

complaint

Mr C complains that NewDay Ltd ('NewDay') mis-sold him a monthly premium payment protection insurance ('PPI') policy. Mr C says he wasn't made aware that he wouldn't have been able to claim under the cover because he was self-employed.

background

In November 1999 Mr C took out a credit card through People's Bank Connecticut. At the same time he was sold a PPI policy. NewDay Ltd has since accepted responsibility for Mr C's complaint. So for ease of reference, in my decision I've referred to NewDay throughout.

Our adjudicator said Mr C's complaint should be upheld. They said the policy terms were not made clear enough to Mr C when he arranged the cover. And if Mr C had properly understood those terms then he wouldn't have gone ahead with the policy given his circumstances at the time.

NewDay disagreed with the adjudicator's view. It said:

- Mr C was not advised to take out the policy, so it was not in a position to assess Mr C's 'best interests'.
- The sample application form showed PPI as something separate to the credit card agreement and presented Mr C with a choice to take out the insurance.
- Mr C applied for the policy by completing an application form and he would have received the policy documents setting out the policy details.
- Mr C had 30 days to cancel the policy.
- The policy would have been good value for Mr C given his circumstances.

my findings

I've considered all the available evidence and arguments to decide what's 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 C's case.

I've decided to uphold Mr C's complaint for the reasons below.

As I've discussed in more detail below, I don't know what happened at the time of the sale. But even if I accept that NewDay didn't advise Mr C to take out the PPI (so it didn't have to assess his circumstances and make a suitable recommendation for him), it still had to give him enough clear information about the policy so he could decide if he wanted to take it out. If I don't think NewDay did this, I then need to consider if Mr C would have done something different, such as not take the policy out.

At the time of sale Mr C was self-employed, working as a sole trader.

NewDay provided us with a copy of policy terms. Although the policy terms are not dated, NewDay has presented them as the terms that would've applied at the time Mr C was sold the policy. I can see the terms explain that unemployment (for a self-employed person) is 'business cessation'. 'Business cessation' is defined as, '*Your being entirely without work as a result of the involuntary winding up, liquidation or bankruptcy of your own business or*

proceedings being commenced by a third party to effect such status, and having filed your closing accounts with the Inland Revenue’.

I can't see that these terms would have been made clear to Mr C at the time of the sale. I don't know what happened or what may have been said. And I don't know what information he would have been given and when. Mr C's version of events is different to those put forward by NewDay. Mr C told us he was sold the policy on the telephone after he received the credit card from Peoples Bank. NewDay has suggested the policy was taken out during the initial application and that it would have been requested on the application form (although a copy is not available). There is therefore very little evidence available from the time of the sale to help me understand exactly what took place in 1999.

Taking all of this into account, I can't be sure the important terms of the policy were properly highlighted to Mr C. So I can't say that NewDay met its obligations when it sold the policy to Mr C. I think the above terms were significant to most people and would have mattered to Mr C at the time he took out the policy.

For Mr C to make a successful unemployment claim he would have needed to file closing accounts for his business. I think it's unlikely Mr C would have wanted to do this. I say this because most people would expect this type of cover to help them when they needed it most - during periods of low business where they were struggling to meet their daily living expenses. So I don't think Mr C would have wanted to wind up his business – particularly as he had been self-employed since 1985/6.

As a self-employed person, Mr C would have had to go to greater lengths than an employed person to make a successful unemployment claim. And he would most likely have incurred additional costs to close down his business. I also think the unemployment cover would have been important to Mr C. So I think it most likely that if Mr C had properly understood these terms, he wouldn't have gone ahead with the policy as I don't think he would have seen the overall cover as good value for him.

Because of this I think Mr C's complaint should be upheld.

putting things right

NewDay should put Mr C in the financial position he'd be in now if he hadn't taken out PPI. I understand that Mr C has cancelled his policy, so:

- A. NewDay should find out how much Mr C would owe on his credit card if the policy hadn't been added to it.

So, it should remove the PPI premiums added, as well as any interest charged on those premiums. It should also remove any charges that were caused by the mis-sale of the PPI – as well as any interest added to those charges.

NewDay should then refund the difference between what Mr C owes and what he would have owed.

If Mr C made a successful claim under the PPI policy, NewDay can take off what he got for the claim from the amount it owes him.

- B. If – when NewDay works out what Mr C would have owed each month without PPI – Mr C paid more than enough to clear his balance, NewDay should also pay simple interest on the extra Mr C paid. And it should carry on paying interest until the point when Mr C would've owed NewDay something on his credit card. The interest rate should be 15% a year until April 1993 and 8% a year from then on.†
- C. NewDay should tell Mr C what it's done to work out A and B.

† HM Revenue & Customs requires NewDay to take off tax from this interest. NewDay must give Mr C a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons above, my final decision is that Mr C's complaint is upheld and NewDay Ltd must pay Mr C compensation as I've described above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 1 September 2015.

Kristina Mathews
ombudsman