

## **complaint**

Ms M complains that NRAM Plc ("NRAM") acted on an instruction from her solicitor without her consent. She says NRAM's customer service was poor.

## **background**

Ms M owns a property in Scotland mortgaged with NRAM. In June 2012 she tried to sell it and engaged a solicitor to assist her. So he wrote to NRAM to tell it he'd been engaged in this capacity. Ms M says she received some offers but none high enough to accept. Due to mounting financial pressure and arrears she decided to surrender possession to NRAM voluntarily. So in February 2013 she says she signed the paperwork to begin the surrender process and sent it the keys to the property.

NRAM wasn't able to start the surrender process. This was because it thought there was a legal issue with the title concerning a piece of land on the property. This affected its security on the property and prevented it from issuing a calling up notice to allow repossession to commence.

But Ms M's solicitor told NRAM not to proceed as he was in the process of marketing the property anyway. After, he informed Ms M he'd done this and asked her to provide a letter of authority to deal with NRAM about the surrender. But Ms M told her solicitor she never consented to him stopping the voluntary surrender and talking to NRAM about it. Ms M decided she no longer wanted the solicitor to act for her and ended their professional relationship. In June 2013 he advised NRAM of this. Ms M says she didn't hear from NRAM for some time after this so assumed it had ignored the solicitor's instructions and was pressing ahead with the surrender.

She says she next received a letter from NRAM in August 2013 about her arrears, so telephoned it. She was told the surrender had been put on hold since her solicitor's request. Ms M says she told it she still wanted to go ahead so NRAM said it would look into it. But it never got back to her. Again she says she assumed the surrender was proceeding. Ms M then entered into a debt arrangement scheme ("DAS") through a debt management company ("DMC") to assist her manage what she believed was her arrears with NRAM. This was approved in January 2014 and was for about £14,000. She says she'd asked the DMC to ensure that the debt quoted by NRAM was the full amount outstanding. So she thought this was all she owed it.

Ms M says she next heard from NRAM's solicitors in September 2014 when she received a letter advising her that the outstanding debt to it was about £87,000. She asked her DMC to query this but says NRAM didn't reply. Shortly after, in December 2014, it sent her a calling up notice. This is a Scottish legal document which ends the mortgage agreement and asks the borrower to repay the whole amount of the loan that's outstanding (the arrears and all the payments the borrower still has to make).

In December 2014 Ms M complained to NRAM. In summary her complaint was;

- NRAM didn't communicate with her efficiently. It never advised her formally the repossession hadn't gone through and didn't return the keys to her.
- NRAM improperly acted upon the instruction of her solicitor to stop the voluntary surrender when it didn't have authority to do so.
- NRAM didn't tell her DMC the full amount she owed.

After receiving no response from NRAM, Ms M brought her complaint to this service. Our adjudicator initially upheld the complaint as NRAM hadn't provided any information on which she could form a judgement.

But shortly after, NRAM sent a final response letter to Ms M. It said it believed Ms M's solicitor was authorised to act for her from February 2012 to November 2013. So it had correctly carried out the instruction not to go ahead with the voluntary surrender. NRAM said the DAS was in relation to an unsecured loan, not the mortgage shortfall, and her DMC should have made her aware of this. However it did admit that its customer service department should have provided a better service. It offered Ms M £550 as compensation which Ms M wasn't happy with.

Based on what she'd seen our adjudicator didn't uphold Ms M's complaint. Ms M asked that her case be reviewed by an ombudsman.

In my provisional findings I said:

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

*The main thrust of this complaint is that NRAM shouldn't have acted upon the instructions of Ms M's solicitor in halting the surrender and should have kept her updated. Before I discuss this I'd like to highlight one observation I have.*

*Surrendering a property doesn't mean a borrower is free from liability for their mortgage debt. Even if Ms M believed her property had been surrendered (and I'm satisfied Ms M did genuinely believe this), I'd have expected her to keep in contact with NRAM – just as I'd expect NRAM to contact her – about the progress of any sale. But, that's not to say I think NRAM excelled in its customer service. I don't, and I'll deal with that later.*

*I'll begin by considering whether NRAM was wrong to accept the instruction of Ms M's solicitor to stop the surrender.*

*There remains some ambiguity as to whether NRAM was right to act on this instruction. However this isn't something that's relevant to me in determining my decision and I'll explain why.*

*Our role is to put people, as much as possible, back into the position they would have been in but for the mistake of the business. We aren't here to punish or fine businesses that do wrong. That's the job of the regulator. Meanwhile, if Ms M believes that NRAM unlawfully divulged her personal information she may decide to take this up with the Information Commissioners Office. I'm aware she's made a complaint separately about the solicitor. His actions are not something I can comment on.*

