

## **The complaint**

Mrs P complained that when she made a deposit of money into an account with Clydesdale Bank Plc trading as Virgin Money, it opened a new ISA account for her. Mrs P said because she didn't know this money went into an ISA, she accidentally overpaid later in the year.

## **What happened**

Mrs P told us that Virgin was insisting that a payment of £1,000 she'd made in July 2022 was the opening of a new cash ISA. She said she knew she'd paid this money in, but couldn't remember why it was sent. She said it couldn't have been for a new ISA, because it was sent to an existing account with an old account number.

Mrs P disputed that this payment was sent to open a new ISA. She said she hadn't made an ISA application then, she'd received no paperwork for this alleged new ISA at the time, and Virgin couldn't prove now that she had wanted to open an ISA in July 2022.

Mrs P said that because she'd already made this one payment, when she later funded a different new Virgin ISA towards the end of the same financial year, that meant she'd exceeded the ISA allowance. Just before the end of the financial year, Virgin refunded everything she'd paid into this new ISA. Mrs P didn't think that was fair.

Virgin said that when Mrs P made payments into an ISA account held with it on 28 February 2023 and 1 March 2023 for £500 and £19,500 respectively, that meant her ISA account was oversubscribed. So it returned the money. It didn't think it had made a mistake.

Our investigator didn't think this complaint should be upheld. He said Mrs P had made payments into two separate ISA accounts in the same financial year, which is a breach of the ISA rules. He thought the first ISA Mrs P paid into, had been opened on 24 June 2022, when she'd transferred some money in from an ISA held with a different building society. She then paid some cash into this first ISA account, the £1,000 transfer she referred to above.

Our investigator said Mrs P later opened a second ISA with Virgin, and paid more cash into this account not long before the end of the financial year. He said Mrs P had breached the ISA rules by paying money into two separate cash ISAs in the same year. She'd also paid more than £20,000 in total into her ISAs, which again was a breach of the ISA rules.

Our investigator didn't think it was unfair for Virgin to reverse the payments Mrs P had made into the second ISA, and he didn't think this complaint should be upheld.

Mrs P still insisted she hadn't opened a new cash ISA when she made her payment in July 2022. And she said Virgin didn't pay back the money until 3 April 2023. It did that with no explanation, so Mrs P said she didn't see the money in time to reinvest it before the end of the financial year. Mrs P said she didn't receive interest for the time this amount was in her ISA. And Mrs P said Virgin should never have agreed to open the second ISA for her, if she'd already opened one new ISA in that year. Mrs P continued to think that Virgin was responsible for what had gone wrong here.

Because no agreement was reached, this case then came to me for a final decision. And I then reached my provisional decision on this case.

### **My provisional decision**

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

Mrs P has repeatedly said she didn't intend, when making a payment of £1,000 in July 2022 from a different bank, to open a new ISA. She says Virgin can't show any documentation to prove she did open a new ISA then.

I've seen the records of this ISA account. And I can confirm that Mrs P didn't open a new ISA in July 2022. This first ISA had been open, in one form or another, since late May 2020.

I can see that on 22 June 2022, Mrs P contacted Virgin, to say she had a fixed interest rate ISA which was maturing, and she had tried to open a new fixed rate E-ISA online, but wasn't sure that had been successful. Virgin replied on the same day to say her reinvestment had been done, so her existing account had been turned into a 1 year Virgin Fixed Rate E-ISA, Issue 495.

Virgin confirmed then that the account number for this ISA would stay the same. At this point, there was a little over £20,000 in this account.

On 29 June 2022, Mrs P received into this ISA the amount of just over £20,000, which she'd asked Virgin to transfer here. This money came from a building society, which I won't name here. Virgin has told us this money came from existing ISA savings, so it didn't count towards her annual allowance. Virgin refers to this as "old money" – money which was paid into an ISA in a previous financial year, and has remained within that ISA wrapper ever since.

On 12 July 2022, Mrs P paid in a further £1,000. Virgin has told us this didn't come from an existing ISA. It was "new money" and did count towards her ISA allowance. She's allowed to pay in up to £20,000 per financial year in "new money". All of this "new money" must go into the same cash ISA.

Transfers of "old money" from an existing ISA, are something Mrs P must ask the bank to do for her. That's so the money never leaves the ISA wrapper, and keeps its tax free status. But payments of "new money" are something Mrs P can do herself. I think that means the primary responsibility for making sure Mrs P says within the ISA rules, when she pays in "new money" would rest with Mrs P herself.

So Mrs P says she didn't intend to open a new ISA in July 2022, when she made a payment then. But she didn't do that. She paid new money into an ISA account which had existed, in one form or another, since May 2020.

At this point, summer 2022, Mrs P was well within the ISA rules. She had reinvested her existing Virgin ISA into a new one-year fixed rate deal, she had then transferred some "old money" into this existing Virgin ISA in the 22/23 financial year, and paid in £1,000 of "new money" into the same account.

Mrs P then opened a further ISA account on 13 February 2023. Mrs P said Virgin shouldn't have opened this new ISA for her, but I don't agree. I haven't been able to see

that it had, as she alleged, already opened a new ISA for her, in that same financial year.

Mrs P initially asked for two transfers to be made into this new ISA. One came from the same building society she'd moved money from, at the end of June 2022. The other was from a different building society. But Mrs P then cancelled that second transfer. I can see that the first transfer, of £20,497.33, arrived safely, and I can see the contact notes showing the second transfer was cancelled.

