

complaint

This complaint is about a payment protection insurance (PPI) policy taken out with a credit card in 1996. Mr L says NewDay Ltd mis-sold him the PPI.

background

In 1996 Mr L applied for a credit card. At the same time he was sold a PPI policy. The policy cost 59p for every £100 outstanding on Mr L's monthly statement. The policy provided cover against Mr L not being able to work because of an accident, sickness or involuntary unemployment. In the event of a successful claim the policy would've paid 10% of the outstanding balance of the account for up to 12 months.

Our adjudicator didn't think the PPI was mis-sold. Mr L disagreed with the adjudicator's findings so the complaint has been passed to me.

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 L's case.

NewDay has limited information about how the credit card and PPI were sold. This isn't unusual and it's understandable in view of the time that has gone by since the sale took place. But where there is limited information, I will make my decision based on what's more likely to have happened, taking into account the evidence available, what both parties have told me and what we know about these types of sale.

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

Mr L told us he recalled applying for the credit card by post and later receiving a phone call during which he was told he needed to add PPI to the account in order to have the credit card application approved.

NewDay has been able to give us a copy of the original application form for the credit card which I've looked at carefully. The application is the type of form which would be completed by the applicant and returned. So I think Mr L did apply for the credit card by post. The form has been completed thoroughly by Mr L and signed.

I note there is a section for PPI which set out basic details of the cost and invited the applicant to tick a box to add PPI to the account. I can see the box has been ticked to select PPI. The tick in the box is consistent with several other ticks that appear on the form. There's nothing that makes me think it's likely that Mr L left the box blank and that the tick was added later by someone else after the telephone call.

Some businesses did contact consumers to sell PPI if they had not selected it on a postal application form. But in my experience the signed application form would not be altered to reflect the telephone sale. Rather, a note would usually be added to the business's internal records.

I also note the PPI remained on Mr L's account for 15 years until 2011. During that time the premiums would've likely appeared on Mr L's monthly statements as a purchase. If Mr L had not wanted the cover, or only took it to get the credit card approved, I'd expect him to have questioned it at an early stage. But I've seen no evidence that he did.

I also need to take into account that these events took place over 20 years ago and memories do fade over time.

All this makes me think it is most likely Mr L selected the PPI by ticking the box before he returned the application form.

I do think Mr L has given us his honest recollection of how the PPI was sold. But taking everything into account I think its most likely NewDay made it clear that Mr L didn't have to take out the PPI and that he chose to take it out.

As the PPI was sold via a postal application I don't think NewDay recommended the PPI to Mr L so it didn't have to check if it was right for him. But it did have to make sure Mr L got the information he needed to decide for himself if it was right for him.

It's possible the information NewDay gave Mr L about the PPI wasn't as clear as it should've been. But as I think he chose to take out the PPI - it looks like he wanted this type of cover.

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. For example he met the eligibility criteria for the policy, and he had no medical conditions that would not be covered. So it 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 L.

But NewDay will pay back *some* of the cost of the PPI to Mr L because:

- NewDay got a high level of commission and profit share (more than 50% of the PPI premium) - so it should have told Mr L about that. Because NewDay didn't tell Mr L, 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.

I've thought about everything Mr L has said, including what he told us about his employer's sick pay scheme. But I think Mr L chose to buy the policy knowing his employer would've paid him if he was unable to work. And the PPI policy would've paid a benefit in addition to any sick pay and for up to 12 months per claim. Taking this into account I don't think the PPI was mis-sold.

what the business needs to do

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

NewDay should re-work the credit card account and pay back to Mr L the difference between what Mr L 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 L 8%* simple interest if he paid off their credit card at some point.

*Businesses have to take basic rate tax off this interest. Mr L 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 L.

But NewDay Ltd does have to pay back to Mr L 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'm required to ask Mr L to accept or reject my decision before 15 June 2019.

Steve Thomas
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