

complaint

E has complained that 1st Credit Limited is unfairly pursuing it for a debt. It says the debt hasn't been proved, and that it's unfair to be considering taking the former matrimonial home into account as a potential way of recouping the amount owed.

background

E is the executor of the estate of Mrs H. Mrs H sadly passed away, and at that point, I understand she had assets of £4,812.47, and debts of £24,089.70. This included a debt to 1st Credit of around £14,000.

1st Credit is now seeking to recover this debt from the estate. In part, it has been looking at the option of seeking to recover the monies by way of potentially forcing the sale of the matrimonial home. E feels this is unfair.

E has also explained that it has no proof that Mrs H owed the money to 1st Credit.

Our adjudicator recommended that the complaint should be upheld in part. This was because although he felt Mrs H did owe the debt, it was unfair of 1st Credit to pursue it, given that the estate is insolvent.

As 1st Credit disagreed, the complaint was passed to me. I agreed that it was unfair to pursue the sale of the house. But I felt that if the estate has other assets, it could try to recover its money this way. On this basis, I asked that the adjudicator seek comments from both parties, so I could reach my final decision.

1st Credit still disagreed, and made a number of points. I consider the key ones to be that: (i) it could apply to the court for a charge on the property; and (ii) the property has actually now changed hands.

The complaint's now been passed to me for my final 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.

I'm satisfied, on balance, that the debt was (and is) owed to 1st Credit. This is because it wrote to Mrs H in July 2013, to let her know it had bought the debt from another party. I can also see that Mrs H continued to make repayments towards it.

So I turn now to whether it's fair for 1st Credit to pursue the debt. I think it's unfair for it to attempt to seek a charge against the property, as it has explained it's entitled to do. Such orders are rarely granted, and – although I can't pre-empt what a court might decide – I think it unlikely it would happen here. This is for a number of reasons. In particular, as I understand it, there is now only between £500 and £1,000 left in the estate. As both parties agree the home doesn't form part of the estate (as it passed to Mrs H's husband under the legal doctrine of survivorship), I think it unlikely a court would order a charge when the debt that could be recouped is so low. Further, the property has now actually been transferred to third parties (as 1st Credit has pointed out). So I think it would be onerous and disproportionate to attempt to seek such an order, in these circumstances.

That said, as at the time of writing, I understand there may remain up to £1,000 in the estate, which could be available to creditors. As 1st Credit is one such creditor, I see no reason why it shouldn't try to recoup part of the debt from these funds. Clearly I can't comment on whether it would be successful in doing so, as debts are typically required to be paid in a particular order.

my final decision

For the reasons given above, it's my final decision to uphold this complaint in part. I require 1st Credit Limited to stop pursuing the estate for repayment in respect of the former matrimonial home. I make no further order.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 29 March 2016.

Elspeth Wood
ombudsman