DRN-3980421

The complaint

Mr and Mrs C complain that they have been charged too much interest on their Together unsecured loan. Their lender is now NRAM Limited ("NRAM").

What happened

In October 2005 Mr and Mrs C took out a 'Together' mortgage with Northern Rock. They took out a mortgage for £72,225 over a 35-year term. There also took out an unsecured loan for £19,936. The initial rate on both the secured and unsecured loan was 5.89% until the 1 January 2011. After that the interest on both loans reverted to NRAM's standard variable rate ("SVR").

In 2008, Northern Rock collapsed and was later nationalised. Mr and Mrs C's mortgage and loan were transferred to NRAM.

In 2014 Mr and Mrs C decided to move to a new home. They decided to purchase their new property with a mortgage from another lender. When this happened their Together mortgage was redeemed. However they weren't in a position to redeem their unsecured loan at the same time. So the unsecured loan remained with NRAM.

When the mortgage was repaid in 2014, an interest rate premium of 5% above the variable rate Mr and Mrs C had been paying began to apply to their unsecured loan. The unsecured loan is still running, and the interest rate premium has been applied since 2014.
Mr and Mrs C separated in June 2017. As part of an informal - but later formalised - arrangement Mrs C took responsibility for paying the unsecured loan. Mrs C is unhappy with the amount of interest she has paid on the unsecured loan.

Mrs C complained to NRAM in 2018. She said she'd paid over £16,000 towards the unsecured loan and offered NRAM £6,000.00 to settle it. She told NRAM money was tight as she was going through a divorce and she didn't think the interest rate she was paying was fair. At that stage the interest rate on the loan was 10.04% and the unsecured loan balance was more than £12,800. NRAM declined Mrs C's offer saying she needed to repay the balance of the loan in full to settle the loan. It said the interest rates that would apply to the mortgage and unsecured loan were set out clearly in the relevant agreements and it had done nothing wrong.

So Mrs C complained to the Financial Ombudsman Service. She said the amount of interest NRAM is applying to her unsecured loan is excessive and unfair. She said she wanted to consolidate her debts but didn't want to do that until this issue has been resolved as she didn't want to borrow more than was necessary.

Our Investigator recommended that the complaint be upheld. He didn't think NRAM acted fairly when it applied the 5% interest rate premium. He thought that NRAM should strike out the relevant term in the unsecured loan agreement so that the 5% increase to the interest rate on the unsecured loan is no longer applied going forward. He also thought that NRAM should refund the additional interest rate premium (over and the interest rate that would have applied if the mortgage had remained with NRAM). He said Mr and Mrs C should be offered

the choice of whether they'd like their Together Loan to be reworked and the 'overpayments' be applied to reduce the balance of the loan or have them paid back to them. He said that if Mr and Mrs C choose to have the overpayments refunded to them, it should be paid with 8% simple interest.

Mrs C agreed with our investigator, but NRAM didn't. So the complaint has been passed to me to decide. NRAM said:

- it thought the interest rate loading term was fair. It provided a number of reasons for this.
- Mr and Mrs C were given the information they were required to be sent at the time they entered into the mortgage and the unsecured loan in 2005. It thinks it's unfair to apply current regulatory standards when considering that information. It thinks the documentation Mr and Mrs C were provided with was transparent and prescriptive about exactly what will happen and when.
- It thought that Mr and Mrs C could have paid off most of the unsecured loan when they moved around 2014 but chose not to do so. NRAM says the mortgaged property sold for £80,000. Mr and Mrs C paid off their mortgage with £65,963.39 and the balance of the unsecured loan at that time was £14,567.23. It says Mr and Mrs C went on to buy a new home for £187,500 through a Help to Buy scheme. That scheme required a 5% deposit (£9,375) so it says it would still have been possible to pay off some of the unsecured debt at that time – even after choosing to get a new mortgage for almost double the amount of their previous one.
- Mrs C told NRAM on the phone that before she moved home into 2014 she'd been in conversation with Mr C for over two years about delinking the account. So NRAM thinks Mr and Mrs C were aware what that would mean for them in relation to the interest rate.

My provisional decision

In my provisional decision I said:

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

Having done so, I've come to a different conclusion to our investigator. I'll explain why. The crux of this complaint is about the 5% interest rate premium which has been applied to the unsecured loan since 2014. This premium has resulted in Mr and Mrs C paying interest at a much higher rate than they had been used to while their mortgage was in place. Our investigator thought that it was arguable that the interest rate loading term was an unfair contract term.

