

complaint

Mr S has complained about the offer Lloyds Bank Plc (Lloyds) has made in relation to his packaged bank account mis-selling complaint.

background

Mr S originally complained that Lloyds mis-sold him three packaged bank accounts. Mr S was sold a Gold account at some point before August 2001. Mr S then upgraded to a Platinum account in April 2002 and to a Premier account in August 2010.

Lloyds investigated his complaint and upheld it. Lloyds has explained that it upheld Mr S' complaint as he also held another packaged bank account with his joint account and so effectively he had duplicate cover.

Lloyds has offered to refund Mr S his packaged bank account fees plus simple interest at 8% (minus a tax deduction on the interest which HM Revenue & Customs requires a business to take off before making any payment). And Lloyds has offered a £50 distress and inconvenience payment for the way it initially handled his complaint.

Mr S feels the interest Lloyds has paid should be at the same rate as his overdraft and this should be calculated as compound interest rather than simple interest. This is because he feels the monthly account fee increased the amount he was overdrawn and so he feels he's paid interest at the overdraft rate, on a compound basis.

I attach an extract of my provisional decision of 30 June 2017, which forms part of this final decision. In my provisional decision I set out why I thought that the offer Lloyds had made is fair. I asked both Lloyds and Mr S to provide any further comments and any new evidence before I made my final decision.

Lloyds hasn't responded to my provisional decision and Mr S has made a number of points in response.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I still think the offer Lloyds has made to Mr S is fair and so I'm not going to ask it to do anything further.

Mr S has raised largely similar points in response to my provisional decision as he has prior to this. Mr S doesn't agree that it's fair or reasonable for Lloyds to calculate the interest on his offer in the way described above. He still feels that Lloyds should calculate the interest payable at the same rate he's paid on his overdraft. And Mr S feels this should be calculated on a compound rather than simple basis.

To summarise, as I explained in my provisional decision, in order to say that interest should be calculated at the overdraft rate I'd need to be satisfied that Mr S was using his overdraft for the overwhelming majority of the time. And so for the vast majority of the time he was paying that rate on his packaged bank account fees. I appreciate Mr S has said he was reaching high overdraft balances, but he had periods of time when his account was in credit (around a third of the time). Mr S has also said if we were to look at the position of his account at the end of every month (or at another single point in the month) then a different

conclusion might be reached about the amount of time Mr S spent overdrawn. But as I explained, I don't think this is fair. The overdraft interest he's paid was calculated on a daily basis. So when looking at how much he's used his overdraft, I think the fairest way to do this is to look at the daily closing balance of his account. And as I've explained, Mr S had periods of time when he was in credit so I don't think it's fair for interest to be calculated at the overdraft rate.

I also don't think that calculating the interest on a compound basis is fair. As I explained, to do this assumes that Mr S wouldn't have otherwise still have spent this money. And given how small his packaged bank account fee was in comparison to his overdraft balances, I can't say it's most likely that Mr S wouldn't otherwise have spent this money on something else. In addition, as I explained in my provisional decision, I also can't say it's fair for Lloyds to complete an account reconstruction (by this I mean working through month on month to try and conclude what would've happened each month if Mr S hadn't be charged the packaged bank account fee). This is because it's hard to know what would've happened if Mr S hadn't taken out the packaged bank account in question. In particular I don't know if he would've been able or would've wanted to increase his overdraft on his joint account to incorporate the limit he had on his sole account. So I don't know whether or not he would've still had access to preferential interest rates (which were benefits of his packaged bank accounts) on his entire overdraft balance. And given the amounts he was overdrawn, I think it's likely that he would've made substantial savings through the overdraft benefits that he might not have received without paying two monthly account fees.

So for the reasons I've explained both above and in my provisional decision, I think the offer Lloyds has made to put things right in Mr S' case is fair.

my final decision

For the reasons explained, I think that Lloyds Bank Plc has made a fair offer. So I'm not requiring it to do anything further.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 14 September 2017.

Claire White
ombudsman

my provisional findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Lloyds has already agreed to uphold Mr S' packaged bank account mis-selling complaint. So I won't be looking at the sale of these accounts. Instead what I will be considering is whether or not what Lloyds has offered to put things right is fair. I know this is going to come as a disappointment to Mr S, but after giving his case a lot of thought, I currently think that what Lloyds has already offered to do is fair in the circumstances of his complaint. And so I'm not planning to ask Lloyds to do anything further. I know this isn't the outcome that Mr S was hoping for. But I hope that my explanation will help him to understand how I have come to this provisional conclusion.

Typically where we think a business has mis-sold a packaged bank account we usually require it to refund all account fees paid and add 8% simple interest to compensate a consumer for loss of access to this money. In the circumstances of this complaint Lloyds can't confirm when Mr S' account was first upgraded to a packaged bank account. So Lloyds has offered to refund from halfway between when the account was first launched and the earliest record it has of Mr S' account being a packaged bank account. Given it's not clear when the account first became a packaged bank account, I think this is a fair approach to take.

