

complaint

Mr M has complained about a packaged bank account sold to him by Barclays Bank Plc ("Barclays") in 2011.

background

The circumstances leading to this complaint, and my initial conclusions, are set out in my provisional decision from August 2015. In that decision, I reached the following provisional conclusions:

- Mr M wanted to open an account with Barclays because his business partner banked there and he was interested in some of the account benefits.
- He chose to open a Premier packaged account after a meeting with the bank. He thought he would automatically be granted an interest-free overdraft facility of up to £1,000 with his account. This wasn't the case and there may have been shortcomings in the information Barclays provided to Mr M at their meeting.
- Mr M understood within a short time of opening the account that he didn't have an overdraft but that he had a reserve facility. And he understood that this facility incurred charges and he continued to use it.
- Barclays has already refunded Mr M the account fees he paid. I didn't think it needed to offer a further refund.

I invited both parties to send me any further comments they wished me to consider before I reached a final decision. Barclays says it has nothing further to add to my provisional decision. Mr M says he does not agree with it saying he finds it incredible that I am contradicting our adjudicator's decision which he believes was a considered one, reached in discussion with an ombudsman.

It sometimes happens that an ombudsman's final conclusions are different to those of earlier investigators' considered views on a case. I would like to reassure Mr M that I have reviewed all the information I have about his complaint and considered everything he has told us throughout the course of it. I have also taken into account what he has said in response to my provisional decision, which I have summarised below:

- Mr M says that he opened the account in order to be in line with the requirements of his employer.
- He says that Barclays' staff were paid commission to obtain new accounts and feels it's because of this he wasn't given correct information about the Premier account.
- Mr M says that Barclays agreed to supply an interest-free overdraft facility to him and he didn't agree to what he considers to be a variation in the terms and conditions as set out in his meeting with the bank. And so he should not have been charged interest or fees for any overdraft amount.
- Mr M also says that he was never told he needed to apply separately to have an overdraft facility and that he wasn't offered this option at a later stage. He feels this was so that the bank could generate income through his use of a reserve facility.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint, including Mr M's additional comments.

Having considered all of the evidence, I have reached the same conclusions as set out in my provisional decision, an extract of which is attached below and forms part of this decision. However, I would like to add the following comments:

In considering Mr M's complaint I thought about whether or not he was given a choice in opening his account in the first place. When I wrote my provisional decision I understood that Mr M wanted to open an account with Barclays so he could receive his salary as a transfer from another Barclays' account. He'd mentioned to us that he had run various businesses in the past and that he was responsible for paying people. I wasn't sure of the nature of his employment so I referred to 'a business partner' in my decision rather than an employer.

I also thought that Mr M's wife might have had an account with Barclays based on his account statements. Mr M says that isn't the case however, and I accept that. In looking at this point again, I am still of the view that one of the reasons Mr M chose to open his account was the convenience of banking with Barclays. So I can't say his account was mis-sold on the basis that he didn't have a choice in the matter.

I said in my provisional decision that there might have been issues with the information Barclays gave Mr M about the account, which led him to think he would automatically be granted an overdraft facility. Mr M feels these issues arose because of how Barclays remunerates its staff. How Barclays does so is a commercial decision for the bank and is not something my decision would address specifically. However, notwithstanding *why* Mr M might not have received clear, fair and not misleading information in the sale of his account, I have considered what impact this potential failing might have had for him.

I concluded that Mr M became aware, shortly after opening the account, that he didn't have an overdraft but did have a reserve facility which incurred fees. (I understand the reserve facility is a borrowing facility which is independent of the account a customer holds.) Mr M said it took a matter of weeks for him to realise he was being charged, and I can see the first charges were incurred about three months after opening the account. Mr M then spoke to the bank who confirmed his borrowing arrangements. He continued to use his Premier account understanding that he didn't have an overdraft facility. He also continued to make use of his reserve facility. Barclays has already refunded all Mr M's account fees to him. And I am not asking the bank to refund any reserve charges because, from what I've seen, they were applied in line with its terms and conditions and with Mr M's knowledge.

I have considered carefully what Mr M said about not being offered an overdraft after the sale of the account. I don't know the detail of what was discussed between Mr M and Barclays at the point Mr M knew he didn't have an overdraft. Given this was something he says was important to him, I would have expected him to have asked Barclays how to go about obtaining one. And I can't see why the bank would have withheld this information from him. If Barclays decided not to offer Mr M an overdraft facility but was happy to offer him a reserve facility, then this is a commercial decision which it is entitled to make and so is not something I could consider to be a failing on the bank's part.

In conclusion, for the reasons set out above and in my provisional decision I do not think Barclays needs to offer Mr M any further refund.

my final decision

I do not uphold this complaint and make no award against Barclays Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 November 2015.

Michelle Boundy
Ombudsman

A copy of the provisional decision

complaint

Mr M has complained about a packaged bank account sold to him by Barclays Bank Plc ("Barclays") in 2011.

background

Mr M took out a 'Premier' account in a branch meeting in early 2011. The account offered a number of benefits for a monthly fee of £10. The benefits were of a financial and customer service nature – planned overdrafts would be interest-free up to £1,000 with a preferential rate beyond that. And account holders had access to an account manager.

