

complaint

Ms Z has complained about the way The Royal Bank of Scotland Plc ('RBS') wants to use PPI compensation it has agreed to pay her after she complained about the mis-sale of payment protection insurance ('PPI').

background

Ms Z took out a credit card with RBS in September 2006 and also took out PPI alongside it. The PPI policy ended in July 2007. Ms Z is in arrears on her credit card account.

Ms Z complained to RBS that she'd been mis-sold PPI. RBS agreed and offered her £1,139.57 in compensation. But it said that it would use the compensation to reduce what she owes.

Ms Z hasn't yet accepted this offer.

Ms Z has said that she has other debts which she considers to be a higher priority and so she'd like RBS to pay the PPI compensation directly to her.

Our adjudicator looked at the complaint and thought it was fair for RBS to use the compensation to reduce Ms Z's debt. Ms Z didn't agree and asked for the complaint to be seen by an ombudsman. So the complaint has 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 Ms Z will be disappointed but I think it's fair for RBS to use her PPI compensation it owes her to reduce her credit card account debt. I'll explain why.

RBS has given us evidence to show that Ms Z's credit card account is in arrears. This debt still exists – because it hasn't been paid back. It is also my understanding Ms Z has been making monthly repayments of £1 towards this debt.

There is in law what is called the equitable right to set off which allows people 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 this right to 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 Ms Z's outstanding debt on her credit card account.

The PPI sold to Ms Z was directly connected to her credit card. Using the right of set-off I have outlined above, I am satisfied the PPI compensation and the credit card debt are closely connected. They are both for the same account Ms Z 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.

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.

Ms Z has given us evidence to give us some idea about her financial position towards the end of 2016.

We asked Ms Z again to provide anything she wanted to before writing this final decision – in case her circumstances had changed or worsened - but she didn't respond. So I have to go off the information I already have.

I understand that any debt isn't nice and I do have sympathy for the struggles Ms Z has had since she's brought her complaint to this service.

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 off-set 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 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.

Ms Z did tell us that her outgoings were more than her incomings. But, unfortunately, the information she's provided isn't enough for me to fairly say that RBS should pay her the PPI compensation directly instead of setting it off.

I want to assure Ms Z that I've given what she's said and what she's provided a lot of thought. Ms Z is in a difficult situation. But I have to be fair to both parties. Ms Z owes RBS, and I don't think it would be fair if RBS were to pay Ms Z directly, with Ms Z then paying off other debts – and not the debt she has with RBS. RBS wants to reduce what Ms Z owes it and I think it is fair for RBS to do so.

my final decision

For the reasons set out above, I think it's fair for The Royal Bank of Scotland Plc to use Ms Z's PPI compensation to reduce the debt still owed on her credit card account.

At the time of writing this decision, Ms Z hasn't accepted the offer. It is up to her whether or not she does this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Z to accept or reject my decision before 8 September 2017.

Martin Purcell
ombudsman