

## **The complaint**

Mr and Mrs D's complaint is about a second charge loan they had with Kensington Mortgage Company Limited. They are unhappy that the amount they were paying was insufficient to repay the loan by the end of the term and questioned that Kensington had refunded them £4,000 when they were in arrears.

In settlement of the complaint Mr and Mrs D want to continue paying on a monthly basis what they had been, but for the debt to be cleared by the end of the term.

While Kensington did not own the loan for the entire period the issues being complained about existed, it has accepted liability for the whole of that period.

## **What happened**

In 2004 Mr and Mrs D took out a second charge loan with 'the original lender'. The loan was for £28,000 including a PPI premium, which was repayable over 20 years. The initial interest was 9% (variable) and the monthly payment £251.92.

In 2006 the loan was sold to a second lender. Mr and Mrs D didn't maintain the payments to the loan from 2009 and it fell into arrears. This meant fees and additional interest were added to the debt.

Mr and Mrs D were told in 2011 about there being an expected shortfall in payments at the end of the term due to this balance and the outstanding arrears. They were given the option to alter their monthly payment to ensure the whole amount owed was repaid by the end of the term. They didn't respond to the letter and their monthly payment remained the same.

Subsequently, when they were able to, Mr and Mrs D made higher monthly payments and additional ad-hoc payments in order to reduce the arrears. In the spring of 2016, they cleared the arrears and returned to paying just the amount of the contractual monthly payment, which at that time was just under £270. However, a small amount of arrears built on the account, and again they made additional payments when they could in order to reduce them.

At the beginning of November 2018 Mr and Mrs D again cleared the arrears. Mrs D spoke to the second lender about the balance of the loan at that time. She questioned why it was so high and was told about the fees and additional interest balance. She was told they wouldn't be chased for this balance to be paid as they had been the arrears, but Mrs D said they wanted to pay it. She was transferred to the relevant team to discuss making payments to this balance. I am unaware of the details of this conversation, but the monthly payment was not increased at that time. The loan was again in arrears a few months later and towards the end of the following year Mr and Mrs D started making additional payments to clear the arrears.

Mr and Mrs D cleared the arrears on the account again in January 2020. Their regular monthly payment amount remained the same thereafter, which was the amount of the contractual payment.

The loan was transferred to Kensington in April 2020. It has confirmed that a review was underway at that time, which was looking into the handling of the payment of the additional amounts owed by borrowers who had experienced financial difficulties. It has confirmed that the review was delayed due to resourcing needing to be redeployed during the Covid-19 pandemic.

Mr and Mrs D made some additional payments in November 2020, which would have reduced the fees and additional interest balance, but none thereafter.

In August 2022 Kensington completed the review and concluded more could have been done in 2011 to make Mr and Mrs D aware of the need to increase their monthly payments. As such, Kensington wrote off the amount of the additional balance as at 2011 – just over £4,000 and approximately a quarter of the total amount owed. It did not highlight this in its subsequent letter, but it would have been detailed on Mr and Mrs D's annual statement.

Kensington then wrote to Mr and Mrs D, setting out the new balance of just over £12,000 and told them their monthly payment was not sufficient to clear that amount by the end of the term. It asked them to complete an income and expenditure form so that it could assess what they could afford to pay toward the loan. They didn't respond. Kensington has confirmed that the recalculated monthly payment at this point was just under £460, around £190 more than Mr and Mrs D were paying at that time.

The loan was transferred to a fourth lender on 18 February 2023. That lender calculated how much Mr and Mrs D would need to pay each month to clear the balance of the loan by the end of the term. This involved a greatly increased monthly payment.

Mr and Mrs D complained to the new lender, which forwarded the complaint to Kensington. After some discussion between the lenders, Kensington confirmed to us that it was responsible for the complaint. However, by this point the complaint was with us, and so Kensington set out its position to us.

