

## **complaint**

Ms B complains that NRAM plc has behaved incorrectly when chasing her for a debt which it had previously told her was all paid off.

Ms B is represented in her complaint by a firm I'll call "C". But for ease of reading I only refer to Ms B. I do this even where it was C who said or did something.

## **background**

Ms B had an unsecured loan. She was told by NRAM in November 2013 that the loan had been fully paid off. It mentioned a refund. When she came to us she couldn't remember exactly what it had said at the time about this refund. But she thought this might have been to do with a refund she got for the mis-sale of PPI. In any event, back in November 2013, Ms B relied on what she was told and cancelled her standing order.

In around February 2016 Ms B was contacted by NRAM asking her to get in touch with it. Thinking this was a hoax she ignored it. It was only in April 2016 that she spoke to NRAM and realised what it wanted. It told her she still owed it money for the loan. But she thought that it didn't explain the situation well so she didn't know why it said she still owed it money. Despite this she explained she felt intimidated. As a result, and even though she believed she owed no money, she made two payments to it.

Subsequently she told it to contact her representative, C instead of her. But it still chose to contact her directly.

NRAM agreed it did tell Ms B in November 2013 that the debt had been paid off - this was a mistake. What it should've told her was that it had refunded some money to her account because it had made technical breach of relevant legislation. But even with this refund she still owed it money. In addition she had built up arrears in the years she'd had the loan. In response to this it had sent her loan to its recoveries department in April 2013. It hadn't been able to tell her about this because she moved without telling it. And then it had failed to update her address when it spoke to her in November 2013. Further it said there had been no PPI refund as there had been no PPI policy.

Dissatisfied with this response Ms B came to this service. While the complaint was with us NRAM offered Ms B £100 for the mistakes it had made which most likely caused her distress and inconvenience.

Our adjudicator thought NRAM hadn't done enough to correct its mistakes. And further it should've updated Ms B's address when it spoke to her in November 2013. She thought Ms B had experienced distress and inconvenience because of NRAM's mistakes. She thought £500 was an appropriate award for this. That is the £100 that NRAM had offered once the complaint came to us and a further £400 as she didn't think £100 went far enough.

Our adjudicator also thought NRAM should send Ms B information showing the arrears and how they'd been calculated. She also thought it should send Ms B information to show how the refund had been calculated and a statement showing the outstanding balance, which seems to be the balance as at April 2013 when it sent the debt to its recoveries department.

NRAM thought this award went too far. With reluctance it agreed to accept it. But it wanted us to know it thought if Ms B had just made her correct contractual repayments all of this could've been avoided.

Ms B rejected our recommendation. She wrote back at length. In summary, she didn't agree that NRAM had done what it should've done to contact her when the arrears were run up. She thought she never got the information she was entitled to receive for example about the refund and an up-to-date statement of account. And she raised new points about whether the debt was enforceable or not and whether NRAM legally owned the debt.

Ms B asked that an ombudsman review her complaint.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I think the offer Ms B has now is fair and reasonable. It follows I'm not going to tell NRAM to take any further action. Please let me explain why I've reached these conclusions.

#### *why the new matters have not been dealt with in this final decision*

Ms B has now raised questions about the enforceability of the debt and the legal ownership of the debt. These appear to be new matters and have not been considered by NRAM in its final response to Ms B. I am as a result unable to look at these points in this final decision.

Ms B may wish to come back to us once she has had NRAM's response about these issues or once it has had the appropriate amount of time to tell her its response. That would be a new complaint. I need to manage Ms B's expectations though, only a court can decide if a debt is unenforceable we can't.

#### *the loan arrears and the outstanding debt*

Ms B and NRAM don't always agree about what happened here. Where that's the case I have to decide which version of events is the most likely.

As far as I can see Ms B doesn't say she didn't originally owe the debt. Further when she rang NRAM in 2013 she didn't suggest she had paid it off in fact she appeared to want to know how to continue paying. Given she had the benefit of the money and hadn't most likely paid off the debt; I don't see anything unreasonable in NRAM asking her to pay it back.

NRAM's records show it tried to contact her at the last address it had for her when arrears started to build up. It was Ms B's responsibility to let it know her address. Nothing I've seen suggests she did this. Its records show arrears had built up. I don't think it likely its records would be inaccurate in the circumstances. It had every interest in keeping accurate records of the repayments it received. Not least of all so it could chase for arrears Ms B hasn't shown she'd made the repayments it said she'd missed. So I don't think NRAM was wrong to apply arrears to her account.

*the business did make mistakes which most likely caused Ms B to experience distress and inconvenience*

That said in November 2013 NRAM did make a mistake in telling her the debt had been cleared. And it seems the explanation it provided for this at the time was confusing. I can well understand why Ms B took what it said at face value; after all it was the expert. But this mistake seems to have been based on human error.

I also think NRAM should've updated its records in November 2013 with her new address. Although I take on board it probably didn't do this as at that point, as the person who spoke to Ms B mistakenly thought the debt was settled, but that isn't Ms B's fault.

I can't imagine the shock Ms B got in 2016 when she found out the debt wasn't settled. Further I think given what it had told her in 2013 and given it was contacting her out of the blue NRAM should've been better prepared.

It ought reasonably to have known she'd want a detailed explanation of what had happened and why she was being chased.

I also think it was wrong to contact her after she told it she wanted it to deal with C instead.

In this context I think £500 is a fair and reasonable award for the distress and inconvenience this most likely caused.

*it's not correct to say NRAM forced Ms B to pay it*

Ms B says that she felt intimidated by NRAM and that she acted under duress. She seemingly worried that it would take legal action against her if she didn't pay up.

As I've already said I think NRAM could've explained the situation better. But I don't see that asking her to repay a debt she owed was intimidation. Neither do I agree that she was forced to pay NRAM she clearly could've refused to pay until it provided a better explanation of why it said she owed it money.

Duress does not mean feeling you're in a weak bargaining position or making a payment when you're not sure if you owe it or not. Nor does it mean having to choose between two or more unattractive options. Duress means being forced – typically by physical threats or blackmail or some other form of undue pressure - to agree to something against one's will. Nothing NRAM did equated to this, as far as I can tell.

*why it's not appropriate to make NRAM pay Ms B's solicitors' fees*

Ms B chose to be represented by a firm of solicitors, that's her choice to make. But I don't see that anything NRAM did meant she needed to instruct it. And she could've brought her complaint to us without paying a representative. So I don't think it is fair and reasonable to ask NRAM to pay her solicitors' fees.

### **my final decision**

My final decision is the NRAM plc should:

- Pay Ms B 500 for distress and inconvenience. That is the £100 it initially offered plus the £400 it agreed to pay later on.
- Provide Ms B with a statement showing the arrears that it added to the account.
- Provide Ms B with information to show why she was getting a refund in 2013 and how it calculated it.
- Provide Ms B with an up-to-date statement of account. Showing the current balance and how this has been worked out.

NRAM must pay the total compensation within 28 days of the date on which Ms B accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Ms B can reclaim the tax if she is able to.

Ms B should refer back to NRAM if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 26 October 2017.

Joyce Gordon  
**ombudsman**