DRN-5400390

The complaint

Mr and Mrs V complain that Topaz Finance Limited trading as Hessonite Mortgages has asked them to pay a debt which they believe was settled in 2004.

What happened

Mr and Mrs V took out a mortgage with Northern Rock in April 2002. There were two parts to this mortgage, one part was secured which was for £42,750, and the other part was unsecured at £9,500. Both loans were on a capital repayment basis over a term of 25 years.

In October 2005, Mr and Mrs V redeemed the secured part of their mortgage and moved elsewhere but the unsecured amount wasn't repaid at the same time. And so, that debt remained outstanding.

In 2008 Northern Rock collapsed and was later nationalised. Mr and Mrs V's unsecured loan was transferred to NRAM Limited and then on 23 October 2023, to Hessonite.

Mr and Mrs V raised a complaint in January 2024 after getting a letter about an outstanding balance. Mr and Mrs V said they were unaware for all these years that the debt was outstanding and had they known it was, they would have repaid it. They would now like the debt to be written off.

Mr and Mrs V also said they both entered into an Individual Voluntary Arrangement (IVA) in 2008.

Hessonite issued a final response on 3 April 2024 explaining that Mr and Mrs V's mortgage was made up of secured and unsecured lending. And Mr and Mrs V only redeemed the secured part of the mortgage in April 2004, so this left the unsecured loan outstanding. They said that Mr and Mrs V were made aware of this via a letter that was sent on 6 May 2004. Hessonite said the account was moved to their shortfall team on 6 September 2010.They also said that there were several arrangements for payments made with their shortfall team from May 2012 to May 2016. They didn't uphold the complaint.

Mr and Mrs V didn't agree with this so they brought their complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. The investigator said that she thought that Mr and Mrs V were aware of the shortfall debt based on the letters that were sent to them and the arrangements that were made at the time.

She also asked Hessonite if this loan was included in the IVA as if it was, Hessonite shouldn't be pursuing Mr and Mrs V for the debt. She concluded that as the last contact made with Mr and Mrs V about the unsecured loan was on 8 October 2014, she didn't think the debt should be pursued as it may be statute barred.

Hessonite confirmed that Mrs V's IVA was settled in 2016 but they had no record of Mr V's IVA. The investigator asked Mr V for details of his IVA but he said he couldn't provide any information.

As Hessonite couldn't confirm whether the debt would be written off and because Mr and Mrs V think it should be, the case has now been passed to me to decide.

My provisional decision

I issued a provisional decision on 3 March 2025. I said the following:

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

Mr and Mrs V believe that the unsecured part of their loan should have been redeemed when they remortgaged in 2004. They said they only became aware that it hadn't been when they received a letter dated 13 October 2023 from NRAM letting them know the loan was transferring to Hessonite.

I've seen a letter that was sent to Mr and Mrs V dated 6 May 2004 which confirmed the secured part of their lending was redeemed in April 2004 and that Mr and Mrs V should call to discuss future payments regarding the unsecured account.

Northern Rock wrote to Mr and Mrs V again on 11 September 2008 letting them know that there were arrears outstanding on the unsecured loan and gave details of what they needed to do.

It's not clear what happened between 2004 and 2010 and Hessonite cannot find any other letters since the secured loan was repaid. But the issue here is that Mr and Mrs V do not believe that this debt should be pursued by Hessonite.

However, what is clear is that Mr and Mrs V were still paying towards this loan until April 2008 and then their payments stopped.

This loan appears to have been transferred to NRAM's shortfall team in 2010. I've seen a contact note dated 3 May 2012 which says ' *adv* [advised] *balance owing, mr aware said already spoke to us and has arranged to put in writing his proposals but keeps receiving calls, has other account and states notes not been transferred over, mr is willing to agree aip* [agreement in principle] *as he has done with other creditors , adv* [advised] *to do this we will need copy of i&e* [income and expenditure] *as well, adv* [advised] *him to send with the letter he is sending and I will put account on hold for 14 days, mr ok with this as said he has been speaking to us and still recd* [received]*calls and feels like he is now getting harassed'.*

There is another contact note dated 19 May 2012 which says '*Mr advised received a text. Advised Mr we received I&E and shows has neg* [negative] *DI* [disposable income]*so how could he afford to offer £1.00. Mr advised he budgets heavily and is due some tax back. Mr has already sought advise through CCS and is happy to pay £1.00 (accepted on both accounts). Payments are going to be made on 27th by S/O* [standing order]*. Advised can accept 2 months then will call for review. Mr may be receiving pay rise in September'.*

I've seen a letter that was sent to Mr and Mrs V dated 8 October 2014 thanking them for the payment of £1.00 and this letter confirmed the outstanding balance on the unsecured loan.

A letter was then sent to Mr and Mrs V from NRAM dated 13 October 2023 which confirmed the transfer of their account to Hessonite. Another letter was sent from Hessonite dated 23 October 2023 confirming the transfer of the loan shortfall account to Hessonite. These letters are what Mr and Mrs V said made them aware that the unsecured loan was still outstanding.

