DRN-4512541

The complaint

Mr P complains TransUnion International UK Limited (TU) haven't removed an incorrect entry regarding a County Court Judgment (CCJ) from his credit file when they should have. He's also unhappy with their actions when he's disputed a default.

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 the provisional decision below, and they form part of this final decision.

Mr P had a CCJ recorded on his credit file and he said this was done fraudulently. The CCJ was ultimately removed in December 2021.

In addition, Mr P complained L's entry on his credit file was incorrect because they hadn't sent him a default notice or Notice of Assignment.

TU said they understood Mr P was raising concerns regarding a CCJ that was issued incorrectly on his credit report, and a defaulted account with L on his credit report.

In respect of the CCJ, TU said they could see Mr P raised a dispute with them regarding this in 2020. As a result of data received, they said they'd correctly applied this to his credit file. TU added they don't dispute public records directly, and instead need a certificate from the issuing court to amend the records. They said the CCJ was marked as set aside and removed from his credit file in December 2021.

In respect of L, TU said it's the data provider who records the account performance and they don't remove data without the consent of the data provider. In Mr P's case L is the data provider who recorded the default. TU said L wanted some more information about his concerns, but Mr P wasn't prepared to provide it, so there wasn't much more they could do. They said if Mr P now wanted to provide this information, then they could dispute it.

Unhappy with this, Mr P asked us to look into things – providing information regarding the court service and how CCJ's are granted.

One of our Investigators looked into things. She explained we can't comment on the court process, and overall she felt TU had acted fairly.

Mr P didn't agree. In summary using my own words he's raised the following points:

- *We've ignored the importance of the automated nature of the CCJ process and that TU when approached could have removed or taken action regarding the CCJ but didn't.*
- *Our service has upheld 75 similar complaints against TU, which suggests our Investigator got the wrong outcome and he asks for the case to be reassessed.*

- *On 5 November 2023 Mr P provided a chronological list of concerns he's had with TU and said since 2017 they'd made over a dozen errors. Mr P said these issues must be considered in this complaint.*
- *Mr P quoted guidance from the Information Commissioner's Office (ICO) which says TU as a credit reference agency has to take reasonable steps to ensure the accuracy of their data. Mr P said TU hadn't explained what actions they'd taken and if those actions were reasonable. He also felt we hadn't considered this.*
- *After our Investigator explained the additional issues Mr P had mentioned weren't contained in the scope of this complaint, he disputed that. He said no formal scope had ever been officially agreed which affects the fairness of any subsequent outcome.*
- *The complaints have clear traits of human rights law breaches which haven't been addressed. He quotes Article 8 of the European Court of Human Rights (ECHR) and Article 6 of The Human Rights Act 1998 (HRA 1998). He also quoted two legal cases he said supported his complaint.*
- *He pursued the court responsible for the CCJ and said they hadn't complied with Article 22 of the General Data Protection Regulations (GDPR). He added because of the industrial scale of which these CCJ's are being churned out by the court, TU should know this process isn't compliant and we need to hold them responsible.*
- *Mr P quoted the Consumer Duty and said this should have been considered by our Investigator.*
- *He also referenced COCON 2.1, COCON 2.4 and PRIN 2.1*

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 think it's important I first set out my scope of what I can and can't consider in this complaint – both in terms of how I'm required to decide Mr P's case, and what I can consider in terms of the complaint issues raised.

The regulator the Financial Conduct Authority (FCA) sets out the rules for our service to follow. These rules are set out in the Dispute Resolution: Complaints (DISP) Handbook.

DISP 3.6.1 says:

The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

And DISP 3.6.4 says:

In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:

(1) relevant:

(a) law and regulations;

(b) regulators' rules, guidance and standards;

(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time.

