

complaint

Mr F opened a Signature current account with Clydesdale Bank Plc in February 2011. The account came with a package of benefits and, in return, Mr F paid a monthly fee. Mr F believes the Signature account was mis-sold to him.

background

I issued a provisional decision in October 2015. A copy of this is attached and forms part of this final decision. In my provisional decision I explained why my intention at that stage was to uphold the complaint. I gave Mr F and Clydesdale the chance to provide further information. Mr F has said that he accepts my decision and Clydesdale have provided further arguments as to why the complaint should not be upheld.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I have decided to confirm the findings I made in my provisional decision and to uphold this complaint.

In their response to my decision Clydesdale made a number of points that I have summarised below:

- The adjudicator who initially assessed the complaint said that it was difficult to fairly uphold a complaint based on what may have been said when we have no way of confirming this but instead we should consider all available information.
- It is inequitable to accept that Mr F's memory might have faded with regard to his use of the breakdown cover but to accept his recollections of the sale.
- A member of their staff wouldn't have told Mr F that the Signature account was the only account from which he could operate a debt management plan (DMP) or that non-registration of benefits would result in account closure. And pre-registration for benefits wasn't a requirement.
- The account was an active one that wasn't used solely to operate a DMP and the transactions don't suggest financial hardship at the point of sale.
- As Mr F initially asked for a basic account, he must have been aware he didn't have to have a fee-paying account.
- Mr F opened another account with Clydesdale in 2012 that was fee-free but he kept the Signature account for some time afterwards.
- The bank wasn't provided with firm evidence that Mr F had alternative insurances in place and it was up to Mr F whether he kept any he had.
- The breakdown provider says that Mr F used the service twice between March and September 2011 yet Mr F only remembers one occasion.

It is quite right that it would be difficult to justify upholding a complaint on the basis of what *might* have been said if what might have been said is relevant to the outcome of the complaint. However, I have decided to uphold the complaint because, having weighed up all the evidence before me, I am satisfied that Mr F was told that, if he wanted an account for his debt management plan, he would have to open a packaged bank account. For the avoidance of doubt, the standard of proof that I have applied in making this finding is the balance of probabilities. In other words, I am satisfied not that he may have been told this, but that it's *likely* he was told this. And I've concluded that it was for that reason alone – because he believed what he'd been told – Mr F opened the Signature account.

The fact that Mr F went on to use some of the benefits doesn't alter my conclusion. He paid for the benefits and was entitled to use them. Of course, I've considered whether the fact he used the benefits is actually evidence that he took the Signature account willingly and because he wanted and needed the benefits – and not because he felt he had no choice. But as I've said in my provisional decision, I don't think that is the case. I accept what he says about having the benefits through work (in the case of the phone and travel insurance) and rolled into his house insurance (in the case of the breakdown cover) and that he had little or no reason to take a packaged bank account to get them. For the sake of completeness, I would add that I don't think it would have been possible – or practicable at any rate – for Mr F to have cancelled his alternative benefits, given they either weren't standalone benefits or weren't paid for by him.

I turn next to Clydesdale's point that it is inequitable to allow that Mr F's memory should fade in respect of recalling when or why he used the breakdown cover and yet accept its reliability about the sale. I do not agree that this is inequitable. Mr F gave his recollections of what took place at the sale. He gave a detailed and coherent account which included him explaining to the sales person that he really didn't need the benefits. I was persuaded, as I have said, that Mr F's account was correct. His use of the breakdown cover was less significant to him and I could understand why his recollection was unreliable. I did not believe and, having thought about Clydesdale's submissions, still do not believe, that this undermines his account of what took place at the sale. Nor do I believe that Mr F's later opening of a fee-free account undermines what he has said because he did not need to operate a DMP from that account.

As to what Clydesdale have said about Mr F not being in financial difficulty and using the Signature for other transactions besides the DMP ones, this does not alter my conclusion. I'm satisfied that Mr F needed an account from which to operate a DMP and that he accepted what the salesperson told him - and so opened the Signature account.

After careful consideration therefore, I uphold this complaint and require Clydesdale Bank Plc to pay Mr F compensation in accordance with what I have set out in my provisional decision.

my final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 29 December 2015.

E J Mc Allister
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr F opened a Signature current account with Clydesdale Bank Plc in February 2011. The account came with a package of benefits and, in return, Mr F paid a monthly fee. Mr F believes the Signature account was mis-sold to him.

background

Our adjudicator didn't think the complaint should be upheld. Mr F did not agree so the complaint has come to me for a decision.

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. We have set out our general approach to complaints about packaged bank accounts on our website. I have taken this into account when considering Mr F's complaint. Having done so, I'm minded to uphold Mr F's complaint. I've explained my reasons below.

Mr F says that he wanted a new account to operate his debt management plan from and so went into Clydesdale to open one. He says he was told that he wouldn't be approved for any account except the paid-for Signature account. Mr F says that he told the Clydesdale representative he didn't need any of the benefits because he had travel insurance through his work, breakdown cover with his car insurance and had a work mobile phone that his employer's insurance covered. Mr F says he was told this didn't matter. He says he was also told he needed to register for the benefits to show he was using the account and that, if he didn't, he risked the account being taken away from him. Mr F says that this is why he registered for the benefits. He accepts that he did use the breakdown cover on one occasion. In his questionnaire he said this was because the line to his other breakdown cover was busy. When speaking to our adjudicator, he said it was because he came across this number first in his phone.

Clydesdale say that this wouldn't have happened and that Mr F would have been offered a fee-free account and could have used this to run his debt management plan.

I find what Mr F has said persuasive. I can see that his employer was in the travel industry so I think it is likely that he could get free or cheap travel insurance through his employment. And Clydesdale haven't disputed what Mr F has said about already having the other benefits. As to why he chose to use the breakdown cover that came with the Signature account rather than the one that came with his car insurance, I don't know why this is the case. Although Mr F has given two different explanations for this, I don't think the discrepancy matters. I don't know when the breakdown took place but it wasn't such a significant event that I would expect Mr F to know which breakdown company he used and why. It is understandable that his memory should fade in a matter like this.

So I am satisfied that Mr F already had the main benefits that came with the Signature account and that it's unlikely he needed them or was in a position to cancel them and make a saving. That begs the question of why he would have chosen to pay for the same benefits in the Signature account and why he would have done so when he was clearly experiencing some financial strain. And I'm satisfied that Mr F did have a debt management plan as he says – certainly Clydesdale haven't questioned this. I've listened to the call Mr F had with our adjudicator and I am persuaded that, just as he says, he was told he had to have the Signature account if he wanted to open an account for his debt management plan and that this was the reason Mr F took a paid-for account.

So my intention at present is to uphold the complaint and require Clydesdale Bank Plc to pay Mr F fair compensation as set out below.

what Clydesdale must do to put things right

Clydesdale Bank Plc must put Mr F in the position he would have been if he had not opened the Signature account. So Clydesdale should:

- Refund Mr F the monthly fees he paid; and
- Add interest at 8% per year simple on each of these amounts from the date he paid them to the date of settlement of the complaint[†].

[†] Clydesdale Bank Plc may be required to deduct basic rate tax from this part of the compensation.

Whether Mr F needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr F should refer back to Clydesdale Bank Plc if he is unsure of the approach they have 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 explained, I intend at this stage to uphold the complaint and to require Clydesdale Bank Plc to put things right for Mr F in the way that I have set out above.

If either Clydesdale Bank Plc or Mr F wish to make any further comments or send me more information, they should do so by 16 November 2015. After that I will make my final decision.

E J Mc Allister
ombudsman