

## The complaint

Mr J is unhappy with PRA Group (UK) Limited's handling of a credit card debt.

Mr J says PRA have no authority to report the default as the court concluded the debt was unenforceable and PRA have failed to show they legally own the debt.

## What happened

I issued my provisional findings to both parties on 2 September 2021 which are copied below and form part of this decision.

### What happened

*A credit card was taken out in May 2012 with Company B, with the last payment being made towards the account on 26 February 2019.*

*As no further payments were made, on 30 July 2019 Company B defaulted the outstanding debt of £4,072.96 and sold it to PRA. (The debt has more recently been reduced by the original creditor following a review of accounts to £3,274.18.) Shortly after the default was registered PRA became the legal owners of the debt. (Mr J disputes this point, and I'll refer to this in more detail later on.)*

*To show they were now responsible for the debt, PRA provided a copy of Company B's Notice of Assignment (NOA) dated 21 August 2019 and they confirmed PRA had also sent a NOA to Mr J at the same address.*

*Through September, October and into November 2019, PRA's case notes show attempts to contact Mr J via phone, email, text and letter with no success. The records show that litigation letters were sent to Mr J in November and December 2019 and, after no response from Mr J, a claim was accepted at court in January 2020. Mr J submitted a Subject Access Request (SAR) to PRA in February 2020. I understand from the submissions Mr J also made a SAR to Company B.*

*A hearing took place before a Deputy District Judge on 9 October 2020 who concluded the debt was not enforceable.*

*After the hearing PRA continued to report the debt as a default against Mr J on his credit file. Mr J complained about PRA's authority to do this, and that in any event as the debt was not enforceable it should not be reported on his credit file. As Mr J was unable to reach a resolution with PRA, he brought the complaint to our service and is looking to have his credit file cleared of anything in relation to this debt.*

*Our investigator reviewed the matter and concluded Mr J's complaint should not be upheld. They explained it was only possible for this service to consider the actions of PRA under this complaint, not Company B – so any concerns about the initial registration of the default should be directed to Company B.*

*The investigator also explained there was enough information available for our service to say PRA owned the debt – in particular, the investigator referred to the NOAs. And the investigator explained that a Deed of Assignment (DOA) was a document between Company B and PRA regarding the sale of several accounts, so not a document solely relating to the sale of Mr J's account and it was not a document for our service to validate. The investigator said if Mr J felt strongly that PRA didn't own the debt, then he should approach Company B.*

*Our investigator said it was also not for our service to determine if a debt is enforceable, and noted Mr J had not disputed that he had entered into the agreement with Company B. The investigator's findings were that it was reasonable for PRA to conclude the debt was owed by Mr J and it was reasonable for them to continue recording the default. And while the investigator noted Mr J's reference to a particular Court of Appeal ruling about a different case, they noted differences between Mr J's circumstances and the case he was referring to - so they didn't find this was enough to change their view that Mr J's complaint should not be upheld.*

*Mr J strongly disagreed. Mr J felt the investigator had not done enough to establish that the debt was owned by PRA. And he made three particular points; firstly, in light of the court case he had cited to support his position, it was not reasonable for PRA to continue registering the default against him; the NOAs the investigator was relying on to support PRA owned the debt were not certified copies and there was no evidence of a NOA sent to him from Company B (he had not received a copy of a NOA through his SAR request from Company B) and lastly, PRA had not provided a correctly executed DOA to prove they legally owned the debt.*

*As Mr J and the investigator were unable to reach an agreement, the case has been passed to me to decide.*

*Since receiving the case to decide PRA have provided their legal representative's summary of the court hearing which took place on 9 October 2020. I'm mindful that the summary of the hearing is not a court record, but I have no reason to doubt its contents at this time.*

#### *What I've provisionally 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.*

*Having carefully reviewed everything, I agree with the outcome reached by the investigator for broadly the same reasons.*

*Before setting out my provisional findings, Mr J should note it is not for this service to decide matters of enforceability – that is for a court to decide. Furthermore, it would be inappropriate for this service to consider any matters that have already been dealt with by the courts.*

*It may also be helpful for Mr J to note that this service is set up as an alternative to the courts. So while, amongst other things, the ombudsman's considerations will take into account any relevant laws, rules, regulations, codes of practice and good practice, ombudsman's decisions are determined by what is fair and reasonable in all the circumstances of the individual complaint.*

*So I need to decide if PRA have acted fairly and reasonably in Mr J's case.*

*Mr J has told us he wishes for PRA to stop reporting the default for this debt on his credit file and I understand this to be for two main reasons. Firstly, because Mr J says PRA have not provided the required documentation to demonstrate they are the legal owners of the debt in*

question. And secondly, because the court dismissed PRA's claim and said the debt was unenforceable. Mr J says this means it follows that the debt should no longer be reported on his credit file. To support his position Mr J referenced particular case law.

