

The complaint

Mr O complains about how Masthaven Bank Limited (“Masthaven”) opened an account in his trading name that Masthaven says has a two-year term when Mr O wanted a one-year term.

Background

Mr O applied for a business savings account with Masthaven in his trading name – “S”.

Masthaven has sent “customer journey” slides. These are example screenshots to show the online application process that Masthaven says Mr O used. According to those slides and Masthaven’s explanatory notes on them:

- The process begins with the customer entering the amount they would like to save – which Masthaven refers to as the “pledge amount”. The customer then selects a savings term. Some terms in complete years can be chosen by clicking on a button for them - each button showing a corresponding interest rate. A slider or calendar button can be used to select other terms, and these don’t have to be exact years. An interest rate and indicative cash return is then displayed based on the pledge amount and term selected.
- The application then proceeds through general information and declarations and on to a summary of the account being applied for. This sets out again the pledge amount to be paid in, the interest rate and the “fixed end date”. General requirements for completing the application are also set out. Screens then follow to fill in details of the applicant and the business, including names, addresses and bank details.
- A cash transfer can be made once the application ‘submit’ button is pressed. But the application won’t proceed to that stage if more verification is needed, in which case a message appears that says Masthaven will be in touch by phone or email.

Mr O points out the slides are not dated - and he doesn’t believe they show what was current at the time of his application in May 2021. The interest rates they show aren’t those current at the time of Mr O’s application. The example term shown of 19 months with an end date of April 2020 dates the screenshots to around September 2018 and just before the earliest one-year fixed term business account rate currently quoted on Masthaven’s website.

Mr O also says the slides show a level of flexibility rather than being a fixed term product. He has also told us he believes he tried to open his account online initially but couldn’t because it was a business account so phone calls with Masthaven followed.

Masthaven has sent two call recordings relating to Mr O’s application. In brief summary:

- In the first call Masthaven tells Mr O it is looking through his application, some parts of which (relating to shareholdings for example) it says weren’t filled in. The general nature of Mr O’s business activities was established during the call as was that he was a sole trader and not incorporated. He told Masthaven he didn’t operate a business bank account and that all his taxable income was interlinked.

- In the second call Masthaven told Mr O it had to ask him where the pledged sum was coming from because it exceeded his declared turnover. Mr O said it was coming from other investments including a current account he had elsewhere earning nothing. Mr O explained the Masthaven account would give him a slightly better rate of return than his existing investments, and that he was trying to maximise his return on those because returns were pretty poor at the time. Masthaven's resulting call note described the planned source of Mr O's 'pledged funds' as being from "business savings".
- The specific interest rate to be paid on the account was not discussed during either call and nor was the length of the account term and Mr O didn't refer to his trading name.

On 7 May 2021 Masthaven sent an email to tell Mr O the account was open and ready to accept funds. It said he had a two-week window to pay in funds and Masthaven would then send him a personalised welcome pack in the post. The email refers to the account as a fixed rate account but doesn't mention a term.

Mr O made a series of cash transfers into the account between 8 and 11 May 2021. He at first told us the account may have been funded by the rolling over of funds from his existing personal account with Masthaven. He has since sent a screenshot for an account he held elsewhere. He has told us he used this to fund the Masthaven account using as a payment reference the phrase: "1 YEAR BOND" – which is shown on the screenshot he has sent us. He has pointed out that later correspondence from Masthaven didn't refer to this payment reference or explain how it reconciled what he explains was an evident conflict.

Masthaven says a welcome pack was sent to Mr O on 24 May 2021 and that this would have confirmed the length of the term for Mr O. It says these packs were sent by a third party but based on data it passed to that party. Mr O says he didn't receive that pack. Masthaven has provided a screenshot it says shows the welcome pack was produced on 24 May 2021. It has also sent a screenshot showing data it says was sent to the third party for the purpose of populating the welcome pack. According to that data extract, the pack would've specified a term length and maturity date of two years not one year. It gives a 7 May 2021 account open date – consistent with the email above – and a maturity date of 3 May 2023. The interest rate referred to was 0.85%.