Mr S has said he was paid a small monthly wage and then received substantial bonuses. So he's said he used his overdraft up to high balances and then periodically he would receive large deposits and return into credit. From the selection of statements I have available I can see that Mr S did manage his account in this way. And I can see he had substantial overdraft limits. In 2002 he had an agreed overdraft limit of £15,000 and prior to this (from August 2001 onwards) I can see he had overdraft balances which were substantially higher than this. Mr S has argued that he should therefore be paid interest at the overdraft rate on his packaged bank account fees.

I've thought carefully about what Mr S has argued. But I don't think it would be fair for Mr S' interest to be calculated in this way. Firstly Mr S had periods where he was in credit and Lloyds has said he was in credit for around a third of the time (based on the number of days his closing balance was in credit since August 2001). I appreciate that Mr S has argued the large amount he was in his overdraft should also be considered to determine if he was a heavy overdraft user. And as I've explained above I accept Mr S had high overdraft balances. But in order to say Lloyds should pay his refund at the overdraft rate I'd have to be satisfied that Mr S was using his overdraft (above the interest free portion) for the overwhelming majority of the time and I don't think around two thirds of the time is substantial enough to qualify for this. Typically where this is the case a consumer will stay consistently in their overdraft or only go into credit for a couple of days a month on average. And as Mr S was in credit for around a third of the time it's difficult to agree that interest at the overdraft rate is fair.

I appreciate that Mr S has argued if you were to look at the closing balance at the end of the month or look at a yearly basis this could provide a different perspective on his overdraft usage. Firstly I don't think it's fair to look at an isolated point in a month period to assess his overdraft usage. The overdraft interest he's paid was calculated on a daily basis and so to determine his overdraft usage I think the fairest way is to look at the daily closing balance of his account.

I understand Mr S also feels that as he's paid compound interest on his overdraft (including his packaged bank account fees) Lloyds should calculate interest on a compound basis. However, I also don't think this is a fair way to calculate interest as it assumes that Mr S wouldn't otherwise have spent the cost of the packaged bank account fee. And given the amount of the packaged bank account fee and Mr S' large overdraft balances, I can't safely say that Mr S wouldn't otherwise have spent that money had he not had a packaged bank account.

I also think an account reconstruction presents other challenges as it's not entirely clear what would've happened if Mr S hadn't held the packaged bank account in question. My understanding is

Mr S additionally held a separate packaged bank account as a joint account holder which effectively duplicated some of the cover on this account. And Mr S has said his joint account also had a substantial overdraft of £10,000. I don't know if Lloyds would've allowed Mr S to combine the two overdrafts or if a joint application would've been successful. So it may not have been possible for Mr S to combine the two overdrafts and I don't know if Mr S would've necessarily wanted to do this. After all I think it's likely Mr S chose to structure his accounts in this way. Whether or not Mr S could have combined his overdrafts and whether he would have if he'd been given this option is significant as the packaged bank accounts offered preferential overdraft rates.

The Premier account provided a £500 interest free portion with a preferential rate on agreed balances above this. The preferential rate fluctuated during the period Mr S held the account and was approximately between 4 to 8% less than the standard current account overdraft interest rate. These were the most preferable overdraft terms of the three different packaged bank accounts Mr S held, but both the Gold and Platinum accounts (which had a lower monthly account fee) also offered an initial fee free portion with a preferential rate on agreed balances above this. So given I don't know if a combined overdraft of that size would've been possible on a much higher joint application, I don't know if Mr S could've had one packaged bank account and received a preferential rate on his entire overdraft balance. So it may have been the case that he needed to have two packaged bank accounts (paying two account fees) in order to receive a preferential rate on both overdrafts. And if this was the case, it seems likely given his overdraft balances on the account in question, that he's benefited more from the overdraft preferential rates than he's otherwise paid out in account fees on this account.

Equally I accept that it's possible he could've been able to combine his overdraft on the one account. So I agree with Lloyds' decision not to deduct the preferential overdraft benefits from his refund. And I agree with Lloyds' decision not to deduct any preferential rates received from Mr S' loans as again he may still have been able to qualify for these through the joint packaged bank account he held. But I can't safely say what would've happened as there are a number of different possibilities. So an account reconstruction doesn't seem fair in the circumstances. I think that what Lloyds has already offered in relation to Mr S' packaged bank account mis-selling complaint (described above) is fair. I also note that in addition to this Lloyds has also offered Mr S £50 compensation for how it handled his complaint. Based on everything I've seen, in particular what Mr S has said about some of the challenges he's had in making his complaint, I think this is fair. So I'm currently not requiring Lloyds to pay Mr S anything more than what it's already offered.