Termination of the business relationship by the bank after mediation proceedings closed with the Ombudsman

Topic: **Miscellaneous** Case number: **2017/21**

A client contacted the Ombudsman as he felt that the charge of 50 CHF deducted by the bank for cash withdrawals and payments made by debit card from his savings account was unjustified. Unable to find the contractual basis for these charges at first glance, the Ombudsman intervened with the bank. Unconvinced by the bank's explanations, he recommended that the bank reimburse the charges. It was only after lengthy negotiation that the bank agreed to do so. At that time, the bank did however state that the business relationship with the client would be terminated upon closure of the mediation proceedings on the grounds that the necessary mutual relationship of trust had been broken. Although the Ombudsman expressed his doubts about proceeding in this matter, the bank did not wish to discuss the matter further.

The young client was the account holder of a Youth savings account opened for him with the bank by his parents in 2001. After commencing his apprenticeship in 2015, from November of that same year, he began using his debit card to make regular small withdrawals from the bank's cash machines and to pay for his lunch in self-service restaurants. In July 2014, he received a letter from the bank informing him that withdrawals from the bank's cash machines and purchases from certain stores using his debit card would not incur charges.
In March 2017, having reached the age of majority, the client went into a bank branch to complete certain formalities. At this time, he was informed that, for his savings account, the first twelve withdrawals and purchases of the year would still not incur any charges but that he would then be charged 5 CHF for each additional transaction. The client then noticed, to his great surprise, that charges totalling 50 CHF had already been deducted from his account for February and March 2017. In light of the letter he received in 2014 however, he thought these withdrawals were free and unlimited. Since he felt that the deduction of such charges was a "breach of contract and of the principle of good faith", he demanded their reimbursement. In fact the client suggested that the contractual provisions concerning the charges entered into force on 1 January 2017 without him having been informed thereof.
The bank declared that it was unwilling to reimburse the 50 CHF however. It told the client that the main idea behind a Youth savings account is saving. That is why Youth savings accounts have higher interest rates. In addition, the rule stipulating that the first twelve withdrawals of the year would not incur charges, and that subsequent transactions would be charged at 5 CHF each, had nothing to do with the provisions regarding charges for debit cards. In fact, these charges were set out in a brochure and had been applicable, without any changes, since 2005. The bank also revealed that back in 2016, it had already given the client a rebate of 600 CHF on charges he had incurred. It felt that an additional gesture of goodwill was in no way necessary. Not satisfied with the bank's response, the client then contacted the Ombudsman.
The documents provided did not enable the Ombudsman to see whether the disputed charges were introduced by the bank in such a way that they formed an integral part of the contract. He therefore contacted the bank to ask when and how notice of the provisions regarding the charges had been sent to the client and his parents.

The bank replied that under its general terms and conditions, it was entitled to change its charges at any time. The charges made for the Youth account withdrawals had been valid, without change, since 2005 and not since 1 January 2017. In addition, the bank stated that it had sent an information letter in August 2016 in which it stated that the number of free withdrawals was limited. The client nevertheless continued to make chargeable withdrawals. Furthermore, in February 2017, a letter entitled “Recommendation: consider an alternative to regular withdrawals from your savings account” was then sent. This letter explained that it was possible to make twelve free withdrawals per year but that each additional cash withdrawal or purchase would be charged at 5 CHF. Finally, for the 650 CHF in charges incurred in 2016 for 130 chargeable withdrawals, the bank granted the client a rebate of 600 CHF. It therefore felt that an additional gesture of goodwill was not necessary.

Having reviewed the documents provided, the Ombudsman found the fact that the charges for withdrawals made prior to 20 March 2017 were the subject of a valid agreement between the parties to be debatable. The Ombudsman is of the opinion that any introduction of, or change to, charges should be communicated to clients in the normal manner and with adequate notice. It is not the clients’ responsibility to constantly check if new charges have been introduced or if there have been any changes by going into the branch or looking online. In this case, the Ombudsman was unable to establish that such communication of the charges had taken place. In his view, the August 2016 letter referred to by the bank, the aim of which was to provide information about a new bank card, was insufficient to conclude the existence of an agreement regarding charges between the bank and the client. Furthermore, the statement that the number of free withdrawals from savings accounts were limited, appearing at the end of a paragraph about the possibility of using the card to make cash withdrawals, was not clear in the least. The actual conditions (amount of the charges and number of free withdrawals) were not even stated. In the Ombudsman’s opinion, on the basis of that letter, the client should not have expected the charging structure in question.

It therefore seemed plausible that the client, relying on the information received in July 2014, thought he could make free withdrawals from the bank’s cash machines and especially since he only had one account with the bank, namely the savings account in question.

The Ombudsman also considered whether or not the client should have noticed that the cash withdrawals and payments were subject to charges when he received his annual statement for 2016 (no monthly statements were sent for the savings account). In fact, the statement did not show that charges had been incurred or that a rebate had been granted. The Ombudsman therefore found it completely plausible that a client making several withdrawals a week would assume that these were free given that no deduction of charges appeared on the statement for the period from May to December (and that, given the circumstances, he did not notice the deduction of 50 CHF for charges for the months of March and April 2016). It would be different if the bank had told the client that it had decided, as a gesture of goodwill, not to invoice him for the charges incurred from April 2016 but it did not do so. In addition, while the bank considered the silent waiver a generous gesture, proceeding in this way actually reinforced the client’s idea that the transactions would not incur charges.

The Ombudsman did feel however that the client had been sufficiently well informed about the charges in the letter sent to him in February 2017. The letter did actually state that the provisions would enter into force after a specified period and gave the client time to become aware of them and adapt his behaviour accordingly if necessary. Thus, the existence of a valid contractual basis for the charges deducted for withdrawals made from around mid March 2017 could be assumed.
All in all, the Ombudsman felt that no clear and transparent information about the charges had been sent before the February 2017 letter. He therefore suggested the bank reimburse the charges of 50 CHF deducted for February and March 2017. The bank responded once again however that it had already been very generous and that the client had continued to make withdrawals even once he had

been notified about the applicable charges, hence why the bank was refusing any new gesture of goodwill.
Following lengthy negotiations, the bank finally agreed to reimburse the 50 CHF while informing the Ombudsman that it intended to terminate the business relationship with the client upon closure of the mediation proceedings. The bank felt that the client had acted recklessly and that the relationship of trust with him had been broken.

The Ombudsman tried, in vain, to dissuade the bank from terminating the business relationship. He was aware however that the decision to terminate the business relationship resulted from the bank's business policy over which he had no control. In his opinion however, the client's conduct did not contravene the principle of good faith. In fact, it seemed indisputable to him that the client had claimed in good faith that the charges had not been agreed upon, and even more so given that the Ombudsman himself was not convinced about the existence of an agreement on charges between the parties. It is also clear that the Ombudsman would not get involved on behalf of a client acting contrary to the principle of good faith. Quite the opposite, the Ombudsman feels that banks should be expected to notify their clients about any fees collected transparently. Finally, he did not understand why the bank had never contacted the client, particularly to tell him about the rebate of fees granted in 2016.
The Ombudsman also reminded the bank that mediation proceedings are open to any client of the bank. Hence, the client should not be penalised for having taken advantage of this possibility and for the fact that the Ombudsman intervened with the bank on his behalf. Such sanctioning of the client following closure of the mediation proceedings would harm the institution of the Ombudsman and the reputation of Swiss banks. The bank was not open to this important argument raised by the Ombudsman and persisted in its decision to terminate the business relationship.