

## **The complaint**

Mrs K complains about the way Cynergy Bank Limited has administered her savings accounts with it and about the service it provided to her.

Mrs K's husband Mr K has brought the complaint on her behalf. For ease, I'll refer only to Mrs K unless the facts require otherwise

## **What happened**

In early January 2023 Mrs K transferred the full amount (over £38,500) held in her online Individual Savings Account ('the old ISA') with Cynergy to her newly opened online easy access account with the same bank. Following the transfer her old ISA was closed.

On 20 February 2023 Mrs K opened a new online ISA with Cynergy ('the new ISA'). She transferred the full amount from her online easy access account to the new ISA.

The same day Mrs K asked Cynergy to transfer the money in her new ISA to the Cynergy fixed rate cash ISA ('the fixed rate ISA') at the loyalty interest rate of 3.82%. She asked the bank to tell her how to apply for the account.

On 21 February 2023 Cynergy responded to Mrs K's message with a link and explained how to open the fixed rate ISA. Mrs K applied for the fixed rate ISA the same day. She gave Cynergy her fixed rate ISA application reference. She asked it to transfer funds from her new ISA to her fixed rate ISA immediately and to close her new ISA. Two days later she complained to the bank's senior management that she'd not had a response.

Cynergy attempted to speak to Mrs K on 27 February 2023, but Mr K explained she was ill in hospital and that Cynergy should follow her instructions. When Cynergy was able to speak to Mrs K on 1 March 2023 it told her that her savings had lost their tax free ISA status in January 2023. This was because she'd transferred the money in her old ISA to the non-ISA easy access savings account. Cynergy said the money she'd paid into her new ISA would be treated as a new subscription for that tax year. Mrs K confirmed that she'd not subscribed to an ISA for the 2022/2023 tax year. Cynergy said she could keep the £20,000 in her new ISA but that it would return the oversubscription of £18,653.25 to her nominated account.

Mrs K complained and asked Cynergy to pay her total savings to the fixed rate ISA with effect from 21 February 2023. In a letter sent in early March 2023 Cynergy said it could not do this. The original ISA she'd closed in January 2023 was not a flexible one. This meant she could not withdraw money and reinvest it the same year without the money being counted as a new ISA subscription. It said it would return the oversubscription to her nominated account. It asked her to confirm if she still wanted the £20,000 to be transferred to the fixed rate ISA.

Mrs K responded to Cynergy on 13 March 2023 asking it to transfer the full balance of her savings with interest to the fixed rate ISA with effect from 21 February 2023 and to confirm her money had full ISA status.

On 26 April 2023 Cynergy wrote to Mrs K. It said that as it had not received a response to its 7 March 2023 letter (which it attached) it would return £18,653.25 to her. On 27 April 2023 Cynergy returned the £18,653.25 to Mrs K's nominated account, which I understand is with a different provider (a building society).

On 6 May 2023 Mrs K complained to Cynergy about both the ISA and its handling of her requests, discrepancies in the dates of its letters and that it had not replied to her letter of 13 March 2023.

On 28 June 2023 Cynergy sent Mrs K its final response to her complaint. It said it could not reinstate the full ISA status. But it accepted it had not returned the oversubscribed money to Mrs K's nominated account; instead it had placed this in a holding account on 27 February 2023. It offered to pay £96.26 interest on this amount at the rate of 2.85% from 20 February 2023 to 27 April 2023 and £150 compensation.

Mrs K sent a secure message to Cynergy on 3 July 2023 instructing it to transfer the money held in her new ISA to its twelve month fixed rate ISA with effect from that date. The following week Cynergy confirmed it had done so with effect from 3 July 2023 at the rate of 5.16%.

On 3 July 2023 Mrs K wrote to Cynergy to say that she was not satisfied with the outcome of her complaint. She explained that she wanted more interest because she'd lost the opportunity to invest her savings at a higher interest rate. She also wanted compensation of £7,000 for the anxiety, distress and inconvenience Cynergy had caused her in the period where she did not know where her life savings had gone.

Cynergy did not respond to Mrs K's 3 July 2023 letter so she asked us to look into her complaint. She said Cynergy had not addressed the issues she had raised and had offered her only a "*derisory*" amount of compensation.

Our Investigator did not uphold Mrs K's complaint, as she thought Cynergy's offer was fair and reasonable. She thought Cynergy had fairly said it could not reinstate the lost ISA allowance following Mrs K's error. She noted Cynergy had offered backdated interest following its delay in returning Mrs K's funds, and she thought this together with £150 compensation was fair. While Cynergy could reasonably have replied to Mrs K's letter of 3 July 2023, it had already responded to her complaint and explained how to refer matters to us.

