

## **complaint**

Mr W doesn't think it's fair for The Royal Bank of Scotland Plc (RBS) to use his payment protection insurance (PPI) compensation to reduce the debt from which he was discharged when his protected trust deed came to an end in 2007.

## **background**

In November 2019 I issued my provisional decision. In it I explained why I thought it was fair for RBS to use the PPI compensation to reduce Mr W's debt from which he was discharged when his protected trust deed came to an end in 2007.

A copy of my provisional decision is attached and forms part of my final decision.

Both parties confirmed receipt of my provisional decision. Neither party had anything to add to it, although Mr W was clear that RBS should have provided some information about the amount he borrowed and the outstanding amounts, which he said RBS had failed to provide.

## **my findings**

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. When considering what is, in my opinion, fair and reasonable, I'm required by DISP 3.6.4 R of the Financial Conduct Authority ("FCA") Handbook to take into account:

*'(1) relevant:*

- (a) law and regulations;*
- (b) regulators' rules, guidance and standards;*
- (c) codes of practice; and*

*(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time.'*

RBS had nothing further to add to my provisional decision.

Mr W said in summary he accepted my decision, but he had requested several pieces of information from RBS regarding his outstanding debt and wanted an explanation about why RBS has failed to supply this.

This is a matter for RBS but I understand it has now responded to Mr W about his queries. If he wishes further explanation about the information he has received, he should contact RBS in the first instance.

I'm very sorry to disappoint Mr W but I have decided not to uphold this complaint.

In my provisional decision (attached) I mentioned that there were some court cases which dealt with how the PPI compensation should be paid when a consumer had been 'discharged' from a 'protected trust deed. In one of the court cases, Royal Bank of Scotland Plc v Donnelly [2019] CSIH 56 the court said RBS couldn't use the consumer's PPI compensation to reduce a debt from which they were 'discharged' when the trust deed came to an end. But I explained that this was being appealed by RBS – and that the outcome may change.

Since my provisional decision, the appeal has been heard at 'The Inner House of the Court of Session'. In short, RBS lost the appeal and the court reaffirmed the legal position that RBS couldn't use the compensation to pay down the amount that wasn't repaid after the trust deed ended. The court said when the trust deed ended the debtor was discharged from her debts, so there was no longer any debt owing from her to the bank which could be subject to set-off.

At this moment it isn't known whether RBS intend to appeal the decision further to the Supreme Court – so there is a possibility the outcome may change.

However, as explained within my provisional decision – I have considered the relevant law. And when I set out my findings in my provisional decision, I did so when the law had already found in the consumer's favour. RBS lost its appeal and now confirms the legal position within Scots law about what happens when consumer is discharged from their trust deed (although I'm mindful as I've said above, RBS may be appealing this further to the Supreme Court). But as I also explained in my provisional decision, whilst I have to take into account the relevant law – I'm not bound to follow it. I must also apply an over-arching test of what's 'fair and reasonable' in the particular circumstances of Mr W's complaint – as required of me through FSMA Section.228 and the FCA's DISP rules.

Having done so, I remain of the opinion it would be unfair for RBS to pay compensation directly to Mr W – when Mr W, thanks to the trust deed, now won't ever have to repay the monies borrowed and left unpaid.

So, I see no reason to depart from the findings set out in my provisional decision and I don't uphold this complaint.

### **my final decision**

For the reasons set out above and in my provisional decision, I've decided not to uphold Mr W's complaint. I've decided that it's fair for The Royal Bank of Scotland Plc to use Mr W's compensation for the mis-sold PPI to reduce the amount he owed and didn't repay when his trust deed came to an end.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 January 2020.

Nicola Woolf  
**ombudsman**

## **Copy of my provisional decision**

### **complaint**

Mr W doesn't think it's fair for The Royal Bank of Scotland Plc (RBS) to use his payment protection insurance (PPI) compensation to reduce the debt from which he was discharged when his protected trust deed came to an end in 2007.

### **background**

Mr W took out a chain of loans with RBS between 1996 and 1998. At the same time, he was sold PPI policies to protect his repayments.

Mr W entered into a trust deed as he was unable to pay all his debts when they fell due. This became a protected trust deeds for his creditors. This is an alternative in Scotland to bankruptcy (called sequestration in Scotland). It is a legally binding agreement between a consumer and their creditors, which is administered by a trustee.

The outstanding balance of Mr W's existing loans was included in those trust deeds, which was discharged in 2007.

RBS records show that following the completion of the trust deed in 2007, there was still a substantial outstanding balance owed to RBS. While RBS didn't chase for the outstanding sums the debt still existed. So, a substantial amount of debt was left unrecovered from Mr W.

Mr W complained that PPI had been mis-sold to him. RBS agreed and it upheld the complaints offering to refund the PPI premiums and the extra interest that Mr W had paid to date together with simple interest to compensate him for the time he'd been out of pocket.

