

complaint

Mr S complains that NewDay Ltd ("NewDay") mis-sold him a payment protection insurance ("PPI") policy alongside a credit card in 2001.

He has told us that he did not know it had been added to his account and that he did not need it. He also thinks that it was not suitable for his needs when he became self-employed in 2003.

background

I issued a provisional decision in May 2015 explaining why I did not expect to uphold Mr S' complaint. There is an extract from that decision below:

"This sale took place a long time ago, and both the credit card and PPI have transferred to a number of companies over time. As a result, neither Mr S nor NewDay has been able to confirm exactly how the policy was sold to Mr S, although NewDay says that Mr S would have filled in an application form and posted it back to them.

Although I cannot be certain, it seems unlikely that any NewDay staff were directly involved when Mr S filled in the form. So I do not think that NewDay recommended the policy to him. This means that NewDay did not need to make sure that the policy was suitable for Mr S's particular circumstances. But it did still have a duty to provide Mr S with enough clear information that he could make his own decision about whether or not to buy the policy. NewDay has not been able to provide a copy of Mr S's application form, or a sample application form from the same time. But it has provided me with copies of application forms that it says were in use shortly before the sale and shortly after the sale. On both forms there was a section which offered the PPI to the customer and which they had to complete by ticking a box to say "Yes" to the PPI or "No". This suggests that the customer had to make an active decision to buy the policy at the time that they filled in the form.

Our adjudicator upheld this complaint because NewDay could not prove that Mr S had ticked the box to ask for the PPI and because Mr S told us that he did not agree to take the policy.

I have some sympathy with this view, and I accept that Mr S has given us his best memories of the time of the sale. But looking at this particular case, I think it is more likely than not that Mr S was offered the choice to buy the PPI. I say this because the application forms from one year before the sale and from one year after would both have offered Mr S that choice. It is, of course, possible that NewDay changed its application forms for the space of one year so as *not* to offer the customer a choice about whether or not to take the PPI. But, on balance, I think that is fairly unlikely, so I think that Mr S probably was given the choice about buying the policy.

NewDay has also provided copies of some of Mr S's credit card statements which show that the PPI was clearly presented as a separate charge on the account. I think if Mr S had not agreed to buy the PPI he would probably have questioned that charge at the time.

So, on balance, I think it is likely that Mr S was offered the choice about taking the PPI at the time of the sale, but that he does not remember his decision to do so, given the time that has passed.

I have then looked at whether Mr S was disadvantaged in any way by the terms and conditions of the policy.

As far as I can see, Mr S was eligible for the policy. I have also not seen anything in the information that Mr S has given us that makes me think that he might not have been able to make a successful claim on the policy. He has not suggested that he had any unusual circumstances, such as his employment or health that might have made the cover unsuitable for him.

Mr S has told us that he had some savings and a supportive partner, so did not need the policy. But this policy would have paid out in addition to any other resources Mr S could call on, and for up to a year. I can see that the cost of the policy was around 72p for every £100 of outstanding credit card balance per month and would have paid out 10% of the outstanding card balance each month. This was broadly competitive for the market at the time and would have given Mr S additional protection to cover the new credit card and potential debt that he was taking on. So I do not think that Mr S would have refused the cover on the grounds of cost.

I think it is very likely that NewDay could have given Mr S more and better information about the policy at the point when he applied for it. But I am not currently convinced that he would have made a different decision about buying the policy even if it had done so."

I then asked Mr S and NewDay to give me any further information that they wished me to consider before I made my 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.

NewDay has not provided any further information for me to look at.

Mr S has explained again why he thinks that the policy was mis-sold to him. Most of his comments I have covered in my provisional decision, copied above. But there are a couple of points I would like to respond to:

- Mr S has told me that he was sold the policy during a telephone call. NewDay has told us that he would have applied for both the credit card and PPI by filling in and posting back an application form. Because the sale took place so long ago there is no paperwork from the time for me to look at.

But in the end, I do not think how the policy was sold makes any difference to my decision. I say this because I have not seen anything in Mr S' circumstances that make me think the policy was not suitable for his situation. So even if NewDay had spoken to Mr S on the telephone and even if it had advised him to buy the cover, I would not be upholding the complaint for that reason.

- I accept that Mr S does not remember being told that the policy was optional and that he says he thought it was just a part of the card. But the cover was shown every month on his credit card statement as a separate charge. As he did not question this or cancel the cover, I think he must have been accepting of the cost and accepting of

having PPI cover. So I do not think he would have made a different decision about taking the cover even if he had known that it was optional.

- It is possible that Mr S was no longer covered by the PPI once he was self-employed – I have not looked into this issue in this decision. But I am satisfied that, as he was employed at the time that he *bought* the policy, the policy was not mis-sold on those grounds.

In the end, while I appreciate that this will be very disappointing for Mr S, I do not find that I have any grounds to uphold his complaint.

my final decision

For the reasons set out in my provisional decision and repeated above, I have decided that the complaint should not be upheld. I make no award against NewDay Ltd.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 9 July 2015.

Roxy Boyce
ombudsman