

complaint

Mrs M has complained that TSB Bank plc (TSB) mis-sold her a Select packaged bank account (PBA). This was later upgraded to a Premier PBA.

background

The background to the complaint was set out in my provisional decision dated 3 November 2015. A copy of this is attached and forms part of my final decision (so I will not repeat that information here). In my provisional decision I set out why I intended to uphold Mrs M's complaint in part. I asked both parties to let me have their final submissions by 3 December 2015.

TSB wrote to me. It still thought Mrs M had a need for the overdraft facility provided by the Premier PBA. But it was prepared to make an offer along the lines I had suggested in my provisional decision. However it felt it would be reasonable for the refund to be calculated from October 2010 to December 2014; which was when Mrs M had been advised how to downgrade her account by it.

Mrs M also wrote to me. In summary:

- She hadn't appreciated that there were different types of PBA. She believed she had opened her account in 1997 not 2000.
- Until recently she didn't know about the full benefits of the account apart from being eligible for an overdraft. She believed she had had to purchase AA breakdown assistance in approximately 1998. It was only several years later that she was made aware she had breakdown cover with her bank account.
- And whilst she unknowingly had travel insurance, she remembers buying single trip travel insurance before the year 2000. She didn't recall dates but was happy to agree the dates contained in my provisional decision.
- She had been put into the Select PBA solely because it gave her access to overdraft facilities and a better loan rate. She didn't believe she had a choice about taking out the PBA.
- She acknowledged that she had used some of the benefits provided by the PBAs, but this was simply because as she was paying for it, she thought she might as well use it. And she already had travel insurance with her credit card account.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I think the relevant issues to take into account are the same as those set out on our website about our approach to complaints about packaged bank accounts.

I've thought very carefully about what Mrs M and TSB have said in response to my provisional decision. But I haven't changed what I thought about the case, for the reasons I set out in my provisional decision. I will explain why.

I do understand Mrs M feels strongly that she wasn't given a choice about taking out the PBA. And I accept her recollection is that she took out her account earlier than TSBs records show. But for the reasons I set out in my provisional decision, I don't think I have enough persuasive evidence to safely decide in this case, that Mrs M was led to believe she had to take out the Select PBA in the way she has described.

Mrs M has said that she didn't know of the full benefits provided by the Select PBA. She has referred to her having purchased breakdown cover and travel insurance as evidence of this. But the dates Mrs M has said when she purchased breakdown cover and travel insurance, were it seems, before she upgraded her account to a Select PBA in 2001. So I don't think this indicates that she wasn't aware of the benefits the Select PBA provided.

I understand that Mrs M appears to feel that she didn't need the benefits provided by the PBAs and that she had some cover provided by her credit card. But it would've been for her to decide whether a PBA as a package was right for her. And whether or not she needed to cancel any existing cover she might already have.

Mrs M has acknowledged that she used some of benefits that the PBAs provided. I've noted what she has said about why she used some of the benefits. But for the reasons I've explained in my provisional decision, I think it's likely that the benefits provided by the accounts were explained to her. And that she was interested in some of the benefits the PBAs could provide.

I think Mrs M was interested in travel insurance. But I don't believe she needed the Premier PBA. I believe that if she'd been properly informed about the Gold PBA including the travel insurance it provided, she would've taken it out rather than the Premier PBA. So I think it's most likely there were shortcomings in the sale of the Premier PBA. And that Mrs M has lost out because of what TSB did wrong.

I've also thought about what TSB has said about my proposed redress. I don't agree with it that the redress should be limited to December 2014. As I said in my provisional decision and reiterated above, I think Mrs M had a need for a Gold PBA. Because I've decided she had a need for a PBA albeit a different PBA to the one that TSB sold her; I don't think it's unreasonable in this particular case that she didn't cancel her PBA when TSB told her she could.

fair compensation

For the reasons given above, I think TSB mis-sold the Premier PBA to Mrs M. TSB should:

- refund and pay Mrs M the difference between the Premier PBA monthly fees she paid and the monthly account fees that she would've paid if she had the Gold PBA instead during this period; and
- pay an additional amount equal to 8% simple interest[†] per year on the difference between each account fee, calculated from the date Mrs M paid her account fees to the date of settlement.

If TSB can calculate any additional savings Mrs M has made from interest linked to savings accounts or overdrafts by holding the Premier PBA and can show these calculations to her, it may, if it wants, deduct this additional saving from any compensation that is paid.

