

The complaint

Mr G and Miss W's complaint is about a second charge mortgage that Kensington Mortgage Company trading as Acenden administers on behalf of the lender. They don't feel that they were provided with the help they needed and asked for when they were in financial difficulties.

What happened

Mr G and Miss W took out the second charge mortgage on their home in 2006. They borrowed £45,000 over a term of 20 years. The interest rate at the time was 14.24%, but it was variable at 9.25% above the lender's base rate.

Mr G has explained that they did so to consolidate their business and planned to repay the mortgage over the following two years by selling rental properties they owned. Unfortunately, the rental properties didn't sell, and their business was adversely affected by the recession that hit in the late 2000s. This resulted in the other properties they owned being repossessed and they were left with only their residential property. The mortgage fell into arrears not long after it was advanced and in 2008 a suspended possession order was issued by the courts. Mr G and Miss W were allowed to retain the property if they paid an amount each month that was set by the court. The arrangement was not maintained for long and after September 2011 no further payments were made to the mortgage until 2020.

When the lender ceased to be authorised to conduct mortgage business, it placed the administration of the mortgage with a regulated administrator – Acenden.

From the point payments ceased to be made in 2011 Mr G and Miss W were sent documentation setting out the account status and notifying them of rate changes. However, there doesn't appear to have been any substantive correspondence or attempts to engage them until late 2016 and then it was an isolated event. It was not until 2018 that Acenden appears to have made any significant effort in this regard. By this time the arrears were approaching double the amount they initially borrowed.

In 2019 Acenden recommenced legal action due to the level of arrears and the lack of engagement from Mr G and Miss W. While there was a previous suspended possession order in place, due to the time that had elapsed since it had been granted, Acenden decided to start the process again. Mr G engaged more after that, but despite payment arrangements being agreed on more than one occasion, the situation with the mortgage did not move forward and the arrears continued to build.

A new suspended possession order was granted in September 2019. It required Mr G and Miss W to pay the monthly contractual payment plus an additional £935.36 if they wanted to keep the property. No payments were made and Acenden decided to apply for a warrant to take possession of the property. The warrant was issued, and an eviction date of 27 February 2020 was set. However, Mr G started to communicate with Acenden again and it cancelled the eviction. A new payment arrangement was agreed in the middle of February 2020 for a six-month period. Acenden received a payment in March 2020, but for

significantly less than the payment arrangement required to be paid. No further payments were made as Mr G was unable to work during the Covid-19 pandemic.

Acenden agreed payment holidays for the mortgage to cover August 2020 to January 2021. Payments were to start again in February 2021, but they did not. Assessments of Mr G's financial situation was made and payment arrangements agreed, but payments were not made. Acenden again decided to move to legal action and a complaint was made by Mr G.

Acenden responded to the complaint in a letter of 17 April 2024. It said that the balance of the account was correct, as interest was charged on the outstanding balance, arrears and fees, which was then added to the balance. In relation to the fees and charges Acenden had charged, it said it would only consider those applied in the last six years, and it was satisfied that those applied in that period had been applied in line with the terms and conditions of the mortgage.

Mr G was not satisfied with the response and referred the complaint to this Service. Miss W gave her consent to us considering it.

Subsequently, Acenden commented on the new part of the complaint – about it not agreeing to either extend the term of the mortgage or capitalise the arrears. It said that Mr G and Miss W didn't meet its criteria for extending the term.

One of our Investigators considered the complaint. He concluded that we could only consider some elements of the complaint for limited periods:

- The arrears on the account and balance from March 2018 to March 2024.
- The fees and charges applied from 24 May 2022 to March 2024.
- The interest rate on the account from 24 May 2022 to March 2024.
- Acenden has not agreed to extend the term or capitalise the arrears.

All parties accepted the Investigator's conclusions, so he went on to consider the merits of the parts of the complaint that fell within our jurisdiction. He recommended that the complaint be upheld. He considered that given the circumstances of the account – that years would go without any contact from Mr G and Miss W and almost no payments having been made since September 2011 – Acenden should have concluded there was no hope of the mortgage getting back on track and it should have come to that conclusion quite some time ago. However, as the earliest we can look at the complaint issues is six years before the complaint was raised, the earliest we could find Acenden should have taken action was at that point.

The Investigator recommended that Acenden write off the charges and interest that had been charged since March 2018, when reasonably Acenden should have taken action on the mortgage. He then considered that Acenden should work with Mr G and Miss W to find a way forward for repayment of the debt. If that turned out not to be possible and repossession was determined to be the only way forward, as Mr G had started works to improve the property, Acenden should allow up to six months for the works to be completed. At that point, the Investigator considered that it might be reasonable for Acenden to be able to start to charge interest again, subject to the circumstances at the time.

