

# 2021 in Brief

Same as 2020, the year under review was also marked by the Covid pandemic. The Ombudsman's work processes had already been adapted to the special requirements in the previous year and functioned perfectly. However, certain delays were still noticeable in the response to enquiries by some financial institutions, which in some cases led to proceedings taking somewhat longer. The number of cases submitted to the Ombudsman decreased slightly overall. The surprisingly fast recovery of the economy and the fact that 2021 was therefore a positive year for the majority of investors may have contributed to this. For selected cases drawn from the full range of the Ombudsman's activities, please refer to our website <https://bankingombudsman.ch/en/case-studies/>.

## OMBUDSMAN PROCEEDINGS

In terms of customer complaints, the Ombudsman continues to be confronted with a considerable number of fraud cases. The total number of these cases has once again increased compared to the previous year. The subject area "Accounts, Payment Transactions, Cards" is particularly affected. For the most part, these fraud cases follow familiar patterns, although the perpetrators, some of whom are very sophisticated, continue to refine their modus operandi. The Ombudsman recommends that customers heed the information and warnings on fraud issued by the authorities, financial businesses and consumer protection organisations, as well as the Ombudsman's own advice, which is published on the website <https://bankingombudsman.ch/en/> under "Messages".

In case 2021/06, customers fell victim to fraudsters who had obtained their credit card details by using a manipulated ATM and then immediately misused them to pay for their own transactions. In case 2021/09, the perpetrators managed to charge the customer's prepaid card by using a computer to generate a large number of possible card numbers, and by charging cards that were actually in circulation as soon as a number they had generated coincidentally matched that of a real card. In doing so, the perpetrators were never actually in possession of the real card and did not receive the card details used from the cardholder. The bank did not want to refund the charges to the customer because he had not objected to them within the contractually-stipulated period. In case 2021/08 the customer paid for services of a dating platform with his credit card. He demanded to be reimbursed by the card issuer because he felt cheated by the operators of the dating platform as the contacts he made through the platform were allegedly not with actual potential partners.

As in 2020, the Covid pandemic led to complaints in connection with loans. There was a sharp increase in complaints in connection with Lombard loans. These were driven by Covid-related market distortions. In case 2021/15, such market distortions led to a forced liquidation of structured products financed by means of a Lombard loan. It was disputed whether the bank was entitled to forced liquidation at all. After the bank acknowledged that certain errors had been made, the parties argued about the point in time on which the calculation of the loss suffered from the liquidation of the structured products should be based, and about which measures the customer should have taken to mitigate the loss. In case 2021/21, the customer suffered considerable losses with exchange-traded leverage products, which also fell sharply in value due to Covid-related market distortions. Among other things, the customer accused the bank of not having notified him about the risks of these products and that it should have applied higher margins of safety for them. He demanded to be reimbursed by the bank for money that he had paid in as part of additional contributions to rectify the situation and invoked provisions of EU law in this regard. In case 2021/16, customers complained about the early repayment request of a Covid loan. The bank had taken this measure because the customers had changed the legal form of their company in order to meet requirements for Covid emergency aid from the cantonal authorities.

In the loan sector, there were further cases that gave rise to interesting questions. Disputes continued to arise in connection with the issue of negative interest rates. For example, a decision by the High Court of the Canton of Zurich (Obergericht des Kantons Zürich), in which the question arose as to whether the bank had to take negative Libor interest rates into account when calculating the customer interest rate for a Libor mortgage or whether a lower limit of the reference interest rate of 0% applied to this calculation, led to various complaints to the Ombudsman. The issue is set out, by way of example, in case 2021/14. The Ombudsman continued to be regularly confronted with issues concerning early repayment penalties. In case 2021/13, the customer disagreed with an early repayment penalty that the bank had demanded from her. This was because the repayment was only made because the bank did not want to continue the mortgage as the customer had moved abroad. Case 2021/10 raised the question of whether a certain mortgage interest rate was binding, which the bank had set much too low in the written contract because it had mistakenly swapped the numbers before and after the decimal point when drafting the contract.

The Wirecard scandal continued to be a matter of concern for the Ombudsman in the year under review. The customer in case 2021/17 had acquired Wirecard shares as part of an investment advisory relationship and thus suffered a total loss after the major fraud came to light. He accused the bank of having made mistakes in providing investment advice and demanded compensation.

