

## The complaint

Mr S's complaint is about the way The Royal Bank of Scotland Plc (RBS) settled his complaint concerning the mis-sale of a payment protection insurance (PPI) policy. RBS off-set the amount it offered Mr S against the outstanding arrears it said he had on the overdraft account to which the mis-sold PPI policy was attached.

Mr S says he doesn't think he still had an outstanding balance on this overdraft account and so RBS's offer should have been paid directly to him.

## What happened

In 2019, Mr S complained to RBS about a PPI policy it had sold him attached to an overdraft account.

RBS responded to Mr S's complaint in a letter dated 29<sup>th</sup> October 2019, accepting that the policy had been mis-sold and offering him £293.77 (net of tax) in compensation for this. In that letter RBS said that:

*"To accept our offer you will need to sign and return the declaration at the end of this letter. On receipt we will arrange for payment to be made, subject to clearance of any arrears you may have with The Royal Bank of Scotland."*

On 1st November 2019, Mr S's signed the declaration form to accept the settlement offer. This form included the following wording:

*"I/we understand the offer will take into consideration any arrears on my/our account. The remaining balance, if any, will then be credited to my/our current account held with you or by cheque. I am/we are aware that it is possible for the account to remain in arrears if the offer is not sufficient to clear the full amount owing on my/our account".*

Following Mr S giving his acceptance of the offer, RBS's Debt Management Operations (DMO) confirmed that there was an outstanding arrears owed by Mr S to the bank on the overdraft account of £746.10. So, having updated the compensation offer to include the additional statutory interest which had accrued since its original offer was made, the revised offer figure of £294.51 was off-set against that outstanding balance.

But Mr S wasn't happy with the fact that RBS had used all the compensation he'd been offered in this way and complained to RBS about this. He said he didn't think there were any outstanding arrears on the overdraft account and so the compensation offer should have been paid directly to him. RBS responded to Mr S confirming that there was an outstanding debt of £746.10 and that it had used the "bank's right of set-off" to reduce this outstanding amount by the offer settlement.

Mr S still thought that RBS should have paid the full amount of its PPI offer to him directly. So he referred his complaint to this service.

Our adjudicator was satisfied that there were outstanding arrears on Mr S's overdraft account of £746.10 and he didn't think that RBS had done anything wrong in using its PPI compensation offer to reduce the arrears on this account. So he didn't think Mr S's complaint should be upheld. But he told Mr S that RBS had offered £25 for the distress and inconvenience it may have caused him by the way it had handled his complaint.

Mr S didn't agree with the adjudicator's view. He said he didn't think that RBS had provided sufficient evidence to this service to show there remained £746.10 arrears on his overdraft account prior to set-off. As Mr S disagreed with the adjudicator's view, the case has been passed to me for a final decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

RBS has accepted it mis-sold the PPI policy to Mr S and agreed to compensate him for this. So, in this decision, I shall not be addressing the issue of how the PPI policy came to be sold to Mr S. It also doesn't appear as if Mr S is complaining about how the total compensation figure (net of tax) was calculated by RBS. So I haven't looked at these calculations in detail either. In this decision I will only be considering whether RBS should have paid the compensation it offered Mr S to settle his complaint directly to him.

In this case, I consider the most relevant law to take account of is the equitable right to set off. This allows, in certain circumstances, an individual (or organisation) to "set-off" closely connected debts. This means one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them.

For this right of set-off to apply in this case, I must be satisfied that there is a close connection between the PPI compensation and any outstanding debt. I must also consider whether it would be unjust not to allow RBS to set-off in this way. Both tests must be satisfied for me to find that RBS has an equitable right to set-off some of the PPI compensation offered to Mr S against the outstanding debt RBS says he had on his overdraft account.

RBS has provided a screenshot from its computer systems that shows a debit balance of £746.10 on Mr S's overdraft account as at 27<sup>th</sup> May 2008. This balance can also be seen to have been written off on that date. And although Mr S has questioned the reliability of this screenshot, I'm satisfied that it does provide sufficient evidence to show that, at the time RBS made its compensation offer, there was an outstanding balance on Mr S's overdraft account which had never been repaid. And the fact that RBS may not now be able to pursue Mr S for repayment of this outstanding amount doesn't mean that it doesn't exist.

I'm also satisfied from what I've seen that the PPI policy which is the subject of this complaint was directly connected to Mr S's overdraft account. So, in considering the right of set-off I have outlined above, I have concluded that the PPI compensation and the overdraft debt are closely connected. They are both for the same account of Mr S with RBS.

Having decided there is a close connection, I need to think about whether it would be unjust not to allow RBS to set off in this way. And, as I have already identified, the offer acceptance form which Mr S signed stated that the offer might be used to off-set outstanding arrears. So I think RBS made it clear to Mr S that, if he still had arrears on his overdraft account which he'd never paid back to it, this would be taken into account in determining the amount of compensation, if any, paid directly to him for the PPI mis-sale. I'm aware that Mr S isn't happy with the way that he was treated by RBS in the past. But I don't think this is a matter

that I can consider further in this decision. Mr S will need to make a separate complaint if he still thinks he's been treated unfairly by the bank in relation to his overdraft account or any other matters which are not directly related to this complaint, which only concerns the way in which RBS has settled the mis-sale to him of a PPI policy.

So, in summary and from the information and evidence I've seen, I think it was reasonable for RBS to apply set off. The PPI policy and the overdraft debt were closely associated and I consider that it would be unjust not to allow RBS to set-off in this way. Mr S owed money to RBS on his overdraft account that he'd never repaid including, no doubt, some of the PPI which he was charged for. In these circumstances, it would seem evidently unfair if RBS were required to refund all the money he was charged for PPI, some of which was never actually paid to RBS in the first place.

I've also thought about the way RBS has handled Mr S's complaint. And I think that RBS could have handled it better than it did. RBS has already offered Mr S £25 in compensation for the distress and inconvenience which he may have been caused as a result of this and I understand that this offer remains open to Mr S to accept. I think this is fair in the circumstances, I don't think RBS needs to offer Mr S any more.

So I don't think RBS has done anything wrong in the way it has settled Mr S's mis-sale complaint.

### **My final decision**

For the reasons I've given, I'm not upholding this complaint against The Royal Bank of Scotland Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 May 2021.

Simon Furse  
**Ombudsman**