

complaint

Mr and Mrs R complain that the Receivers appointed by Northern Rock (Asset Management) plc ('NRAM') under the Law of Property Act 1925 recommended that their buy-to-let property should be sold. Mr and Mrs R say NRAM has failed to take into consideration a number of proposals they made in respect of the property and their mortgage account – and instead, unfairly started possession proceedings.

background

In 2005 Mr and Mrs R took out a buy-to-let mortgage with NRAM. By September 2010, the mortgage account was in arrears and NRAM took the decision to appoint Law of Property Act (LPA) Receivers to deal with the property.

In early 2012 the Receivers wrote to Mr and Mrs R about the level of arrears on the mortgage account. Whilst payments were made to reduce the arrears, by February 2013 the Receivers had assessed the situation and recommended that the property should be marketed for sale due, in part, to the on-going arrears and the 'high level of repairs required'.

Unhappy with this situation, Mr and Mrs R made a complaint to NRAM. They accepted that the account was still in arrears, but said that they would clear these in full – along with any outstanding amounts owed to the freeholder for ground rent and buildings insurance – if NRAM would take the property back from the Receivers and halt the possession action.

Mr and Mrs R also said they intended to fully refurbish the property and were hoping to negotiate higher rental income from their tenants. And, that they would sign an undertaking agreeing to meet the mortgage payments regardless of whether the tenant paid the rent or not. When NRAM wasn't prepared to change its view, Mr and Mrs R brought their complaint to the Financial Ombudsman Service.

The adjudicator who looked into Mr and Mrs R's complaint initially thought it should be upheld.

This was on the basis that he wasn't satisfied the initial appointment of the Receivers in 2012 had been fair, given Mr and Mrs R had been in the process of reducing the arrears at the time.

NRAM disagreed with the adjudicator's findings. It said that the letter sent to Mr and Mrs R in 2012 about appointment of the Receivers – on which the adjudicator had relied – was incorrect, and had been sent in error. Instead, the Receivers had been appointed in 2010, and the property had remained under the Receivers' control ever since.

The adjudicator acknowledged this position, but wanted NRAM to provide further information about the Receivers' appointment in 2010. NRAM wasn't prepared to do so, as it said that Mr and Mrs R hadn't raised a complaint about the Receivers' appointment. They had complained about the Receivers' decision in 2013 to sell the property. If Mr and Mrs R wanted to complain about the initial appointment, then that would need to be considered as a fresh complaint.

Unable to reach an agreement on this point, the matter was referred to me for review. I issued a provisional decision last month saying, in summary:

- I understood the position both the adjudicator and NRAM had taken. But I felt that it had detracted somewhat from the crux of the complaint – which was, as I saw it,

whether or not NRAM had treated Mr and Mrs R unfairly by seeking possession of the property.

- Having considered that particular point further, I wasn't currently minded to say that it had. Although I appreciated that Mr and Mrs R wanted to hold on to their property, the mortgage remained in arrears (amongst other issues) and NRAM had taken the decision to seek possession. I was satisfied that this was a decision it was entitled to make.
- I also thought it was worth noting that I couldn't consider a complaint about the actions – or recommendations – of the Receivers themselves. The Receivers are agents of the borrowers, not the lender. So if Mr and Mrs R had any concerns about the actions of the Receivers, they would need to raise them directly with the Receivers themselves. I had no power to consider a complaint about the Receivers.

responses to my provisional findings

NRAM confirmed that it had received my provisional decision, and that it had no further comments/information to add to the case.

Mr and Mrs R also confirmed that they had received my provisional decision, and set out the reasons why they disagreed with it. These were, in summary:

- That although they had been told the Receivers were appointed for their benefit, they were in fact acting for NRAM. And that nowhere in their original mortgage offer did it say NRAM had the power to even appoint Receivers – which it had subsequently done so, unilaterally
- When the decision was first made to sell the property in February 2013, the arrears had been reduced from approx. £3,000 to £300. The property was no longer in arrears and hadn't been since 2013.
- Since then, the outstanding payments to the freeholders had been made; the tenants had been paying the rent in full and on time to the Receivers, and the property had recently been refurbished. For all these reasons Mr and Mrs R didn't agree that NRAM should have accepted the Receivers' recommendations.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

In the first instance, I have noted what Mr and Mrs R have said about the arrears, and the fact that these had been substantially reduced at the point the recommendation was made to sell in February 2013. I have also noted what Mr and Mrs R have said about the current position – i.e. that they have not been in arrears since 2013.

This information has been checked with NRAM as it contradicted my understanding of the position. NRAM has confirmed that although the statements it provided to this service indicated that the mortgage was currently in arrears, this incorrect. The mortgage hasn't in fact been in arrears since June 2013.

But – although I apologise to Mr and Mrs R for referring to current arrears in my provisional decision - the fact that the arrears have since been repaid doesn't have any bearing on the outcome here. The arrears were not the only reason behind the Receivers' recommendation. And whilst I also note that Mr and Mrs R say they have taken steps to resolve the other issues, the decision whether or not to proceed with the court action was still NRAM's to make.

Having made that decision, it was then for the court to ultimately decide whether or not to grant repossession of the property. I am given to understand that this is what happened, and that an eviction date has been set for later this month.

I do appreciate that this is a very difficult time for Mr and Mrs R, and that the loss of their buy-to-let property will be most upsetting for them. But I do not have the power to either interfere with or overturn a court order. So I cannot, as Mr and Mrs R have requested, require NRAM to halt the eviction process. Such an option would only be open to the court.

Mr and Mrs R have questioned whether NRAM had the *legal* power to appoint the Receivers in the first place. This is not the same as questioning whether it treated Mr and Mrs R unfairly in doing so – an issue which, as I explained in my provisional decision, did not form part of the complaint actually brought to us.

To confirm though, having seen the terms and conditions Mr and Mrs R's mortgage is subject to – as well as the mortgage offer itself - I am satisfied that NRAM did not act illegally when appointing the Receivers. It was entitled to rely on the terms of the mortgage to instruct them.

my final decision

I am sorry to disappoint Mr and Mrs R, but my final decision is that I do not uphold their complaint.

Katherine Wells
ombudsman