DRN-4263303

The complaint

Mr and Mrs D complain that Kensington Mortgage Company Limited wouldn't offer them a new interest rate product on their mortgage.

What happened

Mr and Mrs D took out their mortgage with Kensington in March 2017. They borrowed just under £320,000 on a capital and interest repayment basis over a term of 29 years.

The mortgage was on a fixed interest rate of 3.54% for the first two years. After that, the interest rate changed to a variable rate, at 4.1% above three-month sterling LIBOR, with a floor of 1% (meaning the rate payable would not fall below 5.1%), for the remaining term. LIBOR was 0.4% when the mortgage offer was issued in February 2017, so the variable rate payable at that time would have been 5.1%.

The initial fixed rate came to an end in March 2019, and since then Mr and Mrs D have been paying interest at the variable rate.

In April and again in June 2021, Mrs D asked Kensington for a new interest rate product on the mortgage. Kensington said it had no products available to Mr and Mrs D, but they could apply for one through an independent financial adviser or a mortgage broker. Mr and Mrs D went on to consult an independent adviser, who made a complaint on their behalf.

Mr and Mrs D complained that Kensington was offering interest rate products to new customers, and they were being treated unfairly as existing customers in not similarly being offered a new rate. They said they had never missed a payment to their mortgage and their house has increased in value.

Kensington said it had written to Mr and Mrs D in late 2018 and early 2019, shortly before their fixed interest rate ended, offering them a new fixed rate – but Mr and Mrs D didn't respond. It didn't have a new rate to offer them now and it isn't required to offer product switches. It said Mr and Mrs D could seek independent advice and look at deals available from other lenders.

Mr and Mrs D said they hadn't received the 2018 and 2019 letters and they were still unhappy, so they referred their complaint to the Financial Ombudsman Service.

Our Investigator concluded that Kensington hadn't treated Mr and Mrs D fairly in not offering them a new rate when they asked for one in 2021. She recommended that it re-work their mortgage in such a way that it reflected the lowest interest rate product that would have been available to them in June 2021, which was a two-year fixed rate at 3.64%, and pay them £150 to reflect their upset and inconvenience.

Mr and Mrs D accepted that, but Kensington did not, and it asked for an Ombudsman's review.

My provisional decision

I came to a slightly different conclusion to our Investigator about how Mr and Mrs D's complaint should fairly be resolved, so I issued a provisional decision. I said:

"Lenders aren't under any obligation to offer new interest rate products to their customers. Where they do offer new products, they're entitled to set eligibility criteria – so different customers might get different rates, or none at all, depending on various factors, including their circumstances and their loan-to-value ratio, for example.

Kensington says that Mr and Mrs D could have had a new interest rate product in 2019, if they had replied to the letters it sent them offering new rates. But they had to reply by 31 March 2019. After that date the rates were no longer available to them. I've seen copies of the letters Kensington issued setting out the new fixed rates it had available, dated 18 December 2018 and 17 January 2019. They are correctly addressed. I think it's more likely than not that they were sent, and it's unclear why Mr and Mrs D might not have received them.

It wasn't until April 2021 that Mr and Mrs D asked Kensington about taking a new interest rate product. Kensington told them to seek advice from a broker. Mr and Mrs D asked again in June and July 2021. Kensington told them it had no new rates to offer them and again suggested they take independent advice.

Kensington has told us that it was offering new fixed interest rate products to some customers when Mr and Mrs D asked for one in 2021 – but Mr and Mrs D weren't eligible. This is because they didn't meet its criteria. It has said it was only offering new interest rate products to existing customers who were coming to the end of an existing fixed interest rate (in the same way it had offered Mr and Mrs D a new product in 2019), and who met its other eligibility criteria, which included requirements about the remaining mortgage term, arrears, and property, for example.

Kensington has said that it was only offering new products to existing customers in this way, and it wasn't accepting any unsolicited applications – so it treated Mr and Mrs D the same as any other customers who were already on a reversion rate (that is, a variable rate after any initial fixed or discounted rate had ended).

It has also explained that its process for offering new interest rate products was a manual one, and this is why it couldn't sustainably offer new products to existing customers who asked for one. It felt resource was better directed towards arranging payment deferrals and providing other support to customers during the coronavirus pandemic. It has since put in place an automated process, as a result of which existing customers have, since February 2022, been able to apply for a new product.

