

complaint

Mr H complained that The Royal Bank of Scotland Plc (RBS) mis-sold him a payment protection insurance (PPI) policy alongside a credit card.

background

Mr H applied for a credit card with RBS and at the same time he took out a PPI policy. He later complained to RBS that he had been mis-sold the PPI policy.

RBS didn't uphold Mr H's complaint so he brought it to this service. Our adjudicator said that they didn't think the PPI was mis-sold and Mr H asked for an ombudsman to look at the complaint.

As well as considering if the policy was mis-sold, following the Supreme Court decision in the case of Plevin, it has been considered if Mr H should receive any refund of commission if the policy wasn't mis-sold.

In November 2017 RBS had offered to repay an amount of commission as some commission over 50% had been paid on the PPI. In January 2018 the business wrote to Mr H and offered him a total of £675.21 as compensation for the commission paid over 50%. It also said this had been paid into Mr H's credit card account.

Mr H wasn't happy with the amount offered or what RBS had done with the compensation. He said the compensation should be much more and as his credit card account had been sold as a bad debt by RBS to a third party any compensation should be paid directly to him as RBS had no interest in the debt any more.

The full background and information regarding this complaint is in my provisional decision issued in March 2018. A copy of that provisional decision is attached and forms part of this final decision.

Both parties have confirmed they received that provisional decision. RBS has accepted my findings. Mr H is very unhappy with my findings and has made some comments about the provisional decision.

my findings

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

In response to my provisional decision RBS has said it accepted my provisional findings. It also agreed to recalculate the commission amount of compensation due to Mr H as I had indicated and to update the interest to the date of final payment, once Mr H has accepted any final decision.

Mr H has responded to my provisional decision saying he vehemently doesn't accept my findings. Mr H says any PPI compensation is his money and he should decide how it is paid and that it shouldn't be paid to the debt on his card account. Mr H has also said he will stop making his regular payments of £10 per month to the debt he owes on the card account until the amount set off for the compensation is reached.

Although Mr H doesn't agree with my findings, he hasn't submitted any additional evidence for me to consider in reaching a final decision.

In my provisional decision I set out in some detail the reasons why I thought the PPI hadn't been mis-sold. I also explained why I thought RBS hadn't worked out the compensation for the commission amount, paid on the PPI, correctly.

RBS has said it will recalculate the commission amount, following the approach I had indicated. That is using the amount of the balance transfer as the starting balance on the account and gradually reducing this to the date when the actual records of the balance are available - which is a year later. This will affect the amount of PPI that was charged on the account and so the amount of commission that would've been paid.

I've seen nothing new to persuade me that my outcome regarding the mis-sale part of this complaint is unfair. So I confirm my finding that the PPI wasn't mis-sold.

Also there is no new evidence to indicate that the approach I outlined to estimate the amount of commission paid, during the time when no data is available, is unfair. And RBS has accepted it will use the approach I put forward.

I have noted Mr H's comments in response to my provisional decision and I understand he is very unhappy as I haven't agreed with him and directed RBS to pay all or part of the compensation directly to him.

I explained in my provisional decision that the evidence I'd seen showed the debt Mr H had on his credit card is still owned by RBS and it had used collection agencies to seek payment of the debt, rather than selling the debt to a third party. Mr H still owes this debt, which he doesn't dispute, but it is owed to RBS not a third party as Mr H thought.

As I indicated in my provisional decision the payment of the compensation for the commission will reduce the amount Mr H owes to RBS for this debt. And if he continues to make his regular payments then the time he would need to do so would be reduced, as the commission will reduce the overall amount owed. If Mr H stops making any regular payments then he will still owe the money until it is repaid. But any issues about the debt going forward are not for me to consider in this complaint.

Having considered all the evidence and comments, I have seen nothing to change my findings as set out in my provisional decision.

I don't think the PPI was mis-sold. But as more than 50% of the premiums for the PPI were commission, RBS needs to repay the amounts over 50% commission together with any interest caused by this excess commission and it should pay account interest and 8% simple interest where appropriate.

RBS should recalculate the amount of excess commission using the start balance on the account of £1,400.00 and gradually reduce this to the date of the known balance, this is to estimate the amount of commission for unknown data period. Once recalculated the excess commission and other costs should be repaid.

I also think it is fair for RBS to pay this excess commission amount to the credit card debt that Mr H still owes for the spending on the card. This will reduce what Mr H owes to RBS, whilst repaying what RBS owes Mr H for the commission.

my final decision

For the reasons I've explained, I'm not upholding the part of the complaint that the PPI related to Mr H's credit card was mis-sold.

But as commission over 50% was paid on PPI premiums charged to the credit card account, this commission should be recalculated, as I've indicated above and in my provisional decision which is attached to and forms part of this final decision. This will then produce the amount of compensation that is due for the refund of the excess commission.

