

## **complaint**

Miss D has complained about the way The Royal Bank of Scotland Plc ("RBS") has used the compensation it agreed to pay her after she complained about the mis-sale of payment protection insurance ("PPI") policies.

## **background**

Miss D took out PPI alongside eleven loans that she had with RBS between 1997 and 2006. In January 2007 Miss D entered into a protected trust deed as she wasn't able to pay all of her debts when they fell due. She was discharged from the protected trust deed in September 2013. The effect of this was that Miss D couldn't be chased by her creditors for the debts she listed in January 2007.

Miss D complained to RBS that she'd been mis-sold PPI and in February 2014 RBS made an offer to settle her complaint. It offered her compensation of £9,057.05. Miss D accepted the offer, but in March 2014 RBS wrote to her to say it was going to offset this against the £32,543.08 it said Miss D still owed.

Miss D says that RBS can't do this. She says the law in Scotland means that her debts were written off after she came out of the protected trust deed, so she should get paid directly. Miss D has also complained that she found it hard to speak with RBS about her complaint.

Our adjudicator looked at the complaint and thought what RBS had done was fair. But Miss D disagrees, so the complaint has been passed to me for a final decision.

## **my findings**

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

RBS says I can't look at Miss D's complaint because she's already accepted an offer. I don't agree. There's no rule that says the ombudsman service can't consider a complaint if the consumer has accepted an offer.

I think RBS means to say I should exercise my discretion not to consider Miss D's complaint because she's accepted an offer. The rules say I can do this if there are compelling reasons why it would be inappropriate to look at the complaint. In other words, I can dismiss a complaint if I think it's the right thing to do.

Miss D signed an acceptance form in February 2014. The form states:

*"I understand that the offer will take into consideration any arrears on my account. The remaining balance, if any, will then be paid into my [RBS] current account or by cheque if no account remains open. I am aware that it is possible for the account to remain in arrears if the offer is not sufficient to clear the full amount owing on my account "*

But it wasn't until over a month after Miss D signed this form that RBS wrote to her to say it was aware she was in a protected trust deed and it was going to use the compensation to reduce her debt. And I think that Miss D thought that she didn't have outstanding debt when she signed the form as she'd been discharged from her protected trust deed. So I think

Miss D also thought she was going to be paid directly. I have to look at whether it's fair for RBS to use the compensation in this way and there is a real issue to be considered. And I think it's helpful for Miss D to have an answer that deals with this issue.

RBS made an offer about PPI and Miss D isn't saying that the amount offered is wrong. It seems to me that all I've got to decide is whether or not it's fair for RBS to use the compensation to reduce the amount it says Miss D still owes.

Miss D has said that our adjudicator didn't take into account the difference between the law in Scotland and the law in England and Wales. When coming to my decision I have to take into account the law and I accept that the law may be different in Scotland to that in England and Wales. But ultimately I have to decide what I think is fair and reasonable, taking into account the law, good industry practice and the evidence.

I think it's fair for RBS to use the compensation in the way it's done and I'd like to explain why.

When Miss D entered into a protected trust deed, the debts she owed weren't cancelled. And they weren't cancelled when she was discharged in 2013 – but by law she couldn't be chased for the debts. The debt she has with RBS still exists and some of it related to PPI premiums (and interest) that Miss D never paid. So I think it's fair for RBS to use the compensation to reduce the debt, otherwise she'd be getting a refund of PPI premiums (and interest) she didn't actually pay.

I've also thought about when Miss D had PPI – it was before she entered into the protected trust deed. But at that point she shouldn't have had PPI on her loans, so she would've owed RBS something, but it would've been less. RBS has to put Miss D into the position she would've been in if she didn't have PPI. Having looked at what she owed her various creditors, I think she would've still entered into a protected trust deed as the PPI was only a small proportion of her overall debt. So she would've entered into the arrangement with a smaller debt and, at the end, RBS wouldn't have been able to chase this smaller debt. This is the position RBS has put Miss D in, so I think what it's done is fair.

Miss D has also complained that RBS didn't return her calls when she asked about her complaint. I can see that there was a period of a month between Miss D signing her acceptance form and RBS writing to her to explain it was going to use her compensation to reduce her debt. Miss D says that she had to call RBS on several occasions and it didn't return her calls. RBS has told us that it has apologised to her for this. Overall I don't think Miss D had to wait an unreasonable time for RBS to respond to her complaint and I think its apology is enough in this case.

**my final decision**

For the reasons I've set out above I think The Royal Bank of Scotland Plc's offer was fair and I don't direct it does anything further.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss D to accept or reject my decision before 14 September 2015.

Mark Hutchings  
**ombudsman**