

complaint

Mr M complains that the compensation offered by The Royal Bank of Scotland Plc ("RBS"), in response to his complaint about payment protection insurance (PPI) attached to his credit card was wrongly used by RBS to reduce the debt on his credit card account.

background

Mr M took out a credit card with RBS. He was also sold a PPI policy to run alongside the credit card in order to protect his repayments.

In May 2006 Mr M entered into an Individual Voluntary Arrangement (IVA). A sum of money owing to RBS on his credit card formed part of that IVA.

The IVA ended in April 2011, and Mr M's IVA practitioners have confirmed that they have no interest in this complaint.

In 2012 Mr M made a complaint to RBS, saying that he had been mis-sold PPI on his credit card account. RBS upheld that complaint and made an offer of compensation to Mr M, which was accepted.

Mr M says that he understood when he signed the acceptance form, that the compensation would be paid directly to *him*, but RBS used it to reduce the amount it maintains was still owed to them at the conclusion of the IVA agreement.

In my provisional decision, dated 29 December 2015 – a copy of which is attached and forms part of this my final decision, I made a number of findings. In summary it was my provisional view that:-

- I was not satisfied that when Mr M signed the acceptance form confirming he accepted RBS' offer in full and final settlement of his complaint, he understood that the compensation would be used to reduce any debt owed to RBS.
- It was my view that this service *could* therefore consider Mr M's complaint about how his compensation had been paid.
- There was no dispute about the amount of compensation offered by RBS.
- It was my provisional decision that it *would be* fair and reasonable for RBS to use the compensation to reduce the debt owed to it by Mr M.

RBS and Mr M were invited to respond, providing me with any further information or submissions that they wanted me to consider by 29 January 2016 – after which I would make my final decision.

my findings

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

Both RBS and Mr M, through his claims management company, (Debt Specialists Ltd) have told us that they have received a copy of my provisional decision.

RBS have confirmed that they do not have anything further which they would like me to consider before reaching my final decision.

Debt Specialists, on behalf of Mr M say that they have nothing to add to my decision that the Mr M's complaint *could* be considered on its merits by this service.

Debt Specialists does however ask me to consider a recent decision of the High Court – *Green v Wright* [2015] EWHC 993 (Ch), which it says is relevant to my decision.

It argues that following the above case, as Mr M was subject to an IVA, which was completed by the time the compensation was offered, Mr M should be found to have been released from all debts subject to the agreement. And that RBS were therefore obliged to pay the compensation it owed as a result of the mis-sale of PPI directly to Mr M.

I have looked at the case cited to me closely, and note that in that case the dispute was between the IVA supervisor and the claimant – and not the business paying compensation. There was no argument in that case that the business which had upheld a mis-sale complaint and offered compensation to the claimant, shouldn't be allowed to use the funds to reduce any debts that they were directly owed on an account which formed part of the IVA.

And so I am not persuaded that this case is directly applicable to Mr M's circumstances.

In considering this complaint, I have to decide whether, in my view, RBS acted fairly and reasonably.

It is accepted that the debt owed by Mr M to RBS on his credit card made up part of his IVA. And I think that part of that debt would have included PPI premiums which Mr M had failed to pay.

I do not accept that when the IVA was concluded the debts were *cancelled*, but I do accept that they could no longer be pursued by the businesses to whom the debts were owed (including RBS). So I am satisfied that the debt owed to RBS (of around £4500) still existed when the IVA was concluded, and some of that debt would have been made up of PPI premiums which were never paid.

And so I still think for the reasons set out in my provisional decision that it is fair for RBS to have used the debt owed by Mr M, particularly as this would have been at least partly made up of PPI premiums (and interest) which he didn't actually ever pay.

Finally, as stated in my provisional decision, I can see that Mr M had PPI on his credit card account before he entered his IVA – and so if he hadn't been sold the PPI in the first place I accept that the amount he would have owed to RBS would have been smaller at that time. However, given the value of the PPI only makes up a small

proportion of the debt owed by Mr M when he entered the IVA I don't accept that if he hadn't been sold PPI he would have been able to avoid using an IVA altogether.

RBS are required to put Mr M back in the same position as if he hadn't been sold PPI. I am persuaded, on the evidence, that had Mr M not been sold PPI he would have still entered into an IVA – but that this would have been with a smaller debt. By using the compensation to reduce the debt, RBS and Mr M are now in the position where Mr M owes a smaller debt to RBS – which they are now unable to pursue. And so I think that this has had the effect of putting Mr M more or less into the position he would have been in had he not been mis-sold the PPI. So I am satisfied that they have acted fairly.

my final decision

For the reasons set out above and in my provisional decision of 29 December 2015, I think that The Royal Bank of Scotland Plc's offer is fair, and I don't direct that it does anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 February 2016.

Sarah Partridge-Smith
Ombudsman

Provisional Decision

I've considered the relevant information about Mr M's complaint against The Royal Bank of Scotland Plc ("RBS"). Based on what I've seen so far I think that this is a case which this Service can consider on its merits, but that we would not, in the circumstances, direct RBS to do anything different.

I'll look at any more comments and evidence that I get by 29 January 2016. But unless the information changes my mind, my final decision is likely to be along the following lines.

