complaint

Mr A’s complaint is about how The Royal Bank of Scotland Plc (RBS) has used the compensation it offered for three mis-sold payment protection insurance (PPI) policies. Mr A wants RBS to pay all the compensation directly to him.

background

Mr A originally complained to RBS about the mis-sale of a PPI policy he took out with a loan in 2003. When RBS sent its reply it told Mr A it said there were four successive loans and he had bought three PPI policies with the first three loans.

RBS wrote four letters to Mr A offering goodwill payments to settle his complaint. But as part of its offer RBS wanted to use the compensation from the PPI policies to set against debts it said he had with the bank.

Mr A was unhappy with the information RBS gave him showing how it had reached it compensation figures and how it was refunding the compensation. So through a third party he brought his complaint to this service.

Our adjudicator said they didn’t agree with how RBS was paying the compensation and said it should all be paid directly to Mr A. RBS disagreed and asked an ombudsman to consider the complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

RBS has offered to settle Mr A’s complaints about the mis-sale of the policies. So I will not address the issue of how the PPI policies came to be sold to Mr A.

Having carefully considered the issues I’m upholding Mr A’s complaint.

When Mr A took out his first loan, the last four digits of its reference being 9050, he bought a PPI policy paid for by a single premium added to the loan. Mr A then settled this loan with the funds received from a second loan, reference 3859. Again with the second loan Mr A bought a PPI policy. Mr A settled loan 3859 with the funds from another loan, 4256 and he bought another new PPI policy with this third loan.

Mr A then took out a fourth loan, 0293 and settled loan 4256 from the money he borrowed. With this fourth loan Mr A did not buy a PPI policy.

Each PPI policy was paid for by a single amount that was added to the loan. So every time Mr A took out a new loan, some of the money he borrowed was used to pay for the PPI that had been added to the previous loan, and had to be cleared each time he settled the previous loan.

Mr A paid off all his loans in full, except the last one which has a debt on it. This was the one he took out without buying a PPI policy.

RBS paid directly to Mr A the amount it calculated as the 8% simple interest to compensate him for being out of pocket. It calculated the premiums and interest refund (redress) to be £6552.98 for all the policies. RBS has said it has used the compensation as follows:

- RBS calculated that £3,333.54 of the last loan was for PPI premiums and interest, carried forward from earlier loans. It has used this amount of the redress to pay towards the balance outstanding on this last loan.

- RBS has also used £2,451.97 of the £6552.98 redress to repay the arrears on Mr A's current account.

- RBS paid the remaining balance of £767.47 to Mr A by cheque.

right of set off

RBS has told us it has used the PPI compensation to set against debts Mr A had with the bank as it has a *"right of set off". RBS says:*

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We do not accept your or the customer's assertion that because the premium refund relates to earlier loans (we have already established that these four loans are in a chain of refinance and so contain the outstanding balance from the previous loan including its used PPI premium element)and the refund was made to a later loan account, or that any surplus cannot be used to reduce the current account arrears. As the servicing account for the loan, the current account debt is in also in part due to the original loans and all are inextricably linked by this close association."

The equitable right of set-off in law allows a person 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.

This is different to the "banker's right of set off" which is the right a bank has to transfer funds from a consumer's account which is in credit to a consumer's account which is in debt. The "banker's right of set off" can only be used by a bank where the consumer holds both accounts in question in the same capacity (for example, it couldn't use its right of set-off if the consumer held one account in their sole name, and another in joint names). And it can only apply the "banker's right of set off" when a debt is due and payable. As PPI redress is not an "account", but rather an amount of compensation which has resulted from the mis-sale of a product, I am not persuaded that the "banker's right of set off" applies here.

Going back to the equitable right to set-off, for this 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 unjust not to allow 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 Mr A's outstanding debt on the last loan and the debt on his current account.

Mr A's current account

I have concerns that RBS didn't clearly inform Mr A of its intention to exercise its right of set-off in the offers it made to him and use some of the compensation to clear a debt on his current account.

I've carefully read the letters RBS sent to Mr A for each loan with the acceptance forms. Each letter was several pages long and contained details of how the compensation was calculated. Halfway through the second page in each letter is the following paragraph:

> *"To accept my offer, all you need to do is sign and return the declaration at the end of this letter. On receipt we will arrange for payment to be made, subject to clearance of any arrears or indebtedness you may have with the Group."*

I've also read the wording on the acceptance form which says:

> *"I understand that the offer will take into account any arrears on my account. The remaining balance, if any, will then be paid to my Royal Bank of Scotland current account, or by cheque if no account remains open."*

The covering letter saying that debts *"with the group*" will be cleared isn't in a prominent part of the letter. It doesn't specifically mention or make clear that part of the compensation would be used to set against the debt on Mr A's current account.

