

## **complaint**

Mr A's complaint is that The Royal Bank of Scotland Plc (RBS) used part of the redress from a mis-sold payment protection insurance (PPI) policy to offset an outstanding debt on his current account. Mr A wants RBS to pay all the redress directly to him.

## **background**

In 2013 Mr A complained to RBS about a PPI policy he was sold in conjunction with a loan. The last four digits of the loan account were 2607.

In June 2013 RBS wrote to Mr A. In its letter RBS stated that it was willing to uphold his complaint as *"a gesture of goodwill and without admission of liability"*. The letter went on to say that RBS was willing to make Mr A an offer of £496.35.

Mr A signed and returned a settlement form, on the settlement form Mr A wrote the words *"Paid By Cheque Please!"*

In July 2013 RBS wrote again to Mr A. In its letter RBS said that the total redress was £497.09 (the amount had slightly increased due to added interest). The letter enclosed a cheque for £212.47 which the letter said was made up of the interest element of the refund. The letter went on to say that the remaining £284.62 had been credited to Mr A's current account which was being managed by RBS' *"Credit Management Services department"*.

Unhappy that RBS had not paid the full amount of redress directly to him, Mr A brought his complaint to this service.

In January 2014, an adjudicator from this service wrote to RBS. In her letter the adjudicator gave her reasons for upholding Mr A's complaint and requested that it paid the redress directly to Mr A.

RBS disagreed with the adjudicators findings and has requested that an ombudsman consider the complaint.

## **my findings**

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

RBS has agreed to uphold Mr A's complaint about the mis-sale of the policy albeit as a gesture of goodwill. RBS has also agreed to pay Mr A compensation in line with this service's approach to redress for mis-sold PPI policies. Therefore I will not address the issue of how the PPI policy came to be sold to Mr A.

I have carefully read the letter RBS sent to Mr A in June 2013 with the acceptance form. The letter is two pages long and contains details of how the redress was calculated. Approximately halfway through the second page is the following paragraph:

*"To accept our offer all you need to do is sign and return the declaration at the end of this letter. On receipt we will arrange for payment to be made subject to clearance of any arrears or indebtedness you may have with the Group. Please do not make any amendments as this*

*will result in the form being null and void. We will endeavour to make payment within 28 working days of receipt of the acceptance form."*

I have also read the wording on the acceptance form which states:

*"I understand that the offer will take into account any arrears on my account. The remaining balance, if any, will then be paid to my The Royal Bank of Scotland current account, or by cheque if no account remains open. I am aware that it is possible for the account to remain in arrears if the offer is not sufficient to clear the full amount owing on the account"*

The covering letter does state that payment would be arranged *"subject to clearance of any arrears or indebtedness you may have with the group"*. However in my opinion it is not in a particularly prominent part of the letter and does not specifically mention that any part of the redress would be used to clear the debt on Mr A's current account.

In my view Mr A would be more likely to carefully read the statement on the actual acceptance form. This statement only mentions that the redress would be used to *clear "any arrears on my account"*. In my view this refers only to arrears on Mr A's loan account ending 2607 and I have not been provided with any evidence that he had arrears on that account.

The statement does not specifically mention that the redress would be used to clear the outstanding debt on the current account, it only mentions any outstanding debt on the loan account which there was not.

Overall I find that RBS did not make it sufficiently clear to Mr A that it intended to use part of the redress to reduce the outstanding debt on his current account and then send him the interest portion by cheque. Indeed I note that in its response to the adjudicator's findings RBS has accepted that the wording on the acceptance form *"could have been clearer"*.

Mr A has told us he did not expect this to happen especially as he considered the current account to be closed as he had not used it since 2008 other than to pay a nominal £1 per month to reduce the debt. I also note that Mr A appears to have specified on the acceptance form that he wanted the payment to be made to him by cheque. I do note that RBS stated in its letter that any amendments would make the form null and void. So it follows that I would have expected RBS to have at least contacted Mr A to make him aware or how it intended to distribute the redress before going ahead.

In any event if Mr A had been given sufficiently clear information to allow him to appreciate that £284.62 of the total redress would be used to reduce the current account debt I find it highly unlikely he would have signed the settlement form.

#### right of set-off

In its response to the adjudicator's findings RBS has told us:

*"The Bank maintains and defends its "right of set off" in cases of indebtedness. We do not accept your or the customer's assertion that because the premium refund relates to a loan and the refund was made to a different account, that it cannot be used to reduce the current account arrears. As the servicing account for the loan, the current account debt is in part due to the original loan and both are inextricably linked by this close association."*

As stated earlier in this decision I do not consider that RBS clearly informed Mr A of its intention to exercise its right of set-off in the offer it made to him.

The equitable right of set-off in law allows a person to 'set-off' closely connected debts. This means one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them.

For the equitable 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 unjust not to allow RBS to set-off in this way. *Both* tests must be satisfied for me to conclude RBS has an equitable right to set-off the PPI compensation against Mr A's outstanding debt on his current account.

In consideration of these tests, I am not persuaded there is a *close* connection between the *redress* for the mis-sold PPI policy taken out in connection with Mr A's loan and the outstanding *debt* on his current account. The redress for the PPI policy arises from shortcomings in the way the policy was sold. The arrears on Mr A's current account flow from entirely different circumstances. Given this, I am not persuaded the redress and the current account debt are sufficiently closely connected for it to be fair and reasonable for the redress from the mis-sale of the PPI policies to be offset against the debt on Mr A's current account.

#### summary

I do not find it fair and reasonable for RBS to "set-off" the redress from the PPI policy sold with the loan ending 2607 against the outstanding debt on Mr A's current account.

Therefore RBS should recalculate the redress for this policy, bringing it up to date with interest calculated at 8% simple per annum and pay Mr A the difference between the new total and the sum of £212.47 which Mr A has already received. The difference should be paid to Mr A directly by cheque.

#### **my final decision**

My final decision is that I uphold Mr A's complaint that he should have received the redress from the PPI policy sold with loan ending 2607 directly. The Royal Bank of Scotland Plc should not have used any of the redress to reduce the debt on Mr A's current account. The Royal Bank of Scotland Plc should recalculate the redress and pay Mr A fair compensation as set out above.

I make no other award against The Royal Bank of Scotland Plc.

Steve Thomas  
**ombudsman**