complaint

Mr T 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 2006.

background

In September 2019, I issued my provisional decision explaining to Mr T why I wasn't intending to uphold his complaint. I said that it would be fair for RBS to use Mr T's compensation for the mis-sold PPI to reduce the amount he owed and didn't repay to RBS when his trust deed came to an end.

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 comments or information they wanted me to consider before making my final decision.

my findings

I've re-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.'

RBS has responded to my provisional decision saying that it had nothing further to add. It told us that the offer of redress on the complaint remained outstanding as it was yet to receive acceptance and it would be used to set-off the outstanding amount against RBS' claim in the trust deed.

Mr T hasn't given me anything further to consider so I see no reason to depart from my provisional findings. I am sorry to disappoint Mr T, but for the reasons set out below I haven't upheld his complaint.

my final decision

My final decision is I don't uphold this complaint. It's fair for The Royal Bank of Scotland Plc to use Mr T'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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 5 December 2019.

Nicola Woolf
ombudsman

Copy of my provisional decision

complaint

Mr T 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 2006.

background

Mr T took out a series of loans with RBS between 1999 and 2001. He took out PPI alongside these loans to protect his repayments. He also took out PPI on an overdraft.

In July 2002 Mr T 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.

When Mr T entered into the trust deed, RBS's total claim was £16,652.18 and RBS's records indicate that it didn't receive any dividends. RBS didn't chase for these outstanding sums but it confirmed it wrote off the accounts as a result of the trust deed. While RBS didn't chase for the outstanding sums the debt still existed. So a substantial amount of debt was left unrecovered from Mr T.

Mr T complained to RBS about the mis-sale of these policies. RBS upheld the complaint about all the PPI policies and offered to refund the PPI premiums and the extra interest that Mr T had paid to date together with simple interest to compensate him for the time he'd been out of pocket. Mr T signed the acceptance forms for these offers in June 2017 and RBS confirmed receipt of this acceptance.

RBS confirmed it had used the redress to offset against its total claim in the trust deed. But Mr T 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 long since ended, he doesn't owe the money to RBS. He has asked that the compensation be paid directly to him.

Our adjudicator said that she didn't think this complaint should be upheld. She thought that it was fair to set off the compensation against the sums owed to RBS. She said that RBS had acted in line with our expectations. Unhappy with the adjudicator's view, Mr T asked that the matter be referred to an ombudsman for a final decision. He said that he no longer owed any money to RBS as he had long since been discharged from the protected trust deed, so it wasn't right that RBS should use the compensation to reduce debt he was no longer responsible for. So the matter has been passed to me.

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.'

As RBS has upheld Mr T's PPI mis-sale complaint, in this provisional decision 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 T hasn't raised any issues about the amount of compensation offered so I also won't consider this. Mr T's complaint is that RBS has set-off the amount of compensation to reduce the loan 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 T'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 2006.

And in this case the relevant law I need to take account of is Scottish law. 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 in the particular circumstances of Mr T's complaint. Having done this, I think it's fair for RBS to use the PPI compensation to reduce the money Mr T borrowed and didn't repay.

Just because Mr T entered into a protected trust deed - owing RBS £16,652.18 - and Mr T 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 T compensation when he doesn't now have to repay the borrowing which was still outstanding.

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

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 T'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 T'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 13 October 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