Kensington's policy in 2021 meant that Mr and Mrs D had to stay on their existing variable interest rate, move their mortgage to another lender, or re-apply to Kensington as new borrowers and take a new mortgage with it.

Mr and Mrs D consulted a mortgage adviser, as Kensington suggested. The adviser says that they looked into re-mortgaging to another lender, but Mr D had started a new business in 2019 and the business had been adversely affected by the pandemic. So, while Mr D had two years' worth of accounts by 2021, Mr and Mrs D's financial situation meant they couldn't borrow enough, either from another lender or from Kensington as new customers, to cover the mortgage balance. This led to this complaint being made – Mr and Mrs D had no other options, and were trapped on their variable interest rate.

I think it's likely that Mr and Mrs D can't move to another lender for a better interest rate. They have taken advice, but their circumstances are such that their income doesn't meet lenders' requirements in order for them to borrow as much as they need to repay the Kensington mortgage.

The only reason Mr and Mrs D weren't eligible for a new interest rate product with Kensington when they asked for one in 2021 was because their fixed rate had ended in 2019. It wasn't because they had mortgage arrears, for example, and I see no other particular reason why they might not have met the criteria Kensington has told us about. So I need to decide whether, in all the circumstances, this was a fair and reasonable basis on which to refuse them a new interest rate product.

In making my decision, I take account of relevant rules and guidance. That includes the rules of mortgage regulation, which are set out in the Financial Conduct Authority's Handbook, under MCOB, and available online.

MCOB 11.8.1 E is relevant here. It says that, where a customer is unable to take a new mortgage either with their existing lender or elsewhere:

"*the existing mortgage lender or home purchase provider should not (for example, by offering less favourable interest rates or other terms) take advantage of the customer's situation or treat the customer any less favourably than it would treat other customers with similar characteristics. To do so may be relied on as tending to show contravention of Principle 6 (Customers' interests).*"

MCOB 11.8.1 E is an evidential provision, rather than a rule. So conduct of the sort it describes might be unfair in some circumstances but not others. The provision is clearly intended to ensure that borrowers who can't shop around for a better deal aren't taken advantage of or treated less favourably than those who can.

Kensington says it wasn't offering new interest rate products to any existing customers who hadn't been invited to apply. So it treated Mr and Mrs D the same as all its other customers who were in their position – that is, those were already on a variable rate, having come to the end of a fixed rate.

I don't consider this was a fair and reasonable approach for Kensington to have taken. MCOB 11.8.1 E is intended to ensure that customers who are similar aren't treated differently – and I don't think that whether a customer is approaching the end of a fixed interest rate or whether that initial rate has already ended is a characteristic of a customer on which it's reasonable to rely in deciding which customers will be offered another preferential rate.

While I understand the point Kensington has made about resourcing, I consider it unfair that this meant Mr and Mrs D have been disadvantaged – and treated less favourably than other customers with similar characteristics – as a result of the way in which Kensington chose to address its resourcing problems. Mr and Mrs D weren't offered a new interest rate product when they asked because they were already on a variable rate, whereas a customer who was about to move onto a variable rate and was otherwise similar would have been offered a rate. In all the circumstances, I don't consider this was fair or reasonable.

Putting things right

I'm satisfied from Kensington's records that Mr and Mrs D's first request for a new interest rate product was in mid-April 2021, not June as our Investigator had understood. So, to put things right, I find that Kensington should put Mr and Mrs D in the position they would have been in, had it offered them a rate when they asked in April 2021. Allowing time for an application to be made and processed, it should re-work their mortgage as if a new interest rate product had been in place from 1 June 2021.

Kensington should provide a list of the rates it had available on 13 April 2021 in response to this provisional decision.

I propose to require Kensington to re-calculate Mr and Mrs D's mortgage on the basis of the lowest of the available rates they would have been able to apply for on 13 April 2021, setting aside Kensington's requirement that they were on a fixed or discounted rate which was coming to an end, treating payments they have made on the higher variable rate as overpayments.

Kensington should then give Mr and Mrs D the choice of:

- having the overpayments they've made refunded to them, plus interest at an annual rate of 8% simple from the date of each payment to the date of refund, or

- having the overpayments treated as such and reducing the mortgage balance – and therefore the interest in later months – accordingly.

I also propose to require Kensington to pay Mr and Mrs D £300 by way of compensation, to reflect their inconvenience in having had to make multiple enquiries about a new rate and be turned away, the pressure of having had to make higher mortgage payments on the variable rate for longer than they should, and the stress and upset they've been caused.

