

The complaint

Mr S has complained that Lloyds Bank Plc (“Lloyds”) mis-sold him a fee-paying Gold account, which was sold to Mr S at some point prior to September 2001.

Mr S has given a number of reasons why he says that it was mis-sold. These include that that he was coerced by a member of staff into agreeing to upgrade his account to a Gold account. Mr S says he was led to believe that by agreeing to the account it would reduce the chance that his arranged overdraft would be removed and that he’d be given preferential treatment, should he need to apply for a loan or other product.

Account history

- Opened as a fee-free account on 9 February 1989
- The earliest available statement from September 2001 shows Mrs S held a fee-paying Gold account.
- Gold account downgraded to a fee-free Classic account on 26 December 2023

What happened

One of our investigators assessed the complaint and they didn’t think that the account had been mis-sold. Mr S disagreed with the investigator’s assessment and so the matter was referred for an ombudsman’s decision.

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.

We’ve explained our approach to complaints about packaged accounts on our website and I’ve used that to help me decide this complaint. I think it may also help to explain that where matters are in dispute and evidence is incomplete, as is the case here, I need to decide what I think most likely happened based on all of the evidence that is available. And having considered everything, I’m unable to say that the Gold account was mis-sold. I will explain why.

I’ve started off by considering whether Mr S was given a fair choice in agreeing to the Gold account.

Mr S has given very specific recollections of what was said during the sale. He says he was invited in for an account review. And although he had no interest or desire in changing his account, he says that the member of staff manipulated him into thinking he essentially had no choice but to agree to upgrade his account.

When considering Mr S’s recollections, I’m aware that the sale of the account took place at least 23 years ago. And given how long ago the sale took place, I’m mindful that recollections can fade and change overtime. A specific example of this is that, when Mr S

first complained to Lloyds, he said he could recall being told that the Gold account included breakdown cover, and he explained to the member of staff that he already had breakdown cover and was quite happy with the cover he already had. But I don't think it is likely that he was told that during the sale of the account, because breakdown cover was not added as a benefit of the Gold account until May 2004 – which was a number of years after it had been sold to Mr S. And I don't find it particularly plausible that the member of staff would've discussed whether Mr S had a need for breakdown cover when it was not a feature of the packaged account that was being sold to him.

As such, I'm not able to place as much weight on Mr S's recollections of the sale as he may perhaps want me to. But having said that, I have still taken into account what he can recall and weighed this up with all of the other evidence that is available, to decide whether it was likely that he'd been deprived of a fair choice. And having done so, I've not seen enough evidence for me to conclude that he was likely not given a fair choice in deciding whether to upgrade his account.

Mr S says that he was not given much choice but to agree to the upgrade. He says he was coerced into it. However, I understand that he'd opened a fee-free current account in 1997 – which I understand was around a year after when Mr S said he'd agreed to upgrade to the Gold account. Lloyds says that he continued to hold that fee-free current account up until it was closed in 2015. Lloyds also says that Mr S had confirmed he held a fee-free account with another bank as well. So overall, I'm satisfied that Mr S was aware that fee-free accounts were generally available to him.

In terms of when the account was sold, Lloyds said that it was sold at some point prior to September 2001 (although it can't say when exactly). Whereas Mr S has said it was sold approximately around August 1996. And from what I know about the account, prior to July 1997, the Gold account cost £8 per month. In return it provided a guaranteed arranged overdraft facility of £2,500 – although a larger arranged overdraft limit of up to £10,000 could be applied for. In addition to this, the Gold account charged a preferential overdraft interest rate i.e. a lower rate of interest than would be applied when using an overdraft on a standard fee-free account. Also, by having the account, Mr S could use his overdraft each month and not be charged a £5 monthly overdraft usage fee (which was applicable to fee-free accounts). So in short, this meant that - providing he used his overdraft each month - for £3 extra per month, he would be guaranteed his overdraft limit i.e. it was not subject to a credit check, and he would be charged a lower amount in overdraft interest.

