DRN-5338117

The complaint

R - a limited company – has complained about what happened when it was remortgaging some properties it owned that were included within a floating charge held by NRAM. R needed a letter of non-crystallisation (including additional consent for the priority of the charges over the properties) from NRAM and it is unhappy about how much NRAM's solicitor charged for its involvement, how long the process took, and the level of service provided to both R and its solicitor.

The complaint has been brought by Mr M in his capacity as a director of R and any reference to Mr M in this decision should be taken in that context.

The lender at the time in question was NRAM, but it has since been passed to Topaz Finance Limited trading as Hessonite Mortgages (in October 2023), so Topaz is responsible for dealing with the complaint.

What happened

On 12 May 2023 R's solicitor – which I will refer to as V – contacted NRAM to ask for a fax number as it needed to send a letter. Unfortunately, the faxes kept coming up as 'undeliverable' and so it was agreed that the letter would be sent to NRAM in the post.

V contacted NRAM again on 24 May and was told nothing had been received. As an exception NRAM said it would accept the letter by email, and the email was received the same day.

Unfortunately, NRAM misunderstood the nature of the request and treated it as a request for a second charge to be granted and it wasn't until 30 May that the misunderstanding was resolved. NRAM then referred the matter to its legal team on 1 June.

There was some back and forth internally within NRAM and with a solicitor that it intended to instruct to act on its behalf, and then on 14 June the quote for the work was put to R for its agreement, and it was referred to NRAM's underwriting team for agreement to proceed. I understand R accepted the quote the same day, and NRAM gave its consent to proceed on 20 June.

Over the next 10 days there was correspondence between the two sets of solicitors and with NRAM, and on 30 June an agreement was reached on some proposed revisions to V's original wording. The parties were ready to proceed on that date, and then completion of R's remortgages took place on 7 July.

R had raised complaints with NRAM throughout the process due to the time it was taking and the service received. And, as I said, R was also unhappy about the £1,150 (plus VAT) cost it incurred to cover NRAM's legal fees. Topaz, as by then it had taken over the lending and also responsibility for dealing with the complaint, didn't uphold it.

The complaint was referred to our service where it was looked at by one of our Investigators. He said that whilst he fully empathised with the situation, he didn't think NRAM had done anything wrong.

R didn't agree and so the case was passed to me to decide.

What I've decided – and why

Earlier this month I issued a provisional decision, the findings of which said:

> 'Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.
>
> The underlying issue here is that V (acting on behalf of R's new mortgage lender) wanted a specific document that it had drafted to be signed by NRAM, whereas NRAM had its own wording that it normally used for requests like this.
>
> I can see from NRAM's contact history that it had dealt with similar requests from R before in May 2017, January 2018 and December 2019. Each time the requests were dealt with within days and without NRAM needing to seek legal advice. The difference with those were that the new lender each time (and their solicitors) accepted NRAM's standard wording which covered this scenario. It is unfortunate that wasn't the case here as NRAM told V on 30 May that it could issue an equivalent document using its standard wording the same day.
>
> It wasn't unreasonable for NRAM to want to seek external legal advice about the document before agreeing to it, something that V accepted in an email to R on 2 June saying instructing external solicitors in these circumstances isn't uncommon as it is a legal document.
>
> It is unfortunate that V wasn't able to accept NRAM's standard wording that had been used before by other lenders, but I can't hold NRAM liable for that. As V said its document needed to be used, NRAM instructed an external solicitor to provide it advice and to make any necessary amendments and that is as I would expect. I would also expect NRAM to pass the costs incurred for that onto R, as that is entirely normal in situations like this as it was a cost that NRAM incurred solely due to something R had asked to do.
>
> I can only order NRAM to refund all (or part) of this sum if I find that it did something wrong in charging it. I can't ask it to refund the cost simply because it is a large sum, or more than R's solicitor would have charged.
>
> There's no suggestion the legal cost charged to R wasn't incurred by NRAM, and I haven't undertaken a forensic examination of the work undertaken by its legal advisers. There's no evidence to suggest they didn't undertake the work they charged for.
>
> Having considered everything very carefully, I see no grounds to order NRAM to refund the legal costs charged to R (either in full or in part).
>
> V tried to fax the document to NRAM on 12 May, and V told NRAM it was coming up as undeliverable to both fax numbers provided. As an alternative NRAM said the document should be posted to them. The notes from the calls that day indicate NRAM said, once it received the document in the post, it would get it logged onto the account as soon as possible to get the request actioned due to the delays of trying to get it to NRAM.