The effect of these rules mean I'm required to take into account a lot of the information Mr P has mentioned, but I'm not bound by it. This reflects our informal nature as an alternative to the courts. I note Mr P is concerned our Investigator didn't mention a lot of the laws he has, but that's because we wouldn't routinely quote every law that could potentially apply due to the informal nature of this service. The only reason I've mentioned them here, is because Mr P has raised them – had he not done so, then unless a particular law was relevant, I wouldn't have gone into this level of detail in explaining my outcome.

Points Mr P has raised I don't consider relevant to deciding his complaint

Mr P has spent some time explaining to our service the relationship between the companies who originally got the CCJ against him – and about the court processes which he says led to the CCJ being incorrectly placed on his credit file.

I can see Mr P has some serious concerns about the robustness of the court process which allowed the CCJ to be granted. But that's outside of my scope to consider – I can only consider whether TU have acted fairly when he disputed the CCJ with them. So, I won't be commenting on the court process.

Of the complaints upheld on our website against TU, Mr P has said this means our Investigator got the outcome wrong. I don't agree that just because we've upheld a number of cases against a financial business it can or should mean another outcome is wrong if it's not an uphold. Each case is decided on its own merits. To follow Mr P's logic through, it'd mean because we've upheld cases against a financial business previously then all cases should be upheld against them. This would be fundamentally against DISP 3.6.1 and DISP 3.6.4 which requires me to take into account all the circumstances of the case.

The chronological list of concerns Mr P has raised also won't be something I consider in this case. I understand from his point of view he thinks we should be able to look into them, but I don't agree. DISP 2.8.1 makes it clear under what circumstances our service is allowed to look into complaint issues. In summary, these make it clear TU would need to be given the opportunity to address his concerns first. I can see our Investigator and several other colleagues have explained this to Mr P, so I won't be considering them in this complaint.

I've noted Mr P said this isn't fair, because the scope of his complaint was never agreed. I don't though agree with that. On 8 August 2023 our Investigator wrote to Mr P to introduce herself. In that, she said:

In summary my understanding of your complaint is you're unhappy TransUnion incorrectly reported a CCJ on your credit file, which was removed in December 2021. They're now reporting a defaulted account under L…, which you don't believe is legitimate and is being mis-reported.

To resolve the complaint, you'd like TransUnion to pay you compensation of at least £3,000 and remove the default reported under L…

If I've misunderstood this, please let me know.

In a response received the same day, Mr P replied and said:

Thank you for your recent email regarding ref:…

Unfortunately I feel that your synopsis is too brief and for the purposes of clarity I must add the following :

Mr P then talked about the court process, and went on to say about TU:

"…I must make it clear that TransUnion did not remove the CCJ for several years, until I sought costly and time consuming court action to set aside the CCJ. The £3000 figure quoted is due to the prolonged and long term financial affects (inability to obtain most types of credit – including mortgages and loans) of the CCJ being present on my Trans Union credit report".

But, his list of issues regarding TU going back to 2017 weren't mentioned at this time. I've also seen no evidence in the paperwork Mr P first submitted to our service when he contacted us that he had concerns around these issues. Nor can I see they've been raised with TU or addressed in their final response letter. So, in the absence of evidence to the contrary, I don't consider that I can look into those issues as part of this existing complaint.

Although I agree ECHR Article 8 and HRA 1998 Article 6 are both relevant, I've not considered the specific judgments Mr P has mentioned. That's because, as I've mentioned above, I'm required to decide Mr P's case based on all the circumstances of his case. I'm not bound by legal precedent, and I can depart from the law if I consider it appropriate in the individual circumstances of a case.

Mr P has quoted the FCA's Consumer Duty which, amongst other things, requires financial businesses to prevent financial harm. The Consumer Duty applies from 31 July 2023, but it's not retrospective. Mr P's concerns regarding the CCJ and debt with L were both addressed before then. So, I don't think the Consumer Duty is relevant to his complaint.

Points I agree are relevant to Mr P's complaint

Mr P has said it's not clear how ECHR Article 8 works in conjunction with HRA 1998 Article 6 – but as I think ECHR Article 8 is relevant to Mr P's complaint, I've quoted them both below.

