

The complaint

Mr B complains that his mortgage with Kensington Mortgage Company Limited was mis-sold. He also complains about action Kensington has taken since the mortgage fell into arrears. He doesn't believe the arrears were due and says that payments made towards the arrears should be refunded to him. He says that Kensington hasn't treated him fairly taking account of his personal circumstances and vulnerabilities.

What happened

Mr B had a mortgage with Kensington – very recently, while this complaint has been in progress, Mr B has redeemed it and moved to another lender.

The mortgage was taken out in 2003 on interest only terms with another lender, and later transferred to Kensington. The mortgage offer says that interest is charged at a fixed rate of 5.5% for the first month, followed by an interest rate which tracks the Barclays Bank base rate with a margin of 1.75%. In practice, the Barclays base rate is the same as the Bank of England base rate. Mr B says that it ought to have been a repayment mortgage, and it ought to have had payment protection insurance (PPI) in place alongside it – for those reasons, it was mis-sold.

Mr B fell into arrears soon after the mortgage was taken out, and in 2005 the previous lender was granted a possession order, though the order wasn't enforced at the time. In recent years, the mortgage has again been in arrears. In 2019, Kensington returned to court and was given permission to enforce the 2005 possession order. Since then, it has considered returning to court to enforce the order and apply for a warrant of possession several times.

Mr B has made several complaints to Kensington, one of which was referred to us in August 2021. Kensington returned to court, which resulted in a consent order in October 2021. The consent order provided that the proceedings be adjourned to allow us to investigate a complaint.

Further court action was taken in 2022, but Kensington agreed not to go ahead because of Mr B's personal circumstances. As the mortgage continued in arrears, Kensington re-started legal action in 2024, following which Mr B brought this complaint. Separately, he has also since repaid the arrears and moved his mortgage to a new lender.

Mr B says that the consent order in 2021 provided that he and Kensington should work together to resolve the issues that had arisen with his mortgage, and that if that wasn't successful it should be reviewed by the Financial Ombudsman Service. He says that Kensington didn't comply with the order or seek to work with him to resolve his mortgage situation. Mr B says he regularly contacted Kensington without success. He says that he was told his complaint was being dealt with and that he shouldn't worry that the balance was increasing because an adjustment would be made once the complaint had been resolved. But instead Kensington said the balance and arrears were increasing and it would take further legal action. Mr B says that his mortgage balance increased by around £25,000 as a result. He made that payment to clear the arrears and avoid repossession, but doesn't consider that was fair and wants it refunded to him.

Kensington said that much of Mr B's complaint was out of time, and we could only consider whether it had acted fairly in charging interest and treating Mr B as being in arrears while his complaints were ongoing, and whether it had complied with the 2021 consent order.

Our investigator agreed that we could only consider part of Mr B's complaint, and she didn't think it should be upheld. Mr B asked for an ombudsman to review his complaint. I've separately issued a decision setting out what parts of Mr B's complaint I can consider; what follows is my decision on the merits of that part of the complaint.

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.

Having done so, I'm satisfied I have all the evidence I need to decide this complaint and I don't require further evidence from either party. I explained in my jurisdiction decision that I would only consider the following matters:

- Whether Kensington complied with the consent order issued in October 2021
- Whether it was fair for Kensington to charge interest, increase the mortgage balance, and treat Mr B as being in arrears, while his mortgage was in dispute.
- Whether Kensington ought to have released Mr B from the mortgage on compassionate grounds.

Mr B has been concerned about his mortgage for many years, and has raised a series of complaints with Kensington. I explained in my jurisdiction decision that we couldn't consider many of those complaints, because Mr B had referred them to us too late.

As well as making complaints, Mr B counter-claimed against Kensington when it took action to enforce the possession order. Mr B also referred a complaint to us about the sale of the mortgage and how it had been set up by the previous lender – that it ought to have been a repayment mortgage, not interest only.

He referred that complaint to us in August 2021. We logged the complaint on our system, and in August and again in September 2021 we told Mr B that we would need him to send a copy of the final response he had received from Kensington before we could progress his complaint. Mr B didn't respond or send us a copy of the final response, and did not contact us again until 2024. I said in my jurisdiction decision that because of that delay it wouldn't be appropriate for us to deal with that complaint now.

After the referral to us, Mr B and Kensington agreed between them that the legal proceedings should be adjourned for us to consider his complaint. In October 2021, a consent order was issued which said:

UPON the Defendant [Mr B] have indicated an intention to file a complaint with the Financial Ombudsman Service

AND UPON the parties have agreed that the Financial Ombudsman Service should have an opportunity to investigate the Defendant's complaint

BY CONSENT

IT IS ORDERED THAT

1. The hearing listed for 21 October 2021 at 11.00am be vacated;
2. The Defendant's application to set aside the Order granted by District Judge [name] on 3 October 2019 is adjourned to 4th March 2022...

