsman who should have been harmed by the overpayment and to what extent.

The Ombudsman nevertheless contacted the bank and tried to ascertain whether there was any scope for a friendly solution. In its response to the Ombudsman, the bank explained that the granting of Covid-19 loans was regulated by the Confederation. It had been allowed to rely unconditionally on the information provided by the borrower and had only been obliged to check the signature of the loan applicant. This solution had been deliberately chosen by the Confederation in the interest of speeding up the granting of loans in the Covid-19 crisis. The borrower company and its managing director could not derive anything from the fact that it had been possible to use a higher amount in the field in question than the maximum allowed. It had not breached any control obligations, as it had not had any such obligations in this context.

The process for correcting faulty Covid-19 loan agreements is also governed by Confederation guidelines. According to these guidelines, the guaranteeing organisation informs the bank of

suspected error and notifies it that without correction, criminal charges will be brought against the borrower within 90 days. The bank would have to inform the borrower immediately and demand full or partial repayment of the loan. It must give reasons for this and inform the borrower that criminal charges could be filed against him by the guaranteeing organisation if no correction is made. It could conclude a repayment agreement extending beyond the 90-day period. In the case of partial repayment, the borrower must submit a corrected credit application for the remaining amount.

The bank was of the opinion that it had only implemented these guidelines and had no further room for manoeuvre in correcting the unfortunate situation. It was still prepared to accept a Covid-19 agreement corrected to CHF 50'000, but demanded that the overpaid loan amount of CHF 100'000 be repaid promptly. If the complainant did not agree to this solution, it would hand the case over to the guaranteeing organisation. The bank was no longer prepared to revert to its payment solution rejected by the complainant.

After taking note of the above-mentioned guidelines on the rectification of Covid-19 credit agreements and the bank's clear position, the Ombudsman saw no scope for a mediation solution and recommended in a final decision that the complainant rectify the credit situation as requested in order to avoid further proceedings. After handing the case over to the guaranteeing organisation, the Ombudsman would ultimately not have been competent to conduct mediation proceedings, as the latter is not an institution with membership of the Swiss Bankers Association.