ECHR Article 8 says:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

HRA 1998 Article 6 says:

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

This law goes into further detail – but none of which seems particularly relevant to Mr P's circumstances because it talks about criminal trials so I've only quoted the part I think is potentially relevant.

GDPR Article 22 says:

1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.

2. Paragraph 1 shall not apply if the decision:

a) is necessary for entering into, or performance of, a contract between the data subject and a data controller;

b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or

c) is based on the data subject's explicit consent.

3. In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.

4. Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 9 (1), unless point (a) or (g) of Article 9 (2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

Mr P has also mentioned COCON 2.1, COCON 2.4 and PRIN 2.1 – all of which essentially require TU to treat Mr P fairly.

So, bringing all of the above together, if I ultimately decide TU have done something wrong – then I'll consider the impact on Mr P and award compensation appropriately in line with our guidelines. If though I decide TU haven't done anything wrong, then I've decided Mr P has been treated fairly. In those circumstances, I'm satisfied that would address the requirements of how he is to be treated in each of the different laws / regulations I've mentioned above.

Focusing now on the specific details of Mr P's case

As a starting point for deciding Mr P's case, I think the ICO's guidance regarding credit reference agencies (CRAs) he's quoted is helpful. This guidance in full says:

Who is responsible for the information on my credit file?

It is easy to see why people assume the CRAs are responsible for all the information that appears on their credit file. However, in reality, the lenders and telecoms and utility companies who passed the information to the CRA in the first place also have responsibilities for the information that appears on your credit file.

As a general rule, if the entry you are looking at has the name of a company in it, it's likely to be that company who is responsible for that entry. The CRAs cannot amend this data without the permission of that company.

Having said this, we still expect the CRAs to take reasonable measures to ensure the information that is reported by lenders via their credit files is accurate.

The information that is generated by the CRAs and for which they **are** responsible, includes financial links, linked addresses and alias information.

Bringing all of this together, I'm required to decide what I think is fair and reasonable in all the circumstances of the complaint – and the ICO's guidance says CRA's are required to take reasonable measures to ensure the information is accurate. In other words, I need to decide whether TU in Mr P's case took reasonable measures when Mr P raised his concerns regarding the CCJ and the default with L.

Addressing the CCJ first.

A CCJ was registered on Mr P's credit file, and given it was subsequently removed, seemingly it'd been on his credit file for some time in error.

TU's position on this is they need a certificate from the court who issued the CCJ in order to remove it.

Mr P's position is, in summary, that TU knew or should have known the CCJ shouldn't be applied to his credit file and should have helped him remove it.

From what I can see, the process to remove a CCJ requires the person disputing the CCJ to fill in a form, explain the reasons the CCJ should be set aside, and pay a fee for this. If this application is approved, then a new court date will be set, where the judge may order the CCJ to be set aside.

Under those circumstances, I can understand why TU wouldn't be prepared to simply remove the entry. Mr P says he provided TU with lots of evidence to show the CCJ shouldn't apply. But, it was added to his credit file through a legal process – and the only way to get it removed is if a judge agrees it should be. Whatever Mr P's own views on this, TU removing a CCJ could be seen as interfering with a legally approved process.

So, in the circumstances, I don't think TU did anything wrong in not removing the entry and I don't currently plan to uphold this element of Mr P's complaint.

Looking now at the defaulted account for L, I can see TU's position is they asked Mr P for more information to dispute the account at L's request, and he refused to provide it.

Mr P's position is that he told TU L hadn't followed the correct process for defaulting an account, by sending a default notice nor had they sent a notice of assignment. So, he's told them they haven't followed the correct process, and as a result the default should be removed.

I don't though agree.

When Mr P disputed the account, I'm satisfied TU took reasonable measures by contacting L to dispute the accuracy of the data being reported to them. I understand in response L asked for more information, which Mr P said he wasn't prepared to provide. This process would have required Mr P's co-operation in order to progress, because ultimately TU would at that stage have only been able to pass messages on. As Mr P didn't agree for TU to contact L further, I'm satisfied TU have acted fairly.

