complaint

Mr A complains that Bank of Scotland plc (trading as Halifax) has deducted a penalty of 270 days' interest from the money paid to him on closure of a 3-year fixed term Individual Savings Account (ISA), after six months. Mr A says he was unaware of the penalty condition and it should not have been imposed.

background

Mr A had held an ISA with Halifax which was due to mature in May 2012. The bank sent Mr A a letter in which it set out a number of options available to him on the maturity of the account. The letter pointed out that if Mr A did nothing, the account would automatically become an ordinary savings account. Mr A made an appointment and spoke with a bank advisor at the branch. As a result he transferred the money from his ISA into a 3-year fixed-term ISA. In November 2012 Mr A terminated the account and withdrew the money, transferring it into another ISA with a different provider. The bank closed the account as instructed but deducted £1,059.22, which represented 270 days' interest from the money paid out.

Mr A complained to Halifax but it did not uphold the complaint. It said that the ISA was a 3-year fixed-term account and the penalty was set out in the terms and conditions of the account. Mr A complained to this service.

I issued a provisional decision concluding the complaint should be upheld. In summary, I found Halifax had not taken sufficient steps to draw the penalty clause to Mr A's attention. So that meant it should not rely on the clause to make the deduction from Mr A's account.

In response, the bank says that the early closure fees would have been discussed with Mr A, as he has not had a fixed rate ISA previously. It says this would have happened when Mr A called into the branch. Mr A has nothing to add to the information he provided.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The bank is relying on its standard terms and conditions. Because the bank relies on a particularly onerous term, the result is that Mr A received less than his original investment on termination of the account. The law is clear that if the bank wanted terms and conditions to be included in the account terms and those terms are in a separate document or not obviously part of it, the bank had to sufficiently bring the terms to Mr A's attention. This applies even more so, where the term is an onerous one, as here.

The bank said at first that it agreed it did not particularly draw the terms and conditions to Mr A's attention when he took out the new account. The last time the bank could definitely say it gave notice of the terms and conditions was in 2001, 11 years previously. The bank's initial explanation was that the particular terms and conditions were available in the branch or could be accessed on the internet if desired. The bank now says that the exclusion would have been explained at the branch interview. It says that new terms would have been provided on any amendment to the terms and conditions but does not say definitely if and when this happened.

I have concluded that the bank did not give sufficient notice of the term. This was a new investment by Mr A. The bank does not dispute it should have mentioned the penalty. It would have been easy enough for the bank to give him a set of conditions as he was in the branch. Mr A is definite that he was not told.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here) I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances. It seems to me that the bank has not been consistent in its response to this complaint. Mr A on the other hand is recalling his particular visit. I find that Mr A's account is more likely to be correct.

Halifax also says that in the transfer authorisation Mr A had opted for an immediate transfer at risk of any penalty for early withdrawal. It says that this fact demonstrates an awareness of the penalty in the terms of his ISA account. I do not agree that this proves Mr A knew that there was a penalty at the outset – before he opened the new account.

I have concluded that the bank is not entitled to rely on the penalty clause in the circumstances of Mr A's complaint. No doubt Mr A received an enhanced rate of interest through signing up for a 3-year fixed-term account, as both parties would have appreciated. Therefore, it is fair that the interest on the account should be recalculated to the appropriate ordinary savings rate that applied at the time. Mr A should have received his money back, less a deduction for the overpayment of enhanced interest. I direct that the bank pay to Mr A the difference between the money in the account at closure as calculated on the ordinary savings interest rate and the money actually paid to Mr A by the bank in November 2012.

my final decision

My decision is that I uphold this complaint. I direct Bank of Scotland plc (trading as Halifax) to pay Mr A the equivalent of 270 days' interest, less the difference between the interest he actually earned and what would have been earned on a standard savings account.

Paul Moulder
ombudsman