However, having considered the relevant documentation and what NRAM have said, I'm not persuaded that the 5% premium or the overall rate were inherently unfair. I'll explain why. The mortgage offer and unsecured loan agreement issued in 2005 set out what would happen to the interest rate on the unsecured loan if the secured and unsecured loans were delinked. The mortgage offer said, at section 12, that if Mr and Mrs C took the £19,936 unsecured loan which was available to them:

"There are no Early Repayment Charges for this unsecured borrowing. However, if the secured mortgage is transferred to another Northern Rock product or repaid in full, the rate of interest charged for the unsecured loan will increase to 5.00% above the current standard variable rate for mortgages. This would make the interest rate payable 11.59% based on current interest rates."

The fixed-sum unsecured loan agreement also set out what would happen to the interest rate on the unsecured loan if the secured and unsecured loans were delinked. It said:

"If you are not or cease to be a Borrower with us under the Mortgage, (or transfer to a new mortgage product with us, or enter into a new mortgage with us) a variable rate which will be 5.00% above our Standard Variable Rate will apply to this agreement."

I think the documents set out clearly the circumstances in which the premium would apply. So I find that the contract entitled the lender to apply an extra 5% interest above its standard variable rate if the loans delinked.

In his view of this complaint our investigator said why he thought it was arguable that the interest rate loading term was an unfair contract term. In summary he said:

- *it's difficult to see that it represents the costs to NRAM;*
- *the reasons for the increase in the interest rate weren't set out in the unsecured loan agreement, mortgage offer or mortgage terms and conditions that Mr and Mrs C were provided when the loan and mortgage was entered into.*
- *the consequences of this clause weren't prominently drawn to Mr and Mrs C's attention when they got the mortgage and loan.*

NRAM responded by setting out the how the interest rate loading term took into account its costs and its additional risks when the mortgage and unsecured loan delinked. It also said that the documentation it sent, and the level of explanation it included was compatible with the regulatory regime at the time. It didn't think it would be fair to apply current regulatory standards to products taken out in 2005.

I've carefully considered what NRAM has said about its costs and taken account of the additional risks to the lender when an unsecured Together loan is delinked from the mortgage. I'm satisfied that there are some risks, such as the risk of default being higher on an unsecured debt than a priority mortgage debt. And I note there are no early repayment charges or other barriers to exit should Mr and Mrs C look to move the loan elsewhere onto more favourable terms or should they be in a position to repay it.

I've also considered our investigator's comment that the consequences of this clause weren't prominently drawn to Mr and Mrs C's attention when they got the mortgage and loan. I'm conscious that the mortgage and unsecured loan were sold by a broker in 2005. So the broker would have been responsible for the sale. However, I've considered the mortgage and unsecured loan agreements that Mr and Mrs C agreed to. I think the clauses set out above were set out clearly in relatively short agreements. I also think that the lender – Northern Rock at the time – could reasonably expect Mr and Mrs C to look at the documentation they were sent at the time of the sale. I'm not persuaded that it was required at the time the agreements were made to set out (in the mortgage and loan agreements) the reasons for the increase in the interest rate if the secured and unsecured loans were delinked.

So I think the circumstances in which the premium would apply were clear in the mortgage and loan documents.

However, that's not the end of the matter. I must also consider the fairness of the lender's decision to apply the increased interest rate in Mr and Mrs C's particular circumstances. Mrs C says she took full responsibility for paying off the unsecured loan when she separated from Mr C. She says she feels stuck paying the unsecured loan (with the interest rate loading term) and thinks that if Northern Rock had still been trading she might have been able to refinance with that at a lower interest rate. She told us that she felt she had no other option but to pay the increased interest rate when she moved home in 2014. By that time

she'd been told that NRAM was unable to lend her more money. She says she'd just had a mortgage approved (with the new lender). So she didn't want to apply for another loan in case that application was rejected and there was a negative effect on her credit score.

I appreciate Mrs C's frustration that following Northern Rock's collapse and subsequent nationalisation, it wasn't able to offer new lending or new interest rate products to its existing customers. This, of course, isn't a situation that Mr and Mrs C could have foreseen when they took out the Together product in 2005, and I can certainly see that they were left with fewer options than they expected when they wanted to move home. However, there was never any guarantee that Northern Rock would continue to offer new interest rate products or agree to further lending.

I've considered what Mrs C has told us about what happened when she moved home in 2014. I'm not persuaded that it's fair to say that Mr and Mrs C had no choice but to repay the secured part of their Together borrowing and take a new mortgage with another lender just because their existing lender was 'closed book' and no longer offered new products or lending. Ultimately they chose to move home in 2014 and borrow significantly more money to do so. Mr and Mrs C did that in the knowledge that they would pay more interest on their unsecured loan. As NRAM has suggested, it seems that even bearing in mind the 5% deposit they needed to pay to purchase their new home in 2014, Mr and Mrs C were still in a position to pay off some of the unsecured loan at that time, had they chosen to do so.

