

## **complaint**

This complaint is about a credit card payment protection insurance (PPI) policy taken out in 1996. Mrs R says NewDay Ltd, trading at the time as People's Bank ("NewDay"), mis-sold her the PPI.

## **background**

The background to this complaint, and my provisional findings, can be found in my provisional decision which I've attached below and which forms part of this final decision.

## **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 haven't received any response from NewDay. Mrs R has told us she is unhappy with the outcome but hasn't provided any further information or evidence for me to consider. In the circumstances, I see no reason to change my provisional decision.

## **what the business needs to do**

NewDay has to pay back to Mrs R any commission and profit share it got that was more than 50% of the PPI premium. NewDay should also pay back to Mrs R any extra interest she paid because of that.

NewDay should re-work the credit card account and pay back to Mrs R the difference between what Mrs R owes and what she would've owed if the commission and profit share it got hadn't been over 50% of the cost of the PPI. NewDay should also pay Mrs R 8%\* simple interest if she paid off her credit card at some point.

\*Businesses have to take basic rate tax off this interest. Mrs R can claim back the tax if she doesn't pay tax.

## **my final decision**

I don't think the PPI policy was mis-sold – so NewDay Ltd does not have to pay back all of the cost of the PPI to Mrs R.

But NewDay Ltd does have to pay back to Mrs R any commission and profit share it got that was more than 50% of the PPI premium.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 6 April 2019.

Jenny Giles  
**ombudsman**



copy of provisional decision

**complaint**

This complaint is about a credit card payment protection insurance (PPI) policy taken out in 1996. Mrs R says NewDay Ltd, trading at the time as People's Bank ("NewDay"), mis-sold her the PPI.

**background**

Mrs R made an application for a credit card in 1996. At the same time she was sold a PPI policy.

Our adjudicator didn't uphold the complaint. Mrs R disagreed with the adjudicator's opinion and so the complaint has been passed to me for review.

**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.

We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding Mrs R's case.

I currently don't intend to uphold this complaint as I don't think the policy was mis-sold. I'll explain my reasons for reaching this outcome.

Mrs R has said she was never asked if she wanted to take out the PPI and it was added automatically. She told us she wasn't given the opportunity to refuse the cover. But I think NewDay made it clear that Mrs R didn't have to take out the PPI and that she chose to take it out – although I can understand why she can't remember this. NewDay no longer has a copy of the actual application form completed by Mrs R at the time of the sale – which isn't surprising considering this took place over 21 years ago. But it has provided a sample application from around the time which it says would have been the same as the one completed by Mrs R. On this form there is section about PPI and there are boxes to tick to accept or decline to take out the cover. Without any evidence to persuade me otherwise, I think it's likely this form would be the same or similar to the one Mrs R completed at the time of the sale. And I think it's likely that Mrs R ticked the 'yes' box to confirm she wanted the cover.

I've noted that Mrs R has said she wasn't given an option to refuse the cover but as Mrs R was making an application for additional credit I think she would have read through the form before signing it. And when she saw that there was an option to decline to take out the PPI, I think she would have queried this with NewDay at the time.

So based on everything I've seen and been told, I think NewDay made it clear the policy was optional and that Mrs R agreed to take it out, knowing she could refuse it if she didn't want it.

NewDay didn't recommend the PPI to Mrs R so it didn't have to check if it was right for her. But it did have to make sure Mrs R got the information she needed to decide for herself if it was right for her.

It's possible the information NewDay gave Mrs R about the PPI wasn't as clear as it should've been. But she chose to take out the PPI - so it looks like she wanted this type of cover. Based on what I've seen of her circumstances at the time it doesn't look like she was affected by any of the exclusions to or limits on the PPI cover - so it would have been useful for her if something went wrong. It also looks like the PPI was affordable. So I don't think better information about the PPI would have put her off taking out the cover.

Which means NewDay doesn't have to pay back all of the cost of the PPI to Mrs R.

But NewDay will pay back *some* of the cost of the PPI to Mrs R because:

- NewDay got a high level of commission and profit share (more than 50% of the PPI premium) - so it should have told Mrs R about that. Because NewDay didn't tell Mrs R, that was unfair.
- To put that right, NewDay has basically offered to pay back the amount of commission and profit share that was above 50% of the PPI premium - and I think that offer is fair in this case.

I've thought about everything Mrs R has said - including what she has said about not needing the policy as she would receive six months' full pay followed by six months' half pay from her employer if she was unable to work due to accident or sickness. But this policy would have paid out for 12 months which would be in addition to her sick pay, and potentially for longer than she would receive full pay. And it would also pay out for the same length of time if she was to lose her job. As she didn't have any other means with which to make her repayments I think this policy could have provided her with a useful benefit.

Mrs R also commented on the policy covering 'disability' and said she wouldn't be able to claim for sickness unless she became disabled or was under the supervision of a doctor. But having checked the policy terms and conditions, the word 'disability' is defined as 'a medical condition certified by your doctor which stops you from doing your job'. As this policy would only provide cover for claims where the individual had been off work for more than 30 days, I think it is reasonable to expect that a doctor would have been consulted. So these points don't change my decision.

### **what the business needs to do**

NewDay has to pay back to Mrs R any commission and profit share it got that was more than 50% of the PPI premium. NewDay should also pay back to Mrs R any extra interest she paid because of that.

NewDay should re-work the credit card account and pay back to Mrs R the difference between what Mrs R owes and what she would've owed if the commission and profit share it got hadn't been over 50% of the cost of the PPI. NewDay should also pay Mrs R 8%\* simple interest if she paid off her credit card at some point.

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**my provisional decision**

I don't currently think the PPI policy was mis-sold – so NewDay Ltd does not have to pay back all of the cost of the PPI to Mrs R.

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