Overall then, I'm currently satisfied TU have acted fairly in relation to Mr P's concerns about the CCJ and the defaulted account with L.

Responses to my provisional decision

TU said they had nothing further to add.

Mr P didn't accept my provisional decision. I've summarised his responses in my own words and quoted him where I felt it was appropriate to do so:

- I've allowed TU to breach DISP 1.4 which requires them to have fully investigated matters. And my "*Provisional Decision allows that situation to persist and persistent to the detriment of other affected consumers, your position has a chilling and deterrent effect on the consumer*."
- Our Investigator and I have failed to attach the appropriate importance to the court documents he'd provided. He also provided further documents in support of his position that the granting of the CCJ was essentially flawed, fraudulent, and says he's "*incredulous*" I feel able to ignore the documents he's provided regarding the bulk processing of CCJ's.
- One of those documents he said showed between 2007 and 2016 over 50% of CCJ's were set side. He said "*Trans Union I argue would be fully aware of this ongoing issue but have neglected to acknowledge its role in data processing of such CCJs and the adverse impact it has on consumers*".
- For additional context regarding the CCJ, Mr P said his CCJ was successfully set aside and defended – meaning it couldn't be reapplied to his credit file. He said TU knew as early as mid 2020 about the situation, but the CCJ wasn't removed until December 2021. He says it would have been reasonable for TU to believe he was telling the truth about the CCJ being fraudulent which meant they should have removed it or used a process to hide the CCJ until the dispute over it had been resolved.
- He talked about material error liability – and said it "*is a legal concept that means false or misleading information that could reasonably affect a decision*." He went on to explain this was a particular problem for TU in the US, but the UK operations use the same systems – and means "*Assigning a CCJ through a remote and automated process for that to then appear on a credit file without robust checks, represents a serious material error and all parties within the reporting chain share a degree of liability*." He adds this is exacerbated by him telling TU in mid 2020 about this liability.
- He referred to Article 82 of the GDPR, which he wrote "*any person who suffered material or non-material damage as a result of an infringement of GDPR shall have the right to receive compensation from the controller or processor for the damage suffered*." Mr P said I hadn't addressed this and it means he's due compensation.
- Even after the CCJ was accepted it shouldn't be on his credit file, TU were told 10 December it was to be removed, and by 22 December it was still on his credit file.
- When I've commented on L, I've said they asked for further information, but I haven't specified what further information – and I then "*unhelpfully attempt to attach responsibility to my refusal as if this somehow provides weight*." He went on to say his response was irrelevant, it was for L to prove their point. And by me saying TU only had to pass messages on, and saying they'd not done anything wrong, I allowed TU to breach DISP 1.6.7 and DISP 1.6.8.
- The new complaint points he'd raised are ones he's only raised now because our system limits the amount of characters someone can type out. He said it's "*irrelevant as to the time they were disclosed or seen, what is relevant is that they are capable of having a material affect on the outcome of this case*."
- DISP 3.5.9 talks about evidence that can be submitted, and nowhere does it say evidence submitted at a later time should be excluded. Nor was the intention to exclude all legal arguments and if I think it was the intention of the FCA to do so then I need to explain why.

- Mr P contacted L about various pieces of information regarding the debt and said my provisional decision "*failed to make any mention of the absolute need for an Executed Deed of Assignment and for confirmation under FCA Handbook Rule: "CONC 13.1.6(8), you are obliged to confirm whether any alleged debt(s) is/are enforceable or unenforceable.""*
- There are clear breaches of various rules in the FCA's handbook – and Mr P listed out COCON 2.1, DISP 1.4, DISP 1.6.8, DISP 3.5.11, DISP 3.5.12 and DISP 3.6.4.

I also think it's important to explain to Mr P I have read in detail all of the comments he's made in response to my provisional decision – as well as reading the articles he's sent our service. The above reflect what I consider to be most relevant to the outcome of his case against TU. Many of his comments I've not reflected relate to either broad concerns about how our service operates, or specific concerns about my conduct, which have been addressed separately.