Mrs K asked for an Ombudsman's review of her complaint. She said, in summary:

- She did not want her ISA reinstated. Her complaint concerned Cynergy's unprofessional conduct, and we had not addressed her concerns about the bank's handling of correspondence.
- She'd asked for a response to her letter of 3 July 2023 and we should ask Cynergy to provide one.
- We'd not addressed her calculation of her loss of interest or the amount she said should be her account starting balance.
- We'd also not addressed her distress and inconvenience as she'd described or the amount she'd claimed in compensation.

Following an initial review, I asked both Mrs K and Cynergy for some additional information and comments. I then issued a provisional decision saying that I intended to uphold the complaint and explaining how I thought it should be fairly resolved. I said:

### ***“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.*

*Our role is to resolve complaints as informally as possible. So I’ve not listed all the arguments when setting out the background to this complaint. But I want to reassure the parties that I’ve read and considered all the evidence that we’ve received in assessing what I consider to be fair and reasonable in all the circumstances.*

*I appreciate Mrs K wants a full response to her letter of 3 July 2023 and she suggests that I should ask Cynergy to provide one. I have asked Cynergy some additional questions but I don’t need a full response to Mrs K’s letter to decide this complaint. I will focus on what I think are the central issues.*

#### *The loss of ISA status in January 2023*

*Mrs K has said she accepts she made an innocent mistake when in January 2023 she transferred her old ISA balance to her easy access savings account.*

*I appreciate Mrs K’s point that when she complained to us she did not ask that her funds’ ISA status be reinstated. But she had asked Cynergy several times to reinstate her full ISA allowance. So I think our Investigator did need to assess whether Cynergy had correctly refused to reinstate the ISA status.*

*For completeness, I’m satisfied that the old ISA from which Mrs K transferred money in January 2023 was not a flexible one. In an online message before she transferred the money to her easy access savings account, Cynergy warned her that any money she withdrew from the account could not be replaced in that tax year without it being treated as a new subscription. So Cynergy fairly said it could not reinstate the tax-free status of Mrs K’s money in excess of the £20,000 maximum subscription held in the new ISA.*

#### *The February 2023 ISA applications*

*On 20 February 2023 Mrs K opened the new ISA with Cynergy and transferred the balance of her easy access savings account to the new ISA. The following day, she asked Cynergy to transfer the balance in the new ISA to the new fixed rate ISA.*

*I can see from Cynergy’s records that its ISA team raised the oversubscription issue on 23 February 2023, which was the day that Mrs K asked for an urgent response and complained. But it was not until 27 February 2023 that Cynergy tried to contact Mrs K. On that day Cynergy also removed the oversubscribed funds from the new ISA and placed them in a holding account.*

*In my view, Cynergy could reasonably have spoken to Mrs K about the oversubscription on 23 February 2023. It’s clear she was available on that date as she was messaging Cynergy about her accounts. Cynergy could have resolved matters by paying the £20,000 into her new fixed rate ISA as instructed and by returning the oversubscribed amount to her nominated account the same day.*

*When it did speak to Mrs K on 1 March 2023 Cynergy told Mrs K it would return the oversubscribed money to her nominated account. It repeated this information in its letter of 3 March 2023. But it did not do so until 27 April 2023 and Cynergy accepts this was an unacceptable delay. I agree and as this delay is not in dispute I’ve gone on to consider the impact on Mrs K.*

## *Financial loss*

*In assessing compensation I will seek wherever possible to put the consumer in the position they should have been in had the financial business not made a mistake.*

### *The money held in the ISA*

*I've explained why I think Cynergy should reasonably have called Mrs K on 23 February 2023 to confirm that she'd not subscribed to an ISA that tax year. Had it done so, I think that Cynergy could reasonably have transferred £20,000 plus the interest accrued in the new ISA to Mrs K's one year fixed rate ISA at the loyalty rate of 3.82% with effect from 21 February 2023.*

*If Cynergy had done so, Mrs K would have received interest on her £20,006.04 (including online ISA interest) at the rate of 3.82% – an amount of £764.23. Assuming she could then achieve a higher interest rate of 5.16% in February 2024, she could have earned additional interest on £20,770.27 in the period to 3 July 2024 of £390.52 (133 days at 5.16%). So, the total interest would be £1,154.75.*