Mr and Mrs V have been paying £1.00 towards this loan from 2012 and I have noted that Mr and Mrs V now know what this payment is for, but they said they didn't know what this payment was for until 2023.

Having looked at the letters that have been sent to Mr and Mrs V since 2004 and the contact notes provided, I can't say that Mr and Mrs V were not aware of this debt and cannot say they only found out about it in 2023.

Mr and Mrs V say they thought that this loan had been transferred when they remortgaged – but it hadn't been. But it's evident that they were still making payments towards this loan until April 2008 so it doesn't therefore follow that they thought it had been repaid with the secured part of the loan.

Our investigator thought that this loan would be statute barred but I don't agree that it should be. Mr and Mrs V were paying towards this loan until April 2008. They then made contact in 2012 where a payment plan was agreed. So although Hessonite didn't contact Mr and Mrs V for over six years, Mr and Mrs V were still paying for this loan so in other words, there was still an acknowledgement of it.

Mr and Mrs V didn't pay anything towards this loan from May 2008 until contact was made again in 2012. From the contact notes provided above, it's evident that Mr and Mrs V acknowledged this debt again by 2012 at the latest, therefore this loan would not be statute barred as they were aware – and they accepted – at this time that it was outstanding. Mr and Mrs V started to pay £1.00 a month towards this debt and from what I can see, continued to do so until the middle of 2024. And there was only a break of around four years of those payments being made to the loan. Based on this, I am not persuaded that Mr and Mrs V were unaware of this loan and that they only found out about it more recently. So from what I can see, this loan is still outstanding and would need to be paid.

The second consideration here is that Mr and Mrs V said they entered into an IVA in 2008. So it's possible that this debt was included in that. If that was the case, and the IVA's were settled then any debt left over at the end of the payment term will be written off. If the IVAs or even one of those IVA's was to fail, then the debt remains outstanding.

Hessonite said their account notes suggest that the IVA failed for both Mr and Mrs V in 2011 and if an IVA fails, it would be terminated and a new one would need to be set up. They said they cannot evidence a new IVA being set up and if any IVAs fail, they would continue to pursue Mr and Mrs V for the outstanding amount.

Hessonite have since provided us with information that shows that Mrs V's IVA was settled on 23 September 2016 but they haven't been able to find anything for Mr V. Mr V has told us that as far as he is aware, his IVA failed so he doesn't understand why Mrs V's has been settled as it was a joint IVA. IVA's are normally for one person so they cannot be joint. They may be linked to some degree but it's unlikely this IVA was a joint one.

We have asked Mr V for details of his IVA but he hasn't been able to provide anything, so it's not clear if this debt was included in the IVA. Hessonite has information about Mrs V in the form of a screen shot which shows her IVA has been settled. But without information for Mr V, they cannot conclude either that the loan debt was included in his IVA or that his IVA has been settled and that it can't therefore continue to ask him to pay it.

In the absence of any IVA documentation, I cannot safely say that Hessonite shouldn't be pursuing Mr V for the debt. As there is some evidence from Hessonite that Mrs V's IVA was settled, they shouldn't be pursuing her. But the entire debt will still be outstanding and Mr V is still jointly and severally liable for the debt.

If we had evidence to show that Mr V's IVA was also settled then we may be in a position to ask Hessonite not to pursue this debt – if it was included. But without this information, I do not consider there are reasonable grounds on which I can do this.

This loan is continuing to impact Mr and Mrs V's credit file so I've thought about what should have happened in these circumstances.

Hessonite fairly reported the conduct of the unsecured loan element to the credit reference agencies. However, given the payment history of this loan, Hessonite's predecessor ought to have defaulted this loan in around 2012. The reason I say this is because this is when Mr and Mrs V acknowledged this debt which had been outstanding as a shortfall since 2008. Mr and Mrs V hadn't been paying towards the unsecured loan since 2008 so Hessonite ought to have taken action to default the loan when Mr and Mrs V made contact in 2012.

A default is usually recorded on someone's credit file in situations where the lender in a standard business relationship with the individual decides the relationship has broken down. And it was apparent that Mr and Mrs V could only afford to pay £1.00 per month. So this is what Hessonite should have done – so they should do this now, backdating the default to 2012. This would cause the unsecured loan to be removed from Mr and Mrs V's credit file.

Hessonite have said that no interest has been applied since 2008. Making this change to the credit file wouldn't result in the balance being written off altogether so Mr V will need to come to an arrangement with Hessonite to repay the default balance over time.

Finally, I've thought about whether considering this complaint more broadly as being about an unfair relationship under Section 140A of the Consumer Credit Act 1974 would lead to a different outcome. But even if it could (and should) reasonably be interpreted in that way, I'm satisfied this wouldn't affect the outcome of this particular case.

Developments

Hessonite responded to the provisional decision and accepted what I had said.

Mr and Mrs V have not responded.

Therefore, I have no further comments to make and have no reason to depart from my provisional decision.

My final decision

For the reasons given above, I uphold this complaint and direct Topaz Finance Limited trading as Hessonite Mortgages, to amend the credit file as detailed above.

Maria Drury
Ombudsman