

The complaint

Mr and Mrs H complain that Kensington Mortgage Company Limited has incorrectly recorded adverse information on their credit files – and sold their mortgage to another lender even though it had been repaid.

What happened

Mr and Mrs H had a mortgage with Kensington, which they've repaid. But when they applied for a new mortgage, they found out Kensington had recorded missed payments against the mortgage. Mr and Mrs H consider that was wrong as they'd agreed a payment deferral or "holiday" with Kensington.

Once Mr and Mrs H repaid their mortgage in full, they said Kensington had then sold the mortgage to another lender, who has recorded adverse information.

Kensington said it had agreed a payment deferral with Mr and Mrs H – but it had ended up giving them a deferral for 12 months. During that time it did not record any missed payments on their credit files. Kensington said it wrote to Mr and Mrs H and attempted to contact them by phone when the deferral ended. But as no payments were received, it correctly recorded the missed payments on Mr and Mrs H's credit files.

The investigator did not think the complaint should be upheld.

Mr and Mrs H did not accept what the investigator said. They made a number of points, including:

- They were engaging with Kensington throughout the time in question.
- They repaid the mortgage, but Kensington then sold the mortgage to another lender who said there was a balance remaining. There was no mortgage to transfer, so Kensington had breached data protection rules.
- Kensington never supplied the full breakdown they'd asked for on several occasions and refused to deal with them.

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.

Credit files

During the Covid pandemic, the financial services regulator, the FCA, issued guidance to mortgage lenders about the measures they should take to help borrowers who were struggling to pay their mortgage. That included payment deferrals, where no payments were required for up to six months. The deferrals should not negatively impact a borrower's credit file.

In this case, Kensington has effectively given Mr and Mrs H a 12 month payment deferral. It's not clear why it did that. But I can't see that it has caused Mr and Mrs H any detriment. Kensington did not record any missed payments or adverse information on Mr and Mrs H's credit files while the deferral was in place.

Kensington has given us evidence that it wrote to Mr and Mrs H in December 2020 to say that it needed to discuss the end of the payment deferral. It wrote again in February 2021, to say it urgently needed to discuss the end of the deferral with Mr and Mrs H as they'd reached the maximum length of time for a deferral – but if it did not hear from them it would restart payments. Kensington also attempted to call Mr and Mrs H during that time.

There is no evidence that Kensington ever told Mr and Mrs H that it would give them a payment deferral for this length of time. And they had a contractual requirement to make payments.

I am satisfied that Kensington took reasonable steps to tell Mr and Mrs H that the deferral was going to end and that they needed to make payments to the mortgage. But the evidence I have shows that Mr and Mrs H did not make any payments from May until August 2021. So it is entitled to reflect that payments due were not received on Mr and Mrs H's credit file.

Account transfer

Under the terms and conditions of the account, Kensington was entitled to transfer the mortgage to a new lender.

In this case, the process of transferring Mr and Mrs H's mortgage to a new lender (along with a large number of other borrowers) took place in February 2022.

Kensington said it took five days for the payments Mr and Mrs H made to repay the mortgage on 13 February 2022 to be applied to the mortgage. So both the letter saying the mortgage had been repaid and the letter saying that the mortgage had been transferred were sent on the same day.

I accept that the terms and conditions allowed Kensington to transfer any right, obligations, debts or security. But, at the time of the transfer there was no mortgage, debt or security as the mortgage had been repaid. So it's not clear that Kensington had the right to transfer the mortgage in this scenario.

The timing here was clearly unfortunate - the transfer had been started while Mr and Mrs H were in the process of repaying their mortgage. There may have been little Kensington could do to stop it going ahead. But I consider it would have been reasonable for it to take steps to deal with this issue. It is not fair for Mr and Mrs H's data to be transferred to a third party, when there was no contractual right for Kensington to do so and where Mr and Mrs H had not consented to that.

At my suggestion Kensington agreed to:

- Write to the new lender, explain what happened and ask it to remove any data it holds for Mr and Mrs H.
- Pay Mr and Mrs H £200 for the upset and confusion caused by their detail being transferred to a third party and how it dealt with his matter.

When I put that offer to Mr and Mrs H they said they thought Kensington should pay them £500. But looking at how we make awards for distress and inconvenience, what Mr and Mrs H have said about the impact of this matter on them and how long it went on for, I consider that £200 is fair in all the circumstances.

I understand that Kensington is processing a data subject access request for Mr and Mrs H – if not then it should tell them what they need to do to arrange that and/or to obtain the breakdown of the mortgage.

My final decision

My final decision is that Kensington Mortgage Company Limited should:

- Pay Mr and Mrs H £200.

- Write to the new lender, explain what happened and ask it to remove any data it holds for Mr and Mrs H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr J to accept or reject my decision before 18 April 2024.

Ken Rose
Ombudsman