

## The complaint

Mr N complains PRA Group (UK) Limited are asking him to repay a debt he says they shouldn't be. He also complains they've recorded a default against his credit file for this alleged debt.

A representative has supported Mr N in bringing this complaint, but for simplicity I'll just refer to him.

## What happened

As I understand it, PRA say Mr N accrued a credit card debt with a company I'll call M which he defaulted on – PRA purchased the debt from M. The debt is reported on Mr N's credit file as defaulted on 31 October 2018, with an outstanding balance of £4,751. Mr N disputes the existence of the debt and told PRA this. In doing so, he asked for the alleged Notice of Assignment (NoA) and a Deed of Assignment (DoA) in an unredacted form.

In that situation I'd expect PRA to contact M and ask for relevant documents to establish the debt is legitimately owed by Mr N. This generally would include a copy of the original credit agreement and evidence of how the balance accrued, amongst other things depending on the type of lending.

On 2 April 2021 PRA contacted Mr N and provided documents which they later said proved the debt was his. But said the original lender M couldn't provide a copy of the credit agreement. Because of this, they said the debt was unenforceable. They said this meant they couldn't enforce the agreement in court, but could legally still:

- Contact Mr N and ask him to repay what he owed
- Pass his details on to a third party debt collection agency
- Report his account with the CRA's as appropriate

Mr N raised a complaint about this as he felt because the debt was unenforceable PRA shouldn't be reporting it to the CRA's – and he said there have been legal judgments which show him to be right. He's also complaining the debt is being reported by both PRA and the original lender M.

PRA replied to the complaint, and in doing so provided a copy of the NoA, and said the DoA contains commercially sensitive information, as such they don't need to provide this. They also provided a reconstituted copy of the default notice and termination letter – which they said further evidences the default is correct. They said for this reason the legal judgment Mr N referred to doesn't apply – as that only says if the account isn't redeemably enforceable, but PRA said they thought Mr N's agreement was.

In respect of the reporting of the default twice, PRA said this was normal. They explained Mr N's account defaulted with M on 31 October 2018 and this would be recorded for six years. Following the sale of an account, PRA said the lender would usually update their entry to show as satisfied – as no money is owed to them anymore – and then the new owner would continue reporting a default. PRA considered the screenshots Mr N had

provided from the CRA's and said they were reporting things correctly. So, overall, they didn't uphold his complaint on these points. But they accepted earlier responses they'd sent weren't good enough, so offered Mr N £50.

Unhappy with this, Mr N asked us to look into things. As part of this approach, we contacted PRA for their file. They provided it and said they didn't hear back from Mr N about the £50, and said they could still send this out to him, or use it to reduce the outstanding balance. One of our Investigators looked into things, and found PRA were acting fairly by continuing to report the default despite the account being unenforceable – and didn't think they were doing anything wrong in reporting the default now either even if it was also being reported by M.

Mr N didn't agree with this and referring back to the legal judgment he provided when contacting our service, said PRA weren't acting correctly. Because of this, the complaint's been passed to me 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 think it's important to set out my remit. My role is to consider rules, regulations, industry best practice and to take into account the law – but my overriding remit is to consider things on a fair and reasonable basis. That means I can depart from the law, if I'm satisfied it's fair and reasonable to do so. If I do that, then I need to explain why I'm doing that.

I also think it's important to explain I'm only considering a complaint against PRA – I can't comment on M's actions or require them to do anything as part of this complaint. This is relevant because I think some of the issues Mr N is raising are likely best directed to M.

#### *Should PRA be reporting the debt as defaulted to the CRA's*

In short yes, I'm satisfied PRA aren't acting incorrectly or unfairly by doing so.

Mr N is saying that because the debt is unenforceable, PRA shouldn't be reporting this to the CRA's. As I can see our Investigator explained, our service can't decide whether the debt is or isn't enforceable, only a court can do that.

Instead, our service will look at whether a debt purchaser / collector has acted fairly when notified of a dispute. When debt purchasers / collectors take over a debt quite often they won't have all the information to determine whether the debt is or isn't enforceable – so they'll need to contact the original lender. In this case, that's M.

