

complaint

This complaint is about a credit card payment protection insurance (PPI) policy taken out in 1997. Mr S says NewDay Ltd mis-sold him the PPI.

my findings

I've considered all the available evidence and arguments to decide what is 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 S case.

I've decided the policy wasn't mis-sold and I'll explain why.

Mr S says the PPI was added without his knowledge or consent. But he's not been able to remember when the policy was sold to him, and he's not given me much more information to persuade me that this is what happened. And this policy was sold around 12 years ago – which is something I have to keep in mind when deciding what I think is more likely to have happened.

NewDay says the PPI was sold via post but due to the length of time that's passed, there are no longer any documents available from the sale. But NewDay has provided a copy of a postal application it says would've been used at the time – and I've not seen any persuasive evidence that this type of document isn't relevant to this sale, so I've relied on this in my decision. The sample provided shows that there was both a 'yes' and 'no' option for PPI. So I think Mr S would've known about the PPI and seen that it was optional. And I think it's likely that the policy would've only been added to Mr S's account if he had ticked 'yes' for PPI. So based on this evidence, I think it's likely that NewDay made it clear Mr S didn't have to take out the PPI and that he chose to take it out – although I can understand why he can't remember this.

NewDay didn't recommend the PPI to Mr S so it didn't have to check if the PPI was right for him. But it did have to make sure Mr S got the information he needed to decide if the policy was right for him.

Mr S was given a PPI questionnaire to complete in which he was asked to provide information about his circumstances at the time of sale. While Mr S has filled in this form, he hasn't said what date he thinks the PPI was sold to him. We've contacted his representative on a number of occasions to ask whether this information is correct for 1997 – but at the time of writing I've not had any response. So in the absence of any information about Mr S's circumstances at the time of sale I've continued with my decision on the basis that the information in the PPI questionnaire is correct for 1997.

It's possible the information NewDay gave Mr S about the PPI wasn't as clear as it should've been. But based on what I've seen of his circumstances at the time it doesn't look like he was affected by any of the exclusions to or limits on the PPI cover. It also looks like Mr S didn't have any sick pay or savings at the time – so the PPI would have been useful for him if something went wrong. It also looks like the PPI was affordable. So I don't think better information about the PPI would have put him off taking out the cover.

This means NewDay doesn't have to pay back all of the cost of the PPI to Mr S. But NewDay will pay back *some* of the cost of the PPI to Mr S because:

- NewDay got a high level of commission and profit share (more than 50% of the PPI premium) - so it should have told Mr S about that. Because NewDay didn't tell Mr S, that was unfair.
- To put that right, NewDay has basically offered to pay back the amount of commission and profit share that was above 50% of the PPI premium - and I think that offer is fair in this case.

what the business needs to do

NewDay has to pay back to Mr S any commission and profit share it got that was more than 50% of the PPI premium. NewDay should also pay back to Mr S any extra interest he paid because of that.

NewDay should re-work the credit card account and pay back to Mr S the difference between what Mr S owes and what he would've owed if the commission and profit share it got hadn't been over 50% of the cost of the PPI. NewDay should also pay Mr S 8%* simple interest if he paid off his credit card at some point.

*Businesses have to take basic rate tax off this interest. Mr S can claim back the tax if he doesn't pay tax.

my final decision

The PPI policy wasn't mis-sold – so NewDay Ltd does not have to pay back all of the cost of the PPI to Mr S.

But NewDay Ltd does have to pay back to Mr S any commission and profit share it got that was more than 50% of the PPI premium.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 6 April 2019

Sienna Mahboobani
ombudsman