Mr and Mrs C's unsecured loan has been on the higher interest rate since 2014 – around 8 years – and they still owe a significant sum, so I can understand why they want this matter resolved. But it's not clear from what Mrs C has told us whether she has tried to refinance the unsecured loan over the years and been unable to do so. Mrs C hasn't told us of attempts to do this and when our investigator mentioned this option to Mrs C she said she wanted to wait and see how much money she would need to borrow after we had resolved this complaint before attempting to do that. She told our investigator she still hoped NRAM would agree to let her settle the unsecured loan for £6,000 – something it has declined to do.

So while I appreciate Mrs C's desire to only borrow the minimum amount she needs to consolidate her debts, I'm not persuaded that she has been 'trapped' with this unsecured borrowing over the period of time since the loan was delinked (since 2014). I could only come to that conclusion they were 'trapped' if I thought that she had had no option but to repay the unsecured despite feeling that the interest rate plus the additional premium was too high.

In the circumstances, I'm not persuaded - even taking Northern Rock's collapse into account – that it would be fair and reasonable for me to say that the relationship between Mr and Mrs C and NRAM was unfair. I say that because I can't see that they've acted to try and refinance the loan at a lower interest rate/mitigate their financial loss and reduce their interest payments beyond asking NRAM if it would be willing to settle the unsecured loan for £6,000 – less than half the outstanding balance of the unsecured loan at the time.

I appreciate that Mrs C feels that she has paid enough towards the loan and was frustrated that NRAM declined her settlement offer. But NRAM wasn't required to accept her offer. It is allowed to use its commercial judgement to decide how much it was willing to settle the loan for.

For completeness I will also say here that I think NRAM could have done more to engage with Mrs C after she asked it to accept £6,000 to settle the unsecured loan. As Mrs C said she had that money available I think it should have had a discussion with her about whether she could use that money to partially repay the loan balance. Then NRAM would have been in a position where it was able to consider restructuring Mr and Mrs C's monthly repayments.

NRAM didn't do that. However, I'm not persuaded that has an impact on the outcome of this complaint.

Conclusion

I have some sympathy for why Mr and Mrs C think the interest rate on the unsecured loan at the increased rate does not offer good value for money. I can also understand why they are unhappy that the additional 5% was triggered when – upon Northern Rock being nationalised - they were left with fewer options than they would originally have anticipated would be open to them when they moved home in 2014. But I don't think that's enough to say that NRAM have acted unfairly or unreasonably in adding the additional 5% in the circumstances of this complaint.

I appreciate that Mr and Mrs C are likely to be very disappointed this decision. For completeness I think it's helpful for me to say here that if they are now struggling with rising interest costs on the unsecured loan, they may wish to take advantage of debt advice to explore their options now and ways that they can restructure their borrowing going forward to reflect the changing economic outlook. Our investigator can provide details of such services if that would be useful for Mr and Mrs C.

The responses to my provisional decision

NRAM responded to say that it didn't have any comments on my provisional decision.

Mrs C said she was very unhappy with my provisional decision. She made a number of points that I've considered below.

What I've decided – and why

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

I've also reconsidered what I said in my provisional decision with particular reference to Mrs C's response to it. However, I remain of the view that NRAM doesn't need to do anything to resolve this complaint for the reasons set out in my provisional decision. I'll also comment on Mrs C's response to my provisional decision.

Mrs C seems to accept that it wouldn't be fair and reasonable for me to apply regulatory standards that are in force today to agreements she entered into in 2005. However, she says that the Unfair Terms in Consumer Contract Regulations 1999 and MCOB 2.2.6R were applicable in 2005 when the Together mortgage and loan were taken out and are applicable in this case.

I agree that the Unfair Terms in Consumer Contract Regulations 1999 and MCOB 2.2.6R were applicable when the Together mortgage and loan were taken out in 2005. However, I don't think that has an impact on my reasoning in this complaint. As I said in my provisional decision, I'm not persuaded that the 5% premium or the overall interest rate were inherently unfair. I say that because the mortgage offer and unsecured loan agreement set out what would happen to the interest rate on the unsecured loan if the secured and unsecured loans were delinked. In other words, the documents set out clearly the circumstances in which the interest rate premium would apply. So I remain of the view that the contract entitled the lender to apply an extra 5% interest above its standard variable rate if the loans delinked.

As I said in my provisional decision I've carefully considered what NRAM has said about its costs and taken account of the additional risks to the lender when an unsecured Together

loan is delinked from the mortgage. I remain satisfied that there were some risks, such as the risk of default being higher on an unsecured debt than a priority mortgage debt. And I note there were no early repayment charges or other barriers to exit should Mr and Mrs C have looked to move the loan elsewhere on more favourable terms or if they'd been in a position to repay it.

