

complaint

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

background

I issued my provisional decision on 11 October 2019. A copy of my provisional decision is attached and forms part of my final decision.

My provisional decision sets out the background to this complaint. It explains why I thought it was fair for RBS to use Mrs P's PPI compensation to reduce the amount she owed and didn't repay when her trust deed came to an end.

Neither Mrs P nor RBS had anything to add to my provisional 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.

As neither party had any further comments or evidence they wished to provide following my provisional decision, I see no reason to change my mind about the conclusions I reached in it. I still think it's fair for RBS to use the PPI compensation to reduce the amount Mrs P owed and didn't repay when her trust deed came to an end.

my final decision

For the reasons I've explained above and in my provisional decision, I think it's fair for The Royal Bank of Scotland Plc to use Mrs P's compensation for the mis-sold PPI to reduce the amount she owed and didn't repay when her trust deed came to an end.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 21 December 2019.

Simon Furse
ombudsman

copy of provisional decision

complaint

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

background

RBS sold Mrs P a PPI policy in 2004 to protect the repayments on a credit card she'd taken out. Mrs P complained to RBS that the policy had been mis-sold to her. RBS upheld her complaint. It offered to refund the PPI premiums and the extra interest and charges paid as a result of this mis-sale, together with simple interest to compensate her for the time she'd been out of pocket. The total amount offered was £2,327.78.

However, in 2008, Mrs P had granted a trust deed - which became a protected trust deed - for her creditors. This is an alternative in Scotland to bankruptcy (called sequestration there). It is a legally-binding agreement between a consumer and their creditors, which is administered by a trustee.

When the protected trust deed started, RBS says Mrs P had an agreed debt on her credit card of £6741.48. It says it received dividends totalling £1,812.49 by the time the trust deed ended in 2015. And it says a refund of interest of £4.69 was also made. This meant that the amount of £4,924.30 was left unrecovered then.

RBS says that, following acceptance by Mrs P of its PPI mis-sale compensation offer, it used this in partial payment of the outstanding amount it hadn't fully recovered when Mrs P's protected trust deed ended in 2015. But Mrs P doesn't think that the compensation she's been offered for the mis-sale of her credit card PPI should be used in this way. She thinks that, as her protected trust deed has now ended, she doesn't still owe any money to RBS. And so she thinks the PPI compensation should be paid directly to her.

Our adjudicator didn't think that Mrs P's complaint should be upheld. She thought that it was fair in these circumstances for RBS to use the compensation offer partially to offset the credit card debt to it which was still unpaid when the protected trust deed was ended. Mrs P disagreed with the adjudicator's view, so the case has been passed to me.

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.

When considering what is, in my opinion, fair and reasonable, I'm required by DISP 3.6.4 R of the Financial Conduct Authority ("FCA") Handbook to 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.'

Where the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances.

As RBS has upheld Mrs P's PPI mis-sale complaint, in this provisional decision I've just looked at whether what it's done to put things right is fair and reasonable. So what I need to decide is whether it's fair and reasonable for RBS to use Mrs P's PPI compensation offers to reduce the much higher amount of debt which she wasn't required to repay to it after her protected trust deed was closed.

And in this case the relevant law I need to take account of is Scots law. In recent years there've been a number of cases looking at what happens to PPI compensation after a trust deed has come to an end.

In *Dooneen Ltd v Mond* [2018] UKSC 54, the Supreme Court considered the effect of a discharge following a final distribution by the trustee. In that case, the discharge was held to terminate the trust which meant that any unrealised assets were returned to the debtor – including the PPI compensation that no one had known about at the time.

In *Donnelly v The Royal Bank of Scotland PLC* [2017] SAC (Civ) 1, the Sheriff Appeal Court considered whether RBS could offset PPI compensation against the amount that hadn't been repaid when the trust deed came to an end. The terms of the trust deed in this case meant RBS had, in effect, agreed that the debt would be extinguished – and it couldn't later revive the debt to offset the PPI compensation (I understand RBS has appealed this decision, so the outcome may change).

So I accept that, unless and until the Inner House reverses the decision of the Sheriff Appeal Court, and on the assumption that the relevant terms of the trust deed in *Donnelly* are essentially the same as those in this case, then RBS could not, in court, successfully argue for set-off in this case.

But I must apply an over-arching test of what's fair and reasonable in the particular circumstances of Mrs P's complaint. And I simply don't think it would be fair to tell RBS to pay Mrs P's PPI compensation directly to her when she borrowed a great deal more money from RBS which won't ever now be repaid. The fact that Mrs P's protected trust deed had come to an end before this offer of PPI compensation was made doesn't, in my opinion, make a difference to what is fair and reasonable in the circumstances here. I don't think anyone would think it fair to require RBS to repay the PPI compensation directly to Mrs P when she doesn't now need to pay back to RBS a much bigger amount which she borrowed. As her PPI premiums were charged directly to her credit card account, to do so would, in effect, mean that RBS was paying her back money that it had never actually received from her in the first place.

So it follows from what I've said that I think it's fair that RBS used the PPI compensation it offered to Mrs P to reduce the outstanding debt on her credit card, which won't now ever be repaid to RBS following the closure of her protected trust deed.

Finally, I've considered whether Mrs P's complaint should be dismissed by this service without considering its merits. This is on the basis that the PPI compensation offer RBS made to her was on the basis of a "*full and final settlement*". And it appears that Mrs P signed to accept this offer in June 2018.

But I think that it's most likely that Mrs P's acceptance of this offer would have been on the basis that she thought she was entitled to have this compensation paid directly to her, because her former debt had been extinguished when the trust deed was completed. Given the uncertainty about the legal position regarding pre-existing debts after a trust deed had ended, I don't think RBS's offers made its position sufficiently clear. And so I don't think it would be appropriate to dismiss the case on that basis.

my provisional decision

For the reasons I've given, I don't currently think that Mrs P's complaint should be upheld. I'm minded to decide that it was fair for The Royal Bank of Scotland Plc to use Mrs P's compensation for the PPI

policy it mis-sold to her to reduce the amount she owed and didn't repay when her trust deed came to an end. So based on what I've seen so far I don't plan to make a further award.

Simon Furse
ombudsman