

complaint

Mr and Mrs J brought their complaint to this service as they were unhappy that The Royal Bank of Scotland Plc ("RBS") used the redress from four mis-sold PPI policies to offset an outstanding debt related to a current account they had with the bank. Mr and Mrs J want all the redress paid directly to them.

background

Mr and Mrs J complained to RBS about the sale of four PPI policies that were purchased successively alongside a chain of successive loans over a period of years taken out with RBS. In September 2013 RBS wrote to Mr and Mrs J agreeing to make an offer on each of the PPI policies sold to settle the complaints and it set out the compensation amounts calculated.

In 2009 Mr and Mrs J had each entered into a protected trust deed. These were both discharged in April 2013. Initially RBS indicated that any refund due to Mr and Mrs J would have to be accepted and paid to the trustee in bankruptcy.

RBS then informed Mr and Mrs J that it would pay the redress for the premiums and interest towards a debt they owed the bank which had been incurred in connection with a current account. In respect of three of the loans the PPI refund amount was set against the current account debt. For the fourth loan RBS has indicated once accepted it would intend to again use this amount to reduce any debt on the current account.

Mr and Mrs J were unhappy with RBS' proposal for the repayment of the compensation associated with the PPI policies. They requested that RBS pay all the compensation directly to them as their debts to RBS relating to the loans had been satisfied at the end of the trust deed.

An adjudicator from this service indicated to RBS that its proposal to refund the redress was not in line with the ombudsman service approach and would not be fair and reasonable. RBS disagreed and requested an ombudsman consider the complaint.

my findings

I have briefly outlined the background to this complaint above, but I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances.

RBS has agreed to pay compensation to Mr and Mrs J in relation to their complaint about the mis-sale of the PPI policies. Therefore I will not address the issue of how the PPI policies came to be sold to Mr and Mrs J, only those considerations relating to the redress payable to Mr and Mrs J.

The main focus of Mr and Mrs J's complaint is that they consider the compensation should be paid directly to them and not used to reduce a debt on a totally different account they held with RBS. They also feel that all their debts to RBS were cleared when the trust deed was discharged in 2013.

Mr and Mrs J both entered into separate trust deeds in 2009. They were both discharged from their respective trust deeds in April 2013. The trustee has written in May 2014

indicating that there is an amount of dividend that is still due to RBS which it has not claimed. This seems to relate to the current accounts yet it seems RBS has not reclaimed this amount to reduce the debt owed by Mr and Mrs J. This is still available to RBS to claim and this dividend would substantially reduce the debt on the current account. It is unclear why RBS has not acted to reduce the debt owed in this way. The letter from the trustee went on to say in relation to the PPI refund *"For the avoidance of doubt, we would mention again that the Trustee has no interest in these monies"*.

As Mr and Mrs J have been discharged from the trust deed the trustee, as stated, does not need to make the application in relation to any PPI refund now due. It is for Mr and Mrs J themselves to seek the PPI compensation and this would not be paid to the trustee. Consideration then needs to be given if it would be fair and reasonable to apply the compensation for the PPI owed by RBS to Mr and Mrs J, incurred in connection with a series of loans, against a debt they owed to RBS which was not a loan to which the PPI related.

RBS is proposing to set off the debt it owes to Mr and Mrs J as a result of the compensation for the PPI mis-sale, against a totally separate debt which was the result of an overdraft on a current account. RBS says the current account was closely associated with the original PPI loans and so the debt it owed to Mr and Mrs J.

RBS has stated *"The assertion that the current account is not a linked account, is incorrect as this was the servicing account for all the loans. All the repayment amounts that also included the PPI loan repayment amounts came from this account, so the outstanding balance/arrears on this current/servicing account is higher because of the PPI loan repayments."*

RBS has put forward what is the general legal position of the equitable right of set off which allows one party to set off amounts owed where the other party is in debt to it, where those debts are *"closely connected"*.

When I decide what is fair and reasonable in each case, I must take into account, amongst other things, the relevant law as well as any relevant regulatory rules, although I am not necessarily bound by them.

The Financial Conduct Authority (FCA) has issued guidance for financial businesses handling PPI complaints. That guidance states:

"where the complainant's loan or credit card is in arrears the firm may, if it has the contractual right to do so, make a payment to reduce the associated loan or credit card balance, if the complainant accepts the firm's offer of redress. The firm should act fairly and reasonable in deciding whether to make such a payment".

A strict reading of the relevant guidance suggests that RBS can only use PPI compensation to reduce arrears on the *associated* loan and only where *it has the contractual right to do so*.

In this complaint the four loans taken out by Mr and Mrs J (the associated loans) have been settled as they were refinanced or satisfied as part of the trust deed. So it seems to me there are no arrears now outstanding on those loans.

Setting aside whether or not RBS has a *contractual right*, applying the relevant guidance suggests that RBS is not entitled to use the compensation for the mis-sale of the PPI sold

alongside Mr and Mrs J's loans to reduce the outstanding balance on a debt on their current account as this is not the "*associated loan*" in this case.

However RBS is also raising the wider, equitable right of set off, which I need to consider. For this to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt which RBS would like the compensation set against. *If* this first hurdle is met I must also consider whether it would be unjust not to allow RBS to set off in this way.