Mr W signed the acceptance forms in August 2018

RBS told Mr W it would use the funds to reduce the money it said was outstanding on his accounts. This is called '*offsetting*'.

Our adjudicator thought the way RBS had offered to settle the complaint was fair. Mr W didn't agree with that view. Mr W doesn't think the PPI compensation he was offered should be used by RBS in this way.

Unhappy with the adjudicator's view, Mr W asked that the matter be referred to an ombudsman for a final decision. He said that his old debt was a separate issue - he'd paid back the loans long before he started the trust deed. He also said there was an on-going court case which had to be considered. So, the matter has been passed to me.

To be clear in this decision I'm only looking at whether it was fair for RBS to use the compensation for the mis- sold PPI to repay outstanding amounts on Mr W's account. I am not looking at the service RBS gave.

### **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. When considering what is, in my opinion, fair and reasonable, I'm required by DISP 3.6.4 R of the Financial Conduct Authority ("FCA") Handbook to take into account:

'(1) *relevant:*

- (a) law and regulations;*
- (b) regulators' rules, guidance and standards;*
- (c) codes of practice; and*

(2) *(where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time.'*

I am very sorry to disappoint Mr W, but I'm not intending to uphold this complaint. I'll explain why below.

As RBS has upheld Mr W's PPI mis-sale complaint, I've just looked at whether what it's done to put things right is fair and reasonable. I haven't looked at how the PPI policies came to be mis-sold. And Mr W hasn't raised any issues about the amount of compensation offered so I also won't consider this. Mr W's complaint is that RBS has set-off the amount of compensation to reduce the loan amounts that haven't been fully repaid rather than paying the compensation directly to him.

So, in this decision I need to decide whether it's fair and reasonable for RBS to use Mr W's PPI compensation offer to reduce the much higher amount of debt which he wasn't required to repay back to it (and was written off by RBS) after his protected trust deed was closed in 2007.

Mr W has referred me to the ongoing court case.

I've thought about what Mr W has said about how the law applies to his complaint. But as I said above, the outcome of this complaint depends upon what I consider to be fair and reasonable in all the circumstances.

I've considered carefully what the law says about protected trust deeds. In recent years there have been several cases looking at what happens to PPI compensation after a protected trust deed comes to an end.

In *Dooneen Ltd v Mond [2018] UKSC 54*, the Supreme Court of the United Kingdom considered the effect of a discharged trust deed following a final distribution by the trustee. In that case, the discharge was held to terminate the trust which meant that any unrealised assets were returned to the debtor – including the PPI compensation that no one had known about at the time. In other words, the Supreme Court said that the PPI compensation should not be paid to the trustees. It said it should be paid to the consumer.

In *Donnelly v The Royal Bank of Scotland Plc [2017] SAC (Civ) 1*, the Sheriff Appeal Court considered whether The Royal Bank of Scotland ('RBS') could offset PPI compensation against an outstanding balance when a trust deed came to an end. The terms of the trust deed in this case meant RBS had, in effect, agreed that the debt would be extinguished – and it couldn't later re-open the debt to offset the PPI compensation (I understand RBS has appealed this decision, so the outcome may change).

So I accept that, unless and until the Inner House reverses the decision of the Sheriff Appeal Court, and on the assumption that the relevant terms of the trust deed in Donnelly are essentially the same as those in this case, then RBS couldn't successfully argue in court that it should be allowed to offset the compensation in Mr W's case.

But as I said above, when I'm deciding what's fair and reasonable, I have to consider a number of things – not just the relevant case law. And I also have to consider what's fair for both parties. I appreciate that RBS can't now chase Mr W in court for the money that they owed when they granted the trust deed. But I can see from the evidence RBS has provided that Mr W still borrowed more than he repaid off his loans. It's likely that won't now ever be repaid.

I accept that Mr W has been discharged from the trust deed and that the case law says those debts don't exist anymore. I don't think it would be fair to tell RBS to pay Mr W's compensation directly to him. The fact that Mr W's trust deed had come to an end before this offer of PPI compensation was made doesn't make a difference to what is fair and reasonable in the circumstances here. I can't reasonably say it's fair for RBS to repay the PPI compensation directly to Mr W when he doesn't now need to pay back the much bigger amount he borrowed. In reality Mr W borrowed considerably more from RBS than he has paid back.

So, it follows from what I've said that I think it's fair for RBS to use the PPI compensation it's offered to reduce the outstanding monies owed and left unpaid following the closure of Mr W's protected trust deed.

**my provisional decision**

For the reasons set out above, my provisional decision is I'm not intending to uphold this complaint.

I'm currently minded deciding that it's fair for The Royal Bank of Scotland Plc to use Mr W's compensation for the mis-sold PPI to reduce the amount he owed and didn't repay when his trust deed came to an end.

So, unless comments or information I get by 12 December 2019 change my mind, based on what I've seen so far I don't plan to ask The Royal Bank of Scotland Plc to do anything more to put things right.

Nicola Woolf  
**ombudsman**