

## **complaint**

This complaint concerns the sale of a regular premium payment protection insurance (PPI) policy. Mr U complains that he was mis-sold the insurance by NewDay Ltd (NewDay)

## **background**

Mr U purchased the insurance in connection with a credit card in 2000.

The adjudicator concluded that NewDay had mis-sold the insurance policy and upheld Mr U's complaint. NewDay do not agree with our adjudicator's view, so the matter has been referred to me for a final decision.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also taken account of the law and good industry practice at the time the PPI policy was sold.

The relevant considerations in this case are materially the same as those set out in our well established general approach to complaints about the sale of PPI which is published on our website. The key questions I need to consider therefore are:

- Whether in giving any advice or recommendation NewDay took adequate steps to ensure that the product it recommended was suitable for Mr U's needs.
- Whether NewDay gave Mr U 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.

If there were shortcomings in the way in which NewDay sold the policy, I then need to consider whether Mr U is worse off as a result; that is, would he have done something different – eg not taken out the policy - if there had been no shortcomings in this case.

## **basis of sale**

Mr U has been unable to recall the sales process for the insurance. NewDay have said that Mr U completed an application form and have provided a copy of Mr U's application. Mr U has said he was given advice by NewDay regarding the insurance. As Mr U completed an application form in his own time I take the view that it is more likely than not that advice was not given regarding the purchase of the insurance policy. I therefore do not need to consider whether the insurance was a suitable recommendation for Mr U.

## **was the optional nature of the policy made clear?**

I have examined the application form which Mr U completed for the credit card. There is a separate section for the payment protection insurance which requires a box to be ticked in order to purchase the insurance. There is nothing on the form to suggest that the insurance had to be taken. I take the view that (although not explicitly stated) by requiring active selection the optional nature of the insurance was clear.

### **was clear information provided?**

I am not satisfied that NewDay drew Mr U's attention to all the significant features of the policy. But it doesn't automatically follow from this that I should uphold Mr U's complaint. I need to be satisfied that Mr U has lost out as a result – in other words, that he would have acted differently (and decided not to take out the policy) if NewDay had clearly explained all of the policy's significant features.

NewDay had a duty to provide Mr U with 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. Having carefully examined all the detail of this complaint I cannot say that this was the case. I am not satisfied that NewDay drew Mr U's attention to all the significant features of the policy.

Mr U had employer benefits which would have paid 75% of his salary until retirement in the event of sickness. I take the view that therefore Mr U would have had sufficient means to meet his repayments in the event of sickness. NewDay have referred to a previous decision issued by this service which stated that a policy would still pay out in addition to any occupational benefits. But I can only consider the merits of this case and the level of Mr U's benefits.

I accept that the headline cost of the insurance is mentioned on the application form. But there is no reference to anything which would draw a consumer's attention to the importance of any explanation about interest being payable on the insurance or clear information about the importance of reading information about the policy benefit.

This information was of direct relevance to Mr U at the point of sale and would have had a direct bearing on his decision to take out the insurance policy. Had Mr U been aware of this information and how his existing provision compared with the overall cost and benefit of the policy, I consider it unlikely he would have proceeded to purchase the insurance.

I have therefore concluded that Mr U has been disadvantaged as a result of NewDay's failings. It therefore follows that I uphold this complaint and direct NewDay to pay Mr U fair compensation as detailed below.

### **fair compensation**

In accordance to our approach to redress in such cases, NewDay should put Mr U back into the position he would have been in had he taken out the credit card without the PPI policy. I understand that the PPI policy has been cancelled. NewDay should:

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

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 U the difference between the current balance and what the current balance would have been without PPI.

- B. Pay Mr U interest at 8% per year simple<sup>†</sup> 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. Set out in writing to Mr U how it has calculated the compensation in A and B.

<sup>†</sup> I understand NewDay is required to deduct basic rate tax from this part of the compensation. Whether Mr U 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 U should refer back to NewDay 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**

For the reasons set out above I uphold the complaint and direct NewDay Ltd to pay Mr U compensation as set out above. I make no further award against NewDay Ltd.

Paul Bishop  
**ombudsman**