

## **complaint**

This complaint is brought by Mr R 1, Mr R 2 and Mr R 3. They are executors and beneficiaries under their father's will. I'll refer to them collectively as "the executors" in my decision.

They complain that Drydens Limited is wrongly pursuing them for their late father's debt.

## **background**

The executors' father passed away leaving an outstanding balance on his credit card account.

They say the only asset their father left was the family home. Under the terms of their father's will, the house has been left to them, but their mother, Mrs R, is allowed to live there for as long as she wishes.

Drydens has been appointed by the current creditor to collect the debt. Drydens says the creditor is legally entitled to payment of the outstanding balance before any beneficiary inherits. It has asked the executors for payment.

Our adjudicator concluded that Drydens had behaved unreasonably by asking for details of Mrs R's and the executors' personal financial details. He said the debt belongs to the estate and it's unfair of Drydens to lead the beneficiaries to believe they were personally liable for the outstanding balance. He recommended that Drydens pay £300 compensation.

Drydens didn't accept the adjudicator's conclusions.

Drydens says the creditor is entitled to take action against the executors because they are jointly and individually liable for the debts of the estate. But, it disagrees that it said the executors/beneficiaries were personally liable for the debt. Drydens says it has simply tried to enter into a payment arrangement with the executors to prevent further action by the creditor. It says it has followed correct process and been transparent and fair throughout.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's right that the creditor has a claim on the estate for the unpaid balance, assuming it wants to pursue payment. The executors must make sure that any creditors are paid before the estate is distributed to the beneficiaries.

The executors are unhappy because the debt was unsecured and the estate doesn't have any cash to cover the outstanding balance. The house is the estate's only asset and Mrs R is living in it. However, this doesn't mean the creditor doesn't have a valid claim against the estate.

So far, the creditor hasn't tried to force a sale of the house, or register a charge against it. Drydens says the creditor doesn't want to sue for the money, even though it's entitled to. Instead, Drydens says it's been asked to write to the executors/beneficiaries to ask for payment of the full outstanding balance.

I accept that Drydens is entitled to try to negotiate with the executors/beneficiaries to recover money owed to the creditor by the estate. This might be to avoid taking action to force a sale of or to register a charge against the house. But, in doing so, it shouldn't give the impression that the beneficiaries are personally liable for their father's debt.

I have considered all the available correspondence, including a transcript of a telephone conversation between Drydens and one of the executors. In my view, its communications have been unclear and confusing.

I think the transcript shows that Drydens' employee doesn't understand who is liable to repay the debt. She says Mrs R won't be expected to make payments out of her pension credit. She also tells the executor that he isn't expected to pay out of his own pocket. If this is the case, it's unclear why either of them should provide income and expenditure details.

Dryden's now accepts that its employee was wrong to say that Mrs R should complete an income and expenditure form. But, I also think Drydens has been vague in its communications with the executors about the basis on which it's asking them for payment of the outstanding debt.

By asking the executors to complete an income and expenditure questionnaire Drydens has given the impression that they are personally liable to repay the debt. I don't think this is fair or transparent. Drydens should have made it clear that the creditor's claim (if it intends to pursue it at all) is against the estate, not the individuals. If the executors then want to negotiate so they can keep the house, they can do so with full knowledge and understanding of how and why they are liable.

For these reasons, I find that Drydens should pay compensation to the executors for the distress and inconvenience it has caused them. I think the amount recommended by the adjudicator is fair in all the circumstances.

### **my final decision**

My final decision is that I uphold the executors' complaint against Drydens Limited. I award £300 in compensation in total. I leave it to the executors to decide how they wish to divide this money amongst themselves.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R1, Mr R2 and Mr R3 to accept or reject my decision before 6 June 2016.

Athena Pavlou  
**ombudsman**