

## **complaint**

Mr P has complained about how NRAM Limited ("NRAM") intends to use compensation from the mis-sale of a payment protection ("PPI") policy he took with a personal loan.

## **background**

I issued my provisional decision on 15 March 2019. A copy of my provisional decision is attached and forms part of my financial decision.

My provisional decision sets out the background to this complaint. It explains why I didn't think I could uphold the complaint and gave my proposed summary outcome.

NRAM didn't respond.

Mr P did reply. He agreed that PPI compensation was only due for the six months he paid for it. But overall, he wasn't happy with the outcome of my provisional decision and raised several points he would like addressed.

## **my findings**

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

Mr P says that when the individual voluntary arrangement ("IVA") ended in 2008 the debt legally ceased to exist. He has said I haven't taken into account how UK laws work on debt. And he referred to the statute of limitations.

But I disagree with Mr P. I'll explain why.

When making a decision I must take account of the relevant law when deciding what I think is fair and reasonable in all the circumstances of the case. I'm not bound to follow it – but if I decide to depart from it, I must say so and explain why.

In this case, I don't think I'm departing from the law. I say this because the Court of Appeal has, relatively recently, clarified the effect of a certificate of completion on a PPI claim made following completion. In *Green v Wright* [2017] EWCA Civ 111 the court concluded that the debts weren't extinguished – and that the creditors had a right to claim any assets that were included in the IVA. As the PPI claims were an asset in the arrangement – even if the parties didn't know about the claims when the IVA was entered into – then it didn't matter that the claim was made post-completion, the IVA supervisor was entitled to the PPI compensation.

So Mr P's debts weren't, as he is thinks, extinguished upon completion of his IVA. But even if the facts of the case are different from Mr P's, I must apply an over-arching test of what's fair and reasonable in the particular circumstances of Mr P's complaint.

And I do not think it would be fair to tell NRAM to pay Mr P his PPI compensation when Mr P borrowed a significant sum of money from NRAM and now won't ever repay it.

As background, Mr P borrowed £25,000 from NRAM just under a year before he entered into his IVA. During that time he paid six PPI repayment instalments totalling £816.78. The amount written off by NRAM was £35,712.90.

Mr P paid just over £7,300 to the IVA. It's not clear how much of this NRAM received.

But what is clear is that Mr P borrowed and did not repay many thousands of pounds. That a certificate of completion has been issued does not, in my opinion, make a difference to what is fair.

Put simply, I think it would be fundamentally unfair to tell NRAM to pay back the extra £816.78 Mr P paid for PPI when he doesn't now have to pay back the many thousands of pounds he borrowed. I can't see how that is fair.

Mr P referred to the statute of limitations, which is legislation that provides timescales within which a claim by the creditor, NRAM, should have been made. But this relates to the time limits which would apply if NRAM was to chase Mr P for the debt. To be clear, NRAM is not chasing Mr P for the debt. It is owed that debt by Mr P but is not chasing him for it.

Mr P says I have also '*exercised moral judgement*' by saying he had taken '*advantage*' of an IVA. But I don't agree. Mr P was able to take '*advantage*' of an IVA as it meant the parties to the IVA could not pursue him for any debts. This wasn't a personal comment about Mr P or a comment on how Mr P came to enter into an IVA – that was not part of my decision. But clearly, it is unfortunate that he found himself in the position where he needed to enter into an IVA.

Finally, as I explained in my provisional decision, I don't think Mr P would benefit from NRAM amending its records to reflect the revised balance after the value of the PPI compensation has been deducted, so I'm not going to tell it to do anything.

### **my final decision**

My final decision is that I don't think NRAM plc needs to do anything.

Under the rules of the Financial Ombudsman Services, I'm required to ask Mr P to accept or reject my decision before 25 July 2019.

Catherine Langley  
**ombudsman**

***copy of my provisional decision***

**background**

I'll summarise the background to Mr P's complaint –

- In July 2004 Mr P took a personal loan with NRAM. He borrowed £25,000 to be repaid over five years.
- Added to the personal loan was a PPI policy. Mr P borrowed more upfront from the business to pay for the policy.
- In April 2005 Mr P was in financial difficulties and entered into an individual voluntary arrangement ("IVA"). An insolvency practitioner ("IP") was appointed.
- At the time, the balance on Mr P's account was £35,712.90. This included the personal loan amount, the additional amount borrowed to pay for the PPI and the interest due on both.
- NRAM sold Mr P's debt to a debt recovery agency ("Business A") in May 2005.
- The IVA was completed in June 2008 and during the time it was in place Mr P paid £7,340.71 to the IVA.
- In 2018 Mr P complained to NRAM that the PPI had been mis-sold to him.
- NRAM agreed and calculated the PPI compensation to be £1,532.14 including interest.
- But NRAM said that as it had written off £35,712.90 of the debt then nothing was due to either Mr P or his IP.

