

complaint

Mr L complains that he was mis-sold a payment protection insurance (PPI) policy when he took out a People's Bank credit card in 2000.

As NewDay Ltd ("NewDay") has accepted responsibility for this complaint, I will refer to NewDay throughout the remainder of this decision.

background

I issued my provisional decision on 9 January 2019. A copy of my provisional decision is attached and forms part of this final decision.

My provisional decision set out the background to this complaint. It explained why I thought the complaint should be upheld.

Mr L didn't respond to my provisional decision.

NewDay responded saying that it didn't agree with my provisional decision. It made a number of comments which were, in summary, that:

- The good value for money provided by the policy.
- The fact that this wasn't an advised sale, so it wasn't necessary for it to ensure the policy was suitable for Mr L, including assessing his other financial resources at point of sale.
- The fact that there was a "cooling off" period, during which Mr L could have cancelled the policy without charge.
- The good level of information about the policy given to Mr L, including the full policy documents.
- The fact that Mr L's complaint didn't highlight any restrictions on the ability to claim for unemployment under the policy.

my findings

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

I've thought carefully about NewDay's comments in response to my provisional decision. But these don't change my view that this complaint should be upheld for reasons that I'll now explain.

I don't think the comment which NewDay has made about the policy providing good value for money is relevant to my decision. I say this because the policy's value for money wasn't a reason for me thinking this complaint should be upheld.

In my provisional decision I say that I think this was a non-advised sale. This means I didn't place an additional requirement on NewDay to show that it had ensured the policy was suitable for Mr L, given his particular circumstances at the time of this sale. So I don't think the comments which NewDay has made about this in responding to my provisional decision are relevant.

I accept that there was a "cooling off" period when Mr L could have cancelled his policy. But unless I'm satisfied that NewDay provided Mr L with clear, and sufficiently prominent,

information about the requirements that he would need to satisfy to claim unemployment benefit, I don't think his ability to cancel the policy changes my mind about it being mis-sold.

NewDay says that a good level of information was provided to Mr L about the policy he was buying, including the full policy documents. But I don't think what it's said has given me any greater confidence that, at the time of the sale, Mr L would have been made sufficiently aware of the conditions he would need to meet to make a successful claim for unemployment as a self-employed person. And I remain of the view that he wouldn't have wanted to buy the policy if he'd been fully aware of these conditions.

Finally, NewDay has said that Mr L's complaint didn't highlight the restrictions on his ability to claim for unemployment under the policy. But in looking at whether Mr L was mis-sold his policy, I'm not limited to looking at only those issues specifically raised by him. So the comment made by NewDay about this hasn't changed my mind about upholding this complaint.

So for these reasons, together with the ones already given in my attached provisional decision, I still think that Mr L was mis-sold his PPI policy by NewDay and that he's lost out as a result of this.

fair compensation

NewDay should put Mr L in the financial position he'd be in now if he hadn't taken out PPI. The policy should be cancelled if it hasn't been cancelled already and:

- A. NewDay should find out how much Mr L would owe on his credit card if the policy hadn't been added to it.

So, it should remove the PPI premiums added, as well as any interest charged on those premiums. It should also remove any charges that were caused by the mis-sale of the PPI – as well as any interest added to those charges.

NewDay should then refund the difference between what Mr L owes and what he would have owed.

If Mr L made a successful claim under the PPI policy, NewDay can take off what he got for the claim from the amount it owes him.

- B. If – when NewDay works out what Mr L would have owed each month without PPI – Mr L paid more than enough to clear his balance, NewDay should also pay simple interest on the extra Mr L paid. And it should carry on paying interest until the point when Mr L would have owed NewDay something on his credit card. The interest rate should be 8% a year.[†]

- C. NewDay should tell Mr L what it's done to work out A and B.

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

my final decision

For the reasons I've explained above and in my provisional decision, I'm upholding this complaint and direct NewDay Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 March 2019.

Simon Furse
ombudsman

copy of my provisional decision

complaint

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background

Our adjudicator thought that Mr L's complaint should be upheld. She didn't think the cost of the policy was made clear enough to Mr L. And if it had been, she didn't think he would still have taken the PPI. This was because he appeared to have other means of making his repayments, so he didn't have a strong need for the policy.

NewDay didn't agree with the adjudicator's view, so the case has been passed to me.

my provisional findings

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

NewDay has told us that Mr L wasn't given advice about buying the PPI policy. And having looked at all the available evidence, I think this is likely to have been the case. This means that NewDay didn't need to ensure that the policy was suitable for Mr L. But it still needed to ensure that it gave him enough information for him to decide if he wanted it.

In this case, I don't think NewDay did give Mr L good enough information about the policy for reasons that I'll now explain.

NewDay has provided a copy of the "*Policy Terms & Conditions*" document which it says would have applied at the time of this sale. Under the section headed "*Involuntary Unemployment Insurance Cover*", there's an exclusion from paying any benefit if "*You are Self-Employed and You cannot provide proof that You have stopped trading and finished Your Self-Employed business by production of a certificate from Your accountant and Your official notice from the Commissioner for the Inland Revenue...*"

I think these stated conditions for claiming unemployment benefit when self-employed were onerous and therefore represented a significant limitation in the policy. As such, they should have been clearly drawn attention to by NewDay as part of its sales process. This was so that customers could make a properly informed choice about whether to buy the PPI cover offered.

NewDay has provided a sample of the credit card application form that it says Mr L would have completed, selecting the option provided to take PPI cover. But there isn't any information given on this form about the specific conditions applying to self-employed people claiming unemployment benefit under this policy.

NewDay says that Mr L would have received information relating to the policy's features and benefits at the time of the sale. But I don't think that I can be sure that this particular exclusion was explained clearly enough to him. And even if he'd had the opportunity to look at the policy document before deciding to purchase the cover, I think that it's quite likely that he still wouldn't have fully appreciated the terms for claiming unemployment benefit as a self-employed person.

Mr L says that at the time of this PPI sale he was working in a business which he owned. So I think the conditions that had to be met in order for him to claim unemployment benefit under the policy as a self-employed person would have been of importance to him. And I think it's likely that, if NewDay had drawn Mr L's attention to these conditions clearly enough, he wouldn't have bought the policy. I say this because I don't think Mr L would have wanted to pay the full monthly premium for the policy when he might have difficulty in claiming for one of the key benefits it offered.

So, on the basis of what I've seen so far, I think that Mr L has lost out because NewDay didn't explain the policy conditions relating to self-employed people clearly enough.

fair compensation

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- D. NewDay should find out how much Mr L would owe on his credit card if the policy hadn't been added to it.

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my provisional decision

For the reasons given, I'm currently intending to uphold Mr L's complaint and direct NewDay Ltd to put things right as set out above.

I now invite both parties to make any further representations in writing that they'd like me to consider by 9 February 2019, before I make my final decision.

Simon Furse
ombudsman