

The complaint

Mr and Mrs W's complaint is about their mortgage with Kensington Mortgage Company Limited. Mr and Mrs W say that they have been unable to access a new interest rate, and believe they've been treated unfairly compared with other customers in a similar position.

Mr and Mrs W are represented by their mortgage broker in bringing the complaint, but for clarity, I will refer to Mr and Mrs W throughout.

What happened

I won't set out the full background to the complaint. Our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs W being identified.

In his letter of 5 June 2024 the Investigator set out the background of what led to the complaint being brought to our service.

Mr and Mrs W initially took out their mortgage in 2008 with GE Money. This was for a loan amount of £243,180 plus £1,795 of fees. The mortgage is on an interest only basis and has a term of 23 years. The initial interest rate Mr and Mrs W agreed was a two-year fixed rate of 8.49%. Following this, the mortgage reverted to a variable rate which is 3.44% above the base rate.

In November 2015, Mr and Mrs W's mortgage was transferred from GE Money to Kensington. Mr and Mrs W contacted Kensington in November 2021 to enquire about converting their mortgage onto a repayment basis. An initial assessment was carried out and ultimately Kensington declined this due to the outstanding fees balance on the account. Mr and Mrs W's broker contacted Kensington on 21 March 2024 to enquire about them accessing a new interest rate product. Kensington explained as the mortgage is an ex-GE Money mortgage, Mr and Mrs W cannot access a new interest rate product. Following this a complaint was raised.

Kensington issued a final response letter on 11 April 2024. Within this they stated when Mr and Mrs W's mortgage transferred from GE Money in 2015, it was part of a larger portfolio sale, and this meant the original terms would apply – which means a new product couldn't be accessed. Kensington did acknowledge Mr and Mrs W's account had been reviewed in line with their mortgage prisoner criteria – but their current rate was lower than the mortgage prisoner rate available.

Mr and Mrs W disagreed with this and referred the complaint to our service.

The Investigator noted that Mr and Mrs W had first requested a new interest rate in March 2024. He explained that we couldn't consider anything that happened more than six years prior to March 2024, as he was satisfied that Mr and Mrs W would have been aware of the interest rate they were on, and could have complained about it at the time if they were unhappy with it.

After looking at what happened after March 2018, the Investigator thought the complaint should be upheld. The Investigator noted all the reasons why Kensington said Mr and Mrs W weren't eligible for a new interest rate. Notwithstanding these, he didn't think Kensington had complied with its regulatory obligations or its duty to treat Mr and Mrs W fairly. The Investigator noted that Mr and Mrs W had a fees balance of about £1,100, which was one reason why Kensington said a new rate wouldn't be available to Mr and Mrs W. The Investigator thought that if Mr and Mrs W had been made aware that this would need to be repaid in order to access a new rate, they'd have repaid it, or it could have been capitalised.

The Investigator also noted Kensington's argument that the reversionary rate on a new product would be higher than the current rate they were on. But the Investigator thought this was something Mr and Mrs W could make their own decision on, as they could always opt for a new fixed rate before going onto the reversionary rate, subject to lending criteria.

The Investigator thought Kensington should do the following:

- provide Mr and Mrs W with details of interest rates available in March 2024;
- allow them to pick a new rate from those;
- where Mr and Mrs W have overpaid, give them the option either to use the overpayments to reduce the mortgage balance, or refund the overpayment to them with 8% simple interest per annum from the date of each payment until the date of refund;
- pay Mr and Mrs W £250 compensation for distress and inconvenience.

Kensington didn't accept this and asked for an Ombudsman to review the complaint. It's reiterated all the previous arguments it's made about why Mr and Mrs W aren't eligible for a new interest rate product.

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.

It's correct that there's no obligation on lenders to offer new interest rates to their customers. A lender might legitimately choose not to offer rates to any customers. And where it does offer rates, it's fair and reasonable – and standard practice in the mortgage industry – for a lender to have eligibility criteria. These criteria might mean that not all borrowers are offered the same rate, or that some are not offered a rate at all, based on matters such as loan-to-value ratio (LTV) and arrears history.

