

complaint

This complaint is about a debt that NRAM Limited is trying to recover from Mr H. He says it's not his debt and even if it was, NRAM is statute-barred from pursuing him for it.

background

In what follows, I have summarised events in rather less detail than they've been presented, using my own words to do so, and rounding the amounts involved. No discourtesy's intended by that. It's a reflection of the informal service we provide, and if I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

This approach is consistent with what our enabling legislation requires of me. It allows me to focus on the issues on which I consider a fair outcome will turn, and not be side-tracked by matters which, although presented as material, are, in my opinion peripheral. Another reason I have left out a lot of the detail is to avoid the risk of identifying Mr H when my decision is published.

The debt NRAM is looking to recover has its origins in a joint mortgage taken out with Northern Rock in 2007, in the names of Mr H and a Miss G. NRAM's predecessor business – for simplicity's sake, I'll refer throughout to NRAM. Miss G is not present in the complaint. The mortgage application was submitted through a third party intermediary, which I'll call "F". The lending was in two parts; one was secured, the other unsecured.

In 2012, the mortgaged property was taken into possession and sold. Before the sale completed, NRAM received a complaint from Mr H about the way the property was being marketed. It issued a final response to the complaint, but posted it to the mortgaged property, as it didn't have a current address for Mr H. The property sale was completed in December 2012. Once all the costs of sale had been added to the outstanding debt, the sale price fell short by almost £58,000.

Over the years that followed, NRAM attempted to contact Mr H about the shortfall. It wrote to him at various locations without success, until it eventually traced him to his current address in June 2018. Once a dialogue had been established with Mr H, NRAM forwarded a copy of the final response from 2012.

Mr H has complained in the strongest terms about NRAM's actions in asking him for repayment proposals. He's said, variously:

- he doesn't admit liability for the debt;
- the mortgage and unsecured loan were unsuitable at the outset and therefore mis-sold;
- he's not seen a satisfactory breakdown of how the shortfall debt arose;
- NRAM has waited too long to contact him so is statute-barred from recovering the debt; and
- He never participated in the original mortgage and never lived in the mortgaged property and knows nothing about it.

Our investigator didn't recommend the complaint be upheld. Briefly, he thought Mr H was the same person who applied for and took out the mortgage with Miss G. He was satisfied with the manner of the sale, and that the amount of the shortfall debt was fair.

He made no comment on the suitability of the advice to take the mortgage out in the first place. He explained that that would need to be a separate complaint to F, the broker that had submitted the application to NRAM, and that Miss G would need to join him in making the complaint.

Mr H asked for his complaint to be reviewed by an ombudsman. He was unhappy that the investigator had relied on documents from NRAM that he'd not seen. The investigator sent Mr H copies of the documents in June of this year so that could comment on them if he wished to. Mr H hasn't done so.

my findings

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where there's a dispute about what has happened, and the available evidence is either incomplete, contradictory, or both, I reach my conclusions on the basis of what I think is most likely to have happened on the balance of probabilities. That's the same test that the courts use in civil disputes.

Mr H has gone to great pains to say he doesn't recognise or acknowledge the debt as being his. That's his prerogative of course, but what he perhaps doesn't realise is that by framing his complaint as he has done and asking for it to be determined by an ombudsman, he has called on me to decide if this is his debt.

The point of sale documentation from 2007 includes, amongst other things, a copy passport, payslip, and a credit agreement bearing a signature that bears more than a passing resemblance to the signature on the complaint form Mr H sent us. I don't find it likely that another person with the same name, date of birth, employer and signature applied for the mortgage with Miss G.

I'm satisfied that Mr H is the person who (with Miss G) took out the mortgage from which the shortfall debt originates; put simply, I find this to be his debt. That shouldn't come as a surprise to Mr H; after all, if the property and the mortgage on it weren't his to begin with, he'd have had no reason to complain in 2012 about how NRAM was marketing it. I look at that next.

I've considered how the shortfall amount is made up and if NRAM acted fairly when the mortgaged property was sold in possession. The starting point here is that NRAM's duty was to sell the property for the best price (*not* the highest) achievable within a reasonable period of time. That's a somewhat subjective test, but in essence, a lender shouldn't sell for too low a price to achieve a quick sale nor unduly delay a sale (thus adding further to the borrower's interest costs) to achieve an unrealistically high price.

It's about finding a balance between the two, and to ensure that happens, lenders are required to obtain two independent valuations, and then to market the property with a view to achieving a selling price at, or close to, the valuations. In this case, I'm satisfied that's what NRAM did.

Ultimately, any property is only worth what someone is willing to pay for it at any given time. I can't say one way or another whether there were possible shortcomings or factual inaccuracies in the actual valuations NRAM obtained at the time. These were the work of surveying firms and/or estate agents, not NRAM itself.

My remit doesn't extend to questioning the content of the reports, and I don't find that NRAM had an obligation to challenge or second guess it either. These were the professional opinions of the parties NRAM was required to consult. It was entitled to rely on those opinions when deciding how much to try and sell the property for. Having seen the closing statement at the point of sale in 2012, I've no reason to find the amount of the shortfall to be incorrect.

Mr H points out that because NRAM sent the final response to the complaint he made in 2012 to the mortgaged property, he couldn't have received it. I take his point, and on first glance, it does seem odd that a lender would write to a borrower at the mortgaged property when it knows they're not there anymore.

But sometimes a lender has no choice but to do that; if it doesn't know where the borrower is living, all it can do is send mail to the last known address (i.e. the mortgaged property) and hope the borrower has put mail redirect in place. On that latter point, when a borrower leaves a mortgaged property that has been repossessed, they have duty to inform the lender of their new address. If a borrower doesn't do that, I can't fairly criticise the lender for not knowing where to find them.

Having established that this is Mr H's debt, and that the transaction that gave rise to it was fairly conducted, I now have to decide if NRAM can fairly seek repayment proposal from Mr H. Mr H says that NRAM is statute-barred from pursuing him for the debt because more than six years have passed. I'm afraid Mr H has rather mis-directed himself.

The statutory time limits for secured and unsecured debts aren't the same. The law allows six years for unsecured debts and twelve years for secured debt (albeit in the latter case there is industry-wide acceptance that six years is good practice). So for practical purposes, when considering what is fair, this service applies a six-year limit to secured and unsecured debt alike. The limitation period starts from the date of the borrower last made a payment or acknowledged the debt in some way.

In Mr H's case, it's reasonable to conclude that he acknowledged the debt that NRAM is now asking him to pay when he made the complaint that NRAM replied to in October 2012. That complaint was about how NRAM was marketing the property in possession. So the very earliest he could have started the complaint (and in doing so, acknowledged that he owed NRAM money under the mortgage from which the shortfall subsequently crystallised) is the date of possession, which was 16 July 2012. In reality, it's likely he started the complaint later than that, but even if I give him the benefit of the earliest possible date, it doesn't help his argument.

That's because six years from 16 July 2012 is 16 July 2018, and NRAM wrote to Mr H at his current address to tell him of the shortfall on 22 June 2018. Mr H must clearly have received

that letter, because NRAM wrote to him again on 27 June 2018 to acknowledge his complaint about it.

Putting all of the above together, my overall conclusion is that the shortfall NRAM is seeking *is* a valid debt for which it can fairly hold Mr H liable, and can fairly seek his proposals for repaying it.

my final decision

I don't uphold this complaint. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 January 2020.

Jeff Parrington
ombudsman