2020 in brief

The Covid-19 pandemic had an enormous impact on 2020, including for the Banking Ombudsman. Measures taken by the Federal Government in March 2020 forced the Ombudsman's office to switch over to home-officing on just a few days' notice. Thanks to its state-of-the-art technology and reorganizing of internal processes, the Ombudsman managed to adapt to the new situation without interrupting its activities. Since the number of telephone queries, written submissions of new ombudsman cases and search requests for assets that are dormant and/or without contact did not decrease but rather remained high or even increased despite the restrictions imposed on public life, the Ombudsman's office constantly had a heavy workload throughout the year under review. Nevertheless, clients' requests could be processed within the usual timeframe. In a few cases, delays unfortunately occurred, partly due to late submission of opinions and replies by the parties involved.

Ombudsman proceedings

In the year under review, the Covid-19 pandemic led not only to organizational challenges for the Ombudsman's office but also manifested itself in the complaints. Besides a large number of different cases concerning various products and services offered by financial institutions, the Ombudsman had to deal with numerous complaints that involved clients who were victims or criminal offences committed by third parties and subsequently brought claims against their bank. The big increase is with no doubt at least partially due to the Covid-19 pandemic. The issues will be described below in the "Fraud" section. The Covid-19 pandemic, or the market turbulence that was primarily influenced by it, also impacted the cases discussed below under the section "Credit-financed investment transactions". For selected cases drawn from the full range of the Ombudsman's activities, see our case studies 2020 on our website www.bankingombudsman.ch/en/case-studies/.

In the course of the above-mentioned market turbulence, various clients complained to the Ombudsman that their bank failed to execute their securities transactions orders in a timely manner (e.g., see cases 2020/25 and 2020/18). In case 2020/23, it was disputed, on the one hand, whether the client had effectively placed an order to sell in view of a feared price drop in/of his securities and, on the other, whether the bank's advice to postpone the sale was reasonable in March 2020. In the credit sector, the Ombudsman had to deal with problems related to Covid-19 loans. One typical example is case 2020/15 in which the issue in dispute was the terms of repayment of an excessively big Covid-19 loan resulting from an overstatement of sales revenue figures.

Other credit-sector cases handled by the Ombudsman involved disputes in which clients alleged that their bank refused to let them exercise their option to buy their leased vehicle upon expiry of the lease agreement (see, for example, case 2020/16). In case 2020/17, clients had overlooked the fact that, in order to make the desired changeover to another bank, they had to terminate their fixed-rate mortgage with a six months' notice to the maturity date.

Problems related to foreign exchange rates are submitted to the Ombudsman on a regular basis. In case 2020/04, a client complained that the exchange rate that his bank applied to an e-banking transaction

was significantly less favourable than the rate that the system had previously displayed to him. The client in case 2020/32 complained that, in his opinion, the exchange rate applied to a credit card transaction was excessively high and non-transparent.

The Wirecard scandal in the year under review did not pass by the Ombudsman unnoticed. Various clients who suffered losses with structured products (Barrier Reverse Convertibles) on Wirecard shares contacted the Ombudsman with massive accusations against the issuers of such products (see case 2020/26 for example). A loss on investments was also the subject matter of the case 2020/24, in which the main issue in dispute was whether the bank had drawn up the client's profile accurately and drawn the correct conclusions for investment advice.

The Ombudsman handled a case in the pension products sector where a client had forgotten to inform his bank's pension foundation that he wished to continue working beyond the normal retirement age and therefore did not yet wish to withdraw his Pillar 3a assets yet (2020/19). It was disputed whether the withdrawal of the assets reported by the pension foundation was reversible. The issue in case 2020/27 was the price applicable to the redemption of Pillar 3a investment fund shares, giving the Ombudsman another opportunity to explain the "forward-pricing" principle, which is so important in the investment fund sector. In case 2020/20, the client disputed that the bank had the right to set off claims based on an old bankruptcy loss certificate against his claim for disbursement of his Pillar 3a assets.

