

The complaint

This complaint is about a mortgage Mr T holds with Kensington Mortgage Company Limited trading as Kensington Mortgages (KM).

In essence, the complaint comprises the following broad points:

1. The mortgage payment arrangement KM has put him on is unfair, as it's charging interest on interest; and
2. KM misled him and his broker about his eligibility for a new fixed rate deal.

What happened

By way of a provisional decision dated 16 December 2024, I set out my provisional conclusions on this complaint. The following is an extract from the provisional decision.

"The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat all the details here. Instead I'll give a brief summary, rounding the figures, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

The investigator explained that we wouldn't be able to look into every element of Mr T's complaint. We'd issued a decision in January 2024 on a previous complaint which covered COVID-19 payment holidays, a refusal to consider a switch to interest-only, and Mr T's previous requests for a new rate. On the latter issue, the investigator said we could look into Mr T's eligibility for a new rate since January 2024.

Separately, the investigator observed that Mr J had raised a further complaint with KM in May 2024, subsequent to this one, to do with litigation action in late 2022 and not being offered an interest-only concession. These issues don't form part of the current complaint, but could be part of a future one.

On point two of the complaint, the investigator agreed that KM had provided conflicting information about access to a new rate, for which, in itself, she considered KM's offer of £100 to be fair.

On point one of the complaint, the investigator considered the way interest is charged to be in accordance with the terms and conditions. But she also noted that Mr T's payment arrangement – which consisted of the contractual monthly payment plus an extra amount which, if maintained, would clear the arrears by term end – has the same effect as capitalisation. Mr T is maintaining the arrangement but because the arrears remain current, he is deemed ineligible for a new rate which would bring his contractual monthly payment down.

To resolve the complaint, the investigator said KM should retrospectively capitalise the arrears effective from 1 March 2024, the date at which Mr T had kept to the

arrangement for twelve months, and then invite Mr T to choose a fixed rate deal from those that would have been available on the same date, to be applied retrospectively.

KM rejected the investigator's recommendation and asked that he be referred to an ombudsman for review. Whilst the case has been awaiting allocation to an ombudsman, Mr T has informed us that due to his home needing urgent repairs, he's taken out a second charge loan of around £40,000. However, as a condition of consenting to the second charge KM insisted that the arrears (around £18,000 at the time) be cleared in full.

At my direction, the investigator made enquiries of both parties about this development, in order to help me judge how it might affect the settlement of the current complaint. At the time of writing, we've only heard from Mr T, but based on what he has told us, I'm satisfied I have enough information to proceed with a decision.

What I've provisionally found – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

First of all, although neither party had contested the time limits the investigator placed on our consideration of the complaint, we do review our jurisdiction to consider a complaint at every stage. Accordingly, albeit largely for completeness, I confirm that I agree with the investigator that our consideration of the complaint points should be confined to the two broad points I detailed in the introduction above.

It's normal for the total amount paid over the life of a long-term debt such as a mortgage to exceed the amount borrowed by a considerable margin. Additionally, in Mr T's case, the ongoing arrears will have resulted in more interest being charged than would otherwise have been charged, along with fees and charges to offset the additional administrative cost of managing the arrears.

I've looked at what KM has said in its email of 18 July 2024 about why it doesn't agree with the investigator's recommendation that the arrears be capitalised as at 1 March 2024.

The amount Mr T is required to pay under the arrangement at present is, to all intents and purposes, broadly the same amount he would pay, all other things being equal, if the arrears were capitalised. He's shown he's able to pay it, and whilst I see KM is seemingly concerned that he'd fall into arrears if the full amount wasn't received in any month, he was already in arrears when KM rejected the investigator's recommendation. Not only that, but the current arrangement also means that even if he pays every month in full on time without fail, Mr T will remain in arrears for the rest

of the life of the mortgage. He'll be subject to adverse credit reporting every month, and be excluded from any prospect of accessing a new interest rate.

By any reasonable assessment, that is not fair treatment. Capitalising with effect from 1 March 2024 would have removed the arrears, therefore reporting the mortgage as up to date would not be inaccurate, as KM has tried to argue. It would also have made Mr T legitimately eligible for a new rate. So although I said his monthly commitment would, all other things being equal, have been broadly the same, all things are not equal. In fact, this would be opening up an opportunity for Mr T to have a monthly payment that is lower than that which he has already demonstrated he can afford.

So it seems to me that the investigator's recommendation, which was presented in July 2024, was entirely fair, and KM should reasonably have recognised it as such. It's still fundamentally fair, but there's been a development since then, which in my view could have been avoided.

If the complaint had been settled on the terms I consider it should have been, and *when* I consider it should have been, then the mortgage would have been arrears free and Mr T would have already been paying less each month (by being on a better rate) when circumstances forced him to borrow money elsewhere to fund repairs to the house. Mr T would then have been able to do all of the repairs he needed to do instead of having to pay a lump sum to KM and only doing half of the repairs.

Even though Mr T now has the cost of the loan to factor into his monthly budget, I still consider the recommended settlement to be fair in the circumstances, because of the financial benefits it will give Mr T. However, the manner in which the settlement is implemented needs adjusting to take into account the lump sum Mr T paid to clear the arrears. That's because retrospectively capitalising the arrears as at a date that precedes the lump sum payment will convert that lump sum into an overpayment.

Mr T is entitled to choose how that overpayment should be treated. It can either be returned to him to make use of in completing repairs to his home. Alternatively, it can be treated as a part-redemption, permanently reducing the mortgage balance which will then further reduce the monthly payment. But he needs to keep in mind that, under the terms of the new fixed rate I'm proposing should be put in place, it's likely that a part-redemption would attract an early repayment charge. Nonetheless, Mr T should be allowed to choose, and to indicate his preference in his response to this decision."

I gave the parties until 6 January 2025 to add anything further before I finalised my decision. Mr T has done so; he's confirmed he accepts the proposed settlement and would like the overpayment resulting from the re-work to be returned to him. KM hasn't replied.

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 not persuaded to depart from my provisional decision.

My final decision

My final decision is that I uphold this complaint, and in full and final settlement, direct Accord Mortgages Limited to do the following:

- re-work Mr T's mortgage account from 1 March 2024 to the eventual date of settlement, to reflect how it would look if the arrears had been capitalised in full on 1 March 2024;
- amend Mr T's credit file to reflect how it would have been reported each month since March 2024 if the arrears had been capitalised on that date;
- refund the resulting overpayment to Mr T with interest at 8% simple per annum*, less the amount of mortgage interest he would have paid if the lump sum had not been paid, from the date he paid it to the date it is returned; and
- allow Mr T to select an interest rate product from those that would have been available on 1 March 2024, have it applied to the mortgage for the above re-work, and then pay redress comprising A+B where:
 - A. equals the extra interest Mr T has paid each month from 1 March 2024 up to the date of settlement by being on SVR instead of the new interest rate product; and
 - B. equals interest on each monthly differential amount identified in A, at 8% simple per annum* from the date each amount was paid by Mr T to the eventual date of settlement.

Lastly, KM must pay Mr T the compensation of £100 already offered for having given conflicting information.

*In the event KM consider it should deduct basic rate income tax from the interest elements of this award, it should also provide Mr T with the relevant tax certificate.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 February 2025.

Jeff Parrington

Ombudsman