

complaint

Mr S has complained that TSB Bank plc ("TSB") mis-sold him Select, Gold and Platinum packaged bank accounts in 2005, 2009 and 2012. He paid a monthly fee for the accounts which included some benefits.

background

I attach my provisional decision of 12 October 2015, which forms part of this final decision.

In my provisional decision I set out why I intended to partially uphold Mr S's complaint. I invited both parties to make any further comments before I reached a final decision.

Following this, TSB responded by email. In summary it said, Mr S:

- hasn't put forward any argument for being mis-sold apart from saying that he was told he had to take the account to get an overdraft and be allowed to withdraw cash from cash machines. And this hasn't been accepted by me or the adjudicator;
- has said the account wasn't value for money and this isn't something for me to consider as it's up to a consumer to monitor their products;
- chose to upgrade again from a fee free account in 2012 this suggests there was something about the account benefits that attracted him;
- couldn't have had the Select account in 2012 so any refund would have to be calculated on the basis of accounts that were available;
- retained the Platinum account after it issued its final response so this suggests he wants the account;
- couldn't have been recommended the packaged account because TSB sold these products on a non-advised basis;
- could have travelled despite the lack of travel transactions on his statements – his first letter of complaint said that he didn't have travel insurance when he travelled;
- may not have saved money through the preferential overdraft terms, but I have to look at the package as a whole when looking at the sales;
- was sent a number of mailings and was given the opportunity to contact TSB if he was unhappy with the accounts.

Mr S didn't provide any further comment in response to my provisional decision.

my findings

I have reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've explained how we handle complaints about packaged bank accounts on our website. And I've used this approach to help me decide Mr S' complaint.

I accept that I don't agree with Mr S' suggestion that he only took the packaged accounts because this was the only way he could get overdraft limit increases. But me disagreeing with a consumer on one aspect of their complaint doesn't mean that I should disregard everything else they've said, or end my consideration of the complaint there. And, in any event, I have an inquisitorial remit that allows me to look at a sale as a whole, rather than just a single part of it. This means that if I'm reviewing a complaint and I find that a consumer has lost out because of something that a business has done wrong, then I am perfectly entitled to uphold a complaint on that basis even if the consumer hasn't particularised their case on that ground.

So I don't think that me disagreeing with Mr S' assertion that he wasn't given a choice automatically means that his complaint shouldn't be upheld. Equally I also don't think that this means I should disregard what Mr S has said about the accounts being recommended to him either. In any event, I didn't reach the conclusion that the sales were recommended *solely* on the basis of what Mr S said. I also thought about all of the available documentation and the fact that TSB hasn't provided any explanation on why it considers the accounts weren't recommended, or anything else to support its view.

Indeed the documentation it seems to be placing most weight on is its 'Your Personal Summary and Our Recommendation' ("YPSOR"). And it appears to me that this document is primarily concerned with setting out why a chosen insurance product has been *recommended* to a consumer. So I find TSB's assertions that the accounts weren't recommended and the vehemence of its protestations about this to be somewhat surprising and rather contradictory, given it wants me to consider the YPSORs in support of its case.

I've also thought about what TSB's said about the ombudsman service previously accepting that its sales weren't recommended. But I think that this is likely to have been based on the facts of an individual case. So while I've thought about everything that TSB has said on this point, I remain of the view that the accounts were recommended to Mr S in this particular case and based on these facts.

I now turn to the recommendations themselves. As explained in my provisional decision, where an account is recommended, the bank concerned needs to make a fair recommendation based on the consumer's circumstances at the time. And value for money is something that needs to be taken into account as it would be unfair for a bank to recommend an account where a consumer had no reasonable prospect of recouping the monthly account fee because they had no need or didn't want the majority of benefits included.

My provisional decision explained that I was concerned Mr S didn't have a need for enough of the benefits on the Gold and Silver packages to have made the recommendation of these accounts fair and appropriate. My greatest concern was in relation to the travel insurance as this was the benefit that set the Gold and Platinum accounts apart from the cheaper ones in TSB's range.

I accept that consumers may not always use their debit card when travelling abroad. And Mr S, in his initial letter of complaint, did suggest that he travelled abroad when he had the Select account. But crucially TSB hasn't provided me with anything to indicate that he did travel, or that he even intended to, while he held the Gold and Platinum accounts. And while it has referred to the YPSOR for the sale of the Gold account, which suggests that the account was recommended for travel insurance, I've not been provided with anything to indicate how, or what, TSB did to establish that Mr S had a need for travel insurance. This and the fact that TSB hasn't been able to provide me with anything else to suggest that Mr S relied on the cover, means that I simply haven't seen enough to be able to say that it was fair to recommend Mr S accounts where one of the core benefits was travel insurance.

I accept that Mr S has made some overdraft savings and has used some of the other benefits. Although most (I accept Mr S used the homestart on the breakdown cover but this is likely to have been because the provider told him he had it, rather than because TSB established a need for this) of these are benefits he's likely to have had available to him on the package he initially had, or didn't justify the sale of the Platinum account. TSB is correct

in saying that I have to look at the overall package as a whole when considering a complaint. And that's precisely what I've done here. Having done that, I don't think he needed the more expensive accounts.

