

complaint

Mr and Mrs H's complaint is about how The Royal Bank of Scotland Plc (RBS) used the compensation due to them for a mis-sold payment protection insurance (PPI) policy.

background

Mr and Mrs H complained to RBS that the PPI on an overdraft facility on their joint bank account was mis-sold. RBS agreed to settle the complaint and repay the full costs paid for the policy plus some compensatory interest.

RBS paid the compensation into the joint bank account, but Mr and Mrs H no longer had access to this account. RBS then transferred some of the compensation to the Official Receiver as Mr H had been declared bankrupt and it also used some of the funds to pay the debt on a loan that was only in Mr H's name.

Mr and Mrs H weren't happy with what RBS had done with the compensation as they felt half of the compensation should have been paid directly to Mrs H. She wasn't involved in the bankruptcy and wasn't responsible for the loan debt in Mr H's sole name.

Our adjudicator partly upheld the complaint and said some of the compensation should go directly to Mrs H after a debt on the joint bank account had been cleared.

RBS disagreed and said as the PPI policy was only in Mr H's name, all the compensation was due to him and had been properly paid to the Official Receiver and against his outstanding loan with RBS, being paid through the joint bank account.

Mr and Mrs H also didn't agree with the adjudicator. They said as the result of an earlier decision by an ombudsman about the joint bank account, there should've been no overdraft debt outstanding on the joint account. So Mrs H's half of the compensation should be paid in full directly to her.

The full background to this complaint is set out in my provisional decision issued in June 2017. I've attached a copy of that provisional decision and it forms part of this final decision.

Both parties have sent a response to my provisional decision, indicating it has been received.

my findings

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

I explained in my provisional decision why I thought Mr and Mrs H were jointly responsible for the overdraft debt and this should be repaid from the PPI compensation. But also that after this was cleared, 50% of the remaining compensation should be paid directly to Mrs H.

The evidence provided showed after the PPI compensation payment was made into the joint account, and the debt cleared, it left a £4,084.44 credit on the account. This should've been split between Mr and Mrs H, with Mrs H's share paid to her and Mr H's share being allocated by RBS as it did, to the loan he defaulted on and the Official Receiver.

Mrs H should have been paid her share of the compensation in December 2015 when the offer was originally made. So I said I was going to direct RBS to pay her 8% simple interest yearly on her amount of the compensation, from December 2015 to the date it makes the final payment to her, as she has been out of pocket for the whole of this period.

Both parties confirmed they had received my provisional decision and neither party provided any further information directly relevant to this complaint.

RBS said it had nothing further to add and its stance remained the same as previously.

Mr and Mrs H said they understood the reasons for the provisional decision but raised points about other issues they had with RBS relating to other financial products. The points raised and documents provided did not relate to the PPI complaint on the joint overdraft, so didn't affect my findings in any way.

As I haven't received any further information or evidence from either party relevant to this complaint about the PPI, I see no reason to change any of my findings as set out in my provisional decision, which is attached and forms part of this final decision.

So I'm awarding the compensation as indicated in my provisional decision plus £100.00 additional compensation to Mrs H, for the reasons set out in that decision.

I would also add that this final decision will only become legally binding on RBS if Mr and Mrs H accept it. They can choose not to and then they have the right to take the matter through the courts. But this decision can't then be enforced and RBS will not be bound in any way by my findings or directions. This final decision is the end of our role in dealing with this complaint.

my final decision

I'm directing The Royal Bank of Scotland Plc to pay directly to Mrs H her share of the compensation, that is £2,042.22, plus 8% simple interest from December 2015 to the date of final settlement.

I am also awarding an additional £100.00 to Mrs H for the delays caused in the way The Royal Bank of Scotland Plc handled this complaint.

Mr H's share of the compensation has already been paid to his loan debt and an amount also paid to the Official Receiver, so Mr H isn't due anything more.

If The Royal Bank of Scotland Plc has paid more than Mr H's was due, then it is up to the bank to resolve that internally and bear any loss itself. Once all payments have been made, the joint current account should be closed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 25 September 2017.

Christine Fraser
ombudsman

Copy of Provisional Decision

complaint

Mr and Mrs H's complaint is about how The Royal Bank of Scotland Plc (RBS) has used the compensation due to them for a mis-sold payment protection insurance (PPI) policy.

background

Mr and Mrs H complained to RBS that the PPI taken out in relation to the overdraft facility on their joint bank account was mis-sold. The policy only covered Mr H. RBS agreed to settle the complaint and repay the full costs paid for the policy plus some compensatory interest.