*Instead, Mrs K received interest on her new ISA of £208.16 in the period to 3 July 2023, when the total of £20,208.16 was paid to her new fixed rate ISA at the rate of 5.16% for twelve months. She will receive an additional interest payment of £1,042.74 on that amount – a total of £1,250.90.*

*So, on the basis of the above calculation (which assumes interest is added on the anniversary of the account opening date), it's not clear to me that Mrs K suffered a financial loss due to Cynergy not following her instructions and promptly transferring her ISA allowance to the fixed rate ISA at the loyalty rate of 3.82%.*

*If Mrs K and/or Cynergy disagrees and they would like to provide any further evidence about the loss, then I will consider it before reaching my final decision.*

*I understand that Mrs K was unfortunately very unwell at the time these events happened. She also says she was advised not to move the ISA money because of possible fraud. I can appreciate the point she is making. But in its letter of 26 April 2023 Cynergy did explain that it had been waiting for her instructions and that it would return her funds on 27 April 2023 as it then did. I think it was open to Mrs K to have moved her ISA money and oversubscribed money to a different provider at that point.*

### *The oversubscribed money*

*I think Mrs K lost the opportunity to move the oversubscribed money at a more attractive interest rate in the period that Cynergy held the money in its holding account in error. Mrs K has suggested that Cynergy pay her interest at a higher rate to reflect that lost opportunity and I think that is fair and reasonable. Her record with Cynergy shows that she has consistently moved money to take advantage of higher interest rates.*

*Mrs K has suggested that Cynergy pay interest at a higher rate on the oversubscribed funds, based on the rate she could have achieved at bank 'S'. I think that's a reasonable suggestion. I've looked at bank S's historical interest rates for the relevant period. Based on its easy access account I can see that the relevant interest rates were as follows:*

- 3.06% 07 February 2023 to 28 March 2023;
- 3.26% 28 March 2023 to 6 April 2023; and
- 3.36% 6 April 2023 to 28 April 2023.

*I think Mrs K could have moved her money from her nominated account to S on 27 April 2023.*

*So I propose to require Cynergy to pay Mrs K interest on the oversubscribed funds of £18,653.25 at the higher rate of 3.06% from 20 February 2023 to 27 March 2023; and at 3.26% from 28 March 2023 to 5 April 2023; and at 3.36% from 6 April 2023 to 27 April 2023.*

*If Mrs K can provide me with evidence that she could have achieved a higher interest rate with bank S for the above period of time then I will consider whether a higher award is fair.*

#### *Cynergy's response to Mrs K's complaint*

*Cynergy does not dispute the delay in returning Mrs K's funds to her nominated account. It did not move her ISA money to the fixed rate account as instructed. In addition I think there was some unnecessary confusion over the dates it sent Mrs K letters and the dates it received her letters. Unfortunately this added to her concern about Cynergy's handling of her accounts.*

*Cynergy offered Mrs K a payment for interest and for her distress and inconvenience. Mrs K wrote to Cynergy on 3 July 2023 to explain why its offer did not go far enough. Cynergy says it didn't receive her letter.*

*Ultimately, Mrs K is not satisfied with Cynergy's offer of compensation to resolve her complaint so the issue for me to decide is whether its offer was fair. And in doing so I've looked at Mrs K's comments about the impact on her of Cynergy's poor handling of her accounts.*

*I have asked Mrs K whether she chased Cynergy in the period from 1 March 2023 when Cynergy told her that it would return the oversubscribed money to her and 27 April 2023 when it returned the money. As she said she wrote a letter to Cynergy on 13 March 2023 asking it to place the full amount into the fixed rate ISA as she'd originally instructed. It's not clear that Cynergy received that letter but I've no reason to doubt she sent it. I've noted that in her letter of 6 May 2023 she said she'd assumed that Cynergy had re-instated the ISA to the full £38,653.25 as she'd requested.*

*I've considered Mr K's comments about this issue. And I appreciate that Cynergy had not sent the money to Mrs K's nominated account as it said it would. This issue was clearly distressing but it's not clear to me from the evidence that Mrs K thought her life savings had gone missing. She said at the time she'd assumed they'd been paid into the fixed rate ISA as instructed. And it seems to me that she might have contacted Cynergy again earlier than she did if she thought the money had gone missing. I am very sorry to hear of her ill health but I don't consider an award of £7,000 is fair based on the evidence I have seen.*

