

The complaint

Mr and Mrs S have complained that NRAM Limited rejected their request for a borrow-back facility ("the facility") on their mortgage. The request was later agreed, but Mr and Mrs S say they incurred costs as a result of the initial decline which they would like NRAM to reimburse.

What happened

The evidence in the case is detailed, running to several hundred pages of documents. I've read everything, and it's apparent that some parts of the evidence are less relevant to the underlying case than others. There are also a lot of duplicated documents and repetition of arguments. In what follows, I have, by necessity, summarised events in rather less detail than has been presented.

No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint. This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral or, in some instances, have little or no impact on the broader outcome.

In addition, the details of the complaint have been set out in correspondence from our investigator, and both parties have a copy of this, so there is no need for me to repeat all the details here. Because our decisions are published, it's important that I don't include any information that might result in Mr and Mrs S being identified. I will therefore keep my summary of the complaint quite brief.

Mr and Mrs S have a mortgage with NRAM on which they had overpaid. The mortgage terms and conditions provide they could borrow back overpaid amounts, subject to NRAM's approval.

In October 2018 Mr and Mrs S wanted to borrow back £35,000 of their overpayments, in order to carry out building work on a new property. The application was declined. Mr and Mrs S complained to NRAM. In February 2019 the request was granted. In response to the complaint, NRAM offered £200 compensation.

Mr and Mrs S were dissatisfied with NRAM's response and complained to the Financial Ombudsman Service. They explained that, because NRAM had initially refused the facility, they took steps to sell a property. The sale didn't go ahead, because NRAM ultimately agreed the facility. However, professional fees had been incurred, which Mr and Mrs S had to pay. Mr and Mrs S also say that they had to pay £2,500 for the cost of deferring contractors. In addition, because of delay in the release of funds, Mr and Mrs S took out a personal loan, and they wanted NRAM to cover the cost of this. Mr and Mrs S also wanted compensation for distress and upset caused to them by NRAM.

An investigator looked at the complaint. Having done so, she was satisfied the complaint should be upheld. She didn't think NRAM was required to carry out an affordability assessment for the facility. This was because Mr and Mrs S's mortgage fell within the regulatory exceptions that allowed NRAM to dispense with assessing affordability. They weren't increasing their borrowing, or changing the mortgage contract, and so NRAM should have granted the facility in October 2018.

In relation to redress, the investigator noted Mr and Mrs S were claiming for the following financial losses:

- a £14,500 personal loan they'd applied for on 22 February 2019, plus interest on that loan of £58.12 per month;
- £2,500 as a result of the increased cost of deferring contractors;
- £1,900 in professional fees they had to pay in relation to the abortive sale of another property to fund the work;
- £4,860 which Mr and Mrs S say they lost in capital gains tax (CGT);
- £1,000 for distress and inconvenience.

The investigator wasn't persuaded NRAM should be responsible for the cost of the personal loan. Mr and Mrs M had applied for this after they were already aware – and had accepted – the reinstatement of the facility.

The investigator also noted that Mr and Mrs S hadn't provided any evidence of either the cost of deferring contractors, or of any additional CGT liability Mr and Mrs S say they'd incurred or lost. Mr and Mrs S had, however, provided evidence of the fees of £1,900 they'd had to pay when they were selling the property.

The investigator explained that if Mr and Mrs S were able to provide evidence of the CGT and contractor losses, she would reconsider these. She asked NRAM to pay the £1,900 fees and a total of £750 (including the £200 already offered) for distress and inconvenience.

NRAM agreed to this. Mr and Mrs S didn't provide any further evidence of their losses. Although they initially said they were pursuing the matter in court, their solicitor has clarified that, as far as he is aware, no legal action has been commenced. In the circumstances, as the matter is unresolved, it is appropriate for me to issue a final decision.

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.

NRAM has acknowledged that it should have granted the facility in October 2018 when it was first requested. In the circumstances, I don't need to establish if NRAM is at fault; all I need to determine is what NRAM should do to put things right.

I note that Mr and Mrs S have told us they were able to borrow £20,000 from family and friends when the facility was declined. The balance - £14,500 – came from a personal loan they took out. Mr and Mrs S want NRAM to cover the cost of this.

I'm not persuaded, however, that this would be fair or reasonable. The loan was applied for on 22 February 2019. But Mr and Mrs S had already – on 19 February 2019 – accepted NRAM's offer to reinstate the facility. In the circumstances, I've not been provided with any

evidence to persuade me that it was necessary for Mr and Mrs S to take out the personal loan after they already knew the £35,000 facility was to be reinstated.

I've taken note of what Mr and Mrs S have said about the increased costs of £2,500 incurred because they had to defer contractors. This wasn't mentioned by Mr and Mrs S in their initial complaint to NRAM in February 2019. In the absence of any evidence that Mr and Mrs S actually incurred these costs, I am not persuaded it would be fair to expect NRAM to reimburse them.

Mr and Mrs S say that, if they'd carried on with the sale of the property they'd decided to sell to raise the funds for the work, and if the sale would have completed by 1 April 2019, they'd have saved £4,680 in CGT. Because the facility came through, Mr and Mrs S decided not to proceed with the sale, but they'd like NRAM to pay them the CGT they'd have saved if they'd gone ahead and sold the property before 1 April 2019.

There is no basis on which I can find NRAM responsible for a tax liability that has not, in fact, been incurred. If NRAM hadn't made an error in declining the facility in October 2018, there'd have been no decision to sell this property, and so there is no financial loss in relation to any purported loss of CGT.

I agree with the investigator, however, that NRAM should cover the abortive sale costs, and in this regard, evidence of the professional fees of £1,900 has been provided. NRAM has acknowledged it will reimburse these.

NRAM is also required to pay compensation for trouble and upset. The investigator recommended a total amount of £750. I think this is fair and reasonable in all the circumstances. Over a period of about four months Mr and Mrs S were caused a lot of upset by the decline of the facility, and I think £750 is proportionate for the trouble they were caused.

Putting things right

To settle this complaint, I direct NRAM Limited to do the following in full and final settlement of this complaint:

- reimburse Mr and Mrs S with £1,900 for the professional fees they paid on the abortive sale;
- interest at 8% per annum simple on the £1,900 from 10 March 2019 to the date of settlement by NRAM;
- pay compensation of £750 in total (to include the £200 already offered) for trouble and upset.

* If NRAM considers that it is required by HM Revenue & Customs to withhold income tax from any interest, it should tell Mr and Mrs S how much it has taken off. NRAM should also give Mr and Mrs S a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. I direct NRAM Limited to settle the complaint as directed above. I make no other order or award.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 12 April 2022.

Jan O'Leary
Ombudsman