

The complaint

Mrs M has complained that TSB Bank plc (“TSB”) mis-sold her a number of fee-paying packaged accounts.

In summary, Mrs M says that they were mis-sold because she says that TSB failed to check whether the package of benefits were right for her.

Account history

Mrs M’s account history is as follows:

- Upgraded to a fee-paying Platinum account – July 2001
- Upgraded to a fee-paying Premier account – 30 November 2006
- Downgraded to a fee-paying Platinum account – 16 May 2007

What happened

In its response to the complaint, TSB upheld Mrs M’s complaint about the sale of the first Platinum account and the sale of the Premier account. However, it didn’t think that the Platinum account sold in May 2007 (which was actually a downgrade from the Premier account) was mis-sold.

Mrs M accepted TSB’s findings relating to the two accounts it had upheld, but referred her complaint to our service about the sale of the Platinum account in May 2007. Mrs M felt that the account fees for that packaged account should also be refunded.

One of our adjudicators assessed the complaint and they upheld Mrs M’s complaint and recommended that TSB refund the account fees Mrs M paid for the Platinum account from May 2007.

TSB dis-agreed with the adjudicator’s assessment, so the matter was referred for an ombudsman’s decision.

I issued a provisional decision on 11 August 2023, explaining why I didn’t think the Platinum account Mrs M took out in May 2007 was mis-sold. I have included an extract of my provisional decision below and it forms a part of this decision:

“What I’ve provisionally decided – and why

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

We’ve explained our approach to complaints about packaged accounts on our website and I’ve used that to help me decide this complaint. And having considered everything, I currently think that the Platinum account ‘sold’ in May 2007 was not mis-sold. I will explain why below.

A central part of the adjudicator's assessment was that she concluded that the Platinum account sold in May 2007 was done so on an advised basis. And indeed, Mrs M's complaint is essentially that TSB failed to assess whether Mrs M had a need for the benefits - as it is required to do during an advised sale. Conversely, TSB says that the sale was done so on a non-advised basis.

Having reviewed the available evidence, I don't think that the Platinum account 'sale' was done so on an advised basis.

I say this because TSB has provided evidence which shows that Mrs M called TSB and specifically requested that her account be downgraded from a Premier account to a Platinum account.

As such, given that Mrs M contacted TSB (not the other way round) and she was requesting that her account be changed to a specific packaged account, I can't see why TSB would've provided advice, as Mrs M clearly knew what product she wanted. Indeed, there is no other evidence available - including Mrs M's testimony - to indicate that any advice or recommendation was given at the time.

Making such a distinction is important, because if the packaged account had been sold on an advised or recommended basis, then TSB would've been required to assess Mrs M's circumstances and ensure that the package of benefits was a reasonable fit for Mrs M's circumstances. Whereas if the packaged account had been sold on a non-advised basis, then TSB would not have been required to assess if the packaged account that Mrs M was requesting was a good fit for her circumstances at the time.

As I think that the account was sold on a non-advised basis – essentially because Mrs M was specifically requesting her Premier account to be downgraded to a Platinum account, I therefore can't reasonably say that TSB did anything wrong if it didn't assess whether Mrs M had a need for the Platinum account benefits.

What TSB would've been required to do was to provide Mrs M with enough information about the account, its cost and associated benefits, so that she was able to make an informed choice.

Unfortunately, due to how long ago the account was sold to Mrs M, there is very limited evidence available from the time to be able to say what information Mrs M was given about the account.

However, I can't see anything that makes me think Mrs M would've been put off from agreeing to the account had she been given more information about it. I say this bearing in mind that Mrs M had held the Platinum account for a number of years – up until six months prior to reverting back to it in May 2007. As such, I think it's likely that Mrs M had a good appreciation for what was included with the account – otherwise I doubt she would've requested to have the account again if she didn't know what it actually provided or had some need for some of the benefits it provided.

I also note that when Mrs M held the Premier account beforehand, she was able to have the Premier packaged account for the same price as the Platinum account. Based on my experience of TSB's sales practices and the evidence available in this case, I think it was most likely the case that Mrs M was offered the Premier account at a discounted rate, and Mrs M chose to revert back to the Platinum account before she was charged the full amount for the Premier account. In my view, Mrs M's actions at the time indicate that she was aware of, and happy to pay, the monthly fee

for the Platinum account and was aware that she could upgrade and downgrade packaged accounts accordingly.

