Financial Ombudsman Service

complaint

Mr B complains about a default being registered against him in relation to an agreement he had with FirstRand Bank Limited (trading as Miotonovo).

background

In February 2015 Mr B was supplied with a car and entered into a hire purchase agreement with Motonovo. The total amount repayable under the agreement was £17,994.00.

In February 2016 Mr B contacted Motonovo to advise that the car had been written off and that his motor insurance company would be making a payment. Motonovo received £11,720 from the insurance company and write to Mr B advising him that he was responsible for the shortfall amount of £4555.03.

Motonovo says that Mr B failed to make payment so it issued a notice of default on 11 May 2016 in which it advised him that it would terminate the agreement on 25 May 2016 if he didn't make payment. It says it received no response from Mr B so it terminated the agreement leaving an outstanding balance of £8,619.02.

Motonovo says it wrote to Mr B on 25 July 2016 asking him to make payment but received no response. It says the debt remained outstanding until it was sold to a third party in September 2018. The third party placed a default on Mr B's credit file backdated to 25 July 2016, this being the date the agreement was placed into default.

Mr B was unhappy about the default on his credit file and complained to Motonovo. He said he hadn't received any letters or the notice of default from Motonovo. He also said his credit file showed the agreement as settled for two years leading up to the default being recorded.

In its final response Motonovo said it didn't uphold Mr B's complaint, because it said it had sent him all of the necessary letters advising him of the outstanding amount and warning him that a default wouldn't be recorded if the balance wasn't paid.

Mr B wasn't happy with the response and complained to this service. He wants the default removed from his credit file and compensation for the trouble the situation has caused him.

Our investigator upheld the complaint. He thought Motonovo had acted unfairly be sending the shortfall letter to an incorrect address, failing to report the default when it should've done and selling the debt without resolving a dispute over the amount owed. He recommended that Motonovo should buy the debt back, agree a settlement amount with Mr B and remove the default once Mr B had paid.

Motonovo didn't agree. It acknowledged that it hadn't registered the default when it should have done but said it would've been clear to Mr B that the debt was owed. It said the issues raised by Mr B regarding the servicing and MOT policy hadn't been considered as part it its investigation because it hadn't formed part of Mr B's initial complaint. In relation to that issue t said that any concerns Mr B had about the loan advance should've been raised before he signed the agreement. Motonovo said it would consider buying back the debt and recording the default as settled if Mr B paid the settlement balance in full. Subsequently, Motonovo said it didn't think it was fair that it was being asked to buy back the debt and remove the default. It said it was prepared to pay Mr B compensation of £150 for the inconvenience caused by sending the shortfall letter to an incorrect address.

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've considered the whole file including all of the information provided by the parties prior to and following the investigators view. I'll comment on what I think is most relevant to my decision. If I don't mention a particular point it isn't because I haven't thought about it but because I don't think I need to comment on it in order to reach the correct outcome.

I've reviewed all of the correspondence sent by Motonovo before it sold the debt. Its not disputed by Motonovo that the shortfall letter was sent to an incorrect address. Whilst I accept the point made by Motonovo that the shortfall letter isn't a legal requirement, it's still something I'd expect to be sent to the correct address. I think the non receipt of the shortfall letter deprived Mr B of the opportunity to settle the account before the notice of default was issued.

Mr B has said that he didn't receive the notice of default either. Motonovo is legally obliged to send this. I've can se that the notice of default was sent to Mr B at the correct address , so I think its more likely than not that Mr B received this.

Mr B has said that he disputed the amount he was being asked to pay. I can see from the contact notes that Mr B raised an issue about the servicing and MOT policy in May 2015. Motonovo told Mr B it would investigate this but I cant see that this was progressed or that Mr B received a response. I'm not surprised that Mr B has continued to raise this issue, because he believes it affects the amount outstanding. I don't think it was fair for Motonovo not to address this issue when it was raised and to continue to leave this dispute unresolved before selling the debt.

I can see that Mr B contacted Motonovo in September 2016 via its solicitors and offered to pay £4000 to settle the debt. I can't see that any steps were taken at this time to try and resolve the dispute about the MOT and service policy and bring the matter to a close, which I'm satisfied would have been possible based on the amount which Mr B had offered.

I can also see that Motonovo didn't register the default when it should've done. Motonovo has said this was an error. I think the error has caused the complaint to become protracted and led Mr B to think that his credit file would be unaffected.

Baaed on everything I've seen, I'm satisfied that Motonovo sent the shortfall letter to an incorrect address, failed to register the default and failed to investigate Mr B's dispute about the MOT and service policy. I don't think Motonovo has acted fairly here.

That said, I'm also satisfied that Mr B is aware that a debt is owed. His actions in previously offering £4000 to settle are consistent with this. So I don't think its reasonable to ask Motonovo to remove the default until the debt is settled. Mr B is unlikely to settle the debt until his dispute about the MOT and servicing policy has been fully investigated so Motonovo should look into this. But if, after having done so, Motonovo determine that the policy has no effect on the outstanding balance, then Mr B will need to settle the outstanding balance.

my final decision

I uphold the complaint. FirstRand Bank Limited should:

- Buy back the debt
- Investigate Mr B's point about the MOT and servicing policy and issue him with a response
- Agree a settlement amount
- Once the settlement amount has been paid I full, remove the default
- Pay compensation of £150 for trouble and upset caused by sending the shortfall letter to an incorrect address and failing to register the default

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 July 2020.

Emma Davy
ombudsman