

complaint

Mr D complains about the sale of a monthly premium payment protection insurance ("PPI") policy in connection with a credit card account in 2000. Mr D says NewDay Ltd ("NewDay") (formerly trading as Progressive Credit Limited) mis-sold the policy. In essence Mr D complains that the optional nature of the policy was not explained and it was unsuitable for his circumstances.

background

Mr D applied for a credit card via a postal application. As part of the application PPI was purchased. The cost of the policy was £0.72 per £100 of the outstanding balance per month. It provided a monthly benefit of 10% of the credit card balance for accident, sickness and unemployment for up to 12 months. The policy also provided life cover and purchase protection (subject to a maximum sum).

NewDay disagrees that the policy was mis-sold and indicates Mr D chose to take out the policy. It also indicates that adequate information was provided to enable Mr D to make an informed decision about whether or not to purchase the policy.

Our adjudicator has considered the case and is of the view that the complaint should be upheld. NewDay disagrees with this view and has asked for an ombudsman to consider the case.

my findings

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

In doing so, I have also taken into account the law and good industry practice at the time the policy was sold.

After careful consideration, I think the issues in this case are the same as those set out in our note on our website, which explains our approach to complaints about the sale of PPI. Therefore, the overarching questions I need to consider are:

- whether NewDay gave Mr D information that was clear, fair and not misleading in order to put him in a position where he could make an informed choice about the insurance he was buying; and
- whether in giving any advice, NewDay took adequate steps to ensure that the policy it recommended was suitable for Mr D's needs.

If there were shortcomings in the way in which NewDay sold the policy, I must also be satisfied that Mr D is worse off as a result – in other words, that he would have done something different – i.e. not taken out the policy if there had been no shortcomings.

It may be helpful at this stage for me to explain that, although I am aware Mr D has raised a number of concerns in relation to the sale of the policy I will only be addressing those issues I consider to be materially relevant to the complaint in hand. Mr D should note, however, that although I may not address each individual point raised, I have given careful consideration to all submissions before arriving at my decision.

basis of sale

Due to the passage of time NewDay have been unable to provide a copy of Mr D's credit card application form. However, Mr D has confirmed that he applied for the credit card via post and says that he received a recommendation. NewDay has provided a sample copy of a credit card application form it says would have been completed by Mr D at the time of the sale.

Having reviewed the application form, it seems likely that Mr D responded to a general mailshot. I say this because the credit card application form indicates that Mr D's personal details would have been typed and if incorrect should be corrected by the customer handwriting their details alongside.

I am satisfied that such a general targeting did not involve any form of recommendation and therefore accept that this was a non-advised sale. NewDay did not therefore need to ensure the policy was suitable for Mr D's needs – that was essentially a decision he needed to make for himself. NewDay was however, responsible for ensuring that it gave clear, fair and not misleading information on which he could base his decision to purchase the policy.

was adequate information provided to Mr D about the policy?

Based on the evidence I have seen I am not persuaded that Mr D was provided with sufficient information about the terms and conditions of the policy to enable him to make an informed choice about the policy before agreeing to take it out. I set out my reasons below.

Mr D has told us that at the time of taking out the PPI policy he was self-employed and was not entitled to any employment benefits. Mr D says the terms of the policy were not fully explained to him. And he says that as a self-employed person at the time of the sale, he received inadequate information about the limitations on unemployment cover which applies to policyholders who are self-employed. I have carefully reviewed the policy summary which NewDay has confirmed would have been provided to Mr D. The policy summary confirms that;

'Sterling will not pay 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 form the Commissioner for the Inland Revenue'

I consider this is important information and is a significant limitation to the cover. I find the term is significant because I consider it is onerous and places greater conditions on a self-employed person to be able to successfully claim on the unemployment benefit of the cover when compared to that of an employed person.

I say this because, in order for Mr D to be able to claim unemployment benefits from the policy, he would have to comply with a number of financial and fiscal strictures which may take some time and expense to complete. And, in needing to have stopped trading before he could claim, there would be a limited range of circumstances in which Mr D could benefit from the policy as he could not claim if he merely had insufficient work to undertake and left his business in abeyance pending a change in either his circumstances or the economy.

And, as an onerous term, I consider NewDay should have brought it to the attention of Mr D at – or before the point of sale – that is when he actually decided whether or not to take the policy. I can see no reference to these terms on the sample application form and whilst they appear in the policy document, I cannot see that Mr D was referred to them at the point of sale. Even if I accept that Mr D received the policy summary, the terms are towards the end of the policy summary, in small dense text, with no distinction. The document deals with a lot of detail about the many parts of the policy, and I am not persuaded that the terms regarding self-employed policy holders were given any emphasis or sufficiently prominent in the information which was provided to Mr D at the time.

In their submissions NewDay also say that the policy document along with the terms and conditions would have been sent to Mr D on receipt and approval of his credit card application. It also says he could have cancelled the policy within 30 days if he felt the policy was unsuitable for him. However, the provision of information about a policy *after* the sale does not necessarily rectify failings on the part of the business at the point of sale.

For the reasons outlined above I am persuaded that there were shortcomings in the way NewDay sold this policy. I must now consider whether this caused Mr D to purchase a policy that he would otherwise have declined. Because Mr D was self-employed at the time of the sale, I am persuaded that clearer information about the limited circumstances in which he might make a successful claim for unemployment would, more likely than not, have caused him to decline the policy.

I have carefully considered the additional benefits the policy provided. However, I have seen nothing in Mr D's circumstances to persuade me that his need for accident, sickness and life cover was such that this would have motivated him to take out this policy. Mr D has told us that he could have relied on his savings to meet his repayments. On balance, then, I agree with the adjudicator, who said that Mr D is unlikely to have concluded that the policy offered good value in his circumstances if he had received adequate information about the terms and conditions of the policy. And I conclude that this complaint should be upheld for these reasons.

redress

Mr D should be put back in the position he would have been in now if he had taken out the credit card without the PPI policy. So NewDay Ltd should:

- A. Carry out a hypothetical reconstruction of the credit card account to find out what the closing balance of the credit card account would have been if Mr D had paid the same monthly payments, but the PPI policy had *not* been added to it.

This will involve NewDay Ltd removing the PPI premiums, any interest that was charged on the premiums and any charges (and interest on those charges) that would not have applied if the PPI had not been added to the account.

NewDay Ltd should then pay Mr D the difference between the closing balance and what the closing balance would have been without PPI.

- B. Pay Mr D interest at 8% per year simple[†] on any credit balance for any periods when the reconstructed account would have been in credit for the period it would have been in credit.

C. Pay Mr D interest at 8% per year simple[†] on the difference between the actual closing balance of his account and the reconstructed closing balance from the date the account closed to the date of settlement.

D. Set out in writing to Mr D how it has calculated the compensation in A, B and C.

[†] I understand NewDay Ltd is required to deduct basic rate tax from this part of the compensation. Whether Mr D needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr D should refer back to NewDay Ltd if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my final decision

I uphold Mr D's complaint and require NewDay Ltd to pay compensation in line with the redress formula set out above. I make no further award against NewDay Ltd.

Sharon Kerrison
ombudsman