Financial Ombudsman Service

complaint

Mr and Mrs M are unhappy with the way The Royal Bank of Scotland Plc ("RBS") has used the compensation it agreed to pay them after they complained they'd been mis-sold payment protection insurance ("PPI").

background

I issued my provisional decision on this complaint in February 2016.

Mr and Mrs M took out ten loans with RBS. Each loan was used to pay off the previous one. They also took out PPI alongside eight of these loans to protect their repayments. With those loans they borrowed more to pay for PPI and, when they refinanced, some of the cost of PPI was added to the next loan.

In July 2007 Mr and Mrs M both entered into protected trust deeds ("PTD") as they were unable to pay all of their debts when they fell due. Mr M was discharged from his PTD in October 2010 and Mrs M was discharged in May 2011. So they couldn't be chased by their creditors for the debts they listed when they entered into the PTD.

Mr and Mrs M complained to RBS that they'd been mis-sold PPI on eight of the loans. RBS agreed and made them an offer to settle their complaint. It offered them compensation of £13,549.40 in total for the eight loans. But it said it would use this to reduce the amount of money it said Mr and Mrs M still owed.

Mr and Mrs M were happy for RBS to use the compensation for the mis-sold PPI on the last loan in the chain to reduce the amount they couldn't pay on this loan when they entered the PTD. But they said they paid off all the other loans and their trustee confirmed they have no interest in the money. So they want the compensation from the other loans paid directly to them.

RBS had said we can't look into this complaint as it thinks it's outside of our jurisdiction. It thought that, as Mr and Mrs M signed in full and final settlement for the compensation, we couldn't investigate the offers.

RBS agreed to work out compensation in the same way as if I'd found it had mis-sold PPI, so I didn't need to look at how PPI came to be sold to Mr and Mrs M. But I did need to consider whether RBS' offer is fair.

RBS said I couldn't look at Mr and Mrs M's complaint because they'd already accepted an offer. I disagreed. There aren't any rules that say the ombudsman service can't consider a complaint if the consumer has accepted an offer.

I thought RBS meant to say I should exercise my discretion not to consider Mr and Mrs M's complaint because they've accepted an offer. The rules say I could've done this if there were compelling reasons why it would be inappropriate to look at the complaint. In other words, I could dismiss a complaint if I thought it was the right thing to do.

I didn't dismiss the complaint as I didn't think the settlement forms Mr and Mrs M signed were very clear on how their compensation was going to be used. So they thought they were going to be paid directly for some of the loans. I looked at whether it was fair for RBS to use the compensation in this way.

When Mr and Mrs M refinanced their loans they 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 and Mrs M actually paid towards PPI and the refund wasn't enough to cover the cost of the whole PPI premium. This meant some of the cost of the PPI premium was carried over to the next loan in the chain - so Mr and Mrs M were still paying for the PPI premiums sold with loans one, two, three etc. in each of their later loans.

I looked at how RBS has worked out compensation and I thought it'd done this in the way I would've expected it to. And Mr and Mrs M weren't saying that the amount offered is wrong, so I needed to consider whether RBS could use it to reduce the debt it said they still owed.

When Mr and Mrs M entered into their PTDs, the debt they owed wasn't cancelled. And it wasn't cancelled when Mr and Mrs M were discharged in 2010 and 2011 respectively– but by law they couldn't be chased for the debt. The debt they had with RBS still exists and some of it relates to PPI premiums (and interest) that Mr and Mrs M never paid. So I thought it was fair for RBS to use the compensation from the last loan to reduce this debt, otherwise they'd be getting a refund of PPI premiums (and interest) they didn't actually pay in the first place.

I understood Mr and Mrs M paid off their other loans before they entered into the PTD, so felt these debts were settled and so they should get the compensation from these PPI policies directly. But when Mr and Mrs M entered into the PTD all their outstanding debts were added up to work out what they owed and all the money they had was added up to work out what they could afford to pay. If Mr and Mrs M hadn't taken PPI on the earlier loans they would've paid less each month for these loans, so potentially would've had more money in the bank. But when they entered into the PTDs this would've been considered and used to pay off their outstanding debts, including what they owed on the last loan. So by also using the compensation from the first seven loans with PPI to pay off their debt now, I thought RBS was putting Mr and Mrs M in the position they would've been in without PPI. So I thought the way it had paid the redress was fair.

However RBS hadn't shown that it did pay all of Mr and Mrs M's compensation towards their outstanding debt. So I asked for it to provide evidence it had done this.

I also thought Mr and Mrs M were due a payment for the distress and inconvenience they were caused by the handling of their complaint. I awarded Mr and Mrs M £400.

RBS responded saying it was unable to provide statement evidence to show that all the payments had been made to Mr and Mrs M's loan. It agreed to pay Mr and Mrs M £400 for the distress and inconvenience its handling of the complaint had caused.

Mr and Mrs M responded to my provisional decision with some further comments. They asked me to consider:

- Asking RBS to pay them the 8% per year simple interest directly as they feel this money was previously promised to them by RBS and cheques were given to them for these payments, which then bounced

- That RBS has benefitted twice from their money, as the terms of the PTD set out that RBS would receive some money towards the debt already

- That they were pressured into taking PPI with the last loan by an RBS employee as she was behind on her targets, so needed their help to meet them

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.

I've taken into account the additional information and comments provided by both parties. But I still think the way RBS has paid Mr and Mrs M's compensation is fair.

I asked RBS to send me statements to show that all the payments had been made to Mr and Mrs M's loan, but it wasn't able to do this. But it has sent me information that shows when Mr and Mrs M's loan account was closed in 2014; they still owed more than their total PPI compensation. So I don't think RBS needs to pay any of the PPI compensation directly to Mr and Mrs M.

I understand Mr and Mrs M would like RBS to pay them the 8% per year simple interest directly. But I don't think it's fair to ask RBS to do this. While it did make a mistake in telling Mr and Mrs M that they would receive this money directly, I don't think Mr and Mrs M are entitled to this money.

As I explained in my provisional decision, our approach to compensation is to put the consumer in the position they would've been in. If Mr and Mrs M hadn't paid for PPI, their loans would've been less and I think they might've had additional money in their accounts. But then this would've been used as part of their PTDs and been paid towards their debts. So I think it's fair for RBS to also use this part of the compensation towards the debts now. And RBS is paying Mr and Mrs M additional compensation for the fact it told them they would be getting this money directly. So I think they have been fairly compensated for this mistake.

I've considered Mr and Mrs M's comment that RBS is benefitting twice by receiving this compensation now. I can understand why Mr and Mrs M feel this way as the compensation for all the loans is being used towards their debts with RBS. If Mr and Mrs M had had the compensation at the time of their PTDs, it would've been shared amongst all their debts. But as Mr and Mrs M's PTDs have ended, RBS can't pay their trustees to get this money divided between all their creditors now. So I think it's fair that RBS puts all this money towards the debts it has.

RBS has agreed all the policies were mis-sold to Mr and Mrs M, including the policy on their last loan. And it has worked out their compensation in the way I'd expect it to. So even if I was to say Mr and Mrs M were pressured to take out their last policy, I would then be asking RBS to compensate them in the way it already has. So this point doesn't change my conclusion on this case.

my final decision

I think the way The Royal Bank of Scotland Plc has paid Mr and Mrs M's compensation is fair.

I direct The Royal Bank of Scotland Plc to pay Mr and Mrs M £400 directly for the distress and inconvenience it's caused by the handling of this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 18 April 2016.

Amy Osborne
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