

complaint

Mr and Mrs W are unhappy that Lloyds Bank plc sold them a fee-paying packaged bank account rather than a free one. They say they only wanted an overdraft facility, not any of the other added benefits (such as insurance policies or motor breakdown cover).

background

Our adjudicator didn't uphold the complaint. He wasn't persuaded that the bank misadvised Mr and Mrs W that they had to have the *Gold Service* account in order to qualify for an overdraft. But he did think they probably found it attractive at the time because the first £100 of an overdraft was free – and the remainder had discounted interest. The adjudicator felt that the overall package of benefits probably appealed to Mr and Mrs W even if not all of them were used. And he thought it was their responsibility to cancel any duplicate cover with third parties (eg, their breakdown cover). Also, the adjudicator concluded that the evidence didn't support Mr and Mrs W's allegation that the bank tried to stop them downgrading when they had financial difficulties. On the contrary, the account was switched to a free one shortly after their letter setting out such difficulties in February 2008.

Mr and Mrs W have appealed, saying (amongst other things) that:

- At the point of sale in 1999, they only wanted an overdraft facility – and are adamant that the bank said they therefore had to have the fee-paying account;
- The travel insurance wouldn't have attracted them at the time because it only covered a couple – whereas they had two children;
- They haven't often travelled abroad during the life of the account;
- They wouldn't have paid for breakdown cover if they'd known the account included this, so it wasn't a selling feature for them;
- They only found out about the mobile-phone insurance six years after the sale, so this also didn't attract them; and
- Trying to downgrade proved a 'nightmare', as the two branches they attended in their new home city wouldn't do it because the account had been opened in London – and it was very difficult to contact the London branch by phone as the manager was always unavailable or not taking calls.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The disputed sale/advice took place a long time ago. So it's very difficult—if not impossible—for Mr and Mrs W to prove that the bank misled them about the need for a packaged bank account if they wanted an overdraft facility. It's not unreasonable for the bank to have limited information about the sale after all this time. Whilst the delay doesn't *stop* us from considering the complaint, it does put Mr and Mrs W at a disadvantage when it comes to deciding whether or not the bank's advice was clear, fair and accurate.

On balance, I expect a discussion probably did take place about overdraft facilities; and it's likely that the bank did promote the Gold account by reference to its preferential overdraft rates. But I can't safely conclude that it actually *misrepresented* the position. It's just as likely—arguably more so after all this time—that, quite understandably, Mr and Mrs W can't recall all the details of a meeting back in 1999. What they now recollect as wrongful advice

might in fact just have been legitimate promotional information about the favourable overdraft rates.

I'm mindful that there's evidence of Mr and Mrs W having made other factual errors when trying to recall details about their account. For example, on our questionnaire they stated that:

- they hadn't ever registered for any of the account benefits; and
- they hadn't ever used anything else with the account, such as a better overdraft rate.

But this isn't true. The bank's database shows that they registered a mobile phone for the insurance on 17 March 2005; and Mr and Mrs W have since conceded that 'the fee portion [of the overdraft] is a fair point and useful years later in small part' (*letter dated 7 September 2015*). It's a matter of record that they ran an overdraft, so did in fact benefit from the account's preferential rates. For the avoidance of doubt, I'm not suggesting that Mr and Mrs W haven't presented their case fairly; rather, these factual errors simply illustrate that we all have fallible memories, especially about older events and/or unfamiliar money matters. It wouldn't be fair or reasonable for me to accept Mr and Mrs W's unsupported allegations when there's evidence that they've forgotten documented facts that are less ambiguous or subjective than an oral sales pitch.

Similarly, it's irrelevant that Mr and Mrs W held breakdown cover elsewhere, as the packaged bank account didn't actually include this benefit at the point of sale, so it wouldn't have impacted on their decision. Again, mobile-phone insurance wasn't added as a benefit until 2004, so it made no difference that Mr and Mrs W didn't want this at the point of sale. But they did register a phone—see above—the year after this benefit was added. That arguably indicates that they did receive promotional information about the account during its lifetime. Yet they don't appear to have queried its costs or benefits at the time, which may indicate that they were satisfied with it then. The registration of the mobile phone implies that having a packaged bank account was something they found useful. Also, if they had enough information to register a phone, it's unclear why they weren't also able to cancel their duplicate breakdown cover when this was also added to the Gold account in 2004. It would almost certainly have been promoted too, as the bank had a vested interest in highlighting additional features that might attract or retain fee-paying customers.

I can accept that the travel insurance mightn't have been a key attraction for Mr and Mrs W, especially as it only covered two partners. But it could be upgraded to family cover – and it appears they actually enquired about this at one point but decided it wasn't cost-effective. This does, however, show that they were aware of the benefits and potentially interested in using them. Whilst they weren't frequent foreign travellers, we know that they did travel abroad on occasion during the life of the account. The important thing to bear in mind about insurance is that it's still of benefit/use even if not actually claimed on; indeed, one key aim of insurance is to provide peace of mind against the *risk* of loss or damage. So, it's hard to conclude that this added benefit wasn't at least partly attractive to Mr and Mrs W at the point of sale. It's another benefit that banks tend to promote fairly prominently.

It seems that Mr and Mrs W's difficulties in downgrading may have been due to their relocation and/or indebtedness at the time rather than unfair or unreasonable conduct by the bank. It would have been easier to have determined this if they'd complained to us about it at the time. But as the adjudicator pointed out, the bank did downgrade the account to a free one within about a month of their putting this request in writing in February 2008. This doesn't suggest the bank was being deliberately obstructive.

In all the circumstances, I'm not persuaded that the bank presented the packaged account as compulsory or otherwise misrepresented its benefits or costs. There were features of it that probably did attract Mr and Mrs W at the point of sale, such as the preferential overdraft rates (which they used) and the travel insurance (they said on our questionnaire that they travelled abroad annually at the time). They also used the mobile-phone insurance that was later added; and could have used the breakdown cover if they'd wanted. The bank can only offer an overall package – it's up to the customer to pick and choose which benefits to use and whether any duplicate cover needs cancelling. I'm satisfied there wasn't a mis-sale; and I don't think Mr and Mrs W would have acted differently with better information or advice. Accordingly, it wouldn't be fair and reasonable to ask the bank to refund the account fees.

my final decision

For the reasons set out above, I'm unable to uphold this complaint against Lloyds Bank plc. I am sorry to disappoint Mr and Mrs W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before **14 December 2015**.

Mark Sceeny
ombudsman