

The complaint

Mr O complains that a lack of clear information from Yorkshire Building Society ("YBS") caused him to lose his Individual Savings Account ("ISA") allowance.

What happened

Mr O held a YBS 'Six Access ESaver' cash ISA, opened in October 2020. In October 2022 he saw that YBS had a similarly named 'Loyalty Six Access ESaver' account, which was paying a higher interest rate. He instigated an online transfer of his full balance to the Loyalty Six Access ESaver believing it to be an ISA, closing his existing account in the process. But because the Loyalty Six Access ESaver wasn't an ISA, Mr O lost the allowance he'd built up over the course of previous years' subscriptions.

As I understand it, Mr O didn't realise this until some time later. He complained to YBS, saying the online process didn't make the distinction between the accounts sufficiently clear or offer any sort of warning about the consequences of closing the account. Mr O was also unhappy that YBS hadn't explained the situation to him when he called it in March 2023 to check his current ISA subscription level.

YBS said that its online closure process would have included a warning that closing the account would mean the money losing its ISA tax-free status, and that to proceed with the closure required the customer to accept that they'd been made aware of that information. It acknowledged the similarity in the account names, but said that as Mr O was undertaking his own activity online, it was incumbent on him to read the product terms and ensure he'd selected the right product for himself.

In respect of the telephone conversation in March 2023, YBS agreed that its representative should have clarified the non-ISA status of the Loyalty Six Access ESaver, given the enquiry Mr O was making about his current year subscriptions. It offered to pay him £90 compensation in recognition of this. Mr O wasn't satisfied with YBS's response and referred matters to us.

Our investigator felt the information YBS provided about the Loyalty Six Access ESaver was sufficiently clear that Mr O ought to have been aware that it wasn't an ISA. She was further satisfied the warning message would have been displayed when Mr O executed the closure of his original account. The investigator noted YBS's response and offer in relation to Mr O's telephone conversation. She didn't recommend any additional action or compensation, observing that at that point Mr O wouldn't in any event have been able to reinstate his ISA.

Mr O has asked for this review, as he's entitled to do under our rules. He felt the investigator had relied on an assumption about the closure warning.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm afraid I'm going to disappoint Mr O again when I say that I'm not upholding his complaint.

I fully understand why Mr O assumed the Loyalty Six Access ESaver was an ISA as his original account had been. The accounts are very similarly named. But as our investigator noted, there was nothing in the product name or literature that mentioned or suggested that the new account was an ISA.

Under the Financial Conduct Authority ("FCA") high level principles in place at the time, a firm must pay due regard to the information needs of its customers and communicate information to them in a way which is clear, fair and not misleading. The Banking Conduct of Business Sourcebook ("BCOBS") expands on this by including an 'appropriate information rule'. That says firms have to provide or make available appropriate information in (among other things) easily understandable language and in a clear and comprehensible form, to enable the customer to make decisions on an informed basis.

I've no reason to conclude that the details YBS provided about the new account failed to meet either requirement. If Mr O had spoken with YBS when opening the account and it had become apparent that he held that assumption, I would expect YBS to have made the position clear. But I can't say it was unfair of YBS not to include a statement to the effect that the account was not an ISA. That would place an unreasonable expectation on YBS to correct an assumption it was unaware Mr O had made.

I'm conscious in his reply to our investigator's assessment, Mr O questioned the basis on which she had concluded that YBS provided a closure warning message. In light of this, it's important to explain that where – as here – there is a dispute about what happened, we are sometimes required to reach findings on the balance of probabilities – in other words, on what we consider is most likely to have happened in the light of the available evidence.

I make a point of explaining this because it would be unreasonable to expect that a bank or building society would make – and retain – screenshots every time a customer uses its online services. Here, YBS has provided evidence that supports that its ISA closure process issues a warning to online users. On the balance of probabilities, I think it's more likely that Mr O's account closure followed that process than that for some unknown reason, the warning wasn't displayed.

There is a question over whether the wording of that warning addresses the transaction Mr O was undertaking. As our investigator noted, the wording YBS has supplied says

"Please note, if you wish to transfer the proceeds of your ISA to another ISA provider then you need to choose the option 'Transfer out' from the ISA options. If you close this ISA without transferring it out you may not be able to invest in another ISA in this year."

Mr O wasn't transferring to another ISA provider. He was keeping his funds with YBS. And the warning doesn't say anything about the effect of closure on previous years' subscriptions; only that it might affect the customer's ability to invest in another ISA in that year. If Mr O had taken action in reliance on that warning, he might be able to claim that it was his understanding that it didn't apply to his situation. But that isn't what Mr O has said. His position is that there was no warning at all. So it can't rightly be later argued that he's done anything in reliance on the warning I've concluded was displayed.

I've listened to the telephone recording between YBS and Mr O that took place in March 2023. In it, Mr O asks the YBS representative about the amount he's put in his ISA during the tax year. YBS tells Mr O the amount he's deposited, and the dates on which he did so. The representative also gives Mr O the account number and points him to where he can

view the information himself online. It is clear that they are both talking about the monies paid into the closed account.

Although Mr O deposited a further £5,000 on the day he opened the new account (taking the total deposits for the year to the ISA maximum of £20,000), there is no mention by either party of that sum. Presumably YBS didn't include this in the total ISA deposits because the new account wasn't an ISA.

Had that been explained to Mr O, he would no doubt still have been dissatisfied with the loss of the ISA wrapper on his more substantial previous years' subscriptions. He wouldn't have been able to restore the status of those subscriptions; this would be against HMRC rules. But he would have been able to deposit £5,000 to an ISA in that tax year, and it's right that YBS has recognised this by offering him compensation. I think that the £90 YBS proposed is a fair way to acknowledge this.

My final decision

For the reasons I've set out here, I don't require Yorkshire Building Society to take any further steps to resolve this complaint. I'm satisfied that its proposal to pay Mr O £90, if it hasn't already done so, is a fair resolution to the dispute.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 3 May 2024.

Niall Taylor
Ombudsman