Therefore, from what I understand of the product, having the Gold account at a cost of £8 per month could potentially save an accountholder money for someone who regularly or heavily used their overdraft each month. Unfortunately, Lloyds only has bank statements going back to September 2001. But from what I have read (and based on Mr S's statements since 2001) it seems that Mr S did regularly use his overdraft.

Therefore, if Mr S was told that by upgrading to the Gold account it would ensure that he would retain his arranged overdraft facility and provide a lower rate of interest than he was previously being charged, then what he was told at the time was correct.

Furthermore, in 1996, from what I know about the Gold packaged account, it was a very different product to what it later became. For example, it didn't come with an array for insurance benefits like it did in more recent times – the only insurance product it came with at the time was travel accident insurance. And that only applied if the travel was booked with

the Gold debit card. So the main features of the account at the time were largely only banking features (for example, in addition to the overdraft benefits, it also provided benefits such as better rates of interest on credit balances, commission free foreign exchange).

So, from what I understand, the main reason why account holders agreed to the Gold account was largely for the overdraft benefits that it came with. And based on Mr S's recollection of events, whilst I don't know what exactly was said, it does seem that Mr S agreed to it for the assurance that it came with regarding his overdraft facility at the time. And it's clear from his testimony that his arranged overdraft facility was important to him at the time.

Therefore, I think that Mr S was in all likelihood given a fair choice in agreeing to it and I can't reasonably say that he was misled into agreeing to it. I say that especially as he later applied for a fee-free current account. So he was clearly aware he didn't have to have a fee-paying account and that fee-free current accounts were also available to him if he didn't want to pay a monthly fee.

I note that Mr S has mentioned not needing the insurance benefits on the account. However, the insurance benefits Mr S has mentioned e.g. breakdown cover and travel insurance, were not a feature of the account around the time it was sold to him – they were added later. So I don't think whether he had a need for them, or whether he already had such cover in place at the time of the sale is relevant to deciding whether the Gold account was mis-sold or not.

Finally, I note that Mr S has said that Lloyds failed to make a reasonable adjustment for him under the Equality Act 2010, during the sale of the account due to a neurological condition he has recently been diagnosed with.

I'd like to make it clear that our service is unable to make findings on whether or not something constitutes discrimination under the Equality Act 2010 (or indeed under any other anti-discrimination legislation). This is because the Financial Ombudsman Service is an informal alternative to the courts. If Mr S wants a finding as to whether or not Lloyds's actions constitute a breach the Equality Act (or any other legislation), he will need to pursue it through the courts. This is because only a judge can give a formal decision on whether or not a piece of legislation has been breached. It is outside of this service's jurisdictional remit and therefore not something I can do within this decision. All I can consider is whether or not the business has acted in a fair and reasonable manner in this matter.

However, I should point out that the sale of the Gold account took place many years before the Equality Act 2010 was enacted. And secondly, I can't reasonably say that Lloyds treated Mr S unfairly at the time of the sale of the account, if it failed to make a reasonable adjustment for a condition that he don't even know he had at the time and was only diagnosed with many years later.

Having said that, I have considered what Mr S has told us about his circumstances. I acknowledge that he says, due to his neurological condition, this meant he was more vulnerable to the sales techniques that Lloyds used, then if he didn't have the condition. I have considered what he has told us about the impact his condition had on him. However, I'm also mindful that the Gold account included a number of overdraft benefits and that Mr S's overdraft was clearly important to him. So I think it's just as likely, if not more so, that Mr S was told about the overdraft benefits of the Gold account, he had a good appreciation of what he'd get by having the Gold account and he agreed to it because he was attracted to the account features.

As such, taking everything into account, I haven't seen enough evidence for me to conclude that the Gold account was mis-sold.

I appreciate that the Gold account has changed a fair amount over the years that Mr S has held it. So I recognise that it may've, later on, no longer have been as good value for money for Mr S as it may've initially been. But that doesn't mean that it was mis-sold or that Lloyds was being unreasonable or unfair in selling the account to Mr S when it did.

My final decision

Because of the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 November 2024.

Thomas White
Ombudsman