

The complaint

Mr R complains that TSB Bank plc has refused to refund all the fees that have been charged over the years for a packaged bank account held by Mr and Mrs M.

Mr R brings this complaint on behalf of Mrs M and the late-Mr M's estate.

What happened

The circumstances that led to this complaint are well known to both parties, so I won't repeat them in detail here. But, in summary:

- Mr and Mrs M opened a joint current account in 1989. The bank has limited records going back that far but, at some point before September 2001, the account was changed to the Select account. This was a packaged account, launched in early 1997, which afforded a number of benefits in return for a monthly fee. Mr and Mrs M switched to the Gold packaged account in February 2003 and the account was downgraded to a fee-free account in late-2022.
- Mr R complained to TSB – on Mrs M and the late-Mr M's behalf – that the packaged accounts had not been needed and the benefits had not been used. He asked the bank to refund all the fees that had been charged over the years.
- TSB refunded £411.03 of Select account fees and interest but said the Gold account had not been mis-sold. TSB then said that the complaint had been referred to our service too late. Since then an ombudsman has reviewed that matter and concluded that the complaint was brought in time.
- One of our Investigators looked into the complaint and didn't think the Gold account had been mis-sold. Mr R disagreed and so the complaint has come to me for review.

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 hope Mr R won't take as a discourtesy the fact that I won't be addressing directly each and every one of the points he's made. I can assure him that I've considered everything he's said and provided in order to reach my decision. And if I haven't commented specifically on a particular point or question, that doesn't mean I haven't considered it. Instead, when setting out my findings, I've concentrated on the main issues and what I believe to be the crux of the complaint.

While I appreciate this is likely to come as a disappointment to Mr R, I've reached the same conclusion as the Investigator, and for much the same reasons. I won't repeat everything she said but note, in particular, that:

- Mr R hasn't asked us to consider the compensation TSB has paid relating to the Select account fee refund. But, for completeness, I have looked at this and can confirm TSB has taken the approach we would expect when calculating such awards.
- I'm satisfied, for all the reasons the previous ombudsman set out, that the complaint about the Gold account was brought in time.
- Mr R has suggested the complaint about the Gold account sale should be upheld because the bank upheld the complaint about the Select account. But I disagree. It's not clear from the bank's final response letter or the evidence it's sent to us, why it decided to uphold the Select account complaint. But I suspect that might simply be because the bank has no records relating to that sale or that account. However, we do have some evidence available relating to the Gold account. When making my decision about the Gold account sale I have taken into account everything that TSB and Mr and Mrs M and Mr R have told us about their relationship.
- Given the length of time that's passed, I don't think it's unreasonable that TSB hasn't been able to provide complete information or documentation from when the various account changes took place or what was sent in the subsequent years. I must also take into account that the event I'm considering in this case – the sale of the Gold account – happened 20 years before the complaint was made and memories can fade over time. Where evidence is incomplete and matters are in dispute, my role is to make a decision based on the balance of probabilities – that is, what I think is most likely to have happened – keeping in mind everything I've seen and have been told by both parties.
- Mr R may well be unable to find any TSB (or LloydsTSB as it was before the bank split into two entities in 2013) correspondence, but he's also acknowledged that Mrs M has recently disposed of some records. I agree with the previous ombudsman that the bank hasn't been able to provide records sufficient to justify time-barring this complaint. But that doesn't mean I must conclude that the bank didn't send any correspondence to Mr and Mrs M over the years about their account. TSB's records indicate it held Mr and Mrs M's correct address and I think it's unlikely they weren't sent any of the usual correspondence that was issued to Gold account holders over the years.
- Mr R has told us that Mr and Mrs M didn't know that a fee-free account was available. But, as noted above, they held a free account for many years before they first took out the Select account. Mr R has said it's possible Mr and Mrs M were forced into switching to a packaged account. But there is no mention in Mr and Mrs M's initial complaint submissions that suggested they were told they had to have a packaged account or that they were forced into switching.
- The bank has notes of its contact with Mr and Mrs M going back to 1996. These include interactions that Mr and Mrs M had with the bank – often in branch – relating to their current account, their overdraft, their mortgage, their savings, some loans and Mr M's early retirement due to ill health in late-2000. And, with particular relevance to this case, in February 2003 the notes say *"converted to Gold as per customers request"* and *"converted select savers to gold savers."* I think it's more likely than not Mr and Mrs M actively engaged with the decision to change to the Gold account and may have been attracted to it because it offered different benefits, including some preferential ones, to the Select account. I also think it's possible they would have been sent some information about the new Gold account when they switched because it was usual practice to do so. I note the bank has no customer-specific evidence which shows what exactly was sent and Mr R cannot find any letters to this effect. But, again, I must keep in mind that more

than 20 years has passed and I can't rule out the possibility that Mr and Mrs M have not kept every letter they've ever been sent.

- It's clear that Mr and Mrs M understood at least some of the benefits that the Gold account has afforded over the years. They specifically mentioned the travel insurance and breakdown cover in their initial complaint submissions. This understanding could have come from the initial discussion with the bank and/or any letters they were subsequently sent. And the bank's records indicate they made three enquiries about the travel insurance between 2006 and 2008. It's clear the bank knew something about Mr M's health because this is referenced in their notes but that doesn't mean he would have been completely excluded from cover. But, if he was told he was ineligible for cover at some point after switching to the account then it was up to him to decide whether to continue with the Gold account – given the fee and other benefits it afforded – or to discuss other options with the bank. The breakdown cover was only included as a benefit from 2004 and I think it's likely the bank would have written to Mr and Mrs M to confirm this. It was usual to advise customers about such changes and Mr and Mrs M said they knew this was a feature of the account. If they had breakdown cover already it was for Mr and Mrs M to decide whether to cancel that in favour of the cover that was included with their packaged account and/or whether the Gold account offered value for money if they didn't want to change their existing arrangements. As I've already noted, Mr and Mrs M interacted with the bank at various points over the years and I have difficulty accepting the suggestion that they wouldn't have queried the Gold account if they had any questions or concerns about it.
- I accept that Mr and Mrs M may not have taken advantage of all the benefits on offer, and for which they were eligible, over the years. But that, in and of itself, doesn't mean the fees should be refunded or that the account was unsuitable for their needs. And, from everything I've seen, I don't think the Gold account was unsuitable, given Mr and Mrs M's overall circumstances
- There was no requirement, as Mr R suggests, for the bank to have phoned Mr and Mrs M over the years to check either that they were still happy with the account or that it was still suitable for their needs. I think it's more likely than not the bank would have written to them at various points in time about the account and these letters would have set out, to some degree, the cost of the account and the available benefits. As I've already said, the fact the bank can't provide complete records of all these pieces of correspondence and/or that Mr R can't now find them doesn't mean they weren't sent. It was up to Mr and Mrs M to review these and make any appropriate decisions, including arranging to speak with the bank about the account if they had any questions.

Overall, I'm not persuaded that it would be fair to uphold this complaint or instruct the bank to refund any of the Gold account fees that have been charged over the years.

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 M and the late-Mr M to accept or reject my decision before 18 April 2024.

Ruth Hersey
Ombudsman