It goes without saying that the Ombudsman again dealt with numerous complaints from customers in connection with bank fees. Cases 2021/25 and 2021/26 concerned fees for failing to provide notice due to a breach of the notice provisions of savings accounts. So-called credit balance fees ("negative interest") were the focus of cases 2021/22, 2021/23 and 2021/24. The longer the negative interest situation goes on for, the more banks are moving towards charging customers credit balance fees. In addition, there is a tendency for the exemption levels to be lowered. Since large retail banks also took these measures, many oral and written complaints ensued. Due to its rules of procedure, the Ombudsman cannot examine whether such fees are reasonable, but only whether they have been validly agreed. In doing this, the Ombudsman applies his

fee principles. If such fees are newly introduced or amended, the Ombudsman takes the view that this constitutes a contractual amendment of which the customers must be notified, via the communication channel that is usual for them, with sufficient notice to allow them to adjust their conduct and to give them the option of terminating the banking relationship if they do not agree with said amendment. It became apparent that these principles were not always adhered to. Moreover, in the Ombudsman's view, certain rules on credit balance fees appeared somewhat complicated in some cases and sometimes not particularly transparent.

In case 2021/05, the customer complained that a payment to her pension fund for an extraordinary purchase of pension benefits had not been made. The bank did not dispute the fact that an error had been made. However, the consequences of the error were disputed. Among other things, the customer demanded that the bank assume liability for the tax loss she incurred because she was unable to deduct the amount that had mistakenly not been transferred from her income taxes in the year in question. The bank was of the opinion that the customer had to take account of the fact that she was able to make the deduction in one of the following years.

With some regularity, customers complain to the Ombudsman about malfunctioning ATMs. These fall under the problem cause of "settlement issues", which has been the largest share of complaints since 2018. An example of this can be found in case 2021/03. The customer inserted a large number of 50 Swiss centimes coins into an ATM. The amount credited to her was much less than expected. The bank insisted that the machine had worked perfectly. In such a case, it is important that the facts are clarified quickly and transparently using the available means, such as video recordings.

Case 2021/27 was also discussed in the press on several occasions. Due to an unsuccessful software update, accounts of various customers were debited with a delay for amounts they had paid with their debit card in an online casino. This led to problems because these customers mistakenly assumed that they had more credit than was actually available in their accounts. In the case at hand, the question arose as to whether a customer concerned had to pay for the negative balance on her account that had resulted from such a delayed debit. In case 2021/29, the customer disputed a charge on his credit card in connection with the rental of a car abroad. After returning the vehicle, the rental company had charged him for insurance, which he had expressly refused in the rental contract.

## FINANCIAL SERVICES ACT (FINSA)

In the year under review, the process initiated in connection with the new financial market legislation, namely the Federal Act on Financial Services (FinSA), to optimise customer access to the Swiss Banking Ombudsman and the possibilities of banks and financial service providers to become affiliated with its institution was continued.

For example, amendments to Article 2 of the rules of procedure entered into force on 1 January 2021, which now also provide for a responsibility of the Swiss Banking Ombudsman for transactions with affiliated institutions domiciled abroad. This applies to financial services provided to private clients pursuant to Article 3(c) and Article 4(1) and (2) of the Federal Act on Financial Services (FinSA).

In September 2021, the Swiss Bankers Association as the founder of the Swiss Banking Ombudsman Foundation, decided to amend the foundation charter to make the affiliation with the Swiss Banking Ombudsman more flexible. As a result of these amendments, it is now not only members of the Swiss Bankers Association who can affiliate themselves with the Swiss Banking Ombudsman, but also institutions that have contractually affiliated themselves with the founder for this purpose. In order to reflect this expansion in the foundation's other regulations, the board of foundation has decided to amend the Rules of Procedure, the Organisational Regulations and the Contribution and Cost regulations accordingly, with effect from 1 January 2022.

Institutions that are subject to a statutory affiliation obligation with an accredited ombudsman office under the new financial market legislation must be able to provide proof of such affiliation to their supervisory authorities. The Swiss Banking Ombudsman recorded 306 affiliated institutions at the end of the year under review, which, according to the Swiss Bankers Association, are subject to a statutory affiliation obligation and to which the Ombudsman has therefore issued a written affiliation confirmation.