† HM Revenue & Customs requires TSB to take off tax from this interest. TSB must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

Mrs M should refer back to TSB if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my final decision

For the reasons I've given, I've decided to partly uphold Mrs M's complaint about the sale of her Premier PBA by TSB Bank plc. I don't uphold her complaint about the sale of the Select PBA. TSB Bank plc should calculate any compensation due to Mrs M using the methodology I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 4 January 2016.

Simon Dibble
ombudsman

copy of provisional decision

complaint

Mrs M has complained that TSB Bank plc (TSB) mis-sold her a Select packaged bank account (PBA). This was later upgraded to a Premier PBA.

background

TSB has told us that Mrs M first opened a fee free account in 2000. She upgraded her account to a Select PBA in June 2001. This was upgraded again to a Premier PBA in October 2010. The PBAs offered a number of benefits for a monthly fee. TSB didn't agree that the PBAs had been mis-sold.

Our adjudicator didn't uphold the complaint. In essence he didn't think that the accounts had been mis-sold. Mrs M disagreed and asked for the case to be reviewed. Another of our adjudicators looked at the case. She didn't think that Mrs M had a need for the Premier account and that she would've taken out the Gold PBA if she had been given clearer information. TSB didn't agree with her.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I think the relevant issues to take into account are the same as those set out on our website about our approach to complaints about packaged bank accounts. I've decided to uphold part of Mrs M's complaint. I will explain why.

The first thing I've thought about is whether Mrs M was aware she had a choice about taking out the account. Mrs M has said that she didn't feel that she had an option but to upgrade to the Select PBA. She did understand that it was a progression from the basic account. But she recalls being told that to get an overdraft or personal loan, she would have to move to a PBA. It's clear to me that Mrs M feels strongly that she wasn't given a choice by TSB about continuing with her existing fee free account. I need to decide what I think is most likely to have happened taking into account all of the evidence, including what Mrs M has said.

I appreciate that Mrs M feels she didn't have a choice but to upgrade to the Select PBA. And I accept that what Mrs M has said is her honest recollections of what she was told. But the account was upgraded 14 years ago and it's possible that her memory of what she was told could've faded over time. Also my understanding is that at the time Mrs M upgraded to the Select PBA, TSB charged a £5 overdraft usage fee on its fee free accounts. But by having the Select PBA Mrs M wouldn't have to pay the overdraft usage fee if she stayed in the overdraft fee free limit of £50. At the time of the upgrade the account cost approximately £4 per month. So Mrs M would've potentially made a saving by having the Select PBA. Also the Select PBA offered discounts of up to 5% on standard loans up to £25,000. It seems to me from what Mrs M has told us that a loan and overdraft may have been of interest to her at the time of the Select upgrade. And from the information TSB has been able to give us it looks like she expressed an interest in taking out a loan at the time of the upgrade. So I think it's equally possible that she was given the information I've summarised above rather than being told she had to have a PBA to have an overdraft or a loan. And that she may have been interested in those benefits.

Mrs M had held a free bank account prior to the upgrade. This also suggests to me that she was likely to have been aware she had a choice about whether or not to take out the Select PBA. Looking at everything I've been given, I think it's likely Mrs M knew she could've continued with her previous fee free account if she wanted to. So I don't think I have enough persuasive evidence to safely say in this case, that Mrs M was led to believe she had to take out the Select PBA in the way she has described. And based on what I've seen I think it's likely that she was also aware she had a choice when she upgraded to the Premier PBA.

It doesn't seem to me from what Mrs M has told us and everything else I've been given, that she was provided with individual tailored advice about the accounts and all of the benefits they provided.

Taking this into account, I don't think there is enough evidence for me to decide in this case that Mrs M was advised to take out the PBAs. This means TSB didn't need to make sure that the account was suitable for her. But it had to provide her with sufficient information so she could decide if the account was right for her.

The PBAs provided a number of different benefits. From what I've seen I think it's likely there was some form of discussion about the benefits they provided, particularly as they charged a fee. For the reasons I've set out above, I think Mrs M was probably attracted to some of the benefits the Select PBA provided. And it's likely the benefits offered with it were explained as part of the sales process, in order to encourage Mrs M to upgrade her account to one that charged a fee. So I don't think the Select PBA was mis-sold.

I've also carefully thought about the sale of the Premier PBA. Having done so, I don't think Mrs M would've taken it out if she had been properly informed by TSB about the PBAs it offered. I will explain why.

