

complaint

Mr and Mrs B complain that they were charged fees both by NRAM plc (formerly Northern Rock (Asset Management) plc) ("NRAM") and by their solicitor when they ended their mortgage.

background

Mr and Mrs B had a mortgage with NRAM. When they ended the mortgage, they were charged a fee described by NRAM as a "discharge of mortgage fee". They also had to pay a fee to their solicitor for preparing and executing a deed discharging NRAM's security over their property.

Mr and Mrs B complain that this amounts to double-charging by NRAM – that it has charged them for work in fact done by their solicitor. They also say that NRAM didn't warn them that they would incur solicitor fees, and didn't set out the fee in the mortgage terms and conditions. They refer, in support of their complaint, to a decision by another ombudsman in a different complaint about fees charged on ending a mortgage.

NRAM says that its discharge of mortgage fee was properly charged in accordance with the terms and conditions and didn't include a charge for work done by the solicitor.

Our adjudicator recommended upholding the complaint, but NRAM didn't agree and requested a final decision from an ombudsman. Because I took a different view to the adjudicator, I issued a provisional decision, to allow all parties to comment on my proposed findings before I make my final decision.

my provisional decision

Firstly, I considered the legal and contractual position. A mortgage loan is a loan secured on property. Money is lent in return for a promise it will be paid back, with interest. To allow the lender to enforce recovery of the debt if it needs to, the loan is registered against the property's title, allowing the lender to possess and ultimately sell it to recover the money it has lent. When the debt has been repaid, that registration is removed – meaning that the lender no longer has any hold over the property and the borrowers can sell or re-borrow as they wish.

In England and Wales, a charge is registered at the Land Registry in favour of the lender. At the end of the mortgage term, its removal is a relatively straightforward administrative process generally carried out by the lender. In Scotland, a standard security is registered at the Registers of Scotland. Scottish law requires that its removal at the end of the term be done by a solicitor executing a deed signed by the borrower and the lender. Mr and Mrs B's complaint concerns a loan taken out in Scotland.

NRAM charges a fee which is payable at the end of a mortgage. It calls this a "discharge of mortgage fee", and in its tariff of charges says that the fee is "to cover all necessary administrative work related to the redemption". This fee is payable whether the borrower is in England and Wales or in Scotland. In addition to this, a borrower in Scotland must instruct – and pay – a solicitor to discharge the standard security.

Mr and Mrs B's complaint was essentially that it was not fair and reasonable that they should pay fees to both NRAM and their solicitor when their mortgage ended, and that this represented double-charging; NRAM charged for discharging the security when that work was in fact done by the solicitor.

In response, NRAM said that the fee represented its own internal administrative costs in ending the loan agreement. It related only to work carried out by NRAM, and did not represent double-charging for work done by the solicitor.

I considered the arguments that both Mr and Mrs B and NRAM put forward, and in this case I was satisfied that the fee charged by NRAM was fair and reasonable.

NRAM's fee is set out in the mortgage offer. Section 10 of the offer says "a discharge of mortgage fee will also apply if your loan is repaid early". The tariff of fees describes the fee in the way I have set out above, and I'm satisfied that "all necessary administrative work related to the redemption" means the internal administration NRAM must carry out to bring the loan agreement to an end. I was also satisfied that this is not the same as drawing up and executing a deed to discharge the security; I found that these are two separate things.

I did consider the fee to be unfortunately named; "discharge of mortgage" means, technically, the removal of the charge not the ending of the loan (strictly speaking, the "mortgage" is the charge over property given to enforce the loan, not the loan itself). But for the reasons I gave, I was satisfied that the definition of the fee did make clear that it in fact related to NRAM's administrative work in ending the loan, not the discharge itself. It is the description of what the fee is for that was the crucial element in determining whether the fee NRAM charged was in fact for work done by NRAM or by the solicitor.

