

complaint

Mr J's complaint is about how The Royal Bank of Scotland Plc (RBS) used the compensation it offered to settle his complaint about a payment protection insurance (PPI) policy taken out with a credit card. Mr J wants RBS to pay all the compensation directly to him.

background

Mr J complained to RBS about the sale of a PPI policy associated with his credit card. The PPI policy was in place on the card from December 2006 to January 2008.

RBS wrote to Mr J in March 2014 and said it was willing to settle his complaint. RBS said in the offer that it would pay the compensation to any arrears on the credit card balance and then send a cheque for any amount that remained to Mr J.

Mr J signed the acceptance of offer form and returned this but wrote on the form he wanted the compensation paid to his bank account.

RBS paid the compensation to the credit card account and it in effect reduced the arrears that were on the credit card.

Mr J was unhappy that RBS had not paid the compensation directly to him as he had requested and he brought his complaint to this service.

In August 2014 our adjudicator said what RBS had done with the compensation was fair and reasonable.

Mr J disagreed with the view of the adjudicator and has asked an ombudsman to consider the complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

RBS has agreed to settle Mr J's complaints about the mis-sale of the policy on his credit card ending 8918. So I will not address the issue of how the PPI came to be sold to Mr J. I am in this decision only looking at the circumstances relating to the payment of the compensation for this credit card account.

I have decided not to uphold Mr J's complaint.

I have looked at the calculations undertaken by RBS. The amount includes the premiums and associated interest Mr J paid for the PPI. It also includes penalty charges caused by the PPI and then an amount of 8% simple interest to compensate Mr J for being out of pocket. Overall the calculations and total look fair and reasonable.

I have then looked at the way RBS has paid this compensation. It has paid it to Mr J's credit card account on which there is a debt. The account is still open and owned by RBS. So the debt on the account is money that Mr J owes to RBS.

In this case, the relevant law is the *equitable right to set off* which allows people to "set-off" *closely connected* debts. This means one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them.

For this right of set-off to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt. I must also consider whether it would be unjust not to allow RBS to set-off in this way. *Both* tests must be satisfied for me to find that RBS has an equitable right to set-off the PPI compensation against Mr J's outstanding debt on his credit card account.

The PPI sold to Mr J was directly connected to his credit card. Using the right of set-off I have outlined above, I am satisfied the PPI compensation and the credit card debt are closely connected. They are both for the same account of Mr J with RBS.

Having decided there is a close connection I then need to think about whether it would be unjust not to allow RBS to set off in this way.

I have looked at the offer letter and acceptance form that Mr J signed. On the acceptance form it says, immediately above where Mr J signed:

"I understand that the offer will take in to consideration any arrears on my credit card balance. The remaining balance, if any, will then be paid to me by cheque I am aware that it is possible for the credit card account to remain in arrears if the offer is not sufficient to clear the full amount owing on my credit card."

I think this made clear how RBS was intending to use the compensation. Mr J knew he owed money on his credit card so would have realised what RBS was saying.

Mr J has underneath his signature then written saying that due to ill health, which he had provided evidence of already to the bank, he wanted the compensation paid directly to his bank account. He then gave his bank account details.

Two weeks after receiving the acceptance RBS paid the compensation to Mr J's credit card account to reduce the debt. So it took no notice of the note Mr J had put on the form.

RBS had indicated how it intended to pay the compensation and I think Mr J understood it was being paid to reduce his arrears. This seems to be why he wrote the note requesting payment in a different way. Mr J did not in his note given any indication he had other debts or financial problems, he only mentioned his health matters.

RBS could have responded to Mr J's request for the direct payment and considered if there were reasons why it would not be fair to use its right of set off in this particular case. But it did not do so.

Mr J brought his complaint to this service as RBS would not pay the compensation to him directly. RBS said Mr J had accepted their offer and it had paid the compensation in the way it had outlined and he had accepted.

RBS has however since said that if Mr J could provide evidence of financial hardship or other factors that would make payment to his arrears on his credit card unjust, it would reconsider its position.

Mr J has been asked to provide up to date information to do this, but he has not sent in any clear evidence of other more pressing debts.

When Mr J brought his complaint to this service he provided copies of some medical reports and evidence. These show he was having medical treatment from February 2014. Mr J has clearly undergone some severe health issues but I cannot see that these have been directly caused by or are directly linked to the sale of the PPI in 2006.

Mr J has also told us he is in severe financial hardship. He provided a copy of a rent account (dated July 2013 for the period April to July 2013); a utility bill (dated October 2013); and two council tax bills for 2013 and 2014. All of these bills have hand written notes saying they have not been paid or are in arrears.

Having looked carefully at the bills provided they do not show that there are any missed payments or arrears on the accounts. They all show the amount that is due to be paid and nothing more.

Mr J has been asked for some sort of up to date evidence that he has pressing debts from his rent, council bills or other utility bills. These might be classed as more pressing than the debt he owes to RBS. Mr J has said "*other documents are not forthcoming*" and not provided any more or new evidence.

I understand that Mr J is unwell and asking for more information is always going to cause some stress and inconvenience. But I have not seen any evidence to show that he currently has debts for services at his home or in connection with his property that I could consider as more pressing debts. Without evidence of more pressing debts I cannot find that it was unfair for RBS to use the compensation it owed to Mr J to set against his debt with them for the credit card.

trouble and upset

I consider RBS should have contacted Mr J, after he returned the acceptance of the offer, to find out more about the note Mr J had made on his acceptance. From the evidence provided that I have seen, as I have set out, I am not satisfied this would have affected the outcome of the complaint. But in dealing with his complaint RBS should have ensured it had full information before paying the compensation to the credit card arrears.

Mr J had to make a follow up call about the payment of the compensation before he realised it had been paid towards his debt and his request on the acceptance had not been accepted. This put him to extra trouble at a time when he was unwell.

Considering these factors, I am directing that RBS pay to Mr J £100 for the extra trouble and upset he was caused by the poor way RBS dealt with this part of the complaint. This should be paid direct to Mr J.

my final decision

For the reasons set out I agree that the way The Royal Bank of Scotland PLC used the compensation due to Mr J was fair and reasonable in all the circumstances.

I am awarding an additional payment of £100 to be paid direct to Mr J for the trouble and upset caused by The Royal Bank of Scotland PLC in the way it dealt with part of his complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr J to accept or reject my decision before 2 March 2015.

Christine Fraser
ombudsman