

The complaint

Mr and Mrs B's complaint is about a secured loan they took out with Kensington Mortgage Company Limited in 2006. They consider that, given their financial history and then current circumstances, the lending was irresponsible. This was because the loan turned some of Mrs B's short-term debts into a long-term liability. They believe that Kensington should have known it would become unaffordable, especially after Mr B's retirement.

In addition, Mr and Mrs B have said that Kensington disregarded the payment arrangement that was ordered by the courts in 2015. They also feel that Kensington has subjected them to systematic harassment and caused them to suffer increased financial difficulties. They are unhappy with how Kensington dealt with them after the loan went into arrears, especially the decision made in 2019 to start legal action.

What happened

In 2006 Mr and Mrs B were recommended a secured loan with Kensington by an independent broker. Mrs B had an existing repayment mortgage with a high-street lender for approximately £165,000 which had a remaining term of 22 years. The new loan was for another approximately £44,000 (including fees and costs), again on a repayment basis and over a 25-year term. Both Mr and Mrs B were recorded as being employed at that time and they had a joint income of £4,000 per month.

In April 2009 Mr and Mrs B started missing payments. It was not until the spring of 2010 that monthly payments started being made again, at which time Mr and Mrs B were paying more than the contractual monthly payment (CMP) in order to reduce the arrears. This continued until October 2010, when they reduced their payments to the amount of the CMP; over £3,000 of arrears remained on the account at that time. Subsequently they again increased the monthly payment to start clearing the arrears, which they did at the beginning of 2014. However, they almost immediately started missing payments again and the loan went back into arrears.

In May 2015 Mr and Mrs B started making regular payments to the loan again, which included an additional sum toward the arrears. Most payments were made thereafter, but the occasional one was missed. The frequency of missed payments increased in late 2018 and arrears started to increase again.

In early 2019 Kensington arranged for a field agent to visit Mr and Mrs B to establish their situation so that it could determine if there was anything it could do to assist. They refused the visit and subsequently letters were sent, and calls were attempted, to do the same thing. No responses were received until the middle of July 2019. At this point Mr and Mrs B completed an income and expenditure document. They also offered to pay the CMP plus an additional £30 toward the arrears. Unfortunately, while Kensington assessed the income and expenditure and decided that it wanted Mr and Mrs B to pay the CMP plus an additional £60 per month to the arrears, it doesn't appear to have talked to them about it and so no payment arrangement was added to the account. Kensington decided to start legal action.

In September 2019 Mr and Mrs B contacted Kensington asking whether the payment arrangement had been added to the account. Kensington responded by asking Mr and Mrs B to contact it and it suspended the legal action pending what Mr and Mrs B did. They didn't contact Kensington, made no further payments to the account and no payment arrangement was added. Due to the level of the arrears in December 2019 and the lack of contact about the arrears from Mr and Mrs B, Kensington decided to start legal action afresh.

Mr and Mrs B raised several complaints with Kensington. The first complaint response Kensington issued in December 2018 covered complaint points about the amount of arrears on the account and how Kensington had dealt with their financial difficulties to that point. Kensington also explained how arrears were dealt with in relation to credit files and what would be recorded when legal action was started.

In November 2019 Kensington responded to a further complaint from Mr and Mrs B. This complaint related to the loan allegedly being unsuitable and having been lent irresponsibly. Kensington confirmed that the advice to take out the loan had been given by an independent broker, so it hadn't had any involvement in the conversations about the suitability or affordability of the loan. Mr and Mrs B again raised concerns about how their financial difficulties had been handled and as a result Kensington reviewed the charges that had been applied over the last six years. It reversed £330 of charges that had been applied for months when the contractual monthly payment had been made. In addition, it offered Mr and Mrs B £50 compensation because it hadn't provided details of the selling broker when it should have. That information was provided in the complaint response. In addition, Kensington apologised if Mr and Mrs B felt like they had been harassed by the field agents it had sent to their home. However, it highlighted that they had been told in advance that field agents would be visiting.