I think in the first instance it's surprising that Mrs M upgraded from TSB's cheapest PBA, the Select account; to its most expensive, the Premier PBA. TSB had a number of other PBAs that Mrs M could've taken out. So I've looked carefully at what Mrs M has said, the benefits she used and the points that TSB has made in defending that sale.

In her packaged bank account questionnaire (PBAQ), Mrs M told us that she travelled up to three times a year in the UK and Europe. She has also said that she took out travel insurance when she required it. Mrs M has told us that she suffered from chronic back pain. TSB has told us that its records show that Mrs M contacted the PBA travel insurance provider to check that the insurance was in place and her partner was covered. The Select PBA didn't provide travel insurance. Looking at the information I have, I think it's likely Mrs M had an interest in a PBA that provided travel insurance. And she satisfied herself that the travel insurance covered her and her partner.

I've also looked at the other benefits Mrs M used and thought about whether Mrs M might've found the other benefits that came with the Premier PBA useful – and if she might've been attracted to them. I've also considered what TSB and Mrs M have told us about the benefits Mrs M used. Mrs M registered two mobile phones and made a successful claim in September 2014. So I think it's possible that mobile phone insurance might have been of interest to her. TSB has argued that the Premier PBA would let her have two phones insured at the same time. Mrs M registered her second phone after a claim was made (and accepted) for the loss of her first phone. It looks to me as if the second phone was a replacement for the first that had been lost. So I don't think she needed the level of mobile phone cover provided by the Premier PBA.

TSB also says that the Premier PBA provided more extensive breakdown cover than that provided by the Select PBA. But Mrs M made several claims on the breakdown cover when she had the Select PBA. And I'm not persuaded looking at the evidence I have that she needed or wanted the additional breakdown cover that the Premier PBA provided.

It's also been argued by TSB that Mrs M could've benefitted from the preferential overdraft facility provided by the Premier PBA. But as our adjudicator pointed out, Mrs M appears to have taken out a loan a few days after the Premier upgrade and paid off her overdraft balance the same day. Mrs M didn't start using her overdraft again until a number of months after the upgrade. So at the time she did upgrade I can't see she had a need for the overdraft facility provided by the Premier PBA. And from what I've seen it seems to me that what Mrs M has said about being told she had to upgrade to get an overdraft and loan, relates to the Select PBA upgrade rather than the Premier upgrade.

Mrs M also registered for identity theft protection. But my understanding is that the benefit she was registered for was an automatic registration. And I haven't seen anything which suggests she would've wanted the Premier PBA just for this benefit.

The Premier PBA was £16.05 pm more expensive than the Select PBA. It looks to me as if Mrs M was reviewing her finances. She had paid off her overdraft. For the reasons I've given, I don't believe Mrs M needed the Premier PBA. I think that if TSB had given Mrs M clear information on what the Premier PBA included and how much it cost, she wouldn't have taken it out. I think that had she also been properly informed about the other available PBAs TSB offered, she would've chosen one of them. I'm satisfied that she was probably interested in travel insurance and the other benefits I've set out above. So I believe that if she'd been properly informed about the Gold PBA, the benefits it provided (including worldwide travel insurance) and its cost, she would've taken it out rather than the Premier PBA. So I think it's most likely there were shortcomings in the sale of the Premier PBA. And I think Mrs M has lost out because of what TSB did wrong.

proposed fair compensation

For the reasons given above, I think TSB mis-sold the Premier PBA. TSB should:

- refund and pay Mrs M the difference between the Premier PBA monthly fees she paid and the monthly account fees that she would've paid if she had the Gold PBA instead during this period; and
- pay an additional amount equal to 8% simple interest[†] per year on the difference between each account fee, calculated from the date Mrs M paid her account fees to the date of settlement.

If TSB can calculate any additional savings Mrs M has made from interest linked to savings accounts or overdrafts by holding the Premier PBA and can show these calculations to her, it may, if it wants, deduct this additional saving from any compensation that is paid.

[†] HM Revenue & Customs requires TSB to take off tax from this interest. TSB must give Mrs M a certificate showing how much tax it's taken off if she asks for one.

Mrs M should refer back to TSB if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my provisional decision

For the reasons I've given, I'm currently minded to uphold Mrs M's complaint about TSB Bank plc, in part.

Simon Dibble
ombudsman