DRN-3221786

The complaint

Mr C complains that Kensington Mortgage Company Limited wrongly recorded a coronavirus payment deferral as missed payments on his credit file. This caused him delay and additional expense in taking a new mortgage elsewhere.

What happened

Mr C had a mortgage with Kensington. Because of the impact of the covid-19 pandemic on him, he requested a payment deferral.

At the start of the pandemic, the regulator told mortgage lenders to offer customers payment deferrals of up to six months. During the period of deferral, no payments would need to be made – though they would need to be made up later – and lenders were told not to report the deferral as missed payments on borrowers' credit files. An account already in arrears could continue to be reported as being in arrears – but should not show a worsening status.

Unfortunately, Kensington reported that Mr C had missed payments for the duration of his payment deferral. This meant that his credit file showed that he was in arrears.

Mr C wanted to sell his property and buy a new one, for which he would need a new mortgage. Because of the missed payment markers, he found it very difficult to obtain a new mortgage. He complained to Kensington and it eventually removed the late payment markers.

Mr C complained to us. He said that it had taken a very long time to get Kensington to remove the markers, and he couldn't get a new mortgage until it did. He said that as a result his move had nearly fallen through, and he had months of worry. And by the time he was able to go ahead, the government's stamp duty holiday window had ended. So, he says, he had to pay stamp duty on his new purchase – which, but for Kensington's mistake, he would not have had to pay.

Our investigator thought that Kensington should not have put the markers on Mr C's credit file, and had unreasonably delayed in removing them. He said that Kensington should pay Mr C £750 compensation for the worry and experience. It should refund the costs he had incurred in subscribing to a credit reference agency to check his file, as well as additional legal costs. And it should repay the stamp duty Mr C had to pay on his purchase.

Kensington accepted that it was at fault, and agreed to pay the compensation and Mr C's additional costs. But it didn't accept that it should also pay the stamp duty. It said that by the time the markers were removed, there was still time for Mr C to complete his purchase within the window, and it wasn't responsible for any other delays which meant he couldn't.

As no agreement could be reached, the case comes to me for a final decision to be made.

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 set out above that Kensington accepts that it was at fault here, and agreed with the investigator's recommendation that it pay Mr C £750 compensation, together with the additional costs he incurred. But it didn't accept that it should also refund his stamp duty bill – as that is the remaining area still in dispute, that's what I'll focus on in this decision.

The stamp duty holiday was introduced by the government to help the housing market recover from the effects of its shutdown in the first lockdown in 2020.

From 8 July 2020 to 30 June 2021, the stamp duty nil rate band – the range of property prices in which no stamp duty was payable – was increased to £500,000. The nil rate band was then reduced to £250,000 from 1 July 2021 to 30 September 2021, reverting to the previous limit of £125,000 from 1 October 2021.

In the run up to the covid-19 pandemic, Mr C had separated from his former wife. He was in arrears on his mortgage with Kensington, but was reducing the arrears month by month through an agreed plan. He had not missed any payments since early 2018.

At the start of the pandemic, Mr C's income was affected, and he took a six month payment deferral.

Mr C decided to sell his existing property and buy a new one with his new partner. He had a buyer for his existing property and went to see a mortgage broker to discuss applying for a new mortgage.

As part of this process, he checked his credit file and found that Kensington had reported the payment deferral as missed payments with increasing arrears. He says that his broker advised him that this would make it impossible for him to get a new mortgage.

Kensington agreed to remove the markers in November 2020, and says it did so in December 2020. It says this left enough time for Mr C to complete on his new purchase by the end of June 2021, and therefore it's not responsible if it in fact took longer than that.

It sent Mr C an email on 26 November 2020 confirming that it had agreed to correct his record, and said it could take "*up to 12 weeks to be reflected on your credit file*."

However, it's clear that in fact the corrections did not happen then, or within 12 weeks. Mr C has provided copies of his credit files showing that errors were still showing in March 2021 – and in the case of one of the agencies, later than that. He was in contact with staff at Kensington still trying to resolve this on his behalf as late as May 2021. His credit files had to be changed more than once before they showed correct information.

So while it does seem likely that Kensington first attempted to correct Mr C's credit file on 4 December 2020, those corrections were not effective.

Kensington hasn't told us exactly what corrected date it gave the agencies in December 2020. So it's possible that it told the agencies the correct information, but the delay in correcting it – and replacing the errors with further errors – was the fault of the agencies.

However, on balance, I don't think that's likely. It's unlikely that all three agencies would independently make much the same errors; it's more likely that they were all given the same information by Kensington.