But RBS made the compensation payment to the joint bank account, which was no longer accessible to Mr and Mrs H. It then transferred some of the compensation to the Official Receiver as Mr H had been declared bankrupt and it also used some of the funds to pay the debt on a loan that was only in Mr H's name.

Mr H had been declared bankrupt and it is not disputed that his share of the costs of the PPI should go to the Official Receiver. But Mr and Mrs H felt that half of the compensation should have been paid to Mrs H. She had not been declared bankrupt and was not responsible for any debt for the loan in Mr H's sole name.

When Mr and Mrs H brought their complaint to our service our adjudicator said that Mrs H should be paid half of the compensation, even though the policy was only taken out in Mr H's name. But the adjudicator also said that the debt on the joint bank account should be first cleared and the balance remaining then split so Mrs H got half of what was left after the joint overdraft debt was cleared.

RBS didn't agree as it said the policy was only in Mr H's name and so all the compensation was due to him and had been properly paid to the Official Receiver and against his outstanding loan with RBS.

Mr and Mrs H also didn't agree with the adjudicator. They said an ombudsman had recommended in 2012 that some interest and charges, applied to the joint account from a specified date should be refunded. So Mr and Mrs H said there should've been no overdraft or debt outstanding on the joint account as the charges and interest should have been refunded.

As both parties disagreed the matter has been passed to me for a decision.

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.

I have noted Mr and Mrs H objection to the wording of our approach as being "fair". They indicate they have serious concerns about RBS and suggest issues such as "misappropriation" and "negligence" by RBS should be considered and addressed. The ombudsman service is here to resolve disputes and we are not the regulator who can take action to deal with specific allegations of mis-conduct by any business. So when resolving every dispute our approach is that we look at what would be a fair and reasonable outcome to the specific issue of the complaint. In this case that is the mis-sale of PPI and what would be the right approach for RBS to take when paying any compensation due. This takes into account all the evidence and information provided by all parties on the specific complaint issue.

As RBS has agreed to settle the complaint about the mis-sale of the PPI and pay compensation I'm not looking into how the policy came to be sold. In this decision I am only looking at if the compensation offered, and how it has been used, is fair to all parties involved.

RBS has worked out the total amount paid for the PPI. This was paid for by monthly premium taken out of the joint bank account and the total for the premiums paid was £594.20. As the joint current account was in overdraft, interest was charged on these premiums and RBS has worked this interest out to be £5,118.06, there was also a nominal amount of £0.06 for compensatory interest. This is I believe a reasonable approach to work out what Mr and Mrs H paid for the PPI. So I'm satisfied the £5,712.31 offered by RBS in December 2015 was fair compensation as a total amount at that point.

But I'm not satisfied that how RBS has paid this compensation is fair.

This PPI policy was only giving cover to Mr H. But it was covering the repayments of the overdraft on a *joint* bank account and the payment was being made out of the same joint bank account. I have carefully noted RBS' comments about this, where it says as the PPI was in the sole name of Mr H and he nominated the joint account to pay for the policy the compensation is due solely to him. I do not agree with this interpretation in this case.

The overdraft which the PPI was to cover was on a joint account and so Mr and Mrs H were both jointly liable for the overdraft. The fact that cover was only taken out for Mr H's income doesn't mean that Mrs H wasn't liable for the overdraft, and any debt on the overdraft was a joint debt. Also, as the funds in the account would have been considered joint funds, Mrs H was contributing to the cost of the policy. So looking at this overall I think Mrs H is entitled to be refunded 50% of the costs of the PPI and Mr H's share would've also been 50%.

However in December 2015 RBS has provided information showing the overdraft debt on the joint account was £1,627.87. Mr and Mrs H no longer had access to this account and were not using the account nor clearing this debt. As this was a joint overdraft debt I think it's right that this amount is repaid from the compensation. Effectively Mr and Mrs H should be paying 50% of the overdraft debt from their respective 50% shares of the compensation.

I have noted Mr and Mrs H's arguments that this debt on the overdraft should no longer have existed. They say this, as they had brought an earlier complaint to this service in 2012 about their bank account. Another ombudsman at that time issued a decision indicating, amongst other things, that all the charges and interest on the account made since 2005 should be refunded.

That decision was not accepted by Mr and Mrs H so did not become legally binding on RBS and they did not have to follow the direction made in the decision.