A further complaint was made by Mr and Mrs B and Kensington responded to it in its letter of 4 February 2020. It explained why the December 2019 and January 2020 arrears statements had shown different figures. In relation to Mr and Mrs B raising concerns about Kensington having not responded to a request from them in July 2019 for a suitable payment arrangement, it apologised for having not dealt with the letter at the time, but it had when Mr B chased two months later. It had then asked Mr B to contact it to discuss what it could do for them, but Mr B hadn't done so. The error had also meant that legal action had started earlier than it otherwise would have and so Kensington removed the earlier legal costs from their account. However, it was satisfied that even if a payment arrangement had been put in place, it would have failed as from July 2019 to that date Mr and Mrs B had only paid £50 to their account. Kensington offered Mr and Mrs B £100 compensation for not having dealt with their letter when it should have.

Mr and Mrs B referred their complaint to this service in February 2020. One of our investigators considered our jurisdiction to consider the various aspects of Mr and Mrs B's complaint. She set out what aspects of the complaint she thought fell within our jurisdiction to consider. Further discussions about this issue occurred, which resulted in Mr and Mrs B accepting the investigator's conclusions. As such, the investigator went on to consider the merits of the parts of the complaint that she thought fell within our jurisdiction.

The investigator, in relation to the delay in Kensington confirming which business had given Mr and Mrs B the advice they were unhappy with, said that it should have responded sooner. However, as it caused little trouble or upset for Mr and Mrs B, the £50 offered was fair. In relation to how the loan account was dealt with by Kensington from December 2018, the investigator considered that it had acted reasonably, given the circumstances, on all but one point. This was the lack of response to Mr and Mrs B's letter of July 2019, which wasn't responded to when it should have been. However, again, the investigator considered the £100 offered was adequate compensation.

In relation to the charges that had been applied to the account after December 2018 and remained on the account, she was satisfied that they had been reasonably applied, due to the lack of payments during the relevant time. In addition, she was satisfied that the interest paid applied to the loan was in line with the terms and conditions, so it hadn't been unfair of Kensington to apply it.

Mr and Mrs B responded to the investigator's view and despite having said that they accepted the investigator's conclusions about what parts of the complaint we could consider, they again disputed some of them. They asked that the complaint be referred to an ombudsman for consideration.

I issued a provisional decision setting out our jurisdiction to consider the various aspects of the complaint. I also commented on an area of the merits of the complaint which we hadn't addressed before. Below is an excerpt of that provisional decision regarding the merits point.

'Kensington has provided us with a full list of the transactions on the loan account, including the fees and charges applied. As we have not assessed the charges from November 2013, I have reviewed all of the charges applied from that date to determine whether they were reasonably applied. When doing so, I have applied our standard approach to such matters, which is that charges for managing the arrears on an account shouldn't be applied if the contractual monthly payment (CMP) is made, or if lower, an agreed payment arrangement is complied with. We also don't consider it is fair that more than one charge type is applied in/for any month for the same purpose. An example of this would be where solicitors' fees are applied to the account because the arrears have resulted in the lender starting litigation, and then the lender applies a standard arrears fee too. Having done this I have identified ten charges or fees that I provisionally consider should be reversed:

Date	Charge/fee	Reason for reversal	Amount (£)
01/02/2020	Arrears management for January 2020	Litigation instruction fee charged on 13/01/2020	30
01/03/2019	Arrears management for February 2019	CMP paid	30
01/11/2018	Arrears management for October 2018	CMP paid	30
09/04/18	Field agent fee	CMP paid	90
01/01/18	Arrears management for December 2017	CMP paid	30
31/01/15	Arrears management for January 2015	Solicitors costs also applied	40
31/12/15	Arrears management for December 2015	Solicitors costs also applied	40
29/11/14	Arrears management for November 2014	Solicitors costs also applied	40

30/10/14	<i>Arrears management for October 2014</i>	<i>Court fee also applied</i>	40
31/07/14	<i>Arrears management for July 2014</i>	<i>Field agent fee also charged that month</i>	50

Kensington has confirmed that it has already reversed some charges for this period, totalling £330. Kensington should confirm in response to this provisional decision whether any of the above charges are included among those already reversed and whether it agrees to reverse the remainder.'