I accept that redress payable in respect of the mis-sale of a PPI policy can be set-off against the loan with which the sale of the PPI was associated. That is consistent with the FCA guidance referred to above.

But it is another matter to say that a debt occurring as the result of an overdraft on a current account, albeit in part an account used to make the payment of the loan repayments, is to be regarded as *closely* connected with the debt arising (for example the requirement to pay compensation) from the mis-sale of a PPI policy.

The PPI compensation debt due to Mr and Mrs J arises as a result of the mis-sale of PPI policies which were not sold with, or justified by, the debt arising as the result of an overdraft on the current account.

I have seen no evidence that the current account was used to only service the loans. I have seen some screen prints of the account which reflect it was used for payments of many everyday spending items. It would seem to me that Mr and Mrs J's current account was used as a normal current account and handled other credits and debts not related to the their loans. Mr and Mrs J made many payments from this account, not only the payments to service the loans.

As the current account was not set up *exclusively* for servicing Mr and Mrs J's loans, I am not persuaded the debt on the current account is *closely connected* to the compensation for the mis-sale of his two PPI policies. The arrears on Mr and Mrs J's account arise from many different circumstances.

I have also considered the offer letters, offer statements, declaration and acceptance forms sent to Mr and Mrs J at the time RBS made its offers. Mr and Mrs J were sent four similar letters for each loan, each two pages long which contained details of how the redress was calculated. Approximately half way down the second page of each offer letter it states: "*To accept our offer all you need to do is sign and return the declaration at the end of this letter. On receipt we will arrange for a payment to be made, subject to clearance of any arrears you may have with the Group. Please do not make any amendments as this will result in the form being null and void*".

The declaration and acceptance that Mr and Mrs J were asked to *sign* however stated "*I understand that the offer will take into account any arrears on my account. The remaining balance, if any, will then be paid to my RBS current account, or by cheque if no account remains open*".

Whilst the letter suggests the payment may go towards other debts "*with the Group*" that is not what the actual declaration Mr and Mrs J were required to sign said. In my opinion the wording in the covering letter was not in a particularly prominent part of the letter and does

not specifically say that any part of the redress would be used to clear the debt on Mr and Mrs J's current account.

It is more likely that Mr and Mrs J would carefully read the statement on the actual acceptance and declaration form they had to sign to accept each offer. This statement only indicates that the redress would be used to "*clear any arrears on my account*". So Mr and Mrs J might reasonably have thought that this referred to arrears on their loan accounts. This statement does not specifically mention that the redress would be used to clear the outstanding debt on their current account.

I have noted that also within the offer of acceptance signed by Mr and Mrs J it did state "*If I am subject to ... a Protected Trust Deed, ... any payment will be made to the relevant account I hold with you. Any disbursements due under the terms of the arrangement will then be managed by the Group's Insolvency Team.*" As the trust deed for Mr and Mrs J was already discharged when they signed the acceptance forms I am not persuaded they would have felt this affected them.

Taking the information provided to Mr and Mrs J as a whole I am persuaded they believed when signing the acceptance of offers that only arrears existing on their *loans* would be cleared using the PPI compensation and any balance would be paid to them. As there was no balance on the loans, which Mr and Mrs J would have considered settled by completion of the trust deed, they were signing to agree that they receive the compensation direct.

summary

I am not persuaded overall that there is a close association between the debt that arose from Mr and Mrs J's current account debt and the debt RBS owed to them for the mis-sale of four PPI policies on totally separate loan accounts.

I am also not persuaded that under the terms of the offer it made, RBS should have paid, or make further payments of, the redress to the current account debt RBS say was not cleared. RBS could possibly clear a substantial amount of this if it claimed the dividend from the Accountant in Bankruptcy.

Taking account of all the evidence in this complaint I find it is fair and reasonable that the redress should be paid directly to Mr and Mrs J. I therefore uphold Mr and Mrs J's complaint.

fair compensation

It would seem from the information provided that there are no outstanding arrears on the loans which were associated directly with the sale of the PPI. Mr and Mrs J should as far as possible be placed back in the position they would have been in had the PPI policies not been sold to them.

I direct that RBS should pay directly to Mr and Mrs J, by cheque, the amounts calculated for the redress related to all four of the PPI policies. This may require an adjustment of the current account debt as I understand the redress for three of the loans has already been paid as a set off against this.

RBS must also recalculate the interest at 8% per year simple† to bring this up to date and pay Mr and Mrs J this amount on the PPI loan payments paid from the date each payment was paid, for each loan, to the date of settlement.

† I understand RBS is required to deduct basic rate tax from this part of the compensation. Whether Mr and Mrs J need to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr and Mrs J should refer back to RBS if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my final decision

For the reasons set out above I uphold Mr and Mrs J's complaint and direct that the full redress relating to the PPI policies should be paid directly to them and not set off against the current account debt.

The Royal Bank of Scotland Plc should recalculate the redress interest and pay Mr and Mrs J fair compensation directly to them as set out above.

I make no other award against The Royal Bank of Scotland Plc.

Christine Fraser
ombudsman