

## **complaint**

Mrs D complains that she sent a cheque for £150 to MBNA Limited in full and final settlement of her outstanding debt to it. MBNA disagrees and has pursued her for the outstanding balance - £335.84 - owed by Mrs D.

## **background**

Mrs D sent a cheque for £150 to MBNA. Her cheque was accompanied by a letter stating the payment was in full and final settlement of the debt Mrs D owed to MBNA. MBNA deposited the cheque and Mrs D believes the action of doing so amounted to an acceptance of her closure of the account.

The adjudicator did not recommend this complaint should be upheld. She concluded MBNA and Mrs D had not reached an agreement as to the settlement of the debt. She concluded the acceptance of the cheque by MBNA was a partial settlement of the debt. If Mrs D could not repay the total amount owed then Mrs D could discuss a repayment plan with MBNA. However, MBNA had made no error in continuing to pursue Mrs D for the balance of the debt.

## **my findings**

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

While I have sympathy with Mrs D who as a pensioner feels she is not able to repay the total amount of the outstanding debt, I am unable to find that MBNA is in error in pursuing her for the balance of the debt she owes to it. While it would have been useful to clarify this with Mrs D at the time of depositing the cheque, on balance, I do not find MBNA was at fault in failing to communicate with her on receipt of her cheque. I acknowledge Mrs D believed her debt was settled at this time.

However, I am satisfied the total sum owed was £485.84 and at no time did MBNA agree a partial settlement with Mrs D. As a result it was not obliged to accept £150 as a settlement of the total amount owed.

In paying £150 to MBNA Mrs D made a partial payment of the outstanding debt. In writing "in full and final settlement", without agreeing that £150 would suffice as a settlement of the debt, Mrs D was not able to extinguish the debt she owed. Similarly, in cashing the cheque paid to it, I do not consider MBNA accepted the debt had been settled. Rather, the amount paid merely reduced the sum owed by Mrs D by £150.

Overall, I am not persuaded that a binding compromise or contract was formed between the parties when the bank paid in the cheque. I find MBNA is entitled to seek to recover the outstanding balance, as it has done.

While it is arguable that a court might come to a different conclusion on this case in applying relevant case law and precedent, as an ombudsman I am required to reach a decision on a complaint that is fair and reasonable in all the circumstances, taking into account – but not necessarily being bound by – any relevant law (amongst other things).

Consequently, I do not find MBNA was at fault in referring the debt to a collection agency.

I am satisfied MBNA notified Mrs D that her non-payment of the agreed monthly sums in settlement of the total balance would have this result.

**my final decision**

My final decision is that MBNA Limited has made no error and as a result I do not uphold this complaint.

Zoe Copley  
**ombudsman**