

Written investment advisory agreement

Topic: **Investment advice** Case number: **2018/12**

The bank suggested conclusion of a written investment advisory agreement to the customer. The customer did not wish to accept the offer, whereupon the bank told him that it would no longer provide him with investment advisory services. The customer asked the Ombudsman if the bank was obliged to continue providing its services to him to the previous extent. The Ombudsman had to disappoint the customer by answering this request in the negative.

An elderly customer informed the Ombudsman that he had been with the bank for many years, during which time he received “private banking” services for which he paid the bank fees of several thousand Swiss francs per year. The bank had now presented him with a written investment advisory agreement to sign. This agreement outlined which investment advisory services the bank would provide in future and the corresponding prices. The customer told the bank he did not wish to enter into this agreement and assumed that the bank would continue to provide him with the required investment advisory services in the future under the same terms and conditions. The bank notified him however that it was no longer willing to provide investment advisory services without the conclusion of a written investment advisory agreement. It provided the customer with several pricing models for this. As the customer pointed out, the bank had presented him with the most expensive of these offers. For the following reasons, the Ombudsman had to answer the customer’s question, of whether the bank was obliged to continue providing these services to the previous extent, in the negative.

In the Ombudsman’s view, the so-called freedom of contract is a fundamental principle of Swiss law. On this basis, no one can be forced to enter into a contract with another party or to maintain a relationship in a specific form, except where they have been previously contractually obliged to do so. Banking services are also largely subject to the law of agency. Article 404 of the Swiss Code of Obligations stipulates that agreements of this nature may, in principle, be terminated at any time by either party. It also follows from the right to terminate at any time that a bank is able to impose contractual changes at relatively short notice. If the other party does not agree with said changes, it must look around for another, more suitable offer.

This is consistent with the Ombudsman’s observation that many banks now only wish to provide investment advisory services on the basis of written agreements and in return for an appropriate fee. There could be many reasons for this. Not least the increasing loss of indirect remuneration, e.g. retrocessions, has perhaps led the bank to only provide advisory services in return for direct fees.

In principle, the bank is free to refuse to provide investment advisory services where customers do not wish to enter into contracts that the bank deems necessary for such services. Such decisions pertain to the bank’s business policy and are not subject to evaluation by the Ombudsman according to his rules of procedure.