

The complaint

Mr G and Ms L are unhappy with how Kensington Mortgage Company Limited has administered their mortgage. They believe Kensington's actions have caused them financial losses.

What happened

In 2007, Mr G and Ms L originally took out a mortgage with another lender, via a broker. The mortgage was transferred to Kensington in 2016, and it is responsible for dealing with the issues raised by Mr G and Ms L. I will refer to Kensington throughout for ease.

Soon after the mortgage began, Mr G and Ms L began experiencing some financial difficulties. The mortgage contact notes indicate that Mr G was self-employed, and his earnings had reduced. Kensington agreed a number of payment arrangements with Mr G and Ms L, with the mortgage often being in arrears. The contact notes show that in late 2010, Ms L informed Kensington that a third party would be becoming involved with the mortgage to make the mortgage payments.

In March 2011, a Power of Attorney (POA) was added to the account. From this point, neither Mr G nor Ms L were making payments to the mortgage.

In December 2020, after receiving contact from one of the people named on the POA, Kensington wrote to Mr G to ask if he wanted to give third party authority to that person. Mr G told Kensington he didn't want to do that.

In July 2021 the mortgage was repaid. In April 2024 Mr G and Ms L complained that the mortgage had been repaid by an unauthorised third party and that they'd had no knowledge of a POA registered on the account. Kensington didn't uphold the complaint. It said the mortgage had been repaid through funds received from a solicitor who Kensington had been given authority to engage with. In terms of the POA, it said this was signed by Mr G and Ms L and that the signatures matched the records from when the mortgage was taken out.

Mr G and Ms L remained unhappy and referred their concerns to the Financial Ombudsman Service. They said the POA wasn't authorised, wasn't therefore a legal document, and they also said it was only valid for one year.

An Investigator issued an outcome on the case. They said they couldn't see that Kensington had acted incorrectly in relation to the redemption of the mortgage, and that they couldn't see a reason why Kensington shouldn't have accepted the POA.

After Mr G and Ms L continued to dispute the validity of the POA, the Investigator said Mr G and Ms L would need to seek legal advice about this as verifying the validity of a POA falls outside of the Financial Ombudsman Service's remit.

Mr G and Ms L remained unhappy. Mr G said Kensington had told him before the mortgage was redeemed, that there wasn't a POA on the account and that this had led him and Ms L to take actions they otherwise wouldn't have done, resulting in financial losses. As the matter couldn't be resolved, it was passed to me to decide.

I asked both parties for some further information. I asked Kensington to provide the transaction history and contact notes going back to the beginning of the mortgage. And for clarification about what it had told Mr G before the mortgage was redeemed, about someone named on the POA document not having authority on the account.

I asked Mr G to elaborate on what he considered his and Ms L's losses to be.

I then shared some provisional thoughts with both parties in April 2025. I said the following:

"Having reviewed all the information provided by both parties, I've come to the same overall outcome as the Investigator. However, because I've done so after some further investigation and for different reasons, it's appropriate for me to share my provisional thoughts with both parties and provide an opportunity for any further submissions to be provided, before I reach a final decision – if one is required.

First, I note that Mr G and Ms L have expressed concerns about the actions of a number of different parties - including one of the people named on the Power of Attorney (POA) document – as well as solicitor firms. I wish to emphasise that I am only considering the actions of Kensington (who I assume to be responsible for the acts and omissions of the previous lenders, as well as its own). I will refer to Kensington only for ease.

I consider the following to be material to the outcome of this complaint:

- *Was Kensington right to accept the POA document that it received in 2011?*
- *Should Kensington have allowed the POA to apply beyond the first twelve months?*
- *Did Kensington provide Mr G with incorrect information in December 2020 about third party authority on the account? If so, what impact did this have?*
- *Did Kensington act unfairly when the mortgage was redeemed?*

Was Kensington right to accept the POA document that it received in 2011?

Mr G and Ms L say the POA document is invalid as they didn't sign it. As such, they say Kensington has acted unfairly by accepting it. I've thought about what Mr G and Ms L have said, but I don't agree that Kensington acted unfairly by accepting the POA. I'll explain why. First, I've seen a copy of the mortgage deed signed by both Mr G and Ms L and compared the signatures to those on the POA document. Having done this, I can't see any significant differences.

In addition, I've seen the mortgage contact notes going back to when the mortgage was taken out in 2007. The notes refer to contact from Ms L from November 2010 – before the POA document was received - where she tells Kensington that the person named on the POA document is going to become involved with the mortgage. Bearing this in mind, I don't consider that Kensington would have had any reason to doubt the validity of the POA document that it received.

Should Kensington have allowed the POA to apply beyond the first twelve months?

*Notwithstanding their contention that the POA was invalid (dealt with above), Mr G and Ms L also say that under Section 25 of the Trustee Act 1925, the POA should only have been considered valid for a period of 12 months. In the section where the Trustee Act is mentioned, it says “This Power of Attorney is granted for the purpose of the S25 Trustee Act 1925 **and of every other power** granting me authority to execute or exercise on my behalf....” (my emphasis).*

I’ve seen nothing, in the POA document or elsewhere, indicating that the intention was for the POA to only be in operation for twelve months. Bearing these things in mind, I don’t think Kensington acted unfairly in considering that the POA was in operation beyond the first twelve months.