V phoned NRAM again on 24 May and was told the document hadn't been received, at which time NRAM provided an email address for V to use instead. It isn't clear why V wasn't given the email address on 12 May as although NRAM has said the email address was given as an exception, I think it would have been reasonable for NRAM to have instead done that on 12 May as the solicitor had said it needed to be actioned as soon as possible and the fax wasn't working. Had the email address been given to V on 12 May then NRAM would have received the document eight working days sooner than it did.

Once the document had been received by NRAM it seems there was a misunderstanding about what was being requested, with it initially being treated as a request for a second charge. It took until 1 June for that to be resolved and for the enquiry to be passed to the correct area, a delay of four working days.

The next step was for NRAM to obtain a quote from an external solicitor for the work that needed to be undertaken, that took until 14 June as there was some confusion about the need for a solicitor that specialised in Scottish law as well as what was required. Whilst there would always have needed to have been some back and forth to arrange the quote, and NRAM wasn't in a position to control how quickly the solicitor responded, that is still a longer time period than I would have expected this to have taken. Having considered this part of the process, I am minded to say there was a delay of three working days here.

There was then a further period from 14 June to 20 June where the notes indicate NRAM was seeking approval of the legal cost quote from an underwriter. It isn't clear why this was needed as R was paying the costs in their entirety and it had already agreed to the quoted amount. It hasn't been explained why an NRAM underwriter needed to separately approve something that NRAM wasn't paying for. This caused a four working day delay.

In total I'm provisionally minded to say there were delays totalling 19 working days in this process. I understand completion of R's new lending took place on 7 July 2023.
19 working days before that date would have been 12 June 2023.

Whilst I understand R feels there were delays at other times, I'm satisfied NRAM either moved things through as fast as it could (bearing in mind it needed to liaise with its external solicitor), or if there was a delay it then expediated things to ensure R's request was then prioritised to get it back on track. As I said, previous requests like this were completed within days, but the difference was that the previous requests were able to be dealt with using NRAM's standard wording and so the additional work required here wasn't needed.

R has provided evidence of the redemption figures (including daily interest) for the old lending, and the mortgage offer for the new lending. To resolve this part of the complaint I'm minded to order Topaz to calculate the difference between what R paid (on the old lending) and what R would have paid (on the new lending), from 12 June 2023 until 7 July 2023 if those delays hadn't happened.

R has also said that call backs weren't made when they should have been, and time was spent chasing things up.

R is a limited company and whilst it is eligible to bring a complaint to us and may have been caused inconvenience in this matter, it isn't a 'natural person' and can't experience distress, pain or suffering. Whilst Mr M, as the director of R, might have been caused one or other of these things, that isn't something I can consider as the eligible complainant in this case is R, not Mr M personally. We also can't award compensation for anything that impacted a third party, such as V, as again it isn't an eligible complainant in this matter.

So all I can consider is whether, and to what extent, R was inconvenienced. Again that will only be to the extent that R was inconvenienced, not Mr M personally.

I've reviewed what both sides have said and provided about the service outside of the delays (such as whether call backs should have been made, for example). I don't intend to go into the detail of every call that was made, and whilst I acknowledge R wanted to be kept informed of what was happening and to chase things up, much of the time there was no new update available to be given.

For example, on the afternoon of 7 June NRAM emailed R to say 'I don't know the time it will take for a quote to be obtained, however will ensure [name] contacts you with this information once available.' The information wasn't available and so the call back wasn't made before Mr M emailed NRAM on the morning of 8 June saying 'I have still not had that call from [name] and this is URGENT'. The NRAM case handlers would be dealing with many different accounts and I wouldn't expect a call back to be made in the few working hours between R calling NRAM and his follow up email being sent.

I also can't see any record to show that a call back was promised from a different case handler, so I can't find NRAM at fault there as whilst R may have been expecting a call from that person, I can't see that was something NRAM said it would do.

Whilst R wouldn't have seen it, the NRAM case handler was actively chasing things up, and although I can understand that R wanted a call back, it isn't the best use of the case handler's time to be answering and returning calls when there is no update to give as all that does is take their time away from chasing things up for R, and also from working on other accounts that may equally be urgent. R had been told that the case handler would be in touch once a quote had been obtained, and that is what they did.

All that said, it is clear the service provided overall – including the delays in dealing with the underlying request, the time it took to respond to the complaint, and the need for R and V to make so much contact with NRAM – did fall below the standard of which I would expect to see and that did cause some inconvenience to R.

