

## **complaint**

Ms M complains that The Royal Bank of Scotland Plc ("RBS") did not pay her an offer of redress appropriately. She wants RBS to correct that.

## **background**

I set out in my provisional decision of May 2014, why I was minded to uphold the complaint and I have provided extracts of that decision below:

"Ms M accepted an offer made by RBS to settle a complaint in August 2013. Ms M had expected to receive a cheque for the offered amount, and had intended to use that money to pay off particularly pressing debts. RBS offset the amount it offered Ms M against the arrears on her RBS account. As a result, Ms M did not receive any actual cash.

Ms M complained to this service that that was not a fair and reasonable approach by RBS."

"I consider that RBS raised Ms M's expectation of receiving a direct payment by saying that she would receive a cheque, and by indicating that the payment would be sent directly to her. This is an extract from RBS' offer letter, dated 1 August 2013:

I consider that Ms M would, quite reasonably, have concluded from this that she was to receive a free standing lump sum to dispose of as she wished.

RBS then compounded Ms M's expectation by again saying on the offer acceptance form that she would receive a cheque. This is an extract from that form:

Ms M was required to sign her acceptance directly below this statement, and duly did so.

I note that in the second page of the letter sent to Ms M, situated half way through a paragraph RBS had said "On receipt, we will arrange for payment to be made, subject to clearance of any arrears or indebtedness you may have with the Group." However, I do not think that this was particularly clear, either in terms of its presentation late in the letter and amongst other details, or in terms of its language – what should Ms M understand from "indebtedness" or "the Group"?

Given Ms M's financial and personal circumstances, I am persuaded that she would, in all likelihood, have been concerned primarily with the first page of the letter which upheld her complaint and, apparently, offered her much needed money. I consider that this impression was reinforced by the offer acceptance form which she had to sign and return to receive the money.

In the normal course of events, I would accept that RBS would have the right to offset any payment against any arrears that existed on the account that the PPI covered. I say this because, as our adjudicator noted, Ms M had had the benefit of the money which she had spent from the account at RBS' expense. However, because of Ms M's particular circumstances, I think raising expectation of direct payment, as RBS did, disadvantaged Ms M.

Had RBS made it clear to Ms M that it would be setting the payment against her account she would have been able to appeal that decision or to explain why her need of the money was greater than RBS'. In any event, she would have understood that she was unlikely to receive money that she could use to alleviate other problems.

As it was, she was led to believe that she would be able to use the offered payment to repay other very pressing debts, and was therefore not able to make alternative arrangements with those creditors. I find that this lack of clarity from RBS has directly impacted Ms M, and will have caused her significant additional stress and anxiety."

Having provided my provisional decision for their consideration, I asked both parties to let me have their final submissions by June 2014.

### **my findings**

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

Ms M has provided no further evidence or argument in this case, but has asked that I award additional damages against RBS for the stress caused and for its behaviour.

RBS has provided a robust and substantial response for my consideration.

I will, I am afraid, be disappointing Ms M, in that I will not be awarding additional damages against RBS. The function of the Financial Ombudsman Service is to consider the position of each party and to reflect whether the consumer has been disadvantaged by the actions of the business. If we consider that they have, then we may instruct the business to make good the situation. We do not, however, have any regulatory or punitive function, and do not make awards to 'punish' the business.

It is likely, however, that I will be similarly disappointing RBS, because I remain of the view that Ms M's need of the redress award was greater than that of RBS.

I accept RBS' view that it has a "right of set off" in cases of indebtedness, and that this is a right which the Financial Ombudsman Service generally respects. However, whilst we always take account of the relevant law, our remit is to reach a *fair and reasonable* outcome in individual cases. We may, therefore, decide that in the particular circumstances of a case the consumer should receive the compensation directly. I refer to guidance on our website, which can be found under our publications and PPI technical resource areas, and which relates to consumers who have fallen into arrears on their credit card.

Towards the end of that section it says:

*"There may be other circumstances where we might decide that a business should pay all of the compensation to the consumer. We might decide to do this, for example, where the consumer is able to demonstrate to us that they have arrears on other debts that are more serious or that pose a greater threat to them than the debt to which the PPI is attached."*

Ms M has given us evidence of the scale and severity of her debts, some of which would clearly soon impact on her home life and her ability to access basic utility services. I also

note that the value of these debts is greater than the value of the PPI redress that RBS has paid to Mrs M.

Had RBS not raised Ms M's expectation by referring in two separate places in its letter to the fact that she would be receiving a cheque, I may have been more sympathetic to their wish to offset the compensation against the debts that Ms M owes them. As I said in my provisional decision, had RBS made it clear to Ms M that it would be offsetting the compensation against her credit card debts, she would at worst have been prepared for that eventuality and at best been able to appeal that decision. As it was, she had, quite understandably in my view, planned to use the promised compensation cheque to pay back other arrears that her domestic circumstances suggest were of a higher priority.

Having considered RBS' submissions with care, I remain of the view that my provisional decision should stand, and that RBS should take action as detailed below.

### **fair compensation**

For the reasons set out above, and specific to the circumstances of this particular case, RBS should:

- a) restore the account balance to what it was at the point that the award was paid in to the account in August 2013;
- b) pay the award to Ms M as a cheque, adding statutory interest from that date in August 2013 to the date of payment;
- c) reconstruct the account from that day forward to this, or to the date the account was closed, whichever applies;
- d) write to Ms M explaining how the changes to her account were calculated and explaining the consequences of that change.

If and when RBS receives confirmation that Ms M has accepted this decision, it should then process her payment *as a matter of the utmost urgency*.

### **my final decision**

For the reasons set out above and in my provisional decision of May 2014, I require The Royal Bank of Scotland Plc to provide fair compensation to Ms M as set out above.

Roxy Boyce  
**ombudsman**