

complaint

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

background

I issued my provisional decision on 22 August 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 Mr M's PPI compensation to reduce the amount he owed and didn't repay when his trust deed came to an end.

Mr M didn't provide any further comments or evidence to me following my provisional decision.

RBS responded saying that it had carried out a further review of the amount against which it intended to apply set-off. As a result of this review, it now says that this amount is £11,392.99. This figure takes account of dividends received prior to completion of the trust deed and a previous payment by Mr M which had reduced the outstanding balance. And RBS says that, once acceptance of its offer is received, it will update it for the additional interest which has accrued since it was made and then set it off against the £11,392.99.

my findings

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

Although RBS has provided me with an updated amount against which it says it intends to apply set-off, this doesn't make a difference to the outcome I said I was intending to reach in my provisional decision. I say this because it is clear that the amount RBS intends to apply set-off against is still significantly higher than the compensation it's offered.

So it follows that I think it's fair for RBS to use the PPI compensation to reduce the amount Mr M owed and didn't repay when his 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 Mr M's compensation for the mis-sold PPI to reduce the amount he owed and didn't repay when his trust deed came to an end.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 November 2019.

Simon Furse
ombudsman

copy of my provisional decision

complaint

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

background

RBS sold Mr M a PPI policy to protect the repayments on an overdraft account he had with it. Mr M complained to RBS that the policy had been mis-sold to him. RBS upheld his complaint. It offered to refund the PPI premiums and the extra interest on these that Mr M had paid to date, together with simple interest to compensate him for the time he'd been out of pocket.

However, in 2005, Mr M had granted a trust deed - which became a protected trust deed - for his 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, Mr M had agreed debts to RBS totalling £15,956.90, of which £9980.33 related to his overdraft account. And RBS has confirmed that it wrote off £13,883.92 of debt following completion of the trust deed. So a substantial amount of this debt was left unrecovered from Mr M.

RBS says it wants to use the PPI mis-sale compensation it's offered to Mr M as partial payment of the monies it hadn't fully recovered when Mr M's protected trust deed ended in 2009. But Mr M doesn't think that the PPI compensation he's been offered should be used in this way. He says that, as the protected trust deed has now ended, he doesn't still owe any money to RBS. And so he thinks the PPI compensation should be paid directly to him.

Our adjudicator didn't think that Mr M's complaint should be upheld. He thought that it was fair in these circumstances for RBS to use the compensation offer partially to offset the debts to it which were still unpaid when the protected trust deed was ended. Mr M 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 Mr M'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 Mr M's PPI compensation offer to reduce the much higher amount of debt which he wasn't required to repay back to it (and was written off by RBS) after his 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 Mr M's complaint. And I simply don't think it would be fair to tell RBS to pay Mr M's PPI compensation directly to him when he borrowed a great deal more money from RBS - including on his overdraft account – which won't ever now be repaid. The fact that Mr M'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 Mr M when he doesn't now need to pay back to RBS a much bigger amount which he borrowed - the largest part of this being on the overdraft to which his mis-sold PPI policy was attached.

So it follows from what I've said that I think it's fair for RBS to use the PPI compensation it's offered to reduce the outstanding debt which was written off by RBS following the closure of his protected trust deed.

Finally, I note that RBS has argued that the complaint by Mr M, which is the subject of this provisional decision, should be dismissed by this service without considering its merits. This is on the grounds that the offer it has made to him was on the basis of a "*full and final settlement*".

I've considered the point RBS has made. But I'm not aware that Mr M has formally accepted this offer. And even if he has done so, I think it would have been on the basis that he thought he was entitled to have the compensation paid directly to him, because his former debts 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 offer 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 Mr M's complaint should be upheld. I'm minded to decide that it's fair for The Royal Bank of Scotland Plc to use Mr M's compensation for the mis-sold PPI to reduce the amount he owed and didn't repay when his 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