

## **complaint**

Mr M complains that R. Raphael & Sons Plc paid a refund of Payment Break Plan (PBP) fees to the debt collection agency which had taken over his account.

## **background**

Mr M had an account with Raphael's which was in arrears. He had been paying monthly PBP fees and challenged these with the bank. It agreed, as a gesture of goodwill, to refund these fees, but only on the condition that: "...any monies still owed from [his] original debt are offset by the refund". It paid the refund to the agency that held the debt. Mr M complained that he was unaware the debt had been passed to a debt collection agency and the money should have been paid to him. He said that the bank should not have disclosed any private or personal information without his consent.

The bank rejected his complaint and he brought the matter to this service. The adjudicator did not recommend that it be upheld. He considered the bank was entitled to set the money off against Mr M's outstanding debt. He noted that in the terms and conditions that accompanied the refund offer in Monument's final response letter is a section titled "*Notice of Assignment*". This section clearly states that "*In the event that a debt has been assigned under a sale agreement to another party any offer of a refund will always be subject to any debt still owed from the original agreement*". As such the bank was entitled pay the refund against the debt.

Mr M did not agree and said contract law should take precedence over terms and conditions.

## **my findings**

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

Mr M complained that he had been mis-sold a PBP. Although I can see no reason why this claim should have succeeded the bank agreed to refund those payments plus interest and compensation as a goodwill gesture. It did so on the condition that the money would be set off against Mr M's arrears. It was entitled to do so and I can see no reason why the money should have been paid to Mr M direct.

This was not a refund that the bank was obliged to make and it chose, quite reasonably in my view, to use it to cover some of Mr M's arrears. He has suggested that under contract law that he should receive the money. My role is to decide what is fair and reasonable. Mr M has benefitted by having his indebtedness reduced and I can see no grounds for upholding his complaint.

**my final decision**

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 22 May 2015.

Ivor Graham  
**ombudsman**