

The complaint

Mr R complains ACI-UK Limited haven't removed a default applied to his credit file for a debt they hold when he thinks they should.

What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements of this below, and they form part of this final decision.

Mr R took out a loan with a company I'll refer to as P. P provided pay day lending and went into administration after his loan was taken out and a default reported to the credit reference agencies (CRAs). There was a way for Mr R to complain to P about the sale of his loan, but unfortunately he wasn't able to do so in time. Mr R's loan was sold to a debt purchaser (DP) who appointed ACI to service the account. Mr R says the DP and ACI have a responsibility to remove the default – particularly because, he says, his circumstances make it clear the loan was irresponsibly lent to him.

ACI explained they couldn't help with the irresponsible lending element of Mr R's concerns, because P no longer existed. They added when the account was passed over to them, P had reported a default on 16 January 2020, so the default would remain for six years from then. ACI explained they rely on guidelines issued by the Steering Committee on Reciprocity (SCOR) and specifically the Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies. ACI said they were reporting the default in line with those guidelines.

But, ACI said they didn't deal with Mr R's complaint properly, so although they wouldn't remove the default, they agreed to write off the balance of £182.67 – and this would mean the default would show as settled which is usually viewed more favourably by lenders.

Mr R accepted this outcome from ACI, but also asked us to look into things. He explained in detail his circumstances at the time of taking out the loan – which included his health. I thank Mr R for providing this information. I've taken it into account in this decision, but not disclosed it in full for his privacy as this decision is published on our website.

One of our Investigators looked into things, and asked Mr R if he'd ever had it confirmed by anyone he had been irresponsibly lent to. He said no, but ACI had said the following when he contacted them:

We also can accept that if the information you have supplied to us was available to themselves that a different decision should have been made at the time

So, he felt ACI were accepting he'd been irresponsibly lent to but wouldn't remove the default.

Ultimately, our Investigator didn't uphold the complaint, saying ACI hadn't done anything wrong.

Mr R didn't accept this. I've provided a summary of what I consider to be his key concerns in my own words:

- ACI have a duty to treat him fairly, and have failed in that duty when refusing to remove the default despite accepting there may have been issues with the original lending*
- There is clear evidence P irresponsibly lent to him*
- The Financial Conduct Authority's (FCA) guidelines say firms should act in their customers best interests, and ACI aren't doing that by refusing to remove the default*

Overall, Mr R felt ACI failed to investigate his concerns fully and hadn't reached a fair outcome. So, his complaint's been passed to me to decide.

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.

I'm aware our Investigator said there were elements of this complaint that ACI weren't responsible for. But, in my view by appointing a regulated debt servicer, DP passes on responsibility for all actions under Article 60B(2) to ACI. So, I'll be taking the approach that ACI is responsible for the activity of exercising the lender's – in others words the owner of the debt (DP) – rights and duties under a regulated credit agreement. So, I'll be considering these elements against ACI.

The crux of Mr R's complaint is that ACI should remove the default on his credit file.

I should explain up front I can generally only direct a business to take certain actions if I'm satisfied they've made an error or otherwise acted unfairly.

In respect of the lending with P, Mr R has confirmed he has nothing in writing from them to confirm his loan was irresponsibly lent. I think that's an important point.

I can see Mr R understands ACI and the DP can't be held responsible for any irresponsible lending complaint. If it was possible to consider this, and in doing so Mr R's claims of being irresponsibly lent to by P were upheld, then it's simpler to direct ACI to remove the default. That's because the application of the default would be intrinsically unfair if Mr R had been irresponsibly lent to.

But, there is no party that complaint can be made to anymore. This isn't Mr R's fault, but it's also not ACI's fault.

Our Investigator asked ACI what they meant by this statement:

We also can accept that if the information you have supplied to us was available to themselves that a different decision should have been made at the time

ACI said this was simply an acknowledgement of Mr R's frustrations. Mr R has taken this to be ACI have accepted he was irresponsibly lent to.

My interpretation of this statement in itself is significantly closer to Mr R's rather than ACI's, but I'm not sure that's relevant. I say that because ACI aren't able to decide if the loan was irresponsibly lent or not – so even if they had unambiguously accepted Mr R had been irresponsibly lent to, I'd likely still set aside that comment as not being one ACI were really in a position to make.

I also can't assess whether Mr R was irresponsibly lent to. I've noted his comments and all the evidence he's provided about his financial circumstances at the time. But, ACI can't be held responsible for this issue – so I can't decide it either way.

What all of that means is, the only way I could require ACI to remove the default is if continuing to report it is unfair.

To help me decide that I've looked at the guidance ACI have referred to. I've asked that our Investigator provide a link to those rules when sending this decision.

The first principle requires that data reported on a credit file is fair, accurate, consistent, complete and up to date – and contains the following information:

Should your account be sold or referred to another lending organisation or a debt collection agency, the record(s) provided to a CRA by the creditor/and or purchaser must still be accurate and up to date.