Masthaven told us it didn't keep a copy of the welcome pack itself and the only confirmation it had of what was in the pack was the data extract. We have since received, having asked Masthaven to go to the third party, what Masthaven says was the cover letter for the pack. This letter, which as Mr O has pointed out is undated, is correctly addressed to Mr O and refers to his account as a "Flexible Term Business Savings account" which it says: "will mature 03/05/2023".

As mentioned above, Mr O says he didn't receive this letter or the welcome pack. He has said what he received called the account a 'Flexible Annual Saver Account'. I've noted the welcome email Mr O was sent refers to a "Fixed Term Account" and I've seen a screenshot for the account that refers to it as "Flexible Term Business Savings". Neither say "annual" or "annual saver" but nor do they state a term length or refer to a two-year term.

Around a year after all this, Mr O called Masthaven believing his account was due to mature but he was told by the call handler that his account as shown on Masthaven's system was not a one-year but a two-year account.

Masthaven says the account was set up entirely online by Mr O and with no involvement by Masthaven. It says the data extract sent to us is what it sent to the third party to produce the welcome letter and is an exact copy of the information that was input by Mr O when setting up his account online and there is no ability for any other party to change or manipulate that

data. It says the data extract confirms the account was a two-year product. It says Mr O also set up a two-year account in 2018 and so is familiar with the account set up process.

Our investigator didn't think Mr O's complaint should be upheld. In summary, our investigator saw no evidence Masthaven had made an error with the account term, thought the data extract provided suggested the term was two years and was persuaded the welcome pack was likely sent to the right address.

Mr O didn't agree with our investigator's conclusion. He made a number of additional points including, in brief summary:

- There is no evidence he opted for a two-year term but a lot of evidence of less relevant points. This lack of the most significant detail is concerning. Phone records have been selectively withheld. Masthaven's account of events lacks conviction in its language and, despite requests, data to provide definitive proof like a log-in history, screenshots or online application form. There is no way of showing that information submitted was correctly transcribed and not subject to error. He infers from other information received that the welcome pack data was populated later or set by an administrative or clerical input of data. Various ambiguities in what Masthaven has provided ought to favour a conclusion that its case has not been made out or should not be accepted.
- The welcome letter ought to have been sent electronically and is irrelevant anyway as it wasn't sent in time to allow him to cancel the arrangement and would only have led to the complaint being made sooner. What the terms and conditions are isn't clear, as they haven't been produced, but a cooling off period is implied. Neither the key facts required by the regulator nor an easily understood overview have been provided.
- He didn't knowingly select a two-year term. Committing to a two-year account made no sense for only an extra 0.05% return. Within days of opening the account he put a similar sum into another bank for the same interest rate and for a one-year period. To conclude that he did something different here wouldn't fit in with that.
- His payment references each time said the payment was to a one-year fixed term bond. Either this was the basis of his contract with Masthaven or else it was an inconsistency that Masthaven, if acting diligently, should have spotted given the large sums involved and so allowing a genuine mistake, if that is what it was, to be corrected. His recall is dimmed but he tried to clarify his one-year term instruction when he sent his deposits.
- If there were anything definitive to show he requested, even unintentionally, the term Masthaven says, there wouldn't be a dispute. Masthaven's claims shouldn't be taken at face value without corroboration. The possibility of error or even manipulation should be considered. An attempt to understand the workings of Masthaven's underlying system and processes is necessary such as: What are the data extracts Masthaven has provided? Are they used to create real time entries into a database? How is the data derived, evidenced and corroborated?
- Masthaven's records misleadingly say his funds were from business activity, contrary to his phone call. If that was a requirement, his funds shouldn't have been accepted. Also, to defy logic by calling the account "flexible" and to not use the term length to name the account like Masthaven used to, was misrepresentation. The email receipts didn't specify a term either and just said "fixed rate". Also the term was not an exact two-year period.

As the complaint couldn't be resolved informally, it has been passed to me for a final 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.