Under what circumstances can amounts credited to a client account be subsequently reversed by the bank? That legally interesting question arose in case 2020/03. The proof of entitlement of the heirs and executors of deceased bank clients also raises questions on a regular basis. In case 2020/21, the bank refused to allow an executor to close a bank account, citing, among other reasons, a pending inheritance dispute. In case 2020/22, the issue was whether the heirs of a client who died in Germany had to produce a certificate of inheritance to obtain certain information about a closed bank account or whether the officially opened will suffices as proof of entitlement.

In case 2020/02, it was disputed whether a deposit receipt issued by an automatic teller machine was enforceable against the bank under the specific circumstances. In case 2020/01, the only reason why the client fell short of the minimum amount of annual deposits to qualify for bonus interest was that the bank, unlike in previous years, charged her a postage fee of 85 Swiss centimes for sending the year-end statement, to which the client objected.

There were also disputes about fees in the year under review. In case 2020/29, the bank revoked special terms of the client without notice, which led to multiplying the costs of the investment advisory agreement. The client objected and asked the Ombudsman to mediate.

Finally, the Ombudsman worked on several complaints related to tax issues. In case 2020/31, a company domiciled in a typical offshore country objected to the bank charging it considerable fees for US tax attorney's investigations on tax risks, which had been commissioned by the bank itself. The Italian clients in case 2020/30 disagreed with the bank suddenly passing on to them, in the course of an ongoing fixed-rate mortgage, taxes collected by the Italian tax authorities on the bank's interest income

from the loan. In case 2020/28, the client assumed, based on the bank's incorrect tax statement, among other things, that she had earned capital gains on physical precious metals that were tax exempt at her tax domicile. When it turned out she was the holder of a precious metals account instead and liable to pay capital gains tax, she held the bank responsible for the resulting tax burden.

Overall, the year under review was demanding and challenging for the Ombudsman's office, but also very interesting. Incidentally, among the numerous cases of fraud, certain complaints concerned banks outside the Ombudsman's area of competence. Since he cannot handle such cases, he was restricted to merely give clients tips on possible further steps, such as filing a criminal complaint.

In the year under review, the banks in question followed the Ombudsman's recommendations in the vast majority of cases. In the 20 or so cases in which they did not, the Ombudsman had to refer those clients to the ordinary courts. The clients' further course of action is unknown in most cases. A total of 6 of those cases concerned early repayment penalties, in which the clients were charged on the basis of negative reinvestment interest rates. The Ombudsman does not know of any court judgments on this subject to date that would have supported the bank's standpoint in the Ombudsman proceedings. In the year under review, however, it learned of two cases in which the clients in question sued the banks after the Ombudsman proceedings. According to that information, the bank fully recognized the claims in court in both cases, in one case, even prior to the scheduled trial before the justice of the peace.

Financial Services Act (FinSA)

The Swiss Banking Ombudsman institution was created as a foundation in 1992 by the Swiss Bankers Association as part of the self-regulation of the banking industry. The duties, responsibilities, procedural principles and financing of the Ombudsman's office and the duties to cooperate of the banks subject to enquiries and complaints were regulated on the basis of association and foundation law. This private las basis, which still exists, was supplemented by a partially overlapping new regulatory basis, the Financial Services Act ("FinSA"); the Federal Council brought the FinSA into force as at 1 January 2020.

In the year under review, two elements of FinSA were relevant to the Ombudsman: firstly, the requirement under FinSA Article 84 for ombudsman offices acting as mediators in disputes involving claims between clients and their financial service providers to obtain accreditation from the Federal Department of Finance (FDF) and, secondly, the obligation under FinSA Article 77 for a company qualifying as a financial services provider as required by law to be affiliated to an FDF-accredited ombudsman office by no later than the start of its activities.

By the end of November 2019, the Ombudsman had already submitted an application for accreditation of its institution by the Federal Department of Finance. That application was granted by the ruling of 24 June 2020.

What was remarkable about the affiliation requirement for financial services providers was that, although the FinSA and FinIA (Financial Institutions Act) were not put in effect until early 2020, the legislators had already made an initial revision to both new financial markets acts in the meantime.

Thus, through the Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology of 25 September 2020, the legislators decided to limit the scope of the provisions regarding the affiliation requirement in two respects under FinSA Article 77 and FinIA Article 16. They did so, firstly, by introducing an express limitation on the provision of financial services as defined under FinSA Article 3(c) and secondly by exempting from the affiliation requirement such financial services providers and financial institutions as provide financial services exclusively to institutional clients or professional clients as defined under FinSA Article 4 (3) and (4), respectively.

