

The complaint

Ms B has complained about The Royal Bank of Scotland Plc (RBS) using the redress from a mis-sold payment protection insurance (PPI) policy to repay a debt, on the basis that it was written off when her protected trust deed ended.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

Ms B had a PPI policy on her RBS credit card. Ms B went through a protected trust deed, so the account was written off, and a portion of the credit card debt remained unpaid and in arrears.

Ms B later complained about the sale of the PPI. RBS initially rejected this, then some years later they looked at things again as part of a review exercise and accepted they'd mis-sold the policy to Ms B.

RBS offered Ms B a refund, but subject to clearing any arrears first. Ms B accepted this offer, and RBS used the PPI redress to clear the arrears on the related credit card, then they paid the remainder to Ms B.

Ms B felt that RBS were wrong to do this and that they'd made a mockery of her trust deed. She questioned why they'd initially rejected her mis-sale claim. She was unhappy that RBS had explained that if she objected, it would need to ultimately be dealt with in court. She asked for RBS to either pay all the redress to her, or to get her trust deed reopened so that the redress could be shared amongst all the creditors involved.

Our adjudicator looked into things independently and didn't uphold the complaint. Ms B disagreed with the adjudicator's opinion, so the complaint's been passed to me to decide.

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 the circumstances of the case, I've also taken into account the relevant law and regulations, regulator's rules, guidance and standards, relevant codes of practice, and what I consider to have been good industry practice at the 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 which they were discharged from when their trust deed ended. The case is called *Donnelly v Royal Bank of Scotland* [2019] CSIH 56. However, the business then 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 effectively re-open the trust deed and allow it to use the PPI redress to reduce the debt that was left unpaid – also known as the “right of set off”.

The court found that the trustee should have ideally pursued the PPI claim, and not doing so was an error. So 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”.

I've thought about what this means for Ms B. On the one hand, on the assumption that the terms of her trust deed are the same as those in the court case, RBS could not argue that it had the right to set off in court unless the court first set aside Ms B's discharge. And I don't know what a court might do in Ms B's case – it's possible it may decide to set aside her discharge, or it's possible it may decide not to do so.

On the other hand, I look at things more broadly, based on what is fair and reasonable. And in this case, I think it's fair for RBS to use Ms B's credit card PPI redress to reduce the unpaid balance on the very same credit card. I'll explain why.

When two parties owe each other money, it seems only fair that they each pay what they owe. While RBS owed Ms B about £1,800 for mis-selling PPI on her credit card, Ms B left an unpaid balance of about £1,600 on that very same credit card. So it's both fair and practical to use one debt to reduce the other.

Put another way: let's imagine a situation where Ms B owed someone money, and they also owed her money. I don't think she'd feel it was fair if they never paid her back but she was still forced to pay them – even if that other person had since been insolvent.

And while of course I accept that Ms B was discharged from her trust deed – meaning that RBS couldn't chase her for the debt anymore – it did not mean that the underlying debt was repaid. And the amount left outstanding on Ms B's credit card after her trust deed was not insignificant.

I am also mindful that Ms B's trust deed ended some years ago. But then her PPI redress comes from premiums which she paid even longer ago. So if I were to find that RBS were chasing a debt from too long ago, I'd surely have to fairly say that Ms B was *also* chasing a debt from too long ago.

Another point is that when a PPI policy has been mis-sold, we tell businesses to put their customers in the financial position they'd be in now had the policy never been sold – as far as it's possible to do that. Here, had Ms B's credit card PPI not been sold, then she would not have had an extra £1,800 or so now. Instead, her credit card balance would have been smaller as the PPI premiums would have never been added to that balance. So it makes the most sense to use the PPI redress to reduce that same credit card balance to what it would have been. Here, RBS's calculations show that it would've most likely been a 0 balance without PPI. So it makes sense to use the PPI redress to get it to 0 now.

Further, some of the PPI premiums were charged to Ms B's credit card but then written off in the trust deed. That means there's premiums she never actually paid for with her own money – they were left unpaid on the outstanding balance. And it certainly doesn't seem fair for RBS to give Ms B a "refund" of money that she never paid in the first place.

So I don't think I can fairly tell RBS to pay Ms B all the compensation directly when there was a debt outstanding on the very same account.

I should explain that had Ms B's trustee known about the potential PPI claim and pursued it before discharging her – which is ideally what should have happened – then RBS would have been able to assert its right of set off in any case. I appreciate why Ms B thought the redress would be equally split amongst all the creditors, but actually RBS would have been able to set it off before that. Setting off debts is a standard practice in insolvency – it's normal for a bank to offset debts it owes the customer against debts the customer owes it. It's generally *after* set off that any money is then divided amongst all the creditors. This is usually known as "the principle of balancing of accounts in bankruptcy."

Ms B suggested RBS should still apply for her trust deed to be reopened. Ms B can dispute this in court if she wants to and ask for her trust deed to be reopened. But by setting off Ms B's redress as they did, RBS have avoided a lot of hassle for both sides while essentially coming to the same result. On that note, I appreciate that Ms B didn't like hearing about the potential of court action. But RBS were correct that if she objected to their proposal and wanted a court to consider whether the trust deed should be reopened or not, then this would indeed involve court action. So it seems reasonable that they explained this to her.

Lastly, I appreciate Ms B is unhappy that RBS initially turned down her mis-selling claim in 2012. But I'm afraid it's too late for us to be able to consider that now – Ms B had the opportunity to refer that to us at the time, but didn't. I should also explain that the award RBS made included simple interest to compensate Ms B for all the time she was out of pocket, so the extra time involved was taken into account there. I can see Ms B has mainly questioned why RBS changed their minds about the mis-selling. In case it's helpful, I'll explain that over time, banks got better at identifying which policies had or had not been mis-sold. Our service helped them understand where they'd gone wrong in the past. So some banks – like RBS – went back and relooked at old cases to see if they'd come to the wrong conclusion before. It seems that's what happened here.

My final decision

For the reasons I've explained, I think The Royal Bank of Scotland Plc settled Ms B's PPI complaint in a fair way. I understand that The Royal Bank of Scotland Plc have already paid the settlement. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 20 February 2023.

Adam Charles
Ombudsman