

# How to accept Settlement Offers

I recently had two clients (let's call them Jason and Peter) who were both offered a settlement deal by their debtors. Contractors Debt Recovery had made adjudication applications on behalf of both of them, and the offers had been received once the debtors had read the case against them. It was clear that they could not produce any valid reasons not to pay my clients.

One client received a letter from the debtor's solicitor offering full payment within 14 days on the condition that the application be withdrawn. The other client received a phone message from his debtor offering to 'work it out'.

I discussed the matter with both clients.

Jason wanted me to withdraw the adjudication application as he felt he was sure he would get his money within the 14 days. I was not so confident, but as the letter came from a solicitor it held a bit more water. So Jason agreed to the deal.

Peter asked me if he should call his debtor back, but he really didn't feel like talking to him. I advised Peter to fax his debtor a request to put anything he had to say in writing. He did so, and sure enough Peter also got a written offer to pay the whole amount on the condition that the application be withdrawn.

I advised Peter to prepare a letter outlining the conditions under which he would accept the offer, which of course included a 'no payment, no withdrawal' rule.

Peter got his money. Jason is still waiting, and faces starting the payment claim process from scratch, or commencing winding up the debtor.

Why the different outcomes? The difference lies in control and power. Peter maintained his position of power and controlled the manner in which he accepted the offer. Jason relinquished his power, and didn't control the process.

When you get an offer from a debtor to pay, you need to follow these 6 steps.

**WHY** - should you accept the offer?

Are there other pressing reasons why you would entertain an offer? Perhaps there are other business or personal reasons that are best served if you settle quickly for as much as you can get. This is really for you to decide.

If the offer is an insult, then you will probably want to keep the pressure on. As a general rule, if you're not being offered at least 70% of what you are owed, it's a joke of an offer and I'd keep fighting. Your debtor clearly wants to avoid a fight if he can, which is why he's made an offer in the first place, so keep going. But this is open to each individual circumstance.

**WHO** – is making the offer?

Don't negotiate with someone who is not authorized to make payment offers. Often you will strike a deal with someone who has been playing with you, just to see how low you will go. Then when you accept the offer, you are told that that person was never authorized to make offers. This can happen if your debtor

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is a large company where you might be dealing with project or site managers. Are you sure these guys can make settlement offers on behalf of the company?

So if you are not sure if the offer is coming from a senior enough person, ask them for written confirmation that they are duly authorized to negotiate a payment settlement on behalf of the company. Advise them that you will only consider an offer once you have such confirmation in writing.

**WHAT** – are they willing to pay for?

This is the business end of the deal. How much are they offering? Often you will have a gut reaction to the number once you see it. Go with that most of the time. If an offer is reasonable it is generally better to accept it and save yourself the time, stress, and cost of a much harder fight.

I would stress here that this applies to 'reasonable' offers. Most of the time you will get pathetic offers that your instinct will immediately reject. Often there will be vast slabs of work (often variations) that the debtor will not pay for, instead offering payment for some tiny item of contract works. That is the time to push forward with your adjudication, payment claim, or other recovery process.

The golden rule here is **DO NOT MAKE A COUNTER OFFER**. If you are offered \$30 000 payment on a \$100 000 debt, don't suggest that you will accept \$70 000. This is a road to nowhere, as your debtor will never accept your counter offer. He may come up to \$50 000 if you're lucky.

Remember, your role is to accept offers. It is your debtor's job to come up with one that you will accept. If you reject an offer, then keep your mouth shut and keep going. Your debtor then will have to fight on, or make a better offer.

**WHEN** – will payment be made?

This is the time to impose some control. When you have accepted an offer, the worst thing you can do is relax because 'it's finally all over'. This is when it can all go south. When you have a figure you can live with, you need to define when it is due for payment. And I mean 'when' precisely. That means a day and time.

This is a crucial step because by imposing this rule you can test your client's credibility. If they hesitate at any kind of a deadline then you know the offer is not real. They may offer another deadline that you can live with, but make sure that your power is intact. That means that you continue your adjudication or recovery action right up to the time that money hits your bank account. If you relinquish this power, you can kiss your money goodbye.

**WHERE** – will payment be made?

Again this is another aspect of controlling the process. Where do you want the money to arrive? It may come to you by couriered cheque. Or a cheque may be sent to your lawyer's office, or to your office. This step only applies to payment by cheque, but you must define where the cheque will be sent, and advise your debtor accordingly.

**HOW** – will payment be made?

This is the most important aspect of control, because you need to confirm that you have actually been paid before drop your recovery action.

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Today there are many ways of moving money around: Most of the time you would accept payment by either cheque or direct transfer into your account. Remember that if you accept a cheque it MUST be a bank cheque. Offer to pay your debtor for the cost of the cheque in order to make it easier for him to comply. If you can't get a bank cheque out of him, then you will only consider payment to be made on the clearance of the money, NOT receipt of the cheque itself.

Or you could provide account details for a direct transfer. Evidence of this will be an online receipt. But be careful. I have seen one of these faked using liquid paper and a photo copier. So again only consider payment to be made once you can see the cash in your account. This will usually be a day after the transfer.

So have a go at writing an offer acceptance letter incorporating all the elements above, and preserve your power, and control the process. Anyone can make offers. It's your job to turn them into cash.

Good luck.