Financial Ombudsman Service

complaint

Mr O doesn't think it's fair for The Royal Bank of Scotland Plc (RBS) to use his payment protection insurance (PPI) compensation to reduce the debt from which he was discharged when his protected trust deed came to an end in 2011.

background

In October 2019 I issued my provisional decision. In it I explained to both parties why I wasn't intending to uphold Mr O's complaint. In summary, I said that I thought it was fair for RBS to use the PPI compensation it offered to reduce the outstanding debt, which was written off by RBS following the closure of Mr O's protected trust deed.

A copy of my provisional decision is attached and forms part of this final decision.

I asked both parties to come back to me with any further information they wanted me to consider before I made 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. When considering what is, in my opinion, fair and reasonable, I'm required by DISP 3.6.4 R 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) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time.'

Both parties confirmed receipt of my provisional decision. Neither party had anything further to add.

Within my provisional decision (attached) I mentioned that there were some court cases which set out to whom PPI compensation should be paid when a consumer has been 'discharged' from a 'protected trust deed. In one of the court cases, Royal Bank of Scotland Plc v Donnelly [2019] CSIH 56. the court said RBS couldn't use the consumer's PPI compensation to reduce a debt from which they were 'discharged' when the trust deed came to an end. But I explained that this was being appealed by RBS – and that the outcome may change.

Since my provisional decision, the appeal has been heard at 'The Inner House of the Court of Session'. In short, RBS lost the appeal and the court reaffirmed the legal position that RBS couldn't use the compensation to pay down the amount that wasn't repaid after the trust deed ended. The court said when the trust deed ended the debtor was discharged from her debts, so there was no longer any debt owing from her to the bank which could be subject to set-off.

At this moment it isn't known whether RBS intend to appeal the decision further to the Supreme Court – so there is a possibility the outcome may change.

However, as explained within my provisional decision – I have considered the relevant law. And when initially providing my provisional decision, I did so when the law had already found in the consumers favour. RBS losing the appeal confirms the legal position within Scots law about what happens when consumer is discharged from their trust deed (although I'm mindful as I've said above, RBS maybe appealing this further to the Supreme Court). But as I also explained with my provisional decision, whilst I take into account the relevant law – I'm not bound to follow it. I must also apply an over-arching test of what's 'fair and reasonable' in the particular circumstances of Mr O's complaint – as required of me through FSMA Section 228 and the FCA's DISP rules.

Having done so, I remain of the opinion it would be unfair for RBS to pay compensation directly to Mr O – when Mr O, thanks to the trust deed, now won't ever have to repay the monies borrowed and left unpaid.

So, I see no reason to depart from my findings set out in my provisional decision.

I'm sorry to disappoint Mr O but it follows that I don't uphold his complaint.

my final decision

For the reasons set out above, and in my provisional decision, I don't uphold this complaint. I think it's fair for RBS to use the PPI compensation it's offered to reduce the outstanding debt which was written off by RBS following the closure of Mr O's protected trust deed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 10 January 2020.

Nicola Woolf
ombudsman

Copy of provisional decision

complaint

Mr O doesn't think it's fair for The Royal Bank of Scotland Plc (RBS) to use his payment protection insurance (PPI) compensation to reduce the debt from which he was discharged when his protected trust deed came to an end in 2011.

background

Mr O took out an overdraft in 2002. He took out PPI alongside this overdraft to protect his repayments.

In November 2007, Mr O entered into a trust deed as he was unable to pay all his debts when they fell due. This became a protected trust deed for his creditors. This is an alternative in Scotland to bankruptcy (called sequestration in Scotland). It is a legally binding agreement between a consumer and their creditors, which is administered by a trustee.

RBS records show that following the completion of the trust deed in 2011, two of Mr O's accounts were closed. This included loan account ending 5872 and a current account 4179 (the account where the redress was due). Both of these accounts were included in the trust deed. The outstanding balance owed to RBS was £13,996.23 when they were closed in January 2013. RBS confirmed it received a dividend of £739.04. While RBS didn't chase for the outstanding sums the debt still existed. So a substantial amount of debt was left unrecovered from Mr O.

Mr O complained to RBS about the mis-sale of these policies. RBS upheld the complaint about the sale of the PPI policy and offered to refund the PPI premiums and the extra interest that Mr O had paid to date together with simple interest to compensate him for the time he'd been out of pocket.

Mr O signed the acceptance form for this offer on 29 September and RBS confirmed it received this form on 4 October 2018.

RBS confirmed it had used the redress to offset against its total claim in the trust deed. But Mr O doesn't think the PPI compensation he was offered should be used by RBS in this way.

He says that as the protected trust deed ended, he doesn't owe the money to RBS. He says that at the end of the trust deed everything was settled and his outstanding debt was written off. He has asked that the compensation be paid directly to him.

