Missed termination of a framework agreement for mortgages

Topic: **Fixed-rate mortgage** Case number: **2020/17**

> A couple had a fixed-rate mortgage with the bank. Two months before it was due to expire, the clients contacted the bank and asked for an offer to extend it. As the offer from a competitor bank was considerably more favourable, the clients decided to have the mortgage paid off by this other bank. Their previous bank pointed out to them that they had to observe a six-month notice period based on the framework agreement for mortgages. The clients had overlooked this. Between the expiry of the fixed-rate mortgage and the expiry of this notice period, the bank charged them the interest rate for variable-rate mortgages, which at 2.75% was considerably higher than that of the expired fixed-rate mortgage. The clients felt that they had been cheated and called the Ombudsman. The bank could not be persuaded to make concessions in the Ombudsman proceedings.

The couple had been clients of the bank since the construction of their property about 25 years ago. In addition to the mortgage, the whole family used various account and pension products. According to the clients, they had always used the mortgage in the form of a fixed-rate mortgage. The bank had never actively contacted them before a fixed-rate mortgage expired. Rather, the practice had been that they contacted the bank about two months before the expiry of the respective fixed-rate mortgage and negotiated follow-up financing in each case. They were convinced that when a fixed-rate mortgage expired, they were free to seek financing from another bank if necessary and that there was no contractual obligation to continue with the bank.

However, the framework agreement for mortgages, which they had signed a long time ago and which regulated the use of the specifically selected mortgage products, provided otherwise. It contained a termination provision according to which a six-month notice period had to be mutually observed in any case, even in the case of a fixed-rate mortgage with a specific expiry date. If the parties did not agree on another follow-up financing, the contract stipulated that the bank could charge the interest rate for variable mortgages until the expiry of the notice period. According to the Ombudsman's experience, this interest rate, in those cases where variable mortgages are still agreed, is relatively high and, unlike the interest rates for fixed-rate or money market mortgages seems to take little account of the banks' favourable refinancing opportunities.

In the Ombudsman's view, the contractual situation was clear. In the product confirmation for the fixed-rate mortgage, customers were explicitly informed of the termination requirement. However, since the Ombudsman was regularly contacted by customers of this bank who had overlooked this termination provision and considered the resulting situation to be extremely unfair he nevertheless decided to ask the bank to re-examine the case. In the past, he had also suggested to the bank that it revise the provision in question and make it more customer-friendly, e.g. by waiving the cancellation requirement for mortgage products with a clear end date or by ensuring with a clear process that customers are contacted by the bank in good time before the expiry of such a product so that they can still meet the cancellation deadline.

In parallel cases, the Ombudsman has always succeeded in reaching amicable solutions, especially since the lavish interest margin achieved by the variable interest rate for the bank should be able to facilitate a concession from an economic point of view as well. Finally, a friendly parting of ways after a long-standing customer relationship is more likely to allow a bank to win back a lost customer and should therefore, in the Ombudsman's view, also be in its own interest. In the present case, however, the bank refused to make any concessions and insisted on the strict implementation of the contractual provisions. The Ombudsman had no choice but to close the case with an explanatory notice without any result for the clients.