

The complaint

Mrs R complains that Skipton Building Society failed to transfer a third party Individual Savings Account (ISA) to them and they charged her a penalty when she transferred her ISA to a third party provider, which she was not aware of.

Mrs R is represented by her husband in bringing this complaint. But for ease of reading, I'll refer to any submission and comments he has made as being made by Mrs R herself.

What happened

Mrs R opened a fixed rate ISA in April 2022 with the view to consolidate two other ISA's into this new ISA, but she says Skipton failed to transfer one of the ISA's and therefore she says she was forced to open another ISA before this fixed rate ISA had matured. Mrs R thought the penalty for closing the ISA early would be a loss of interest earned up to the closure, but then she found out there was a clawback charge in addition to the loss of interest. She says she was not made aware of this when the ISA was opened, and she made a complaint to Skipton. Mrs R also says that she later found out Skipton had incorrectly calculated the clawback charge and overcharged her.

Skipton upheld Mrs R's complaint in part. They said on 30 March 2022, she opened the ISA online. They said upon opening this account, she agreed to the terms and conditions of the product selected. They said following receipt of the account opening application, a transfer request was also submitted to transfer her ISA from a third party provider, however, this was rejected as they were unable to locate an account with them. Skipton said they sent an email to Mrs R on 31 March 2022 confirming this and a secure message was then received from her on 14 April 2022, querying as to why the transfer had not been completed. Mrs R later confirmed they had the wrong third party provider. They said they were unable to uphold this part of her complaint as it was her responsibility to provide correct instructions within their transfer authority form. They said as no new instructions had been provided, her request to transfer into them was cancelled.

Skipton said on 13 June 2022, they received a request to transfer Mrs R's 30 month fixed rate ISA to a third party provider. They said she had confirmed that she was happy to accept the penalty to complete and allow the transfer to be processed. Mrs R had requested the penalty calculation to be recalculated. They said their system showed a penalty charge of 210 days rather than 180 days loss of interest. A recalculation was received which confirmed that there had been an overcharge. Skipton said that she had been charged £132.28 which was for 210 days loss of interest, but the penalty charge should have been £104.33 loss of interest for 180 days. A difference of £27.95. They said they were happy to reimburse her £27.95 for being overcharged and an extra £30 compensation for the inconvenience. Mrs R brought her complaint to our service.

Our investigator thought the offer was fair. He said Skipton explained that the early closure charges were made clear in the terms and conditions when Mrs R opened the ISA herself. Mrs R asked for an Ombudsman to review her complaint. She said that Skipton defaulted on their own terms and conditions, thus rendering any penalties null and void. She said the clawback charge should be refunded in full and she believes this is a legal requirement given

such circumstances.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

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

Mrs R has made a number of points to this service and I've considered and read everything she's said and sent us. But, in line with this service's role as a quick and informal body, I'll be focusing on the crux of her complaint in deciding what's fair and reasonable here.

Mrs R has mentioned potential legal requirements. But if Mrs R wants a decision that Skipton have breached any laws, then she'd need to go to Court. Our service acts as an informal dispute resolution service for complaints about financial businesses. We look at the circumstances of individual complaints and, on a case by case basis, taking into account relevant law, regulations and industry guidance amongst other things, make findings about what is fair and reasonable in all the circumstances of a complaint.

I asked Skipton if they could provide evidence that Mrs R had selected an incorrect third party provider to transfer her ISA to Skipton. The screenshot they sent me shows that this was an automated process and the provider is greyed out, so I'm persuaded that there was no human error by Skipton in the wrong provider being selected. So I can't hold Skipton responsible if Mrs R accidentally selected the wrong third party provider from the drop down list. I have also seen an email which Skipton say they sent Mrs R on 31 March 2022 which informs her that "We have received a rejection message from (third party provider) as the account details you have provided are incorrect".

The email goes on to say "Following HMRC guidelines, we have a maximum of seven working days to complete the transfer. Therefore, please contact us as quickly as you can to ensure the transfer takes place within this time frame." So I'm satisfied that the delay in transferring the external ISA to Skipton was not a result of any errors Skipton made and they made Mrs R aware of the rejection of the transfer.

I've then considered what the terms and conditions the Skipton ISA which Mrs R held has around any penalties for transferring out of the ISA. At the top of this document, it lists reasons why the account may not be right for a customer. One of these reasons is "you want to withdraw money before the end of the fixed term; early closure will incur an interest penalty so you may get back less than you paid in." So I'm satisfied that the terms of the account makes it clear that if Mrs R withdrew money before the end of the fixed term, she could get back less than what she paid in.