Having done so, I've arrived at the same conclusion as our investigator. I'll explain why.

I accept what Mr O says about wanting a one-year term. I accept the screenshot evidence he has sent shows he used a payment reference that referred to a one-year bond when he made transfers to fund the account. His use of that reference is in my view evidence that at the time of those transfers, which is the time he was taking the account, he believed he was paying into a one-year account. I think it reasonable to suppose that this indicates that when he set up his account Mr O did so with the intention at the time of selecting a one-year term, given the proximity in time between the transfers and his setting up of the account.

Mr O has further explained he preferred a one-year term because rates were low – and I note the rates available were lower than for the two-year fixed term (personal) account he'd taken with Masthaven previously – and that he had taken a similar account elsewhere that was also for one year. All this in my view supports my point above about the term he wanted.

In conversation with our investigator, Mr O told us Masthaven's one-year fixed rate was 0.85% and the two-year version offered only a fraction more so wasn't worth it. I note 0.85% is actually a two-year rate. This is according to the screenshots which show this is the rate on Mr O's account, which Masthaven says is a two-year fix. Also the historic rates currently on Masthaven's website say this and say the equivalent one-year rate was 0.75%. Although the rates vary from what Mr O recalled for us, the difference between them is small like he recalls and lends support in my view to what he's said about not wanting a two-year account.

So I accept Mr O wanted a one-year account, but I also accept his account is in fact showing as a two-year fixed rate account. I think this a reasonable conclusion based on the evidence. For example we have Mr O's phone call with Masthaven in which the call handler, looking at Masthaven's system, told Mr O the fixed rate ran until 2023. I think it very unlikely indeed the call handler would've told Mr O his account ran until 2023 if this wasn't what was showing on the system – particularly given that Mr O queried it during the call. Also Masthaven has been consistent on this point throughout (which as it happens is also consistent with the fact that the interest rate showing for the account matches the historic two-year rate on its website).

Masthaven says Mr O's account is showing as a two-year account because this is what he selected and inputted when he set up his account. I've considered this assertion carefully in the light of the evidence that has been provided.

I first note there is no evidence that the nature or term of Mr O's account was altered after it started. For example Mr O hasn't mentioned there having been any alteration to the interest rate shown on the account. There's nothing whatsoever to suggest such an occurrence. So bearing in mind the absence of evidence to suggest anything else, I proceed on the basis that Mr O's account shows as a two-year account and was set up like that from the start.

I'd add that Mr O would've probably spotted if the interest rate shown on his account when it started wasn't what he had selected. Also it is in the nature of a fixed-rate term account that the rate and term is fixed from the start – so there's no reason to suppose that once it started the basis of the account was somehow changed between then and Mr O's call to Masthaven a year later. So I now turn to events at the start and I've considered how it is that the account came to be set up.

Mr O has told us he couldn't recall exactly how he opened the account and that he was

struggling to recall the exact details. This isn't surprising given the passage of time and given also – as Mr O has pointed out – he wasn't expecting the problem that arose later, so he had no reason to try to commit to memory all the specifics of the events and process at the time. But his tentative recollections point to an application attempted online but then conducted instead by phone.

In my view the evidence supports the view that Mr O applied for the account online. I reach this view bearing in mind his recollections and that Masthaven has said he applied online. I also bear in mind that the evidence I have, taking into account Mr O's recollections, doesn't support a view that his application was made by him in some other way whereas it does fit with the evidence Masthaven has provided relating to the online application process.

For example, Mr O has recalled phone calls, but he hasn't recalled his application having been taken in full over the phone. Also we have recordings of what appear to be those calls. These show that the calls covered certain limited and specific parts of Mr O's application but by no means enough to have been the means by which his application was made. The term was not mentioned, for instance, nor his trading name. Moreover it is apparent from what is said at the start of the calls that an application had already been received by Masthaven and the calls were made to query details of it.

