

2022 in Brief

After the years 2020 and 2021, which were strongly marked by the Corona epidemic, the work processes in the Ombudsman office largely returned to normal in the reporting year. In the previous year, there had been a slight decrease in the number of cases submitted to the Ombudsman. These have now increased again to a total of just over 2000. Selected cases from the Ombudsman's activities can be found on our website [Case Studies](#).

OMBUDSMAN PROCEEDINGS

Unfortunately, in the year under review there was again an increase in the number of complaints in connection with clients who were victims of fraud. A large proportion of these concern cases involving credit and debit cards. According to the Ombudsman's observations, this increase is in line with a general trend that is also perceived by the police and law enforcement authorities. The exchange with foreign Ombudsman institutions in the financial services sector also confirms that this is an international development.

The topic of "fraud" was the focus of the Annual Report 2020. The Ombudsman takes the opportunity to once again address certain fundamental aspects of the topic and to point out more recent developments. Clients turn to the Ombudsman as victims of fraud cases because they believe that they are not, or not fully, responsible for the resulting financial losses, but that the bank should bear all or at least part of them. Experience shows that clients are the main weak point where fraudsters start their criminal activities. The fraudsters have developed a variety of psychologically sophisticated methods to get clients to make payments themselves under false pretences or to charge their credit cards, thus favouring the fraudsters and their middlemen. Another method is to obtain passwords and access codes from clients in order to make payments from their accounts or charge their credit cards.

Since it is usually the clients and not the bank who are the target of these attacks, the bank is rarely liable for damages in the legal sense. Accordingly, mediation successes in the Ombudsman procedure are the exception rather than the rule, apart from goodwill solutions and concessions by the financial institutions for reasons of equity. The question, who ultimately has to bear the damage from a case of fraud, is decided on the basis of the contractual provisions according to the concrete circumstances of the individual case. The relevant contracts are often based on the so-called sphere of risk theory, according to which the party that can prevent the occurrence of the damage by exercising reasonable caution and care in its area of responsibility must bear the damage. In this context, clients play a decisive role as the primary target of fraudulent attacks.

Due to the technical development of the last few years, the mobile phone of the clients is of great importance. It is used to receive messages and codes via SMS or via apps installed on the mobile phone. These are used to access the e-banking system, to confirm payment and credit card transactions and to check transactions that have been made. **The relevant messages should be read carefully. Clients must make sure that these correspond exactly to the transactions they have made. In particular, stated amounts and recipient data must be checked carefully.** Any anomalies should be reported to the bank immediately. Careful handling of the device itself is also crucial. The mobile phone must not fall into the

wrong hands and should be blocked immediately if it goes missing. The operating system of the device should always be updated, as this can close known security gaps. It should also have adequate protection against viruses and malware.

The Ombudsman expects banks to have adequate safeguards in place, which should be able to detect and prevent common fraud schemes where possible. Banks should be aware that clients who are victims of fraud are often traumatised and do not know how to deal with it. As a first step, they turn to the bank in its role as a specialised body from which they expect professional help. In the Ombudsman's experience, however, many financial institutions seem primarily concerned with defending clients' claims. They are often confronted with contradictory explanations. As a first step, however, financial institutions should rather try to prevent imminent damage, e.g., by doing what is reasonable to stop or reclaim payments. If damages cannot be prevented and the financial institution believes that they must be borne by the client, it is important that it explains in a comprehensible manner what it believes has happened and on what contractual basis the client must bear the damages.

Since it is often not possible to meet clients' expectations of a settlement of claims in the mediation process, prevention in the area of fraud is extremely important. The Ombudsman repeats his recommendation to clients to heed the relevant information and warnings from the authorities, financial institutions and consumer protection organisations, and refers once again to his own advice, which is published on the website under "[Beware of fraudsters](#)". The detailed information provided by the police on the following websites is also very helpful: www.telefonbetrug.ch, www.card-security.ch and www.cybercrimepolice.ch.

Now to the individual cases related to fraud against clients: In case 2022/12, the client became a victim of a type of fraud that was frequently observed in the reporting year. By means of a so-called "shock call" from false police officers, the client was convinced that her daughter was in an emergency situation and urgently needed cash to avoid serious disadvantages. The client, who was at an advanced age, obtained the money by withdrawing a large amount of cash from her account at the bank's counters. The client in case 2022/13 fell victim to the method known as "Microsoft fraud". Alleged Microsoft employees contacted the client by telephone and pretended that it was necessary to fix alleged security problems on his computer. In this way they gained access to the client's e-banking and triggered transactions on their own. The card fraud cases as described in case 2022/14 in connection with transactions on well-known online sales platforms are also frequent. Allegedly interested parties for the item advertised by a client pretend to need the client's credit card data for the transfer of the purchase price, which they then misuse for transactions in their own favour.

