

complaint

Mr and Mrs W complained about NRAM Limited. Their property was possessed in April 2007 and later sold. They say NRAM didn't tell them that there wasn't enough money to pay off their mortgage until October 2018.

Mr and Mrs W believe this means they aren't liable for the debt, and they want it written off.

background

Mr and Mrs W's property was possessed in April 2007 and later sold. There wasn't enough money to cover what Mr and Mrs W owed NRAM, so there was a shortfall.

There's a dispute about what happened next:

- Mr and Mrs W's version is that they didn't hear anything until October 2018, when they received letters from NRAM saying that as the loan was in default and a formal demand had been issued, the outstanding balance of £8,791.68 was payable. The letter asked them to contact NRAM to discuss the situation.
- NRAM's version is that it had written to Mr and Mrs W at the address on file on 21 May 2008, telling them about the shortfall and asking them to get in touch. NRAM said it had sent a follow-up letter on 28 May passing the debt to its loss recovery unit. NRAM also said that Mr W had phoned NRAM on 29 May 2008 giving new separate addresses for Mr and Mrs W, and that another letter had been sent to the two new addresses on 4 June 2008.

The facts from October 2018 onwards aren't disputed. After NRAM's October 2018 letters, both Mr and Mrs W wrote to NRAM saying they didn't have any liability for the debt. They quoted various rules which they believed backed up their claim. They said the Limitation Act 1980 said that no action can be brought to recover mortgage money after 12 years after the date on which the right to receive the money accrued. And they said that the Financial Conduct Authority (FCA)'s handbook said that if a lender decides to recover a mortgage shortfall, they must inform the borrower within six years of the date of sale.

NRAM didn't reply to these letters. On 9 January 2019, it wrote again about the shortfall debt, saying it was seeking repayment proposals for the £8,791.68. The letter set out options if they couldn't pay it all straightaway.

Mr and Mrs W complained. They said they'd sent Signed For letters in response to NRAM's October letter, and hadn't had a reply. They repeated their view that they weren't liable for the debt, and said they wanted confirmation that NRAM wouldn't contact them again about the account. They said it could constitute harassment and breaches of the FCA's rules were treated seriously by the FCA.

NRAM didn't uphold their complaint. It apologised for not replying to Mr and Mrs W's autumn 2018 letters, but said it wasn't correct that the debt had expired. It sent copies of its 28 May 2008 letter, and said that the fact that Mr W had phoned NRAM on 29 May 2008 indicated that he'd received the letter. It sent a copy of its 4 June 2008 letter too. So NRAM didn't accept it hadn't told Mr and Mrs W about the shortfall within six years.

NRAM also sent Mr and Mrs W a factsheet from a debt website, which showed lenders have 12 years to take action to recover a mortgage shortfall debt. But Mr and Mrs W weren't satisfied and complained to this service.

The investigator didn't uphold their complaint. She set out rules which give guidelines about best practice between lenders and borrowers. These were:

From the Council of Mortgage Lenders:

*" In England, Wales and Northern Ireland, a lender legally has 12 years in which to contact the borrower to begin the process of obtaining repayment of shortfall debt; this period is usually 5 years in Scotland...
In addition, from 11 February 2000, lenders who are members of the Council of Mortgage Lenders have agreed voluntarily that they will begin all recovery action for the shortfall within the first six years following the sale of a property in possession...
The six year limit only refers to beginning recovery action and does not affect a lender's ability to recover the shortfall debt over a longer period.*

From the FCA's Mortgages: Conduct of Business Sourcebook (MCOB):

*(1) If the decision is made to recover the sale shortfall, the firm must ensure that the customer is notified of this intention.
(2) The notification referred to in (1) must take place within five years of the date of the sale (if the regulated mortgage contract or home purchase plan is subject to Scottish law) or within six years (in all other cases).*

Mr and Mrs W's property was in England. The investigator said NRAM had started the process of obtaining repayment of the debt within 12 years, and she considered NRAM had sent the disputed 2008 letters, so it had made Mr and Mrs W aware within six years.

So the investigator considered Mr and Mrs W were liable for the shortfall debt.

Mr and Mrs W didn't accept this.

my findings

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

First, I've considered the dispute about whether or not Mr and Mrs W heard anything about the shortfall debt before NRAM's October 2018 letter. I've set out the conflicting versions above.

Where evidence conflicts, I make my decision on what I think is most likely to have happened, taking all the available evidence into account. I note that Mr and Mrs W say they believe NRAM's system notes are forged. But having looked carefully at these, I consider this is unlikely. I find it's more likely than not that NRAM did write to Mr and Mrs W on 21 and 28 May 2008, and that it was as a result of those letters that Mr W rang NRAM on 29 May 2008.

I recognise that Mr W has told us that he never made that call, so again I've considered what's most likely to have happened. There's no call recording available, which isn't

surprising after so many years. But if that call didn't take place, I can't see how NRAM would have known the two new, separate addresses for Mr and Mrs W, which it used to write to them in 2018.

Having found that the call did take place, I also consider it's more likely than not that the issue of the shortfall would have been discussed – because that's what the letter had been about, which led to the call.

So I find that NRAM did tell Mr and Mrs W about the shortfall in May 2008. This means that it met the requirement to notify them within six years.

I've also considered the period under which a lender must start to take legal action to recover a shortfall. A shortfall debt isn't automatically written off when a property is sold in possession. Section 20 (1) of the Limitation Act 1980 sets out that a lender has 12 years to use court action to make a borrower pay a shortfall from a mortgage.

That 12 years starts from the date the property is sold, not the date of possession. That's because an accurate figure for the shortfall can't be known until the sale has definitely gone through. The court action for the shortfall would be separate from the possession proceedings. But it doesn't have to be an actual court application, as a form of pre-action would be sufficient – for example notification that borrowers need to pay or the lender would start court proceedings.

Looking at the correspondence sent by NRAM to Mr and Mrs W, the disputed 2008 letters refer to "*further recovery action*." But in any case, the 15 October 2018 letter which Mr and Mrs W agree they received, refers to "*further action being taken on your account which could be legal action*." That letter was sent within 12 years of the sale. So I find that NRAM met this requirement too.

It's important to note that the rules relates to when a lender must start these processes. If borrowers don't respond or do anything until after the timescales have expired, it doesn't mean that debt will be cancelled, provided the lender has started these processes. So Mr and Mrs W's shortfall debt won't be cancelled at the end of these periods.

For the reasons I've set out above, I accept that NRAM did notify Mr and Mrs W of the shortfall within the required timescales. So I don't uphold Mr and Mrs W's complaint that they aren't liable for the debt.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 19 January 2020.

Belinda Knight
ombudsman