

complaint

Mr A has complained about the way The Royal Bank of Scotland Plc (RBS) sorted out the overly-high commission they charged for a payment protection insurance (PPI) policy.

background

Between 2001 and 2009, Mr A had a PPI policy on his credit card.

In 2013, Mr A entered a sequestration, which included that credit card. His credit card debt was written off with a balance of £4,786.72 left unpaid. He was discharged from the sequestration in 2014.

In 2017, Mr A complained about the sale of his PPI policy. RBS didn't agree that the policy had been mis-sold as a whole, but did agree that they had charged him an unfair amount of commission without explaining the amount at the sale.

On 4 August 2017, RBS sent a letter explaining that any compensation offer they made would be offset against the credit card debt from the sequestration. In October 2017, RBS offered to refund the commission that was over 50% of the PPI premium, along with any associated interest and charges. That came to £1,188.55. They then offset that refund against the remaining credit card debt.

Mr A didn't think RBS should be able to do that, so he came to our service. Our adjudicator explained why she thought it was fair that RBS used their debt to Mr A to reduce his debt to them. Mr A disagreed, arguing that the case should be decided on pure legal grounds rather than what was fair. He sent in a number of arguments to explain why he didn't think RBS had the legal right to set off.

my findings

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

I've decided not to uphold Mr A's complaint – I'll explain why.

how we decide cases

Before anything else, it's worth me explaining that our service was set up by Parliament to resolve cases informally, on the basis of what's fair and reasonable. Of course, we take into account the relevant law, regulations and good industry practice to help us come to our conclusions. But the overarching principle is fairness.

I understand Mr A would like me to decide the case on pure legal grounds. But that's not what I'm here for. I will give a brief commentary on some of the key legal issues Mr A has raised, in the hope that it's helpful. But the crux of my decision is based on what's fair – which takes into account the law, but is not exclusively based on it. If Mr A still wants the case to be looked at on solely legal grounds, he is free to reject my decision and pursue RBS in court.

Mr A has sent in a number of legal articles and commentaries. I appreciate why he's done that, and I've read everything that Mr A's sent. But some of it isn't relevant. For instance, parts of what he's sent is actually about a different type of setting off, or is based on English rather than Scottish law, or involves a different type of insolvency (which, in fairness to Mr A, he's since acknowledged). So I won't comment on everything he's sent.

the legal issues

As I explained above, my decision is based on what's fair, rather than just on what the law says. So this section doesn't form the crux of the decision. But I thought it would be helpful to go over some of the more relevant issues that Mr A raised.

Mr A's trustee mentioned that there's nothing in the bankruptcy legislation about set-off, and this has led Mr A to question what basis set-off has in law. Like a lot of law, set-off in insolvency – or “the principle of balancing of accounts in bankruptcy” as it's often known in Scotland – is based in common law rather than explicitly written in legislation. I think that's what the trustee was referring to.

Mr A says his debt to RBS doesn't arise from the same capacity as their debt to him, as one was a credit card debt and the other arose from the commission on PPI. But “capacity” isn't about what *purpose* the debt was created for. It's about who the debts are between. In this case, both debts are between the same individual and the same public limited company, so they're in the same capacity.

Mr A says the commission and credit card debts aren't related. But the commission was charged on the exact same credit card account, in the same way as the rest of the card debt, during the same time period, under the same debtor-creditor relationship, between the same two parties. Indeed, when Mr A went bankrupt, some of his outstanding credit card debt was for PPI commission that was added to the balance and never paid off. So the credit card debt and the PPI commission debt are, in part, one and the same. And so I'm satisfied that the debts are closely related.

The trustee didn't have an interest in the PPI commission. Mr A says this means it passes to him, and he feels the trustee effectively turned down RBS' request to offset. But the reason the trustee wasn't interested in the amount was because it wasn't high enough to make it worth them re-opening the sequestration. That wasn't to do with setting off – the trustee didn't originally comment on the offset, though they've since clarified that “*the bank can use the PPI redress to offset against any arrears that the debtor has with them, even if they were included in the bankruptcy.*” I should also clarify that the trustee doesn't own Mr A's credit card debt in the way he's suggested. The debt is still with RBS. The trustee was just there to manage Mr A's bankrupt estate.

Mr A also brought up the laws around criminal fraud. But this decision is on a purely civil matter. As far as I'm aware, there's been no criminal investigation or conviction involving Mr A's PPI commission.

Lastly, Mr A made arguments around the statute of limitations and sending statements under the Consumer Credit Act. I'm afraid those aren't relevant as he was bankrupt and this debt was included in the bankruptcy – it's not an active account. He also sent a copy of another ombudsman's decision. But ombudsmen's decisions don't set a binding precedent – we look at each case on its individual merits. And that case was about a different type of set-off involving two distinct accounts, rather than the same credit card account.

what's fair and reasonable

While I know this will disappoint Mr A, I agree with our adjudicator that it's fair for RBS to set off their debt to him against his debt to them, and for much the same reasons. I'll explain.

RBS owe Mr A just under £1,200 for PPI commission they charged to his credit card. But Mr A left a debt of just under £4,800 unpaid on the same credit card, for amounts charged to it in the same way, under the same debtor-creditor relationship. And as our adjudicator explained, and Mr A agreed, his debt to RBS still exists even after it was written off. So it seems only fair – and practical – that one debt is used to reduce the other.

Further, as I mentioned above, some of this PPI commission was charged to Mr A's card but then written off in the sequestration. That means there's a chunk of the commission that Mr A never actually paid for – it was left on the unpaid balance. So it certainly wouldn't be fair for RBS to give him a "refund" of money that he never paid in the first place.

Another way to think about fairness is to look at a reverse situation. So imagine if RBS owed Mr A £4,800, while Mr A owed RBS £1,200 on the same account, and RBS went insolvent. In that case, I don't think Mr A would find it fair for RBS to expect him to pay them £1,200 and then to pay him nothing more, when they owed him around four times as much from the same account.

Mr A said he felt it was unfair that RBS were "profiting" from the PPI commission that they'd overcharged him for. While I understand what he's saying, the fact is that even after RBS have set off the commission against the unpaid credit card balance, they'll still be out of pocket for about £3,600. So I can't really say that RBS have profited overall.

Taking everything into account, I don't think I can fairly tell RBS to do anything more here.

my final decision

For the reasons I've explained, I don't uphold Mr A's complaint about The Royal Bank of Scotland Plc.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A to accept or reject my decision before 23 June 2018.

Adam Charles
ombudsman