

complaint

Mr and Mrs L complain that NRAM plc has wrongly made an adverse entry on their credit files.

background

For financial reasons Mr and Mrs L make their monthly mortgage payment to NRAM manually on the last day of the month. On 31 July 2015 they were unable to pay during working hours because they were attending Mr L's mother's funeral service. Mr L attempted to pay at 8.03pm using the automated payment line. The payment didn't go through so he tried again at 9.17pm and was successful. NRAM nevertheless recorded a late payment on their credit files.

On their complaint to NRAM it said:

"As mortgage account holders, it is your responsibility to ensure your contractual monthly payment is paid in the calendar month in which it is due. When customers use the automated payment line, they are informed at the beginning of the telephone call any payments made after 8.00pm will be registered onto the account the next working day."

"As you contacted the Automated Payment Line after the 8.00pm deadline, the payment was registered onto your account the next working day, therefore registering as a late payment. Customers are provided with this information when they use the Automated Payment Line to make their payments. As the payment was registered on 1 August 2015, the system recognised no payment being made in July 2015."

Mr and Mrs L complained to this service. They said that although NRAM may not have updated its records until the following working day, this didn't alter the fact that the payment was made on the due date.

When our adjudicator initially spoke to NRAM it said it wasn't aware of the extenuating circumstances and would look to amend the credit file on receipt of the adjudicator's view.

The adjudicator said he had examined the mortgage offer and the terms and conditions, neither of which gave a specific time by which payment should be made. The terms and conditions said that payment must be made on the monthly payment date, but not by a specific time. Although it might be the case that NRAM allocated payments received after 8.00pm to the following day, in this instance he felt there were mitigating circumstances. When he spoke to NRAM on 9 December 2015, he was told that the information about the funeral had not been provided previously. It had therefore been agreed that the late payment marker could be removed.

NRAM replied that Mr and Mrs L knew they were attending the funeral and should have made suitable arrangements. The terms and conditions said that payments should be made by direct debit. As Mr and Mrs L could not do this, it had agreed to allow them to make card payments. But there were processes which must be adhered to including making payment before 8.00pm. NRAM requested review by an ombudsman.

my findings

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

The offer of loan stipulates in section 6 a number of payments under the heading: "*What you will need to pay each month*". However it doesn't stipulate any particular day of the month, or time of the day, and doesn't stipulate that the payments must be made by direct debit.

The Mortgage Offer General Conditions say in paragraph 1.2: "*'Monthly Payment Date' means the first day of each month (or such other day as we may agree with you) but is subject to change...*". NRAM hasn't suggested that the July payment was actually due on 1 July, and I assume this was changed. The conditions likewise don't stipulate that the payments must be made by any particular time of the day, or that they must be made by direct debit.

The adjudicator called the automated payment line and confirms that it says that payments made after 8.00pm will be credited the following day. However I haven't seen any evidence that this is a term of the mortgage contract: rather, it appears to be an internally imposed time limit. I can see that having been given this information, and having chosen to use this payment method after 8.00pm, a borrower couldn't complain if NRAM didn't credit the payment to his mortgage account until the following day, and calculated interest accordingly.

But a payment made at 8.03pm is still a payment made, and I'm not persuaded that NRAM is obliged, or entitled, to register a default as if the payment hadn't been made that day at all. There is nothing in the terms of the mortgage contract which obliges borrowers to make their payments by 8.00pm.

The credit file is meant to be a true reflection of a borrower's creditworthiness. But it wasn't that Mr and Mrs L didn't want to or couldn't pay – it was a simple misunderstanding of NRAM's own procedures. So it doesn't seem fair for it to be recorded as a late payment.

I therefore agree with the adjudicator's view.

my final decision

My decision is that I uphold this complaint and order NRAM plc to remove from Mr and Mrs L's credit files the late payment marker for July 2015.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 18 February 2016.

Edward Callaghan
ombudsman