

complaint

Mrs R complains that NRAM plc holds her liable for the whole of the remaining mortgage debt after the sale of her jointly-owned house and that it failed to advise her properly.

background

Mrs R and her former husband jointly mortgaged their house to NRAM. When the house came to be sold there was a shortfall leaving money owed to NRAM. Mrs R says that she has been left solely responsible for the debt because Mr R had entered into an individual voluntary arrangement (IVA). She complains that NRAM did not advise her of this at the beginning of the sale. If she had known, she would not have sold. She wants to be held responsible for no more than half the debt.

Our adjudicator did not recommend that the complaint be upheld. As the mortgage was in joint names Mrs R agreed to be jointly and severally liable for the debt. This meant it was up to NRAM whether it chose to pursue one or both parties for the shortfall on the sale. When the house was sold at a shortfall, the remaining debt became unsecured. Because of Mr R's IVA, NRAM could not pursue him for the debt. Whilst the adjudicator understood why this would seem unfair, when Mrs R entered into the mortgage agreement it meant she could be held responsible for the debt. The adjudicator wouldn't be able to say NRAM had acted unreasonably by pursuing Mrs R for this.

Mrs R did not agree. Not once in the beginning was she told when selling the house that the IVA would be an issue if a shortfall arose. If she had been made aware of this then she would have had to think about making sure that she made the right decisions when selling the property. If Mr R could pay back other debts then why was a mortgage shortfall not classed as another debt?

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mrs R would like to know:

- *is it possible to include the shortfall in the debts being administered under Mr R's IVA?*
- *does the IVA prevent NRAM from pursuing Mr R as well as Mrs R?*
- *if Mrs R has to pay more than half the shortfall, can she bring a claim against Mr R to make the contributions equal?*

The answers to these questions may depend on the terms of the IVA. Not all IVAs are the same, and it would be sensible for Mrs R to take advice if she can. But it is still the case that NRAM can choose who to pursue. It is not obliged to pursue both parties equally.

The other issue is Mrs R's complaint that NRAM did not tell her the effect of the IVA at the start of the sale and that if she had known, she would not have sold. I don't think NRAM had a duty to give Mrs R legal advice. But in any case the correspondence at the time suggests that she did know.

The sale was completed on 17 April 2014, and NRAM's file notes record that in a telephone conversation on 15 January 2014 it clarified for Mrs R that Mr R would not be liable for the shortfall due to the IVA.

Following this, in a letter to NRAM received on 22 January 2014 Mrs R said:

"I still feel strongly about being left with the debt I am prepared to come to an arrangement to pay back what I can to clear the debt, which I do feel still angry that I got to take this on myself, please consider this sale as I have a buyer who I do not want to loose now after everything and surely in your best interest as well".

In a letter to Mrs R dated 19 September 2014, NRAM also said it had told her in a letter dated 9 January 2014, a copy of which was enclosed, but I do not have a copy of that letter.

However on the evidence I consider it is likely that Mrs R knew of the IVA effect before completing the sale. It is also likely that if Mr and Mrs R had not sold then NRAM would have done so, and the position now would be the same.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs R to accept or reject my decision before 3 September 2015.

Edward Callaghan
ombudsman