Kensington highlighted that Mr and Mrs D were written to by the previous lender in July 2011 and would have been aware at that time that a shortfall was expected due to historical fees and interest (caused by arrears) that had been applied to the account. They were then given two options; to increase their payments to deal with the situation or to leave payments as they were. Mr and Mrs D hadn't responded.

In addition, Kensington confirmed that following the account being transferred to it, it had again written to Mr and Mrs D explaining that the monthly instalment would need to be increased to clear the entire balance by the end of the term. Kensington asked Mr and Mrs D for information about their financial situation so that it could assess what was affordable to them going forward. Mr and Mrs D did not respond to this letter either. As Kensington had reduced both the balance of the loan and the interest rate payable it considered it had treated Mr and Mrs D fairly and that the complaint should be rejected.

One of our Investigators considered the complaint and recommended it be upheld. He considered that once the arrears were cleared in 2020 Kensington should have continued working with Mr and Mrs D to ensure repayment of the additional interest and fees balance. This would have meant the monthly increase needed would have been less than that required when the payment was reviewed in 2023. In addition, had Mr and Mrs D's situation been assessed at that time, the Investigator considered Kensington may have been able to put in place forbearance measures that would have enabled them to pay the loan off by the end of the term.

As for the letter Kensington sent Mr and Mrs D in August 2022, the Investigator considered it was not sufficient to address the impact the arrears had made to the total amount that still needed to be paid before the end of the term. He considered reducing the balance was a reasonable step for Kensington to have taken at that time, but he thought more should have been done, and that one letter after eleven years of nothing being done was not sufficient.

The Investigator recommended that Kensington calculate as at January 2020, when the arrears were paid off, what Mr and Mrs D would have needed to pay going forward to clear the loan by the end of the term. Once this had been done, Kensington should liaise with the current lender to reduce the balance of the loan to what it would have been had the higher payments been made from February 2020 to the point of the transfer to the new lender on 18 February 2023. In addition, he considered Kensington should pay Mr and Mrs D £200 for the impact the lack of service had on them.

Mr and Mrs D thanked the Investigator for his view of the complaint. They also said they didn't receive Kensington's letter of August 2022.

Kensington didn't accept the Investigator's view. It confirmed the contractual payments were only reviewed when the interest rate was changed, which had not happened for many years. As such, from 2019 the previous lender and then Kensington had been reviewing the situation for affected customers. It reiterated its comments about the review process and what it had decided should be done to compensate affected borrowers. It explained that for borrowers where the increase needed to the monthly payment was more than £60, it didn't automatically increase the monthly payments, given the impact of the pandemic and the rising cost of living. As such Kensington wrote to the affected borrowers in order to review their situation to ensure they could afford the increase. Unfortunately, Mr and Mrs D hadn't engaged with the process.

As agreement couldn't be reached, it was decided the complaint should be referred to an Ombudsman for review. I reviewed the complaint and issued a provisional decision on 5 January 2024, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

*'Kensington has concluded that not enough was done by it and the previous lender to highlight to Mr and Mrs D they needed to make payments toward the fees and additional interest balance in order to clear the debt by the end of the term. I would not disagree with that conclusion and so some redress is appropriate in the circumstances. The question for me to consider is what that redress should be.'*

*It is clear that Mr and Mrs D had conversations with the previous lender about repaying the arrears and paid what they could when they could in order to do so. Although the lender didn't proactively chase the fees and additional interest balance being paid, Mr and Mrs D were clearly aware of its existence. I say this as Mrs D made enquiries about it, was made aware that additional payments were needed to clear it and expressed the desire to do so. A formal payment arrangement was not put in place for this balance, rather Mr and Mrs D would make additional payments when they could. It is unfortunate that they were not able to do so as often as was needed, but I can only find they knew by 2018 at the latest about the loan balance and that the amount they were paying was insufficient to clear the total amount owed by the end of the term.*

