

complaint

Mr M complains that he was mis-sold a monthly premium payment protection insurance ('PPI') policy.

Although the PPI was sold by another business, as I understand it NewDay Ltd (NewDay) have accepted responsibility for the sale and so the complaint has been set up against them.

To keep things simple, I've only referred to NewDay in this decision.

background

Mr M applied for a credit card in December 1999. He was sold the PPI in connection with this credit card at the same time through an application form.

The policy cost 69p per £100 of the monthly outstanding balance. It would've paid 10% of the monthly outstanding balance for up to 12 months' if Mr M was off work sick or lost his job.

Our adjudicator said Mr M's complaint should be upheld. This is because Mr M told us he was self-employed at the time of the sale and the circumstances in which a self-employed person could make a claim were limited. So our adjudicator thought that if NewDay had made this clear to Mr M then he wouldn't have taken the policy out.

NewDay didn't agree with our adjudicator and so the complaint has been passed to me to decide.

my 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 Mr M's case.

Having done so, I've decided to uphold Mr M's complaint for the reasons below.

NewDay had to give Mr M information in a clear, fair and non-misleading way so that he could make a proper choice about whether or not to take the policy out.

If they didn't then I have to go on and consider whether Mr M would still have taken the policy out if he had been given better information.

I don't think NewDay did give Mr M all the information as they should've. In particular I can't see that NewDay made it clear to Mr M how difficult it would be to make a successful claim for unemployment under the policy as a self-employed person.

NewDay have given us a sample application form from around the time of the sale. They say this represents the sort of form Mr M would've seen. This form makes no mention of what self-employed people would have to do in order to make a claim and doesn't instruct Mr M as to where he would find this information in the policy document.

So even if Mr M had been given the policy document as NewDay say he would've been, Mr M wouldn't have known where to look for this information and the policy document itself doesn't highlight this information.

I think knowing this information would've mattered to Mr M because he has told us he was self-employed at the time of the sale.

I appreciate that Mr M hasn't been able to provide evidence to support he was self-employed at the time of the sale. But the sale took place over 15 years ago and so I wouldn't expect him to now have that information. He has told us he was working as a sole trader from 1998-2001 and then set up a limited company. I've checked the records and note that what he says about the limited company is correct. And based on the information I have, I accept what Mr M has told us about being a sole trader before then.

NewDay provided us with a copy of policy terms. I can see the terms explain that unemployment (for a self-employed person) is 'business cessation'. 'Business cessation' is defined as, *'Your being entirely without work as a result of the involuntary winding up, liquidation or bankruptcy of your own business or proceedings being commenced by a third party to effect such status, and having filed your closing accounts with the Inland Revenue'*.

So Mr M would have had to go to greater lengths than an employed person to make a successful unemployment claim. And he would've most likely had to pay extra to close down his business.

I think it's unlikely Mr M would have wanted to do this. I say this because most people would expect this type of cover to help them when they needed it most - during periods of low business where they were struggling to meet their daily living expenses. So I don't think Mr M would have wanted to wind up his business, pay extra to do so and then start up all over again.

So I think that if this information had been made clear to him at the time of the sale, it's unlikely that Mr M would've taken the policy out as it wouldn't have been of good value for money in his circumstances.

It follows that I uphold Mr M's complaint.

fair compensation

NewDay should put Mr M in the financial position he'd be in now if he hadn't taken out PPI.

- A. NewDay should find out how much Mr M would have owed when he closed his credit card account if the policy hadn't been added.

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 M owed when he closed his account and what he would have owed if he hadn't had PPI.

If Mr M 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. NewDay should add simple interest on the difference between what Mr M would have owed when he closed his account from when he closed it until he gets the refund. The interest rate should be 8% a year.[†]
- C. If – when NewDay works out what Mr M would have owed each month without PPI – Mr M paid more than enough to clear his balance, NewDay should also pay simple interest on the extra Mr M paid. And it should carry on paying interest until the point when Mr M would've owed NewDay something on his credit card. The interest rate should be 8% a year.[†]
- D. NewDay should tell Mr M what it's done to work out A, B and C.

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

my final decision

For the reasons above, my final decision is that Mr M's complaint is upheld and NewDay Ltd must pay Mr M compensation as I've described above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 14 October 2016.

Navneet Sher
ombudsman