As I am satisfied on the evidence presented that The Royal Bank of Scotland PLC still own the debt on the credit card account, I think it's fair that any amount due to Mr H for the commission compensation is paid to the card account to reduce the debt Mr H owes to the business.

If Mr H accepts this final decision it will be legally binding on both sides.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 May 2018.

Christine Fraser
Ombudsman

Copy of Provisional Decision

complaint

This complaint is about a credit card payment protection insurance (PPI) policy taken out in April 2000. Mr H says The Royal Bank of Scotland Plc (RBS) mis-sold him the PPI.

background

Mr H took out a credit card by postal application with RBS and at the same time he took out a PPI policy attached to the credit card account. Mr H later complained to RBS that he had been mis-sold the PPI policy.

RBS didn't uphold Mr H's complaint so he brought it to this service. Our adjudicator said that they didn't think the PPI was mis-sold and Mr H asked for an ombudsman to look at the complaint.

Whilst Mr H was waiting for an ombudsman's decision the Supreme Court issued a decision which affected many PPI mis-sale complaints that were not upheld. The court decision affected complaints that had not been upheld but where more than a certain amount of commission had been paid to the business from the PPI premiums paid and the consumer hadn't been told about this commission amount.

The regulator of financial services, the Financial Conduct Authority (FCA), looked at the court decision and has decided that where the commission paid to a business is more than 50% of the premium paid by a consumer then the business should refund the amount of commission over the 50% amount.

Mr H's complaint, which had been recommended as a non-uphold by our adjudicator, was then further delayed. This was whilst awaiting the outcome of the FCA review of the court case and until it was clear if there would be any commission offered as a refund, in line with the new FCA requirements.

In November 2017 this service advised Mr H that the business had offered to repay an amount of commission as on the account he had some commission over 50% had been paid. Mr H indicated he would accept the offer made to repay the commission.

In January 2018 the business wrote to Mr H and told him it was offering him a total of £675.21 as compensation. It also said this had been paid into Mr H's credit card account.

Mr H wasn't happy with the amount offered or what RBS had done with the compensation. He said the amount should be much more based on his credit card balance. He also said the credit card account was no longer active as it had been sold as a bad debt by RBS to a third party. Therefore he said that any compensation should be paid directly to him as RBS had no interest in the debt any more.

The complaint has been passed to me for a decision. I have considered the three aspects to this complaint. I have looked again at all the information to decide if the PPI was mis-sold. I have then considered the issue of any commission. And I have finally looked at where any compensation should be paid.

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.

was the PPI mis-sold?

We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding Mr H's case.

Mr H applied for the credit card through the post and I have seen a copy of his actual application form. Mr H ticked a box on the application form to say he wanted the PPI cover. Mr H says because the statement on the form where the box was said that RBS "strongly recommended you take out this cover" he felt pressured to buy it. He has also said this statement was prominently displayed and "in large bold letters" on the first page of the application form.

I don't think that the particular section which dealt with the PPI is any more prominently displayed than any other section on the form. It is in exactly the same size text as every other section Mr H completed – or chose not to complete – such as the section for "Card Registration – 90 Day Free Trial" which Mr H didn't choose to take out.

As the application was completed by Mr H with no RBS staff present I don't think RBS pressured Mr H to buy the PPI. So I think the form gave him a choice to buy the PPI, just as he had a choice to take

out the Card Registration for a free trial. And Mr H chose to take out the PPI but not the Card Registration.

The application form is clearly a generic form sent to many prospective card account customers so the wording used was not based on any personal recommendation or assessment of Mr H's circumstances. As this was a postal sale RBS didn't assess Mr H's personal situation to make an individual recommendation to him based on his particular needs.

But RBS did have to make sure Mr H got the information he needed so *he* could make an informed decision if PPI was right for him.

The information RBS gave Mr H about the PPI on the application form wasn't as clear as it should've been. It didn't give him information about the cost nor did it highlight any restrictions of the policy. But I think he chose to take out the PPI - so it looks like he wanted this type of cover.

Based on what I've seen of his circumstances at the time it doesn't look like he was affected by any of the exclusions to or limits on the PPI cover, for example any medical conditions he already knew about. So the policy would have been useful to him if something went wrong.

Mr H has said his employer would pay some sick pay if he was unwell. But the PPI would've paid a benefit in addition to any sick pay and potentially for longer. He had only been in his role for six months so the policy may also have been useful if he'd been made redundant.

It also looks like the PPI was affordable. The cost was £0.69 for every £100.00 balance on the card and the policy would've paid 10% of the monthly balance for up to a year if Mr H had been off work sick or lost his job. It also included life cover.

So I think it provided some additional protection to Mr H's over and above his existing arrangements at the time. Taking everything into account, I don't think better information about the PPI would have put off Mr H taking out the cover.