Mr M says the account was mis-sold to him, mainly because he was told it would automatically include an overdraft facility.

I understand that Barclays has refunded the fees Mr M paid for the account, which amounted to approximately £406. It also paid Mr M £50 in recognition of the inconvenience this matter caused him. However, Mr M incurred other charges while he held the account and wishes to have those charges refunded, in addition to the fees.

Our adjudicator felt that his complaint should be upheld. Barclays disagreed and the complaint has come to me for review and final 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. I know this will come as a disappointment to Mr M. But, having thought about everything that has been said and the evidence provided by both parties, I do not plan to uphold his complaint for the reasons set out below.

Mr M says that he chose to take out the Premier account with Barclays because it offered a *"free £1,000 overdraft"*. He says he wanted to bank with Barclays because his then business partner banked there, as did his wife. He also said he could have taken out a similar account with another bank but chose not to because he didn't automatically meet their minimum income requirements. I understand that at the time of opening the account Mr M knew he was unlikely to have an income for several months.

Although I can see Mr M chose to take out the account, he is unhappy with the bank because he thought the account would automatically come with a £1,000 overdraft and various insurances. Neither proved to be the case - Mr M wasn't given an overdraft facility nor did the Premier account come with any insurance benefits at the time.

Mr M has provided a diary note for the day of the account opening which mentions a free £1,000 overdraft, an account fee of £10 and various insurance benefits. I don't know for sure what was discussed at that meeting – Barclays hasn't provided any customer notes.

It's possible that several accounts were discussed and Mr M is mis-remembering what information referred to what account. Another account called the 'Premier Life' account provided some similar financial benefits to the Premier but also came with insurances and cost more. It is, of course, also possible that Barclays mis-informed Mr M about the account offering insurance benefits.

Mr M hasn't suggested that he had to make a claim on any of these insurances noted in his diary. Or that relied on them in any way or took out any alternative insurances. From what he has told us, I think he opened the account not because of any insurance benefits but to have an overdraft and for

the convenience of banking with Barclays. So I don't think Mr M lost out because of anything he might have been incorrectly told regarding insurance provision.

Turning to the matter of the overdraft, it is the case that one of the benefits of the account was to have overdraft interest waived on balances up to £1,000. So, based on Mr M's diary note, I don't think Barclays said anything factually incorrect to him on this point. The bank says that overdrafts are subject to an application process irrespective of account, and it may be that it failed to point this out to Mr M.

Although he wasn't automatically given an overdraft, Mr M was given a £250 reserve facility. Mr M says he proceeded to use his account on the basis of having an overdraft. I can see from his statements that he first used this reserve a couple of months after opening the account. And that he began to be charged for this usage in June 2011.

Mr M says he noticed the charges within a matter of months. The charges are highlighted on the statements as "*reserve fee*" and the number of charging instances and the total charges in the month are identified. He says when he spoke with the bank it confirmed that he didn't have an overdraft but rather that he had "*an arrangement*" which incurred charges.

Mr M says that he continued to use the reserve as he felt he was promised an overdraft with the account. He feels that Barclays sold him one product and gave him another. He says he stopped using the reserve for a time, but then made a conscious decision to use it during a period when there were issues with his wife's income. And I can see that he has used the reserve regularly though out the lifetime of the account.

From Mr M's statements I can see that he paid approximately £2,000 for the reserve usage over the two years or so he held the account. While the account terms and conditions¹ say that this type of borrowing is intended to be short-term and that the bank *may* withdraw the facility if it is used continuously, it seems to me that Barclays have applied the reserve fees in accordance with the terms and conditions of the account.

Even if Barclays hadn't made it clear to Mr M when he was opening the account that he wouldn't automatically be granted an overdraft, from what he has said he became aware of this within a short time. I think he knew then the type of credit arrangement he had and what the associated charges were. I haven't seen anything to suggest that Mr M told Barclays about any financial issues he might have been having, or that he applied for an overdraft when he knew that he didn't have one. Ultimately, it was up to Mr M to decide at that point whether he was happy to continue using the reserve facility or indeed the account.

I understand that Mr M has suffered personal difficulties over the years and I acknowledge that he has paid a considerable sum to use the reserve facility. I can understand that, with hindsight, he might not make the same decision about his reserve usage or the Premier account today.

However, while there may have been shortcomings in the information Barclays provided, I cannot ask it to refund charges that it has correctly applied to Mr M's account, with his full knowledge of those charges and what they were for. Barclays has already refunded Mr M's account fees and I do not think it should refund him anything further.

¹ I do not have a copy of the actual terms and conditions applying to the Premier account and so have referred to a copy of the terms and conditions of a similar account (the 'Premier Life' account) that would have been in use at the time.

my provisional decision

For the reasons set out above, I am considering not upholding Mr M's complaint about Barclays Bank Plc.

I now invite the parties to make further submissions by [REDACTED]. At the end of this period, or when both parties have commented, I will reconsider the case in the light of any further submissions before reaching a final decision.

Michelle Boundy
ombudsman