

complaint

Miss S's complaint is about how The Royal Bank of Scotland Plc (RBS) used the compensation it offered to settle her complaint about mis-sale payment protection insurance (PPI).

background

Miss S complained to RBS about PPI sold to her with two loans. RBS offered to settle the complaint but used the compensation to set against a debt Miss S owed the bank.

Miss S had entered into a trust deed for bankruptcy for her debts. RBS said even though the trust deed had ended, because of the circumstances of a trust deed it could use this PPI compensation against a debt still unpaid after the trust deed had ended.

Miss S wasn't happy with this and wanted the compensation paid directly to her.

The full background to this complaint is set out in my provisional decision issued in February 2016. I've attached a copy of that provisional decision and it forms part of this final decision.

my findings

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

I explained in my provisional decision why I thought it was fair for RBS to set the compensation against the debt that was still left after the trust deed ended. Both parties have confirmed they received the provisional decision.

As I haven't received any further information or evidence from either party I see no reason to change any of my findings. I confirm the decision I reached as set out in my provisional decision which is attached and forms part of this final decision.

my final decision

My final decision is that The Royal Bank of Scotland Plc can use the compensation due to Miss S to set off against what is left of her debt after the end of her trust deed. Under the rules of the Financial Ombudsman Service, I am required to ask Miss S to accept or reject my decision before 3 May 2016.

Christine Fraser
ombudsman

Copy of Provisional Decision

complaint

Miss S is unhappy with how The Royal Bank of Scotland Plc (RBS) has used the compensation it offered to settle her complaint about the mis-sale of payment protection insurance (PPI).

background

Miss S complained about PPI linked to two loans she took out with RBS. RBS agreed to settle her complaint but said it had used the compensation to set against a debt Miss S owed to the bank. Miss S wasn't happy with how the compensation was used.

Our adjudicator said because the debt Miss S owed was not related to the loans which the PPI was taken out with, it wasn't fair that the bank should use the compensation against the debt.

RBS has recently reviewed its general approach to setting off PPI compensation against unrelated debts. But in this particular case, because Miss S had entered a trust deed for bankruptcy for her debts, RBS says the situation is different and any money owed for the PPI can be used against the debts still unpaid after the trust deed had ended.

As Miss S wants the payment made to her directly I've been asked to look at the complaint and make a decision as to what is fair.

my provisional findings

I've 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 Miss S' complaint so I'm not looking at how the PPI came to be sold to Miss S. In this decision I am only looking at the issues about the PPI compensation and if RBS has acted fairly to put things right.

Miss S took out a chain of three loans with RBS and with the first two she bought PPI. A few months after Miss S took out the last loan in April 2008 she entered a trust deed as she had financial difficulties.

When Miss S took out the PPI with her first two loans the premiums were added to the loans. When she paid off the first loan with the second she would've borrowed a little more than she needed to as part of the PPI was still in the loan. The same happened when Miss S paid off the second loan with the third one, although she didn't take out a new PPI policy with the third loan.

RBS has said the compensation due was around £6,000 this included the PPI for two loans and also 8% simple interest for being out of pocket. The total of the costs for the PPI was around £4,500.

When Miss S got into financial difficulties in 2008 and went bankrupt she entered a trust deed. This means that all her debts are put together and also all her assets. The assets are

used to pay part of the debt owed to each creditor. But it still means that some of the debt isn't paid.

RBS want to use the PPI compensation in this case to set against some of the debt that remained after the trust deed ended. Under the trust deed only part of the debt it was owed in total was settled. When a trust deed is entered into a business can't legally later take action against the consumer for any debts that were part of the trust deed. So the consumer is given protection from being pursued for a debt.

But if a consumer takes advantage of the protection offered by a legal trust deed it isn't fair that they should use that protection to prevent repayment of a remaining debt when an asset is identified.

Miss S didn't complain about the PPI mis-sale until after the trust deed was discharged in 2011. The debt RBS owes to her in compensation was an asset that existed before the trust deed as the PPI was sold before the trust deed was entered.

So in these circumstances it's fair that as Miss S can't be chased to repay any outstanding debt, but the money RBS owes Miss S for the PPI mis-sale which took place before the trust deed should be used to reduce what Miss S still owes the bank. The debt Miss S owes is in part formed by part of the PPI that was sold to her.

I can see from correspondence that RBS offered to settle Miss S's complaint about the mis-sold PPI on 22 June 2012. Then on 13 July 2012 wrote again explaining the situation about using the compensation to set off against the debt. So she was aware of the approach that RBS was taking.

RBS has recently told us that just over £1,400 was paid to the trustee of the deed in July 2012. This was for the simple interest on the costs of the PPI that Miss S had paid. Miss S has provided information that the trust deed was discharged in October 2011. So Miss S may want to contact her trustee to find out if, under the terms of the trust deed, she is entitled to any of this amount paid to the trustee in 2012.

my provisional decision

For the reasons set out I'm currently intending to say that The Royal Bank of Scotland Plc can use the compensation due to Miss S for the mis-sold PPI to set against what was left as a debt after the end of her trust deed.

This is subject to any further evidence or information sent by either party before the date I said at the start of this decision. I would also say that I intend to comply strictly with that date for any responses to be received.

Christine Fraser
ombudsman