If 8% interest is payable as set out above, Kensington can deduct income tax from it as required by HMRC. But it should tell Mr and Mrs D what it has deducted, so they can reclaim the tax from HMRC if they're entitled to do so.

My provisional decision

My provisional decision is to uphold this complaint and to require Kensington Mortgage Company Limited to put things right as set out above. I direct it to provide the list of rates available to existing customers as at 13 April 2021 when it replies to this provisional decision. If it doesn't do so, I will instead direct it to re-work Mr and Mrs D's mortgage on the basis of the lowest available fixed rate for new customers as listed in Moneyfacts at the relevant time."

I invited Mr and Mrs D and Kensington to provide any final submissions they wanted me to consider.

Mr and Mrs D were happy with my proposed resolution and had no more to add. Kensington said it was disappointed with my provisional decision but it had no further information to submit.

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.

Mr and Mrs D are happy with the outcome I proposed in my provisional decision and, while Kensington is disappointed, it hasn't added anything further for me to consider. I therefore see no reason to depart from my provisional conclusions.

Kensington hasn't provided details of the rates it had available to existing customers in April 2021. I said in my provisional decision that if it didn't provide this information, I would require it to re-work Mr and Mrs D's mortgage on the basis of the lowest available fixed rate for new customers as listed in Moneyfacts at the relevant time.

I have therefore looked at the fixed interest rate products listed for Kensington in the May 2021 issue of Moneyfacts, which is based on data for the preceding month, April 2021, which is when Mr and Mrs D asked for a new product. I have also considered Mr and Mrs D's mortgage balance (around £306,000) and their likely loan-to-value ratio (around 60%, based on the 2017 valuation of their property and an online property price calculator) at the relevant time.

The lowest fixed rate listed for Kensington based on those criteria at that time was 1.99% fixed for two years, with a product fee of £1,999. The lowest fixed rate listed for Kensington based on those criteria without a product fee was 3.74%, also for two years.

In all the circumstances, and given that Kensington hasn't complied with my direction that it provide details of its product offerings, I consider the fairest approach is for Mr and Mrs D to have the choice of either of these products: a two-year fixed rate of 1.99% with a fee of £1,999, which they can add to the mortgage backdated to 1 June 2021 and which will be interest-bearing from that date, or which they can pay directly to Kensington, or which they can offset against the refund of their overpayments; or they can choose a two-year fixed rate of 3.74% with no fee. In either case, the two-year fixed-rate product should take effect from 1 June 2021.

That two-year rate will recently have ended. Kensington has had new interest rate products available to existing customers in Mr and Mrs D's position since February 2022, so Mr and Mrs D should be able to discuss their options with Kensington if they wish to take a further fixed rate product.

Putting things right

Kensington Mortgage Company Limited must re-work Mr and Mrs D's mortgage as if a new interest rate product had been in place from 1 June 2021. It must do so on the basis of whichever of the following two options Mr and Mrs D choose – either:

- the two-year fixed rate product of 1.99% with a fee of £1,999, which was available in April 2021. Mr and Mrs D can choose to add the product fee to the mortgage, backdated to 1 June 2021, or pay the product fee directly to Kensington, or offset the product fee against the refund of their overpayments; or

- the two-year fixed rate product of 3.74% with no product fee which was available in April 2021.

Payments Mr and Mrs D have made on the higher variable rate should be treated as overpayments.

Kensington must then give Mr and Mrs D the choice of:

- having the overpayments they've made refunded to them, plus interest at an annual rate of 8% simple from the date of each payment to the date of refund, or

- having the overpayments treated as such and reducing the mortgage balance – and therefore the interest in later months – accordingly.

Kensington must also pay Mr and Mrs D £300 by way of compensation, to reflect their inconvenience in having had to make multiple enquiries about a new rate and be turned away, the pressure of having had to make higher mortgage payments on the variable rate for longer than they should, and the stress and upset they've been caused.

If Kensington doesn't pay the compensation award of £300 within 28 days of the date we notify it that Mr and Mrs D have accepted this final decision, it must pay them interest on this sum at an annual rate of 8% simple from the date we notify it of Mr and Mrs D's acceptance to the date of payment.

If 8% interest is payable as set out above, Kensington can deduct income tax from it as required by HMRC. But it should tell Mr and Mrs D what it has deducted, so they can reclaim the tax from HMRC if they're entitled to do so.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 24 August 2023.

Janet Millington
Ombudsman