In my view Mr A would be more likely to carefully read the statement on the actual acceptance form. This statement only mentions that the redress would be used to *clear "any arrears on my account".* In my view this refers only to arrears on Mr A's loan account which the letter referred to. The first three loans had been cleared so had no arrears.

The statement doesn't specifically draw Mr A's attention to RBS's intention to use some of the compensation to reduce the outstanding debt on his current account.

I note that Mr A's current account was in arrears and he did not have access to it. So it seems likely to me that Mr A would have regarded this account as being closed to him, as he had no access to any funds that were deposited there. I think if Mr A had been given sufficiently clear information to allow him to appreciate that part of the compensation would be used to reduce the current account debt, he would not have signed the settlement forms.

So overall I find that RBS didn't make it sufficiently clear to Mr A that it intended to use part of the compensation to reduce the outstanding debt on his current account.

Looking at the right of set off RBS has put forward, I have seen no evidence that Mr A's current account was used in any way other than as a normal current account. Mr A made many payments from this account, not only the payments to pay his loans. The current account was not set up *exclusively* to make the payments on Mr A's loans.

I'm not satisfied there is a close connection between the compensation for the mis-sold PPI and the outstanding debt on Mr A's current account. The compensation for each PPI policy arises from shortcomings in the way each policy was sold. The arrears on Mr A's current account flow from entirely different circumstances.

Given these facts I am not satisfied the compensation related to the PPI and the debt on the current account are sufficiently *closely connected* for it to be fair and reasonable for the PPI compensation to be offset against the debt on Mr A's current account.

So RBS should pay to Mr A the £2,451.97 it retained to set off against Mr A's current account. It should also calculate a further 8% simple interest to take account of the period from when it paid Mr A the original 8% compensation to the date of settlement. This is because Mr A has still been out of pocket for this amount until it is repaid to him.

Mr A's final loan - 0293

The first three loans taken out by Mr A were paid off in full every time he took out a new loan. So there were no arrears on those loans. Each PPI policy was bought separately with each of the first three loans. So each policy was closely connected with the loan alongside which it was bought.

When Mr A took out his final loan he did not buy a PPI policy. Applying the right of set off that I have already outlined, I am not satisfied the last loan, 0293 was closely associated with any of the earlier PPI policies. Each policy was associated with the loan alongside which it was bought. But I am not satisfied that the compensation for the mis-sale of the three policies sold to Mr A are closely connected with the final loan. So I do not think it fair that RBS uses the compensation for the PPI on the earlier loans is used to reduce the debt on this separate loan.

Mr A had no arrears on the first three loan accounts. So all compensation due for the PPI sold to him bought with these loans should be paid to him direct.

RBS should pay to Mr A the £3333.54 it retained to set off against the last loan, 0293. It should also calculate a further 8% simple interest, to take account of the period from when it paid the original 8% compensation to the date of settlement. This is to compensate Mr A for still being out of pocket for this amount.

distress and inconvenience

Mr A has requested an additional payment to provide compensation for the costs he has incurred in pursuing this matter. Mr A instructed a third party to represent him. He has said that if he had not done this RBS would have ignored his requests for information. I also note he said that until the complaint was brought to this service RBS did not provide clear information to Mr A.

Mr A chose to use a third party to bring his complaint, which was his right and totally his choice. But as consumers do not need to be represented to bring a complaint through this service, I am not making any award towards for the costs incurred by Mr A in using a third party.

summary

In summary I am not satisfied there is a close association between Mr A's current account or the final loan in the chain and any of the PPI bought with loans ending 9050, 3859 and 4256. So RBS should not use the right of set off for this compensation as it has done.

RBS must pay to Mr A the compensation it has retained to use to set off against debts on his current account and his fourth loan. It should recalculate the 8% simple interest for the amount retained to be used to set off to the date of settlement as Mr A has been out of pocket of this amount to that date. RBS should pay direct to Mr A all the compensation due.

I make no further award for distress and inconvenience against RBS.

my final decision

For the reasons set The Royal Bank of Scotland PLC must pay directly to Mr A all compensation due for the mis-sale of the three PPI policies.

Christine Fraser
ombudsman