In this case, Kensington has given various different reasons for refusing Mr and Mrs W a new interest rate, as I have summarised above. Kensington initially refused Mr and Mrs W a new rate because their mortgage originated with GE Money, and it said that under GE Money's terms and conditions it wasn't obliged to offer new interest rate products. Mortgage terms and conditions don't generally require the lender, or its successors, to offer new interest rate products – but they don't prohibit new products being offered either, and the terms of Mr and Mrs W's mortgage are no exception.

I'm also not persuaded that the real reason Kensington wouldn't offer a new product on Mr and Mrs W's mortgage was because of what the terms and conditions said. I think it was because theirs was originally a GE Money mortgage and, as part of its business model, Kensington securitises its mortgages. This means it offers the beneficial interest in groups of loans to third party investors to raise funds for its ongoing mortgage business. This is a normal and legitimate feature of the mortgage industry, and it's not inherently unfair that Kensington operates its business in this way.

However, Mr and Mrs W had no choice in the securitisation of their mortgage, but as a result of this, they are left in a worse position than Kensington's customers in the same situation whose mortgages have not been securitised. That is unfair, given that the decision to securitise Mr and Mrs W's mortgage is not something over which Mr and Mrs W had any control and isn't something they're able to change.

The Financial Ombudsman Service has in other cases taken the view that it's unfair for borrowers to be refused a new rate because of this, where the borrower can't move their mortgage to another lender or shop around for a better rate. I think Mr and Mrs W are likely to be in that position: they have an interest-only mortgage, and Mr and Mrs W's broker has been unable to source a mortgage with another lender due to their age, the fact this is an interest-only mortgage, and because of affordability.

So if Kensington were to say that Mr and Mrs W must remain on their current mortgage deal, because of the way it has chosen to securitise this mortgage, and that in turn was based on when and how they took their mortgage out around 17 years before Mr and Mrs W asked about a new rate in 2024, I would, in all the circumstances, consider this not to be a fair or reasonable basis on which to refuse them a new interest rate. That is because refusing a new rate for this reason wouldn't be because of current characteristics of Mr and Mrs W or their mortgage – such as LTV, affordability, or their wider credit risk.

The rules of mortgage regulation, which are found in the Financial Conduct Authority (FCA) Handbook under the heading MCOB, are relevant here.

In particular, MCOB 11.8.1 E (the E means it's an evidential provision, not a rule) says that where a borrower is unable to move their mortgage to a new lender (as Mr and Mrs W were), their existing lender:

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 (Customer's interests).

Principle 6 is another part of the FCA Handbook, and says that a firm:

must pay due regard to the interests of its customers and treat them fairly.

As I've already said, securitisation is not an unusual business model and not inherently unfair. However, this is not something Mr and Mrs W were aware of or had any control over. And I don't think it can be said to amount to a characteristic of them or their mortgage – it's something done to their mortgage by Kensington.

I don't therefore consider that Kensington's choice to manage its business in this way is a relevant consideration for the purposes of the comparison envisaged by MCOB 11.8.1 E. It's a matter for Kensington's commercial judgement how it chooses to structure its business. But if – as I think is the case here – that results in unfairness in an individual case, that's a matter for me.

In my view, what's relevant is whether, when Mr and Mrs W asked for a new rate, they had similar characteristics to other borrowers who would be eligible for a new interest rate – and whether, if they did, refusing them a rate would tend to show unfairness of the sort envisaged by MCOB 11.8.1 E.

Kensington has argued Mr and Mrs W have been treated fairly:

“as their account has been reviewed in the same way as all our other customers. To explain further, for mortgages that didn’t originate with Kensington and for those where the reversionary rate was higher on a new mortgage product, the customer would not be offered a new fixed rate. This is because those who took out their mortgage originally with GE Money and were on a variable rate had a lower reversionary variable rate on any potential new products.”