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 I need to reiterate I'm only able to decide Mr P's case. I have reviewed everything he's sent me, and I thank him for providing this information, a lot of which relates to general concerns various people have expressed about the processes of recording accurate data with a credit reference agency. I've taken all of that into account, but fundamentally I am focused on the circumstances in Mr P's case.

DISP 1.4

This part of the DISP rules is for respondent firms such as TU – and it tells them how to handle complaints. Complaint handling in isolation isn't an activity covered in DISP 2.3 and falls outside of my remit.

Sometimes our service can consider this if it's explicitly related to the activity we can consider. Fundamentally though, Mr P was able to contact our service – and I'm reaching my own outcome on his case – so whether TU have fully investigated the matter or not becomes less relevant given I'm reaching my own outcome.

I've noted Mr P is aware he can flag concerns he has to the FCA, and he can do the same about TU's complaint handling process if he'd like to. Our service can also flag up such things to the FCA if we have concerns, but this isn't something we'd share publicly.

The CCJ being applied to his credit file

As I said above, I have read everything Mr P submitted. That includes the Freedom of Information Act request which shows, as he says, on any given year over 50% of CCJ's are set aside.

I don't dispute the information Mr P is providing. I'm simply making it clear I can't decide whether the court process itself is or isn't functioning as it should be. That's outside of my remit.

My role is to determine Mr P's individual case. So, even taking into account Mr P's evidence that some CCJ's are successfully set aside – and indeed his was – this doesn't change my position on whether TU have treated him fairly and reasonably. The key reason for this is what I outlined in my provisional decision. I said I thought the only way to get a CCJ removed is to go to court. Mr P hasn't disputed my thoughts on that and is what he did himself to get his own CCJ removed. So, if the only way to get a CCJ officially removed is to go to court to justify why it needs to be removed – then TU removing it would be interfering with a legally approved process.

I understand Mr P believes he proved his CCJ was fraudulent to TU and it'd have been reasonable for them to believe him – but TU weren't the party he needed to prove this to – the court were. So, I think TU acted reasonably in expecting him to follow the legal process to get the CCJ declared invalid.

Whether TU were aware of the high percentage of set aside judgments I don't know. But, I don't think it'd make a difference in Mr P's case even if they were. I say that because without appropriate evidence Mr P's CCJ shouldn't be recorded on his credit file I wouldn't expect TU to remove it. And, that evidence wasn't provided until December 2021 after Mr P had applied to a court and it was agreed it could be removed.

Although Mr P has quoted "material error liability" I've been unable to find any specific definition of this. I take his point though, in that if there has been a material error made by TU in the reporting of their data then they could be liable for that. I agree with that in principle, if TU were aware of a problem and didn't take reasonable or appropriate steps to fix the error without good reason, then they could be held liable to some degree for the impact of the error. But, in Mr P's specific case, I don't think TU have done anything wrong which has led to this kind of impact. That is, again, because I think TU acted reasonably in requiring Mr P to go through the legally approved process to get his CCJ set aside before it could be removed.

Mr P said I hadn't quoted Article 82 of GDPR. The specific part he's quoted is Part 1 which says:

"*Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processer for the damage suffered.*"

Mr P is right in that I hadn't quoted it as it wasn't something he'd talked about previously. I mentioned in my provisional decision, we don't routinely quote all laws that could apply – which is in line with our informal approach.

I've now considered what Mr P said, but the same law also has further parts, and I'll quote Parts 2 and 3 for completeness:

"*2 Any controller involved in processing shall be liable for the damage caused by processing which infringes this Regulation. A processor shall be liable for the damage caused by processing only where it has not complied with obligations of this Regulation specifically directed to processors or where it has acted outside or contrary to lawful instructions of the controller.*

3 A controller or processor shall be exempt from liability under paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage."

