

## **complaint**

Mr D is complaining that The Royal Bank of Scotland Plc (RBS) mis-sold him a payment protection insurance (PPI) policy. He's unhappy that it wants to use the compensation it's offering to pay to reduce a debt it says he still owes.

## **background**

Mr D took out six loans through RBS where he also took out PPI alongside them to protect his repayments. With each loan he borrowed more to pay for PPI and the cost was added to the loan. The first four loans were linked with one refinancing the others. The last loan in the chain was settled early in 2002. The fifth loan (loan five) was to run for seven years and was taken out in 2002. The sixth loan (loan six) was also to run for seven years and was taken out in 2004. Neither of these loans were settled early.

In November 2006 Mr D entered into a protected trust deed (PTD) as he wasn't able to pay all of his debts when they fell due. The outstanding balance on loan five and loan six were included in the PTD. Mr D also owed RBS money on an overdraft and this was also included in the PTD. The first four loans were already settled, so weren't included in the PTD. He was discharged from the PTD in August 2012, so he couldn't be chased by his creditors for the debts he listed when he entered into the PTD.

Mr D complained to RBS that he'd been mis-sold PPI and it made him an offer to settle his complaint. It offered him compensation of £26,567.94 in total for the six loans, but it said it would use this to reduce the amount of money it said Mr D still owed.

Mr D says that he should get paid this money directly. He says that, as he's come out of his PTD, his debts have been written off and he doesn't owe RBS anything. RBS says that, while he's been discharged from the PTD, he still owes it £43,192.90. And it says it can use the compensation to reduce this amount. So Mr D asked this Service to step in.

Two of our adjudicators looked at the complaint. Regrettably there was a misunderstanding and the first adjudicator told Mr D that RBS had agreed to pay him compensation for mis-selling PPI on the first four loans directly. He said that it had done so because he didn't owe anything on these loans. So it wasn't able to use the compensation to reduce the amount still owed following the PTD. But that wasn't right. RBS said that it hadn't offered this. And it maintained that it could use the compensation on all six loans to reduce the total amount he still owed.

A second adjudicator then looked at the complaint and agreed that RBS hadn't offered to pay the compensation for mis-selling PPI on the first four loans to Mr D directly. And he thought it was fair for RBS to use the compensation on all six loans to reduce Mr D's debt. Mr D disagreed and asked for an ombudsman to review the complaint.

## **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 has accepted that it mis-sold the PPI. So I haven't looked at how the policy was sold to Mr D. But RBS wants to use the amount it's offering in compensation to reduce an outstanding debt. This is called the "right of set off". In this decision, I've looked at whether I

think it's fair for RBS to use its right of set off in this case. I think it is and I'd like to explain why.

*is the amount RBS has offered in compensation fair?*

In a situation like this, I'd expect the bank to put someone in the position they'd be in if they hadn't taken out PPI. I'd expect RBS to work out the difference between what a consumer actually paid each month and what they would've paid if they hadn't taken out PPI with any of their loans. RBS then needs to add 8% simple interest per year on the extra paid from when they paid it to when it works out compensation.

When Mr D refinanced loans one, two and three he got a partial refund of the PPI premium which was used to reduce the outstanding balance of the loan before it was refinanced. But what Mr D actually paid towards PPI and the refund wasn't enough to cover the cost of the whole PPI premium. So some of the cost of the PPI premium was carried over to the next loan in the chain. This means Mr D was still paying for the PPI premiums sold with loans one, two and three in the later loans. So it needs to refund this too. RBS then needs to add 8% simple interest per year on these payments too from when he paid it to when he gets it back.

I've looked at how RBS has worked out compensation on all six loans and I think it's done this in the way I'd expect it to. And Mr D isn't saying that the amount offered is wrong. So I now need to think about whether RBS can use it to reduce the debt it says she still owes.

*can RBS use the compensation to reduce the amount it says he still owes?*

Mr D initially said that, given he was discharged from his PTD, RBS couldn't pursue him for any debt he had in 2006. He said that his debts were dissolved once he was discharged from his PTD. So he didn't think that RBS can use its "right of set off" to reduce the debt, because he didn't think the debt exists anymore. Further to this, he said that the first four loans were settled four years before he entered into the PTD. So, even if RBS is allowed to use its right of set off, he didn't think it can do so on the first four loans.

I've taken into account Mr D's comments, but I don't agree. When Mr D entered into a PTD, the debts he owed weren't cancelled. And they weren't cancelled when he was discharged in 2012 – but by law he couldn't be chased for the debts. The debts he had with RBS still exist and some of them related to PPI premiums (and interest) that Mr D never paid. So Mr D still owed RBS £43,192.90 when the PTD was discharged.

Mr D still owed money on loans five and six in 2006 and the outstanding debts were included in the PTD. And part of this included PPI. Mr D has now accepted that RBS can use the compensation its offering on loans five and six to reduce the outstanding debt. And I agree. Given that Mr D still owes RBS money for these loans, it's fair that RBS can use this compensation to reduce the debt.

So the only issue left to think about is whether RBS can use the compensation it's offering on the first four loans to reduce the debt. And Mr D still doesn't think it can do so. If a consumer enters into formal insolvency arrangements, as Mr D did here, all their outstanding debts are added up to work out what they owed and all the money they have is added up to work out what they can afford to pay. A business then gets part of what it's owed and it then can't chase a consumer for what's left.

I accept that the loans were paid off before Mr D entered into the PTD. But I still think it can use the compensation to reduce the debts. While RBS first offered compensation in 2012, it effectively owed him this money once it mis-sold the policy. So it owed him this compensation in 2006 when he first entered into the PTD. So what RBS has done is to put Mr D in the position as if the compensation was available in 2006 or as if he'd never been sold PPI. I think that's fair.

If Mr D hadn't taken PPI with these loans he would've paid less for them. He might've used this money saved to save more or borrow less. But if he'd saved it up (or been paid compensation earlier), when he entered into the PTD, this would've been used to reduce all of his debts – including what he owed to RBS. So, given this, I think it's fair for RBS to use all of the compensation against his debts now.

#### *summary*

I think the amount RBS has offered in compensation for mis-selling PPI on the six loans is fair (subject to it updating the 8% simple interest). Given that Mr D owes RBS more than it owes him in compensation, I think it's fair for RBS to use the total compensation for mis-selling PPI on all six loans to reduce his outstanding debt.

#### **my final decision**

For the reasons set out above I think The Royal Bank of Scotland Plc's offer is fair. If it hasn't already used the compensation to reduce the outstanding debt, The Royal Bank of Scotland Plc should update the offer and then use the money to reduce the debt. I don't direct it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 May 2016.

Guy Mitchell  
**ombudsman**