

## **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 (previously trading as Progressive Credit Limited) ('NewDay').

## **background**

Mr U purchased the insurance in connection with a credit card in 1998.

The adjudicator concluded that NewDay had mis-sold the insurance policy and upheld Mr U's complaint. NewDay did 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**

In this case the application for the insurance was made via a postal application.

As this was a postal application with no contact between Mr U and NewDay I cannot see that direct advice or recommendation would have been possible. I therefore take the view that the sale of the insurance was non-advised and that a personal recommendation was not made to Mr U. So I don't need to consider whether the insurance was a suitable recommendation for him.

After careful consideration I have decided to uphold Mr U's complaint. I set out my reasons below.

## **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?**

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 Tesco drew Mr U's attention to all the significant features of the policy.

Mr U had a pre-existing medical condition which meant that he would not be covered for claims relating to accident or sickness resulting from his condition.

NewDay have said that Mr U was sent the policy terms and conditions which confirmed all the policy details and cancellation options. I cannot be certain that Mr U received the summary document. However having examined the application form there is no reference to the terms and conditions of the policy and nothing which would draw a consumers attention to the importance of the policy's exclusion terms relating to pre-existing medical conditions.

This information was of direct relevance to Mr U 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 the exclusions relating to pre-existing medical conditions might affect him I consider it unlikely he would have proceeded to purchase the insurance.

### **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 not taken out the insurance policy.

I understand that the insurance has been cancelled. Therefore NewDay should:

- A. Carry out a hypothetical reconstruction of the credit card account to find out what the closing 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 closing balance and what the closing 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. Pay Mr U interest at 8% per year simple<sup>†</sup> on the difference between the actual closing balance of his account and the reconstructed closing balance from the date the account closed to the date of settlement.

D. Set out in writing to Mr U how it has calculated the compensation in A, B and C.

<sup>†</sup> I understand Mr U 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 given above I uphold the complaint and direct NewDay Ltd (previously trading as Progressive Credit Limited) to pay Mr U compensation as set out above. I make no further award against NewDay Ltd (previously trading as Progressive Credit Limited).

Paul Bishop  
**ombudsman**