*I can't be sure whether NRAM was correct to stop the surrender as requested by the solicitor. However I'm satisfied that, either way, Ms M would most likely have ended up in broadly the same overall position as she is presently. I say this because even if the solicitor hadn't intervened, the surrender would in all probability still have stalled because of the legal queries that arose. Interest and charges would still have been increasing Ms M's debt during this time. Ms M says these had been resolved some time ago. In contrast NRAM says the legal problems weren't resolved by it until*

*September 2014. After this time NRAM and Ms M needed to communicate, engage and negotiate a way forward, whether this be by sale of the property herself or by voluntary surrender. This leads me to address Ms M's concerns about NRAM's communication with her.*

*It's clear by NRAM's own admission that its service didn't meet its own expectations let alone Ms M's. In its final response letter to Ms M it offered £550 compensation for this. I don't think that's enough. Ms M was, and is, going through an extremely stressful time. It's clear the failings of NRAM's customer services compounded this. So I think it's more appropriate it pays her £800 in total.*

*I've looked at the arrangement that Ms M has through the DMC. She has since accepted this was in relation to the unsecured borrowing she has with NRAM and not the shortfall on the mortgage. So I haven't considered this element of her initial complaint any further.*

*Finally, I understand NRAM says it never received the keys to Ms M's property and hence hasn't returned them. There's nothing that would lead me to conclude any different so I can't say that it's either mislaid or failed to return them."*

In my provisional decision I said:

*"For the reasons given my provisional decision is that I uphold this complaint in part. Unless I receive submissions that lead me to conclude differently, I intend to direct that NRAM Plc pay Ms M £800 for distress and inconvenience but make no further award."*

I invited both Ms M and NRAM to comment on my provisional decision before making my final decision.

NRAM says it doesn't have anything to add and accepts my findings.

Ms M said she accepted my provisional decision but wanted me to consider some further points. In summary she says:

- She'd never received the final response letter from NRAM that I'd referred to in my provisional decision. So she never had the opportunity to refer to it in her dealings with NRAM.
- That she had evidence that Ms M's solicitor had advised NRAM that he no longer acted for Ms M.
- NRAM never mentioned the boundary dispute to her. The award suggested in my provisional decision doesn't reflect the charges and interest added to her mortgage account by NRAM.
- She would like a single point of contact at NRAM to deal with her situation.
- NRAM admitted on the phone to her in 2013 that it had received the keys to the flat.

### **my findings**

I wish to thank Ms M for taking the time to send me her comments on my provisional decision. I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so I don't propose to depart from the conclusions I drew in my provisional decision but I would like to address Ms M's further points.

I'm sorry to hear that Ms M says she didn't receive NRAM's final response letter it sent in July 2015. I see that it was correctly addressed so I can only speculate that it was lost in the post. That said I don't think Ms M has been disadvantaged by the failure of the letter to arrive, particularly as this service was involved in dealing with the complaint by the time it was sent. I will arrange for another copy to be forwarded to her.

I take on board what Ms M says about her solicitor advising NRAM about no longer acting on her behalf. But as I explained in my provisional decision, I don't think the issue of whether NRAM was right to act on the solicitor's instructions has had a bearing on the fair outcome of this complaint.

I've noted Ms M's comments about the boundary dispute, the keys and my award not taking into account the ongoing interest and charges that are being added to her account. However I reassure her that I've taken everything into account in making my award particularly NRAM's poor communication, an example of which is a lack of explanation over the boundary issue. Further I think it's fair to say we aren't going to get to the bottom of the issue with the property's keys. However, I've taken Ms M's overall experience in dealing with NRAM, including the situation with the keys, into consideration. It hasn't caused me to change the amount I feel is appropriate to award.

Finally Ms M asks that she is given a single point of contact at NRAM to deal with. I can't say that this is necessarily the best way forward. In dealing with her circumstances she may need to speak with specialist departments within NRAM and often dealing with those departments directly rather than via a third party can aid rather than hinder communication. Aside from that, it's not something I can order the business to do in any event. That said, if Ms M felt that NRAM's communication with her in the future didn't meet her expectations, she would of course be free to make a separate fresh complaint.

### **my final decision**

For the reasons I've given, my final decision is that I uphold this complaint in part. I direct NRAM Plc to pay Ms M £800 for distress and inconvenience. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 16 December 2015.

James Hargett  
**ombudsman**