

complaint

Mr W says that NewDay Ltd (NewDay) (trading as Opus) mis-sold him a credit card payment protection insurance (PPI) policy.

background

Mr W bought the PPI policy in 1997 when he took out a credit card by post. The cost of the policy was 59p for each £100 he owed on his credit card. The policy gave him life, accident, sickness and unemployment cover. If he'd successfully claimed on the policy, he could have done so for up to 12 months.

Our adjudicator upheld the complaint. He said NewDay should've made the terms and conditions of the policy clearer. And if NewDay had done so, given his circumstances he didn't think Mr W would've taken out the policy.

NewDay disagreed with the adjudicator. It says Mr W made an informed decision as to the benefits and exclusions of taking out the policy. So as there is still a disagreement between the parties, the complaint has come to me to make a decision.

my findings

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

I think the relevant issues to take into account are the same as those set out in the note on our website about our approach to PPI complaints.

I've decided to uphold Mr W's complaint for the following reasons.

Mr W completed an application form and sent it in the post without any contact from Newday. So it seems likely to me that no advice was given. So Newday didn't need to make sure the policy was suitable for Mr W. That said, it still needed to ensure that it provided clear enough information so that Mr W could make an informed decision and I don't think it did.

At the time of the sale, Mr W says he suffered from a pre-existing medical condition. Under the terms and conditions of the policy that I have been able to see, cover was most likely excluded for such conditions.

Under section 5.2 the policy says:

"We will not pay any benefits for any sickness, disease, condition or injury which you knew about or ought to have known about or for which you received advice, treatment or counselling within 6 months before the starting date."

So after considering this term and what Mr W has said, I'm persuaded that at the time of the sale, Mr W would've thought that his medical condition was the most likely reason he needed to claim on the policy.

I have seen the application form and a policy document. When going through these forms, I find it unlikely that the exclusion was clearly explained to Mr W. He would have had to scour through the terms and conditions carefully and it would have taken him some time to do so.

I think if NewDay had made the exclusion sufficiently clear, I don't think Mr W would have considered the policy to be good value. And I'd question why someone would take out PPI which didn't cover them for the most likely reason they'd need to claim.

I've taken into account NewDay's comments, including what it said about whether Mr W would have had the pre-existing medical condition at the time of sale. But it hasn't been able to provide any reasons why it would think this so it doesn't change my conclusion.

In conclusion, I uphold Mr W's complaint.

fair compensation

NewDay will need to put Mr W back in the position he'd have been in if he'd taken out his credit card without PPI. I understand that the PPI policy was cancelled and the credit card account closed. So NewDay should:

- A. Work out what the final balance of Mr W's credit card account would have been if the PPI policy had *not* been added to the account.

This will involve NewDay 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 should then pay Mr W the difference between his final balance and what the final balance would have been without PPI.

- B. Pay Mr W interest at 8% per year simple[†] on this difference (between his final balance and what the final balance would have been without PPI) from the date the account closed to the date of settlement.
- C. If at any time Mr W's credit card account would have been in credit had PPI not been added, NewDay should pay Mr W interest at 8% per year simple[†] on the credit balance for the time it would have stayed in credit.
- D. Set out in writing to Mr W how it has calculated the compensation in A, B and C.

[†] HM Revenue & Customs requires NewDay to deduct tax from any simple interest payments. NewDay must give Mr W a certificate of tax deduction if he asks for one.

my final decision

I uphold Mr W's complaint and direct NewDay Ltd to pay Mr W compensation as set out in this decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 22 March 2017.

Mark Richardson
ombudsman