

complaint

Ms T complained that she was mis-sold a credit card payment protection insurance (PPI) policy. NewDay Ltd (“NewDay”) has taken responsibility for this complaint, so I’ll refer to NewDay from now on.

background

I’ve attached my provisional decision from August 2019, which forms part of this final decision. In my provisional decision I explained why I proposed to uphold Ms T’s complaint. I invited NewDay and Ms T to send in any further comments or evidence they wanted me to consider by 28 September 2019, before I reached a final decision. Both responded before that date. Ms T said she had nothing further to add. NewDay sent in a response to say that it agreed the complaint should be upheld.

my findings

I’ve reconsidered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint. As neither NewDay nor Ms T provided further evidence or arguments for consideration, and NewDay has agreed that the complaint should be upheld, I’ve no reason to change the conclusions set out in my provisional decision. So I uphold Ms T’s complaint.

fair compensation

NewDay should put Ms T in the financial position she’d be in now if she 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 Ms T would owe on her 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 Ms T owes and what she would have owed.

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

- C. NewDay should tell Ms T what it’s done to work out A and B.

If Ms T made a successful claim under the PPI policy, NewDay can take off what she got for the claim from the amount it owes her. NewDay can also deduct from the redress shown any commission redress repaid to Ms T in relation to this PPI sale.

[†] HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Ms T a certificate showing how much tax it’s taken off if she asks for one.

my final decision

For the reasons I've explained, I've decided to uphold Ms T's complaint. NewDay Ltd should pay her the compensation I've described.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 17 October 2019.

Jan Ferrari
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Ms T complained that she was mis-sold a credit card payment protection insurance (PPI) policy. NewDay Ltd ("NewDay") has taken responsibility for this complaint, so I'll refer to NewDay from now on.

background

The information I have is that Ms T took out the credit card in February 2003. Ms T said she took out the card and PPI in a meeting, but couldn't remember whether the PPI was recommended for her. NewDay hasn't provided us with information about the sale, but from a final response letter issued to Ms T in April 2018, (after which the complaint was referred to us) I can see that it told Ms T that the PPI was selected on the credit card application form and no advice was offered. Ms T said that she didn't know that PPI had been added to the card and the cost and policy terms weren't explained.

NewDay has not provided any information about the policy, so I don't have details of the cost. We have in our records a policy document from the card provider from the year of the sale, and I think it's reasonable to take this as broadly representative of the policy terms that would've applied to Ms T's account. But if NewDay provides a copy of the policy applicable to Ms T's account, and the terms differ from the policy I have, I will look at this again. The policy document in our records suggests that the PPI provided accident, sickness and unemployment cover for Ms T. If she'd successfully claimed on the policy, each month it would've paid out 3% of what she owed on the card when she stopped working. This would've carried on for up to 12 months per claim. The policy also included life cover.

NewDay argued that this service did not have the power to consider the complaint, saying that Ms T had first complained to it in 2012, and at that time had been issued with a final response letter giving her the usual six-month period to refer her complaint to this service. It further said that as the complaint I am now considering was referred to us in 2018, this is well outside the time limits that we are required to apply.

A colleague issued a jurisdiction decision in November 2018 stating, in summary, that as NewDay couldn't provide a copy of the final response letter from 2012, and the computer records it provided did not provide sufficient evidence that such a letter had been issued to Ms T or her representative, the complaint was not outside the time limits and therefore we could consider it. Our adjudicator went on to issue his assessment saying that Ms T's complaint should be upheld.

NewDay disagreed, sending in further computer records of Ms T's complaint, and reiterating its argument that the complaint was made outside the relevant time limits, and as such this service did not have the power to consider it. Ms T's complaint has therefore 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 Ms T's case.

I am minded to conclude that this service does have the power to consider Ms T's complaint, and that it should be upheld. I'll explain why.

I have carefully considered NewDay's further submissions about its previous handling of Ms T's complaint, and indeed asked for further information to clarify the meaning of some of the entries on the computer records.

NewDay sent in a copy of the original complaint letter in 2012, and as far as I can see from the computer records it was acknowledged shortly afterwards – the records refer to such an

acknowledgement. And the complaint is later marked as closed with the entry '*letter policy – additional information*'. I asked for a copy of the text of this letter, which NewDay provided, but this simply asks Ms T – through her representative – to complete a questionnaire and return it within 14 days. None of the information provided by NewDay is identifiable as being a record of a final response letter in the required format – that is, stating that Ms T had six months in which to refer the complaint to this service – having been issued in response to the complaint in 2012. As a result, I have no reason to change my colleague's earlier conclusion that this service *does* have the power to consider Ms T's complaint.

On that basis, I have also considered the merits of Ms T's complaint.

As NewDay has not provided any information about the sale (other than what was in the final response letter in 2018), and said that it did not have a copy of the credit card agreement, I have based my provisional decision on the limited information I *do* have, along with what we know about other sales by the same provider in the same time period.

Ms T said that the card and PPI were sold in a meeting, and I have no information to contradict that. As I mentioned earlier, NewDay said that no advice was given, and Ms T selected the PPI when filling out the application form. It also said that Ms T would've been given a copy of the full policy terms and conditions when she applied.

Ms T said she was self-employed at the time of the sale. As I've explained, I have taken into consideration a policy document from the card provider from the year of the sale, which we have in our records. If NewDay can provide more information about the sale generally, and the policy terms differ, I will look at this again.

In relation to self-employed people, the policy says the following:

"Cover applies in the event of bankruptcy, liquidation or official termination of self-employed status due to failure of business. Temporary cessation of trading or periods of unemployment due to shortage of work are not covered. Evidence of cessation must be provided".

I can see from this that it would've been more difficult for Ms T to claim for unemployment as a self-employed person than an employed person - she would be had to be declared bankrupt or totally ceased trading. And I don't think Ms T would've taken the PPI if she'd understood this.

I have no information about how the policy was explained to Ms T – but I'm not satisfied she would've taken the PPI if she'd been properly informed. As a result I'm minded to uphold Ms T's complaint and to require NewDay to put things right.

fair compensation

NewDay should put Ms T in the financial position she'd be in now if she 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 Ms T would owe on her 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 Ms T owes and what she would have owed.

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- C. NewDay should tell Ms T what it's done to work out A and B.

If Ms T made a successful claim under the PPI policy, NewDay can take off what she got for the claim from the amount it owes her. NewDay can also deduct from the redress shown any commission redress repaid to Ms T in relation to this PPI sale.

[†] HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Ms T a certificate showing how much tax it's taken off if she asks for one.

my provisional decision

For the reasons I've explained, I propose to uphold Ms T's complaint, and to require NewDay Ltd to pay her the compensation I've described.

Jan Ferrari
ombudsman