

complaint

Mrs S complains that R. Raphael & Sons Plc (trading as Monument) paid a refund against her debt (which it had sold on) rather than to her direct. She wants to be paid the refund.

background

Monument offered a refund relating to an optional Payment Break Plan (PBP) which Mrs S had agreed to when she opened her account. The refund was paid against Mrs S's account to reduce her debt. Mrs S says it should have been paid to her direct. Monument says the terms and conditions that accompanied the refund offer allowed it to pay the refund against her debt. Our adjudicator did not recommend that this complaint be upheld. Mrs S disagreed. She said she hadn't accepted the terms and conditions that accompanied the refund offer. Also that legally, Monument was unable to pay the refund against the remaining debt, as it had been sold on.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I note that the terms and conditions that accompanied the refund offer made in Monument's final response letter to Mrs S, stated 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'*. The natural meaning is that whilst Mrs S's debt had been sold on, Monument retained the right to pay the refund against the debt. Mrs S says that she did not accept these terms and conditions; but if so, then Monument would be entitled to withhold payment of the refund.

Even if the above term didn't apply, in my view it is reasonable for Monument to offset the refund (which it had offered as a gesture of goodwill) against the debt, despite it having been sold on. Mrs S has benefitted from the refund by the reduction in her debt. Mrs S says Monument cannot do so because this was a PPI settlement. But an optional PBP is not insurance and accordingly is not subject to the same rules as PPI. The fact that the PBP was not insurance was made clear in the terms and conditions for the account. Mrs S has defaulted and Monument is entitled to transfer its rights and liabilities under the original credit agreement, and accordingly pass on the refund in reduction of Mrs S's debt. Accordingly I find that Monument has acted fairly and reasonably. I appreciate that Mrs S will be disappointed by my decision.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 12 November 2015.

Janine Allen
ombudsman