

The complaint

Mr B has complained about a mortgage he holds with Kensington Mortgage Company Limited.

What happened

Mr B took this mortgage out in October 2006 through a mortgage broker. Mr B already owned the property having bought it the year before, and this was a remortgage to a lender I will refer to as G.

The mortgage offer which was issued in September 2006 showed Mr B borrowed around £65,600 (including fees) on an interest only basis over a 20-year term. The interest rate was fixed at 5.54% for the first 36 months, after which it moved to a reversionary variable rate.

In May 2016 the mortgage was transferred from lender G to Kensington.

There has been a fair amount of correspondence between Mr B and Kensington about this mortgage in the last few years, with Mr B saying he didn't sign the mortgage application form declaration when he took out the mortgage (a complaint that Kensington responded to in August 2023). Other issues have also been raised such as who the beneficial owner of the mortgage is, and Mr B has said that he no longer owes anything under this mortgage contract. I won't detail all the correspondence here as both sides are aware of what has been said, instead I will just mention a few parts to provide the context required.

Kensington wrote to Mr B on 19 October 2023, in which it summarised a complaint as 'You believe you did not sign the declaration for this mortgage deeming the mortgage fraudulent.' It said the application was made through a mortgage broker, and the broker wasn't an agent of lender G, and the onus was on Mr B to demonstrate he didn't sign the document and that he was unaware of the mortgage details within the application. It said it would cooperate with any police enquiry, and that whilst Mr B had provided a crime reference number it hadn't received any contact from the police.

On 30 November 2023 Mr B obtained a report which said, in the writer's opinion, it was highly probable that Mr B did not write the signature in question when the writer compared it to Mr B's signatures from other documents (none of which seem to be the other signatures from the application in question which Mr B hasn't disputed are his). Mr B then referred the complaint to our service on 6 December 2023.

On 2 January 2024 Kensington wrote to Mr B again, this time about the transfer of the mortgage from lender G to Kensington. It said, all the rights and benefits of the mortgagee under the mortgage contract were assigned to Kensington when it acquired the loan from lender G. It said it holds legal title in respect of the charge registered against the title of Mr B's property, and any separate beneficial ownership pursuant to securitisation is entirely a matter for it and it isn't required to provide Mr B with any information about that as it doesn't interfere in any way with the validity of the mortgage contract. And in respect of the alleged fraud, it said that it was corresponding with a named police officer to assist them with their enquiries.

Kensington responded to a further complaint from Mr B on 25 July 2024. It summarised that complaint as:

‘My understanding of your complaint is:

- You are unhappy you are receiving arrears letters from us as you believe you no longer owe any money under your mortgage account
- You are unhappy with the way my colleague has dealt with your allegation of fraud
- You are unhappy we have sent letters with [lender G] detailed as the lender’

It said its position remained unchanged from its letters sent to Mr B in October 2023, January 2024, May 2024 and June 2024 in that Mr B remained liable for the mortgage debt. It also said it has a regulatory responsibility to send letters to keep Mr B updated on the status of his account, and this included sending him letters about his arrears. It went on to remind Mr B that he held an interest only mortgage and he needed to repay the balance in full at the end of the term, which it said was in 28 months’ time. Finally, it said that the information in its letters about lender G was factually correct as lender G was the original lender, with Kensington taking over the mortgage in 2016 when it bought a portfolio of loans.

The complaint was looked at by one of our Investigators. He said Mr B’s complaint about the disputed signature was made too late under our rules and so we couldn’t consider it, and he didn’t uphold the remainder of the complaint. He said the terms of the mortgage allowed it to be transferred, and as Mr B hadn’t been making the payments due then Kensington did nothing wrong in contacting Mr B about the arrears.

Mr B didn’t agree with our Investigator and so the case has been passed to me to decide.

I issued a decision about our jurisdiction earlier this month in which I said I can’t consider a complaint about whether the signature on the mortgage application form declaration was fraudulent as that complaint hadn’t been made in time.

I’ve now completed my review of the parts of the complaint I said we could consider and I now issue this decision as the final stage of our process.

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.

I’m conscious I’ve condensed the events of the complaint into rather less detail than Mr B has presented them. No discourtesy is intended by this. Although I’ve read and considered the whole file I’ll keep my comments to what I think is relevant. If I don’t comment on any specific point it’s not because I’ve not considered it but because I don’t think I need to comment on it in order to reach the right outcome.

The Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don’t act for either party, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our independence and impartiality.

The Financial Ombudsman Service is an informal alternative to the courts. It may be the courts would look at this matter differently, but my role is to concentrate on what I consider fair and reasonable. If Mr B feels his claims have merit, then he can test that in court if he wishes. However I would urge him to get specialist independent legal advice first.

We're not the regulator, and I've no power under our terms of reference to comment on, or otherwise determine, how financial businesses operate in general terms. I have to consider this complaint by reference to Mr B's particular situation. When I do that, I don't uphold this complaint. I'll explain why below.

As I set out in my decision about our jurisdiction, we can't consider a complaint about whether or not Mr B's signature was forged on the mortgage application form declaration. But before I go any further I can reassure Mr B that the information that has been redacted on the copy of the mortgage application form declaration isn't what he thinks it is. Mr B has said the redacted part at the top of the document was the fraudster's name. But I've seen an unredacted copy, and the part that was redacted simply says '[Mr B (with this being Mr B's full surname)]' and then has a five-digit reference number beneath that. I have no idea who redacted that information or why, but there is nothing there to indicate who signed the document that Mr B says he didn't sign.

Whilst Mr B said he didn't sign the mortgage application declaration, he hasn't said he didn't sign page four of the application form (declaring his income and employment details were correct) or the direct debit mandate. Mr B also hasn't disputed that he wanted this mortgage, actively applied for it through a broker or that he accepted the mortgage offer. The mortgage offer Mr B accepted in 2006 – by signing the mortgage deed - shows he took out this mortgage with lender G.

The Mortgage Deed that Mr B signed in 2006 said that by signing the deed he was confirming he had read and understood the conditions of the mortgage, and that he would be bound by them. The mortgage conditions (as lodged with the Land Registry with the mortgage deed) said (at 7.11):

'The lender may transfer some or all of its rights under this mortgage to another person at any time. The lender will only transfer its rights if the other person agrees to exercise the transferred rights in accordance with a policy which the lender reasonably thinks is no less favourable to the mortgagor than the policy the lender was following before the transfer.'

The mortgage was transferred to Kensington in 2016 as part of a portfolio of loans that it had taken ownership of. And as I've shown above, that was allowed under the contract Mr B entered into with lender G. That is entirely normal in the industry and has no impact on the contract Mr B entered into; the contract is still valid and enforceable, it is just it is now Kensington that he owes the money to rather than lender G.

The ownership of the mortgage hasn't been transferred to an offshore company as Mr B has said. I can't comment on what lender G reported as part of a data subject access request it provided to Mr B as it isn't party to this complaint. I also can't comment on why Mr B's bank account chose to return the direct debit payments made to the Kensington mortgage to Mr B, but that decision made by his bank doesn't bind Kensington to any particular action, nor does it prove Kensington has done anything wrong.

One point I would highlight though from the information Mr B received from lender G which is that lender G said the mortgage was 'settled'. This doesn't mean what Mr B seems to believe it does. All it means is that when the mortgage was transferred from lender G to Kensington the mortgage debt was no longer owed to lender G (hence lender G's mortgage account is settled). At the same time the mortgage account was created on Kensington's systems for the amount previously owed to lender G.

If the lender G account wasn't marked as settled then Mr B would on paper owe the same mortgage debt to two different lenders, so this is simply an administrative matter to indicate he no longer owes a mortgage debt to lender G (but that doesn't mean he doesn't owe it to

Kensington instead). This is the same as Mr B would have seen when he remortgaged from his original 2005 lender to lender G. The account with the 2005 lender was settled when the account with lender G was created. He still owed the money, just to a different lender. The only difference here is that it was a portfolio transfer from lender G to Kensington, not a remortgage carried out by Mr B, but the same principle applies in terms of one debt being “settled” when the other is created.

Mr B has referred to a statement made by Kensington in its complaint response of 25 July 2024, saying ‘Also with reference to what I mentioned re [complaint handler’s] final letter on the bottom of the second page where she states the DSAR from [lender G] is a typing error or KMC cannot be responsible for the way [lender G] make their reports.’ But she doesn’t say it is a typing error, she correctly explains that the ownership of the debt was transferred and has not been paid in full, and that Kensington isn’t responsible for the terminology used by lender G. That is all factually correct, and I’ve explained above why lender G would have referred to *its* mortgage account as settled, but at the same time an equivalent mortgage account was created with Kensington to which the mortgage debt transferred.