In addition to cases concerning fraud, the Ombudsman dealt, as usual, with a large number of complaints from a wide variety of topics in the area of financial services. Some of these are highlighted below:

The sad events in the reporting year meant that the Ombudsman was presented with complaint cases from the area of sanctions and embargoes. Case 2022/10 concerns the measures taken by the Confederation in connection with the situation in Ukraine and the sanctions against Russia, which were adopted from the EU. In this case, it was disputed whether a Swiss joint-stock company fell under the sanctions taken in Switzerland due to its ownership structure. The other case selected regarding this topic, 2022/09, stemmed from events prior to the Russian invasion of Ukraine. A client, of a globally

active bank, represented by his lawyer, complained that the bank refused to make a payment to a charity because it was associated with a country that was subject to various international sanctions.

As every year, a significant number of complaint cases were based on disputes in connection with bank fees. In the course of the reclassification of client relationships due to the Financial Services Act, many banks adjusted the fee models for their various services, which sometimes led to confusion regarding the terms used. In case 2022/20, the client complained about flat-rate advisory fees, which he did not want to bear because he had not used any advisory services of the bank. Cases 2022/21 and 2022/22 concerned fee increases which increased the fee charges for the clients by a factor of about ten and made the continuation of the banking relationship no longer appear economically reasonable in view of the low balances in relation to the fees charged. In both cases, the question of whether the fee increases were legally communicated to the clients was disputed. Cases 2022/23 and 2022/24 deal with complaints in connection with fees that typically accrue at the end of a banking relationship. The first of the two cases concerns securities delivery fees which various clients of a bank did not want to bear because, in the opinion of the clients, the bank had set the reason for the termination of the banking relationship itself. In the second case, the bank had adjusted the calculation of the loan termination fees during the term of a client's fixed-rate mortgage in such a way that they were more than twenty times higher than the fee that had been agreed at the time the fixed-rate mortgage was concluded.

Disputes concerning rent deposit accounts are also regularly referred to the Ombudsman. The complainant in case 2022/05 had paid the deposit amount into an ordinary current account of his landlord. He blamed the bank for not having opened a rent deposit account for him in accordance with provisions of the tenancy law. In case 2022/06, the complainant objected to the delayed payment of his rent deposit by the bank. The bank had contacted the landlord several times after the request for payment, but the landlord repeatedly failed to provide the necessary proof that he had legally asserted claims against the tenant within one year after he had moved out of the apartment.

From time to time, clients turn to the Ombudsman with complaints concerning the extent to which a bank must be able to provide information about a particular client relationship on the basis of old bank documents and whether claims can still be made against the bank on the basis of the documents. Case 2022/03 concerns a found account card issued by a legal predecessor of the bank. Case 2022/04 concerns a savings booklet that was found 40 years after the last entry.

The topic of "retrocessions" continues to preoccupy clients. Often, clients become aware for the first time of provisions on this subject because of general adjustments to the basic documents by their bank. The respondent in case 2022/18 asked the Ombudsman whether an advance waiver of retrocessions, distribution fees and other pecuniary benefits from third parties that banks receive in connection with a client's investment products can be validly agreed.

In the year under review, mortgage interest rates rose again after many years at historic lows. After the Ombudsman, in previous years, had to deal regularly with complaints in which clients disputed the valid conclusion of a mortgage contract, he was now presented with cases in which it was the banks that did so. In case 2022/16, clients filed claims for damages against the bank because they believed that the bank had unlawfully withdrawn a binding financing commitment, which meant that they had to look for new financing at short notice, which was considerably more expensive due to the increase in interest rates.

Practically every year, the Ombudsman also deals with complaints in which the extent of a bank's duties in its capacity as custodian of securities in the client's custody account is disputed. In case 2022/19, the client claimed damages against the bank because the bank had not forwarded important information from the liquidator of a fund of which he held shares with the bank.

So much for the cases that are particularly worth mentioning. In the collection of cases on our website [Case Studies](#), you will find more interesting cases on various other topics from the Ombudsman's activities in the year under review.

FIGURES IN BRIEF

In the year under review, a total of 2009 cases were submitted to the Banking Ombudsman, of which 706 were written and 1303 oral, which corresponds to an increase of 8 % compared to the previous year.

The Ombudsman dealt with and closed a total of 2006 cases, of which 1302 were oral and 704 written. This corresponds to an increase of about 4 % compared to the previous year, or 11 % more oral cases and 6 % less written cases.

Broken down by subject area, 60 % of the 704 written cases concerned the area of "Accounts, Payment Transactions, Cards". The most frequent cause of problems in this area, with 124 cases, was fraud, after 125 cases in the previous year and 124 cases in 2020. Settlement issues were the focus 113 times and a restriction by the financial institution in 69 cases. Fee issues were involved in 58 disputes.

14 % of the written cases (previous year 12 %) could be assigned to the subject area "Stock exchange, securities account". In 56 % of the cases, the main cause of the problem was an incorrect or incomplete processing of orders, followed by 20 % of fee issues.

In 79 cases, i.e., 28 % fewer than in the previous year, the Ombudsman dealt with complaints in connection with "Mortgages and loans". The largest sub-area, with 33 % of the cases, was again fixed-rate mortgages, where the focus was on disputes in connection with fees, primarily early repayment penalties. 37 % concerned settlement issues. The strong decrease in fraud cases in this area in the previous year - which in the previous years were mainly related to Covid 19 loans - continued in the reporting year.