So the call recordings don't support a conclusion that Mr O applied giving the necessary details to Masthaven by phone. On the other hand, their content appears consistent with the process shown on Masthaven's slides for online applications where details of an application are queried by phone after the application has been made online. So the calls aren't in fact evidence to suggest Mr O didn't apply online but rather support the view that he did apply online. Also Mr O hasn't said he posted a written application or anything of that nature. It is with all this in mind that I proceed on the basis that Mr O made his application online.

It follows that Mr O entered the details of his application online and the term of the account selected at the outset was selected by him online. Masthaven's slides illustrate how that was done in practice and that the term options didn't just include complete years but could be fixed to particular dates and so run for parts of a year as well as whole years.

The term on Mr O's account reflects that flexibility, and it is this flexibility Masthaven says is why it referred to the account as a "flexible term" account. There's no dispute that Mr O was choosing a fixed term - only over the length of the term - so regardless of the merits of this account description, it didn't mislead Mr O into thinking his account didn't have a fixed term.

According to the example given on the slides, I note that these were prepared before Mr O's application – and possibly before the process in general went live. So it is possible that what Mr O saw online differed in some details from what the slides show – the rate would've been different for example. On the other hand, I haven't any good evidence to suggest that the process Mr O encountered online was substantially different to the process shown on the slides. Bearing in mind also the parallels between what we know happened and what is shown on the slides, what I have favours the view that the slides are illustrative of the general process in the way Masthaven suggests they are.

That said, regardless of how in particular the term choice was presented, it is in the nature of an online application that the application details are entered by the applicant online. So in my view the fact Mr O made his application online, and the absence of anything to suggest that he specified the term in any other way than by an online selection, is very strong evidence indeed that Mr O selected the term of his account by selecting it online. So the natural and logical conclusion is that the reason Mr O's account has a two-year term is that he selected a two-year term online, and that would be so even in the absence of slides to illustrate the specifics of the online application process.

Mr O wanted a one-year term but in my view that is not inconsistent with a view that he selected a two-year term online – as human error of that kind happens from time to time. It is plausible that it happened here and, for example, that Mr O fixed a date perhaps focussing on the rate or not spotting that the year selected meant a two rather than one-year term.

Mr O suggests someone at Masthaven might instead have entered details or data into the system incorrectly and he points out no log-in history, screenshots or online application form has been provided to show that what he entered included a request for a two-year term.

I've thought about this carefully. In my view the fact Mr O's account is a two-year account is in itself evidence he selected a two-year account – as there's no evidence of a process where what Mr O entered online was then input by Masthaven onto its system separately. Masthaven put notes on its system as records of its phone calls but these are distinct from the details that had already been entered online. Also the making of those calls is in line with the process shown on the slides for clarifying application details after an online application – it isn't evidence of a separate undocumented process where Masthaven altered or reinput selections already made online. The slides show no such reinputting process and such a process isn't necessary to explain how Mr O ended up with a two-year term, given what I've said above about human error.

I'd add that it would be strange if after getting a customer to enter details online, Masthaven then entered them again and so unnecessarily introduced extra cost and the chance of the sort of error Mr O alludes to. As such I find this a very unlikely scenario. The lack of good evidence to point to this scenario or give it weight just adds to that. When information is entered online it isn't usually typed in again by someone else – unlike what happens with a paper application, for example. The natural inference where an application is made online is that the result is determined by what is input online and not in some other way.

With this and all I've said above in mind, I'm not persuaded there is good reason to suppose there was a reinputting process at work here. It is in that context I find Masthaven's assertion that there was no such reinputting process, persuasive. The alternative conclusion would be that there was and that Masthaven is hiding it, but there's no good evidence for that view.

Also if that were Mr O's view, a further report from Masthaven wouldn't necessarily disprove it - regardless of what the report purported to show. For example, I don't know if data was captured or kept by Masthaven of a kind that would now show Mr O's keystrokes or choices made online when applying that populated Masthaven's system in the way it was populated. But if it were possible for Masthaven to produce such a report, and Masthaven sent such a report, it's not obvious to me that questions couldn't still be raised about whether the report accurately represented the data it claimed to and wasn't instead manipulated or in error.

