

## **complaint**

This complaint relates to the sale of a monthly premium, Payment Protection Insurance (PPI) policy sold together with a credit card in 1997. Mr J complains that NewDay Ltd, trading as "People's Bank" mis-sold him the policy.

## **background**

The policy was designed to provide cover in the event of accident, sickness, unemployment or death. Our adjudicator considered the complaint and recommended that it should be upheld. People's Bank do not agree with that opinion and therefore it falls to me to make a final decision.

## **my findings**

I have considered all of the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances. In doing so, I have taken into account the law and good industry practice at the time the policy was sold.

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

- if People's Bank gave any advice or made a recommendation, did it take adequate steps to ensure the product it recommended was suitable for Mr J's needs;
- whether People's Bank gave him information that was clear, fair and not misleading so he was put in a position where he could make an informed choice about the insurance he was buying.

For reasons I will go on to outline, I have decided to uphold this complaint.

I turn firstly to how the PPI was sold. Having reviewed the credit card application form, I am satisfied its format is consistent with a postal sale. In particular, I note that the form is signed by Mr J over 10 days before a date stamp indicates it was received by People's Bank.

Further, Mr J's address is included at the top of the form, in typed print, which suggests the document had been sent to him.

I have gone on to assess whether any advice was provided to Mr J during the sales process and have concluded that it was not. I say this bearing in mind my finding that this was a postal sale and People's Bank's submission that no advice was given. Although this was a non-advised sale, People's Bank were still required to provide Mr J with enough information to enable him to determine whether or not the insurance was right for him. I have gone on to consider whether People's Bank did this.

On Mr J's credit card application form, reference is not made to the policy terms or the significant exclusions which applied. This information may have been included in the policy document, however, I am not sure at what point Mr J was provided with such a document. As a result, I am not satisfied important information on the terms and exclusions of the policy were brought Mr J's attention before he agreed to purchase the PPI. I have gone on to assess what impact this shortcoming had on the sale.

A copy of the exact policy document applicable to this sale is unavailable. I have therefore considered a number of policies from around the date of the sale, finding them to be similarly worded. In light of this, I have assessed that Mr J was eligible for the insurance. However, he has told us that at the time of the sale he suffered from a breathing condition. The policy documents I have reviewed all state that benefits would not be paid for disability resulting from pre-existing medical conditions. So, it seems that the cover available to Mr J under the policy sold to him by People's Bank would have been significantly limited by this exclusion.

I acknowledge that Mr J would still have been covered for sickness or accident unrelated to his breathing condition. I am mindful though, that he says he has suffered from the condition since birth and was on medication for it at the time of the sale. It therefore represented a likely reason Mr J would wish to claim under the policy.

Taking everything into account, I don't think Mr J would have been willing to take out the cover, and pay the monthly premium, had its limitations been clearly brought to his attention.

There is dispute as to whether Mr J was aware the policy was optional. As I have upheld this complaint for the reasons already given, I do not need to consider this issue any further.

### **fair compensation**

Mr J should be put back in the position he would have been in now if he had taken out the credit card without the PPI policy. I understand the PPI has been cancelled, so People's Bank 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 J had paid the same monthly payments, but the PPI policy had *not* been added to it.

This will involve People's Bank 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.

People's Bank should then pay Mr J the difference between the current balance and what the current balance would have been without PPI.

- B. Pay Mr J 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 J how it has calculated the compensation in A and B.

<sup>†</sup> I understand People's Bank is required to deduct basic rate tax from this part of the compensation. Whether Mr J 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 J should refer back to People's Bank 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 decision is that Mr J's complaint against NewDay Ltd should be upheld and I therefore require compensation to be paid as outlined.

Tope Adeyemi  
**ombudsman**