I'm not aware of Mr R providing any information to ACI which suggests the application of the default itself has been done incorrectly. And, given P were reporting a default, ACI would be required to essentially take over the reporting of it on the same terms as P were doing.

Because of that, I can't reasonably say ACI are acting unfairly by refusing to remove the default.

I have noted Mr R's reference to the FCA's rules about ACI acting in customers best interests – this wording is in several places in the FCA's rules. I think what Mr R means is it's clearly in his best interests for the default to be removed, and he says the FCA's rules support that.

While I understand what Mr R is getting at, I can't say that this wording from the FCA means someone can or should automatically get what they think is fair.

I understand Mr R will be disappointed by this, but as I can't say Mr R was irresponsibly lent to, I can't automatically decide the default is unfair for that reason. And ACI are correct in saying they have an obligation to report correct information to the CRAs. From their perspective, they were assigned an account with an outstanding default – and I've not been persuaded by Mr R's testimony that ACI have made any errors in continuing to report it.

Responses to my provisional decision

ACI replied and said they had nothing further to add.

Mr R sent our service two responses. I've summarised what I consider to be his key concerns:

- He felt ACI were, as a regulated firm, bound by the FCA's Consumer Credit Sourcebook (CONC) rules to treat him fairly (he referenced CONC 7.3.2R) and to consider his individual circumstances when managing his account.
- ACI's statement shows they agree the lending was irresponsible – and they have a duty to act on this but are refusing to do so which isn't treating him fairly. He referred to PRIN 2.1.1R Principle 6 which says a firm must pay due regard to the interest of its customers and treat them fairly. He says continuing to report a default they suspect arises from an unfair loan doesn't comply with this principle.
- He says the default suggests he deliberately didn't meet his obligations – but if he was lent to irresponsibly the obligation for him to meet the payments was flawed from the start. ACI taking over the reporting of the default on the same terms assumes P's

default was legitimate – but they've not proven this. ACI are required to dig deeper according to SCOR.

- ACI should proactively investigate whether the default has been applied fairly or not. He references CONC 7.3.6R.
- He understands the FCA's rules about 'best interests' doesn't mean he should automatically get what he thinks is fair – this isn't about entitlement, but about fairness under the FCA's rules he's referenced above.
- Just because P don't exist anymore shouldn't leave him without any remedy. He quotes DISP 3.6.4 from the FCA Handbook which allows me to decide things on a fair and reasonable basis. And he says ACI's failure to act on their own suspicions about the lending being irresponsible makes their position unreasonable.

Mr R also provided further information he says shows the lending was irresponsible and never should have been granted to him.

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 thank Mr R for providing the level of detail he has – I know this issue is important to him, and I've given it very careful thought.

I'm also aware of the various rules Mr R has quoted – all of which, in essence, require him to be treated fairly. And, as he says, my remit is fundamentally to decide matters on a fair and reasonable basis. Being independent means I have to apply this to both parties – both Mr R, and ACI.

As a reminder, I can only decide if ACI have or haven't treated Mr R fairly – I can't go beyond that in reaching this outcome.

I'd summarise Mr R's concerns as simply being it's unfair ACI continue to report a default when he's proven, and they've seemingly admitted, he never should have been lent to in the first place by P.

As before, my starting point on considering whether ACI are acting unfairly in refusing to remove the default is to first consider if there is any specific evidence which suggests they shouldn't.

This primarily, would be in the form of an upheld complaint about irresponsible lending – but I don't have that.

I do agree with Mr R that ACI's comments suggest they think he may have been irresponsibly lent to. But, as I said in my provisional decision, even if they'd explicitly said he had been but wouldn't remove the default, I don't think that changes anything. Again, that's because ACI aren't in a position to assess whether the account was or wasn't mis-sold.

I realise P going bust has sadly left Mr R in a difficult situation where he can't raise his irresponsible lending complaint and deal with matters this way – but that isn't something I can hold ACI responsible for.

Mr R hasn't disputed at any point that he didn't make the payments to the loan with P. So, from the simplest perspective – the default was applied correctly because Mr R didn't make the payments he was required to make. In light of that, ACI are continuing to report true and accurate information, and I can't say them doing so is wrong.

In respect of ACI investigating further, it's unclear to me what more ACI could do – bearing in mind they can't decide if the account was or wasn't irresponsibly lent to Mr R. In view of that, I'm satisfied ACI have met the SCOR guidance because, in all honesty, it seems like there isn't anything else they could have done to look into this.

I realise to Mr R this outcome isn't going to feel fair, and he has my sympathy for the difficulties the default remaining on his account may cause him in the future. But, from my perspective, it's not been proven Mr R was irresponsibly lent to, he's not disputed he didn't make his payments, P recorded a default and there is nothing to show the pure act of reporting the default is in some way wrong.

In the circumstances, ACI writing off £182.67 of Mr R's outstanding debt was likely more than they were required to do – so overall I won't be asking them to do anything more.

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 R to accept or reject my decision before 10 April 2025.

Jon Pearce
Ombudsman