

complaint

Mr A complains he was mis-sold a card protection policy in September 2003 by a business that NewDay Ltd is responsible for.

background

Mr A was sold a card protection policy in connection with his credit card in September 2003. He says he wasn't given all the information he needed because the benefits were overstated.

NewDay didn't uphold the complaint. It said the premiums Mr A paid before 14 January 2005 hadn't been covered by the redress scheme that was put in place for policies such as his. And although the premiums he'd paid after 14 January 2005 had been, he hadn't made a claim under that scheme. Mr A didn't agree so he brought his complaint to this service.

I issued a provisional decision saying I was planning to uphold Mr A's complaint and require NewDay to refund all the premiums he'd paid – together with interest. A copy of my provisional findings is attached and forms part of this decision. In summary, I said:

- I agreed with the adjudicator that this service can consider Mr A's complaint about the sale of his card protection policy. It seemed most likely to me that fraud cover was a benefit of the policy and that it was incorrectly presented to Mr A as something he wouldn't have without the policy. I was satisfied the policy wouldn't have been attractive to Mr A if he'd understood he already had a lot of the fraud cover.
- I was satisfied that at the point Mr A complained about the sale of his card protection policy NewDay should've highlighted to him that a redress scheme had been set up that covered the premiums he'd paid after 14 January 2005. If it had done, I thought it was most likely Mr A would've made a successful claim under that redress scheme.

Mr A's representative replied saying Mr A agrees with my provisional decision. NewDay didn't reply.

my findings

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

As neither Mr A nor NewDay has provided any further comments or evidence in support of their case since my provisional decision, I don't feel it's necessary to comment further. My conclusions remain as set out in my provisional decision for the same reasons.

fair compensation

I therefore require NewDay to:

- refund all the card protection policy premiums paid by Mr A; *and*
- pay Mr A interest at 8% simple a year* on each of the premiums – from the date they were paid to the date compensation is paid.

*I understand NewDay is required to deduct basic rate tax from this part of the compensation. Whether Mr A 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 A 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

My final decision is that I uphold Mr A's complaint against NewDay Ltd and require NewDay Ltd to pay Mr A fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 August 2017.

Laura Parker
ombudsman

COPY OF 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.

the premiums paid before 14 January 2005

I agree with the adjudicator that this service can consider Mr A's complaint about the sale of his card protection policy.

Neither NewDay nor the policy administrator can provide a copy of the sales material or the documents that would've been sent to Mr A. So I can't be sure what the exact benefits of the policy were at the time – or how they were presented to Mr A.

It seems most likely to me that fraud cover was a benefit of the policy at the time Mr A took it out. I say this because this cover is often included in this type of policy. And Mr A remembers it being a benefit. For the same reasons I think it's most likely it was presented to Mr A as he remembers – as cover he wouldn't have without the policy.

To be able to make an informed choice, I think a consumer needs to understand the main benefits, conditions and restrictions of a policy. In this case, that includes how those benefits give extra cover – over the cover already provided under the law and general rules and obligations on card providers.

I haven't been provided with evidence that the overlaps between the fraud cover included in the policy and that in the Consumer Credit Act 1974 were made clear to Mr A. I therefore can't say Mr A was given enough clear and fair information to decide whether to take the policy.

Mr A says the fraud cover was what attracted him to the policy. One of the other main benefits of these policies was being able to make one phone call to cancel all cards. But the policy administrator says Mr A didn't register any cards for this benefit. Taking all of the evidence into account, it therefore seems most likely to me that Mr A took the policy out because he was attracted to the fraud cover. I don't think this would have been attractive to him had he known he already had a lot of this cover.

I'm therefore planning to require NewDay to refund the premiums Mr A paid before 14 January 2005 – together with interest.

the premiums paid after 14 January 2005

In 2013, the financial services regulator, the Financial Conduct Authority (FCA), agreed a redress scheme to compensate consumers, like Mr A, with card and identity theft protection policies. Broadly the scheme required businesses to return premiums paid on or after 14 January 2005 to consumers who made a claim under the scheme before 30 August 2014.

The policy administrator has provided evidence to show that the documentation for the redress scheme was sent to Mr A. However, I can see that it was sent to an address Mr A didn't live at any longer. Mr A says he therefore didn't know he could claim under the scheme.

NewDay wasn't responsible for Mr A's policy under the redress scheme – a completely separate business was. I therefore haven't considered what the redress scheme did as part of this complaint.

But I can see that Mr A's representative first complained to NewDay about the sale of the policy on 30 January 2014. The first sentence of that letter was "*We have been requested by the above client to act on their behalf in respect of a complaint about the mis-sale of Card Protection Insurance*". It then went on to detail the reasons why Mr A believed the policy had been mis-sold.

NewDay wrote to Mr A on 12 March 2014. But that letter treated the complaint as being about payment protection insurance. Mr A's representative therefore chased the card protection complaint

on 7 May 2014. And on 2 July 2014 it wrote to NewDay again saying "*I can confirm that this complaint is about the mis-sale of a Card Protection Policy and not Payment Protection Insurance. Therefore, please assess a complaint about the mis-sale of a Card Protection Policy attached to this card*". It then chased the complaint again on 30 July 2014. NewDay still hadn't responded to the complaint when Mr A came to this service on 7 April 2015.

Taking everything into account, I'm satisfied that at the point Mr A complained about the sale of his card protection policy NewDay should've highlighted to him the fact that a redress scheme had been set up that covered the premiums he'd paid after 14 January 2005.

It seems most likely to me that if Mr A had been told the premiums he'd paid after 14 January 2005 were covered by a redress scheme he would've contacted that scheme to request a claim form. I'm satisfied he then would've filled it in and submitted it before the deadline of 30 August 2014. Taking everything into account, I think it's most likely his claim would've been accepted.

In these circumstances I think it'd be fair and reasonable to require NewDay to pay Mr A the amount he would've been entitled to under the rules of the redress scheme.