The necessity to draw up and execute a deed, and to have it done by a solicitor, is a requirement imposed not by NRAM but by Scottish law. While I understood that Mr and Mrs B don't think it fair that they should have to pay an additional fee because they are subject to Scottish law, I didn't conclude that the reason they have to do so is because of something NRAM has done.

Nor was I persuaded that NRAM was required to warn them in advance of taking out the loan that the solicitor's fee was something that they would have to pay. NRAM is required by the rules regulating mortgages to advise customers of fees and charges that could be incurred on the mortgage contract.

But the solicitor's fee isn't such a fee. Mr and Mrs B's liability for it arose not because of the mortgage contract, but because of Scottish law. And, by paying back the outstanding monies, they brought the mortgage contract to an end. It is in Mr and Mrs B's interest to have the standard security discharged at the same time, as without doing so they can't sell the property or take out another mortgage. But it isn't necessary to discharge the security to bring the mortgage contract to an end. Therefore, the solicitor's fee isn't a fee that is incurred on the mortgage contract – and so not something that NRAM was required by the contract or the rules of mortgage regulation to advise them of.

In any event, section 8 of the mortgage offer warned Mr and Mrs B that they may have to pay other costs in addition to those set out. While this was not specific it did at least make them aware that the fees and costs set out in the mortgage offer were not the only ones that they may need to pay.

I considered an earlier ombudsman decision, in a different case, to which Mr and Mrs B referred me. It is important to note that each case is decided very much on its own facts and circumstances and no one case creates a precedent for any other. I reached my provisional conclusions on the facts of the case before me, and for the reasons I set out.

the responses to my provisional decision

NRAM accepted my provisional decision. Mr and Mrs B did not. In summary, they said that the charging of two fees – one by NRAM, and one by the solicitor – was discriminatory. It put borrowers in Scotland in a worse position than borrowers in England and Wales.

Mr and Mrs B didn't consider that NRAM in fact did any administrative work to justify the fee, and as they were not informed in advance that they would need to pay a solicitor, it was dishonest to require them to pay. They considered that all costs required should have been spelled out in the mortgage contract. Finally, they referred again to the previous ombudsman decision, and considered that it was a precedent I should be bound by.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have also considered again my provisional decision, and the responses to it.

My role in this case is limited to considering whether NRAM has done anything wrong. It charged Mr and Mrs B a fee for ending their mortgage. Separately, Scottish law required them to instruct a solicitor – who charged them a fee – to discharge the standard security registered over their property.

I don't consider that NRAM has discriminated against Mr and Mrs B. It charged them the same fee that it charges borrowers in England and Wales, and for the same work – its internal administration in bringing the mortgage contract to an end. The additional fee that Mr and Mrs B had to pay was one imposed by Scottish law, not by NRAM. I'm satisfied that the work NRAM had to do was proportionate to the fee it charged.

I accept that the requirement to instruct a solicitor was not explicitly set out in the mortgage offer (and, as I said in my provisional decision, it would have been helpful if it had been) – but that isn't enough for me to uphold the complaint. NRAM set out in the contract the fees it charged; but the solicitor's fee wasn't charged by NRAM, nor did NRAM require Mr and Mrs B to incur it. It was a legal requirement, not an NRAM requirement.

Ombudsman decisions are made on the facts of individual cases, and no one case sets a precedent to be followed in any other. I have considered what the previous ombudsman in a separate case said. But I have reached my decision in this case on the facts of this case, and for the reasons I have explained.

The additional fee Mr and Mrs B paid was imposed on them by Scottish law. I have no powers to set aside or change the requirements of Scottish law. All I can consider is whether the fees charged by NRAM were fair and reasonable. For the reasons I have given, I'm satisfied that NRAM's fee was set out in the contract, was for work NRAM needed to do, and didn't duplicate work done by the solicitor. I'm therefore satisfied that it was fair and reasonable to charge it.

my final decision

For the reasons I have given, my final decision is that I don't uphold this complaint.

Simon Pugh
ombudsman