

complaint

Mr C has complained about the way The Royal Bank of Scotland Plc (RBS) tried to resolve a complaint about mis-selling a payment protection insurance (PPI) policy.

background

Mr C was the director of a limited company, which had a loan with RBS. Between 2002 and 2005, that loan had a PPI policy attached, which was paid for on a month by month basis.

In 2007 the loan was written off, with the limited company leaving £1,720.16 unpaid. The company later dissolved.

In 2016, Mr C complained about the sale of the PPI on his former company's behalf. RBS agreed that the policy had been mis-sold. But Mr C ran the business jointly with another director, who hadn't complained. So RBS only offered to give Mr C "his" half of the PPI refund, along with compensatory interest. That came to £202.67.

Mr C didn't accept that offer, and in 2017 he came to our service. But by that point, RBS had realised that the limited company had left a bigger debt unpaid to them than what they owed the company for mis-sold PPI. So RBS instead used the PPI refund to help reduce the £1,720.16 left outstanding on the same loan that the PPI had been there to protect.

Our adjudicator looked into what happened. She explained that where the bank was going to pay compensation to two joint parties, it was fair for them to split it half and half. And she also explained that it was fair for the bank to set off their PPI debt against the unpaid loan debt, given the PPI and the loan came from the exact same borrowing.

Mr C disagreed with our adjudicator. He said that the company was dissolved and the debt was written off, so he thought the debt no longer existed. He also said the matter was so long ago that it was too late for RBS to chase the debt. He put forward that the policy was there to protect him, so he should get the money from the refund. And he said that because RBS were wrong to sell the PPI, they shouldn't be allowed to claw any money back.

The complaint's been passed to me to make a decision.

my findings

Before discussing anything else, I think it's important for me to explain that Mr C isn't actually eligible to bring this complaint. The limited company in question has dissolved. And it was the limited company's PPI policy. There is no legal entity that exists anymore to complain.

Mr C has pointed out that he was a director at the time, and that the PPI policy was there to protect him. But it was the limited company's policy, paid for from the limited company's current account, to protect the limited company's business loan. In much the same way that Mr C can't be held personally liable for his former company's debts, he also can't claim personal ownership of the former company's PPI refund.

So Mr C was never due any money from RBS for this PPI policy. And this wasn't really a complaint that we should have considered in the first place, since it hasn't been brought by an eligible complainant. But given that we're now at such a late stage, and that both Mr C and RBS have put time and effort into arguing their case, I don't think it would be helpful to either side for me to dismiss the case without further comment. So I'll briefly talk through the issues here.

We need to bear in mind that the business loan was written off with over £1,700 outstanding. And that loan was the exact same borrowing that the PPI relates to. So putting all other issues aside, I think it's both fair and practical for RBS to use what they owed the company for the loan's PPI to reduce the larger debt that the company left unpaid to RBS, for the very same loan.

Mr C argued that RBS shouldn't be allowed to set off the PPI refund, as they'd mis-sold the PPI. Whilst I understand where Mr C's coming from, the limited company also broke its agreement by having use of loan funds, but then leaving part of the loan unpaid. Mr C also queried why RBS were profiting from the insurer. It may be worth explaining that the PPI refund comes from RBS itself – not the insurer. Because RBS sold the policy in the first place, they're the ones responsible for refunding it. So RBS haven't profited from the insurer. The compensation has been paid, effectively, from RBS to RBS. That's to account for the fact that a PPI refund was due to a company that no longer exists, and that the same company left a related debt unpaid.

As the debt was written off, Mr C said RBS shouldn't be able to claim money towards it. I appreciate what he's saying here, too. But written-off debts don't cease to exist – it just means the bank agrees not to chase the amount any more. And they didn't chase the loan here, they only set off an amount against it. It was Mr C who chased RBS for PPI money relating to the loan, though he understandably won't have known that he wasn't entitled to it.

Similarly, Mr C said that because it had been so many years since the loan closed, it doesn't exist anymore. Mr C is referring to "statute barred" debts. But a debt being "statute barred" just means that the bank can't take any formal action to chase it anymore, such as applying for a court judgement. Again, the debt continues to exist. So both for written-off debts and statute barred debts, the bank still has the right to set off.

So whilst I realise my decision will come as a disappointment to Mr C, I hope this helps both to explain why he wasn't supposed to get this PPI refund, and to shed some light on the surrounding issues.

my decision

For the reasons I've explained, I do not think that The Royal Bank of Scotland Plc need to pay this PPI refund directly to Mr C.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 18 November 2017.

Adam Charles
ombudsman