Mr M is represented in his complaint by Debt Specialists Ltd, a claims management company.

complaint

Mr M complains that the compensation offered by RBS in response to his complaint about payment protection insurance (PPI) attached to his credit card, was wrongly used by RBS to reduce the debt on his credit card account.

background

Mr M took out a credit card with RBS. He was also sold a PPI policy to run alongside the credit card to protect his repayments.

In May 2006 Mr M entered into an Individual Voluntary Arrangement (IVA). The monies owing to RBS on his credit card formed part of that IVA.

The IVA ended in April 2011, and Mr M's IVA practitioners have confirmed that they have no interest in Mr M's PPI complaint.

In 2012 Mr M complained to RBS that he had been mis-sold a PPI policy when he took out a credit card.

RBS upheld the complaint and made an offer of compensation to Mr M.

There was some confusion initially about where, and to whom the monies were paid. However RBS have now provided a credit card statement which shows that the compensation was paid into Mr M's credit card account and has been used to reduce the debt owing to RBS.

Our adjudicator looked into the matter, and felt that we could not consider Mr M's complaint on the merits. This is because she thought that Mr M had accepted RBS' offer in full and final settlement of his complaint – and the acceptance form had been clear in stating that the money would be credited to his card balance if the card was active.

Debt Specialists, on behalf of Mr M, disagree with our adjudicator and asked for the matter to be referred to an ombudsman for a decision. They say that it would be wrong for us to find that RBS were entitled to use the monies to reduce Mr M's credit card debt, as he had been released from those debts as a result of the completion of the IVA.

my provisional findings

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

Our adjudicator thought that this service should not consider the merits of Mr M's complaint, as he had accepted the offer made by RBS in full and final settlement.

In coming to this view she relied on the final response letter sent by RBS on 2 May 2012 and on the acceptance form signed by him which states:-

'I understand that the money will be credited to my card balance. If my card is no longer active the money will be paid to me by cheque'.

It was the submission of RBS, which was accepted by the adjudicator in this case, that this statement was sufficient to show that Mr M was aware when he accepted the offer that the settlement would be paid into his credit card account.

Debt Specialists argue on behalf of Mr M that this would not have been clear. They say that, as Mr M had entered into an IVA – which included the arrears owing on his credit card - and the IVA had come to an end, that he reasonably understood that the account was no longer active.

I have considered these arguments closely and, on balance, agree that in Mr M's case, he may reasonably have thought that his credit card was no longer active. I therefore am not persuaded that when he signed the acceptance form, he did so understanding that the monies would be used to pay off the arrears on his account.

On that basis I do not find that the offer was accepted in full and final settlement of Mr M's complaint, and I think that it would be appropriate in the circumstances for me to consider the merits of his complaint.

Firstly I note that Mr M does not complain that the amount offered to him by RBS is wrong – and I can't see anything which indicates that the offer has not been calculated in the way that I would expect it to be. And so the question I have to decide is whether RBS can use the money offered as compensation to reduce the debt it says that Mr M still owes.

Debt Specialists argue on behalf of Mr M, that RBS should not have used the compensation owing to Mr M to reduce the debt owed by him to RBS on his credit card. They say that when the IVA was concluded the debts set out in the IVA (which included the credit card debt) were written off, and so RBS are in breach of the Insolvency Act by attempting to recoup the debt on Mr M's account.

I have considered these arguments closely, but it is my provisional decision – subject to anything which may be said in response by either party - that RBS acted fairly when they used the money to reduce the debt on Mr M's credit card.

I have reached this decision for the following reasons;

- Although the IVA was concluded in April 2011, this doesn't necessarily mean that Mr M was able to fully pay off the debts owed to the creditors. And I can see from a bank statement provided by RBS that as of May 2012 Mr M still owed RBS a little over £4500.
- When the IVA was concluded the debts he owed weren't cancelled, but by law he could not be chased for the debts by his creditors – including RBS. The debt he has with RBS still exists and some of it was PPI premiums (and interest) that Mr M never paid. So I think that it is fair for RBS to use the compensation to reduce his debts, otherwise he'd be getting a refund of PPI premiums (and interest) that he didn't actually pay in the first place.
- Mr M had PPI before he entered into his IVA, if he hadn't been sold the PPI he would still have owed RBS something when he entered into his IVA, but it would have been less. RBS have to put Mr M into the position he would have been in if he didn't have PPI. Having looked at what he owed his various creditors (as set out in his IVA), I think that he would still have entered into an IVA as the PPI was only a small proportion of his overall debt. But he would have entered into the arrangement with a smaller debt, and at the end RBS wouldn't have been able to chase this smaller debt. This is the position that RBS has now put Mr M in, so I think that what it has done is fair.

I therefore conclude, subject to anything which may be said in response by either party, that it was fair for RBS to use the compensation offered in response to the PPI complaint to reduce the debt owing to it by Mr M.

my provisional decision

For the reasons set out above, my provisional decision is that The Royal Bank of Scotland Plc's offer is fair. And so I don't intend to direct that it does anything further.

Both parties are now invited to make any further submissions or to provide me with any evidence which they would like me to consider by 29 January 2016, after which I will issue my final decision.

Sarah Partridge-Smith
ombudsman