In the circumstances, I'm satisfied Part 3 applies to TU. The CCJ although shown by TU on his credit file, wasn't obtained by TU initially – and for all the reasons I've explained above I don't think they were required to remove it. So, overall, I don't think this applies in Mr P's case.

Finally regarding the CCJ side of things, Mr P has said TU were told to update it on 10 December 2021, but as of 22 December 2021 it was still on his credit file.

I've seen the emails that suggest this is true – but I'm also aware the CCJ was removed in December 2021. So, at most it'll have taken TU three weeks to have removed the entry. I can see why Mr P would be keen for it to be removed as soon as possible given the time it's taken for him to get to this point – but even if TU took the full three weeks I wouldn't find this an unreasonable period of time to have updated his credit file. Particularly given the Christmas period this covers as well.

L asking for further information

The further information L asked for wasn't as relevant to me as Mr P's response. TU were acting as a go between for the want of a better phrase, and I think trying to assist Mr P in resolving the issues he had with L.

But, when Mr P explicitly said he didn't want TU to communicate with L anymore, they've respected his request. I think it'd be fair to say if they hadn't respected his request, then Mr P would likely be unhappy with that and rightly so.

Ultimately, Mr P has a dispute with L about the information they're recording on his credit file. L say they did everything they should have done, so Mr P needs to raise his concerns with L if he wants to pursue that matter. Although TU have a responsibility to ensure the data they display is accurate, I don't think it's generally unreasonable of them to be able to rely on the responses they receive from data providers – unless there is evidence to the contrary. Mr P has said he's told TU the entry is wrong, but that in itself isn't proof – and as L dispute that, Mr P needs to take it up with them.

Mr P says my approach on this point has allowed TU to breach DISP 1.6.7 and DISP 1.6.8. These are both under DISP 1.6 Complaints time limit rules, which are for respondent firms like DISP 1.4 is which I've mentioned above. On this particular point, I think TU have explained what I'd expect them to, which is if Mr P is unhappy with L's response, then he'll need to take the matter up with them. So, although I can't decide this point in relation to DISP 1.6.7 or 1.6.8, I think more generally TU have acted fairly.

More recently Mr P has contacted L asking for information, and said my provisional decision didn't talk about the need for an Executed Deed to be provided. He quoted CONC 13.1.6(8) which says:

However, where a firm is aware that an agreement is unenforceable because of non-compliance with an information request under section 77, 78 or 79 of the CCA, a firm should make it clear when communicating to a customer about a debt that the debt is in fact unenforceable. Failure to do so, in that case, would in the FCA's view unfairly mislead the customer by omission. Any communication that implies expressly or otherwise that a debt is enforceable when it is known that it is not, would be misleading. One way to avoid this would be for the firm to explain to the customer the full meaning of 'unenforceable'."

The rest of CONC 13.1.6 sets out guidance regarding whether a debt is unenforceable or not and the actions the financial business should take.

Generally speaking I wouldn't consider the responsibility of establishing whether a debt is enforceable or not falls to TU – that would be the responsibility of the current owner of the debt – in Mr P's case, L. They are the ones who hold the account and expect repayments. So, if Mr P has concerns regarding this, he'd need to raise them with L.

New complaint points / further evidence

I've seen Mr P said our system limits the amount people can write when submitted their complaint. That's correct, it does. But I can see on the complaint form Mr P submitted he still had a significant amount of additional space to explain the other issues if he wanted to. He also provided ten attachments when first submitting his case to us. So, I'm satisfied Mr P hasn't been denied the opportunity to explain all of his points when first contacting us.

In addition, the points he's looking to now raise are seemingly new complaint issues. I mentioned in my provisional decision I'd seen no evidence these were raised to TU for them to consider, nor were they mentioned to us to clarify matters earlier. Mr P hasn't provided any evidence to show me this was incorrect.

