

Time limits for retaining and providing bank documents

Topic: **Miscellaneous** Case number: **2017/26**

The client tried to request details and documents from the bank pertaining to three payments he had made from his account approximately fifteen years earlier. The payments were made into his son's private pension plan (third pillar). The reason behind the client's request was his son's divorce. Without providing any further explanation, the bank advisor simply responded that the bank was unable to perform searches on transactions dating back more than ten years. The detailed information from the Ombudsman ultimately enabled the client to obtain the desired information from the bank directly.

The client held an account with the bank. According to his version of events, approximately 15 years ago, he had three substantial payments debited from this account to his son's private pension plan. These three payments were made correctly but, unfortunately, he no longer had the documents evidencing them or account statements from that time. Now, as part of divorce proceedings and liquidation of the associated matrimonial property, his son had to provide the court with documents to enable it to decide whether these three sums could be regarded personal property or matrimonial property. Since his son no longer had any of the relevant documentation, the client asked his bank to send him supporting documents for the corresponding payments. Without any further justification, the bank advisor responded that the bank was unable to locate the documents which dated back more than ten years. The client then contacted the Ombudsman. He asked him, on the one hand, if the bank was actually unable to obtain the documents he requested and which were issued approximately fifteen years previously, and, on the other, if the Ombudsman could order the bank to provide these documents. Regularly faced with similar requests, the Ombudsman took this opportunity to reply to the client's request in detail, providing him with the information summarised below.

Like all companies obliged to keep proper records, banks have a duty to keep their archives which include, in particular, accounts and commercial correspondence. This obligation to keep records is limited to ten years however (Article 958f of the Swiss Code of Obligations). From expiry of that period, the bank is permitted to irreversibly destroy the records kept by it up to that point. The issue of knowing whether, and where applicable, when and to what extent a bank exercises this right is determined by the latter's commercial policy, probably taking into account, among other things, the costs involved. Given that documents now are often no longer kept in physical form but on data media (microfilms, digital data storage media, etc.) it is possible that the documents may still exist even after expiry of the retention period. The fact that it may no longer be possible to find certain documents or that it may not be possible to read others due to IT system changes that have taken place in the meantime, should not be ruled out however.

The Ombudsman was unaware of the specific situation of the bank in question in this case. The wording used by the bank advisor however did not rule out that the documents, issued over ten years previously, may still exist but that the advisor was unable to view them electronically in the bank's system and print them. If this was the case, this would raise a new question: is there another way, within the bank, of reproducing account statements, either in hard copy or on a data medium, dating back approximately fifteen years? The Ombudsman was therefore unable to definitively determine whether or not the bank was actually capable of obtaining documents issued approximately fifteen years earlier. It was clear however that the bank was under no obligation to retain such documents.

Moreover, even if the documents or information did still exist in physical form, the bank was in no way obliged to manage them in such a way that they could be located or reproduced.

Having said that, the Ombudsman also pointed out that, in general, banks have a duty of loyalty to their clients. In accordance with said duty, the bank could be expected to make special efforts to find the documents issued and sent in the past that it was no longer obliged to retain, and if it managed to find them, to make them available to the client again. In the Ombudsman's opinion however, such an obligation could only be invoked if, on the one hand, the client was able to prove that his request was based on a substantial interest and one worthy of protection, and that, on the other, the effort required by the bank was not disproportional. It is also clear that, where applicable, the bank may demand compensation for any expense incurred as a result of its efforts.

The Ombudsman noted that in this case the client's request to the bank was based on the financial interests of the client's son, not the client himself. Since the bank did not have any contractual relationship with the son, it was under no obligation to safeguard his interests. Furthermore, the Ombudsman was in some doubt as to the need to provide the documents requested by the client in order to prove that the latter was indeed the party that made the private pension plan payments in question in this case. This therefore raised doubts about the fact the client had a substantial interest and one worthy of protection. Ultimately, the Ombudsman initially suggested that the client contact the bank's management again drafting a letter detailing the reason behind his request, inviting the bank to state its specific position in writing regarding the matter, and inquiring about the amount the bank would charge him, if it agreed to fulfil his request, for the clarifications and effort it would need to make. Then, depending on the response, the client would be able to contact the Ombudsman again unless the bank claimed that the documents had been destroyed or could no longer be found and provided without a disproportionate amount of effort.

The client followed this advice and contacted the bank. He then informed the Ombudsman that the bank was able to provide him with the three supporting documents in the required form. He felt this positive outcome was due to the Ombudsman's detailed explanations which he had made the bank aware of. The bank therefore met the client's request without any need for intervention by the Ombudsman.