I cannot reopen or reconsider and look at any aspects of that complaint. Mr H has told us he still thinks it is important that RBS didn't act correctly and wrongly applied charges and interest to the account. I cannot comment on or look at what charges were applied and if any charges were ever removed from the balance or refunded, as this was all covered and in the previous decision. That earlier complaint is now closed and its decision was never accepted. Any concerns or issues about the refund of any charges should have been taken up in 2012 if the decision had been accepted. So I'm not looking at those charges or considering any more about them in this decision.

Evidence has been provided by screen shots that as of December 2015 the overdraft on the account stood at £1,627.87. That amount was therefore due to RBS jointly by Mr and Mrs H. Once that was taken off the total compensation it left £4,084.44 to be split between Mr and Mrs H equally, so £2,042.22 each.

RBS therefore should've paid Mrs H directly her share, this being £2,042.22. Once this was paid and Mr H's share had been paid in accordance with the requirements of his bankruptcy, the joint account balance should have been zero and I can see no reason why this account should not have then been closed.

I understand that RBS has used the compensation once paid into the joint account to pay £1,947.40 towards a loan Mr H had, in his sole name, and which had been defaulted on. And also a further

£1,363.16 was paid to the Official Receiver. The fact that RBS paid more than Mr H's share towards his debt and to the Official Receiver is for RBS to rectify as it was its mistake and Mrs H shouldn't be penalised for that.

RBS has also said there is a credit balance in the joint current account of some £773.88, which it says is unrelated to the PPI compensation. I have looked at the screen shot provided showing the account statement. On 15 December 2015 the balance carried forward on the account was a debit of £1,627.87. The compensation of £5,712.31 was paid in also on 15 December 2015 and this left a credit balance of £4,084.44.

In January 2016 an amount of £1,947.40 was paid out and this would seem to be for the loan in Mr H's name. A few days later, the £1,363.16 is shown as paid out, which was sent to the Official Receiver. This leaves the credit balance of £773.88.

RBS has told this service that this £773.88 is unrelated to the PPI, but that would not seem to be the case from its own records. RBS did also say at one point that the overdraft on the joint account was £2,401.75; however I have seen nothing to support this.

I am satisfied that the evidence provided to date shows the PPI compensation payment was made into the joint account and this then cleared the overdraft leaving the £4,084.44 credit. This should then have been split between Mr and Mrs H, with Mrs H's share paid to her and Mr H's share being allocated to the loan he defaulted on and the Official Receiver.

Also once the PPI compensation on the overdraft had been paid correctly, the overdraft cleared and the remaining balance administered correctly to Mrs H and Mr H as I've indicated, there would seem to have been no reason to keep this joint account open.

Mrs H should have been paid her share of the compensation in December 2015 when the offer was originally made. So I am intending to direct RBS to pay her 8% simple interest yearly on her amount of the compensation, from December 2015 to the date it makes the final payment to her, as she has been out of pocket for the whole of this period.

The official receiver has been joined as a party to this complaint as he has expressed an interest in it because of any monies that may have been due to Mr H. Any issues the Official Receiver may have about Mr H's share of the compensation, or any other funds that solely belong to Mr H, and how these may have been used would need to be taken up directly between RBS and the Official Receiver.

I do have some concerns about the way RBS has handled this complaint. It has provided conflicting information and also its approach has caused some delay, especially for Mrs H. Therefore I'm intending to direct RBS to also pay a further £100.00 for the trouble and upset caused to Mrs H, this payment to be made direct to her.

my provisional decision

For the reasons I've set out above, but subject to the responses of both parties, I'm intending to tell The Royal Bank of Scotland Plc to pay directly to Mrs H, her share of the compensation which at December 2015 was £2,042.22, after her share of the overdraft was cleared. The Royal Bank of Scotland plc would also pay 8% simple interest on this amount from December 2015 to the date of final settlement.

Mr H's share of the compensation has already been paid to his loan debt and an amount also paid to the Official Receiver, so at present I do not think Mr H is due anything more. If the Royal Bank of Scotland plc has paid more than Mr H's was due, then it is up to the bank to resolve that and bear any loss itself. Once all payments have been made, the joint current account should then be closed.

Also I'm intending to tell the Royal Bank of Scotland plc to pay an additional £100 to Mrs H for the delay and the way it's handled this complaint.

This is subject to any further evidence or information provided by either party before the date indicated at the start of this decision.

Christine Fraser
ombudsman