

complaint

Mr N complains that Mercedes-Benz Financial Services UK Limited, trading as Mercedes-Benz Finance, ("MBF"), incorrectly recorded a default and an outstanding balance on his credit file. This caused a mortgage application to be put on hold, damage to his reputation and considerable trouble and upset.

background

Mr N had acquired a car under a hire purchase agreement with MBF in February 2012. When the agreement was due to end in February 2015, Mr N decided he wanted to keep the car. But, he felt that the optional purchase payment ("OPP") to be paid to MBF to keep the car had been misrepresented to him at the point of sale. In 2015, he noted that the OPP was somewhat higher than the current market value of the car. So, before the agreement was due to end, Mr N complained to MBF about the OPP. MBF appointed solicitors to negotiate with Mr N, and the matter was settled in April 2015 with an agreed reduction in the OPP. But unbeknownst to Mr N, MBF had applied a default on his credit file as he'd not paid the OPP on the date set out in the hire purchase agreement, and he hadn't returned the car. MBF also hadn't sent a default notice to Mr N to alert him to the matter. Mr N didn't realise until early September 2016 that there was a default on his credit file. He'd applied for a mortgage to assist a family member's property purchase which was put on hold due to the default on his credit file. Mr N then complained to MBF about the default and the balance of £1,095 which was incorrectly showing as due to MBF on his credit file. MBF responded within four days to say that the balance had been removed and the default would be amended to show as settled. It also apologised to Mr N. MBF then agreed to remove the default from the credit file a week later.

Mr N said that his credit rating since 2015 had been affected, his credit file gave a misleading impression to anyone searching it, and his reputation was damaged. In addition, he was concerned that the matter wouldn't be resolved quickly enough to prevent his family member's property purchase falling through because his mortgage application had been put on hold due to the default. He has provided a credit search to show that his credit rating was perfect after the default was removed. He is seeking £500 compensation for the stress and anxiety suffered and the lost hours dealing with the matter.

MBF didn't believe that the default had been issued in error as there was a breach of the agreement terms because the car hadn't been returned to it at the end of the agreement. But it accepted that it hadn't sent Mr N a default notice before applying the default. It also accepted that it hadn't removed the outstanding balance of £1,095 from Mr N's credit file after it was paid in April 2015 until Mr N complained about it in September 2016. It also said that it hadn't clearly communicated with Mr N. Due to this, it removed the default as a gesture of goodwill. MBF also said that Mr N had already benefited by being offered the market value for his car and saving over £1,000 due to this.

The adjudicator concluded that MBF's offer to pay Mr N £100 compensation for the distress and inconvenience caused was fair and reasonable. She appreciated that this matter had affected Mr N's mortgage applications, but the compensation offered took into consideration the effect this issue had on those applications. She also said that we were unable to consider compensation based on Mr N's earnings.

Mr N disagreed and responded to say that the level of compensation was insufficient. He had no knowledge that there was a default on his credit file until September 2016, and only realised this when his mortgage broker informed him that a lender had conducted a search on his credit file and noted the default. He said that no default notice had ever been sent to him. And the matter had caused him great levels of stress and anxiety, and several weeks of delay to his remortgage. Furthermore, his standing before various financial organisations and credit referencing agencies had been lowered. He had also spent a considerable amount of hours on this matter over the course of the last two years.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I know that Mr N is seeking a larger amount of compensation. But, he hasn't provided this service with any evidence of financial loss or damage to his reputation. I note that Mr N said his credit rating was greatly reduced whilst the default was on his credit file, but credit ratings aren't seen by lenders and are only for the benefit of the consumer. I am also only considering the effect on Mr N since early September 2016 when he discovered the default (and not the time spent due to the events before that). But I do think that Mr N should receive a higher award of compensation than £100 for the following reasons:

1. Whilst there was a technical breach of the hire purchase agreement, it's not clear to me that the registration of a default was appropriate in 2015. Mr N had logged a complaint with MBF about misrepresentation before the end of his agreement and it had acknowledged the complaint. Mr N was then in good faith negotiating with MBF's solicitors to agree a fair OPP. MBF then agreed to reduce the OPP by £1,000. I think it would have been reasonable for the registration of a default to have been put on hold in these circumstances.
2. If Mr N had known that a default had been registered, he may not have agreed to the settlement with MBF of his misrepresentation complaint.
3. The default shouldn't have been registered without a default notice being served on Mr N. MBF has accepted that a default notice wasn't sent to Mr N. MBF should have been clear with Mr N about what it was doing and given him appropriate notice.
4. MBF had left a balance owing to it of £1,095 on Mr N's credit file until it rectified the file in September 2016. There was no balance owing from April 2015 and so anyone searching Mr N's file would have received a misleading impression.
5. It's clear that for the 17 days period from when Mr N was told about the default until it was removed, that he has spent a great deal of time trying to resolve the matter. In addition, I can understand that Mr N would have been distressed in that period. I can see that he was trying to arrange a mortgage to help a family member buy a property. And he would have been under pressure from his family to resolve this as quickly as possible to prevent the property purchase falling through. I can see that although 17 days is a short period, that the intensity of the family situation would have caused Mr N substantial trouble and upset.
6. The £1,000 write off on the OPP was for a different complaint to the credit file complaint. I am assessing the level of compensation for the credit file complaint separately.
7. I can understand that Mr N would have been concerned that his normally perfect credit rating had been impaired, and that he would have been worried about the potential damage to his reputation.

So, having carefully considered the circumstances of this complaint, I think that a fairer compensation award would be £250. I asked the adjudicator to ask MBF for its comments on this. MBF responded to say that it would honour this, and had no further comments.

I know that Mr N is seeking a larger amount of compensation than £250. But, he doesn't have to accept my decision and may pursue his case by alternative means should he wish to do so.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of it, I order Mercedes-Benz Financial Services UK Limited, trading as Mercedes-Benz Finance, to pay Mr N £250 compensation. MBF must pay the compensation within 28 days of the date on which we tell it Mr N accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 20 January 2017.

Roslyn Rawson
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