The expectation here would have been for M to provide the relevant information to PRA, or, as M has, confirm if they don't have the information to provide.

Following M confirming it doesn't have a copy of the credit agreement PRA said the debt couldn't be enforced in court – but that doesn't mean the debt isn't still owed.

The information PRA got from M showed default letters being sent to Mr N's address. If Mr N doesn't agree the debt was his, then he'd need to raise that with M – as they'd be responsible for dealing with any concerns regarding this.

So, in effect, PRA have received information from M that shows the debt is unenforceable in court, but that also shows the debt is likely Mr N's. Under those circumstances, they've done

what they should have, by telling Mr N his debt wasn't enforceable in court, but setting out what they can do. As I've noted, they've said they can ask for repayment, can ask a third party to collect on the debt, and can report it to the CRA's – all of which is correct.

I've noted Mr N's representatives have referred to two different legal judgments which they say mean the default shouldn't be reported to the CRA's.

The first of those concerns a ruling by the Supreme Court which Mr N's representatives said showed reasonable care had to be taken before recording a default – which they didn't think PRA had done.

I've read through the judgment carefully, including the specific paragraph they've highlighted. But I think the circumstances are different. The judgment relates to the entity who recorded the default – but in Mr N's case that was M, not PRA who I'm considering the complaint against. I'd explain that generally I agree the entity who records a default has to take reasonable care in doing so, but that entity in this case was M, not PRA. So, I don't think this shows PRA are doing anything wrong.

In the second judgment Mr N's representatives have referred to relates to the account being irredeemingly unenforceable. In Mr N's case though, I don't think I can say that. Again, this comes back to whether the account is or isn't enforceable which only a court can decide. I've noted PRA have told Mr N the account isn't enforceable, but I can't make that judgment – so it follows I can't decide if the account is irredeemingly unenforceable either. I would add though, the basis on which Mr N's representatives are arguing this is because M can't provide a copy of the credit agreement – and I've seen many occasions where a lender said this, but then later on discovered a credit agreement. To reiterate, I'm looking at the individual circumstances of this case, and need to look at what's fair and reasonable.

Overall, I think PRA bought a debt that'd already had a default recorded, and I've not seen any reason to say they've done anything wrong in continuing to report the default on Mr N's credit file.

#### *Double reporting to the CRA's – and PRA's responsibility on this*

Mr N says the default is being double reported which he's doesn't think is fair.

I've seen PRA's response, which says the default isn't being reported twice. But based on the screenshots provided by Mr N I do think it is – or was, as at the time of the screenshot. Generally, when a debt purchaser / collector takes over the debt they'll also take over the responsibility for reporting on the debt to the CRA's. Usually, this means the lender would stop reporting the debt, because the debt purchaser / debt collector is.

I've seen that PRA and M are both reporting the debt as defaulted for October and November 2018. As I've said above, this complaint is only about PRA – and as they're the owners of the debt they're currently responsible for reporting it, so I can't legitimately say they're doing anything wrong. The question then becomes whether they're reporting it accurately and in a fair way, given the entry by M.

The Information Commissioner's Office (ICO) are responsible for upholding information rights in the UK. They issue guidance on such matters, and their guidance for this issue says:

*If it is clear from looking at the two entries that they relate to the same account, with the same default date and balances and the original debt is clearly showing as settled then it is likely that we would consider this to be fair in terms of the data protection law. However, if the entries are recorded on your credit file in a way that may look like they are two different*

*debts, or that could make the debt remain on your credit file for longer than six years from the date of the original default it is unlikely that we would consider this to be fair.*

I can't decide if something has breached data protection law, as that'd be for the ICO to consider. But I can see both PRA and M are reporting defaults in October and November 2018, saying the default happened in October 2018, and PRA say the debt is £4,801, with M reporting £4,800.

Considering the ICO's guidance then, I think PRA are reporting the debt in such a way that it's clear it's the same one as M are reporting. And they've recorded the default in October 2018 – so it won't be on there for longer than the six years I'd usually expect. So, overall, I don't think PRA have acted unfairly despite M's entry.

### **My final decision**

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 4 October 2022.

Jon Pearce  
**Ombudsman**