

Annual Report 2015

Swiss Banking Ombudsman

2015 In Brief

In addition to the statistics on mediation cases and dormant accounts, an analysis of two main topics and 24 selected case examples, the summary below provides an overview of the issues the Ombudsman dealt with over the year under review.

Financial Services Act

On 4 November 2015 the Federal Council adopted the dispatch on the Financial Services Act (FinSA). The act governs the prerequisites for providing financial services and offering financial instruments. The aim is to improve investor protection by means of comprehensive provisions on transparency. Bank customers will also have improved possibilities to enforce their rights thanks to strengthening of the ombudsman offices. The draft enshrines the principle that disputes about legal claims between customers and financial service providers should as far as possible be dealt with in mediation proceedings by an ombudsman office. To this end, all financial service providers shall be affiliated with an officially recognised ombudsman office and be obliged to take part in proceedings brought against them. From the Ombudsman's perspective the proposals on ombudsman offices (Articles 77ff) are by and large very satisfactory. The Ombudsman also welcomes the proposal of the Federal Council that decision-making authority remains with the civil justice system. Addressing the issue of very high costs involved in certain cases, the Federal Council proposes a solution that comes under the Civil Proceedings Ordinance.

Publication of dormant assets

For over 20 years it has been possible to search for dormant assets held with banks across the whole of Switzerland through the Swiss Banking Ombudsman. As an independent office the Ombudsman has access to a specially created central database in which, since 2001, details of all dormant customer relationships at all banks in Switzerland have been recorded and kept up to date. On 1 January 2015 an additional rule on dealing with dormant assets came into effect. It states that each year the oldest portion of these dormant customer relationships (where there has been no contact for 60 years) will be published on the internet during one year and if no substantiated claims are made within that time, the respective assets will be liquidated by the bank and transferred to the Federal government. An electronic platform designed to allow all banks to jointly publish dormant assets went live on 16 December 2015 at www.dormantaccounts.ch. Since then the Ombudsman has been available for general enquiries and assistance with problems with the publication platform. The announcement of the initial publication was greeted with great interest, especially in the foreign media, and – as a side effect – in the first few months after the

platform went live, as many enquiries for dormant assets (which would have been possible already before) were received by the Ombudsman as normally come in over an entire year.

Decision by the Swiss National Bank of 15 January 2015

On 15 January 2015 the Swiss National Bank (SNB) unexpectedly announced that it was discontinuing the minimum exchange rate of CHF 1.20 per euro with immediate effect. This promptly resulted in a sharp appreciation of the Swiss franc, especially against the euro and the U.S. dollar. At the same time, the SNB lowered its interest rate on sight deposit account balances exceeding a given exemption threshold to -0.75% and moved the target range for three-month LIBOR further into negative territory. This decision had far-reaching effects on the Swiss economy, and hence also on bank customers. The Ombudsman has dealt with numerous customer complaints on various issues in connection with the consequences of this decision.

Selected cases

Discontinuation of the minimum exchange rate against the euro

The decision by the Swiss National Bank to discontinue the minimum exchange rate between the Swiss franc and the euro led to numerous complaints. Not only were pending foreign exchange trades in these currencies, as well as in U.S. dollars and pound sterling, affected, the decision also had an impact on various banking products and the processing of the respective transactions. For example, stop-loss orders could not be executed at the defined limits due to a lack of liquidity available in the market, meaning that the actual purpose of such orders was missed. Credit card statements regarding transactions in various foreign currencies and the exchange rates applied caused complaints, as did the market turbulence in general: in some cases, subsequent corrections of exchange rates were made to transactions already settled during this period of uncertainty of 15 and 16 January 2015, with the market turbulence cited as the reason for the corrections.

Negative interest rates

In conjunction with the discontinuation of the minimum exchange rate of the Swiss franc against the euro, the Swiss National Bank also decided to introduce a negative interest rate for banks on deposits above a certain exemption threshold. This interest rate was set at -0.75%, and as a result short-term money market rates such as LIBOR also moved into negative territory. One question that had to be answered was whether and to what extent banks have to take these negative interest rates into account for loans where the rate charged to the customer was contractually agreed as comprising a margin on top of such a short-term benchmark rate (e.g. LIBOR mortgages) – which would lead in extreme cases to the customer being credited interests rather than debited. Some banks had already allowed for the possibility of negative money market interest rates in their standard loan agreements for some years by specifying that the reference interest rate applicable to the customer could not be negative, i.e. always had to be at least zero. In these cases there was no need for any discussion. It was an issue, however, in cases where agreements did not explicitly provide for the possibility of negative LIBOR rates. In the opinion of the Ombudsman, both sides were able to present reasonable grounds for their positions and in some cases customers had to be referred to legal action.

