

The complaint

Mrs W complains that PRA Group (UK) Limited purchased a debt from her credit card provider, who I'll call 'A' when she hadn't given her permission for the debt to be sold. She said that she neither saw nor signed the terms and conditions A relied on to sell the debt, making subsequent enforcement of the debt unfair.

What happened

Mrs W said that in 2002 she took out a credit card with A with a £7,000 credit limit. She said that after receiving the terms and conditions in January 2003, she ticked 'no' against a box and didn't sign data protection consent for transference of data, but signed the main document. At a later date Mrs W says she took out further credit and that she was told that a further agreement would need to be signed, as the existing agreement only covered the original £7,000. Mrs W said that she didn't receive or signed a new credit agreement, and said that A had made PRA Group aware of this.

In May 2018 Mrs W entered into a debt management plan (DMP) via a third-party organisation, and with A's agreement made monthly payments of £12.93. Then in July 2018 PRA Group wrote to Mrs W to say they had purchased the debt - and that future payments should be made to them. Mrs W was sent two notices of assignment of the debt, detailing an outstanding balance of £18653.04. Mrs W continued to make the DMP payments to PRA Group. In August 2018 she asked PRA Group to send her a record of her agreeing to the debt being sold by A.

Mrs W subsequently complained about the delay in answering her enquiry, and said that after being told that she wouldn't receive calls or letters while PRA Group investigated her concerns - that she had. She wrote again making a formal complaint as she believed that PRA Group had failed to carry out due diligence when purchasing the debt. And that was unhappy with the service she received from PRA Group as they had failed to supply her with the documents she requested within a reasonable time. Mrs W also said that she was unhappy that the notice of assignment was incorrectly worded and, although PRA Group sent a correctly worded copy since, she didn't accept this change.

PRA Group responded to Mrs W advising that they were the legal owner of the debt and that they had purchased it in good faith. They that while they didn't have the signed agreement that Mrs W had requested, they had relied on the original document with a defined credit limit of £7000 as the legal foundation to enforce the debt. PRA Group said they were sorry for the delays in providing the documents, and for a letter that had been sent out while the account had been placed on hold.

Mrs W didn't agree with the response from PRA Group saying that she believed the debt shouldn't have been sold and that it wasn't enforceable - and came to us. Our investigator gave his view that the complaint shouldn't be upheld, concluding the evidence supported the reasons PRA Group had given in its final response letter. Mrs W didn't agree with the investigator's view and asked that her complaint be given to an ombudsman to decide.

What I've decided – and why

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

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've come to the same overall view as the investigator for similar reasons.

PRA Group's purchase of the debt

Having seen the original credit agreement, and while I can see Mrs W wrote 'NO' against a box for payment protection and didn't sign data protection consent for transference of data – she signed the main document. So, accept that Mrs W is bound by the terms and conditions of the original Credit Agreement.

'Terms and conditions: 18C *We may transfer our rights or duties under this agreement or for any other person to carry out our rights or duties under this agreement. If we do this, it will not reduce your rights or increase your duties unless you agree otherwise. You may not transfer any of your rights or duties under this agreement.'*

I can see that Mrs W didn't agree that 18C of the terms and conditions allowed MBNA to sell the debt - and that her view was that they were only able to transfer it for collection. I don't agree, and believe it was reasonable for PRA Group to have relied on this to show that A were entitled to sell the debt.

There are two types of assignment that a creditor can make - legal and equitable. Both fall under the Law of Property Act 1925, and require the creditor to notify the consumer of the change in writing. This doesn't require the debtor's agreement. I understand that PRA Group entered a legal assignment, giving them the power to enforce the debt. They made Mrs W aware of this by sending the notice of assignment.

While I accept that the first letter contained an error by not referring to A in paragraph three, I'm satisfied that the error didn't take away from the information provided. PRA Group had purchased the debt from A and any future payment would need to be made to PRA Group. While Mrs W may not accept the notice of assignment, her acceptance is not required as it's only to tell the consumer that the debt has been sold, who to, and how to pay.

Need for second credit agreement

Mrs W doesn't dispute that she opened the original account and took on the original and further credit. She has said that she doesn't agree that additional credit should be paid as she didn't see or sign a further credit agreement.

The further debt arose from the same account both opened and operated by Mrs W. This wouldn't usually require a new credit agreement, so I'm satisfied it was reasonable for PRA Group to believe that the entire debt was covered by the original credit agreement, and that A was entitled to sell it. Mrs W has said that she didn't see or sign the new credit agreement that she believes was relied upon when selling the debt. But if there was no new credit agreement, then the question becomes one of whether the steps taken are in line with the original agreement.

I don't know whether Mrs W has sought to take this up with A. But for the avoidance of any doubt, this isn't something I can fairly hold PRA Group responsible for. Based on what I have seen, I don't believe that PRA Group did anything wrong by taking reasonable steps to recover the debt that they purchased in good faith. Mrs W can, of course, obtain legal advice on how a court might view the enforceability of the debt, should she wish to do so.

Customer service from the PRA Group

While I understand the frustration caused to Mrs W while waiting for the documents she'd asked for. As the delays were beyond the control of PRA Group - it wouldn't be fair to expect them to compensate for this.

I have also considered that PRA Group sent Mrs W emails each month giving regular updates while they waited for A to provide the requested documents and feel that PRA Group acted reasonably by keeping Mrs W updated. When Mrs W escalated her concerns in September 2018, PRA Group responded in days explaining the reason for the delays. Then when she complained in March 2019, their final response was sent in April 2019 within the time scales set out for regulated businesses.

I accept from a letter sent by the PRA Group that the account was placed on hold. While on 8 August 2018 Mrs W was told she wouldn't receive any letters or calls, a letter had been posted 3 August. That was before this was agreed, so while I can understand why Mrs W would feel the agreement wasn't kept to, I don't think the 3 August letter is evidence of this. I'm satisfied PRA Group did stop sending Mrs W letters - as promised. I therefore believe their decision to apologise, rather than compensate, was fair.

Broadly speaking, in line with long standing industry good practice, including section 7.3 of the Consumer Credit Sourcebook, I would expect PRA Group to have treated Mrs W with forbearance and due consideration in periods where they should reasonably be aware that she was experiencing financial difficulties. I believe that PRA Group have done so by not adding interest to the debt, accepting payment of the amount previously agreed with A through the DMP, and placing the account on hold while they investigated Mrs W's concerns

My final decision

I understand this will be disappointing, but for the reasons set out above, I don't uphold Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 5 May 2020.

Sarah Watts
Ombudsman