

complaint

Mr A has complained that Clydesdale Bank Plc (trading as Yorkshire Bank, but referred to as Clydesdale in this decision) mis-sold a signature packaged bank account to him in 2009. He paid a monthly fee for the account and received several benefits in return.

Mr A has used a claims management company (CMC) to bring his complaint to us.

background

One of our adjudicators has looked into Mr A's complaint already. The adjudicator didn't think that Clydesdale mis-sold the packaged account to Mr A and didn't recommend that Clydesdale should pay him any compensation. The CMC didn't accept this recommendation and asked for an ombudsman to look at the complaint and make a final decision.

In my provisional decision of 27 January 2016 I explained why I felt Clydesdale had mis-sold Mr A a packaged account. Clydesdale has since responded, explaining why it doesn't agree.

Clydesdale has said it didn't provide any advice to Mr A when he upgraded his account and its staff would've given Mr A enough information so he could decide for himself if he wanted to upgrade his account. Clydesdale has also said Mr A would've then been issued with a welcome pack which included details of how to downgrade his account if he was unhappy. Clydesdale also argued that Mr A signed to upgrade his account which included a declaration to confirm he'd read the terms and conditions. And that it sent Mr A information/reminders about the account during the life of his signature account.

Clydesdale has also said that their records show Mr A changed his savings account to a signature savings account (providing a preferential interest rate) in June 2010. They've said he did this in branch and that shortly after he changed his savings account he began regularly using the signature savings account. So Clydesdale has said that this shows Mr A had a need for the account and was attracted to the preferential credit interest rates.

my findings

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

We have explained how we handle complaints about packaged bank accounts on our website. I have used this approach to decide what to do about Mr A's complaint.

I've thought about all the points raised carefully, but I still feel the account was mis-sold. I'll explain why below.

As I explained in my provisional decision when Clydesdale sold the packaged account to Mr A, it had to tell him fairly about its features and costs so he could decide if he wanted it. Whilst Clydesdale has said he would've been given this information during the upgrade, there's limited information from Clydesdale and Mr A's representatives about what did happen during this sale. Clydesdale has given me a copy of Mr A's upgrade form and I accept Mr A signed this. But this form doesn't refer to or explain any of the benefits of the account. And Clydesdale has said a welcome pack would've been sent but this was after he agreed to upgrade. So I don't know if Clydesdale did everything it should have when Mr A

upgraded his account. I therefore need to look at whether or not Mr A would've acted differently, had Clydesdale done everything it should have.

I appreciate what Clydesdale has said about Mr A being sent documentation during the life of the account. But he needed to be given enough information at the time he decided to upgrade. And I've not seen enough to suggest this happened. I have thought about the type of information Mr A would have received during the lifetime of the account, but in this case, I don't think it's fair for Clydesdale to rely on unsolicited mailings sent after the sale to correct any failings at the time of the sale. And looking at what the mailings say, I think they could've done more to remind Mr A that he could downgrade.

In some cases, even when we can't see that enough information was provided at the point of sale, the way a consumer goes on to use the account would suggest that they were adequately informed. As previously explained I have reviewed all the main features, and compared them with Mr A's personal situation. And I can't see Mr A has used, relied on or wanted the key benefits. Taking each main benefit in turn:

- Mr A has said he and his wife had existing medical conditions and rarely travelled. And when they did travel they took standalone cover. So I think it's unlikely he was using or attracted to the travel insurance provided by the account. Clydesdale have made comments about the nature of insurance and that reliance on a particular insurance is using it regardless of whether or not the consumer needed to claim. But my thoughts are that I don't think Mr A was relying on this insurance. And based on what he's said, I don't think he had a need for it.
- Mr A's also said he had existing breakdown cover. And he's since provided details about this, saying he's been with his breakdown provider for ten years. So I think it's more likely he did have separate cover. I agree with Clydesdale that it would've been for Mr A to decide whether or not he wanted to maintain existing cover. But this only applies if Clydesdale gave him enough information during the upgrade. And I don't think it did.
- The only other main insurance benefits were mobile phone & gadget insurance, which required registration at the time of upgrade. And identity theft insurance, which also required registration for some of the cover provided. Clydesdale hasn't provided anything to suggest Mr A registered any items under either of these insurances. Clydesdale has said that the requirement to register a mobile phone was removed in February 2011. But at the time of upgrade this was a requirement and Mr A didn't register his phone. In the circumstances of Mr A's particular case, I think this was because he had neither the demand or need for this insurance.
- Finally I explained I've looked at the banking benefits of the account and I've not seen anything to suggest these were important to Mr A when he upgraded. Clydesdale responded and have now said they have an internal document which shows Mr A changed his savings account in branch in June 2010. Clydesdale previously said happened in 2012 and it couldn't provide details about how this happened.

Even if I accept Mr A changed his savings account in 2010 (not 2012), the document provided by Clydesdale is an internal document with limited details. So I don't know what Mr A would've seen or whether this happened at his request. But in any event, June 2010 is still over a year from the original upgrade so I don't think this shows an

attraction to the signature current account at the time it was upgraded. And whilst I can see a behaviour change (i.e. Mr A did begin to make regular deposits in his savings account) the statements I have show this started around November 2011. So again this was around two years after he upgraded his current account. And I don't agree that this shows an initial attraction to the signature current account.

As I explained Clydesdale has argued that in some circumstances a consumer may have still wanted the packaged account even if they didn't go on to use the benefits. But in Mr A's case not only does he not appear to have relied on the benefits; he also doesn't appear to have wanted or needed any of them. So I think that if Clydesdale had given him enough information about the account, I don't think he would've taken it.

fair compensation

Clydesdale should put Mr A in the position he'd be in now if he hadn't upgraded to the signature account in 2009. Clydesdale should:

- Pay Mr A the amount he paid each month for the signature account.
- Add simple interest to each payment from when he paid it until he gets it back. The rate of interest is 8% a year†.
- If Mr A has saved money because of a better rate on his overdraft, loan or savings account by having the packaged account and Clydesdale can show exactly how much Mr A saved, it may deduct these savings from the amount it pays him. Clydesdale must explain clearly and simply to Mr A how it has worked out any savings.

† HM Revenue & Customs requires Clydesdale to take off tax from this interest. Clydesdale must give Mr A a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons I've explained, I uphold Mr A's complaint.

Clydesdale Bank Plc should pay Mr A compensation in line with the instructions set out above.

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

Claire White
ombudsman