

complaint

Ms A complains about a finance agreement her deceased father had with FGA Capital UK Limited (trading as Fiat Financial Services). She is unhappy about the way that Fiat Financial Services has sought payment from her for what is outstanding on her deceased father's credit agreement.

background

Ms A's father took out a finance agreement for a car but in September 2012 he died suddenly. Fiat Financial Services attempted to contact the executors of Ms A's father's estate and Ms A responded to say that no executors had been appointed to deal with her late father's affairs. The car remained in Ms A's garage and Ms A did then arrange with Fiat Financial Services for the car to be taken back and sold. The sale proceeds were used to reduce the outstanding balance on the finance agreement but an amount remained outstanding.

Fiat Financial Services has sought repayment of the outstanding amount but Ms A is unhappy that it has written directly to her for payment. Fiat Financial Services says that it has not been provided with the contact details of who is actually dealing with the estate and as Ms A had asked them to take the car back it simply addressed correspondence to her.

Ms A was unhappy with Fiat Financial Services' response to her complaint so she referred it to our service. It was considered by an adjudicator and he explained why he felt the complaint should be upheld. He felt that it was not reasonable for Fiat Financial Services to assume Ms A was dealing with her late father's estate and it was unreasonable to issue a default notice directly to her. He recommended Fiat Financial Services pay Ms A £200 for the distress and inconvenience caused and that it stop contacting her about the outstanding debt.

Fiat Financial Services did not fully accept the adjudicator's recommendations but did say that, as a gesture of goodwill, it will offer Ms A £50. It will also ensure no further letters are addressed to Ms A but it will pursue the estate for the outstanding balance.

Ms A did not accept Fiat Financial Services' offer and she was disappointed that its offer was merely as a gesture of goodwill and did not accept any responsibility. As the complaint could not be resolved informally, it has been referred to me for consideration.

my findings

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

Ms A has repeatedly said that she is not dealing with her late father's estate and she has merely made arrangements to have the car taken back by Fiat Financial Services. When Ms A made arrangements to have the car taken back by Fiat Financial Services she completed a form that is entitled 'Form A'. The form states, amongst other things:

'I hereby authorise you to take possession of the above vehicle and dispose of the goods on behalf of the estate...'

The form does indicate that Ms A is providing authorisation *on behalf of the estate*. It is perhaps not unreasonable in the circumstances for Fiat Financial Services to therefore continue to contact Ms A after she had completed this form as it would have likely understood that she was authorised to act on behalf of the estate.

However, this form was not simply returned to Fiat Financial Services on its own and it was accompanied by a letter from Ms A. This letter makes it clear that Ms A is not acting on behalf of the estate and she only wishes to return the car as it is a painful reminder of her late father. It is clear that Ms A has only completed 'Form A' as this is the only way that she could get the car removed from her property by Fiat Financial Services.

Having considered Ms A's correspondence I am satisfied that she has clearly explained that she is not dealing with her late father's estate and she is merely completing 'Form A' to have the car taken back. There is no legal requirement for a family member to deal with a deceased relative's estate and I have not been provided with anything to show that Ms A is actually appointed or authorised to deal with her late father's estate.

Fiat Financial Services should not therefore have sent the default notice directly to Ms A. The default notice states that Fiat Financial Services will consider bringing proceedings against you (Ms A) for the outstanding balance. Ms A has no requirement or responsibility to ensure any amounts are paid to Fiat Financial Services for her late father's estate. Fiat Financial Services should not therefore have sent the default notice directly to Ms A.

I think that sending the default notice, that indicates it is considering taking further action against Ms A, would have been distressing in what would have already been an upsetting time after her father had passed away. I think that Fiat Financial Services should therefore make a payment to Ms A in respect of this.

Fiat Financial Services has now said that it will stop writing to Ms A and it has offered to pay her £50 as a gesture of goodwill. I should be clear here that any payment is not made as a 'gesture of good will'. The payment should be made as compensation for Fiat Financial Services' failings in the way that it dealt with Ms A. The adjudicator has suggested Fiat Financial Services should make a payment of £200 to Ms A and having considered the circumstances here, I think this is a fair amount.

my final decision

My final decision is that I uphold this complaint and direct FGA Capital UK Limited (trading as Fiat Financial Services) to:

- ensure no further letters are sent to Ms A about her late father's account; and
- pay Ms A £200 for the distress it has caused.

Mark Hollands
ombudsman