

The complaint

Mr F complains that The Co-operative Bank Plc trading as Smile failed to follow ISA transfer instructions and closed his Cash ISA without permission.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision. I said:

On 9 February 2021 Mr F paid £10,000 into his existing Cash ISA with Smile which increased the overall balance to £30,177. On 17 March 2021 Mr F withdrew £2,880 from his Cash ISA and has told us he intended to transfer it to his new ISA provider. Mr F has explained he was unable to transfer the funds directly from his ISA as Smile's systems didn't allow him to add a reference number.

Smile received an ISA transfer request in Mr F's name from P, another ISA provider. The ISA transfer request was for £27,120. On 29 March 2021 Smile transferred £27,346.36 to P and went on to close Mr F's Cash ISA. Smile has since told us that because the amount noted in Mr F's ISA transfer form was within 5% of his total balance it took the step of transferring the full sum and closing his Cash ISA.

Smile has highlighted a section of its terms that says it can close an account that isn't funded in accordance with the product specific terms and conditions. Smile says that when it transferred Mr F's full balance, it had a zero balance but the minimum required was £1. Once the transfer was completed, Smile closed Mr F's Cash ISA.

On 1 April 2021 Mr F spoke with Smile as he wanted to transfer £8,000 into his Cash ISA but was told it was closed. Despite trying to resolve the matter between Smile and P, Mr F was told his Cash ISA had been closed and couldn't be reopened.

Mr F referred his complaint to this service and it was initially upheld. But a subsequent investigator thought Smile had acted fairly and didn't ask it to do anything else. Mr F asked to appeal so his complaint has been passed to me to make a decision.

What I've provisionally 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.

I've been reasonably brief in setting out the background above as the general timeline in this case is broadly accepted by all parties. I want to assure both Mr F and Smile that I've read and considered everything that's been provided when reaching my decision concerning how to fairly resolve this complaint. If I don't specifically refer to a point made or piece of evidence it isn't because I've ignored it. I haven't. Our rules allow me to focus on the key issues of a complaint – an approach that is in line with the informal nature of this service.

I'd also like to thank Mr F for his patience whilst his case has been with us.

I've reached a different view to the most recent investigator to look into Mr F's complaint. I'm not persuaded that Smile has treated Mr F fairly. I'll explain why.

Smile's repeatedly pointed to the ISA transfer form it receive from P and highlighted the fact it contained the figure £27,120 in both the "estimated value to be transferred" box and the "indicate value to be transferred" box. Smile has further explained it uses a 5% tolerance when considering whether to transfer the full ISA funds on to the new provider. Whilst I understand the logic Smile used, I think it's fair to say there were some assumptions made in terms of what Mr F wanted.

I'm not persuaded it's fair for Smile to say that because the estimated value box held a figure it needed to transfer the full funds. I say this because Mr F also gave a specific figure for the transfer in the following box. Where there's a disparity in the nature of a customer's request, I think the fairest approach is to check how they want to proceed. In hindsight, it's clear that Mr F didn't want to transfer his full ISA balance and Smile would've found that if it had checked.

I'm also not persuaded it's fair for Smile to cite a less than 5% difference between the ISA transfer request amount and the overall balance as a reason to close Mr F's account. I've read the terms and that's not specified. And whilst I understand Smile has a standard process for carrying out ISA transfers, in Mr F's case it's led to assumptions being made that weren't in line with what he wanted.

Smile has also highlighted Mr F's request to transfer all his current tax year subscriptions and says there's no option for a partial transfer. But the statements provided by Smile show Mr F paid £10,000 in the current tax year and he wanted to transfer £27,120 to P. So the allowance was sufficient to transfer Mr F's full subscriptions from the current tax year with £17,120 remaining for preceding years.

Mr F then ticked the box that said he wanted to transfer previous tax year contributions as well. The form says "You can transfer all or part of your previous years' contributions..." And then Mr F completed the section that said "If this is a partial transfer, complete one of the following:" at which point he gave the partial ISA balance value he wanted Smile to transfer. I'm satisfied that the fairest approach would've been for Smile to check how Mr F wanted to proceed instead of transferring his full balance and closing his Cash ISA.