So taking everything into account, I don't currently think that the Platinum account that Mrs M requested to be added to her account in May 2007 was mis-sold.

Indeed, the basis of Mrs M's complaint – that TSB failed to check if the benefits were suitable for her at the time – was not something TSB was actually required to do for the sale in question. And if it's the case that, perhaps with the benefit of hindsight, Mrs M now doesn't think it was as good value for money as she may've thought at the time, that doesn't mean that TSB should refund her the account fees or indicate that TSB did anything wrong by arranging for her account to be downgraded back to a Platinum account - as she had requested.

I should also point out that, just because TSB chose to uphold the earlier sales, doesn't automatically mean that the sale in 2007 must therefore have also been mis-sold. This is because I have to consider each sale on its merits and on the evidence that is available. And for the reasons outlined above, I don't currently think it was mis-sold.

My provisional decision

Because of the reasons given above, I'm currently minded to not uphold this complaint."

After I issued my provisional decision TSB didn't respond, but Mrs M did.

In summary Mrs M said that her intention was not to complain about the sale in 2007, but the advised sales in 2001 onwards.

Mrs M says that she took on the account due to advice that TSB had provided her. Mrs M says that due to her circumstances, she didn't need the benefits of the earlier packaged accounts. Mrs M asked for evidence of the advice given in the original sales.

Mrs M says she doesn't understand how TSB could uphold and refund later fees, but exclude certain packaged account fees. Mrs M says TSB should not be able to pick and choose and exclude earlier periods. The account was mis-sold and the whole period should be treated as such.

What I've decided – and why

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

We've explained our approach to complaints about mis-sold packaged accounts on our website and I have used that to help me decide this complaint. And having reconsidered everything, including Mrs M's response to my provisional decision, I remain of the view that the Platinum account Mrs M took out in May 2007 was not mis-sold.

Firstly, I note that Mrs M says that it is not her intention to complain about the sale in 2007. However, her later comments contradict this, as she says that she believes she should receive a refund for the whole period she had a packaged account. Put simply, if Mrs M wants the fees refunded for the Platinum account that she had since in May 2007, then it is necessary for our service to consider whether that specific packaged account was mis-sold.

Mrs M asked that TSB provide evidence of the advice given in the earlier sales i.e. the Platinum account sold in 2001 and the Premier account sold in November 2006. However, I can't see that would add anything to this decision, because TSB has already accepted that it had mis-sold those packaged accounts and refunded the fees Mrs M paid for them, with interest.

Mrs M has said that we should essentially treat the whole time she had a packaged account as a whole. But that is not how our service considers complaints about packaged accounts.

Each time an account holder changes (either upgrades or downgrades) the type of packaged account, each occasion is deemed to be a separate sale. This is because each packaged account is a separate financial product that includes a specific package of benefits.

Because of this, it is necessary for our service to consider each sale on its individual merits. After all, a consumer's circumstances can change a fair amount over time. And just because one product sold a number of years ago by one person may've been mis-sold, doesn't necessarily mean that another product sold later by another person must therefore have also been mis-sold.

In this case, I didn't think the Platinum account sold in May 2007 was mis-sold, largely because there is strong evidence from the time to show that Mrs M specifically asked TSB for her account to be changed to a Platinum account (from the Premier account). Mrs M made no comment about this in her response to my provisional decision.

Having looked through everything, there is no evidence to suggest that the Platinum account Mrs M took out in 2007 was changed with advice or a recommendation provided by TSB. So it was up to Mrs M, not TSB, to determine for herself whether it was suitable for her circumstances at the time. Mrs M says that she didn't have a need for the benefits. But I can't reasonably hold TSB responsible for Mrs M's decision to ask for an account that she now says she didn't need.

I've not seen anything to suggest that Mrs M was unaware that fee-free alternatives were available to her. And given how long she'd held the Platinum account before 2007, I think Mrs M had a good appreciation for what it provided.

So taking everything into account, I don't think that the Platinum account Mrs M took out in May 2007 was mis-sold.

My final decision

Because of the reasons given above and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 September 2023.

Thomas White
Ombudsman