

complaint

Mr B is complaining that The Royal Bank of Scotland Plc (RBS) has used the compensation it offered for the mis-selling of a payment protection insurance (PPI) policy, attached to a loan, to reduce the outstanding debt on that loan account.

background

Mr B took out a loan in 1999. At the same time he bought a single premium PPI policy.

In 2016 Mr B complained to RBS about the sale of the PPI policy. RBS upheld Mr B's PPI complaint. To put things right for Mr B, RBS offered to refund the PPI premiums, associated interest and 8% simple interest. RBS worked out the compensation to be around £5,400.

In its letter to Mr B, RBS explained that in order to accept the offer, Mr B needed to sign and return the declaration form at the end of the letter. It also stated, "*...on receipt (of the acceptance form) we will arrange for payment to be made, subject to clearance of any arrears you may have with the Group.*"

The final paragraph of the declaration form stated: "*...I understand that the offer will take into consideration any arrears on my account. The remaining balance, if any, will then be paid to me by cheque. 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 my account.*"

Mr B signed and returned the form in September 2016. His signature was immediately below this final paragraph.

In October 2016, RBS used the amount it owed Mr B to reduce his outstanding debt on the loan account. It issued a letter on 10 October 2016 confirming this. But RBS also sent a text message to Mr B on the same day, informing him that payment of the compensation would be made to his current account.

RBS offered Mr B £75 for the level of service it had provided in incorrectly texting him and for the inconvenience it had caused.

Mr B complained to our service as he wasn't happy with RBS's response to his complaint. Mr B didn't accept RBS's offer of £75 for the level of service he'd received. And Mr B told us he wasn't happy that RBS used the compensation to reduce the amount he owed. Mr B considered that he had other pressing debts that he needed the compensation for. Mr B felt that he should decide which debt the refund should be paid to and not RBS.

Mr B has provided detailed testimony about his current financial situation. He feels this highlights why he should be paid the compensation directly. And Mr B has also pointed to other ombudsman decisions that are about setting off debts and he feels support his case.

RBS say that because Mr B signed to accept its PPI offer and it's done what it said it would do, we shouldn't look at this complaint.

But RBS also considered that it was entitled (under the 'right of set-off') to set off the amount it owed Mr B against what Mr B owed it - under the loan account. RBS also advised that its offer of £75 for the incorrect text message it sent Mr B was fair.

Our adjudicator did look at the complaint. She thought it was fair for RBS to use the PPI compensation Mr B was owed, to reduce the outstanding debt he had on the loan account. And she didn't think that Mr B's other debts were more pressing than his debt with RBS.

Mr B disagreed and provided more detail around his circumstances. The case was passed to another adjudicator, who provided RBS with the details of Mr B's current financial circumstances. This was to see if it would consider changing its stance. RBS reviewed Mr B's case, but considered that the loan debt Mr B owed RBS was as pressing as the other loan debts Mr B had. And for that reason it was not prepared to change its stance.

As the matter couldn't be resolved, the complaint has been referred to me to consider.

my findings

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

RBS says I shouldn't look at this complaint because Mr B has already accepted its PPI compensation offer in full and final settlement. I can see why it says this.

Mr B says he didn't thoroughly read the letter and wasn't aware that RBS would use the amount to reduce his outstanding debt on the loan.

I've carefully considered the letter RBS sent and the declaration form that Mr B signed and returned to RBS. I know that Mr B has said that he didn't read the form thoroughly before signing, but that was his decision. Looking at the form, it makes it sufficiently clear that RBS will first use the PPI compensation on any arrears owed, with it then paying anything left over to Mr B. And, if the compensation doesn't clear the arrears fully, then there will still be an amount owed. So I think Mr B should've been aware of what he was being offered and accepting, when he signed and returned the form.

Our rules say I can exercise my discretion not to consider a complaint if I think to do so would seriously impair the effective operation of the ombudsman service.