I've considered whether the decision to close Mr F's Cash ISA was fair. Again, I'm not persuaded it was. Had Smile checked with Mr F or only transferred £27,120 he would've maintained a balance of over £1. And the terms Smile says it relied on to close his Cash ISA wouldn't have been applicable. In line with the above, I think Smile's assumptions in this case led to Mr F's account being closed against his will.

Smile told a previous investigator that it wouldn't have accepted further deposits into Mr F's Cash ISA during the existing tax year because it wouldn't know whether the existing funds had been transferred into another Cash ISA or not. But Smile's ISA terms don't say it can reject deposits on that basis. In addition, the terms say that if there's a conflict, the ISA Regulations take precedence. The ISA Regulations allowed Mr F to deposit up to his annual ISA tax allowance which is what he wanted to do when he asked to deposit a further £8,000 on 1 April 2021. As Smile's terms allow for deposits to be made in line with the ISA Regulations, I haven't seen anything that would indicate Mr F couldn't deposit further funds into his Cash ISA before the end of the existing tax year.

For the reasons I've given above I'm satisfied Smile made mistakes when completing the ISA transfer. I've looked at the ISA transfer form and I can understand why Smile felt it was unclear. But I think the fairest approach would've been to check how Mr F wanted to proceed instead of transferring his full ISA balance and closing the account. Based on the information I've seen, I intend to uphold Mr F's complaint.

Smile has told us Mr F's £8,000 was placed in a savings account that pays the same rate of interest as his Cash ISA did. So he's not lost out on interest whilst the funds have been in his savings account. Smile's also pointed out Mr F hasn't previously utilised his full ISA tax allowance so can replace the funds.

In response, Mr F has told us he expected to use around £16,000-£18,000 of his ISA allowance for the tax year 2021-2022. I'm satisfied it will take Mr F some time to replace the £8,000 into the tax free status an ISA provides and have factored that into my decision.

I've considered how the situation has impacted Mr F and can see it's caused a reasonable level of inconvenience. Mr F has had to liaise with both Smile and P to try and find out what happened. I've listened to the call Mr F had with Smile on 1 April 2021 and I think it could've been handled better. The call handler repeatedly told Mr F Smile had done nothing wrong and I felt a lack of empathy for his concerns was shown. As a result of the distress and inconvenience caused to Mr F by the way Smile dealt with his ISA transfer, I intend to award £250.

I invited both parties to respond with any additional comments or information they wanted me to consider before I made my final decision. Smile responded to say it couldn't reopen Mr F's account without undertaking a new application. Smile also didn't agree £250 reflected the level of distress and inconvenience caused.

After receiving Smile's response, I asked our investigator to contact both parties to explain I was amending the proposed settlement. I said Smile should settle by:

- Arranging for a new ISA application to be completed for Mr F
- Pay Mr F £250 for the distress and inconvenience caused

Mr F responded and said that due to the time that passed he had been forced to make other ISA arrangements but felt it was unfair that Smile wasn't complying with the provisional decision.

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.

I'd like to thank both parties for their responses. Smile has explained it can't simply reopen a closed account. In order to open a new account, Smile has to complete its standard verification application process and checks. I appreciate this isn't in line with the provisional decision, but I'm satisfied there are genuine reasons why Smile couldn't simply comply. I'm not persuaded it's unreasonably inconvenient for Mr F to carry out a new ISA application if he wishes to use the Smile account.

Mr F's response to the investigator explained he's made other arrangements for his ISA funds following Smile's mistakes. I leave it to Mr F to decide whether he wishes to complete a Smile ISA application.

Smile said it thought £250 was too high and offered £150 instead for the distress and

inconvenience caused. But I still think £250 is a fair reflection of the distress and inconvenience caused to Mr F by Smile's actions, for the reasons I gave in my provisional decision. So I'm going to proceed on that basis.

My final decision

My decision is that I uphold Mr F's complaint and direct The Co-operative Bank Plc trading as Smile to settle as follows:

- Arrange for a new ISA application to be completed for Mr F (if required)
- Pay Mr F £250 for the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 10 June 2022.

Marco Manente
Ombudsman