Loan termination fees for a fixed-rate mortgage

Topic: **Charges and commissions** Case number: **2019/15**

> The client had a fixed-rate mortgage with the bank, which they had another bank redeem at maturity. The previous bank charged them a loan termination fee of CHF 400 for this, but the clients disputed this fee and were only prepared to pay a loan termination fee in the amount of the CHF 100 agreed at the time the fixed mortgage was taken out. The bank refused to accommodate the clients. The Ombudsman considered that the bank had violated the fee principles which he usually applied when assessing such cases. In the ombudsman proceedings, the bank repaid CHF 300 to the clients, but refused to generally adjust its fee practice.

The Ombudsman was again confronted with numerous fee disputes in 2019. The present case was submitted to him by clients who, after reading his Annual Report 2016 (pages 13ff and 21ff), concluded that the bank had not complied with the principles set out therein and had not reached an agreement with the bank. The bank had twice doubled the loan termination fees during the term of its fixed-rate mortgage, from the original CHF 100 to CHF 200 and in a second step from CHF 200 to CHF 400, because it considered that the fees originally agreed were not cost-covering. The changes were only published on the Internet and posted at the bank's offices.

The Ombudsman assesses fee disputes according to the following principles: Bank charges are usually due when they are customary or agreed. Normally, when opening an account, customers accept the bank's General Terms and Conditions, which refer to fee tables, or other general contractual conditions refer to such fee tables. The banks usually reserve the right to adjust them periodically. If new fees are introduced or adjusted in an ongoing business relationship, this constitutes a contractual amendment, which must be communicated to the affected customers via the usual communication channels in good time so that they can adapt their behaviour and, if necessary, terminate the banking relationship if they do not agree with the amendment. An agreement may also be concluded tacitly, e.g. if the customer does not object to corresponding communications from the Bank. If these principles are complied with, the Ombudsman does not comment on the appropriateness of fees, as business policy and tariff issues are not subject to his assessment under the Rules of Procedure.

In fact, the Ombudsman also concluded that the Bank had violated these principles in the case of the customers. Nevertheless, even after he had contacted the bank, the latter refused to refund the overcharged amounts to the customers. After the head of the branch office had consulted the bank's central legal department, the bank decided to refund the overcharged amount of CHF 300 to the clients. However, it considered that this was only done as a gesture of goodwill. It had been entitled to charge the client the original amount of CHF 400. On the basis of its general terms and conditions, it had the right to adjust fees at any time. It was not legally necessary and impractical to treat customers with fixed-term products differently from other customers in terms of fees. In addition, it had complied with the provisions of the Ordinance on the Announcement of Prices in the way it communicated the increases. Credit termination fees were common and the amount was in line with market conditions.

The bank’s explanations did not convince the Ombudsman and were not suitable to change his long-standing practice. Although the Ombudsman observed that loan termination fees are common, they are by no means demanded by all banks. They have been the subject of interventions by SECO in the past and are therefore not uncontroversial. In the present case, the question of whether the credit cancellation fee is customary was irrelevant, since a fee agreement existed and it was a question of checking its validity. Finally, in practice, there are various amounts of credit cancellation fees, so that a certain amount, such as CHF 400 in the present case, cannot be unconditionally described as customary in the market.

In the Ombudsman’s view, fees are an integral part of the contract, and the Ordinance on the Announcement of Prices does not regulate the question of how fees can be introduced and adjusted in a binding manner under civil law. Moreover, a provision in the General Terms and Conditions of Business providing that customers submit to any future fee adjustments in advance without having the possibility to terminate the contract under the old conditions if they do not agree to the fee adjustment seems problematic. The Ombudsman will therefore continue to apply his fee principles to fee disputes in the future.