*Does PRA own the debt?*

*The Judge ordered the claim [to enforce the debt] be dismissed. And it appears accepted by the parties that this was due to PRA being unable to provide a complete copy of a reconstituted credit agreement. I've seen no suggestion that this order was given because PRA do not own the debt or that the matter of who owned the debt was dealt with during the hearing. I'm therefore satisfied at this time that I can consider this part of the complaint. However, should any new evidence come to light in reply to this provisional decision relating to the court's dealings with this subject matter, then it may be necessary for me to review whether it would be appropriate for our office to continue considering this particular complaint point.*

*Having listened to the telephone calls between Mr J and our investigator I am aware Mr J feels strongly that PRA have not demonstrated they've followed the proper process under the Consumer Credit Act 1974 to become the legal owners of the debt.*

*As previously explained, this service is not a court of law and it is not for this service to determine whether a DOA is valid.*

*In my review I have considered the relevant regulations which set out the requirement on a business to show they've bought a debt. And the Financial Conduct Authority (FCA) Consumer Credit Sourcebook (CONC) which can be found in the regulator's Handbook, sets out what the regulator expects a business to provide in order to show the ownership of a debt has changed.*

*CONC 6.5.2 says 'Where rights of a lender under a regulated credit agreement are assigned to a firm, the firm must arrange for a notice of assignment to be given to the customer...as soon as possible'.*

*I've seen nothing in the regulations to say a business must send a consumer the DOA or that a NOA should be certified.*

*I understand Mr J has said he didn't receive a copy of the NOA from Company B through his SAR, but I'm unable to say why that may not have been available and it would be something to ask Company B. However, PRA provided a copy of the NOA from Company B to Mr J dated 21 August 2019. And PRA's internal screen records dated 21 August 2019 also record 'Notice of Assignment sent to [Mr J]' and quoted the address used for Mr J, which was the same address used by Company B. I therefore think it more likely than not the required NOA was sent to Mr J by both Company B and PRA.*

*As I've said, there's no suggestion in the summary of the hearing that there was any debate as to whether PRA are the legal owners of the debt. PRA's legal representative notes mention that a copy of the DOA was presented in the submissions and that the Judge highlighted that the defendant (Mr J) had accepted he'd entered into a credit card agreement with the original creditor and that the debt was assigned in August 2019.*

*I understand this will come as a disappointment to Mr J, but in view of the above I find it fair and reasonable to say that PRA own this debt.*

*Should PRA continue to report the default?*

*The Judge gave no direction regarding whether the debt should continue to appear on Mr J's credit file - so I'm satisfied this is something I can consider.*

*I've reviewed Mr J's submissions on this point and I'm afraid I am unable to agree with him that the default should no longer be reported.*

*To support his case Mr J has referred to particular case law to illustrate that where a debt is no longer enforceable it should mean the debt no longer exists to be reported. However, I don't think this automatically follows.*

*The question of whether unenforceable debts should continue to be reported on credit files is not straightforward and I consider this broader question would be better suited to a court to decide. The case law Mr J has referred to in his submissions highlights the complexity of this question. So it is not something for me to decide. My role here is to consider the individual circumstances of this complaint. I've therefore considered whether it is fair and reasonable that PRA continue to report the debt on Mr J's credit file.*

*As I've mentioned, there was no instruction following the hearing that PRA must stop reporting the default on Mr J's credit file.*

*There is also nothing to suggest the credit agreement has been voided. From PRA's legal representative's summary notes it's recorded that the Judge noted the claim was unenforceable while the fault with the reconstituted credit agreement continued. So it seems to me this is something that could potentially change should the complete documentation later become available.*

*It also appears the Judge highlighted Mr J's acceptance of entering into the credit agreement with the original creditor. And I've noted in Mr J's conversations with our service Mr J did not explicitly say he was denying it was his debt when asked.*

*As the debt is not enforceable at this time I understand PRA is no longer attempting to recover the debt from Mr J, so I think they are acting fairly in this regard by no longer chasing Mr J for the outstanding sum.*

*But while PRA is no longer able to chase Mr J for the debt, as the owner of the debt PRA has a responsibility to accurately report to the credit reference agencies the information they hold in relation to their customers. I think PRA have reasonably concluded this is Mr J's debt and I therefore think, at this time, it is fair for them to continue showing the default on Mr J's credit file.*

#### *My provisional decision*

*I am sorry this will not be the outcome Mr J had hoped for, but for the reasons above my provisional decision is that Mr J's complaint is not upheld.*

*Both parties now have the opportunity to provide me with any further submissions they wish me to consider.*

#### *Responses to my provisional decision*

*My provisional decision asked for any further submissions from the parties to be with our office by 1 October 2021.*

*Our service contacted Mr J to check he'd received the provisional decision. Mr J responded to say he disagreed with the findings and told us there would be more to follow. Our service*

chased Mr J on two further occasions for any further submissions and extended the deadline for his response. However, Mr J did not contact our service again within the timeframe set and the extended deadline has now expired.

PRA replied to my provisional decision to say they had nothing further to add.

### **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.

As neither party has provided me with any further submissions or evidence to consider in relation to this complaint, I see no reason to alter the findings I set out in my provisional decision.

That is, for the reasons above, I think it's fair to say PRA own the debt in question and at this time based on the evidence and submissions I've reviewed, I think it is fair for PRA to continue reporting the default on Mr J's credit file.

### **My final decision**

For the reasons above, I do not uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 November 2021.

Kristina Mathews  
**Ombudsman**