According to the applicable regulations, the Swiss Banking Ombudsman works for the clients of the member institutions of the Swiss Bankers Association as an independent and neutral information centre and mediator handling questions and complaints about banking and financial service transactions conducted with such member institutions. Institutions that are subject to an affiliation obligation with an accredited ombudsman office under the new financial market acts must be able to provide proof of such affiliation to their supervisory authorities. In addition, ombudsman offices are required by law to inform the competent supervisory authorities about the financial services providers affiliated with them. In the year under review, the Ombudsman therefore issued a written affiliation certificate to 307 institutions reported to it by the Swiss Bankers Association and reported them in turn to the Financial Market Supervisory Authority FINMA.

Since the start of its activities in 1993, questions and complaints concerning transactions with foreign branches of institutions have been expressly excluded from the Swiss Banking Ombudsman's area of responsibilities. The FinSA, however, now also requires foreign institutions providing financial services to clients in Switzerland to be affiliated to an accredited ombudsman office. According to the declared intention of its founder, the Swiss Banking Association, the Swiss Banking Ombudsman is supposed to be available as an ombudsman office to all the institutions falling under its area of responsibilities that are required to be affiliated to an ombudsman office. At the Board of Foundation meeting of 3 December 2020, it was therefore resolved to extend the Ombudsman's area of responsibilities. According to the amendment under Article 2 of the Rules of Procedure effective 1 January 2021 the Ombudsman will now also be responsible for such transactions with member institutions of the Swiss Bankers Association domiciled abroad, as long as financial services provided to private clients pursuant to FinSA Article 3(c) or Article 4 (1) and (2) of the Financial Services Act are involved.

Besides the requirement to be affiliated to an ombudsman office, to pay the corresponding membership fees and to take part in mediation proceedings, the FinSA now also imposes a statutory obligation on financial services providers to inform clients of the possibility of mediation proceedings conducted through the Ombudsman's office. The financial service provider is required to provide such information at various points in time and on different occasions:

- when entering into a business relationship
- when rejecting a claim asserted by a client
- whenever such information is requested

From the Ombudsman's point of view, it is probably most useful to provide such information upon rejecting a client's claim. In any case, institutions must be careful as not to created unnecessary work

and bureaucratic burdens, as may occur if the financial services provider has failed to thoroughly examine the claims brought against it and to make decisions at the proper hierarchical levels before referring the client to the Ombudsman's office. The same may happen if the institution fails to inform the client of its positions and arguments clearly and transparently. According to the principle of subsidiarity, the Ombudsman does not normally respond to a request for mediation unless the client has submitted a written complaint and claim to the financial institution, which, if unwilling to grant the client's claim, has provided the client a reasoned reply in writing. If the institution refers the client to the Ombudsman before having reached that point, the Ombudsman generally has no alternative but to make up for the omissions through Ombudsman proceedings, which unfortunately often results in additional expense and also entails extra costs for the bank.

Fraud

Fraud was booming in the first year of Covid-19, as we know. Due to the lockdown, it was primarily committed in the online environment. The term "fraud" is used below in the colloquial sense rather than according to its statutory definition under the Swiss Penal Code.

Unfortunately, fraudsters regularly succeed in tricking bank clients into disposing of their bank account balances under false pretences (e.g., by withdrawing cash at the bank counter or from ATMs and transferring it to the fraudsters and their accomplices). In other cases, clients are misled about how their funds will be used in order to induce them to make payments or charge their credit cards. Such transactions are summarized under the term "APP" ("Authorized Push Payment"). This means that it is undisputed that the bank client ordered the transactions in question but was successfully misled by the fraudster about the reasons underlying the banking transactions and misunderstood what the money moved through the transactions would be used for. When such swindles become apparent, it is often hard to understand how the victim could have been successfully deceived, which often adds considerable mental aggravation to the financial loss.