Having considered everything very carefully, and keeping in mind the limitations I've set out above in that I can only consider any inconvenience that R was put to, not any impact on Mr M personally or his solicitor, then I'm minded to award £150 compensation.'

Neither party accepted my provisional findings. R said it had been a waste of time and made claims of bias towards Topaz. It said no consideration had been given to numerous calls with call backs that weren't made, information that would have been provided by V and that it had no choice but to accept the quote. R went through the timeline with its comments, and said it feels compensation of £1,000 was due (£500 for the inconvenience and £500 refund on the legal fees) plus the interest difference from 1 June to 7 July.

Topaz said the root of the problem was that V wasn't able to accept NRAM's standard wording, and that it told V on 30 May that it could issue a document using its standard wording the same day. It said, because V didn't accept that, it needed to instruct external solicitors, and there is no standard timeframe for that. It didn't agree that it should have provided an email address on 12 May as that isn't a secure method of contact, and whilst it agreed there were some avoidable delays it felt those equated to 8 days, rather than 19 days.

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

Having done so I won't be going into as much detail as the parties used in responding to my provisional decision, as much of what has been argued in response I'd already taken into consideration when reaching – and dealt with in - those provisional findings.

It is not the case that I don't understand the complaint and a meeting with R would have helped, it is simply that I don't agree with R's view and don't agree NRAM did as much wrong as R believes. That's not a lack of understanding or bias, as R has claimed. I'm sorry to see that Mr M – as a director of R - feels that way and I would seek to reassure him that's not the case at all.

I understand my provisional findings were disappointing. 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 a consideration of all the facts and all the submissions made by both parties. We look at what happened and decide whether we think a business has acted fairly and reasonably. Insofar as R doesn't agree with my provisional findings of the complaint, that isn't - in itself - indicative of bias or a lack of understanding, however unwelcome R found my conclusions.

R has said that it thinks I've not looked at the document at the heart of this, but that's not the case. R has also said that I've misunderstood the situation, and that NRAM doesn't have its own wording for this. I acknowledge that NRAM initially treated this as a request for a second charge – I made findings to that fact in my provisional decision, saying it had caused a delay. But R is wrong in thinking that NRAM didn't have its own wording for this, as it did. Those are two separate things. NRAM was wrong to initially treat this as a request for a second charge, but once that was resolved it said it could issue a document using its standard wording the same day. It was only when V said it wouldn't accept NRAM's standard wording that it was referred to an external solicitor.

As I set out in my provisional decision, NRAM had dealt with similar requests from R in May 2017, January 2018 and December 2019 and each time the new lender in question accepted NRAM's standard wording, which meant they were dealt with in days and without the need for external legal advice.

NRAM sent an email to V on 30 May 2023 saying '…please let us know the completion date and this can be issued on the same day by our Administration Team' in respect of a document using NRAM's standard wording. V responded, 'We need the consent letter approved in the style we have sent it.' There was mention in the emails of the letter of non-crystallisation not also giving consent and the priority of charges, but that was also something that had come up in the previous requests NRAM had dealt with and was resolved by NRAM simply adding an extra part to its standard wording letter. The issue here was that V wanted its exact document to be used, and that is why the matter wasn't resolved on 30 May – and without additional cost to R - as NRAM said it could be if its standard wording was used.

I acknowledge R had no alternative but to pay the fee if it wanted to refinance the properties with the lender in question with V acting in that transaction, but I can't hold NRAM liable for that. NRAM had previously undertaken similar actions with other lenders / solicitors, as I've explained in my provisional decision and above, without that cost being incurred because those lenders / solicitors accepted NRAM standard wording. Once V insisted on its document being used NRAM was within its rights to seek specialist external legal advice about that.

R has said other solicitors feel it should cost no more than £300, but again what another solicitor might charge isn't something I can take into account. As I explained in my provisional decision, I can't ask NRAM to refund the cost simply because it is a large sum, or more than R's solicitor would have charged. There's no suggestion the legal cost charged to

R wasn't incurred by NRAM, and it wouldn't be reasonable to expect NRAM to be out of pocket by charging R a lower amount than it had incurred when the cost was incurred in allowing R to do something that wasn't part of its contract with NRAM. R has also said that NRAM's solicitor didn't ask it anything, but I wouldn't expect them to. NRAM instructed the solicitor to act as its adviser and to protect its security for the money R owes to it. The solicitor didn't need to speak to R to do that, nor did it have to seek any further information from R if that wasn't needed.

