

complaint

Mr and Mrs M complain Bank of Scotland plc (trading as Halifax) cashed a cheque they sent, in full and final settlement of a debt, but later said it wasn't acceptable as settlement.

background

Mr and Mrs M wrote to Halifax on 9 March 2015 with a cheque for £164. The amount owed was over £1,000. They asked the bank to accept this amount to fully settle the debt on an old current account. The debt was with a debt collection agency ("DCA"). The bank cashed the cheque.

Mr and Mrs M contacted the bank in October 2015 as their credit file hadn't been updated to show the debt settled. Halifax couldn't trace the letter Mr and Mrs M sent with the cheque, but, they didn't dispute it was sent. Halifax said they didn't accept the payment in full and final settlement of the debt, so they shouldn't have cashed the cheque. Halifax said by cashing the cheque and not responding to Mr and Mrs M's letter they'd made a mistake and apologised. They refunded the cheque along with a payment of £50 for the trouble and upset this mistake caused Mr and Mrs M.

Mr and Mrs M were unhappy. They complained to us as they thought if the cheque had been cashed the matter was settled. And they thought Halifax should accept it in full and final settlement.

Our adjudicator thought Halifax had done enough to put Mr and Mrs M back in the position they would've been in if the mistake hadn't happened. So, he didn't recommend the complaint be upheld. Mr and Mrs M didn't agree. They still thought Halifax should treat the account as settled. So the case has come to me for a decision

my findings

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 come to the same conclusion as the adjudicator and for largely the same reasons.

I appreciate the current situation must be worrying for Mr and Mrs M. Particularly with Mr M's long term health problems and his recent difficulties in September 2015, which I'm sorry to hear about. And, I think it's likely to be all the more frustrating for them, as this complaint has arisen out of a voluntary effort, on Mr and Mrs M's part, to manage this debt.

From what I can see Mr and Mrs M entered into an *informal* arrangement with Halifax in respect of this. Under the arrangement Halifax were accepting a token payment of £1 each month and no interest or charges were added to the debt. The debt was passed to a DCA who were making collections. And, after the offer letter and cheque were sent to Halifax, Mr and Mrs M didn't cancel this token payment.

Mr and Mrs M thought Halifax had accepted their offer as they failed to respond to the letter and cashed the cheque. And they feel Halifax should now be bound by this. But Halifax didn't have to accept the offer. Nor had they given Mr and Mrs M any indication that such an offer would be accepted. Halifax said before any settlement payment is made they would send a confirmation letter stating whether the amount was acceptable or not. And I don't think that's an unreasonable approach.

Whilst I accept the mistake in this complaint was on the part of Halifax, their records show they continued to receive the monthly £1 payments under the informal arrangement, after March 2015. And I think this would've suggested the payment of £164 *wasn't* in full and final settlement.

Halifax have apologised for their mistake and refunded the money to Mr and Mrs M along with £50 compensation. And I think that's a fair and reasonable response in all the circumstances. If Halifax *hadn't* made the mistake and *had* responded to their letter, rejecting the offer, Mr and Mrs M would still owe the money. And, I think it's likely – given their financial circumstances - they would've continued to pay the token amount of £1 per month. So, overall, it seems to me Mr and Mrs M are back in the position they would've been in if Halifax hadn't made the mistake. Particularly, as Mr and Mrs M appear to have continued the monthly token payment towards the debt. And, the bank hasn't sought to keep the £164 paid in part settlement of the debt.

I can see Mr and Mrs M think the DCA is no longer dealing with the debt as they've received a letter dated 9 July 2015 which says so, but I think this relates to a different matter. I think Mr and Mrs M's active approach to this debt is commendable. And I would urge them to continue to deal with the DCA regarding the ongoing payments.

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 and Mrs M to accept or reject my decision before 10 March 2016.

Annabel O'Sullivan
ombudsman