At this point, mid-February 2023, Mrs P was still well within the ISA rules. She'd only opened one new ISA in the 22/23 financial year (as far as Virgin, and I, am aware). And she'd only paid £1,000 into one pre-existing ISA.

But then on 28 February 2023, Mrs P paid £500 into this second, recently opened ISA. At this point, she'd breached the ISA rules, because she'd paid into two ISAs in the same financial year.

Mrs P paid a further amount of £19,500 into this ISA on 1 March 2023.

When Virgin came to reconcile Mrs P's ISA accounts at the end of the financial year, it realised she'd paid into two different ISA accounts with it, during the same year. And so it returned the money she'd paid into the second ISA, her new ISA, to Mrs P. Virgin did that on 3 April.

Mrs P said Virgin didn't return the money right away. I've explained I think it is primarily Mrs P's responsibility to make sure she doesn't fund two separate cash ISAs with "new money" in the same financial year. And I note that Mrs P's second ISA had only been funded a little over a month earlier. I don't think it was unfair or unreasonable in this case for Virgin to only deal with this overpayment at the end of the financial year.

Mrs P also said Virgin didn't tell her about this refund at the time, so she had no opportunity to pay this money into her other ISA before the end of the financial year. But I can see that Virgin wrote to Mrs P on 1 April, to tell her what it had done, and why. So I think Virgin did explain this to Mrs P at the time.

I know that Mrs P will be disappointed, but I don't think Virgin mistakenly opened a new ISA without Mrs P's authorisation, in July 2022. And I don't think it acted unfairly, when it returned her funds in early April 2023. So, for the reasons set out above, I don't think this complaint should be upheld.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Only Mrs P replied.

### **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.

Mrs P wanted me to clarify some of the things I'd set out in my provisional decision. I'm happy to respond on these points.

She noted that at the end of page 2 it says "*Mrs P paid in a further £1,000 ..... it was 'new money' and did count towards her ISA allowance ..... All of this 'new money' must go into the same cash ISA.*" Mrs P said that she still didn't understand why 'new money' was put into an existing ISA account.

That money was paid into an existing ISA account from a high street bank where Mrs W holds an account. The payment wasn't initiated by Virgin, and the money wasn't sent from a Virgin account, so Virgin isn't responsible for where this money ended up.

I think it's most likely that Mrs P transferred this £1,000 herself, from a different bank. I don't know whether she intended to transfer the money here, but even if this was a mistake, I don't think Virgin was responsible for that, or that it should have acted differently here.

Mrs P said that her second point was that she had recently reinvested her ISA accounts with Virgin and completed forms online, which included giving her tax status. So she said she still wanted to know why that information wasn't required in July 2022, when Virgin said she had opened a new ISA.

Mrs P said that she'd always received confirmation letters (and kept copies) whenever she opened a new ISA or transferred one. These letters would give details of her account number, and the interest rate payable as well as other details. She said that this procedure wasn't followed for that deposit of £1,000 in July 2022. If it had been, she would have known that an account had indeed been opened and could have added to it.

Mrs P said she still thought, that as no application for the ISA was found, and no confirmation letter was sent, Virgin couldn't claim that the ISA was actually opened in July 2022. She said there should be an application form, and then confirmation of opening. And if she'd got that information at the time, the problem wouldn't have arisen.

I think there may still be some misunderstanding here. My provisional decision was not that Virgin opened a new ISA for Mrs P in July 2022, when she paid in £1,000. I don't think it did that.

So I don't think that when Mrs P made her payment of £1,000, Virgin had to send her all the documents it would usually issue for a newly opened ISA, or ask her for any new information to set up that ISA.

I'll set out here the history of this account, briefly. I've deleted the first four digits of the account Mrs P paid £1,000 into, so it shows as an account number \*\*\*\*0825.

- Account \*\*\*\*0825 was first opened on 28 May 2020.
- On 22 June 2022, Mrs P emailed Virgin saying she'd tried to change the interest rate on Account \*\*\*\*0825. On the same day, Virgin replied to say that was done. The interest rate on Account \*\*\*\*0825 changed, but Virgin said the account number of this ISA would stay the same. So this is the same account.
- Also on 22 June 2022, Mrs P asked Virgin to transfer in a little over £20,000 from a separate building society ISA, into Account \*\*\*\*0825. And on the same day, she renewed her ISA declaration with Virgin for Account \*\*\*\*0825.
- On 29 June 2022, Virgin completed its transfer of Mrs P's building society ISA, and £20,095.93 arrived in Account \*\*\*\*0825.
- On 12 July 2022, Mrs P then paid £1,000 into Account \*\*\*\*0825, from a different bank.

So I would not have expected ISA account opening documentation to be issued to Mrs P by Virgin in July 2022. I cannot see that she opened an ISA account at this time.

That's the basis on which I reached my provisional decision, that Mrs P had paid into two ISAs in the 22/23 tax year, and had paid in more than the £20,000 of "new money" which she's allowed (under the relevant tax rules) to pay in during each tax year. So, for the

reasons set out above, I haven't changed my mind. I'll now make the decision I originally proposed.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 5 March 2024.

Esther Absalom-Gough  
**Ombudsman**