

## **complaint**

Miss L and Mr M complain about the way in which NRAM plc (formerly Northern Rock (Asset Management) plc) (“NRAM”) has applied redress to their loan account when it discovered that it was in breach of the requirements of the Consumer Credit Act 1974 (“the Act”).

## **background**

Miss L and Mr M took out a “together” mortgage with NRAM in 2007. “Together” mortgages consisted of two loans, one secured and one unsecured, taken simultaneously. In some cases – including that of Miss L and Mr M – the unsecured loan was regulated by the Consumer Credit Act 1974.

Regulations made under the Act, which came into force in October 2008, required lenders to give certain information to borrowers on their annual statements. In 2013, NRAM discovered that it had not been including that information on its statements. Failure to include it meant that the account was not liable for interest for the period of non-compliance.

NRAM contacted affected customers to inform them that it had not complied with the requirements in respect of their accounts. It adjusted their accounts to remove interest charged during the period of non-compliance.

Miss L and Mr M complained. They said that NRAM should have investigated the whole duration of their account, not just the period between 2009 and 2013. They said that the reason they had fallen into arrears was because interest was unlawfully charged. They said that they were not given enough information or consulted with about how redress was made, and that they should have been given a refund of interest paid direct to them, not applied to their account.

NRAM didn't uphold their complaint. It explained why it had acted as it had, and our adjudicator considered that it had acted reasonably. Miss L and Mr M didn't agree, and so the case comes to me for a final decision to be made.

## **my findings**

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

Miss L and Mr M's account is one of many in which NRAM did not give the required information on annual statements. It has only calculated redress from October 2009 to March 2013 – not the whole period of the loan. I'm satisfied that this is the correct approach.

This is because the requirement was to include certain information on annual statements. It came into force in October 2008 – so the loan cannot have been in breach of a requirement that didn't exist before that date. And because the requirement was for annual statements, NRAM could have issued a compliant one at any point up to a year after that. So its failure to do so only became a breach a year after the relevant regulations came into force – in October 2009. The error came to light and was put right in March 2013 – and so the period from October 2009 to March 2013 is the length of the non-compliance. That is the period over which the redress is calculated, and so NRAM has taken the right approach here.

So was it right to make redress by applying a credit to the account rather than making a payment direct to Miss L and Mr M? The Act says that if a lender is in breach, a borrower is not liable for interest in the breach period. But it doesn't say how interest already paid is to be treated. If the borrower turned out not to be liable, NRAM should remove the interest it has charged to the account. The Act doesn't say one way or the other whether this should be done by way of an adjustment to the account or a payment to the borrowers. Therefore, as long as it removed the interest, NRAM did what it was supposed to do by the Act. As to *how* it did that, it was reasonable for it to take the view that the best way was to adjust the account to remove interest charged. So I don't uphold the complaint in this respect.

Nor do I agree that this was the reason Miss L and Mr M were in arrears. NRAM didn't increase their monthly payments unlawfully; it charged them the right amount throughout as was set out in their mortgage agreement. When it discovered that it was no longer entitled to charge interest for the non-compliant period, it refunded it. But I don't think it was required also to refund arrears fees incurred because Miss L and Mr M weren't meeting their contractual monthly payments. In any event, in many of the months where Miss L and Mr M underpaid their payment, the shortfall was more than the interest element of the payment – so even had no interest been charged at the time, they would still have been in arrears. And they would still have been required to pay an arrears fee.

Finally, I'm not persuaded that NRAM was required to do more to communicate with Miss L and Mr M than it did. When its mistake came to light, it wrote to them to tell them of it. It then wrote again to explain how it had calculated the redress and applied it to their account. It didn't consult Miss L and Mr M – as they wanted – about how redress should be made. But there wasn't any requirement for it to do so.

### **my final decision**

For the reasons I have given, my final decision is that I do not uphold this complaint.

Simon Pugh  
**ombudsman**