

complaint

Mr C complains that PRA Group (UK) Limited (trading as PRA Group) are pursuing him for a debt that is unenforceable.

background

PRA Group purchased a debt that was owed by Mr C from the original creditor in October 2016. At the time the debt was purchased, he was making payments of £152.20 per month via a debt management company.

However, Mr C subsequently stopped making payments in November 2017 because he had concerns regarding the amount of the outstanding debt. He thought that the debt ought to have been settled given the amount of payments he had already made, so he asked PRA Group to provide a copy of the credit agreement and information regarding the outstanding debt, pursuant to sections 77/78/79 of the Consumer Credit Act (CCA) 1974.

PRA Group said there was an outstanding balance of £3,934.43. But they were unable to provide a copy of the credit agreement on which the debt was based, and neither could they provide the terms and conditions of the original account and a statement demonstrating how the balance was accrued. As a result, they acknowledged that the debt was unenforceable and that they would not be able to pursue legal action to recover the outstanding balance. But despite this, PRA Group said that the debt still existed, so they said they were still entitled to pursue Mr C to discuss repayment, and that they would continue to report the account with the relevant credit referencing agencies.

Mr C says that PRA Group were unable to supply him with a copy of the credit agreement as required by the CCA 1974, and seemingly would not be able to. As a result, he submits that they should cease any further collection activity until such time that they can prove how much is due, or alternatively write off any remaining balance.

Our investigator didn't uphold Mr C's complaint because she was satisfied that the original creditor gave formal notice to him when the debt was assigned to PRA Group, which stated what the outstanding debt was at the time. So although the debt may have been unenforceable, she didn't think it was unreasonable for PRA Group to continue to pursue it. Mr C disagreed, so the matter was passed to me to determine.

I issued my provisional decision on this complaint on 3 December 2019. I said I was minded to uphold the complaint for the reasons stated below:

Section 77(1) of the CCA 1974 stipulates what information the creditor must supply to a debtor under a fixed-sum credit agreement:

"The creditor under a regulated agreement for fixed-sum credit, within the prescribed period after receiving a request in writing to that effect from the debtor and payment of a fee...shall give the debtor a copy of the executed agreement (if any) and of any other document referred to in it, together with a statement signed by or on behalf of the creditor showing, according to the information to which it is practicable for him to refer —

(a) the total sum paid under the agreement by the debtor;

(b) the total sum which has become payable under the agreement by the debtor but remains unpaid, and the various amounts comprised in that total sum, with the date when each became due; and

(c) the total sum which is to become payable under the agreement by the debtor, and the various amounts comprised in that total sum, with the date, or mode of determining the date, when each becomes due”

Mr C made a request for the above information (and original credit agreement) in writing, but PRA Group were unable to provide it, and neither could they obtain it from the original creditor. Section 77(4) of the CCA 1974 sets out the consequences for failing to provide the above information:

“If the creditor under an agreement fails to comply with subsection (1) –

(a) he is not entitled, while the default continues, to enforce the agreement...”

PRA Group accept that this means they cannot legally enforce the debt. But they submit that they are still entitled to pursue Mr C for repayment and continue to report the debt. However, I do not think it is fair and reasonable for PRA Group to continue to pursue Mr C for a debt which they can neither prove with the original credit agreement, nor enforce. They cannot demonstrate on what terms Mr C has contracted to repay the debt, or that he has breached these terms. So I therefore do not consider it reasonable for PRA Group to pursue Mr C for the debt (or to pass details on to third-party collection agencies) until such time that they can produce the credit agreement and properly demonstrate how much of the debt (if any) remains.

I said I intended to direct PRA Group (while the debt remains unenforceable) to cease any further collection activity to pursue Mr C for the debt. I also said they should cease reporting the account as in default to the relevant credit referencing agencies and should use their best endeavours to report the account in such a way that reasonably reflects its current status and circumstances.

I invited further comments from both parties. Mr C responded accepting my proposals. PRA Group responded saying they had since managed to obtain a copy of the account statements, which they say demonstrates the current balance owed.

my findings

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 decided to uphold it for the reasons set out above (and in my provisional decision).

I appreciate that PRA Group have located a copy of the account statements. But it appears they are still unable to locate a copy of the credit agreement upon which the debt is based.

So although there may be information relating to what amount may potentially be outstanding, they still cannot demonstrate on what terms Mr C has contracted to repay any such debt, or that he has even breached these terms. And given that there is seemingly no agreement to enforce, I still do not consider it reasonable for PRA Group to continue to pursue Mr C for the debt until such time that they can produce the executed agreement and demonstrate the terms upon which it is based.

my final decision

For the reasons given above, I uphold this complaint and direct PRA Group (UK) Limited (while the debt remains unenforceable) to cease any further collection activity to pursue Mr C for the debt.

PRA Group should also cease reporting the account as in default to the relevant credit referencing agencies and should use their best endeavours to report the account in such a way that reasonably reflects its current status and circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 January 2020.

Jack Ferris
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