

The complaint

Miss M's complaint relates to a shortfall debt resulting from the sale of a property on which she held a mortgage and linked unsecured loan with NRAM Limited. She is unhappy about NRAM's handling of events relating to an offer she made in 2021 to settle the debt for less than the outstanding balance. This includes NRAM's assessment of her income and expenditure, and its conclusion she had disposable income available to make monthly payments toward the debt.

Miss M is represented in her complaint, but for ease, I will refer to all actions and comments as hers.

What happened

Miss M took out a joint mortgage and unsecured loan with a lender that NRAM is now responsible for. The property was sold at a shortfall in 2011 with a resulting debt of over £38,000 being left outstanding. Following remediation and payments from Miss M, this amount reduced to just over £33,000 by the summer of 2012.

NRAM's pursuit of Miss M for repayment of the debt has been the subject of ongoing correspondence for some time. Most recently Miss M's concerns have related to offers she has made to settle the debt and NRAM's responses, or lack thereof, to those offers.

In December 2020 Miss M contacted NRAM with an offer of £3,500 to settle the debt in full. NRAM asked for more information about Miss M's circumstances, including her income and expenditure (I&E). This information was provided in February 2021 and NRAM turned down the offer in its letter of 21 April 2021, but said it was happy to agree an affordable repayment plan. At that time the debt was still just over £33,000.

In May 2021 Miss M complained that NRAM had contacted her directly, rather than going through her representatives. She also expressed disappointment in the amount of time it took for NRAM to respond to the offer. Miss M also increased her offer to £7,000. The complaint was responded to in NRAM's final response letter of 5 July 2021. NRAM upheld the complaint regarding the direct communications and the time taken to respond to the offer.

NRAM declined the revised offer as it considered the amount was too low, given the outstanding balance and the disposable income Miss M had at the time. Miss M disputed that she had a disposable income that could be used to pay down the debt and, in August 2021 she asked NRAM to reconsider the offer. NRAM did not do so at that time, however, in October 2021 it confirmed that the offer would be referred to its Senior Management Team (SMT) for consideration.

Miss M chased the review of the offer several times over the following months. Eventually, on 1 April 2022, NRAM asked Miss M for an up to date I&E form so that the offer could be reviewed. Miss M didn't provide the requested information.

At the end of May 2022 Miss M complained that NRAM hadn't responded to her request for the revised offer to be reconsidered. NRAM issued a final response letter on 19 July 2022. It set out what had happened and when, and confirmed that it was waiting for a revised I&E to reconsider the offer.

Miss M wasn't satisfied with NRAM's response and referred her complaint to this service.

One of our investigators considered the complaint. He concluded that we could not consider any complaint issues covered by NRAM's final response letters of 14 January 2021 and 5 July 2021, as Miss M didn't contact this service about her complaint until September 2022; outside the six-month referral periods. As NRAM hadn't consented to us considering those complaints and there were not exceptional circumstances that prevented a referral, the complaints fell outside our jurisdiction.

In relation to the crux of the complaint that fell within our jurisdiction – that NRAM had not treated Miss M fairly in relation to the £7,000 settlement offer – the Investigator didn't recommend that it be upheld. He was satisfied that the information NRAM had at the time it declined the offer indicated Miss M had disposable income and so NRAM's decision was not unreasonable. As for NRAM providing an explanation for why it considered the offer was too low, the Investigator explained that he wouldn't have expected it to.

In addition, the Investigator explained that the Regulator required NRAM to consider expressions of dissatisfaction from Miss M as complaints. He also set out that he considered many of the issues Miss M had complained about related to how her complaints had been handled. As complaint handling itself was not an activity that fell within our jurisdiction, and we were not upholding any elements of the underlying complaint that it was directly linked to, we could not comment on the issues further. Overall, the Investigator concluded that the complaint should not be upheld, although he acknowledged NRAM could have been clearer about who within its organisation was doing what.

Miss M didn't accept the Investigator's conclusions about either our jurisdiction or the merits of the complaint. However, she confirmed that the complaint only related to matters that occurred following the final response letter of July 2021, which meant she was not objecting to the Investigator's conclusions regarding not being able to consider the complaint issues covered in that or the earlier final response letter. In relation to the matter of the merits of the complaint, Miss M disagreed with the calculation relating to disposable income and so considered the Investigator was wrong to find that the rejection of the settlement offer was reasonable. She said this was especially so when there was a joint borrower that could be pursued for the remainder of the debt. Miss M also provided her own calculation of her I&E from February 2021, which she considered showed she didn't have a disposable income.