Ultimately then, it seems the points Mr P is raising are new issues. I explained in my provisional decision DISP 2.8.1 only allows us to look into complaints in certain circumstances – the primary one being those issues having been raised to the respondent firm. As I've mentioned, I've seen nothing and Mr P has provided nothing to demonstrate he did raise those issues to TU.

So, for those specific points going back to 2017, they are new complaints and our service can't currently consider them. If Mr P wants to pursue those points, he'll need to complain to TU directly.

Separately, Mr P has also expressed concern that DISP 3.5.9 doesn't say evidence introduced later on won't be considered – nor does it say I can exclude all legal arguments. On both points I agree with Mr P. DISP 3.5.9 says:

The Ombudsman may:

1) *exclude evidence that would otherwise be admissible in a court or include evidence that would not be admissible in a court;*
2) *accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate;*
3) *reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested; and*
4) *treat the complaint as withdrawn and cease to consider the merits if a complainant fails to supply requested information.*

Mr P has provided a substantial amount of information and evidence since our Investigator issued her outcome – all of which I've considered, and I've reflected a significant amount of that in both my provisional decision, and this final decision.

I have also considered all of Mr P's legal arguments, but as I explained in my provisional decision, DISP 3.6.1 requires me to decide things on a fair and reasonable basis.

I mentioned in my provisional decision I hadn't considered the two specific judgments Mr P mentioned when he referred to ECHR Article 8 and HRA 1998 Article 6 – as I'm required to decide on the individual circumstances of his case. But, for completeness Mr P has referred to Parochial Church Council of the Parish of Aston Cantlow… versus Wallbank and another in 2003, paragraph 41. Mr P has quoted:

"*it is the function that the person is performing that is determinative of the question whether it is, for the purposes of that case, a "hybrid" public authority, whereas the focus in assessing whether a body comes within the 'core' category of public authorities is upon 'the nature of the person itself, not the functions which it may perform'"*

And Mr P said the ECHR in March 2005 said:

"*the contracting state cannot absolve itself from responsibility…by delegating its obligations to private bodies or individuals*"

In short Mr P said this meant TU had both private and public functions, and when processing a CCJ take on a public function – so must share some responsibility when things go wrong.

Mr P has made a very legal specific argument, when as I've set out above my remit is to decide things on a fair and reasonable basis. Using that scope of my powers, as anything further would be overstepping the authority given to me, I can't reasonably conclude TU do share any responsibility for the incorrect information. To determine that, would initially require me to decide TU perform a public function, and then against that test, decide they've made an error. But the scope of my powers is limited to deciding an individual case on the facts presented – and I've already explained above why I don't think TU did anything wrong in processing the CCJ or refusing to remove it. So, I don't think TU are required to pay Mr P compensation taking into account the legal judgments he's presented.

Mr P has also quoted DISP 3.5.11 which says:

The Ombudsman has the power to require a party to provide evidence. Failure to comply with the request can be dealt with by the court.

And DISP 3.5.12 which says:

The Ombudsman may take into account evidence from third parties, including (but not limited to) the FCA, other regulators, experts in industry matters and experts in consumer matters.

I'm satisfied I've acquired, and been provided with, sufficient evidence from TU and Mr P to reach a fair and reasonable outcome – so I'm comfortable I've satisfied the above two elements of DISP.

Summary

In summary Mr P feels there are clear and identified breaches of COCON 2.1, DISP 1.4, DISP 1.6.8, DISP 3.5.11, DISP 3.5.12 and DISP 3.6.4.

I've explained all of DISP Mr P has referred to above.

COCON 2.1 is titled "Individual conduct rules" and places requirements on respondent firm employees about their behaviour. Ultimately, this relates to whether TU have treated Mr P fairly.

Overall, I'm satisfied TU did act fairly in not taking any further action with the CCJ until it'd been set aside by the court. I don't think they took an unreasonable amount of time to remove the CCJ from Mr P's credit file. And I think they acted appropriately in the dispute with L.

My final decision

For all 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 P to accept or reject my decision before 5 February 2024.

Jon Pearce
Ombudsman