Our adjudicator said that he didn't think this complaint should be upheld. He thought that the way RBS had offered to settle the complaint was fair. Unhappy with the adjudicator's view, Mr O asked that the matter be referred to an ombudsman for a final decision. He said that his old debt was a separate issue. He also said he was tricked into PPI and there was an on-going court case which had to be taken into account. So the matter has been passed to me.

To be clear in this decision I'm only looking at whether it was fair for RBS to use the compensation for the mis- sold PPI to repay outstanding amounts on Mr O's account. I am not looking at the amount of debt on the overdraft or the way in which the PPI came to be sold.

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. When considering what is, in my opinion, fair and reasonable, I'm required by DISP 3.6.4 R 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) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time.'

I'm sorry to disappoint Mr O but I'm not intending to uphold this complaint. I will explain why.

As RBS has upheld Mr O's PPI mis-sale complaint, I've just looked at whether what it's done to put things right is fair and reasonable. I haven't looked at how the PPI policies came to be mis-sold. And Mr O hasn't raised any issues about the amount of compensation offered so I also won't consider this. Mr O's complaint is that RBS has set-off the amount of compensation to reduce the overdraft amount that hasn't been fully repaid rather than paying the compensation directly to him.

So in this decision I need to decide whether it's fair and reasonable for RBS to use Mr O's PPI compensation offer to reduce the much higher amount of debt which he wasn't required to repay back to it (and was written off by RBS) after his protected trust deed was closed in 2011.

Mr O has referred me to the ongoing court case.

I've thought carefully about what the law says about protected trust deeds. In recent years there have been a number of cases looking at what happens to PPI compensation after a trust deed has been discharged.

In *Dooneen Ltd v Mond* [2018] UKSC 54, the Supreme Court considered the effect of a discharge following a final distribution by the trustee. In that case, the discharge was held to terminate the trust which meant that any unrealised assets were returned to the debtor – including the PPI compensation that no one had known about at the time.

So in this case the Supreme Court said that the PPI compensation should not be paid to the trustees for the benefit of the creditors. It said it should be paid to the consumer.

In *Donnelly v The Royal Bank of Scotland PLC* [2017] SAC (Civ) 1, the Sheriff Appeal Court considered whether RBS could offset PPI compensation against the amount that hadn't been repaid when the trust deed came to an end. The terms of the trust deed in this case meant RBS had, in effect, agreed that the debt would be extinguished – and it couldn't later revive the debt to offset the PPI compensation (I understand RBS has appealed this decision, so the outcome may change).

So I accept that, unless and until the Inner House reverses the decision of the Sheriff Appeal Court, and on the assumption that the relevant terms of the trust deed in *Donnelly* are essentially the same as those in this case, then RBS could not, in court, successfully argue for set-off in this case.

In this case I am aware of and have taken into account the relevant law. But I must apply an over-arching test of what's fair and reasonable to both parties, not just the relevant case law, in the particular circumstances of Mr O's complaint. Having done this, I think it's fair for RBS to use the PPI compensation to reduce the money Mr O borrowed and didn't repay.

I appreciate that RBS can't now chase Mr O in court for the money that he owed when Mr O entered into a protected trust deed. But I can see from the evidence RBS has provided that Mr O still owed over £16,000 more than he repaid off his overdraft and loan. It's likely that won't now ever be repaid.

Just because Mr O entered into a protected trust deed - and Mr O was discharged from the debt when the trust deed ended, doesn't make a difference to what is fair. I think it would be unfair to tell RBS to pay Mr O compensation when he doesn't now have to repay the borrowing which was still outstanding.

The fact that Mr O's protected trust deed had come to an end before this offer of PPI compensation was made and after Mr O was discharged from it doesn't, in my opinion make a difference to what is fair and reasonable in the circumstances here. In reality, Mr O still had the benefit of over £13,000 from RBS that he doesn't have to pay back. I don't think anyone would think it fair to require RBS to repay the PPI compensation directly to Mr O when he doesn't now need to pay back to RBS a much bigger amount which he borrowed to take out his overdraft.

So it follows from what I've said that I think it's fair for RBS to use the PPI compensation it's offered to reduce the outstanding debt which was written off by RBS following the closure of Mr O's protected trust deed.

my provisional decision

For the reasons set out above, my provisional decision is I'm not intending to uphold this complaint.

I'm currently minded to decide that it's fair for The Royal Bank of Scotland Plc to use Mr O's compensation for the mis-sold PPI to reduce the amount he owed and didn't repay when his trust deed came to an end.

So unless comments or information I get by 29 November 2019 change my mind, based on what I've seen so far I don't plan to ask The Royal Bank of Scotland Plc to do anything more to put things right.

Nicola Woolf
ombudsman