R has said that compensation of £150 isn't enough, but that is in line with our normal awards. As I said, I can only award compensation for any inconvenience caused to R (not for any impact on Mr M or V). Our website [1]sets out some broad bandings, and the one in question says 'An award … of up to £300' which it explains as:

> 'If an error has caused the consumer more than the levels of frustration and annoyance you might reasonably expect from day-to-day life, and the impact has been more than just minimal, then an apology won't be enough to remedy the mistake.
>
> An award between £100 and £300 might be fair where there have been repeated small errors, or a larger single mistake, requiring a reasonable effort to sort out. These typically result in an impact that lasts a few days, or even weeks, and cause either some distress, inconvenience, disappointment or loss of expectation.'

That describes this situation well as there were repeated small errors that caused more inconvenience than you might reasonably expect from day-to-day life, and that required a reasonable effort to sort out. I must also keep in mind that the bandings are for scenarios where distress and inconvenience have been caused, whereas I can only consider the inconvenience which reduces the size of the award.

I acknowledge Topaz's comments about the fact V didn't accept its standard wording and why it feels it wasn't appropriate to give an email address on 12 May. Whilst I agree Topaz can't be held responsible for V not accepting NRAM's standard wording, it can be held responsible for what happened due to that in terms of the delays. And whilst there may be no standard timescale for matters like this to be dealt with, that doesn't mean things can take an indeterminate time. Topaz has said that it doesn't consider email to be a safe and secure method of contact and so it isn't used. It says that policy applies to all customers. But NRAM did use it here, on 24 May, so that argument falls away. As I set out in my provisional decision, once it was clear on 12 May that there was a problem with the faxes coming through, I think NRAM should have provided the email address to V that day so the request could be emailed through.

Topaz, whilst not giving any reason why, also doesn't accept there was a three working day delay, the details of which I set out in my provisional findings and copied below:

> 'The next step was for NRAM to obtain a quote from an external solicitor for the work that needed to be undertaken, that took until 14 June as there was some confusion about the need for a solicitor that specialised in Scottish law as well as what was required. Whilst there would always have needed to have been some back and forth to arrange the quote, and NRAM wasn't in a position to control how quickly the solicitor responded, that is still a longer time period than I would have expected this to have taken. Having considered this part of the process, I am minded to say there was a delay of three working days here.'

R has asked if I just randomly guessed that there was a three working day delay, saying it was much longer than that, but I don't agree. There were nine working days in the period in

[1] www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience

question (1 June to 14 June), and for ease here I will refer to the time between 1 June and 14 June as the “period”.

It isn’t as straightforward as saying there was a delay in this period between X date and Y date and therefore that is what I will award compensation for. That’s because, whilst there was a delay at the start of the period, in the later stages the matter was prioritised due to that earlier delay.

The request was passed across to the right area on 1 June, but that doesn’t mean I would expect it to be picked up and acted on that day. It isn’t unreasonable to expect that the area in question wouldn’t have reviewed and acted on the request until 2 June which was a Friday, or the Monday which was 5 June. The request for a quote for the legal costs was made by NRAM on 6 June and was chased by NRAM on 12 June. The solicitor’s initial quote was received on 13 June and NRAM immediately appealed that, with the revised quote being received late afternoon on 13 June. The original request could have been made a day or two sooner, and then it also could have been chased up a day or two sooner than it was. But once it was chased up, things were prioritised when the original quote was appealed to obtain the correct quote.

Having considered that part of the process again, and having considered what R has said - and in the absence of any specific arguments from Topaz - in response to my provisional decision, I see no reason to depart from my provisional findings that there was a delay of three working days here.

In summary, I’ve read everything R and NRAM have said in response to my provisional decision and considered the entire file afresh and - having done so - I’m not persuaded to depart from my provisional findings.

Putting things right

I order Topaz Finance Limited trading as Hessonite Mortgages to:

- Pay to R the difference in the interest it was charged by its old lender compared to what the new lender would have charged had completion happened on 12 June 2023 rather than 7 July 2023. We have provided the redemption statements showing the daily interest rate as well as the new mortgage offer to Topaz so it can complete that calculation.

- As that is a loss R incurred in the past, it has been out of pocket since then. So Topaz should pay interest of 8% simple on the total amount calculated above from 7 July 2023 to the date of settlement.

- Pay £150 compensation to R for the inconvenience caused.

My final decision

I uphold this complaint and order Topaz Finance Limited trading as Hessonite Mortgages to put it right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 19 March 2025.

Julia Meadows
Ombudsman