

## **The complaint**

Ms S complains that Kensington Mortgage Company Limited won't remove her ex-husband from their joint mortgage, and won't allow her to switch the mortgage onto a lower interest rate.

## **What happened**

In 2004, Ms S and her then husband took out a mortgage with First National Home Finance, on a fixed interest rate for the first five years. The mortgage has since been sold to Kensington, and has been on the lender's standard variable rate (SVR) of interest since 2009.

Ms S says she has been paying the mortgage on her own since 2010, and she and her husband divorced in 2016. She wants her ex-husband's name to come off the mortgage, and to switch it onto a lower interest rate. Kensington won't let her take a new interest rate product without her ex-husband's agreement, and Ms S says that's unfair; she no longer has any contact with her ex-husband and she has taken responsibility for the mortgage. She says she's a mortgage prisoner, trapped on an unfairly high rate of interest.

Following Ms S's complaint, Kensington said it did have a lower interest rate product available to her – but she would first need to apply to change the mortgage into her sole name. It offered Ms S £100 for initially failing to respond properly to her complaint.

Ms S wasn't happy with that, so she got in touch with us. Our investigator found that Kensington had invited Ms S to apply to transfer the mortgage into her sole name following an enquiry from her solicitor in 2018, but she hadn't done so. The investigator also found Ms S hadn't asked about a new interest rate until August 2020.

The investigator said Kensington should have put the mortgage onto the lower interest rate it was offering when Ms S asked in 2020, without requiring Ms S's ex-husband's consent. She noted that doing so wouldn't prejudice him, since the new rate didn't come with a charge if the mortgage were repaid within a particular length of time. She said Kensington should re-work the mortgage on the basis of that lower interest rate, pay Ms S 8% simple interest on the extra interest she had paid, and pay her a total of £250 by way of compensation.

Neither Ms S nor Kensington accepted that conclusion. Ms S said she should receive more compensation for the hassle she had been put to, and Kensington said it needs both parties who are named on the mortgage to agree to a new rate.

## **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.

Having done so, I've come to the same conclusions as our investigator, for the same reasons.

Kensington's records show that it received letters from solicitors in 2017 and 2018 asking for the mortgage to be transferred into Ms S's sole name. But it didn't have Ms S's authority to deal with the solicitors, so it wrote back to Ms S directly, inviting her to apply to transfer the mortgage. I wouldn't expect Kensington simply to have transferred the mortgage into Ms S's sole name without first considering her circumstances, so I think this was a reasonable response.

However, I find nothing to indicate that Ms S has applied to have the mortgage put into her sole name. If she does now do so, Kensington should give her application fair consideration – but it can't do that until she applies.

I also find nothing in Kensington's records or in what Ms S has told us to indicate that she asked about a new interest rate product until August 2020.

Mortgage lenders don't have to offer new interest rate products to their customers. There is also nothing in the financial services regulator's rules or guidance to say that lenders are required to contact customers proactively, inviting them to apply for a new product. So it was up to Ms S to ask. The terms of her and her ex-husband's mortgage said that, when the initial fixed interest rate ended in 2009, the mortgage would move onto the lender's SVR. That's what happened, and the mortgage statements sent to Ms S would have reminded her of the rate she was paying, as would the letters sent when her monthly payments changed due to changes in the SVR.

In 2020, however, things changed. Kensington wrote to Ms S in June and July 2020, saying it had signed up to the UK Finance voluntary agreement to help 'mortgage prisoners', and this meant it was now offering a lower interest rate product to customers like Ms S and her ex-husband. It said they could switch to a lower interest rate, which would be available for two months, until 21 August 2020. But it also said all parties to the mortgage would need to agree to the change.

This prompted Ms S's complaint. She wanted to pay a lower interest rate, but she couldn't get her ex-husband's agreement to it. She has provided a copy of her divorce order, which confirms that she would pay the mortgage and any interest her ex-husband had in the property was to be transferred to her.

The new interest rate product Kensington was offering came with no set-up fees and no charges for early repayment. It was a variable rate, linked (when it was offered in 2020) to LIBOR, giving a rate in June 2020 of 4.5%. The SVR Ms S was paying at that time was 6.97%.

So the new rate would have represented a significant saving for Ms S. And, as our investigator pointed out, moving the mortgage onto this new rate wouldn't have prejudiced Ms S's ex-husband. On the contrary, it would have meant the mortgage would be less likely to go into arrears and adversely affect his credit file, since the monthly payments would have been more affordable for Ms S.

In the circumstances, I think Kensington should have moved the mortgage onto the rate it was offering in 2020, and so the resolution the investigator proposed – applying and backdating the interest rate product Kensington was offering in June 2020 – is a fair one. I think the rate should begin on 1 September 2020, by which time the switch could reasonably have been completed. I also think that £250 is a fair award to reflect Ms S's inconvenience and time, as well as the fact that she has had to make higher monthly payments to her mortgage than would have been necessary had Kensington switched her mortgage to the new product when she asked.

## **Putting things right**

Kensington should:

- 1) switch Ms S's and her ex-husband's mortgage onto the interest rate product it offered them in June 2020 – that is, a variable rate of 4.15% above LIBOR (and the rate it has used to replace LIBOR now LIBOR has ended) for the term of the mortgage, reviewed quarterly;
- 2) re-work the mortgage as though it had been on the product at 1) above since 1 September 2020;
- 3) refund Ms S the overpayments she's made as a result of being on a higher interest rate, plus simple interest at an annual rate of 8% from the date of each monthly overpayment to the date of settlement; and
- 4) pay Ms S £250 compensation.

If Kensington deducts tax from the interest part of my award, it should tell Ms S how much it has taken off and send her a tax deduction certificate if she asks for one. She may then be able to reclaim the tax from Her Majesty's Revenue & Customs if appropriate.

## **My final decision**

My final decision is that I uphold this complaint. I require Kensington Mortgage Company Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 4 April 2022.

Janet Millington  
**Ombudsman**