*It was then around two and a half years later that Kensington sent Mr and Mrs D a reminder of the total amount owed and that they needed to pay more than they were in order to clear the loan by the end of the term. Given the amount of the increase to the monthly payments needed to do so, Kensington decided it was not appropriate for it to simply apply the change in case it would cause Mr and Mrs D financial difficulties. It instead asked them to speak to it,*

*so that it could assess what they could afford and what it could do for them, but they didn't respond. Given Mr and Mrs D's previous difficulties in paying the loan, I don't consider this was an inappropriate approach from Kensington. However, the fact that it did not chase Mr and Mrs D when no response was received is disappointing.*

*While I note that Mr and Mrs D have recently said they didn't get the August 2022 letter, I have examined it and it was sent to the correct address. Although some letters do go missing in the post, the majority that are correctly addressed are received at their destination. As such, it is likely the letter was correctly delivered, although I can understand after many years of receiving correspondence about the arrears on the account, Mr and Mrs D may not have realised its importance or were not in a position to make additional payments and so chose not to respond.*

*Overall, I am satisfied that despite the lenders' failings in communication about the additional outstanding balance, Mr and Mrs D were aware this balance existed for some years before they were in a position to make payments towards it. They were also aware that they needed to make such payments. So while Kensington didn't remind them for more than two years after they had cleared the arrears on the account in 2020, I don't consider this made a material difference to the situation. Mr and Mrs D clearly knew what they needed to do and did so when they were able, but were not able as often as necessary.*

*To compensate Mr and Mrs D for the poor communications, Kensington reduced the balance of the loan by around a quarter and also reduced the interest rate to 8%. While it is possible that if Mr and Mrs D had engaged with Kensington following repaying the arrears in 2020, some other arrangement might have been agreed. However, as they didn't do so, I can't find that the redress Kensington has already applied is insufficient or that it needs to do more in the circumstances of this case.'*

Kensington confirmed that it accepted my provisional decision.

Mr and Mrs D didn't accept my provisional decision. They said they had not believed Kensington had inappropriately refunded money to their account, and had assumed that was an adjustment they were entitled to, similar to when they had received a refund of fees. They now believe the payment was to compensate them for Kensington's mistake in not ensuring the loan was repaid within the term.

Mrs D remembers calling Kensington at one point having logged into the portal through which she made payments, to question why fees of £1,000 were recorded as arrears, as she was aware they should not be. She said there was no information about a shortfall being likely at the end of the term. She believes this is the telephone call I referenced from November 2018 and disagreed that there had been any discussions about making payments toward the fees and additional interest balance. Mr and Mrs D maintained that they have never known about the fees and additional interest balance. They repeated that they had not received the 2022 letter from Kensington (possibly because of the postal strikes that happened around the time) and confirmed they had no recollection of receiving the 2011 letter either.

### **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.

Mrs D has questioned the content of the conversation in November 2018. The value of contemporaneous documentation and records is that they should reflect what was said at the time it was said. They are not fool proof of course; it is always possible that information

has been recorded incorrectly. However, it is typically more reliable than people's individual recollections at a distance of time, which although given in good faith, can sometimes be inaccurate or contradictory. So unless there is a compelling reason to believe the information is inaccurate, we will generally attach some weight to it.

In this case the notes from the discussion show that Mrs D had questioned the total amount owing on the loan and was told about the fees and additional interest balance. It is also clearly documented that she wanted to make payments to the balance, which is the only reason she would have been transferred to the collections team, as the arrears balance had been repaid at that point. As such, I remain satisfied that Mr and Mrs D were aware at least as far back as November 2018 that there was an additional balance on their account that they needed to make payments to, and this is supported by the additional ad-hoc payments they made in 2020.

As for whether Mr and Mrs D received the letters of 2011 and 2022, I addressed this in my provisional decision. Nothing that has been said has altered my conclusions in this regard. While there were postal strikes in 2022, that would simply mean there was the potential for delays to post being delivered, not that a correctly addressed letter was more likely to go missing.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs D to accept or reject my decision before 19 February 2024.

Derry Baxter  
**Ombudsman**