

complaint

This complaint is about an unsecured loan to which Miss K is a joint party, along with her former partner (whom I shall refer to as “Mr L”). Miss K complains that by its handling of the payment arrangement that she negotiated, separately from the one NRAM negotiated with Mr L, NRAM plc (“NRAM”) has treated her unfairly and caused her undue distress.

background

By way of my provisional decision from October 2014, I set out the effect NRAM’s actions had had on Miss K. In summary, these were

- NRAM’s reporting of Mr L’s missed payments on Miss K’s credit file was not an accurate representation of the facts. Notwithstanding the joint and several nature of the liability for the underlying debt, NRAM had negotiated individual payment arrangements with each borrower, but had not told Miss K she was jointly liable for both arrangements.
- Miss K had no way of knowing when or if Mr L was adhering to his arrangement, and NRAM’s suggestion that she should re-establish contact with him was unreasonable. So, too, was penalising Miss K for not adhering to an agreement to which she was not a party. NRAM was wrong to say it could not report the two arrangements separately; clearly it could, but it had done so inaccurately and to Miss K’s detriment. The information reported on Miss K’s credit file should reflect her adherence to her agreement, and nothing else.
- Miss K had encountered poor customer service over the four years since the arrangement had been set up. She had been given inconsistent information (or refused it entirely), and tried without success to have a face-to-face meeting because of the frustrations of dealing with the business on the telephone.
- Debit interest and charges had been added to the account even though the bank knew Miss K and Mr L were in financial difficulties (it had also told Miss K that no interest would be charged as part of the arrangement). Adding to a debt in such circumstances, when aware there was little prospect of the situation improving, was not fair treatment.
- The wider circumstances of dealing with NRAM including being expected to resume contact with an ex-partner from whom she parted on less than amicable terms, and (even after bringing her complaint to us) being asked questions *about* Mr L in order to pass NRAM’s telephone security procedures had caused her an unacceptable level of stress.

I then set out, with reasons, the basis on which I was minded, subject to the further submissions of the parties, to determine this complaint. My provisional conclusions were:

“NRAM makes much of Miss K’s joint and several liability, along with Mr L, for the unsecured loan balance. Indeed, that is the central thrust of its argument, and in all of its submissions to us, the bank has never strayed very far from that. But in bringing the complaint, Miss K has never disputed that she owes NRAM money. Nor does anything I have seen suggest to me that, since entering into the payment arrangement in 2010, Miss K has ever tried to evade her responsibilities. In that context, I find that, in the submissions and arguments it had made to our adjudicator, NRAM has repeatedly missed the point.

For the avoidance of doubt, this complaint is not about whether Miss K owes NRAM money (although I will return to this subject in my provisional conclusion). It is about how NRAM has treated Miss K in its efforts to recover money from her. Financial businesses have a duty to treat all of their customers fairly at all times; but they have a particular duty in respect of those who are in financial hardship. In all the circumstances, of this case, I find that NRAM has breached that duty.

Notwithstanding that the original debt was a joint commitment taken out by Miss K and Mr L together, the payment arrangement NRAM negotiated with Miss K in 2010 has to be regarded as an agreement between it and her alone. Insofar as NRAM knew Miss K had ended her association with Mr L entirely, was not in contact with him, and was unaware of the existence of any arrangement between NRAM and Mr L (and with no capacity to influence Mr L's adherence to it) her arrangement cannot be fairly regarded in any other way.

On that central premise, I find that by regarding Mr L's missed payments as breaches of Miss K's agreement, and by reporting them on her credit file, applying interest and charges, and chasing her to make good Mr L's breaches of his own agreement, NRAM has treated Miss K most unfairly. But that is not all.

Even whilst Miss K's complaint has been with us, NRAM has exacerbated the position by requiring Miss K to answer personal questions about Mr L in order to pass its security procedures, and when she could not do so, suggest that she contact him. For this to happen when it did, and for NRAM when confronted with it not to grasp how distressing the suggestion was for Miss K, indicates a shocking lack of sensitivity.

fair redress

NRAM says that a payment of £1,500 is disproportionate to the amount of the payment arrangement. Once again, I consider that misses the point. When assessing fair compensation for trouble and upset, we do so by reference to the amount of trouble and upset the consumer has experienced as a consequence of a business' shortcomings, not by reference to the size of the financial service the complaint arises from.

My concern with the adjudicator's recommendation – and the reason for my provisional decision – is not that the proposed award is disproportionately high. It is that ultimately, it will not provide a resolution for Miss K.

Everything that NRAM has said about Miss K's complaint suggests to me that there is little prospect that it would behave any differently towards her after this complaint has been concluded. So that means there is a strong likelihood that the unfair treatment and the detriment to Miss K's financial reputation and health would continue in future. Taking this into account, I am minded to conclude that, by its actions, NRAM should forfeit its right to continue to pursue Miss K for the debt.

Thus, instead of the remedies proposed by the adjudicator, my provisional conclusion is that NRAM should release Miss K entirely from her joint and several liability for the outstanding loan balance, and instead seek to recover it from Mr L alone. It should also remove altogether any mention of the personal loan from Miss K's credit file.

