

complaint

Mr R has complained that TSB Bank plc (“TSB”) mis-sold him a Premier packaged bank account in 2010. He pays a monthly fee for the account which includes 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 R’s complaint. I invited both parties to make any further comments before I reached a final decision.

Following this, TSB responded saying that it intended to deduct the redress it already paid when it agreed it initially said that it mis-sold Mr R his Platinum account, from the suggested settlement in my provisional decision.

Mr R also responded. In summary, he:

- maintained that he had to upgrade or he’d lose his overdraft facility;
- isn’t disputing that he was aware of the benefits. But he didn’t need them;
- said the only reason he still hasn’t switched to a fee free account is because he’s always believed that his overdraft would be reduced if he did;
- wants a full refund of all the fees he’s paid.

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 R’s complaint.

I’m somewhat surprised and disappointed at TSB’s suggestion that it should be able to deduct the value of the redress it has already paid Mr R from my proposed settlement. This is because I had already been in contact with TSB to explain that this wasn’t appropriate *before* I issued my provisional decision. But just to be clear on this, I should reiterate that the settlement I proposed was to be paid in addition to what TSB has paid to Mr R already. Mr R already accepted TSB’s offer to settle that part of the complaint and didn’t refer it here. So TSB has to stand by the redress it has already paid in addition to complying with this final decision should Mr R accept it.

I’ve also thought about Mr R’s further comments. While I’ve seen that he’s reiterated that he was told he had to upgrade in order to keep his overdraft facility, my provisional decision explained that I hadn’t seen enough to be able to support what he’s said. So although Mr R has reiterated what he’s previously said without further information to support this, I’m afraid that this isn’t enough for me to change the conclusions I reached in my provisional decision. I’ve also thought about what Mr R’s said about not needing any of the benefits even though he knew about them.

While Mr R’s said he didn’t need the benefits he did go on to use the breakdown cover and registered a handset for the mobile phone insurance. So this would suggest that he had a need for and used at least these benefits, even if he didn’t necessarily need all of the others. I’d also point out that my provisional decision agreed that he didn’t need the additional

benefits on the Premier account and that's precisely the reason why I partially upheld his complaint.

Having thought about all of the additional points made by both parties as well as everything else I've seen on the complaint, I remain of the view that Mr R's complaint should be partially upheld. And he should be placed in the position he would've been in if he'd not been sold the Premier account as a result.

my final decision

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

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

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

Jeshen Narayanan
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr R has complained that TSB Bank plc ("TSB") mis-sold him a Premier packaged bank account in 2010. He pays a monthly fee for the account which includes some benefits.

background

Mr R also complained about the sale of a Platinum account that took place in 2006. But TSB accepted that account was mis-sold and refunded all the fees that Mr R paid. And I understand that Mr R has accepted this. So I've only looked at the complaint made about the Premier account.

One of our adjudicators has looked into Mr R's complaint already and she didn't think that TSB mis-sold the packaged account to him. Mr R 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 R's complaint.

When Mr R asked for an ombudsman to look into his complaint, he said that he was told he had to upgrade to the Premier account to keep his overdraft. I've carefully thought about this and everything else I've seen on this complaint. Having done so, I think that Mr R's complaint should be partially upheld. And I'd like to explain why.

I've started by thinking about whether Mr R was given a choice in taking the Premier 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. 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 R and TSB have been able to provide me with.

Mr R has said that he enquired about increasing his overdraft because he was between jobs at the time. He says he was told he couldn't have an increase and if he wanted to keep the limit he had, he had to upgrade to the Premier account. I've thought about this carefully. One of the benefits of the Premier account was that it included an interest free overdraft buffer of £500. This was double the amount of the buffer that Mr R already had on his Platinum account. I think that the salesperson may have suggested that Mr R might want to consider upgrading to the Premier account for the increased buffer. And as this took place quite some time ago and the upgrade was discussed at the time Mr R believes he needed to increase his overdraft, I can understand why he might think that the two things were linked. But I don't think that the salesperson would've gone as far as to suggest that Mr R had to upgrade his account to keep his existing overdraft. And I certainly haven't seen anything persuasive to support this. So taking everything I've seen together, and while I've carefully thought about what Mr R has said, I think it's most likely that Mr R's account was upgraded because he agreed to it after having been provided with a choice.

