

## **complaint**

Mr and Mrs D are not happy with how NRAM plc ('NRAM') has offered to settle their complaint about three PPI policies attached to two mortgage accounts and a loan.

Mr and Mrs D have been represented throughout their complaint.

## **background**

Mr and Mrs D had two mortgage accounts with NRAM and both had PPI policies attached. Mrs D also had an unsecured personal loan which had a PPI policy attached.

At some point Mr and Mrs D got into trouble making their repayments and entered into an involuntary arrangement ('IVA').

The unsecured personal loan formed part of the IVA. The two mortgage accounts were redeemed in 2011, before the IVA completed.

Mr and Mrs D completed their IVA in 2015.

At a later date, Mr and Mrs D complained that their PPI policies were mis-sold. NRAM agreed. Mr and Mrs D's insolvency practitioner confirmed that they didn't have an interest in their PPI compensation.

NRAM then said that Mr and Mrs D's still had a debt with it that the IVA hadn't fully cleared. And it said that any PPI compensation would be less than the debt still on the account. So it says it would use that PPI compensation to reduce any outstanding debt.

Mr and Mrs D don't agree with this approach. Their representative has referred to some terms in the IVA agreement which it says means NRAM can't keep the PPI compensation.

Our adjudicator looked at the approach NRAM had taken and thought it was fair. Mr and Mrs D disagreed and so the complaint has been passed to me for a final decision.

## **my findings**

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

NRAM has already agreed to settle Mr and Mrs D's complaint. So I won't be looking into how the policies came to be sold – because that is not in dispute. I will only be looking at whether the approach NRAM has taken is fair.

When a business agrees to settle a PPI complaint we expect it to, as far as possible, put the consumer back in the position they would be in had they not taken a PPI policy. With a PPI policy attached to a mortgage this *generally* means a refund of all the PPI premiums paid and 8% simple interest on each PPI premium from the date it was paid until the date it is refunded.

With a single premium PPI policy attached to a loan this *generally* means a refund of the PPI premium, any interest the PPI attracted and 8% simple interest.

But in Mr and Mrs D's case NRAM say that they still have a debt after their IVA had completed. NRAM intend to use the PPI compensation from both mortgage accounts and Mrs D's loan to reduce the debt outstanding on that joint account.

Mr and Mrs D's representative disagrees with this approach. It has provided a copy of Mr and Mrs D's IVA agreement. They have referred us to a couple of terms in that agreement specifically. It has referred me to paragraph 4(1) and paragraph 7(4).

Paragraph 4 is headed "*Nature and effect of the Arrangement*". Paragraph 4(1) states, '*The Arrangement is a proposal under Part VIII of the Act [Insolvency Act 1986 as amended] for a scheme of arrangement of the Debtor's affairs or a composition in full and final satisfaction of the Debtor's Debts.*'

Mr and Mrs D's representative has taken the phrase "*full and final satisfaction of the Debtor's Debts*" to mean that NRAM can't reduce this debt. But I don't agree this is what this paragraph says. This means that NRAM have agreed to not legally pursue Mr and Mrs D for the debt on their mortgage account. It doesn't mean that NRAM can't off-set a debt it owes Mr and Mrs D against a debt they owe it after an IVA has been completed.

This issue has also been discussed in a recent court case, *James Green (former Supervisor) v James Wright [2017] EWCA Civ 111*. Here the court commented that a debt that forms part of an IVA does still exist even after the IVA is completed. And I agree with that position.

Paragraph 7 is headed '*Mutual credit and set-off*'. Paragraph 7(4) states '*[Restriction on post-commencement set-off] Other than as provided for in this Paragraph, set-off shall not be available in respect of any Debt or item of Property*'.

Here I think the phrase '*other than as provided for in this Paragraph*' is important. This includes paragraph 7(2). And I think it's likely NRAM will be looking to rely on paragraph 7(2) which says, '*[Account to be taken] An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set-off against the sums due from the other*'. This suggests that NRAM can set-off mutual dealings which could be interpreted to include PPI compensation.

But in any event, I have to also look at what is fair and reasonable whilst taking into account the law, relevant rules, guidance and industry practice.

NRAM has provided evidence to show that Mr and Mrs D still had a debt with them of over £12,500 after the IVA completed. The debt still exists, because it hasn't been paid back.

NRAM has looked at and upheld three complaints about three PPI policies that Mr and Mrs D had with it. The total compensation it has worked out is not more than the £12,500 Mr and Mrs D still owe NRAM. So NRAM has said it'll use this PPI compensation to reduce the outstanding debt.

Mr and Mrs D had taken advantage of the IVA to protect them from businesses seeking to recover debts they owed. Once the IVA ended debts that formed part of the arrangement could not be actively pursued, although they still existed. Having taken advantage of such protection I would normally say it's fair that any debts a business was still owed after the IVA ended could be reduced by any money the business owes the consumer as compensation for the mis-sold PPI. So I think the approach NRAM is taking is fair in this particular complaint.

**my final decision**

For the reasons I've mentioned above, my final decision is that the approach NRAM plc has taken to resolve Mr and Mrs D's complaint is fair.

If NRAM plc hasn't yet used Mr and Mrs D's PPI compensation to reduce the debt left over from the IVA then I direct it to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 19 April 2018.

Martin Purcell  
**ombudsman**