I've also considered our investigator's comment that the consequences of this clause weren't prominently drawn to Mr and Mrs C's attention when they got the mortgage and loan. As I said above, I remain of the view that the clauses that set out what would happen if the secured and unsecured loans were delinked were set out clearly in relatively short agreements. I also remain of the view that the lender – Northern Rock at the time – could reasonably expect Mr and Mrs C to look at the documentation they were sent at the time of the sale. I'm still not persuaded that it was required at the time the agreements were made to set out (in the mortgage and loan agreements) the reasons for the increase in the interest rate if the secured and unsecured loans were delinked.

So I think the circumstances in which the premium would apply were clear in the mortgage and loan documents.

Mrs C says I was wrong to assume she and Mr C were in a position to pay off the unsecured loan after they redeemed their mortgage in 2014. She didn't go into specifics about her circumstances at the time. Instead she said that when I considered the price she sold the mortgaged property for, and the price of the property she purchased in 2014 I didn't consider additional factors such as stamp duty, legal fees, moving costs, having a child or additional financial constraints.

I appreciate that I didn't go into all the possible costs that Mr and Mrs C might have had to consider in 2014 in my provisional decision, or all their reasons for doing so. Mr and Mrs C haven't shared that information with me in any detail, so I'm simply not in a position to consider that. I accept there would have been costs associated with the sale beyond the purchase price of the property they were buying. However, I remain of the view that ultimately they chose to move home in 2014 and borrow significantly more money to do so – even when they knew that they would pay more interest on their unsecured loan. In the circumstances, I'm still not persuaded that it's fair to say that Mr and Mrs C had no choice but to act as they did in 2014.

Mrs C suggested that NRAM should have engaged with her/made her a counteroffer after she offered to settle the unsecured loan for £6,000. As I said in my provisional decision, I think NRAM could have done more on this point. Even if it was unwilling to accept £6,000 to settle the debt I think it could have had a discussion with her about whether she could use that money to partially repay the loan balance. But the responsibility was also on Mr and Mrs C to manage their finances. As I said in my provisional decision, NRAM wasn't required to accept Mrs C's offer or make her a counteroffer. In the circumstances I would expect her to ty to refinance the unsecured loan with another lender if she thought the interest rate on it was too high. But Mrs C hasn't told us of any attempts to do this, even after our investigator suggested that she did that.

Mrs C also feels that I've overlooked certain provisions of the unsecured loan agreement. She says the loan agreement has been assigned on more than one occasion and she's unhappy about that. There's no dispute that her unsecured loan debt has been assigned to NRAM after Northern Rock collapsed. But I don't think there's anything in the agreement to say that wasn't possible. The assignment clause Mrs C has referred to says:

"We may assign or transfer our rights and/or our obligations under this agreement."

Mrs C also refers to the following wording in the unsecured loan agreement:

"If any provision of this agreement is or becomes invalid, illegal or unenforceable it shall be deemed severable from and shall not affect the validity of the other provisions."

Mrs C says she disputes the legality of the continual interest rate hikes, and the ability of NRAM and the other successor lenders to benefit from the agreement she entered into with Northern Rock.

I don't underestimate Mrs C's strength of feeling about this issue but I think it's worth me pointing out that I've seen nothing to suggest that NRAM wasn't able to take responsibility her mortgage and unsecured loan legally. I also think it's worth me saying here that NRAM didn't buy her mortgage from Northern Rock. NRAM was set up following Northern Rock's collapse. So I think NRAM was entitled to charge Mr and Mrs C they interest rates it did in relation to the unsecured loan.

Mrs C has suggested that the Financial Ombudsman Service should take action against companies that buy debt at reduced rates and ensure that legislation and Financial Conduct Authority ("FCA") rules are adhered to. However, my role is to resolve individual complaints in a fair and reasonable way. It's not to act as a regulator as Mrs C has suggested. The FCA, NRAM's regulator, is responsible for enforcing its rules.

Finally, Mrs C has said that there's litigation pending that's relevant to this complaint. She hasn't been clear about exactly what litigation she is referring to or what issues it covers, and she accepts that I'm not required to take pending litigation into account. However, she wants me to consider it anyway. As I said above, I appreciate how strongly she feels about her complaint, but it wouldn't be appropriate for me to consider pending litigation that may or may not have an impact on this complaint after it is concluded. My role is to resolve this complaint in a way that's fair and reasonable, having regard to the relevant law (amongst other things). I've explained how I have done this in detail above.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 22 March 2023.

Laura Forster
Ombudsman