

The complaint

Miss A complains that it isn't fair for The Royal Bank of Scotland Plc (RBS) to use her Payment Protection Insurance (PPI) compensation to reduce a debt because she considers it was written-off when her protected trust deed ended.

What happened

During 2003 Miss A took out three loans with RBS and all three had PPI. More recently Miss A complained that she was mis-sold PPI and in 2019 RBS upheld her complaint and it offered her compensation.

But Miss A granted a trust deed for her creditors, which from the available evidence appears to have become a 'protected trust deed' in July 2006.

A protected trust deed is an alternative to bankruptcy (which is called 'sequestration' in Scotland). It is a legally binding agreement between a consumer and their creditors, which is administered by a trustee. The consumer transfers their property to the trustee, who has the power to collect and realise assets, and distribute the estate among creditors according to their respective rights and preferences. The right to compensation for a mis-sold PPI policy is, as an asset, usually vested in – or transferred to – the trustee for the benefit of the creditors. A trust deed will invariably include provisions relating to the discharge of the consumer from their debts, the restoration to them of any surplus and the discharge of the trustee.

Miss A was discharged from her protected trust deed in 2009.

Because Miss A's debt (the balances outstanding on the loan accounts) is greater than the amount of PPI compensation, RBS kept the compensation to reduce the amount of the debt.

The adjudicator who looked at this thought that in the circumstances it was fair for RBS to use the PPI compensation to reduce the outstanding debt – they didn't think RBS had done anything wrong.

Miss A disagrees – she doesn't think it is fair and asks what the point of a trust deed is if RBS can come back several years later and claim the debt is still owed.

Because the complaint couldn't be resolved informally, it comes to me for a 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.

In considering what is, in my opinion, fair and reasonable in all the circumstances of the case, I've also taken into account relevant law and regulations, relevant regulators' rules, guidance and standards, relevant codes of practice and, where appropriate, what I consider

to have been good industry practice as the relevant time.

The relevant law in this case is Scots law.

In a case very similar to this complaint, the Inner House of the Court of Session held that a business couldn't use the consumer's PPI compensation to reduce a debt from which they were discharged when their trust deed came to an end. The case is called *Donnelly v Royal Bank of Scotland* [2019] CSIH 56. And the Supreme Court refused permission to appeal. However, when the business learned it had lost its appeal, it asked the Outer House of the Court of Session – in *Royal Bank of Scotland v Donnelly* [2020] CSOH 106 – to set aside or undo the consumer's discharge. This would re-open the trust proceedings and allow it to assert its 'right of set-off'.

The court held that the trustee's failure to pursue the PPI claims for the benefit of the consumer's creditors was clearly a mistake. As such, the court said it could and usually would set aside the consumer's discharge – unless there were exceptional circumstances which would make it 'inconvenient and unjust'. In that case, the court concluded that there were exceptional circumstances and refused to reverse the consumer's discharge. It took into account a number of factors, including: the time that had passed since the consumer's discharge: the duration of, and misery caused by, the protracted litigation; the fact that the outstanding sum was 'paltry' from the business's perspective (and in proportion to the legal fees likely to have been incurred) but not an insignificant sum for the consumer; and, that there would be adverse consequences for the consumer and no obvious means to alleviate them.

I've thought about what this means for Miss A. On the one-hand, on the assumption that the relevant terms of the trust deed in *Donnelly* are the same as those in this case, RBS couldn't argue it had the right of set-off in court unless the court first set aside Miss A's discharge. I don't know what a court might do in Miss A's case – but it's possible it may decide not to do this.

On the other hand, my consideration of this case is a broader test of what is fair and reasonable in all the circumstances of this case. And in this case, I think it is fair for RBS to use Miss A's PPI compensation to reduce the loan balances that remained outstanding and unpaid when her trust deed ended. And my reasons for reaching this conclusion are set out below.

Firstly and quite simply, I think that when two people – or in this case a person and a business – owe each other money, it seems only fair that they each pay what they owe. So in this case, if RBS paid what it owed Miss A, she'd have to pay it back to RBS because she owes RBS more.

Secondly, while I'm mindful that Miss A's trust deed ended some years ago and she doesn't think it is now fair for RBS to use her PPI compensation to reduce a debt she's been discharged from, I'm also conscious that Miss A has chosen to complain about her PPI policies sold in 2003. So she's chosen to revisit something that happened before she granted her trust deed.

Miss A still owed RBS a not insignificant amount when her trust deed ended. And while the discharge relieved her of the liability – i.e. RBS couldn't pursue her for the debt - it didn't mean the underlying debt was extinguished.

So I don't see how it would be fair to direct RBS to pay Miss A compensation when there is a debt owed – a balance she didn't pay - for a greater sum of money.

Finally, it is also the case that if Miss A's trustee had pursued PPI mis-selling claims before they discharged her from the trust deed (which could be deemed to have been a mistake) then RBS would have been able to assert its right of set-off and keep her compensation in any event.

So taking everything into account, I think it is fair for RBS to keep Miss A's compensation to reduce the money owed and left unpaid when her trust deed came to an end.

I can see Miss A says that RBS didn't tell her that it would keep the compensation and she spent the money she thought she was getting. But notwithstanding what I've said above, I can see that RBS' offer letters and the subsequent compensation acceptance forms Miss A signed described what would happen if she was, or had been, subject to a protected trust deed. So I think RBS made its position clear – I think Miss A was reasonably informed of what would likely happen in her case. And while Miss A chose to spend the money she believed she would receive, which she says has put her in a difficult position, I'm afraid this doesn't change my decision.

My final decision

For the reasons above, I've decided not to uphold this complaint – I think it is fair for The Royal Bank of Scotland Plc to use Miss A's PPI compensation to reduce the money owed and left unpaid when her trust deed ended.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 15 March 2022.

Paul Featherstone

Ombudsman