8 % of all written cases related to the subject area "Investment advice, Asset management". In absolute terms, these cases increased by 12 % compared to the previous year. Settlement issues were the focus of 38 % of the cases, followed by problems related to advice at 30 % and fee issues at 18 %.

In the year under review, as in the previous year, the Ombudsman had to deal intensively with the problem of fraud. This was the focus of 18 % of all written submissions (previous year 20 %). If the oral cases are included, the number of fraud cases even increased by 4 % to a total of 265 compared to 254 in 2021. However, as in previous years, the issue of settlement was the main cause of problems in 30 % of client complaints.

Among the 27 % of respondents from abroad, the countries from the immediate neighbourhood, such as Germany and France, continue to dominate.

In a total of 93 % of the cases, the amount in dispute remained below CHF 200 000 and in 91 % it was a maximum of CHF 100 000.

The average processing time of the cases normalised in the reporting year. Thus, 63 % (previous year 60 %) of the respondents received a final answer within one month, 85 % (previous year 82 %) within three months.

In 83 % of the closed written cases, the client submitted a request for mediation. The remainder of the closed cases consisted of requests for information, an assessment of the client's concern in the sense of guidance, or client complaints to the financial institution, which were merely sent to the Ombudsman for his information.

In 6 % of all written requests for mediation, the Ombudsman was unable to act due to a lack of competence, and in 15 % the client had to be asked to raise his concerns directly with the financial institution first. In another 10 % of cases, the procedure was discontinued due to the absence of documents requested from the client.

9 % of the cases in which the Ombudsman approached the financial institution had to be terminated without result due to the evidentiary questions that arose, which cannot be clarified in the Ombudsman procedure.

The Ombudsman contacted the financial institution in 257 cases (previous year 236), which corresponds to 37 % of the total number of cases or 44 % of the cases with requests for mediation. In 170 cases, or two-thirds of these interventions by the Ombudsman, the Ombudsman considered a correction by the financial institution to be appropriate after an in-depth factual analysis. In 95 % of these cases, the financial institution agreed with the Ombudsman's opinion and accommodated the client. Detailed statistics can be found in the Annual Report, chapter "Facts and figures" on pages 53-61 (available in German and French only).

PUBLIC RELATIONS

The media conference was again held for the first time as a face-to-face event on 29 June 2022. In addition to this valuable annual exchange with media representatives, the number of enquiries from journalists to the Banking Ombudsman declined somewhat in the reporting year compared to the previous year. The extremely high level of media interest in the previous year in the rapidly increasing number of fraud cases since 2020 is certainly one reason for this development.

Numerous contacts with representatives of financial institutions allowed the discussion of fundamental as well as current topics.

Most of the regular meetings, such as those of the [FIN-NET](#) (the European Network of Financial Services Ombudsman Offices) and the World Conference of the [INFO Network](#) (International Network of Financial Services Ombudsman Schemes) were still held online, but they still allowed for a valuable exchange of ideas with the most important exponents abroad. Until his resignation as Ombudsman, Marco Franchetti also served as a board member of INFO Network.

As every year, representatives of the Ombudsman's office were again involved in public panel discussions and teaching events at universities in the year under review.

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 this function, the Ombudsman received 448 new search enquiries related to the assets of one or more presumed bank clients in the year under review. This corresponds to an increase of 2 % compared to the previous year. Of these and the search requests still pending from the previous year, 433 (plus 4 %) were considered sufficiently legitimate. From these enquiries, a total of 498 (plus 8 %) suspected bank clients were finally checked against the central database of assets without contact and dormant assets. This resulted in assets from a total of 46 client relationships without contact being made available to entitled beneficiaries in the year under review. These 46 relationships corresponded to account/deposit values of CHF 14.1 million and the contents of 3 safe deposit boxes. 6 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 introduction of the current search system in 2001, the office has thus been able to identify a total of 692 contactless and dormant client relationships and to make values of CHF 138.3 million and the contents of 72 safe deposit boxes accessible to authorised persons.

Representatives of the Banking Ombudsman's office are part of the Swiss Bankers Association's Dormant Assets working group. This group is dedicated to coordinating, solving problems and improving processes around the issue of dormant assets and assets without contact. The working group met several times by telephone and personally in the reporting year.

Since July 2022, the revised "Guidelines on the treatment of assets without contact and dormant assets held at Swiss banks" (Guidelines on Dormant Assets), which were drawn up by the Dormant Assets working group, have been in force. These brought little new to the daily work of the Ombudsman's office, since they mainly formalised work processes that had already been applied and proven for years.

In the reporting year, the electronic search option for contactless and dormant assets was realised via the Banking Ombudsman website. Search requests can be submitted efficiently and confidentially with this online tool. More than 60 % of all new enquiries have already been submitted this way.

As part of the publication of long-term dormant assets initiated in December 2015, the Banking Ombudsman acts as a contact office for questions and concerns relating to the publication platform at [Dormantaccounts.ch](https://www.dormantaccounts.ch).

As in previous years, the effort in this regard proved to be low. In addition to 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.

For more information on the relevant guidelines and the options for searching for assets at banks in Switzerland see [Search for assets](#).