

complaint

The Royal Bank of Scotland Plc ('RBS') has offered to refund some of the interest and fees it charged to Miss W's loan because it didn't meet its requirement under the Consumer Credit Act 1974 ('CCA'). However, it has used the refund to reduce a debt from which Miss W was discharged when her protected trust deed came to an end. Miss W doesn't think this is fair.

background

I issued my provisional decision on 17 February 2020. A copy of my provisional decision is attached and forms part of this final decision.

My provisional decision sets out the background to this complaint and explains why I don't think RBS needs to pay Miss W any money.

Miss W and RBS have both confirmed that they've received my provisional decision and say they have nothing to add.

my findings

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

As I haven't received any comments or evidence in reply to my provisional decision, I confirm the findings I made therein. My reasons remain the same.

my final decision

For the reasons I've explained above and in my provisional decision, I don't think The Royal Bank of Scotland Plc needs to pay Miss W any money. It doesn't need to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 4 April 2020.

Christopher Reeves
ombudsman

My provisional decision

complaint

The Royal Bank of Scotland Plc ('RBS') has offered to refund some of the interest and fees it charged to Miss W's loan because it didn't meet its requirement under the Consumer Credit Act 1974 ('CCA'). However, it has used the refund to reduce a debt from which Miss W was discharged when her protected trust deed came to an end. Miss W doesn't think this is fair.

background

In 2007, Miss W borrowed £32,151, including £7,151 to pay for a payment protection insurance ('PPI') policy. The loan term was supposed to be 84 months.

In 2011, Miss W granted a trust deed – which became a 'protected trust deed' – for her creditors. A protected trust deed is an alternative to bankruptcy (which is called sequestration in Scotland). It is a legally binding agreement between a consumer and her creditors, which is administered by a trustee. The consumer transfers her property to the trustee, who has the power to collect and realise assets, and distribute the estate among the creditors according to their respective rights and preferences. (Payments to creditors are usually called 'dividends'.) A trust deed will invariably include provisions relating to the discharge of the consumer from her debts, the restoration to her of any surplus, and the discharge of the trustee.

Miss W was discharged from her debts on 11 August 2016 and her trustee was discharged on 29 December 2016.

In September 2018, RBS wrote to Miss W to say it had reviewed its past compliance with the CCA. Specifically, it said it had checked to see whether it had sent her a compliant Notice of Sums in Arrears ('NOSIA') when she missed some loan payments in 2008. It hadn't – so it wasn't entitled to charge her any interest or fees between 17 November 2008 and 10 May 2017 (the period of non-compliance). It offered to refund the interest and fees charged to the loan during this period (£6,629.49) and used it to reduce monies owed and left unpaid when the trust deed came to an end.

Miss W doesn't think this is fair.

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 in all the circumstances of the case, 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.'

When 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.

Regrettably, the information provided by RBS about Miss W's accounts since 2011 is incomplete and, in places, inconsistent. However, I've summarised the available information below.

- RBS has provided a list of the last 15 transactions for Miss W's loan account. When she granted her trust deed, she owed £32,419.04.
- It looks like Miss W received some compensation in 2013 for some mis-sold PPI policies, which reduced the amount she owed by £20,256.36 to £12,162.68.
- In November 2016, there's a payment of £1,254.87, which reduced the amount Miss W owed to £10,907.81.
- RBS has sent us its internal records for Miss W, which show the actions taken by its staff after Miss W granted her trust deed. An entry from January 2017 says RBS received a 'final' dividend of £1,284.90.
- However, as it was supposed to be £0.0387 for every £1 owed, someone at RBS realised Miss W's trustee had calculated its dividend on its original claim, which was, according to a note added in September 2011, £33,194.93. After it used Miss W's PPI compensation to reduce the amount she owed, it submitted (or should have submitted) a revised claim for £12,162.68 and was therefore due £470.69 instead.
- In May 2017, RBS repaid the difference (£814.21) to Miss W's trustee.
- I understand Miss W had another debt with RBS, which may explain the discrepancy between her loan balance (£32,419.04) and the claim submitted (£33,194.93) and the discrepancy between the November payment (£1,254.87) and the dividend (£1,284.90). The ratio is the same. On balance, I think the November 2016 payment was a dividend payment.
- However, Miss W's loan balance wasn't subsequently amended to reflect the refund to the trustee. After the revised dividend payment of £470.69, Miss W owed £11,691.99 not £10,907.81.
- The final transaction on the list of transactions I've seen is described as a 'loan rebate', and it reduced the amount Miss W owed by £4,690.34. The amount owed and left unpaid when the trust deed came to an end was therefore £7,001.65.

Miss W has stressed that she's been discharged from all her debts and obligations – so RBS should pay her the refund.

RBS says it still has a 'right of set-off', which means it can use her refund to reduce any monies owed and left unpaid when her trust deed came to an end, even if she's been discharged from her debts.

I don't think the language of 'set-off' is particularly helpful in this case. Nor do I think it's necessary, in this case, to consider the effect of a trust deed's termination on the 'final distribution' of an estate.

I'll explain why.

RBS accepts that it should not have charged Miss W any interest or fees between 17 November 2008 and 10 May 2017. By doing so, it increased the amount she owed by £6,629.49. In other words, if it hadn't charged Miss W any interest or fees during this period, she'd have owed £6,629.49 less than she did when she granted her trust deed.

As I've explained above, when her trust deed came to an end, Miss W owed £7,001.65. It follows that if RBS hadn't charged any interest or fees to the loan during this period, she'd have still owed £372.16. Essentially, RBS increased a debt Miss W didn't fully repay.

As Miss W didn't pay any extra because of the interest and fees, I don't think RBS needs to pay her any money.

What it must do, and what it's done, is adjust the discharged debt so that it accurately reflects the amount Miss W would have owed if it hadn't charged any interest or fees during the period of non-compliance. As it's adjusting a debt rather than refunding money Miss W paid, I don't think it makes a difference whether Miss W has been discharged from the debt or not.

Finally, I accept that RBS received a larger dividend than it would have done if it hadn't charged Miss W any interest or fees during the period of non-compliance. After all, the dividend is a

percentage of the amount claimed. However, it is Miss W's other creditors who have lost out, not Miss W. Miss W's trustee was appointed to look after the interests of her creditors – and he's confirmed that he has no interest in this complaint. So I don't think I need to consider this point further.

my provisional decision

For the reasons I've explained above, I don't think The Royal Bank of Scotland Plc needs to pay Miss W any money.

So unless the comments and evidence I get by 17 March 2020 change my mind, I won't tell it to do anything.

Christopher Reeves
ombudsman