complaint

Mrs L is unhappy with how The Royal Bank of Scotland Plc ('RBS') resolved her complaint about a payment protection insurance ('PPI') policy attached to a loan.

background

Mrs L took out a loan with RBS which refinanced a previous loan. Attached to this loan was a single premium PPI policy.

Mrs L complained to RBS that this policy was mis-sold.

RBS agreed to settle this complaint and it wrote out to her in April 2017 to say it was willing to refund around £1,510 (after tax).

Mrs L accepted this offer and returned a signed acceptance form in April 2017. The signed acceptance form said, '*I understand that the offer will take into consideration any arrears on my account*'.

RBS then sent Mrs L a cheque for around £181.

RBS explained to this service that Mrs L's loan account, which this PPI was attached to, was written off in 2009. So it used around £1,330 of the compensation to reduce the debt that Mrs L owed. Even though that amount wasn't enough to clear the debt Mrs L owed RBS – it paid her directly around £181, it says was for some 8% simple interest.

Mrs L isn't happy with this. She says that RBS told her over the phone that she was going to get a cheque for the whole £1,510. She also says she doesn't remember this debt on her loan account. Finally, Mrs L told us that she's suffering some financial troubles so she'd like the full amount to help reduce other debts she owes.

Our adjudicator looked at what RBS had offered and she thought it was fair. Mrs L didn't agree. Because the complaint hasn't been resolved it's been passed to me for a 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.

I understand Mrs L will be disappointed but I think the approach RBS has taken to resolve her PPI complaint is fair. I'll explain why.
When a business agrees to settle a PPI complaint we expect it to, as far as possible, put the consumer back in the position they would be in had they not taken out the PPI policy.

Mrs L was sold a single premium PPI policy. What this means is, when she borrowed the money for her loan, she borrowed an extra amount – which was added to her borrowing – for a PPI policy. She would pay off the extra amount borrowed for PPI at the same time as her loan. The PPI policy, like her loan, had interest charged on it.

With a single premium PPI policy, we'd generally expect a business to refund the extra amount the consumer borrowed for the PPI, the interest that was charged on that extra borrowing and 8% simple interest, to compensate the consumer for the time they've been without that money.

RBS has given us evidence to show that Mrs L loan account is in arrears. This debt still exists – because it hasn't been paid back. Mrs L can't remember this particular debt and I can understand that because it happened a long time ago. It looks like Mrs L took out this loan in 2001. Mrs L seems to have got into some trouble after about 9 or 10 months in making her monthly repayments. The loan was later 'written off' in 2009.

At the point that she got into trouble making her loan repayments, Mrs L had only actually made around 9 loan repayments. Part of her loan repayments would've gone towards paying off her loan and part would've gone towards paying off the extra she borrowed for the PPI policy. So, Mrs L did pay some money towards what she borrowed for the PPI policy, but not a lot.

Because Mrs L paid something towards the extra she borrowed for the PPI policy within the monthly repayments she made, RBS gave her 8% simple interest, because technically she is out of pocket for that money. This is what I think the £181 cheque was for. And I actually think that it was generous of RBS to pay this to Mrs L.

So, that means there was a large part of what Mrs L borrowed for that PPI that formed part of her overall loan account debt. She wasn't out of pocket for this money – because she's never paid anything towards it. And I don't think that Mrs L got into financial trouble *directly* because she had PPI on her loan account – because the PPI made up a low percentage of her overall loan debt. So I think it's fair for RBS to take this amount off the outstanding debt on the loan account – because this puts her overall debt in the position it would've been in had she not been sold the PPI policy.

When RBS 'wrote off' the amount Mrs L owed, it didn't mean that the debt doesn't still exist, it means RBS made a decision not to pursue Mrs L for this debt any more.

There is also in law what is called the equitable right to set off which allows people to "set-off" closely connected debts. This means that one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them.

For this right of set-off to apply I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt. I must also consider whether it would be fair for RBS to set-off in this way. Both tests must be satisfied for me to find that RBS has an equitable right to set-off the PPI compensation against Mrs L's outstanding debt on her loan account.

The PPI sold to Mrs L was directly connected to her loan account. Using the right of set-off I have outlined above, I am satisfied the PPI compensation and the loan account debt are closely connected. They are both for the same account Mrs L had with RBS.

Next I have to consider whether or not it's fair for RBS to set-off in this way. Sometimes it might not be fair for a business to set-off in this way if a consumer has higher priority or more pressing debts they need to pay.

It's important to note here that I'm only considering whether it would be fair for RBS to off-set the amount Mrs L actually paid towards the PPI in those 9 loan repayments I mentioned earlier.

We do have to consider and decide upon what may be a priority or a more pressing debt and to do this we look at all the information provided in each particular case.

Mrs L has told us that she has other debts which had county court judgements. She wants to use this PPI compensation to reduce those balances – rather than the balance she owes RBS.

I understand that any debt isn't nice and I do have sympathy for the financial struggles that Mrs L is experiencing.

Debt is a very personal thing and often looked at subjectively. What one person might see as a pressing debt, another might not. There isn't a set 'formula' on when we'd consider whether it is fair for a business to set-off PPI compensation against an existing debt and when it would be fair to pay it directly to a consumer. But if, for example, court action is actively being taken against someone for a utility debt or repossession proceedings have been commenced then we may consider this to be a priority or a more pressing debt.

I do have sympathy with Mrs L that she has other debts. I understand that any debt isn't nice. But I haven't seen anything to make me think that the County Court Judgements that she's mentioned are any more pressing than the debt she owes RBS. Just because RBS isn't pursuing her for this debt doesn't mean that it doesn't have a right to set-off this compensation.

I appreciate that I don't know the level of debt that Mrs L is in. But I feel it's also important to note that even if I did agree with Mrs L that RBS should pay her some of the compensation I'd only say that it would have to pay her back what she actually paid towards the PPI policy – which wouldn't be a significant amount. And I think it's unlikely it would have much of an impact on her other debts. And RBS has already paid Mrs L the 8% simple interest on that amount directly to her.

In summary, I don't think RBS has treated Mrs L unfairly. So I won't be asking it to do anything more.

my final decision

As I've mentioned above, my final decision is that the approach The Royal Bank of Scotland PLC in resolving Mrs L's PPI complaint is fair. So I won't be asking it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 15 December 2017.

Martin Purcell
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