As our role is to resolve problems that consumers and businesses can't resolve themselves, it may not be appropriate for us to get involved if the consumer's already accepted an offer to settle the complaint. To do so may seriously impair the effective operation of this service.

But it's something I have to decide on a case-by-case basis.

In this case, I don't think RBS has done anything wrong – and I'd prefer to explain why, rather than simply dismiss the complaint, so that's what I'm going to do.

RBS has agreed it mis-sold the PPI policy to Mr B, so I don't need to look at how it was sold. And as Mr B hasn't complained about the amount RBS has offered in compensation, so I haven't looked at this.

In this decision, I've looked at two things. Firstly, whether RBS's offer of compensation for the level of service it provided was fair. And secondly, whether it was fair for RBS to use the compensation it's offered to reduce his outstanding debt.

On both of these points, I think RBS acted fairly. I'll explain why.

I appreciate that Mr B received a text from RBS which incorrectly gave him an expectation that the compensation was going to be paid into his current account. But RBS also wrote out on the same day (which Mr B received a few days later) advising Mr B that the amount had been used to reduce his outstanding loan balance. So I think its offer of £75 is fair for its mistake in texting Mr B.

Turning to Mr B's main complaint point – whether it was fair for RBS to use the compensation to reduce his outstanding debt under the right of set-off.

RBS offered Mr B compensation, and it worked this out to be around £5,400. So this is a debt owed to him, by RBS and connected to his loan account. But Mr B also owed RBS around £15,200 for what he'd borrowed and never repaid. As both parties owed each other money related to the same loan account it seems fair that one amount should be set against the other.

There are scenarios where we consider that it would be unfair for a business to apply the right of 'set-off', and Mr B feels that this should be considered in his instance. Mr B feels he has higher priority debts and it should be up to him to decide how best to use the compensation.

We do have to consider and decide upon what may be a priority or more pressing debt and to do this we look at all the information provided in each particular case. So, for example, if court action is being taken against someone for a utility debt or repossession proceedings have been commenced then we may consider this to be a priority or more pressing debt.

Mr B has provided me with detail of his current circumstances and reasoning as to why he feels he should receive the compensation directly. Mr B has said that if the money was paid directly to him, he could use it to clear some other debts and that may place him in a position to re-mortgage and allow him to consolidate all his debt.

I want to assure Mr B that I've given what he's said a lot of thought. Mr B is in a difficult situation. But I have to be fair to both parties. Mr B owes RBS, and I don't think it would be fair if RBS were to pay Mr B directly, with Mr B then paying other debts on other loans – and not RBS's loan. RBS has reduced what Mr B owes it and I think it was fair for RBS to do so.

Mr B recently told us of a family member needing treatment soon, and the money would be of use to help with recovery and ongoing immediate care. Again, I sympathise with the position Mr B is currently in. But, for the reasons, given above I still think it was fair for RBS to use the compensation to reduce Mr B outstanding debt. Mr B had the use of the loan, and hasn't repaid it. RBS reducing what it is owed seems fair to me in this case.

Mr B has mentioned that in other complaints, ombudsmen have directed businesses to pay consumers directly – and he considers the circumstances are similar to his. Mr B feels this is contradictory and unfair. I can see why, on the face of it, that it may seem to Mr B to be the case. But I would like to assure Mr B that we apply fairness in all cases.

We decide each case on its own merits. And the ombudsman looks at the individual's circumstances on each case. So a consumer's situation is fully considered in every case.

I have done so on Mr B's case, and after taking everything into consideration and all of Mr B's submissions, I think RBS correctly applied its right to set-off the amount owed to Mr B against what Mr B owed RBS.

I also consider that the offer RBS made of £75 for its mistake in incorrectly texting Mr B is fair.

my final decision

For the reasons set out above, I don't uphold Mr B's complaint. I think it was fair for The Royal Bank of Scotland Plc to use the compensation it owed Mr B to reduce his outstanding debt.

The Royal Bank of Scotland Plc's should pay Mr B £75 for the level of service he received if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 March 2017

Matthew Horner
ombudsman