

## **The complaint**

Mrs W doesn't think it's fair that The Royal Bank of Scotland Plc ("RBS") has used her payment protection insurance ("PPI") compensation to reduce a debt from which she says she was released when her bankruptcy was discharged.

## **What happened**

Mrs W had taken out a PPI policy in 2001 associated with her credit card. Recently Mrs W complained to RBS that the PPI was mis-sold. RBS wrote to Mrs W on 17 April 2020 saying it agreed the PPI was mis-sold and it offered to pay her some compensation.

In 2004 Mrs W was declared bankrupt and the Insolvency Service (IS) was then responsible for dealing with Mrs W's estate for this bankruptcy. Mrs W was discharged from the bankruptcy in 2005.

Mrs W still owed RBS £1,667.72 on the credit card account when she was discharged from the bankruptcy. The compensation amount RBS offered for the mis-sold PPI that related to the credit card was £947.38 after tax. So, RBS has kept Mrs W's PPI compensation to reduce this debt on the credit card.

RBS also contacted the IS about the PPI compensation in view of its involvement in the bankruptcy. The IS said it did have an interest and applied to be joined to the complaint. The IS also said that RBS could use the mis-sale compensation to set off against the debt on the credit card account and if there was any surplus then that should be paid to the IS, not Mrs W.

Mrs W didn't think this was fair and said that the PPI compensation should be paid directly to her. So she brought her complaint to this service.

Mrs W says that the debt she owed to RBS on her credit card is statute barred; also that under the Insolvency Act when a bankrupt is discharged, this releases her from all the bankruptcy debts; and she has also referred to some case law that she says supports her arguments that the payment should be made directly to her.

One of our adjudicators looked at the complaint and thought it was fair for RBS to use the compensation to reduce the debt on Mrs W's credit card that she never repaid, and this was in line with what the IS had indicated. Mrs W didn't agree and asked for an ombudsman to look at her complaint.

## **What I've decided – and why**

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In this decision I am only considering the PPI sold alongside the credit card account Mr W had with RBS. RBS has agreed to uphold Mrs W's complaint that the PPI was mis-sold and offered compensation to settle the complaint. So in this decision I'm not looking at how the PPI came to be sold. I am only considering whether what RBS has done with the compensation is fair.

I'd expect that when a business has mis-sold PPI, it puts things right by putting the consumer as far as possible in the position they would've been in if they hadn't taken out the PPI. I'd expect a business to calculate how much was paid in premiums and interest for the costs of the PPI. If the consumer was out of pocket as they'd repaid some or all of the costs of the PPI, then the business should also pay some compensatory interest.

RBS has used this approach and worked out that the compensation due for the mis-sold PPI is £947.38. This includes all the PPI costs and some compensatory interest. Neither Mrs W nor the IS has said the amount offered is wrong. But Mrs W says RBS cannot use the compensation to reduce the debt it says she still owes on the credit card after the end of her bankruptcy.

When a bankruptcy occurs the IS has the power to collect and realise all assets that Mrs W may have and distribute the estate among creditors. Compensation for a mis-sold PPI policy is an asset of an estate and would vest in the official receiver. So in this case the IS has indicated it has an interest, even though the bankruptcy has been discharged.

When considering what is, in my opinion, fair and reasonable in all the circumstances of the case, I'm required by DISP 3.6.4R of the Financial Conduct Authority (FCA) Handbook to take into account:

- '(1) relevant:
  - (a) law and regulations;
  - (b) regulators' rules, guidance and standards;
  - (c) codes of practice; and
- (2) ([when] appropriate) what [I consider] to have been good industry practice at the relevant time.'

When the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

The relevant law in this case is English law.

Mrs W has referred to some cases that occurred in the Scottish Courts. One case was brought to the Supreme Court in England by the business to ask for permission to appeal and this was refused. These cases also relate to Protected Trust Deeds, not bankruptcy (called sequestration in Scotland) so may not be directly relevant to the case before me, though similar principles about the cases may exist in law.

That said, I must apply an over-arching test of what's fair and reasonable in all the circumstances of this case. And I think it's fair for RBS to use Mrs W's PPI compensation to reduce the money owed and left unpaid when her trust deed came to an end.

When two people – or as here a person and a business – owe each other money, it seems only fair that they each pay what they owe. Mrs W owes RBS £1,667.72 for the debt on her

credit card that she never paid. RBS owes Mrs W £947.38 as compensation for the mis-sold PPI. Both these debts relate to the same credit card account.

We usually say a business can use a consumer's compensation to reduce their debts if the debt is on the account that PPI was sold alongside. Here the PPI was sold alongside a credit card and when Mrs W got into financial difficulties, she stopped making payments to her credit card. So, I think RBS can use the compensation to reduce the debt as the PPI was directly connected to the account which had the debt.

Mrs W has chosen to revisit something that happened before she entered her bankruptcy – the sale of the PPI policy on her credit card in 2001. I think it's only fair that I take into account what's happened since. Mrs W owed RBS £1,667.72 for the credit card debt after her bankruptcy was discharged. Her discharge relieved her of liability, but it didn't extinguish the underlying debt. I simply don't see how it would be fair to tell RBS to pay Mrs W just over £900, when she owed and didn't repay more than £1,600 to RBS.

When Mrs W was made bankrupt, the debts she owed weren't cancelled. And they weren't cancelled when she was discharged in 2005 – but by law she couldn't be chased for the debts after her bankruptcy ended. So the debt Mrs W had with RBS still existed but RBS could never actively take action to recover any of the debt that was never repaid.

Some of that debt Mrs W owed to RBS would have been made up of the costs for the PPI that were included in the account. By setting the PPI compensation against the amount that Mrs W never paid back for her borrowings on the credit card, RBS is removing anything that was for the costs of the PPI.

Mrs W has referred to the Statute of Limitations and says this makes the debt she owes RBS statute barred. This legislation means that a business cannot actively take proceedings to recover a debt after a period of time. But RBS hasn't actively taken any action against Mrs W to try to recover the outstanding amount.

Mrs W took action to recover the PPI costs charged between 2001 and 2004 from RBS. The compensation owed for the mis-sold PPI is a debt RBS owes Mrs W and is directly related to the debt she owed RBS on that same card account.

Both debts relate to the same account and part of the debt Mrs W owed to RBS would have been for some of the PPI costs she never actually paid. So it is fair to set one debt against the other in these circumstances.

Having considered all the facts, I think it's fair for RBS to use the PPI compensation to reduce the amount Mrs W borrowed and didn't repay on her credit card account. Just because Mrs W was made bankrupt and couldn't be legally pursued for the debt when that bankruptcy ended, doesn't mean the debt was settled or no longer existed. I think it would be unfair to tell RBS to pay Mrs W compensation if she doesn't now have to repay the money which she borrowed and was still outstanding.

So I think what RBS has done with the compensation is fair.

### **My final decision**

For the reasons set out above I think Royal Bank of Scotland Plc's offer is fair and what it has done with the compensation is also fair, so I am not upholding this complaint that compensation should be paid directly to Mrs W.

Under the rules of the Financial Ombudsman Service, I'm required to ask The Insolvency

Service and Ms W to accept or reject my decision before 18 August 2021.

Chris Fraser  
**Ombudsman**