

complaint

Mr W complains through his solicitor that Landmark Mortgages Limited trading as NRAM misled his solicitor when he redeemed his mortgage. Mr W wants NRAM to remove the outstanding equitable charge.

background

Mr W sold his property and his solicitor needed to redeem the outstanding charges on the property. Mr W's solicitor contacted NRAM and asked for and got a redemption figure to cover all its charges including an equitable charge. But after the sale NRAM said that it wouldn't redeem the equitable charge as in fact this charge was for a loan that it had sold to another company which I shall call firm A. NRAM accepted that its agent gave misleading information to Mr W's solicitor. Our adjudicator recommended that this complaint should be upheld and that NRAM should pay Mr W £100 for giving his solicitor incorrect information. Mr W's solicitor disagreed with the remedy saying in summary that he had acted in good faith and that NRAM should remove the equitable charge.

my findings

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

Mr W sold his property in March 2016. His solicitor when doing his usual searches in the Land Registry noted that there were two charges to NRAM on the property including an equitable charge. In the normal way the solicitor asked for and got a redemption figure. To avoid any problems, Mr W's solicitor phoned to check that the settlement figure covered both charges and NRAM confirmed that it did.

Mr W's solicitor then paid the money to NRAM to redeem the charges. But NRAM did not remove the equitable charge. It says this charge is to do with a loan to Mr W which it sold to firm A. But neither NRAM nor firm A had informed the Land Registry of this so that the record showed that the equitable charge was still in the name of NRAM. There is a note about this on the NRAM file which reads *"it was agreed that the charges would remain under Northern Rock, but the third party companies would have power of attorney to remove these charges when the debt is paid. This was due to the cost aspect."*

My reading of this is that in order to save costs neither NRAM nor firm A amended the record in the Land Registry to show that NRAM was no longer the owner of the equitable charge. From the Land Registry search, Mr W's solicitor would reasonably have assumed that redeeming any money due to NRAM meant that both charges would be redeemed. The note on the NRAM file referred to above ends *"Agent has mis-led the sols after obtaining confirmation from another agent."*

Mr W's solicitor gave an undertaking to the purchaser's solicitor that it would discharge the equitable charge and has emphasised how significant this is and the burden it places on the solicitor. I accept that and recognise Mr W's solicitor's dilemma.

But this is Mr W's complaint and I have to look at his position. Mr W would have been aware that he owed both a debt to NRAM for his mortgage and for a loan. The Land Register shows that following a charging order on 22 February 2007 an equitable charge was registered on Mr W's property for this loan. The loan and the benefit of the equitable charge was sold to firm A. So, Mr W should have been aware that there was still a liability for the loan, but now owed to firm A, and that it was secured on his home.

I asked for the redemption statement and Mr W appears to have used the equity from the sale of this property to buy another property. In order to calculate what equity there would be when the first property sold, I would expect Mr W to look at what debts were linked to the property and how much he needed to pay off each debt. Mr W would have had statements and documentation which would help him identify what was roughly owed on each debt. I appreciate that Mr W would rely on his solicitor obtaining final redemption figures. But in order to have an idea of what would be left over after the sale of the house, Mr W would have needed to go through that exercise. I believe that such an exercise would have reminded him about the debt that was by then owed to firm A.

Unfortunately Mr W's solicitor appears not to have been made aware of this and as described above double checked with NRAM and was given misleading information. This meant that Mr W's solicitor credited Mr W with the money that would otherwise have been used to discharge the equitable charge. NRAM's mistake may have benefited Mr W. But it caused problems for his solicitor.

Whilst I have great sympathy for the position of Mr W's solicitor, my role is not to punish NRAM for anything it might have done but to compensate Mr W for any loss he may have suffered. I cannot fairly say that NRAM's actions caused any loss to Mr W. I also believe that he should reasonably have been aware that he owed a debt to firm A and, as that debt has not been paid off, I don't consider it fair that I order the removal of the equitable charge. Although the misleading information caused no financial loss to Mr W I accept that it may have caused him a degree of trouble and so, I uphold in part this complaint and believe that compensation of £100 is appropriate in the circumstances.

my final decision

My decision is that I uphold this complaint in part and order Landmark Mortgages Limited trading as NRAM to pay Mr W £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 March 2017.

Gerard McManus
ombudsman