In summary I think Mr H had a choice and he decided he wanted the PPI. If he'd been given full information at the point of sale I don't think there was anything in the terms and conditions which would have put him off choosing to take out the PPI. And I don't think the cost was expensive for the level of cover offered or that Mr H would've been put off by the cost. So I don't think the policy was mis-sold, which means RBS doesn't have to pay back all of the cost of the PPI to Mr H.

commission on the premiums paid

When the policy was sold, RBS expected to get a high level of commission and profit share which was more than 50% of the PPI premiums paid by Mr H. So RBS should've told Mr H about the amount of commission it was getting. Because RBS didn't tell him, that was unfair and RBS must pay back *some* of the cost of the PPI to Mr H.

To put that right, RBS has offered to pay back to Mr H the amount of commission and profit share that was above 50% of the PPI premium. It has worked this out to be £675.21.

Mr H has said he isn't happy with this offer as he thinks he should be getting much more than the amount offered. He has indicated that looking at the commission on a £6,000 monthly debt on the card account over five years, it should be much higher.

I am not sure if Mr H fully understood that the calculation of the commission refund is not based on the card account balance, but is worked out as a percentage of the monthly PPI premium actually charged. The PPI premiums he paid were based on the account balance but the commission is then a proportion of the premium charged each month.

Mr H would get back any commission that was over 50% commission of the premiums charged. For example if the premium one month was £10 and the commission was 75%, this would mean £7.50 of the £10 was commission. But Mr H only gets back the bit that is over the 50%. So he would get refunded £2.50. He would also get any interest charged on this £2.50 commission and some 8% compensatory interest if he cleared his credit card balance, including this commission amount, and so was out of pocket by this amount.

The approach RBS takes to find the amount to refund of the commission is to reconstruct the credit card account, working out how much PPI was paid and then calculated the amount of that which was commission over 50%.

I have seen the calculations that RBS has carried out to reach the amount of £675.21. The general approach it has taken is in line with what I would expect and is fair. However I don't agree with the figures that RBS has used for the period for which it does not have the full data for the account. That is from May 2000 to April 2001.

Where a business doesn't have actual data it has to estimate how much the balance on the account may have been and how much PPI would have been on that estimated amount. Then it can estimate the amount of excess commission for that period that should be refunded.

RBS has an approach to carry out this estimating process which it has developed over many years to estimate PPI costs for unknown periods and which is, in cases where there is no data, a reasonable approach to take. However in this case we have the credit card application form that Mr H submitted and this clearly shows a balance transfer amount of £1,400 was requested when the card account was opened.

Looking at how Mr H used his card I think he opened the card to use it for the balance transfer and without any other evidence it is reasonable to assume that this was approved. So at the start of the card, in May 2000 the balance would've been £1,400.00, not the estimated amount used by RBS of £183.49. This will make a difference to the amount of PPI paid on the balance and so the amount of commission refund due to Mr H.

I also think it would be reasonable to assume that over the year from May 2000 to April 2001 that Mr H gradually paid amounts off this balance, bringing it down to the £217.07 balance that RBS knows existed in May 2001.

So I am directing RBS to recalculate the amount of commission using these figures in its calculation, in the way I have indicated, unless it has any evidence to show something different happened on the account between 2000 and 2001.

In response to this provisional decision RBS should provide the amount of commission refund due to Mr H having done the calculation using this data and approach. This is likely to increase the amount of commission refund to Mr H.

set-off of the commission refund against any debt on the credit card account

I have also then considered if RBS was right in using the refund of the commission to set off against the debt Mr H owed to it on the credit card.

RBS has provided a copy of Mr H's payment history for the account. I can see that from around 2006 Mr H missed an occasional payment or perhaps paid slightly less than the minimum payment due. In 2008 Mr H had some financial difficulties and he seems to have made an arrangement with RBS about making payments to the debt on the credit card. He made reduced regular payments to the card and no further interest was charged on the balance.

I can see from the records provided about the account that from 2008 to 2017 Mr H changed the payments he made each month and sometimes made no payments at all. For example from February

to November 2008 Mr H paid £41.32 each month to the account. From August 2013 to February 2015 he paid £18.65 each month. From January 2017 to January 2018 he paid £10.00 each month. On dates between these examples he did make payments, sometime of fixed amount, sometimes varying amounts. And some months he made no payments at all.

Mr H has told us that RBS sold the debt to a third party in 2008 and over the years it had been sold on several times. He also says he is still making payments towards the debt. The records provided by RBS reflect he is still repaying the debt on the account.

I have looked at the information Mr H has provided from the company who has been in touch with him most recently about the credit card debt. This correspondence indicates that *RBS* are the client. This third party is actually a debt collection agency who is acting on behalf of RBS and the debt does not appear to have been sold. The accounts provided by RBS reflect the amount the correspondence with this third party states as being the agreed payment of £10.00.