Fixed-rate mortgages

The interest rate turmoil also affected long-term rates in the money and capital markets (e.g. swap rates), which were also negative at longer maturities, as were the yields on long Swiss government bonds. This in turn, in some cases presented to the Ombudsman, influenced the calculation of early redemption costs when fixed-rate mortgages were repaid ahead of schedule. The respective agreements normally state that in the event of early repayment a penalty is due which is equal to

the difference between the interest income foregone due to early repayment of the mortgage and the income that could be generated by reinvesting the capital repaid over the remaining contractual term in the money or capital market. Reflecting the yield curve, certain banks applied negative reinvestment rates, so that the early redemption penalty charged to the customer was higher than the mortgage interest owed for the remaining term. Other banks applied interest rates of at least zero in their calculations. Here too, there are arguments for both views. Some banks could not be persuaded to refrain from applying negative reinvestment rates. As a result, this question of principle may also have to be decided by the courts.

Investment advice and asset management

Most customer complaints received in this category involved the question of whether duties of advice incumbent upon the bank when providing investment advice, or whether, in case of asset management mandates, the agreed investment guidelines had been observed. Where a bank provides advice it must ensure that its recommendations match the customer profile in terms of risk appetite and risk capacity, and that it provides appropriate information on the risks and characteristics of investments it recommends. The amount of product and risk information to be provided must reflect the customer's knowledge. The bank must further ensure that its recommendations do not result in cluster risks. For asset management mandates the bank must ensure that the type of mandate recommended matches the investor profile and that the agreed investment guidelines are observed at all times. Where the customer's risk appetite is excessive, the bank may have to issue a warning.

Misuse and fraud

Fraud involving credit cards and bank cards remains widespread. A whole range of patterns of fraud can be observed which are now well known thanks to media reports, e.g. the manipulation of ATMs to obtain cards or read the data stored on them in order to make duplicates, or the use of miniature cameras or other methods to spy on customers entering their PIN code before stealing the card. In case of withdrawals with copied cards, banks generally bear the loss, if the customer has not breached any duties of care. The situation can be different with card theft and spying on PIN codes. Where withdrawals are made with the original card and the correct PIN, banks generally claim that the customer has breached his or her duties of care (that the cards should be kept safe and the PIN known only to the customer) and refuse to bear any share of the loss. Customers are in any case well advised to have their card blocked immediately after losing it (also on trips abroad) and to check regularly that their card has not been misplaced. Cases where customers are forced to hand over their card and PIN under threat are on a different level of criminal energy. There are also repeated cases of fraudulent transfer instructions to the bank, either in writing with forged signatures or electronically by using hacked e-mail accounts. Cases like these raise the question of whether both, the bank, as well as the customer, have appropriately performed their duties of care.

Charges

Bank charges and customer complaints about them are a recurring issue. When reaching a view the Ombudsman follows the basic rule that bank charges are owed if they have been agreed or are customary. In most cases it is a matter of checking whether the customer accepted a particular charge, and if so in what form. This is normally the case where the bank has given advance notice in good time in an appropriate manner that it intends to introduce or increase a charge so the customer can avoid it by ceasing to use the service in question or terminating the business relationship. In the Ombudsman's opinion, retrospective adjustments to charges are not permissible. It can be harder to reach a view on adjustments that are significant and, from a customer's perspective, rather unexpected, if customers have given instructions for their mail to be withheld at the bank and the bank has given the relevant notification solely by placing the correspondence in the respective post box at the bank.

Credentials

According to its Foundation Charter the Ombudsman deals with questions and complaints from bank customers. Like the bank, the Ombudsman too must respect the customer's right to confidentiality. The Ombudsman is therefore unable to accept issues raised by a third party in connection with a particular banking transaction unless that third party has demonstrated that it is a representative of the customer authorised to represent it in the Ombudsman proceedings. Where more than one person is party to a banking relationship, such as a community of heirs, or where the bank's contractual partner is a company or partnership, for instance a consortium carrying out a construction project, the Ombudsman must always check whether the person he is dealing with has sole authority to assert claims under the contractual relationship with the bank or if others need to be involved or give their consent. If the person putting forward the complaint is unable or unwilling to present the required credentials, this generally means that the conditions for intervening with the bank are not met and the Ombudsman is restricted to providing general advice. The Ombudsman also frequently has to deal with questions of credentials as a source of the disputes submitted to him. Examples included spouses who have joint and several liability for home financing and are unable to agree on the further use of the mortgage loan, and cases where costs incurred upon death are supposed to be covered from the credit balance on the account of the deceased customer while the heirs have not yet been identified.