The 2019 order was an order that Kensington was entitled to enforce the 2005 possession order.

Mr B says that Kensington failed to comply with the 2021 consent order. But I'm not persuaded of that. The consent order doesn't require Kensington to take any action. It simply says that the case is adjourned for at least six months so that Mr B could make a complaint to the Financial Ombudsman Service – in fact, he had already made a complaint but hadn't given us the information we needed to progress it. I don't agree with Mr B that this order required Kensington to investigate his mortgage and then refer it to us. The order says that Mr B had indicated he intended to make a complaint, so I don't think he was expecting Kensington to do so for him. It is for the complainant – Mr B, not Kensington – to make a complaint. In fact, at this time Mr B had already done so, we had told him what he needed to do next, and that didn't happen either before or after the court order. It's for the court to decide whether a party has breached a court order. But nothing I've seen leads me to conclude that Kensington failed to do what the court ordered.

Mr B also says that Kensington agreed that he and it would try to resolve the issues between them and then, if that was not possible, it would be referred to us to deal with. But I've not seen evidence of such an agreement. Kensington did issue a series of final responses to Mr B in the years between 2021 and 2024, but Mr B didn't refer any of them to us. As the final responses made clear, if he wanted us to investigate a complaint about Kensington it was up to him to ask us to do so – not up to Kensington.

I'm aware of the very difficult personal circumstances Mr B and his family have experienced and are experiencing. I hope they'll accept my condolences on their loss and my sympathy for all they have and gone through and are going through. But, as I explained in my jurisdiction decision, those circumstances didn't prevent Mr B referring complaints to us if he had wished to do so.

I'm not therefore persuaded that Kensington was in breach of the consent order, or any other agreement entered into with Mr B for the investigation of his complaint around the time of the consent order. It's clear that Mr B continues to be very unhappy with Kensington, and how it has managed his mortgage. But Kensington has investigated and responded to his complaints, as it is required to do, and if Mr B didn't agree with what it said he had the option to refer those complaints to us.

I also don't think it was unreasonable that Kensington continued to charge interest, and add unpaid interest to the mortgage balance, in the period between the consent order and when Mr B redeemed his mortgage. The mortgage balance remained outstanding, and interest was properly chargeable. The Department for Work and Pensions made some contributions, via benefits payments, until Mr B reached retirement age, but as interest rates started to rise the benefits payments didn't cover the full monthly payment.

DWP mortgage benefits – support for mortgage interest, or SMI – are paid based on a standard interest rate set by the government. If an individual mortgage interest rate is higher than the standard rate, the SMI payment will not be enough to cover the full mortgage interest and the borrower will need to make up the difference to avoid the mortgage going into arrears. But Mr B didn't do this, and he didn't make any payments himself after the SMI stopped either.

That means the mortgage was in arrears. In those circumstances, the mortgage balance will increase. Interest is being charged, and if the interest is not paid, the balance will go up. That's not unfair or unreasonable. I appreciate Mr B was very unhappy about his mortgage and what he saw as unfair treatment by Kensington, but I don't think that means it wasn't entitled to continue to charge him interest in line with the mortgage agreement or that doing so was unfair. This was money Mr B borrowed, and that he agreed to repay, subject to interest in the meantime. Even if Kensington had upheld his complaints, or if they could be considered by the Financial Ombudsman Service, that wouldn't change.

For the same reasons, it wasn't unreasonable for Kensington to treat Mr B's mortgage as being in arrears – these were payments he hadn't made. It follows that it wouldn't be fair to require Kensington to refund the £25,000 Mr B paid to clear the arrears shortly before he re-mortgaged. That was interest he had properly been charged and did owe – if he hadn't paid it before redemption, the redemption balance would have been that much higher.

I also don't think it would be fair and reasonable to expect Kensington to have released Mr B from the mortgage on compassionate grounds – even in his very difficult circumstances. He did borrow the money and agree to repay it, and Kensington is not responsible for his family situation. I don't think it would be fair and reasonable to expect Kensington to write off a substantial debt because of circumstances outside its control, which it did not contribute to.

I would expect it to take Mr B's circumstances and vulnerability into account when dealing with him, and when considering what action to take to deal with the arrears. I know he doesn't agree, but I think Kensington did that – despite many years of arrears, it agreed to stop legal action in 2021, it tried to work with Mr B after that, and it still hadn't enforced the possession order when Mr B redeemed the mortgage in 2024. I know Mr B has had a very difficult time, but Kensington isn't responsible for that, and it took his situation into account in the action it took as far as it could. I'm sorry to disappoint Mr B further, but I don't think I can fairly uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 April 2025.

Simon Pugh
Ombudsman