Based on everything I have seen I am satisfied that RBS hasn't sold this debt. From time to time over the years there may have been contact made by third party collection agencies seeking to agree a payment arrangement with Mr H. But these agencies are acting on behalf of RBS and are not third parties who have bought the debt.

So I'm satisfied that Mr H never fully repaid the amount he owed RBS for the spending on his credit card and he still owes that debt to RBS. RBS now owes Mr H the commission refund for the excess commission paid on the PPI premiums. Therefore I think it is fair that RBS can set off the amount it owes Mr H against the credit card debt he owes to RBS. This will reduce the debt Mr H owes and is still paying.

The letter sent by RBS to Mr H in January 2018 explaining how the amount of £675.21 (the commission figure it had worked out) was made up stated the payment of this amount was made on 8 January 2018. The letter goes on to say that payments are made subject to clearance of any arrears Mr H may have had with RBS and where applicable the payment is applied against any outstanding balance.

I know Mr H says the account is closed as the debt was sold, but for the reasons I've explained I don't think that was the case. So RBS has applied the compensation to the credit card account which remains open, but suspended for further use by Mr H. The compensation paid to the account has reduced the amount Mr H still owes for his credit card spending. And I think what RBS has done with the compensation is fair.

other matters raised by Mr H

The account records indicate that the credit limit on the account when first opened was £2,200.00. Over the years to January 2007 this gradually increased to £6,350.00. Mr H has said RBS encouraged him to spend by lending irresponsibly.

When RBS increased his limit over the years it would have told Mr H it was doing this and he would've had the choice of requesting the limit remained at the lower level. In fact from the account records it is clear Mr H did use the account to its increased limits but then would clear, or almost clear, the balance. For example in May 2005 his balance was around £40 less than his limit of £4,900.00. Then in June 2005 he reduced the balance to just under £900. This level of balance was maintained until around August 2006. Between July 2005 and October 2007 Mr H paid off lumps of around £1,500 on three occasions, even though his balance was well within his credit limit.

It wasn't until July 2007 that Mr H ever exceeded his credit limit, which was at the time £6,350.00. It was from this period Mr H only seemed to reduce his credit slightly and for four out of seven months was over his limit. It was just after this that Mr H entered into a payment arrangement and the interest stopped being charged.

Mr H chose to use his credit limit to the maximum at various times and accepted the increases in the limit without question as far as I am aware. I have seen nothing to show he ever asked RBS to not increase the limit. So I can't see RBS did anything wrong.

Mr H says RBS reduced his limit by £2,000 in 2008 which put him in debt. I cannot see that is reflected on the account as the most recent statement I've seen, in January 2018, shows a credit limit of £6,350.00. However I can see that Mr H was exceeding the limit and also not making the minimum payments at this time in 2008. So RBS would've stopped Mr H using the credit card, and spending more, when he entered the repayment plan from 2008.

I know Mr H has also said he is unhappy because in 2008 when he was having financial problems RBS had reduced the credit limit on his account and put him in debt. In fact the evidence from the statements I have outlined above indicates that was not the case. RBS agreed a fixed payment with Mr H in 2008, stopped charging interest on the balance and stopped his use of the card, which was not unfair if he was having financial problems and struggling to make the minimum payments.

The account however still remains open and payments made by Mr H have been recorded on the account to reduce the debt he owed from when he had problems in 2008 and the account was suspended and he could no longer use it.

summary

In summary I don't think the PPI was mis-sold. But as more than 50% of the premiums for the PPI were commission, RBS needs to repay the amounts over 50% commission to Mr H together with any interest caused by this excess commission and it should pay account interest and 8% simple interest where appropriate.

I think the amount of excess commission needs to be recalculated using the application form data, showing a balance transfer of £1,400, for the starting balance of the unknown data period. Once recalculated the excess commission and other costs should be refunded.

I also think it is fair for RBS to pay this excess commission amount to the credit card debt that Mr H still owes for the spending on the card. This reduces what Mr H owes to RBS whilst repaying what RBS owes Mr H for the commission and Mr H's debt will be paid off sooner.

my provisional decision

Unless any further evidence or information is provided I am intending to find that the PPI sold to Mr H related to his credit card was not mis-sold.

But commission over 50% was paid on premiums charged to the account and this needs to be refunded. This commission should be recalculated as I've indicated above and the new figure provided in response to this provisional decision.

I also currently am satisfied that The Royal Bank of Scotland PLC still own the debt on the credit card account and Mr H is still making payments to this account. So I think it's fair that any amount due to Mr H for the commission is refunded to the card account to reduce this debt.

This is all subject to any further information that is provided by either party by the date indicated at the start of this decision.

Christine Fraser
ombudsman