Facts and figures

Compared with the previous year the total number of cases dealt with (verbally and by correspondence) rose by 5% from 2'002 to 2'103 cases. With the exception of the year 2013, where the issue of retrocessions caused an exceptionally high number of cases, this is the highest number yet since the absolute record in the years 2008 and 2009 (the financial crisis). Particularly strong increases were seen in the areas of mortgages (negative interest rates) and accounts, payments and cards (fees, foreign status of the customer).

Public relations

The Ombudsman intervenes and mediates on an individual and confidential basis. This is generally done in writing. In the morning the telephone lines are open to the public. The Ombudsman and the members of his office are happy to inform customers about their proceedings and rules applicable to banking relationships. Issues raised are first answered informally and broadly. Many enquiries made by telephone concern dormant assets. In these cases it is a matter of pointing out the various procedures and ways to locate accounts. Information and advice is always tailored to the individual case.

At the annual press conference, the Ombudsman he presents the annual report for the previous year and current topics. In addition to the press conference, information can also be found on the website, where earlier press releases, annual reports and many case studies are available. The website also has important information such as the rules of the Ombudsman's office, a description of the proceedings, explanations about dormant assets and public statements on various issues. The Ombudsman is also in regular contact with the media.

Over the year the Ombudsman met representatives of various financial institutions. Members of the office also played a large part in the dormant assets working group of the Swiss Bankers Association. The annual exchange of views on current issues also took place between the full Board of the Foundation and the Chairman and CEO of the Swiss Bankers Association.

The Ombudsman was again much in demand as a speaker. In April he spoke at a conference at the University of Lausanne on "The banking ombudsman: alternative dispute resolution". The Deputy

Ombudsman gave a speech at the "2015 Update on Financial Regulation" conference at the Zurich University of Applied Sciences School of Management and Law in June on "The role of the Ombudsman's Office under the new financial market regulation".

At international level the Ombudsman took part as an observer in a meeting of FIN-NET (the financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries). This body focuses on the European Directive 2013/11/EU on alternative dispute resolution for consumer disputes. It is worthwhile pointing out that the present structure of the Swiss Banking Ombudsman is fully recognised.

In September 2015 the Deputy Ombudsman attended the annual conference of the International Network of Financial Ombudsman Schemes (INFOnet) in Helsinki and made two speeches: "What is hot in problem solving? What is trending" and "Differences in the type and quantity of data published by different financial ombudsmen". As the Swiss Ombudsman enjoys special recognition in this body he was also asked to take part as a panellist in the subsequent discussions. These meetings allow the Swiss Banking Ombudsman to maintain valuable contacts and to gain insight into very different systems around the world.

At the invitation of the Financial Ombudsman Institute, in May the Ombudsman took part in a conference in Yerevan, Armenia and gave a speech on the topic of increasing public confidence and enhancing financial inclusion, entitled "Independent Mediation by the Swiss Banking Ombudsman".

Electronic submission for customers by internet

Since beginning of May 2015 customers have the option of making submissions to the Banking Ombudsman electronically via the website. This possibility is frequently made use of.. During the year under review the Ombudsman's Office received 102 submissions over the internet, equivalent to over 10% of total submissions received in writing.

Assets without contact and dormant assets

As mentioned above (see the section on publication of dormant assets), the number of questionnaires sent out rose sharply from 831 in the previous year to 1'503 in the year under review. Of the total of 532 questionnaires returned, 484 were deemed sufficient and 556 searches were made in the central database. 30 banking relationships with assets worth CHF 19.9 million and two safety deposit boxes could be made available to entitled persons. Since 2001, when the current search system was introduced, the Central Claims Office has identified a total of 387 dormant and contactless customer relationships and made available assets worth CHF 72.4 million, as well as 44 safe deposit boxes.

The Office

The new logo and updated corporate image of the Banking Ombudsman was presented at the media conference in July 2015. The annual report in a correspondingly redesigned layout appeared at the same time.

Apart from these visual changes, the year under review also saw some internal improvements to procedures and IT processes, qualitatively improving daily work in the Office of the Ombudsman. Following the retirement of a long-serving Deputy Ombudsman in early 2015, at the end of the year the team again consisted of eight proven specialists and experts.

30.06.2016