

The complaint

Ms W and Mr W complain that Lloyds Bank PLC gave them incorrect information about account fees, and that they lost out as a result.

What happened

In September 2001, Ms and Mr W changed from a Gold account to a Platinum account. Both are packaged bank accounts which have a monthly fee, in return for which you get various banking and insurance benefits. In 2001 the fee for the Gold account was £8 per month, and for the Platinum account it was £12 per month. Both accounts provided travel insurance. The main extra benefits of the Platinum account were mobile phone insurance and car breakdown cover.

For both accounts the monthly fee was waived if you kept a certain minimum balance. In September 2001 this was £1,500 for the Gold account, and £3,500 for the Platinum account.

Mr W complained to us that for many years:

“...I had a gold card with account fee which was waived if I maintained a certain balance in my account. In 2001 I was offered an upgrade to platinum account on which I maintained the same minimum balance as gold but my account fee was not waived off hence I called the bank and asked why and the answer was there is no fee waiver program for platinum account. I have asked the same question on few other occasions and the answer was same. One of them was as recent as 25th of June 2021.”

Mr W says that, when he was making the change in 2001, he asked if there was a fee waiver. He says he could have kept the minimum required amount in his account, and so avoided the monthly fees, if he'd been given proper information.

In June 2021, Lloyds wrote to Mr W, to tell him the fee waiver would be ending. Mr W phoned the bank and said he'd been previously advised there was no fee waiver anyway. During the call, a member of bank staff wrongly told him this was correct – that there had never been a fee waiver on the Platinum account.

When he complained, Lloyds said that the literature that came with the Platinum account would have informed him about the fee waiver. Lloyds acknowledged that he'd been wrongly told, in his 2021 call to the bank, that there had never been a waiver. It offered him £25 compensation.

Mr W wasn't happy with this outcome and complained to us.

One of our adjudicators looked at the evidence and said they thought the complaint shouldn't be upheld. Mr W didn't agree, and so the matter has been passed to me to make a decision.

When I looked at the case, I reached a different decision to that of the adjudicator. So I wrote a provisional decision and invited comments. I said:

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

On our website, we've set out our approach to packaged bank accounts. I've kept that in mind when considering this case.

My current view is that I should uphold this complaint.

Mr W was clearly surprised to be informed about the fee waiver when he received the letter of June 2021, and this prompted him to contact the bank. Lloyds has confirmed, from listening to the phone recording, that in June 2021 its staff member wrongly told Mr W that there had never been a fee waiver on the Platinum account.

Mr W also phoned Lloyds in March 2022, to test what advice it was giving. He says:

"I asked the same question "Do you have a fee waiver program for platinum account" answer was no. 'Did you ever have one for platinum account' answer was no."

The evidence does suggest there has been repeated confusion amongst Lloyds staff about the fee waiver.

I consider Mr W's testimony to be consistent and plausible. I think it likely he was previously advised several times that there was no fee waiver on the Platinum account.

Lloyds has said there was information about the fee waiver in the welcome pack. I think it's likely that, if Mr W had seen that, he'd have made a further query to Lloyds. Being directly advised of a fact, by a member of staff, is going to have a much bigger impression on a customer than written information buried in a leaflet.

Since the Platinum account started, there have been some occasions when Mr W's balance was higher, and so the fee waiver was applied. But I don't think that was enough for Mr W to have questioned the wrong advice he'd been given. Lloyds would have to show that it was likely Mr W even noticed the fee waiver on the occasions it occurred, and that he also understood the implications of what it meant.

Lloyds has told me it doesn't have copies of Mr W's statements before August 2001, which is around the time Mr W changed over to the Platinum account. So I can't know for certain that Mr W regularly maintained a balance that avoided fees, up until the account changed to Platinum. But, given what Mr W has said, I think it's likely he would have arranged his finances to avoid the monthly fee, if he'd known this was possible.

So my current view is that Lloyds misadvised Mr W, and that he and Ms W have lost money as a result.

In response Lloyds said it did not agree with my provisional decision. Its main points were:

- Product information for the Platinum account stated the fee waiver limit and monthly cost and it is “therefore reasonable that [Ms and Mr W] would have been informed at the time”. They would also have seen the monthly fee on their account, and it would be “reasonable to suggest” they should have raised this.
- Lloyds believes it would have written to Ms and Mr W in May 2004 when the fee waiver rose to £4,000
- Ms and Mr W continued to pay £8 per month (the Gold fee amount) and did not pay the full Platinum fee until July 2007. “It would seem strange not to have been questioned by the customer”.
- “The account statements of 2001 onwards would have shown the monthly fee being debited, which if they understood would be waived it is unclear why this would not be questioned at the time.”
- “There has also been no evidence to show the customer could have retained the required balance to avoid the monthly fee. If funds were held on an account for example, they have received a benefit, i.e. interest, and so any refund request if your view is not changed means a double gain for the customers.”

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’ve thought about what Lloyds has said in response to my provisional decision, but on balance I still think the fair and reasonable outcome is uphold the complaint.

I have already addressed the issue of what the product information may have said compared to what it seems likely the bank advised Mr W. There is no evidence that Ms and Mr W saw the information said to have been sent in May 2004, or how clearly this would have made them aware of a waiver.

I do not see that the information that Ms and Mr W paid a monthly fee shows that they had been properly advised that they could have avoided that fee.

These points do not dislodge my main finding which is that:

“I consider Mr W’s testimony to be consistent and plausible. I think it likely he was previously advised several times that there was no fee waiver on the Platinum account.”

I have accepted Mr W’s testimony that they could and would have maintained a balance to avoid the fee. I have no clear evidence this isn’t accurate.

I agree that the principle should be that Ms and Mr W should be put in a position they would have been, if they had been properly advised. Whether or not they’ve actively made use of the benefits of the account, or needed to make claims, they have had the peace of mind of being protected by the insurances. If Lloyds can demonstrate that it paid interest to Ms and Mr W for moneys in an account that would otherwise have been used to avoid the monthly fee, this interest can be deducted from any redress. Similarly, if Ms and Mr W have received direct payments (for example from an insurance claim) as a result of having the packaged bank account, that may also be deducted.

Putting things right

Lloyds now needs to:

- Pay Ms and Mr W the fees they paid for their Platinum account, from the time it started in 2001 until the end of August 2021 (to allow for a period after Lloyds wrote on 15 July 2021 to properly set out the fee waiver arrangement).
- If Lloyds can show that it paid interest on savings that otherwise would have been used to avoid the fee waiver, or money was paid out as a form of benefit, this may be deducted from the amount owed.
- Add simple interest at 8% per year on each of the above amounts, from the date Ms and Mr W paid the fee, to the date of settlement†.

†HM Revenue & Customs requires Lloyds to take off tax from this interest. Lloyds must give Ms and Mr W a certificate showing how much tax it's taken off if they ask for one.

My final decision

For the reasons set out above, I uphold this complaint.

I require Lloyds Bank PLC to pay Ms and Mr W compensation in accordance with the calculation of redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms and Mr W to accept or reject my decision before 27 October 2022.

Timothy Bailey
Ombudsman