Acenden didn't accept the Investigator's conclusions and asked that the complaint be referred to an Ombudsman. It said that it had attempted to discuss the mortgage with Mr G and Miss W during the relevant period and gave evidence of the letters and statements it had sent, and the field agent visits it had arranged.

Mr G and Miss W didn't comment on the Investigator's conclusions.

The Investigator responded to Acenden's comments. He acknowledged the correspondence that had been sent to Mr G and Miss W, but he remained of the opinion Acenden should have concluded that there was no way for the mortgage to be put back on track if interest continued to be charged, at least as far back as March 2018, and so it should have taken action at that time to deal with the situation. As he didn't change his conclusions, the complaint has been passed to me.

What I've decided – and why

At each stage of our investigation we review our jurisdiction to consider a complaint. Having considered the information available, I am satisfied that the Investigator's conclusions in this regard (detailed above) are correct. I have, therefore, reviewed the complaint on that basis.

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

I have considered this situation very carefully. I accept that Acenden was keeping Mr G and Miss W informed about the situation with their mortgage throughout. I am also satisfied that from 2019 onward, after Acenden notified Mr G and Miss W that it was taking legal action again, there was more interaction with Mr G, albeit nothing that improved the situation in relation to the mortgage.

However, as the administrator of the mortgage, Acenden had a duty of care to Mr G and Miss W. That includes assessing a mortgage account and determining whether it needs to take any action. In this case, payments stopped being made to the mortgage in 2011 and the situation from that point only deteriorated. While a lender or administrator should consider repossession as a last resort, they should also not allow a mortgage to drift without resolution, allowing the debt to increase when there is no realistic likelihood of the situation improving. Even where repossession is not an option that will benefit the lender, that should not stop the lender or administrator taking action to stop a situation deteriorating.

In this case I consider that given the lack of interaction from Mr G and Miss W, and the very significant period that passed without any payments being made, Acenden should reasonably have taken some action to bring the situation to a resolution. Even if there was no equity in the property, making repossession pointless from the point of view of the lender, that should not have stopped it taking action to stop the debt building in the way it did. As I have detailed above I can only consider Acenden's actions from March 2018, but I think by that point, with no payments in over six years, reasonably Acenden should have taken action at that point, be that moving forward with the suspended legal action or by making adjustments to the mortgage to stop the situation deteriorating further and the debt escalating out of control.

I think reasonably at that point interest and arrears charges would have stopped being applied to the debt, be that because the mortgage should have ended due to repossession or if repossession would not have been pursued due to negative equity or similar, Acenden should have simply stopped charging interest as a forbearance measure. Once the balance of the mortgage is recalculated on this basis, I consider that Mr G and Miss W should enter into discussions with Acenden to determine if a way forward for the remaining debt can be reached.

I note that Mr G has mentioned capitalisation, however, this will not make the mortgage more affordable as the amount of the debt will remain the same. However, extending the term of the mortgage might be of assistance and so should be a consideration as a forbearance measure. That does not mean that Acenden has to extend the term of the mortgage, but it should consider if doing so would enable the debt to be repaid within a

reasonable period of time, obviously taking into account issues like when Mr G and Miss W are due to retire.

If a way forward for repaying the debt can be reached, it may be that it would not be inappropriate for Acenden to charge interest on the debt at some point in the future, but that would depend on further assessments of Mr G and Miss W's financial situation. If an agreement is reached and maintained, there will be no need for Acenden to apply any charges to the mortgage account. However, it will be entitled to do so in the future, if it is reasonable for it to do so, for example if any agreement is not maintained or a mutual amendment to it can't be reached.

However, it may be that the property needs to be sold, be that in possession or voluntarily by Mr G and Miss W. I note that Mr G and Miss W have been given a grant under a council scheme to improve the energy efficiency of the property. Mr G believes the works will be completed relatively soon, but he doesn't have a definitive date. I am not aware of the nature of the works outstanding, but in general if works are only partially completed, that can have a detrimental effect on any price a property achieves. As such, our Investigator recommended, Acenden should give up to six months to have those works completed before taking possession of the property. I agree that this is a sensible approach for both parties' benefit. If Acenden has to take legal action to repossess the property, it can apply any charges it reasonably incurs for that action to the mortgage as allowed for under the terms and conditions.

My final decision

My final decision is that I uphold this complaint. In full and final settlement of it, I require Kensington Mortgage Company Limited trading as Acenden to settle the complaint as detailed above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr G and Miss W to accept or reject my decision before 7 March 2025.

Derry Baxter
Ombudsman