*I do think that Cynergy's handling of this matter caused Mrs K some material distress and inconvenience at an already difficult time. It failed to follow her instructions or to return a substantial amount of money as it said it would. There was confusion over the dates of letters Cynergy said it sent to Mrs K, which it accepts. She did not receive an early response to her own letters and Cynergy misquoted the dates of her and its own letters. Cynergy knew Mrs K had been unwell and so it was reasonably aware that its delay in returning the money to her and its poor handling was likely to have caused her distress and inconvenience.*

*Having considered all the evidence from Mrs K and Cynergy I am minded to require Cynergy to pay Mrs K compensation for her distress and inconvenience and I assess £400 in total to be fair and reasonable."*

In summary, I said I intended to uphold this complaint and to require Cynergy to pay Mrs K:

- Interest on the oversubscribed funds of £18,653.25 at the rates of: 3.06% from 20 February 2023 to 27 March 2023; 3.26% from 28 March 2023 to 5 April 2023; and 3.36% from 6 April 2023 to 27 April 2023; and
- £400 compensation in total for her distress and inconvenience.

### **Responses to my provisional decision**

Cynergy responded to say that it accepted my provisional decision. It said it had calculated the proposed loss of interest payment at £107.43. Cynergy said that it would not deduct income tax from this amount and would pay it as compensation.

Mr K responded on Mrs K's behalf to say that Mrs K did not accept my provisional decision. I will refer to his comments below and as before I'll refer to Mrs K unless the facts require otherwise.

Mr K also provided some additional information about interest rates on Mrs K's savings, which I shared with Cynergy. I also shared with Mr K the screenshot showing the warning Cynergy said Mrs K would have seen before transferring her old ISA savings to the online easy access account. Again I will refer to Mrs K's comments about this below.

### **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 have carefully reviewed all the comments that I have received in response to my provisional decision. Having done so, I uphold this complaint. I remain of the view that the award I proposed to make in my provisional decision is fair and reasonable. I will explain why using the headings in Mr K's letter.

#### *The money held in the ISA*

Mrs K says my conclusion that she did not suffer a financial loss does not follow the facts or her original intention.

I appreciate that in January 2023 Mrs K intended to transfer the full balance of her old ISA to a new ISA. But she made a mistake, as she has accepted. She transferred the money to a non-ISA account – the online easy access account.

Mrs K says she does not recall seeing Cynergy's online warning message about losing the tax-free status of her money at the time she carried out the transfer. If she had, she says she would not have made the transfer. She has given me details of her profession in support of her evidence on this point. I've no reason to doubt what Mrs K is saying. But I think it is more likely than not, on the balance of probabilities, that Cynergy displayed the warning and she overlooked it.

Mrs K says the online message refers to the online ISA terms and conditions and she says that Cynergy is trying to confuse me. I don't agree. The message starts with a clear warning:

*“Online ISA does not have flexible features. This means that any money withdrawn or transferred to a non-ISA account will lose the tax advantages of ISAs and cannot be replaced in your account without affecting your annual ISA allowance.”*

Mr K says that he himself has made a similar error with a different ISA provider, which then reinstated the ISA status of his money. It is possible that was a flexible ISA where money can be withdrawn and replaced during the tax year without affecting his annual ISA allowance. But even if I'm wrong, I don't think this means Cynergy must reinstate the flexible ISA status. I remain of the view that there is not any basis on which I can fairly say Cynergy should reinstate the ISA status for the full amount Mrs K transferred from her old ISA in January 2023 to the online easy access account. The old ISA was not a flexible one.

Mrs K has referred to her urgent online secure messages and email to Cynergy sent on 20 and 21 February 2023. She told Cynergy she wanted "*to transfer her **existing ISA** to a fixed rate ISA*" [Mr K's emphasis] and enquired how to do this. Mrs K says that Cynergy should have realised immediately that she did not have an existing ISA to transfer from.

But I don't think that's correct. I say this because Mrs K opened a new ISA on 20 February 2023 and transferred the full amount held in her online easy access account to the new ISA. The new ISA was a different one from the one she closed in January 2023. Having opened the new ISA on 20 February 2023 she then wanted to transfer the money in the new ISA to the new fixed rate ISA.

I accept that Cynergy should have contacted Mrs K earlier than it did. As I said in my provisional decision I think it should have contacted her on 23 February 2023 when the issue of the oversubscription was raised internally. Mr K says this contact could have been by secure message or email. I agree but I don't think there was any reason for Cynergy not to telephone Mrs K. But the key issue here is that Cynergy should have called Mrs K earlier than it did for the reasons set out in my provisional decision.