Another category of cases involves schemes by which fraudsters gain direct access to the client's bank account balances, e.g. by initiating transactions with forged signatures or, more common these days, by acquiring the client's e-banking login information and using it to trigger payments to themselves. In some cases, they seek access to clients' bank cards and PIN codes, which they then use to make cash withdrawals or online purchases. New technical developments and products are quickly and accurately analyzed for weaknesses and may provide new fields of activity for fraudsters, such as making use of credit cards in "digital wallets" such as Apple Pay or Samsung Pay. There is a real competition between the financial services providers and the criminals: the criminals keep developing new methods to get at the money of the financial services provider's clients; the financial services providers try to prevent them from doing so by warning the clients and closing potential security gaps.

It is generally impossible for the victims of such fraud to recover their money because the perpetrators are usually unidentifiable. Often, it is presumably well-organized gangs operating internationally that are behind such criminal activities. In the rare cases in which such perpetrators are caught, they are usually incapable of compensating for the loss. All such cases are submitted to the Ombudsman because the

clients believe that the bank should reimburse them for the money they lost, arguing that it must have breached its duty of care, whereas the bank rejects the requests for reimbursement.

Contrary to certain clients' expectations, the bank is by no means automatically liable for losses incurred by victims of criminal offences. On the contrary, Swiss law tends to assume that such losses must primarily be assumed by the victim. Third parties can be held liable only in exceptional cases. As a general rule, a bank can be held liable only if it has committed a culpable breach of contract and thereby caused a client to suffer a loss through a so-called adequately causal nexus. Adequate causality means that the breach of contract is likely to cause a loss as the one in question based on general life experience and the ordinary course of events to be expected. Whether or not the bank is liable in a specific case depends on the concrete circumstances, the applicable statutory and contractual provisions as well as the relevant case law and legal doctrine. The Ombudsman also takes considerations of equity into account when handling such cases, since clients regularly suffer heavy losses from such criminal activities.

When a bank receives a payment order, it has a duty to perform an authentication check with due care to ensure that the person who gave the order is authorized to do so. If the order is given manually, then the authentication check usually involves verifying the client's signing authority and comparing his or her signature with the specimen on file. If the order is given electronically, then any person who logs into the system using the agreed means of authentication is considered to be a legitimate user. If the user successfully passes the authentication check, the bank must execute the order in a timely manner. The bank has no obligation to check the client's motives for the payment or the recipient's integrity. On the contrary, it is incumbent upon the client to make sure that he wishes the order to be executed as given and to examine the recipient.

Clients often allege that the bank breached its duty of care by violating anti-money laundering regulations. Such regulations generally require the bank to make further inquiries when confronted with unusual transactions. Yet such obligations are primarily incumbent on the receiving bank, which has to credit the funds to a client account. The origin of the funds ought to be known to the sending bank. Moreover, it is not the purpose of anti-money laundering provisions to protect clients from losses caused by their own ill-considered orders.

In case of misuse of cards such as debit or credit cards, the card issuer will generally assume a liability if the client has fully complied with the duties of care set out in the card's terms and conditions. The Ombudsman has observed that the list of such duties set out in card's terms and conditions has in tendency grown more extensive in recent years, which can be explained by the new ways in which the cards can be used. In addition, such duties of care imposed on the client are being interpreted more and more strictly.

See on the website www.bankingombudsman.ch/en/case-studies/ in the category "Abuse and fraud" a selection of cases handled by the Ombudsman in the year under review. A number of clients have submitted complaints to the Ombudsman, which it has brought together under the term "brokerage cases". Fraudsters induced those clients to transfer funds to brokers for alleged investment transactions.

The moneys subsequently vanished, either because it had been misappropriated or lost through highly-speculative trades. The clients reproached the banks with making the payments in question without prior warning (see case 2020/07 for example).

These clients argued that the banks failed to monitor their activities to a sufficient extent. The client in case 2020/08, on the other hand, complained of excessive monitoring on the part of the bank, which found her transfer orders unusual when she tried to transfer money to an online acquaintance abroad. Suspecting a “romance scam”, the bank tried to prevent the client from making the transfers and charged her processing fees for doing so. The client refused to pay those fees.

