

## **complaint**

Mr L has complained that Lloyds Bank PLC ("Lloyds") mis-sold him a Platinum packaged bank account in 2005.

## **background**

Mr L also complained about the sale of a Select packaged bank account that was sold in 2004. But Lloyds has accepted that it mis-sold that account and has offered to put things right by refunding all the fees Mr L paid for this account plus interest. As this is what I would've asked Lloyds to do if I upheld the complaint, I'm not going to look at this sale.

So this decision is only looking at the complaint made about the Platinum account sold in 2005. Lloyds has accepted that it shouldn't have sold Mr L the Platinum account. In an attempt to put things right it offered Mr L the difference between the fees he paid for the Platinum account and the fees he would've paid if he'd instead taken out the cheaper Gold account.

I attach a copy of my provisional decision of 26 January 2016, which forms part of this final decision. In my provisional decision I set out why I thought what Lloyds had done to put things right was fair. I invited both parties to make any further comments before I reached a final decision.

Following this, Lloyds confirmed that it had nothing further to add. Mr L responded. In summary he said:

- he wanted to see the further information provided by Lloyds;
- at the time he took this account out he was borrowing more;
- he wanted to keep his outgoings down;
- he didn't travel that often so could've got travel insurance cheaper elsewhere.

## **my findings**

I've considered all the available evidence and arguments (including the responses to my provisional decision) 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. I've used this approach to help me decide what to do about Mr L's complaint.

Having carefully thought all of Mr L's further points, I still remain of the view that what Lloyds has done to put things right is fair. And I won't be asking it to pay Mr L any more.

I understand that Mr L is disappointed because our adjudicator originally agreed with what he'd told us. And he's asked to see what further information Lloyds provided that caused me to disagree with the adjudicator. The first thing for me to say is that the views reached by our adjudicators aren't final or binding on the parties (indeed even ombudsman's final decisions are only binding on the parties if they are accepted by a consumer). Either party to a complaint is entitled to challenge the view reached by an adjudicator regardless of whether they have any further information or new points. The case is then passed to an ombudsman who reviews the file afresh and makes their own determination on the complaint – as I have done in this case.

It is important to note that I, or any other ombudsman for that matter, am not bound by the view reached by an adjudicator. I am required to reach my own conclusion on a complaint. And, in this case, notwithstanding the fact that Lloyds hadn't provided further information, I didn't agree with our adjudicator's view that the available evidence showed Mr L wasn't given a clear choice in taking the account.

In my view, I clearly set out the reasons why I took a view that differed from that of our adjudicator. But for the avoidance of doubt, I'd reiterate that I don't think that our adjudicator placed enough weight on the fact that Mr L had taken out loans where he hadn't had to have the Platinum account previously. And they failed to take account of the fact that Mr L kept the account for a significant number of years after he'd already repaid his loan.

I would've expected someone who took out the account solely for the purpose of securing a loan to have cancelled it as soon as they repaid that loan. I've thought about the additional point Mr L has made about switching to a fee free account once he fully appreciated what the fee was for. But I don't think that he would've needed any special knowledge to have known that he didn't need the account, if he genuinely and reasonably believed that he was only taking it to secure a loan, once that loan was repaid. So while I've thought about everything said in the adjudicator's original assessment and Mr L's further points, I think it's most likely that Mr L was given a clear choice on taking the account and he agreed to it.

I now turn to the recommendation itself. Mr L has queried the fairness of Lloyds' initial recommendation. At this point it may help for me to explain that Lloyds has already accepted that the recommendation of the Platinum account wasn't fair. And I confirmed this in my provisional decision. So while Mr L has provided further points on why he believes the recommendation was unfair, I don't think that this matters too much here. The question I have to think about is whether what Lloyds has done to put things right is fair.

As explained in my provisional decision, Lloyds has refunded the difference in fees between the Gold account and the Platinum account as the Gold account was the cheapest account that included travel insurance at the time. In Lloyds view, Mr L had a need for travel insurance so paying the difference between the accounts was fair. Having looked at the information provided, I was of the view that Mr L did have a need for travel insurance. And his actions in contacting the travel provider – most crucially after he'd already repaid his loan – led me to think that this cover was something that Mr L was interested in having.

Mr L might have been able to source this cover cheaper elsewhere. But Lloyds couldn't have and wasn't required to talk about products available elsewhere on the market. What Lloyds has done is place Mr L in the position he'd have been in if he'd taken travel insurance in the cheapest way possible with Lloyds. So I think what Lloyds has done is fair.

I've also thought about what Mr L has said about his financial circumstances at the time. I accept that he was consolidating debt when he took this account out. But having looked at Mr L's statements and the history of charges applied to his account, I haven't seen anything to indicate that he couldn't afford the monthly fee for a packaged account. And I haven't seen anything to suggest that the packaged account fee caused him undue financial hardship either. So I don't think that Mr L's financial circumstances at the time, on its own, meant that Lloyds shouldn't have sold him a packaged account of any description. So I don't think that Mr L's complaint should be upheld for this reason.