One of our adjudicators considered the complaint. In summary, she said the following –

- She confirmed that Mr P could bring a complaint to this service.
- As NRAM had written off considerably more than the cost of the PPI to Mr P then it wouldn't be fair for the redress to be paid to him.
- As Mr P had borrowed to finance the cost of the PPI, and that his outstanding balance was higher as a result, NRAM's records should be reduced to reflect what he would owe if PPI (and associated interest) had never been added to his account.

NRAM didn't agree with the adjudicator. It said that it hadn't received anything from the IP to confirm it didn't have any further interest in the IVA so couldn't do what the adjudicator had recommended.

Mr P said that as the IVA was completed in 2008 then an historic IVA should not impact the redress payable in 2018.

The adjudicator spoke with the IP and the IP said that under the terms of the IVA Arrangement that once the IVA was completed all arrangement trusts would cease. Therefore any funds due from the mis-sale should be payable to Mr P.

As the complaint remains unresolved it has been passed to me for a decision.

**my provisional findings**

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

As NRAM has already made an offer to Mr P, I won't be looking at how the policy was sold to him. I will only be considering how NRAM has treated the compensation and if that is fair.

If we find that a business has mis-sold a policy we expect it to – as far as is possible – put the policy holder in the financial position they should be in but for the PPI.

In July 2004 Mr P borrowed £25,000 from NRAM and a further £6,478.50 to pay for the PPI. Including interest, he was to pay back a total of £39,681.00 over 60 months.

But we know this didn't happen. It looks like Mr P only made six repayment instalments totalling £816.78 for the PPI – nowhere near the full amount that was payable – before he defaulted on his loan. He didn't ever pay for the total cost of the PPI so would only be entitled to compensation limited to how much he had actually paid. After he defaulted on the repayments he entered an IVA.

An IVA is set up based on what the debtor can pay rather than how much they owe, and in Mr P's case he paid £7,340.71 to his IP and the IVA was completed – nothing further is due from Mr P to the IP.

Mr P says the IVA and the NRAM compensation aren't connected and the redress should be paid to him. Mr P's argument is that the IVA was completed in 2008, well before any compensation became payable. But the debt didn't cease to exist when the IVA was successfully completed.

Mr P had a significant debt left with NRAM which it sold on to Business A. NRAM wrote off the rest of the debt. But that doesn't mean Mr P doesn't owe anything – he does – the IVA prevents NRAM from chasing him for the debt but it doesn't mean it doesn't exist.

I think what was suggested by the adjudicator was right. Mr P had taken advantage of the IVA to protect him from NRAM seeking to recover the debt he owed. Once the IVA ended, debts that formed part of the arrangement could not be actively pursued, although, and crucially, they still existed.

Put simply Mr P still has a debt with NRAM. It now owes him compensation for the mis-sale of the PPI. But it wouldn't be fair to pay Mr P that compensation when he still owes money to NRAM. Mr P is now in the position to reduce some of that debt by off setting the PPI compensation.

And in this provisional decision I think there is an additional and pragmatic point for consideration. What the adjudicator suggested would mean that Mr P's debt would be restructured with NRAM. So his outstanding balance would be in the position it would be in had the PPI not been added. But the IVA was completed in 2008 which is more than six years ago. After six years any information about the IVA falls away and is not reflected in Mr P's credit rating as recorded by credit agencies.

But by restructuring the debt Mr P still has with NRAM I also have to bear in mind this would cause a movement on his current dormant account and debt, and which would be recorded by credit agencies. This would therefore have a negative impact on Mr P's credit rating which he would no doubt find unattractive and not helpful for his future finances. So I'm not recommending that this be done.

#### summary

- I'm satisfied that compensation is due for the limited number of PPI premiums Mr P paid, plus interest.
- The IP has told us that it has no further interest in the IVA so compensation should be paid to Mr P.
- But there is still an outstanding debt with NRAM, albeit Mr P isn't being pursued for it.
- So compensation is due but - put simply - it wouldn't be fair for it to be paid to Mr P considering the substantial debt he has with NRAM.
- So, I think it is fair that it should be off set against the debt Mr P still owes NRAM.
- In this particular case, I think the most pragmatic outcome is that nothing further should be done with the compensation. If Mr P's debt was to be restructured it would have detrimental effect on his future finances.

**my provisional decision**

My provisional decision is that the approach NRAM plc has taken to resolve Mr P's complaint is fair.

I won't be recommending that Mr P's debt with NRAM plc is restructured to set off the PPI compensation.

I now invite Mr P and NRAM plc to send in any other arguments or comments they want to give me before I make my final decision.