The issue raised in case 2020/09 was whether the client had fulfilled his duties of care when using his prepaid card because he failed to notice that an ATM had been manipulated to allow a third party to gain unlawful access to the card and acquire its PIN code. The same issue was raised in case 2020/10, where the client, considering a phishing website to be genuine, entered his card information on it to pay for shipment of a package. In both cases, the card issuer argued that the clients, intending to use the card information for a normal transaction, disclosed the card information to an unauthorized third party, which, in its opinion, constituted a breach of due diligence. This reminded the Ombudsman of an extremely regrettable case submitted to in 2015 when a bank reached that same conclusion because a client who had been robbed revealed her card information at gunpoint under the threat of immediate death (Annual Report 2015, case 2015/13, only in German and French available on the website).

In several cases submitted to the Ombudsman, criminals managed to register clients’ credit cards with a digital wallet (Samsung-Pay or Apple-Pay) and used them to perform transactions without the clients’ authorization (see, for example, case 2020/11). What the clients found especially disturbing in each case was that the transactions could no longer be stopped even if immediately detected and reported because the storage of a credit card in a digital wallet usually requires a 2-factor authentication (confirmation must be given by entering a code previously sent to the client’s registered mobile phone).

Cases 2020/12 and 2020/13 concerned damage claims from clients whose bank accounts were accessed via e-banking by an unknown fraudster by means of a phishing attack. Those cases show that the different banks deal with such cases in different ways. In case 2020/14, the client held the receiving bank responsible for part of the loss on the grounds that it had, in his opinion, violated anti-money laundering provisions.

What conclusions can be drawn from all these different precedents? Clients have to be careful with payment transactions and check third-party statements with due care. The regular warnings made by financial institutions, the police and the press about fraudulent activities should be taken seriously. The fraudsters take a sophisticated approach and adapt their behaviour quickly to the circumstances, as clearly shown by the first year of Covid-19. There are certainly cases in which the banks reimburse at least part of a loss, but they cannot serve as a general safety net for all losses suffered by bank clients as a result of criminal activities.

Credit-financed investment transactions

A number of banks offer clients the possibility of increasing the volume of investment through securities-based loans. In the year under review, the Ombudsman even observed securities-based loans at interest rates of 0%. Such business is attractive to banks firstly because lending per se gives rise to potential earnings and, secondly, because banks can make money on the increased investment assets and related transactions. Credit-financed investment transactions provide clients with greater potential profits if the market trend follows their expectations. If the opposite occurs, however, clients suffer equally greater losses than if they had simply invested their own money. In the worst-case scenario, after suffering a loss on their investments they still have to make outstanding loan payments to the bank. Credit-financed investment transactions are therefore only suitable for clients with a sufficiently strong risk-bearing capacity and appetite.

Conventional Lombard loans, which are used to finance the investments held by the bank, require the client to maintain sufficient collateral at all times. The bank usually determines the required amount of collateral at its discretion, while reserving the right to adjust it to the prevailing market situation at any time. Depending on the type of investment, the bank will usually finance it up to a certain amount known as the collateral value. The percentage that the bank deducts from the market value of the assets in order to calculate the collateral value is called the margin.

If the client breaches the obligation to provide sufficient collateral, the bank is entitled to liquidate the client's assets pledged as security to the extent necessary, but only after asking the client to bring in more collateral or reduce the amount of the loan within a certain time limit. If the client fails to do so, the assets serving as collateral will be liquidated. Such a request is known as a "margin call". Under the Federal Act on Intermediated Securities, such prior notice is compulsory and can be waived in advance only by qualified investors. The legal doctrine assumes, however, that a forced liquidation is permissible even without prior notice in exceptional situations, and the same stipulation is generally provided in the relevant agreements of banks.

Clients regularly turn to the Ombudsman with complaints attributable to situation with high market turbulence, as could be observed in March due to the Covid-19 crisis. In case 2020/05, it was disputed whether the bank was entitled to such liquidation without prior notice. Moreover, the client argued that the liquidation was premature and performed at an unfavourable time since a price recovery had been foreseeable.

In retrospect, it seems that forced liquidation often occurs at an unfavourable time, i.e. when the prices hit bottom. In such situations, clients with credit-financed investments generally not only suffer from a reduction of value of their assets due to a negative price trend but the turbulence and related uncertainties sometimes lead banks to reduce the collateral value, intensifying the negative impact on the collateral position of a loan.