In any event, putting that to one side, my view is that the account details on Masthaven's system, including the term, are likely a digital record of the selections Mr O made during his online application. I acknowledge he favours also obtaining some other record, but I'm not persuaded more records are necessary to arrive at a fair and reasonable view. In my view what we have already is enough to support a view that Mr O input his account term online.

Turning to the data extract Masthaven did send, Masthaven says this shows what it sent to its third party and says this was pulled directly from its system and so shows what was on its system at the time. I don't see any reason to suppose this extract doesn't reflect the details of Mr O's application as held on Masthaven's system at the time – given that it also reflects the two-year account currently on the system and the absence of anything to suggest this was changed after it started. Of course the key issue is how those application details got onto the system at the start. I've discussed above why I think the answer is that they most likely got there as a result of Mr O inputting them during his online application.

The data extract purports to show information the third party put into a welcome pack it sent Mr O. In my view the evidence supports that Mr O was sent such a welcome pack. I say this not just because Masthaven has said this was its process, or because of the data extract, which Mr O has questioned as insufficient – and not just because of the copy of the welcome letter Masthaven has provided, or because of the screenshot Masthaven sent that it says shows the date of the pack – but also because the 7 May 2021 email Mr O was sent clearly says he'd be sent a welcome pack by post. I find all this persuasive overall.

I've considered what Mr O has said about his use of '1 year bond' as the reference for the bank transfers he then made into his Masthaven account. But I don't think this amounted to a contractual term or formed the basis of his contract with Masthaven. It plainly didn't. I'd observe also that the payment reference was for the reference of the payor and the payee – which in each case was Mr O here - and not for the attention of Masthaven. I don't agree that Masthaven can be faulted for not monitoring, reviewing or seeking to interpret the payment references Mr O used when he made these payments between his accounts.

Mr O says he didn't receive a welcome pack and also hasn't seen the terms and conditions or key features information. I don't know whether that is right or not but if he was concerned that he hadn't received these details he could've enquired about not having received the welcome pack, given that he was informed that this would be following in the post. If there was information Mr O didn't have that he was going to rely on when deciding whether to take the account, I expect he would've asked for this before investing rather than a year later. So I'm not persuaded Mr O's decision to take the account was the result of any shortcoming – if there was a shortcoming – in how relevant account literature, such as terms and conditions, was made available to Mr O. I'd add that Masthaven isn't responsible if, having had it sent to the right address, the welcome pack somehow went astray in the post and wasn't received.

Turning to Masthaven's call note description of Mr O's funds as 'business savings', I note this wasn't specified in that second call. But Mr O applied for a business account and gave Masthaven details of his business. Business accounts were naturally offered on the basis they would be used for business purposes. Historic interest rates on Masthaven's website suggest the rate for business accounts was higher than for personal accounts when Mr O applied. As a sole trader Mr O's business wasn't a separate legal person. He was to fund the Masthaven account from other savings or investments including a current account he wasn't earning any interest on. He told Masthaven he didn't operate a business bank account and as such all his taxable income was interlinked. With all this in mind, I don't see anything untoward about the note Masthaven made. In my view it was ultimately for Masthaven and at Masthaven's discretion that it made the business account available to Mr O. I can't fault it for doing that, bearing in mind for example the extra interest this offered Mr O, and what Mr O has said provides no grounds for me to override the decision Masthaven took in that regard.

In conclusion, and in light of all I've said above, I haven't identified any grounds for upholding Mr O's complaint and so I don't uphold the complaint. I'd emphasise that although I may not have detailed every single point and observation Mr O has made during the course of his complaint, I considered everything he has said and sent us before reaching my conclusion.

I'm grateful to Mr O for all his detailed points and I thank him also for his prompt responses and courtesy throughout our consideration of his complaint.

My final decision

For the reasons I have given and in light of all I've said above, I do not uphold Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or

reject my decision before 3 February 2023.

Richard Sheridan
Ombudsman