complaint

Mr C and Miss B complain that Northern Rock (Asset Management) plc incorrectly led them to believe that the unsecured element of their Together mortgage was regulated by the Consumer Credit Act 1974 (the Act).

background

In 2006 Mr C and Miss B took out a Together mortgage with NRAM – with over £25,000 of borrowing taken as an unsecured loan. The loan agreement for the unsecured loan stated that it was regulated by the Act.

In 2012, NRAM announced that some of the documentation it had issued to some of its customers in respect of the unsecured part of their Together mortgages did not comply with all of the requirements of the Act. It therefore agreed to adjust the accounts of affected customers.

Mr C and Miss B subsequently found out that their unsecured loan was not regulated by the Act because it was taken out before April 2008 and was for more than £25,000. Therefore they did not qualify for any redress from NRAM. Mr C and Miss B say that they would not have taken the loan in the first place if they knew that it was not regulated by the Act and that NRAM misled them both when the loan was arranged and during the term of the loan.

Mr C and Miss B consider that NRAM should recalculate the loan so that the total payments are deducted from the original amount borrowed, with interest on that amount if the payments were also deducted. They say that if they had not been misled by NRAM they would have taken a two-year fixed rate mortgage product with a different lender, which would have reverted to a standard variable rate that was lower than the rate they have been paying to NRAM.

Our adjudicator considered that if NRAM had set out the correct position – that the unsecured loan was not regulated by the Act – it would not have made any difference to Mr C and Miss B's decision to take the loan and mortgage. However, he did not think that NRAM had dealt with Mr C's initial enquiries very well and that it should pay him and Miss B £100 to reflect the distress and inconvenience this caused them.
Mr C and Miss B responded to make a number of points, including:

- The loan documentation was misleading. It was unreasonable to suggest that anyone would borrow more than £200,000 in total based on misleading paperwork. If they had been told that only loans of up to £25,000 would be covered by the Act then they would not have borrowed more than that. They didn't need that much borrowing as it was only used to repay some 'small' credit card debts.

- The fact that Mr C sought clarification of whether the loan was regulated or not in 2010 supports their position that it was important to them that the loan was regulated. Every other loan they have taken was covered by the Act, Mr C had knowledge of the Act and they only needed a 100% loan-to-value mortgage – not the full amount they borrowed.

- The unsecured loan was made up of two parts – one had to be used as deposit for the property purchase and the rest could be used as they wished. Their understanding of the

Act is that the two parts of the loan should be treated as individual loans and therefore below the £25,000 threshold.

- The loan had been 'modified' on several occasions – and as this was after the £25,000 threshold had been removed, then the Act should apply.

- NRAM had not supply any documentation to assist in this investigation.

- The offer of £100 does not properly reflect the financial loss they have suffered as a result of the misleading information from NRAM.

my findings

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

When Mr C and Miss B took the unsecured loan, only loans of up to £25,000 could be regulated by the Act. Although their agreement says the loan was regulated, I am satisfied that it actually wasn't because they borrowed more than £25,000.

Mr C and Miss B have suggested that the loan was actually made up of two parts. Their understanding is that around £10,000 of the loan had to be used as deposit for the property they were buying and therefore was a 'restricted use' credit agreement. That part of the loan should be treated as a separate loan and therefore there were actually two loans, both under the threshold and as such regulated by the Act.

As I have said, Mr C and Miss B's loan was not regulated. There was only one loan agreement – so I can't see how I could reasonably say that there were actually two loans. Therefore I don't see how the provisions of the Act relating to restricted use loan agreement would actually apply to Mr C and Miss B's loan. In any event, I don't consider the loan (or any part of it) met the definition of a restricted use agreement under the Act.

Nor do I agree that NRAM formally modified the loan. It agreed a payment holiday – which was an existing feature of the Together product, not a modification.

I agree that NRAM should have taken more care to make sure that it issued correct loan documentation and the information it has given Mr C and Miss B was misleading. But the agreement is incorrect – the loan is not regulated by the Act. Although there was an error on the paperwork, that does not mean that NRAM is required to treat the loan as if it is regulated. Therefore Mr C and Miss B are not entitled to be compensated in line with borrowers who did qualify for an interest refund from NRAM.

Generally, in these circumstances, I would need to consider if Mr C and Miss B relied on the incorrect information when making the decision to take out the loan and if so, whether they would have done something differently if they had been given the correct information in the first place. I need to make a decision, on balance, about what I think Mr C and Miss B are likely to have done if they had been given the correct information.

After carefully considering what Mr C and Miss B have said, I am not sufficiently persuaded that whether the loan was regulated or not was an important factor in their decision to take the loan.

Mr C and Miss B say they would have reconsidered whether to take the loan if they knew it was not regulated by the Act. I accept that Mr C queried whether the loan was regulated in 2010 and at that point NRAM gave him further incorrect information. But I don't think it follows that they would have done anything differently if they had been told that the loan was not regulated.

I note that Mr C and Miss B used the unsecured borrowing to consolidate some debt. They say that they did not 'need' to take the loan and could have borrowed less. Of course, this option was always open to Mr C and Miss B. Other than the fact the loan is not regulated by the Act, the features of the loan outlined in the contract are the same as they agreed to.

For instance, the right to settle the loan early (in line with the Act) is a term of the loan.

After carefully considering what Mr C and Miss B have said I think it is less likely that they would have chosen to borrow less or not take the mortgage at all if they knew that part of their total borrowing was not regulated by the Act. While Mr C and Miss B say they would have arranged their mortgage differently with another lender, we do not have any evidence that they would have been able to do so or that any other arrangement would have been cheaper than the Together mortgage with NRAM.

I accept that NRAM gave Mr C inaccurate and misleading information when he contacted it in 2010. I am satisfied that information was wrong and that NRAM has not acted in line with the Financial Conduct Authority's high level principles, including providing clear, fair and not misleading information. It does not follow, however, that this means NRAM should honour the incorrect information or that Mr C and Miss B's underlying complaint should be upheld.

NRAM has offered Mr C and Miss B £100 to reflect the distress and inconvenience caused to them by giving them misleading information when they contacted it in 2010. I think this is fair in all the circumstances.

my final decision

My final decision is that in full and final settlement of this complaint Northern Rock (Asset Management) plc should pay Mr C and Miss B £100.

Ken Rose
ombudsman