In addition, Kensington’s records indicate that neither Mr G nor Ms L were making repayments to the mortgage from 2011. It’s unclear what Mr G and Ms L thought was happening in terms of the repayment of the mortgage that remained in their names. I find it implausible that they would have had no idea what was happening, for all that time.

Did Kensington provide Mr G with incorrect information in December 2020 about third party authority on the account? If so, what impact did this have?

In response to a request for further information, Kensington let me know that the person named on the POA document did have third party authority on the account in December 2020.

Kensington’s agent didn’t realise this. So, I agree with Mr G that, at the very least, he was given the wrong impression by Kensington in December 2020 about the existence of third-party authority on the account. However, I don’t agree that Kensington ought to have sent Mr G a copy of the POA around that time (as he says it should). It looks like if things had gone as they should in December 2020, there wouldn’t have been a need for Kensington to have contacted Mr G at all – in that the person named on the POA did have third party authority on the account.

And regardless, having thought carefully about what Mr G has said about the impact of Kensington giving him incorrect information about the existence of a third party on the account, I don’t find what he’s said about the financial impact of this to be persuasive.

This is fundamentally because I don’t agree with Mr G that the incorrect information can reasonably be said to have caused the losses he suggests. The losses Mr G says he and Ms L have suffered appear to relate to the underlying dispute about property ownership, rather than the mortgage itself. The incorrect information provided by Kensington to Mr G about third party authority on the mortgage, is too remote from the losses that Mr G claims he and Ms L suffered as a result, for me to agree that Kensington is responsible for those losses.

Did Kensington act unfairly when the mortgage was redeemed?

In short, I can’t see any issues here. The mortgage contact notes indicate that Ms L asked Kensington to add a third-party solicitor firm to the account, regarding the redemption of the mortgage. This firm then acted on Mr G and Ms L’s behalf to redeem the mortgage, and this was done.

In conclusion, I’m not currently persuaded that Kensington has acted unfairly or caused Mr G or Ms L any loss.”

I asked both parties to let me know by 12 May 2025 whether they agree with my provisional findings. And, if not, to provide any further submissions they want me to consider, by the same date.

Kensington responded to say it accepted my provisional findings and had nothing further to add. Mr G and Ms L disagreed and provided further submissions.

In summary, Mr G and Ms L re-iterated that the POA was a false instrument, hadn't been valid, and that as such the person named on the POA didn't have the ability to make payments on the mortgage. They also said that the person named on the POA was a 'beneficial owner' and this was relevant.

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've reached the same outcome as set out in my provisional findings, which form part of this final decision. Before I explain why, I want to set out the purpose of my role. It isn't to address every single point that's been made to date. Instead, it's to decide what's fair and reasonable given the circumstances of this complaint.

For that reason, I'm only going to refer to what I think are the most salient points when I set out my conclusions and my reasons for reaching them. But, having considered all of the submissions from both sides in full, I will continue to keep in mind all of the points that have been made, insofar as they relate to this complaint.

I still consider the following questions to be material to the outcome of this complaint:

- Was Kensington right to accept the POA document that it received in 2011?
- Should Kensington have allowed the POA to apply beyond the first twelve months?
- Did Kensington provide Mr G with incorrect information in December 2020 about third party authority on the account? If so, what impact did this have?
- Did Kensington act unfairly when the mortgage was redeemed?

I've considered each of these in turn.

Was Kensington right to accept the POA document that it received in 2011?

In response to my provisional findings, Mr G and Ms L re-iterated that the POA wasn't valid. My remit is in considering what is fair and reasonable in this case. On that basis, my focus is on whether Kensington acted reasonably in accepting the POA. I still think it did, for the same reasons as set out in my provisional findings.

There are no significant differences in the signatures on the POA document and on documentation from when the mortgage began. And Ms L had told Kensington that the person named on the POA document was going to become involved with the mortgage. I still don't find that Kensington would have had any reason to doubt the validity of the POA document that it received.

If Mr G and Ms L want a legal determination on whether the POA is a legally valid document, they would need to go through the courts.

Should Kensington have allowed the POA to apply beyond the first twelve months?

Neither party has provided any further submissions in relation to this point, so I see no reason to depart from my provisional findings, for the reasons set out in those findings.

Did Kensington provide Mr G with incorrect information in December 2020 about third party authority on the account? If so, what impact did this have?

Again, neither party has provided any further submissions in relation to this point, so I see no reason to depart from my provisional findings, for the reasons set out in those findings.

Did Kensington act unfairly when the mortgage was redeemed?

Here too, neither party has provided any further submissions in relation to this point. Therefore, once again, I see no reason to depart from my provisional findings, for the reasons set out in those findings.

In conclusion, I haven't found that Kensington has acted unfairly or caused Mr G or Ms L any loss.

My final decision

My final decision is that I don't uphold Mr G and Ms L's complaint about Kensington Mortgage Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Ms L to accept or reject my decision before 11 June 2025.

Ben Brewer
Ombudsman