Notwithstanding that NRAM's actions have caused Miss K very serious distress and inconvenience, I do not intend to make a separate award of compensation. The monetary worth to Miss K of being released completely from her liability for the debt exceeds the level of award I would have made."

Perhaps unsurprisingly, Miss K accepted my provisional conclusions. Equally, unsurprisingly, NRAM did not. It put forward an alternative proposal, the gist of which was that it would:

- Mark the debt on Miss K's credit file as defaulted from the point that the arrears on the account exceeded six months' worth of missed repayments. The arrears at the end of July 2011 were £1,978.20 with a contractual monthly payment due of £329.70, meaning, the account would be deemed defaulted with effect from 1 August 2011.
- Treat the account as defaulted and transfer the outstanding balance from this point onwards from NRAM's live mortgage processing system to its shortfall recoveries system to recover the remaining debt.
- Remove any interest applied to the debt since August 2011 (£651.12), between the date the arrears on the account exceeded six months, and the date the default took effect; and
- Pay Miss K compensation of £1,000.00.

NRAM said that removing the account from its live mortgage processing system would enable it to set up individual accounts for Miss K and Mr L with individual payment arrangements. It would also prevent Miss K's credit file from being negatively impacted when and if Mr L failed to maintain his agreed repayments. Additionally, by taking this action it would mean that NRAM would be waiving its right to charge interest on the debt in future.

We have put NRAM's alternative proposal to Miss K for her comments. She has said, in summary, that NRAM's response is too little too late, and fails to reflect the damage to her health and well-being of her treatment in the intervening years.

my findings

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

The redress I proposed in my provisional decision was intended, at least, in part, to reflect not just how poorly I considered NRAM had treated Miss K over a four-year period, but also how I considered it had failed to engage with Miss K and this service in addressing the complaint.

NRAM's response to the provisional decision does suggest that it has, at last, begun to grasp the seriousness of its shortcomings (notwithstanding that we still had to chase the business for that response and to grant it more time to provide it). However, whilst NRAM's counter proposal was, I believe, well-intentioned, its effect is ultimately to make matters worse rather than better.

What NRAM has revealed is that none of what has happened since 2010 when Miss K entered into her own individual agreement to contribute towards the joint debt was

necessary. It now seems that all along, NRAM had at its disposal a mechanism for separating Miss K's liability for the joint debt from Mr L's liability, and setting up an individual arrangement with Miss K that was not impacted by the arrangement with Mr L.

If NRAM had suggested this approach to Miss K, and implemented its arrangement with her on this basis from the outset, I would, in all probability regard it as a fair and reasonable way of administering and managing Miss K's ongoing joint and several liability for the debt. Additionally, the very serious impact on Miss K could have been avoided.

I have no reason to believe that Miss K would not have adhered to the payment arrangement in much the same way that she has done, but she would have been relatively untroubled by Mr L's failure to adhere to his. As it is, I find it quite egregious that Miss K has been allowed to suffer the trouble and upset that she has experienced since 2010 when NRAM knew it was unnecessary and could be avoided.

Miss K says she did not expect to be released from her obligations to NRAM, but has no faith in NRAM's ability to manage the proposed new arrangement correctly. She fears any settlement based on a continuing liability will still cause her further distress and inconvenience. I have to say I am inclined to agree. I said in my provisional decision that I considered NRAM had forfeit its right to continue to seek recovery of the debt from Miss K. I do not find that NRAM's response to the provisional decision is sufficient to restore that right.

I have given careful thought to NRAM's comments regarding the reporting of the debt on Miss K's credit file. The present position is that Miss K's credit file is prejudiced because it shows information that reflects Mr L's failure to maintain his own payment arrangement rather than Miss K's success in adhering to her own.

NRAM is concerned – legitimately, I might add – about my provisional conclusion that it should remove all reference to the debt from Miss K's credit file entirely. NRAM says this would be a misrepresentation of the facts, and would meet with disapproval from the Information Commissioner's Office.

There is some merit to NRAM's position on this. Clearly, Miss K's credit rating should not, as is happening at present, suffer prejudice because of Mr L's actions over which she has no control. There is, however, a danger that the complete removal of any reference to the NRAM debt risks presenting Miss K's credit file in a more favourable light than it should, strictly speaking, appear.

Having carefully considered the point, I have decided that the fairest action would be for NRAM to amend its entry on Miss K's credit file to show the following:

- the joint loan being defaulted as at 1 August 2011;
- a reduced payment arrangement in place, and entries to reflect all of the payments Miss K has made under that arrangement from 1 August 2011 up to the eventual date of settlement of the complaint; and
- the debt recorded as written off with effect from the eventual date of settlement of the complaint.

my final decision

My final decision, for the reasons given, is that I uphold this complaint. In full and final settlement, I direct NRAM plc to release Miss K entirely from her joint and several liability for the outstanding loan balance, and instead seek to recover it from Mr L alone. I further direct NRAM plc to amend its entry on Miss K's credit file as specified above. I make no other order or award.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss K to accept or reject my decision before 15 December 2014.

Jeff Parrington
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