I want to reassure Mr L that I've thought about all of the further points he's made. But having done so, I remain of the view that Lloyds hasn't treated him unfairly. So I'm not asking Lloyds to pay him any more money.

**my final decision**

For the reasons set out above and in my provisional decision of 26 January 2016, I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr L to accept or reject my decision before 8 April 2016.

Jeshen Narayanan  
**ombudsman**

## COPY OF PROVISIONAL DECISION

### **complaint**

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### **background**

Mr L also complained about the sale of a Select packaged bank account that was sold in 2004. But Lloyds has accepted that it mis-sold that account and has offered to put things right by refunding all the fees Mr L paid for this account plus interest. As this is what I would've asked Lloyds to do if I upheld the complaint, I'm not going to look at this sale.

So this decision is only looking at the complaint made about the Platinum account sold in 2005. Lloyds has accepted that it shouldn't have sold Mr L the Platinum account. In an attempt to put things right it offered Mr L the difference between the fees he paid for the Platinum account and the fees he would've paid if he'd instead taken out the cheaper Gold account.

One of our adjudicators has looked into Mr L's complaint already and he thought that Lloyds' offer wasn't fair. He thought that Lloyds should pay back the whole amount of the fees Mr L paid for the Platinum account. Lloyds didn't accept this and it asked for an ombudsman to look at the case and make a final decision.

### **my provisional findings**

I've considered all the available evidence and arguments to provisionally 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 L's complaint.

Having carefully thought about everything I've been provided with, I, at the moment, think that what Lloyds has done to put things right is fair. So I'm not going to ask it to pay Mr L any more money and I'd like to explain why.

I've started by thinking about whether Mr L was given a choice in taking the packaged account. 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. And in working out what I think is most likely to have happened, I have to think about everything I've been told together with everything 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 L and Lloyds have been able to provide me with.

Mr L had a free account with Lloyds before the first of his upgrades. I've seen what Mr L's said about being told that he had to have the packaged account in order to get a loan. But while I accept that Mr L did take out a loan at the same time he took out his Platinum account, I don't think this necessary means that Mr L only took out the account because he was led to believe this was the only way he could get a loan. Especially as he'd already had a loan approved on his cheaper packaged account a few months earlier and he ended up keeping this account for a significant number of years after he repaid his loan. In my view, Mr L would've returned to a fee free account as soon as he repaid his loan if the sole reason he took the Platinum account in the first place was to secure the loan.

So while the account may have been discussed at the same time as the loan and I can understand why Mr L may now think that the two products were linked, I haven't seen enough to be able to say that Mr L was misled into believing that he couldn't have kept, or returned to the fee free account he'd had in the past. And having thought about everything, I think it's more likely that Mr L agreed to upgrade having been provided with a clear choice.

Lloyds has said that the account was recommended to Mr L. So means that it had to make a fair recommendation, by taking adequate steps to ensure that the selected account was a reasonable fit for Mr L's circumstances. I don't know how much Lloyds thought about Mr L's circumstances before it recommended the Platinum account. But, in any event, it has already accepted that the recommendation made was unfair. So I only need to look at whether what Lloyds has agreed to pay Mr L is fair.

The documentation from the time of the sale suggests that the account was recommended for the travel insurance. Mr L has said that he didn't travel. But Lloyds has provided copies of his account statements and these suggest that Mr L has travelled on a number of occasions. So I don't think it's unfair to say that Mr L had a need for this cover. And as Mr L went on to contact the travel insurance provider to discuss the cover – albeit a few years after the account – this suggests that he was relying on it too. Especially as this call took place after Mr L had already repaid his loan – which being able to take out is what he initially told us the sole reason for taking the account was for. While the Platinum account included travel insurance, at the time, the Gold account was the cheapest in Lloyds' range that offered this cover.

I accept that the Platinum account (and also the Gold account) included other benefits such as mobile phone insurance and breakdown cover that Mr L might not have wanted or needed as much. I don't know if the advisor brought this to Mr L's attention as it should've. But from what Mr L's told us, it doesn't look like he was in a position to cancel the cover he already had elsewhere anyway. And as placing Mr L in the position he would've been if he'd taken out the Gold account puts him in the position where he's had the benefit for the travel cover he appears to have wanted for the cheapest possible price, I don't think that Lloyds has treated Mr L unfairly.

So taking everything I've seen together and having carefully thought about the individual circumstances of this case, I think that Lloyds' offer to refund the difference in fees between the Gold and Platinum accounts, plus interest, is fair. I want to reassure Mr L that I've looked at all the information provided. And I've thought about everything he's said so far. But having done so, I, at the moment, don't think that Lloyds has treated him unfairly. So I'm not intending to ask it to pay him any more money.

### **my provisional decision**

For the reasons I've explained, I, at the moment, think that the amount Lloyds has already agreed to pay Mr L is fair. So I'm not intending to uphold Mr L's complaint.

If Lloyds or Mr L have anything further to add before I issue my final decision, they should ensure anything they send reaches me by 26 February 2016.

Jeshen Narayanan  
**ombudsman**