Kensington accepted my findings in relation to both jurisdiction and merits. It didn't confirm whether any of the charges I had concluded should be reversed were included in those that it had already reversed.

Mr and Mrs B only made further comment about the matter of our jurisdiction – they disagreed with my conclusions. I won't repeat those arguments again, as I have already commented on them in my decision of 21 March 2022, which confirmed our jurisdiction relating to the various complaint points Mr and Mrs B had raised. I concluded that we were only able to consider the following aspects of the complaint:

- How their financial difficulties were handled by Kensington between December 2018 and March 2020, including the concern about potentially inconsistent information contained in specific arrears statements.
- The charges and fees applied to the loan between November 2013 and March 2020.
- Whether the offer is fair for the delay in Kensington providing information about which business provided the advice to take the loan.

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.

Between December 2018 and March 2020 Mr and Mrs B made three payments toward their mortgage. In February and July 2019 they paid an amount above the CMP. They also paid £50 to the account in December 2019. However, no other payments were received and the arrears steadily increased. During this period Kensington attempted to contact Mr and Mrs B on several occasions to see what could be done about the situation. This is what I would expect a lender to do and I don't consider Kensington did anything wrong in trying to speak to Mr and Mrs B about the situation and find a way forward. However, it wasn't until July 2019 that they provided information that Kensington needed to complete an assessment of their circumstances. They also suggested an amount above the CMP for a payment arrangement. Mr and Mrs B also made a payment to the account at this point, presumably in anticipation of their suggested payment arrangement being accepted.

Kensington has acknowledged that it failed to deal with Mr and Mrs B's letter in July 2019. It was not until Mr B chased a response in September 2019 that it did something material about it. Kensington offered Mr and Mrs B £100 for this poor service and, as legal action wouldn't have been pursued in the middle of 2019, it offered to remove those charges from the account. In the circumstances, I think the offer was reasonable, as the delay was relatively short and given the lack of any further payments to the account, the mistake doesn't appear to have made any significant difference to the situation.

Unfortunately, at that point, Mr and Mrs B chose not to interact further with Kensington about the arrears and a way forward with the loan. They also didn't make any further payments to the loan, not even the CMP, which they could have done even if the payment arrangement toward the arrears hadn't been agreed. Kensington attempted to contact Mr and Mrs B again after they failed to respond to its request for them to contact it in September 2019, but it was unable to get a response.

Kensington may have continued to pursue legal action slightly earlier than it would have if it hadn't made the administration error with the July 2019 letter. However, I think it is likely that decision would always have been made. The account was in a considerable amount of arrears and Mr and Mrs B hadn't made payments regularly for a year. In those circumstances, it was not unreasonable for Kensington to follow its normal processes for when a loan is in significant arrears and start legal proceedings.

Mr and Mrs B questioned the difference in the figures between the December 2019 and January 2020 arrears statement. Kensington set out how the figures differed; effectively it was due to a further CMP being missed and the application of an arrears' management charge. I am satisfied that this explanation makes sense and it doesn't appear that the information Kensington gave Mr and Mrs B was wrong.

As for the charges that were applied to the loan during that period, I explained in my provisional decision how we view charging for the additional administration of an account in arrears. I set out in the table above which charges I consider should be refunded. Kensington accepted my conclusions in this regard. Mr and Mrs B didn't comment on them. So I remain satisfied that if Kensington has not already reversed those charges, it should do so now.

Kensington has also offered Mr and Mrs B £50 for the delay in providing them with details of the advising broker. As our investigator pointed out, this is information that Mr and Mrs B should have already had. The delay was not long, and I haven't seen any evidence that this caused any detriment to Mr and Mrs B, so I consider the amount is appropriate in the circumstances.

My final decision

My final decision is that I uphold this complaint in part. In full and final settlement of the complaint, I require Kensington Mortgage Company Limited to reverse the charges detailed in the table in the background section of this decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 21 April 2022.

Derry Baxter
Ombudsman