

## **The complaint**

Mr D complains that Moorcroft Debt Recovery Limited treated him unfairly as they wouldn't accept the settlement amount, he sent them.

## **What happened**

Mr D owed around £14,000 to a lender who I'll refer to as "N". N instructed Moorcroft to collect the outstanding balance on its behalf. In early March 2019, Mr D contacted Moorcroft to make a settlement offer. He provided them with details of his current financial situation and asked if they could put forward his offer of £3,800 to N.

Mr D called back a couple of days later and Moorcroft told him the offer had been declined, but N was prepared to settle the debt at £10,745. Mr D said this wasn't possible so he would continue to make his monthly payment towards the outstanding debt.

Shortly after, Mr D wrote to Moorcroft. He explained that he was in financial difficulty and was working with a charity to clear his outstanding debts. He said he could afford to pay £3,500 in full and final settlement of his debt so he'd included a cheque for that amount. He asked that Moorcroft let him know if this wasn't going to be accepted by N who he owed the debt to.

A couple of weeks later, the cheque was cashed so Mr D said he believed the terms of his letter had been accepted and his outstanding debt had been settled.

In late April 2019, Moorcroft called Mr D to chase the outstanding debt. He told them that he'd settled the debt and they'd accepted this when they cashed the cheque. Moorcroft didn't agree. They said they'd only accepted the cheque as a part payment towards the outstanding debt. Mr D didn't think this was fair, so he raised a complaint.

Moorcroft didn't uphold the complaint. They said despite confirming to Mr D over the phone his offer had been rejected, a couple of days later they'd received the cheque from him. They explained their process was for all cheques to be cashed immediately by one department, but a different department would have responded to the correspondence.

They also said they hadn't received any other correspondence with Mr D's cheque which is why they hadn't been aware this was for a partial settlement. And they explained they hadn't agreed to the partial settlement and N would still be expecting the remaining balance to be repaid. Mr D didn't think this was fair, so he asked this service to look into his complaint.

Our investigator didn't recommend the complaint be upheld. He thought Moorcroft had been clear about how much N would accept to clear the outstanding balance. He also felt that although Moorcroft had cashed the cheque this didn't mean it had been accepted as full and final settlement of the debt.

Mr D didn't agree. He felt his previous offer to Moorcroft was irrelevant and the cheque was the only offer which should be considered. He also didn't agree that Moorcroft hadn't received his letter and he felt they had deliberately said this to change the nature of his

cheque to an account reduction rather than a part settlement. He also said that his letter had been sent by post which was a 'lawful' service of making his settlement and he felt that Moorcroft's delay in contacting him about the payment they'd received was unreasonable.

As an agreement couldn't be reached the case had been passed to me to decide.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've decided not to uphold it. I'll explain why.

Mr D has said he's unhappy with the time it took for Moorcroft to let him know his account hadn't been settled. And he feels his letter was clear that by cashing the cheque Moorcroft had accepted his terms. But I don't agree. It's not unusual for a business to cash a cheque once it's been received. It's also not uncommon to have different departments dealing with payments and actual cases. So I don't think it was unreasonable that Moorcroft cashed the cheque when it was received.

Mr D also feels that it's indisputable his offer had been accepted, and because of the delay in responding to him, it was fair for him to think it had been accepted. But I don't agree. Moorcroft have said that they don't have any record of Mr D's letter being received, and weren't aware of the partial settlement request until they'd spoken to him at the end of April.

I haven't seen any evidence from Moorcroft's system records which show otherwise, however, they have provided a copy of the cheque which shows the account number written on the back. And as the cheque was in Mr D's name, I think it's reasonable that Moorcroft believed the payment was for this account and made the credit to the account accordingly.

Although Mr D has provided a copy of the letter he says was sent, he hasn't provided anything to confirm it was included with the cheque. However, I think based on the content of the letter it's likely that if Moorcroft had received it, they would've contacted Mr D sooner to let him know his offer wasn't accepted, rather than wait until the end of April to chase for the outstanding balance. I also think it's likely that as Moorcroft scanned a copy of the cheque when it was received, if a letter had been enclosed, that this would also have been scanned onto their system at the same time.

I also don't think it was unreasonable that Moorcroft didn't meet the specific terms which had been set by Mr D. I say this because I've listened to the call between Mr D and Moorcroft in early March 2019 where Moorcroft confirmed Mr D's offer had been declined by N. I think Moorcroft were clear that the offer wasn't accepted, and N wanted £10,745 to settle the outstanding debt. Mr D then acknowledged this and confirmed in the call he couldn't afford this higher offer.

Moorcroft then said he could make an alternative higher monthly payment which he also said he couldn't afford. Mr D was then asked if he would like to continue with his monthly payment instead which he then confirmed before ending the call. I think Moorcroft were clear throughout that they were only acting as collection agents for N, and that they weren't in a position to accept or reject full and final settlements without instruction from N.

I acknowledge Mr D feels the initial offer is irrelevant and it's only the second offer that should be considered. But I think Mr D ought to have been reasonably aware that by sending the cheque – and for a lower amount than he'd offered previously - it was likely to have been declined by N. And I think it was clear from the call Mr D had with Moorcroft before he sent the cheque that they didn't intend to accept any full and final settlement payment on N's

behalf. And I think that although Moorcroft cashed Mr D's cheque before considering what the payment was for, it doesn't mean it would be fair and reasonable to say that Mr D doesn't owe anything further.

Mr D told us he was unhappy with the time it took Moorcroft to respond to him. And he feels this strengthens his argument that by leaving it so long to reply, the law construes that his offer had been accepted. But I don't think it's fair for him to reasonably rely on any potential delays in Moorcroft's internal processes, or in response to his cheque - which may not have had an accompanying letter, to say his account had been settled.

I also note that Mr D said that Moorcroft wrote to him a couple of months later after they'd realised their 'mistake'. So, I think he was aware that if the cheque was accepted and cashed it would have been a 'mistake' for them to accept it, and that there wouldn't have been any real consideration or intention from them to accept this as the full and final settlement offer, he'd put forward. Therefore, I don't think it would be reasonable to now bind them to this acceptance. I acknowledge that if Mr D referred this to a court they may come to a different outcome. But in my view, I think it would be unfair given the circumstances to bind Moorcroft to its mistaken acceptance.

I recognise this has been a frustrating time for Mr D, and I'd like to reassure him that I've carefully read all the information that's been provided. I understand why Mr D feels strongly about what's happened and I realise this won't be the outcome he was hoping for, but I don't think Moorcroft have treated him unfairly. So, I won't be asking them to do anything more.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 June 2020.

Jenny Lomax  
**Ombudsman**