Our investigator set out how the assessment of disposable income was done and confirmed the figures it produced. He highlighted that the assessment had been done based on the information Miss M had given NRAM and if she had other outgoings she didn't tell it about, as was now being suggested, it could not have known. He also said that even if Miss M didn't have a disposable income at that time, he couldn't reasonably say that NRAM was wrong not to accept Miss M's offer.

I issued a provisional decision on 12 July 2023 setting out my conclusions and reasons for reaching them. Below is an excerpt.

'At each stage of our process we look at our jurisdiction to consider a complaint. In general, for a complaint to be considered by this service, it first needs to be raised with the financial business that is responsible for the acts or omissions complained about. When a complaint is responded to, whether to a consumer's satisfaction or not, the consumer will have the right

to refer their complaint to this service, but in most cases that referral will need to be made within six months of the final response letter.

In this case, as our Investigator explained, there have been several final response letters. The only one issued within six months of Miss M contacting this service was that of 19 July 2022. Miss M has confirmed that all of the events she wants considered happened after the July 2021 final response letter (which is the second to last one issued by NRAM). That said, I would clarify to Miss M that if she wants any of her earlier complaint points pursued for the later period, for example if she received further direct contact from NRAM, it would need to be raised separately again.

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

I appreciate Miss M's strength of feeling regarding this complaint. I would like to assure her that I have looked at everything she's told and given us. I trust she won't take it as a discourtesy that I have condensed this complaint in the way that I have. Although I have read and considered the whole file I will keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I haven't considered it, but because I don't think I need to comment on it in order to reach the right outcome.

I have noted Miss M's representative's comments about what it expects my decision to do. This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party and we look at things independently without taking sides. So without intending any discourtesy to Miss M, it's up to me to decide what is relevant and to focus my decision appropriately.

I understand our investigator's findings were disappointing to Miss M. It's the nature of what we do that we generally have to find in favour of one party or the other. Our findings are based on consideration of all the facts and all the submissions made by both parties. We look at what happened and decide whether, bearing in mind any relevant law, regulations, and good industry practice, the lender acted fairly and reasonably.

The complaint raised by Miss M related to the rejection of her revised offer of £7,000 and the behaviour (or lack thereof) of NRAM when she asked it to review its decision.

In relation to NRAM's rejection of the offer Miss M made, this is a commercial decision on its part and in general we don't interfere with such decisions. It would only be if the decision was clearly unfair in the circumstances, that we would do so. I would also state at this point that in general, there is nothing inherently wrong with a lender pursuing a consumer for money owed. In addition, the mortgage and loan contracts would have made Miss M and her former partner each responsible for the entire amount borrowed, so whether or not NRAM is pursuing the other party for the debt, there is nothing wrong in it pursuing Miss M too.

In this case Miss M offered NRAM £7,000 to settle a debt of over £30,000; a relatively low percentage of the amount owed. In addition, the information Miss M gave to NRAM indicated to it that she was in a position to make monthly payments toward the debt. In the circumstances where a lender judges that a consumer may be able to pay their debt, or a significant amount of it, from their income over time, it would not be unreasonable for it to ask the consumer to do so. In the circumstances as NRAM knew them, I am not persuaded that the decision it made was unfair. Obviously it would have been a disappointment to Miss M, but that is different to NRAM acting unfairly.

Miss M has said that she disagrees with the calculation NRAM completed to assess if she had a disposable income that could be paid toward the shortfall debt. She has also said she

hasn't received an explanation as to how this calculation was done. Our investigator explained how it was done; it is a very simple calculation:

- All of Miss M's outgoings are added up, including the full amount of rent and other joint monthly costs.*
- Miss M's income and the money contributed by her partner toward the joint costs are added up.*
- The first number is subtracted from the latter, i.e. expenditure is subtracted from income.*

Having reviewed the figures Miss M gave NRAM in February 2021 I can't find that it was wrong to conclude the information showed she had a disposable income of over £200 each month.

I note that Miss M has provided some new expenditure information in her most recent letter to this service. However, I can't consider that information in relation to this complaint as it was not available to NRAM when it declined Miss M's settlement offer. I would also suggest that if Miss M has completed a new income and expenditure form, she or her representative should send it to NRAM, as it requested in April 2022. This will enable it to reconsider the offer she made, if she still wants that done.

Miss M asked NRAM to review its decision in the summer of 2021. It didn't do so and didn't respond to the request for two months. This was clearly a shortfall in service on NRAM's part, especially given the delays it had acknowledged about its consideration of the previous offer. At this point NRAM said its SMT would review the offer, but it doesn't appear that happened, or if it did, further information was asked for to enable a decision to be made. The request for more information doesn't seem to have been communicated to Miss M for around a further five months. Again, I can only consider this to be further delay on NRAM's part.