In addition, the terms and conditions have a section titled "Can I withdraw money?". This section covers off transfers also and it contains the wording "You can't withdraw part of your account balance, however you can close your account at any time and withdraw the full balance online or transfer it to another ISA provider. If you do this you'll lose 180 days' interest. This will be taken from your savings if you haven't earned enough interest on the account and means you might get back less than you paid in." So again, I'm satisfied that the terms and conditions were clear that Mrs R could get back less than she deposited if she hadn't earned enough interest to pay the penalty upon transferring the account to a different provider.

But while Skipton were clear about Mrs R potentially getting less back than what she deposited – and Mrs R would have needed to agree to the terms and conditions when she opened the account, the terms and conditions are also clear that there would be a 180 day

penalty on this account. But when Mrs R transferred the ISA to a third party provider, she incurred a 210 day penalty.

I've listened to a call where Mrs R had a call back from a Skipton representative. He does tell her that the terms and conditions say that it is a 210 day penalty. Mrs R's husband corrects the call handler to say it is 180 days interest the terms and conditions show and a complaint is raised.

So I'm persuaded that Mrs R would have been distressed to find out she had been overcharged on the interest penalty, and she was inconvenienced by having to ring up Skipton and get this looked into. I think it's fair to say that if she hadn't brought this to their attention, then Skipton would not have suddenly realised their mistake at a later point.

I asked Skipton what had happened to the overcharged amount of the penalty, as this would have been part of her ISA. Skipton have sent me evidence to show that they sent this money to her new provider in July 2022 for £28.01 and they asked the new provider to count this payment as part of previous years subscriptions. So I'm satisfied that they put Mrs R in the position that she would have been in had they not overcharged her the penalty. But I'm not persuaded this makes the terms and conditions null and void. As Mrs R would have needed to agree to these terms which I've highlighted on two occasions where it says she could receive less than what she deposited, then I don't think this is a reason to say none of the terms should be enforced due to Skipton's error.

I've considered what compensation Skipton have offered Mrs R for what went wrong. In their final response letter they offered £27.95 for the refund of the incorrect penalty charge. As this was Mrs R's money anyway, it would not be reasonable to include this in deciding what would be a fair and reasonable outcome here. They also offered Mrs R £30 for inconvenience and upset the matter had caused her.

But I'm not persuaded that £30 recognises the impact that the overcharged penalty would have had on Mrs R. I say this as customer's would expect businesses to have controls to ensure that the terms they agreed to are met without any issues. So when Mrs R found out that she had been overcharged with the interest penalty, this would have been distressing. And she wasn't made aware of the error at the time of the transfer by Skipton, this was a result of her getting in touch with Skipton to discuss the whole situation. Even when she received a call back from a Skipton representative, he told her the wrong penalty based on the screen he was looking at, and he had to check the terms and conditions himself before realising the incorrect penalty had been charged.

I'm satisfied that an extra £70 compensation, to total £100 for distress and inconvenience for what happened is fair. While I can't agree with Mrs R that the remaining penalty charge should be refunded to her as she agreed (via the terms and conditions) that she could get back less than she deposited if the funds weren't held for the full term – which they weren't, I am persuaded that Skipton let her down by overcharging her the penalty, causing her distress and inconvenience. So it follows I intend to ask Skipton to put things right for Mrs R."

I invited both parties to let me have any further submissions before I reached a final decision. Skipton accepted the provisional decision. Mrs R responded to the provisional decision. She said that the decision seemed balanced and reasonable, however, she wanted to make me aware that she had not received the interest overpayment from Skipton into her ISA that she transferred to.

Before I issued my final decision, I asked Skipton to put a trace on the interest payment. They emailed me evidence that this had been sent to the same details as the transferred ISA. I then asked Mrs R if she could send me her account movements from account opening

to date and she confirmed she had confirmed she had found this interest payment, but she initially thought it was from her new provider and did not realise it was from Skipton and she expressed her dissatisfaction that Skipton didn't write to her about this. But she is now satisfied she has received the refund.

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.

As neither party have provided me with any further information to consider (which remains outstanding), then my decision and reasoning remains the same as in my provisional decision.

Putting things right

In my provisional decision I said I intend to uphold this complaint in part. I said I intend to ask Skipton Building Society to pay Mrs R a total of £100 (£30 they offered her and an extra £70) compensation for distress and inconvenience. I'm still satisfied this is a fair outcome for the reasons given previously.

My final decision

I uphold this complaint in part. Skipton Building Society should pay Mrs R a total of £100 (£30 they offered her and an extra £70) compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 22 March 2023.

Gregory Sloanes
Ombudsman