

complaint

Mr M has complained about the way The Royal Bank of Scotland Plc (“RBS”) has used the compensation it agreed to pay him following a complaint about the mis-sale of a payment protection insurance (“PPI”) policy.

background

Mr M took out a credit card with RBS in 1999 and took out a PPI policy alongside it. In February 2006 Mr M entered into protected trust deed when he wasn't able to pay all of his debts as they fell due – the PPI was cancelled at the same time. He had a trustee appointed to look after his finances and his protected trust deed was discharged in August 2009. The effect of this was that Mr M couldn't be chased by his creditors for any debts he had in February 2006. Mr M's former trustee has confirmed that he doesn't have any remaining interest in Mr M's estate or his PPI complaint.

In May 2011 Mr M complained to RBS that he'd been mis-sold PPI with his credit card and it upheld his complaint. RBS offered Mr M compensation of £2,347.02. Mr M accepted this offer, but in September 2011 the money was used by RBS to reduce the amount it said he still owed on his credit card. Mr M says that he should've got the money paid to him directly. He says, as a business can't chase him for money owed, it's not fair that RBS can withhold the compensation.

Our adjudicator looked at the complaint and thought what RBS had done was fair. Mr M has disagreed, so this complaint has been passed to me for a final decision.

my findings

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

RBS says I can't look at Mr M's complaint because he's already accepted an offer. I don't agree. There's no rule that says the ombudsman service can't consider a complaint if the consumer has accepted an offer.

I think RBS means to say I should exercise my discretion not to consider Mr M's complaint because he's accepted an offer. The rules say I can do this if there are compelling reasons why it would be inappropriate to look at the complaint. In other words, I can dismiss a complaint if I think it's the right thing to do.

Mr M signed an acceptance form in August 2011. The form states:

“I understand 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 If my card is no longer active the money will be paid to me by cheque.”

Mr M has signed his form and I can see there is a 'tick' next to the final sentence. RBS has said, in an email, that it accepts Mr M '*may have believed that the account was not active*'. Mr M has said that he thought the account was closed when he entered the protected trust deed in 2006. So I think Mr M thought he was going to be paid directly, not for RBS to use the compensation to reduce the amount he owed – Mr M wasn't agreeing to RBS using the compensation in the way it did. I have to look at whether it's fair for RBS to use the

compensation in this way and there is a real issue to be considered. And I think it's helpful for Mr M to have an answer that deals with this issue.

RBS made an offer about PPI and Mr M isn't saying that the amount offered is wrong. It seems to me that all I've got to decide is whether or not it's fair for RBS to use the refund to reduce the arrears on Mr M's credit card account.

We'd usually say a business can use a customer's compensation to reduce their arrears if the PPI policy was sold alongside the account in arrears. In this case Mr M had a balance on his credit card when he entered into the protected trust deed and the account fell into arrears. The PPI was sold alongside the same account.

I think it's fair for RBS to use the compensation in the way it's done and I'd like to explain why.

When Mr M entered into a protected trust deed, the debts he owed weren't cancelled. And they weren't cancelled when he was discharged in 2009 – but by law he couldn't be chased for the debts. The credit card debt he had with RBS still exists and some of it related to PPI premiums (and interest) that Mr M never paid. So I think it's fair for RBS to use the compensation to reduce the arrears, otherwise he'd be getting a refund of PPI premiums (and interest) he didn't actually pay.

I've also thought about when Mr M had PPI – it was before he entered into the protected trust deed. But at that point he shouldn't have had PPI on his account, so he would've owed RBS something, but it would've been less. RBS has to put Mr M into the position he would've been if he didn't have PPI. Having looked had what he owed his various creditors, I think he would've still entered into his protected trust deed as the PPI was only a small proportion of his overall debt. So he would've entered into the arrangement with a smaller credit card debt and, at the end, RBS wouldn't have been able to chase this smaller debt. This is the position RBS has put Mr M in, so I think what it's done is fair.

Mr M has questioned why he was paid compensation directly by RBS when he complained about PPI on various loans, but not on his credit card complaint. I've set out above why I think what RBS has done is fair over the credit card PPI. I can't comment why RBS decided to pay Mr M directly for the other PPI complaints as I've only considered his credit card PPI in this decision.

my final decision

For the reasons I've set out above I think The Royal Bank of Scotland Plc's offer was fair and I don't direct it does anything further.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 24 August 2015.

Mark Hutchings
ombudsman