However, the fact that the offer has not yet been reconsidered is not entirely NRAM's fault. Given Miss M was disputing the assessment of the I&E, and it had been some time since she'd provided information, it wasn't unreasonable for NRAM to ask for updated information. This was not provided and so NRAM couldn't complete the review Miss M has complained didn't happen. As I have said above, Miss M may want to provide NRAM with information about her I&E, with supporting evidence if required.

NRAM acknowledged having delayed responding to Miss M's initial offer. It then compounded that mistake by not responding to the revised offer she made. There were then further delays and poor communication in dealing with Miss M's request. The service NRAM provided Miss M with clearly fell short of what it should have been, which compounded similar earlier poor service. Given this, I consider NRAM should pay Miss M £200 for the inconvenience and upset this will have caused.

NRAM accepted my provisional decision.

Miss M didn't agree with my provisional decision. She commented on the correspondence that had been exchanged and highlighted the same points that had previously been made, including that her representative had not received some of the correspondence it was sent. In addition, Miss M again commented on the I&E calculation and set out how she considered the calculation should have been done and what should have been concluded about her finances. This was again based on different information from that provided to NRAM. She went on to say the FCA required lenders to engage constructively with a borrower, and highlighted that:

A firm cannot pressure a customer to:

- pay a debt in one single or very few repayments or in unreasonably large amounts when to do so would have an adverse impact on the customer's financial circumstances;
- to pay a debt within an unreasonably short period of time or to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing;

Furthermore, Miss M considered the £200 compensation I had awarded fell short of the amount she would have expected, especially given the legal costs she has incurred. She asked that I reconsider the amount of compensation. Miss M also said that I should be making a recommendation regarding her settlement proposal and as to how the situation with the outstanding debt should be resolved.

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 have reviewed the file again in its entirety and I have revisited my provisional decision in light of Miss M's further comments. Having done so, I haven't changed my conclusions about the outcome of the complaint.

I note that Miss M has asked that I make a recommendation about the settlement offer she made and set out how her situation should be resolved. As I explained in my provisional decision, it is not for this service to interfere with a lender's commercial judgement as long as it has been applied fairly. It is also not for us to make decisions on a business' behalf and that would especially be the case where it is awaiting information to allow it to review its decision. I confirmed in my provisional decision that I was satisfied that NRAM's decision not to accept the offer was not unfair or unreasonable in the circumstances, and as such there is nothing more that I can reasonably say in relation to the settlement offer made by Miss M. As for the way forward, I confirmed in my provisional decision that the next step should be for Miss M to provide new evidence of her I&E, with supporting documentation if requested, so that discussions about a way forward can continue.

As for the requirements by the FCA Miss M set out in her response to my provisional decision, I don't consider that they are directly relevant to the specifics of her complaint. NRAM said that based on the information she had provided it with, it thought she could make monthly payments toward the debt. That wasn't in breach of either of the quoted requirements. The next stage of that process would have been the discussion about what Miss M should pay, at which time the quoted requirements would have been relevant, but that part of the process has not happened yet.

Miss M has again detailed how she believes the I&E should have been assessed, and again completed that assessment based on different information from that provided to NRAM. As I said in my provisional decision, we have to assess the matter based on the information NRAM had at the time it completed its assessment. In addition, having reviewed the relevant information, I can't find that NRAM reached an incorrect conclusion about Miss M's finances at that time. Again, I would repeat that Miss M should provide up to date I&E information and, if required, supporting evidence, to NRAM for it to be able to complete a new assessment of her finances/circumstances to be able to move the matter forward.

Miss M has said the compensation payment I put forward in my provisional decision was inadequate, especially in light of the legal costs she has incurred. She didn't say what she considered to be a more suitable sum. I would firstly comment that while Miss M chose to have solicitors to assist her, we would not usually take the costs of such assistance into consideration when making awards. This is because there would have been alternative sources of assistance available that would not have involved those costs. No new evidence

has been provided about the inconvenience or upset Miss M suffered and, having reviewed the matter again, I remain satisfied that £200 is an appropriate amount in the circumstances.

My final decision

My decision is that I uphold this complaint in part. In full and final settlement of the complaint, I require NRAM Limited to pay Miss M £200 compensation for its poor communication and the delays it caused.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss M to accept or reject my decision before 4 September 2023.

Derry Baxter
Ombudsman