In my view, Mr S didn't need enough of the benefits on either the Gold or the Platinum accounts when his likely circumstances, at the time, are considered. So I can't say that the selected accounts were reasonable fits for Mr S when taking into account his circumstances and that's why I think that TSB made inappropriate recommendations to him. Mr S may have been sent various mailings over the years. But that doesn't correct TSB's unfair recommendations, or somehow make them fair. And so this doesn't change my view that Mr S' complaint should be partially upheld.

I've carefully thought about all of the additional points that TSB has made together with everything else I've seen on the complaint. Having done so, I remain of the view that Mr S' complaint should be partially upheld.

what TSB should do to put things right for Mr S

TSB should put Mr S back into the position he would've have been in, if TSB hadn't made unfair recommendations to him. I think that Mr S would've stayed on the Select account if TSB hadn't unfairly recommended the Gold account to him. And as Mr S had a fee free account before unfairly being recommended the Platinum account, I think he would've stayed with what he had if TSB hadn't made an unfair recommendation to him. So Mr S not being able to have the Select account in 2012 makes no difference. And TSB should:

- refund and pay to Mr S the difference between fees he paid for the Gold account and the fees he would've paid if he remained on the Select account; and
- refund and pay to Mr S all of the fees he paid for the Platinum account; and
- add interest at 8% per year simple on each of the above amounts from the date he paid the fee to the date of settlement†;

If TSB is able to work out any *additional* savings Mr S has made from holding the accounts **and** it can show these calculations to him, 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 Mr S a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons set out above and in my provisional decision of 12 October 2015, I partially uphold Mr S' complaint.

TSB Bank plc should pay Mr S compensation in line with the instructions set out both above and in my provisional decision of 12 October 2015.

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

Jeshen Narayanan
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr S has complained that TSB Bank plc ("TSB") mis-sold him Select, Gold and Platinum packaged bank accounts in 2005, 2009 and 2012. He paid a monthly fee for the accounts which included some benefits.

background

One of our adjudicators has looked into Mr S' complaint already and she didn't think that TSB mis-sold the packaged accounts to him. Mr S didn't accept this and asked for an ombudsman to look at his complaint and make a final decision.

my provisional findings

I've considered all the available evidence and arguments and I've provisionally decided what I think is fair and reasonable in the circumstances of this complaint.

We've explained how we handle complaints about packaged bank accounts on our website. And I've used this approach to help me decide Mr S' complaint.

When Mr S asked for an ombudsman to look into his complaint, he said that he was told he had to have the packaged accounts to have an overdraft. And he was advised to take out the accounts even though he didn't want or need the benefits. I've carefully thought about this and everything else I've seen on this complaint. Having done so, I think that Mr S' complaint should be partially upheld. And I'd like to explain why.

I've started by thinking about whether Mr S was given a choice in taking the packaged accounts. At this point, it may help for me to explain that I have to make my decision based on what I think is most likely to have happened. In working out what I think is most likely to have happened, I have to think about everything I've been told and I've been provided with and see how this fits with what I do know. In other words, what I have to do, in this case, is decide what I think is most likely to have happened having weighed up what both Mr S and TSB have been able to provide me with.

It looks like Mr S upgraded to the Select account from a fee free one that he'd had for a couple of years. I've seen what Mr S has said about only taking the accounts out because he was told this was the only way he could get an overdraft. But Mr S didn't apply for an overdraft when he upgraded – he did this a few months later. And Mr S didn't apply for an overdraft increase when he upgraded to the Gold account either. So I don't think he upgraded to the Select or Gold accounts in order to get an overdraft limit increase.

In terms of the upgrade to the Platinum account, it looks like this took place three years or so after Mr S had downgraded back to a fee free account from the Gold account. I accept that Mr S upgraded to the Platinum account around the time that he successfully applied for an overdraft increase. But Mr S successfully applied for a number of overdraft limit increases in the time that he had a fee free account. So while Mr S upgraded to the Platinum account around the same time as an overdraft increase, I think it's more likely that this was because the salesperson discussed the account with Mr S at that stage, rather than it being a case of Mr S being told he could only get an increase if he upgraded. So taking everything I've seen together, and while I've carefully thought about what Mr S has said, I think it's most likely that Mr S' account was upgraded, on all three occasions, because he agreed to it after having been provided with a choice.

TSB has said that the accounts weren't recommended to Mr S. On the other hand Mr S says, on each occasion, he was taken into a room and after a discussion told that the account was the best one for him. I've thought about this carefully. In the first instance, I should say that TSB hasn't really said why it thinks the accounts weren't recommended it has just said that they weren't. And it hasn't really

provided much detail on its sales process either. So I don't think that TSB simply telling me its salesperson wouldn't have recommended the accounts is, on its own, enough for me to agree with this, especially as Mr S is telling me that the accounts were recommended.