TSB has said that the account wasn't recommended to Mr R. On the other hand Mr R says the account was recommended to him for the overdraft. I've thought about this carefully. In the first instance, I should say that TSB hasn't really said why it thinks the account wasn't recommended it has just said that it wasn'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 account is, on

its own, enough for me to agree with this, especially as Mr R has said that the account was recommended.

The signed account upgrade authorisation form shows a tick in the box to confirm that Mr R was provided with a Your Personal Summary of Recommendation ('YPSOR') document, which I understand is TSB's equivalent of a statement of demands and needs. Although TSB hasn't provided me with a copy of this document, I think it's likely to have set out the reasons for the Premier account being recommended to Mr R. The fact that TSB may well have provided documentation highlighting recommended products and what Mr R has told us, lead me to think it's most likely that TSB did assess Mr R'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 the account was recommended to Mr R. So this means that TSB had to make a fair and appropriate recommendation to Mr R, by taking adequate steps to ensure that the selected account was a reasonable fit for his circumstances.

As previously explained, I haven't been provided with much detail on TSB's usual sales process. So I don't know how far it enquired into Mr R's circumstances before it made its recommendation (although the likely provision of an YPSORs 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 assessment of Mr R's demands and needs which resulted in an inappropriate recommendation being made to him. I say this because TSB's defence of this complaint appears to be based on the fact that Mr R was attracted to some of the benefits and he was able to use them.

Having thought about Mr R's wider circumstances and his actions since taking out the account, I think that Mr R may have been interested in mobile phone insurance and breakdown cover. Mr R's registration of a handset not too long after the upgrade to the Premier account and his use of the breakdown cover appears to support this. But these were benefits that were already available to Mr R on his Platinum account. TSB has said that Mr R was interested in the enhanced breakdown cover included on the Premier account. But I haven't seen anything to support this, or the fact that this need existed. And while Mr R may have been registered for part of the ID aware policy, I understand that this was automatically done in branch when he upgraded. So I don't think that this necessarily means that Mr R was interested in or wanted this cover.

I've also thought about what TSB has said about the increased interest free overdraft buffer available to Mr R on the Premier account. But I don't think that the increased interest free overdraft buffer justified recommending the Premier account, as the maximum saving Mr R could make from the interest free buffer was less than the extra he'd be paying in account fees – notwithstanding the reduced fee for the first couple of months. And Mr R's account had been regularly overdrawn by more than £500 so the interest and fee free buffer was of limited use to him anyway – especially when TSB introduced its monthly overdraft usage fee later on in 2010. I accept that the Premier account included a number of other benefits too. But I haven't seen anything persuasive to suggest that Mr R had a demand or need for any of these either.

In conclusion, having carefully thought about everything provided, I don't think that the recommendation of the Premier account was fair or appropriate. And I think that Mr R has lost out because of the unfair and inappropriate recommendation made by TSB. So I'm minded to conclude that TSB should place Mr R in the position he would've been in if TSB hadn't made, what I at the moment think was, an unfair recommendation to him.

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

I propose that TSB should put Mr R back into the position he would've have been in, if he hadn't taken out the Premier account. So TSB should:

- refund and pay to Mr R the difference between fees he paid for the Premier account and the fees he would've paid if he remained on 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 R has made from holding the Premier account **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 R 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 R's complaint. I propose that TSB Bank plc pay Mr R compensation as set out above.

If TSB or Mr R have anything further to add before I issue my final decision, they should ensure anything they send reaches me by 12 November 2015.

Jeshen Narayanan
ombudsman