Experience shows that price drops are eventually followed by price recoveries, which, in the year under review, were surprisingly strong after the turbulence in March. There were rumours of such price recoveries on the markets, but other rumours were more pessimistic or even predicted worst-case scenarios. In any case, in the Ombudsman's opinion, the future price trend must be considered as uncertain, in principle. Unlike clients who invest only their own money, clients with credit-financed investments cannot simply wait out temporary price slumps but are forced to meet their liabilities under the loan and pledge agreements at all times. It is not appropriate to assess in hindsight, knowing the actual price trend, whether a bank had the right to execute a forced liquidation.

Various banks make trading activities available to the general public on web platforms, allowing them to trade up to certain limits, sometimes resulting in highly "leveraged trading". With a relatively small investment of own funds, which is used to secure the price fluctuations of an underlying, the clients can therefore engage in high volume trading. The underlyings may consist of foreign currencies and commodities, among other things. The banks in question generally provide such services without the corresponding advisory services. The platforms are used for execution-only orders, i.e. restricted to the execution of trades, without advising the client. In the agreements that the clients sign with banks to that purpose, they are usually required to confirm that they understand the risks of such trading and have sufficient wealth to assume those risks.

The Ombudsman has found that many clients believe that such risks are limited to the loss of their own capital invested, since they expect the trades on the trading venues to be closed automatically in a timely manner, so that no further losses can be incurred. The Ombudsman understands how certain clients might get that impression from the marketing materials, but it is not the case. Such trading, as well, entails considerable potential gains counterbalanced by equally considerable risks of losses, which may even be theoretically unlimited for certain types of trades. A careful reading of the above-mentioned agreements shows that the client is made to assume all conceivable risks, including the risk of technical unavailability of the trading venue at any time and the risk of inaccuracy of the quoted prices.

Based on the complaints regularly received by the Ombudsman after striking market fluctuations, the Ombudsman has certain doubts as to whether the clients in question really understand the risks of their trades. At the same time, there are also doubts as to whether their financial situation is totally adequate to enable them to bear the assumed risks. Following such events, clients regularly report malfunctions of the trading venues and inadequate or overloaded client service. They often find themselves with outstanding liabilities to the banks that far exceed the financial capabilities according to their description. The relevant banks generally prove to be intransigent in the ombudsman proceedings (as illustrated, for example, by case 2020/06).

Moreover, the Ombudsman also receives clients' complaints affirming that the bank closed out their positions too soon and should have waited for the price recovery they were expecting, as well as complaints alleging that the bank had granted them excessive credit and delayed too much and/or were too late in closing out their positions, thereby causing them to incur a loss. Regarding this last argument,

it should be noted that according to the Swiss case law known to the Ombudsman, the provisions on lending and retention of minimum margins are mainly intended to protect banks from losses and that clients are not generally awarded any damages on the basis of such provisions.

Figures in brief

In the year under review, a total of 2'175 cases were submitted to the Banking Ombudsman (822 in writing and 1'353 orally), amounting to an 8% year-on-year increase.

The Ombudsman processed and closed 2,142 of those cases (1'353 orally and 789 in writing) in the year under review, amounting to a year-on-year increase of 10% in written cases and 4% in oral cases. The total year-on-year increase in the number of cases closed is 6% compared to the prior year (2'013 cases).

The percentage of foreign clients has decreased but is still 25% (prior year 36%). In contrast, around 54% of the cases came from German-speaking Switzerland (prior year 43%). The percentage from Italian-speaking Switzerland slightly decreased, that of French-speaking Switzerland slightly increased.

The largest subject area in the year under review, with 449 cases, is “Accounts, Payment Transactions, Cards”. Its percentage decreased slightly, however, by 5% and is now 57%. In contrast, there has been a sharp increase in the subject areas “Stock Exchanges and Custody Accounts” (by 49% to 103 cases) and “Loans, Mortgages” (by 40% to 143 cases), as well as their percentages out of the subject areas by 3% and 4%, respectively.

Regarding the question about the cause of the problem, settlement is still the most frequent issue, as in the prior year. The percentage rose by 12% to 285 cases (prior year 254). 164 of those cases (58%) concerned the subject area “Accounts, Payment Transactions, Cards” and another 54 cases (19%) the area “Loans, Mortgages”. The second-most common cause of problems with the written cases closed was fee issues (140 cases), corresponding to a percentage of 18%.