It looks like TSB is suggesting that Mr S would've been provided with a Your Personal Summary and Our Recommendation ('YPSOR') document, which I understand is TSB's equivalent of a statement of demands and needs, on each occasion. I say that TSB is suggesting this, rather than saying this, because the documents it has provided for each of the sales are all in a similar format, don't detail which account is being taken, are all unsigned and are all dated July 2015. So it's difficult to place much weight on this documentation. But the fact that TSB is suggesting that documentation was provided highlighting recommended products and what Mr S has told us, lead me to think it's most likely that TSB did assess Mr S' individual circumstances and did carry out an assessment of his demands and needs. Taking everything I've been provided with together, I think it's most likely that the accounts were recommended to Mr S. So this means that TSB had to make appropriate recommendations to Mr S, by taking adequate steps to ensure that the selected accounts were a reasonable fit for his circumstances.

As previously explained, because I haven't been provided with much detail on TSB's usual sales process, I don't know how far it enquired into Mr S' circumstances before it made its recommendations (although TSB's suggestion that YPSORs were provided suggests there's likely to have been some enquiry). And having thought about the particular circumstances of this case, I think that there may have been some shortcomings in TSB's assessments of Mr S' demands and needs which resulted in inappropriate recommendations being made to him in two of the sales. I say this because TSB's defence of this complaint appears to be based on the fact that Mr S was attracted to some of the benefits and he was able to use them. But to me it doesn't look like that the accounts chosen were always the fairest or most appropriate match available when the benefits Mr S wanted are taken into account.

Having thought about Mr S' wider circumstances and his actions since taking out the account, I think Mr S was interested in mobile phone insurance (at least in 2005) and breakdown cover. Mr S' registration of a handset shortly after the upgrade to the Select account and his use of the breakdown cover on a number of occasions over the years appears to support this. At the time, the Select account was the cheapest account in TSB's range that included these benefits. And upgrading to the Select account was the only way that Mr S was able to have these benefits with TSB. So I think the Select account was a reasonable fit when taking into account Mr S' demands and needs at the time. And I think that the advisor's recommendation of the Select account was fair and appropriate.

The YPSORs purporting to be for the Gold and Platinum accounts suggest that they were recommended for, amongst other things, travel insurance. And TSB appears to be relying on a statement in Mr S' initial letter of complaint to suggest that he had a need for this cover. But Mr S' letter of complaint says he was told that he needed to buy separate travel insurance when he went abroad. This suggests to me that he was talking about a period of time when he didn't have the Gold or Platinum accounts (the Select account didn't include travel insurance). And I don't think this necessarily means Mr S had a need for or wanted an annual travel insurance policy with worldwide cover. So I don't find TSB's argument persuasive, nor have I seen anything else to suggest that Mr S travelled while he had the packaged accounts, or that travelling was in his future plans when the accounts were recommended to him.

I've also thought about what TSB has said about the overdraft savings Mr S could've made as a result of upgrading to the recommended accounts. But I don't think that the potential overdraft savings could make justified recommending the Gold and Platinum accounts, as the maximum saving Mr S could make from the interest free buffer was less than the extra he'd be paying in account fees. And in the case of the Platinum account, it was recommended when Mr S increased his overdraft limit to ten times the amount of the buffer. The monthly overdraft fee that TSB introduced, which Mr S would've had to pay if he used his overdraft in the way that his limit increase suggested he might, meant that the buffer would've been of limited use to Mr S anyway. I accept that the Gold and Platinum accounts

included a number of other benefits too. But I haven't seen anything persuasive to suggest that Mr S had a demand or need for any of these, or that TSB had identified one.

In conclusion, having carefully thought about everything provided, I think that the recommendation of the Select account was fair. But I don't think that the recommendation of the Gold or the Platinum accounts was fair or appropriate. And I think that Mr S has lost out because of the unfair and inappropriate recommendations made by TSB. So at the moment I'm minded to conclude that TSB should place Mr S in the position he would've been in if TSB hadn't unfairly and inappropriately recommended the Gold and Platinum accounts to him.

what I think TSB should do to put things right for Mr S

I propose that TSB should put Mr S back into the position he would've have been in, if he hadn't taken out the Gold and Platinum accounts. So TSB should:

- refund and pay to Mr S the difference between fees he paid for the Gold account and the fees he would've paid if he remained on the Select account; and
- refund and pay to Mr S the fees that he paid for the Platinum account; and
- add interest at 8% per year simple on each of the above amounts from the date he paid the fee to the date of settlement†;

If TSB is able to work out any *additional* savings Mr S has made from holding the accounts **and** it can show these calculations to him, 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 Mr S a certificate showing how much tax it's taken off if he asks for one.

my provisional decision

For the reasons given above, I intend to partially uphold Mr S' complaint. I propose that TSB Bank plc pay Mr S redress as set out above.

If TSB or Mr S have anything further to add before I issue my final decision, they should ensure anything they send reaches me by 16 November 2015.

Jeshen Narayanan
ombudsman