That does not seem to me to be a valid reason for failing to offer a new rate. It’s something Mr and Mrs W can take into consideration and factor into their decision on whether or not to take out a new interest rate product. I think it’s likely that at the end of any fixed rate period Mr and Mrs W would decide to apply for another product switch, rather than revert to the reversionary rate, so whether Kensington’s reversionary rate is higher or lower than GE Money’s is something of a moot point.

I acknowledge the mortgage has fallen into arrears, but these are modest, amounting to approximately one monthly repayment. Mr and Mrs W have explained the arrears arose both because of the strain put on their finances during the Covid-19 pandemic, and because they are paying a very high reversionary rate. I have no doubt that this has put a strain on their finances.

I’m satisfied that if Kensington had treated Mr and Mrs W fairly when they asked for a new rate in March 2024, they would then have been able to decide whether to take a rate at that time, and if so, which one. In the circumstances, I think they are very likely to have chosen to take a fixed rate in March 2024, both to reduce their interest rate and to protect them against potential future interest rate rises. I think fairness dictates that they should have the opportunity to do that. I don’t find the various reasons Kensington have given for refusing a fixed rate show that Mr and Mrs W have been treated fairly.

Mr and Mrs W’s broker says that a rate of 5.49% was available to other Kensington borrowers in March 2024. This would have given Mr and Mrs W monthly repayments of about £1,135 rather than the monthly repayments they are currently paying of almost £1,900 per month, a quite substantial difference. I therefore find that Mr and Mrs W should fairly have had the opportunity to take one of the fixed interest rate products Kensington had available in March 2024, if they wish to do so, subject to relevant LTV criteria. I understand Mr and Mrs W’s mortgage broker can advise them about this.

In relation to the fees balance and arrears (which are less than one month’s mortgage payment), as I have stated, I don’t think it’s fair that these should be a barrier to a new rate. If Mr and Mrs W had been allowed to take the rate their broker sourced in March 2024, their monthly repayment would have been significantly less. They’ve therefore overpaid, and so I think it’s reasonable that any overpayments are applied towards the arrears and fee balance.

I also note that regulations that came into effect on 4 November 2024 – specifically the provisions of MCOB 13.3 – require Kensington to give consideration to capitalisation of payment shortfalls. I’m not sure whether this would be the best option for Mr and Mrs W, particularly if any overpayments would be enough to repay the arrears and fees balances in full.

That’s because capitalisation increases the account balance and, in turn, the monthly repayment. Mr and Mrs W will need to discuss this with their mortgage broker and be given advice on whether or not capitalisation would be considered to be in their best interests.

I'm satisfied that Mr and Mrs W have been caused upset and distress by Kensington's refusal to allow them to take a new rate, for which a payment of compensation is appropriate. I think a payment of £250 is fair, reasonable and proportionate.

Putting things right

To put things right Kensington Mortgage Company Limited must do the following:

- provide Mr and Mrs W (through their mortgage broker) with details of interest rates that would have been available to them in March 2024;
- allow them to pick a new rate from those and apply it to the account from March 2024, reworking the account accordingly;
- where Mr and Mrs W have overpaid, give them the option either to use the overpayments to pay off the arrears and fees balance, with any surplus used to reduce the mortgage balance or refund the surplus (after paying off the arrears and fees balance) with 8% simple interest* per annum from the date of each payment until the date of refund;
- alternatively Mr and Mrs W should be given the option, if advised by their own independent financial adviser that it is in their best interests to do so, to capitalise the arrears and fees balances;
- pay Mr and Mrs W £250 compensation for distress and inconvenience.

* If Kensington considers that it is required by HM Revenue & Customs to deduct income tax from any interest, it should tell Mr and Mrs W how much it has taken off. Kensington should also give Mr and Mrs W a tax deduction certificate if requested, so the tax can be reclaimed from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold the complaint. I direct Kensington Mortgage Company Limited to settle the complaint as detailed above.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 4 December 2024.

Jan O'Leary
Ombudsman