The growth trend in fraud-related cases is striking. The percentage increased by nearly 80% to 119 cases in the year under review and the problem concerns all subject areas. The issue of fraud, at 15%, was the third-most important cause of problems in 2020. Increasingly often, at 75 cases in the year under review (prior year 35) a “bank restriction” is the cause of the problem, for example when a financial institution refuses to initiate a business relationship, conclude a transaction, provide a service or rejects an instruction.

In a total of 89% of the cases, the amount in dispute remained under 200'000 CHF and in 86% amounted to a maximum of 100'000 CHF.

In the year under review, the Ombudsman intervened in 241 cases, which corresponds to 31% (prior year 26%) of the total of all cases or 37% of the cases with mediation requests. After an in-depth analysis of the facts. the Ombudsman considered that a correction by the financial institution was advisable in 162 cases or two thirds of its interventions. In 87% of such cases, the financial institution agreed with the opinion of the Ombudsman and made concessions to the clients.

All the detailed statistics can be found in the chapter “Facts and Figures” in the annual report on pages 66 to 77 (only available in German and French on the website).

Public relations activities

In 2020, the mid-year media conference of the Swiss Banking Ombudsman had to be held online for the first time by a Zoom conference because of Covid-19. The percentage of participating journalists was greater than in a physical conference, which has led the Ombudsman to consider sticking with virtual conferences, in the future, too.

The majority of the regularly held annual meetings were likewise held online, such as those of FIN-NET (the European network of financial services ombudsman offices) and the INFO Network (world conference of financial service ombudsman offices). Nevertheless, they allowed a valuable exchange of ideas with important advocates abroad.

In this unusual past year, too, many questions were received from the media on specific banking topics. Numerous contacts with advocates in consumer protection organisations and representatives of various financial institutions have enabled discussing general and bank-specific issues, even though the contacts took place exclusively by telephone or video-conference. Moreover, representatives of the Banking Ombudsman's Office also committed to public panel discussions and educational events in universities in the year under review (likewise online).

Assets without contact and dormant assets

Since 1996, in addition to its customary activities, the Banking Ombudsman has also served as Central Claims Office for searches for assets without contact and dormant assets. As part of that activity, the Ombudsman received 453 new search queries concerning the assets of one or more presumed bank clients in the year under review (a 3% decrease compared to the prior year). Of these and the search queries still pending from the previous year, 458 inquiries (+8%) were considered sufficiently legitimate and, consequently, 517 presumed bank clients (+11%) were searched in the central database of assets without contact and dormant assets. In the year under review, the assets of a total of 28 client relationships without contact were made available to eligible beneficiaries (current account/securities account assets of CHF 3.6 million and the contents of one safe deposit box). Three such cases involved search queries submitted by the beneficiaries in one of the previous years and held as pending by the claims office ever since, but the bank did not report the client relationship as having no contact until the year under review. Since the current search system was introduced in 2001, the claims office has identified a total of 599 dormant accounts or accounts without contact and made 118.8 million CHF, and the contents of 63 safe deposit boxes accessible to eligible beneficiaries. Detailed statistics can be found in the annual report on the pages 78 to 81 (available in German and French only).

In giving public notice of long-term dormant assets, an activity initiated in December 2015, the Banking Ombudsman acts as the claims office for enquiries and concerns relating to the publication platform at www.dormantaccounts.ch. In the year under review, as in previous years, the effort in this regard was minimal, and, in addition to general information by telephone, was limited to cases in which it was necessary to issue a warning to the notifying bank because it failed to give a timely response to the queries received or cases in which presumably eligible beneficiaries were unable to submit their query to the publication platform as planned due to technical problems.

As in previous years, representatives from the Banking Ombudsman's Office have actively served on the Swiss Bankers Association "Narilo working group". This group is committed to coordination, solving any problems which may arise and improving procedures related to the subject of assets without contact and dormant assets and, in the year under review, held numerous telephone conferences.

Further information about the relevant guidelines and options for searching for assets with banks in Switzerland can be found at: www.bankingombudsman.ch/en/search-for-assets/.