

Reimbursement of newly introduced charges where notification of these was sent by the bank in a letter to the wrong address by mistake

Topic: **Charges and commissions** Case number: **2017/02**

In 2014, the bank sent a letter to its client residing abroad. It informed the client that, due to a new strategic direction being adopted by the bank, her account relationship had to be terminated and that special administrative charges of 250 CHF would be deducted from her account each month if she failed to provide account closure instructions before a certain date. Because the bank had entered the client's contact details in its system incorrectly, the client did not receive this letter (or any other bank correspondence) and was therefore not aware of its content. Having discovered this mistake, the bank refused to refund the administrative charges deducted over 18 months to the client, claiming that the client failed to report not receiving the expected correspondence. The bank initially maintained its position in its dealings with the Ombudsman. Ultimately, however, it declared its willingness to refund all of the administrative charges deducted to the client.

The client, residing abroad, agreed with her bank in 2014 that her correspondence would be retained at the bank and that all letters would be sent to her by post once a year. When the client telephoned the bank in the summer of 2016 to obtain a new device to generate codes for accessing her online account, she learned that the bank had decided to terminate its business relationship with her back in late 2014. She also learned that special administrative charges of 250 CHF had been debited from her account every month over and above the usual charges.

The client then submitted a written complaint to her bank claiming that she had never received the termination letter and had not been informed about the introduction of these new charges. The bank refused to refund these charges to her stating that the administrative charges deducted from her account were in line with the current applicable charges. The bank also explained that under the terms of the account opening contract signed by the client, the bank was entitled to change that contract at any time. According to the bank, it is possible to obtain a current overview of any applicable charges and terms and conditions from the bank or these can be viewed online at any time. The client responded that not only had she not received any letter of termination but that the rest of the correspondence which should have been sent to her once a year had only arrived after her telephone request to the bank. In addition, she only learned during that call that the address saved in the bank's system did not match the correct contact details given in the account opening contract. The street number had been entered incorrectly. In its reply, the bank did not comment on these arguments but, this time, asserted that, according to its records, the letter informing the client about the termination and deduction of the administrative charges was sent to her on 30 December 2014 as part of a special consignment of the mail retained by the bank. Since this consignment was not returned to the bank, it believed that this permitted it to assume that the correspondence had been received by the client. As the client was not satisfied with this standpoint and as the bank told her it would not respond to any further letters in this matter, the client contacted the Ombudsman to request mediation on her behalf.

The clarifications performed by the Ombudsman with the bank revealed that the letter notifying the client about the termination of her account relationship and deduction of the administrative charges, like other letters from the bank, had indeed been sent to an incorrect address. Even though the bank had received the correct contact details from the client, these had then been entered in its system incorrectly. Furthermore, it was established that in February 2016 the bank received notification that a letter had been returned due to being sent to the wrong address. In spite of all that, the bank initially declared itself willing to refund only part of the administrative charges deducted over 18 months and amounting to the total sum of 4500 CHF. It emphasised that, under its general terms and conditions, it was the client's responsibility to inform the bank if the annual sending of the correspondence retained by the bank did not take place.

The Ombudsman found this suggestion unsatisfactory. He pointed out to the bank that it seemed doubtful that a notification, sent via hold mail only, announcing the termination of the account relationship and introducing high monthly penalty charges in the absence of account closure instructions, could be deemed validly served. This appears even more true given that the client could not have anticipated such a notification. With regard to the bank's assertion that the client did not report not having received the expected correspondence to the bank, the Ombudsman countered that, conversely, the bank could be expected to have investigated or contacted the client directly if an important response was expected from her, not to mention when it received notice of mail being returned. The bank should have realised, when it received the notice of mail being returned in February 2016 at the latest, that the address it was using was incorrect. It could then have quite easily located the client's telephone number in the online telephone directory. Following this intervention, and while still insisting on the client's responsibility in this matter, the bank ultimately declared its willingness to refund all of the administrative charges deducted to the client as a gesture of goodwill.