And even if there were errors by the agencies, in my view that doesn't change the fact that

Kensington is ultimately responsible for what went wrong here. If it hadn't wrongly reported Mr C's payment deferral as arrears in the first place, none of what happened later would have happened at all. I'm satisfied that it's fair and reasonable in the circumstances to hold Kensington fully responsible for what went wrong here – and the consequences that flow from it.

Putting things right

When Mr C first raised this issue with Kensington, in mid-2020, it accepted it had made an error and offered £300 compensation. But it took many more months for the error to be put right properly.

In that time, Mr C had to spend much time trying to resolve this issue, at considerable inconvenience. He and his new partner had to delay moving to their new property and trying to start a family. He had to resolve matters with his former wife – who held this mortgage jointly – since he had undertaken in the divorce to be responsible for the mortgage.

All of this caused Mr C considerable distress and inconvenience over many months, and I'm satisfied £750 compensation is fair in all the circumstances.

I also think that Kensington should – subject to Mr C providing evidence of these costs – reimburse the additional expenses Mr C was put to. This includes subscriptions to the three main credit reference agencies between July 2020 and May 2021, as well as legal costs incurred in resolving matters with his ex-wife through solicitors.

Our investigator also said that Kensington should reimburse the stamp duty Mr C paid. Kensington didn't agree about that, because it said it corrected the records in December 2020, and Mr C therefore had time to complete his sale and purchase by July 2021.

But as I've explained above, I don't agree that Kensington had resolved matters by December 2020. I've seen the evidence of his credit files Mr C has provided, I've said Kensington is responsible for what appeared on them, and I'm satisfied that Mr C wasn't able to start progressing things until March 2021.

He applied for the new mortgage in March 2021, and began to progress the sale of his old property and the purchase of a new one. Contracts were exchanged and the sale completed in August 2020. This is not an unreasonable timescale for a mortgage application and property purchase, and I'm satisfied that Mr C couldn't reasonably have been expected to complete it by 30 June 2021.

In my view, Kensington was at fault here. It mis-recorded entries on Mr C's credit file. It delayed in correcting them. That delay meant that Mr C's mortgage application was made – and sale completed – around four months later than it otherwise would have done. That was enough to put Mr C outside the stamp duty window – and therefore Kensington is responsible for the extra costs he had to pay.

As his property purchase was in the £250,000 to £500,000 band, he therefore had to pay stamp duty that he would not have had to pay had he been able to complete sooner. In my view, since the delay is a direct consequence of Kensington's mistake, it's fair that it reimburses the stamp duty paid.

Finally, Mr C has also said that he had to apply for a new mortgage with a specialist lender, paying a higher interest rate than he might otherwise have had to do, because of Kensington's mistake.

I’ve considered what he’s said about this. But I’m not persuaded it would be fair to hold Kensington responsible for this.

Mr C’s Kensington mortgage had been in arrears for several years. Before he took a payment deferral, he had been in a payment arrangement since 2018, paying his full monthly payment plus a contribution to the arrears. By March 2020, he was the equivalent of four months in arrears.

Had Kensington treated the payment deferral correctly, and Mr C been able to apply for a mortgage in late 2020 as he planned, he would have had to declare that he was in, or had just come out of, a payment deferral. And his credit file would have shown that he was four months in arrears and in a payment arrangement.

I’m satisfied, from my knowledge of the mortgage market, that his choice of lender would as a result have been restricted in much the same way as it was in 2021. In other words, even if Kensington had done nothing wrong, he would always have had to go to a specialist lender and pay a higher interest rate. It follows that Kensington is not responsible for that.

My final decision

For the reasons I’ve given, my final decision is that I uphold this complaint and direct Kensington Mortgage Company Limited to:

- Reimburse the costs of Mr C’s subscriptions to the credit reference agencies between July 2020 and May 2021, subject to Mr C providing evidence of the payments made. Kensington should add simple annual interest of 8%* running from the date Mr C made each payment to the date of refund;

- Reimburse the legal fees Mr C incurred in engaging via solicitors with his former wife about their credit files, subject to Mr C providing evidence of the costs incurred. Kensington should add simple annual interest of 8%* running from the date Mr C made each payment to the date of refund;

- Reimburse the stamp duty of £4,497. Kensington should add simple annual interest of 8%* running from 20 August 2021 to the date of refund;

- Pay Mr C a further £450 compensation in addition to the £300 already offered – making £750 in all.

*If Kensington considers it should deduct income tax from the 8% interest element of my award it may do so but should give Mr C confirmation of the deduction so that he can reclaim the tax from HMRC, if he’s entitled to do so.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 15 March 2022.

Simon Pugh
Ombudsman