complaint

Mrs M doesn't think it's fair for The Royal Bank of Scotland Plc ("RBS") to use some of her payment protection insurance ("PPI") compensation to reduce a debt from which she was discharged when her protected trust deed came to an end.

background

In 2018 RBS wrote to Mrs M offering to repay some of the commission and profit share it had received on the PPI policy it had sold Mrs M alongside a credit card. It offered to repay anything it had received that was more than 50% of the premiums Mrs M paid. The amount offered was £2,612.90 (later increased to £2,616.44).

Mrs M accepted RBS' offer.

However, in 2011, Mrs M had granted a trust deed – which became a 'protected trust deed' – for her creditors.

A protected trust deed is an alternative to bankruptcy (which is called sequestration in Scotland). It is a legally binding agreement between a consumer and his/her creditors, which is administered by a trustee.

Mrs M was subsequently discharged from her trust deed in 2014.

RBS used the compensation to reduce outstanding monies that it says Mrs M hadn't fully repaid on her credit card debt despite being discharged from her protected trust deed.

Mrs M, unhappy she hadn't received the compensation, brought her complaint to our service.

Mrs M says it is unfair for RBS to use the PPI compensation to reduce a debt from which she has been discharged. Mrs M says the compensation should be paid directly to her. She had kept to the arrangement of the trust deed and RBS had agreed with those terms.

Our adjudicator considered the complaint. She thought RBS had acted fairly in using the compensation to reduce the credit card debt that was left unpaid despite Mrs M being discharged from her trust deed.

Mrs M disagreed with our adjudicator's view. As the matter hasn't been resolved, it's been passed to me for a final decision.

my findings

Before I explain my findings, I would like to explain where our service's powers come from.

We were created by the Financial Services and Markets Act 2000 ("FSMA"). This Act also created what's now called the Financial Conduct Authority ("FCA").

Section 225 of FSMA explains that we're here to resolve disputes '*quickly and with minimum formality*'. And section 228 says a '*complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case*.'

Alongside FSMA, the FCA sets out, in its handbook, some rules for us to follow. These rules are known as the DISP rules – and they can be found online.

DISP 3.6.1 R repeats section 228 of FSMA. DISP 3.6.4 R adds that, when considering what is fair and reasonable, an ombudsman will take into account:

> *"(1) relevant:*
>
> *(a) law and regulations;*
> *(b) regulators' rules, guidance and standards;*
> *(c) codes of practice; and*
>
> *(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time."*

It has already been agreed that Mrs M is owed compensation by RBS for the high level of commission and profit share it had received from her PPI premiums.

All that is left for me to decide is whether it's fair and reasonable for RBS to use the compensation to reduce the outstanding amount that Mrs M says was written off after she was discharged from her protected trust deed.

Mrs M says as she was discharged from her protected trust deed all of the compensation should be paid directly to her. She also said she had been compensated directly by two other businesses and didn't see why RBS should be any different.

RBS says it has the right to offset the compensation against the credit card debt that hasn't been fully repaid.

Is it fair for RBS to use the PPI compensation to reduce an outstanding amount owed – despite Mrs M being discharged from their protected trust deed?

There have been some court cases about to whom PPI compensation should be paid when a consumer has been 'discharged' from a 'protected trust deed'.

I'll summarise the relevant court cases.

In July 2018, the Supreme Court issued a judgment looking at what should happen to PPI compensation after a protected trust deed completed. The court case was *Dooneen Ltd (t/a McGinness Associates) v Mond* [2018] UKSC 54.

In that case, the Supreme Court said the PPI compensation should not be paid to the trustee for the benefit of the creditors and should be paid to the consumer.

Another case that is also relevant is *Donnelly v Royal Bank of Scotland Plc* [2017] SAC (Civ) 1.

In *Donnelly*, the court said RBS couldn't use the consumer's PPI compensation to reduce a debt from which they were 'discharged' when the trust deed came to an end. However, this has been appealed by RBS – so the outcome may change.

Above, I've explained I must take into account the relevant law when deciding what I think is fair and reasonable in all the circumstances of the case. But I'm not bound to follow it. And if I decide to depart from it, I must say so and explain why.

In this case, I am aware of, and have taken into account, the relevant law. But, and importantly, within my role I must also apply an over-arching test of what's '*fair and reasonable'* in the particular circumstances of Mrs M's complaint – as required of me through FSMA Section 228 and the FCA's DISP rules.

Having done so, I think it's fair for RBS to use the compensation to reduce Mrs M's debt which she didn't fully repay. I'll explain why.

RBS has provided evidence to show that when the debt was written off it amounted to £6,681.60 of which £2,512.22 was paid off via the trust deed. This left a balance of £4,169.38. This is money that Mrs M wouldn't ever have had to repay to RBS.

The fact that Mrs M entered into a protected trust deed, and was discharged from her debt when her trust deed came to an end doesn't, in my opinion, make a difference to what is fair.

I think it would be unfair to tell RBS to pay the PPI compensation to Mrs M, when Mrs M wouldn't have had to pay back the thousands of pounds she borrowed.

So it follows that I think it's fair for RBS to use the PPI compensation to reduce the debt that was left unpaid and that Mrs M wouldn't otherwise ever have had to repay.

my final decision

For the reasons I've explained above, I think it's fair for The Royal Bank of Scotland Plc to use Mrs M's PPI unfair commission compensation to reduce the monies owed and left unpaid when Mrs M's trust deed came to an end.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 25 November 2019.

Catherine Langley
ombudsman