

complaint

This is a complaint about how The Royal Bank of Scotland Plc ('RBS') paid Mr R's share of compensation for mis-sold payment protection insurance ('PPI').

background

Mr and Mrs R had taken out eight loans with RBS and they bought PPI policies at the same time. In or around 2007, Mr R was sequestered. At the time of the sequestration, RBS says there was an outstanding balance on a loan and overdraft he had with them.

Mr and Mrs R complained that the PPI policies were mis-sold. RBS agreed and said that they were owed some compensation. It paid Mrs R's share of the compensation directly to her. But instead of paying this compensation to Mr R directly, RBS said it was going to pay it towards the debt he owed when he was sequestered. This is called offsetting.

Mr and Mrs R were unhappy that RBS had offset Mr R's compensation in this way. Our adjudicator thought RBS had acted fairly. But Mr and Mrs R disagreed. In summary, they said:

- Both Mr and Mrs R were sequestered at the same time, but RBS had paid Mrs R's compensation directly to her;
- When they were discharged from sequestration, they were told they were discharged of all debts and obligations they were liable for at the start of their sequestration. And there was a time limit of five years for extinguished debt in Scotland;
- Two Scottish court cases had resulted in PPI being paid to consumers in circumstances similar to theirs.

The matter has been passed to me to make a final decision. And since then, I've asked our adjudicator to make a number of enquiries. I am grateful to the parties for the speed with which they replied to us.

my findings

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

I've thought carefully about the arguments Mr and Mrs R made. But having done so, I don't uphold their complaint. I'll explain why below.

It's not in dispute that the RBS debts I've mentioned above were included in Mr R's sequestration. So when he was sequestered, where possible, his assets would have been used to pay his creditors. But it seems that there wasn't enough to pay back everything Mr R owed to RBS and there was an outstanding balance at the end of that process.

Mr R was discharged from sequestration in 2010. But that doesn't mean that the outstanding balance on his debts to RBS no longer existed. Discharge means that RBS could no longer chase Mr R or take any legal action against him to recover the money that was owed.

What that means in practice is that when RBS worked out how much compensation was due, it owed Mr R some money. But even though it couldn't chase him for the outstanding debt, Mr R still owed RBS around £24,000. So both RBS and Mr R owed each other some

money. And I think it's fair for RBS to use Mr R's compensation to reduce the amount that he owed.

I've thought about what Mr and Mrs R told us about the five year time limit for pursuing debts in Scotland. I'm aware of the rules Mr and Mrs R have referred me to. I can see that in certain circumstances a creditor may not be able to *take court action* after five years. But even if that applied to Mr and Mrs R's case, the debt doesn't go away even though RBS might not be able to *take action* to get that money back.

I'm also aware of the two court cases that Mr and Mrs R referred to when they asked for this final decision. My understanding is that the issues in those proceedings are to do with protected trust deeds, rather than sequestration. So they don't affect the outcome of Mr and Mrs R's complaint.

I've considered what Mr and Mrs R said about RBS paying Mrs R's share to her even though she'd also entered sequestration. I don't know the circumstances of Mrs R's sequestration. I can see that RBS told us they paid her in error. But what I'm looking at is whether RBS was fair when it decided to use Mr R's compensation to repay some of the debt that was outstanding. And for the reasons I've set out above, I think it probably was.

I realise that my decision will be disappointing for Mr and Mrs R. But for the reasons I've set out above, I don't need to ask RBS to take any action to put things right.

my final decision

I don't uphold the complaint against Royal Bank of Scotland Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 13 March 2019

Nicola Bowes
ombudsman