As I’ve said, the original lender was lender G and it can be seen from Land Registry historical records that the mortgage was transferred from lender G to Kensington in 2016 (with the charges register giving the date as 9 June 2016) and it has remained with Kensington since then. Whilst the loan has been securitised, the owner of the mortgage debt remains as Kensington. Neither of those transfers requires a ‘wet signature’ from Mr B as he believes.

Securitisation is a relatively common model in the mortgage industry. In essence, once it owns a mortgage (whether that be from lending the money initially, or by buying a portfolio of loans from another lender) and is entitled to receive the repayments, Kensington sells the beneficial interest (the benefit of the repayments) to a third party in order to fund further lending to other customers. Loans are not securitised individually, but packaged into groups called special purpose vehicles.

Under this model, Kensington remains the owner of the mortgage, remains the lender of record, and continues to be the firm that the borrower deals with (it isn’t just an agent as Mr B has said). But once it has collected the payments, it passes the benefit of them on to the investor which bought the vehicle including that loan. 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, nor does it impact on Kensington’s rights or Mr B’s obligations under the mortgage contract.

I appreciate Mr B doubts Kensington’s entitlement to claim a debt from him. Kensington is equally firm that Mr B has an obligation to repay the sum of money he borrowed and still owes. What isn’t in dispute is that, after lender G issued a mortgage offer, Mr B accepted that (by signing the mortgage deed) and received the benefit of the money that he’d asked it to lend to him (which went to repay an existing mortgage that he owed to a different lender). The ownership of the mortgage debt was then fairly transferred to Kensington in line with the mortgage contract conditions, and Kensington was entitled to securitise it.

In the circumstances, it seems to me to be fair and reasonable for Kensington to expect Mr B to repay the debt he borrowed and hasn’t yet repaid, in line with the mortgage contract he entered into. I appreciate that Mr B feels differently, and wants his mortgage declared null and void. However, I don’t have any power to decide whether or not a mortgage contract is valid or not; only a court can do so.

I appreciate Mr B’s beliefs are strongly held, and I am sorry to see that adhering to these has

resulted in mortgage arrears. It's not too late for Mr B to resolve the situation with Kensington. However, given that there are arrears on the mortgage, if Mr B is unable or unwilling to reach a payment arrangement with Kensington to repay those arrears, the lender will be entitled to issue possession proceedings.

If this should happen Mr B will then be free to raise in court all the points he's raised with us about why he considers this mortgage to be invalid, and ask the court to declare it null and void. However, I don't know of any mortgagor who has succeeded in having their mortgage cancelled by a court on the basis of the theories Mr B has raised.

Putting all that together there are no grounds for me to say, on a fair and reasonable basis, that Mr B is no longer liable for the debt or that Kensington doesn't have the right to seek to recover it from Mr B.

Finally, Mr B has said that Kensington has continued to add charges, report arrears and undertake collections activities (such as sending him arrears letters) despite, he says, of it being notified in writing that the account is in dispute. Mr K says an account can't be in arrears if it is in dispute.

I've reviewed the arrears letters that Kensington sent to Mr B and I'm satisfied they're not inappropriate. As Mr B owed Kensington money and wasn't making the payments due under the contract those seem entirely reasonable letters for Kensington to have sent him, and in fact are something Kensington is required to send by the regulator.

I understand that Mr B considers the account as in dispute, but an account can't stay in dispute indefinitely as that would be open to abuse, with the potential for disputes being used as a way to get interest and payments frozen, and adverse credit reference information stopped. I'm not saying that is the case here, I'm simply explaining why that isn't a tenable option. Kensington feels it responded to the complaints and dispute as far as it could, the fact Mr B didn't accept its responses doesn't alter that.

Mr B owes this money to Kensington and he hasn't maintained the monthly payments that he agreed to under the mortgage contract. In those circumstances I have no grounds to consider that Kensington should have considered the account as in dispute, or that it should have stopped its normal collections activities and arrears reporting.

Having considered everything very carefully I don't uphold this complaint. Mr B doesn't have to accept my conclusions, and if he doesn't, then neither he nor Kensington will be bound by my final decision. Subject to any time limits or other restrictions a court might impose, Mr B's right to take legal action against Kensington over the subject matter of this complaint won't have been prejudiced by our consideration of it.

My final decision

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 13 March 2025.

Julia Meadows
Ombudsman