## FIGURES IN BRIEF

In the course of the year under review, a total of 1859 cases were submitted to the Banking Ombudsman, 687 of which were written and 1172 oral. This equates to a 15% decrease in the number of cases submitted compared to the previous year (2175).

In the year under review, the Ombudsman processed and closed a total of 1921 cases, of which 1172 were oral and 749 written. This corresponds to a decrease in the number of closed cases of about 10% compared to the previous year (2142 cases), or 5% less for written and 13% less for oral cases.

In terms of the geographical origin of the cases submitted in writing, the proportion of customers from abroad increased slightly to 27% (previous year 26%). In contrast, around 52% of the cases came from German-speaking Switzerland (previous year 54%). The percentage from Italian-speaking Switzerland decreased slightly, that of French-speaking Switzerland increased slightly.

Same as in the previous year, the issue of settlement was the main cause of problems in 29% of cases. More than half of these cases (55%) concerned the subject area "Accounts, Payment Transactions, Cards". The second most important cause of disputes with banks was fraud in 20% of all cases (previous year 15%), only slightly ahead of issues concerning fees (19%).

In 629 of the 749 written cases settled in the year under review, i.e. in about 84%, the customer submitted a request for mediation. In 236 cases, the Ombudsman turned to the financial institution, which corresponds to a share of 32% (previous year 31%) of the total of all cases. After an in-depth analysis of the facts, the Ombudsman considered that corrective action should be taken by the financial institution in 153 cases or roughly two thirds of its interventions. In 90% of such cases, the financial institution agreed with the opinion of the Ombudsman and made concessions to the customers.

## **PUBLIC RELATIONS**

Due to Covid, the annual media conference was held online via Zoom call, as in the previous year.

The majority of the regularly held annual meetings were also 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.

The Banking Ombudsman received numerous media enquiries on specific banking topics. Valuable contacts with advocates of various organisations as well as representatives of financial institutions enabled a discussion of fundamental as well as bank-specific topics. Moreover, representatives of the Banking Ombudsman's Office also committed to public panel discussions and educational events in universities in the year under review (N.B., 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. In so doing, the Ombudsman received 441 new search enquiries related to the assets of one or more presumed bank customers in the year under review. This equates to a 3% decrease compared to the previous year. Out of these and the search enquiries still pending from the previous year, 418 (minus 9%) were considered sufficiently legitimate. Out of these requests, a total of 463 (minus 10%) suspected bank customers were checked against the central database of assets without contact and dormant assets. This resulted in assets from a total of 47 customer relationships without contact being made available to entitled beneficiaries in the year under review. These 47 relationships involved account/deposit values of CHF 5.4 million and the contents of 6 safe deposit boxes. 8 of these relationships involved search enquiries submitted by the beneficiaries in one of the previous years and which had been held as pending by the claims office ever since, but where the account was only reported as having no contact by the bank within the year under review.

Since the current search system was introduced in 2001, the claims office has thus identified a total of 646 dormant accounts or accounts without contact and made 124.2 million CHF and the contents of 69 safe deposit boxes available to entitled beneficiaries.

In the year under review, the electronic search option for assets without contact and dormant assets was put in place via the website of the Banking Ombudsman. This online tool can be used to submit paperless, efficient and confidential search enquiries.

In the context of the publication of long-term dormant assets initiated in December 2015, the banking ombudsman acts as an information centre for questions and concerns regarding the publication platform at [www.dormantaccounts.ch](http://www.dormantaccounts.ch). The ombudsman's work in this regard was, as in previous years, modest. In addition to providing general information by telephone, the publishing bank had to be reminded in a few cases because it had not answered applications received within a reasonable period of time.

Representatives of the Banking Ombudsman's Office are part of the Narilo working group of the Swiss Bankers Association. This group is committed to coordinating, solving any problems and improving procedures related to the subject of assets without contact and dormant assets. The working group met several times by telephone conference and face-to-face in the year under review.

The year under review also saw the change to the new operator of the platform for the database of assets without contact and dormant assets, which was prepared in the working group with the active participation of the ombudsman's office. The publication platform [www.dormantaccounts.ch](http://www.dormantaccounts.ch) was also migrated. For the banks and the Ombudsman's Office as users, this made it possible to realise some improvements that had been desired for years. The last technical problems with the submission of applications also seem to have been solved.

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/](http://www.bankingombudsman.ch/en/search-for-assets/).