Mrs K says the facts in this case are that she waited for Cynergy to respond to her and this took 132 days. She says she could have earned a higher amount of interest during this period. She also says that she could have chosen to invest her ISA savings with a different bank at a higher rate of 5.2%. But she opted not to do so in order that her new fixed rate Cynergy ISA started with the correct balance after adjusting for additional interest.

I understand Mrs K's point. But I don't think there was anything to prevent her from transferring her ISA to a different provider had she chosen to do so. Cynergy would have added any interest earned on her existing ISA to the account balance before it was transferred. So I don't award Mrs K any additional interest on her ISA savings.

#### *The oversubscribed money*

Mrs K has provided examples from three other banks to show that she had plenty of opportunities to achieve a much higher interest rate.

I've looked at the letters, which show the following:

1. S Bank - a two year fixed rate cash ISA bond at 4.31% from 7 May 2023.
2. S Bank – a one year fixed rate maturity bond at 4.4% which matured on 28 December 2023.
3. U Bank – a fixed deposit at 4.96% from 22 May 2023.

I have found that the relevant interest period here is from 20 February 2023 to 27 April 2023. Letters 1 and 3 show a higher interest rate but from a later period, being 7 and 22 May 2023 respectively. For the reasons I gave in my earlier decision I remain of the view that Mrs K could reasonably have moved the oversubscribed money after 27 April 2023, being the date that Cynergy transferred it to her nominated account. So I don't consider I can fairly award higher interest based on this new evidence.

Letter 2 is for a fixed rate maturity bond in Mr K's name maturing on 28 December 2023. Bonds of these types do not generally allow additional deposits. I have looked at the product information for fixed rate bonds on S bank's website. S bank does not appear to allow additional deposits. So it is not clear to me that Mrs K could have added additional money to Mr K's bond between February 2023 and April 2023.

Turning to the delay, I have found that Cynergy should have returned Mrs K's oversubscribed funds to her much earlier than it did, rather than placing the money in a holding account.

### *Tax position*

Mrs K says that Cynergy should not deduct income tax from the additional interest as this case relates to an ISA. As such, she says that the interest should be added to the opening fixed rate ISA balance with effect from 3 July 2023. She restates her point about her decision not to transfer her ISA to the provider offering 5.2% interest. She intends to transfer her ISA on maturity and says that Cynergy should be instructed to adjust the opening balance immediately having been "*dragging its feet*" since February 2023.

Cynergy says it does not intend to deduct tax from the interest award and will pay the award as compensation. But for completeness, I still intend to include in my decision our standard explanation about any tax deducted from an interest award.

I don't require Cynergy to add the interest I have awarded to Mrs K's online fixed rate ISA's opening balance with effect from 3 July 2023. To be clear, Cynergy does not have to add the interest to her ISA. I say this because I am not awarding interest on the ISA funds. I am awarding interest on the oversubscribed funds which were held outside the ISA.

### *Compensation for distress and inconvenience*

Mrs K considers £6,300 would be fair compensation and refers to awards on the Financial Services Compensation Scheme (FSCS) website. I am not sure whether Mrs K meant to refer here to the Financial Ombudsman Service website. But the FSCS is a different organisation. I award compensation after considering the individual facts and merits of each case and based on what I consider to be fair and reasonable in all the circumstances

I've taken into account all of Mrs K's comments about the distress she suffered when she thought her "*life savings*" had vanished or been stolen. I think it is fair that Cynergy compensate her. For the reasons set out in my provisional decision I remain of the view that compensation of £400 in total is fair and reasonable, based on all the evidence that I have carefully assessed.

Mrs K says she will consider her options, which include taking legal action against Cynergy. For her information, if Mrs K decides to accept my final decision then it will be legally binding on both her and Cynergy. But if she decides (as is her right) to reject my final decision then she remains able to pursue any legal remedies open to her.

### **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint. I require Cynergy Bank Limited to pay to Mrs K:

- Interest\* on the oversubscribed funds of £18,653.25 at the rates of: 3.06% from 20 February 2023 to 27 March 2023; 3.26% from 28 March 2023 to 5 April 2023; and 3.36% from 6 April 2023 to 27 April 2023; and



- £400 compensation in total for her distress and inconvenience.

\*If Cynergy considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs K how much it's taken off. It should also give Mrs K a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 30 July 2024.

Amanda Maycock  
**Ombudsman**