

The complaint

Mr L is unhappy with how Kensington Mortgage Company Limited have treated him. He has made the following complaint points:

- He is unhappy with the outcome of the court hearing on 29 January 2024
- Mr L feels that Kensington prevented him from making payments in line with the court hearing
- Mr L says Kensington gave conflicting information regarding who to make the payments to
- Mr L says Kensington refused a payment on purpose and he is disputing the reference being used
- He believes the mortgage was taken out fraudulently.
- Mr L is disputing a refund of £254.73 which Kensington said they paid back to him

What happened

Mr L has a loan with Kensington which he originally took out for around £33,000 in 2005. This mortgage was redeemed in 2020 but fees were added after this date which left an outstanding balance. This loan was then transferred to Mars Capital.

Mr L says he took Kensington to court in 2021 and 2022 and he was successful. There was further court action against Mr L on 29 January 2024 and it was ordered that Mr L should pay £3,814.40 to Kensington.

Following this court order it was agreed that Mr L should pay £150 per month to clear the balance which was outstanding.

Mr L said that Kensington refused some of these payments as they were returned and has disputed a refund that Kensington said he was given.

Kensington issued a final response letter dated 3 July 2024 and they said the following.

- It was agreed that Mr L would pay £150 per month following on from the court hearing to clear the balance of £3,814.40.
- It was acknowledged that Kensington confused matters with regard to the payments that had to be made. They said the funds were returned to Mr L due to an incorrect reference number. They offered £400 for the inconvenience caused.
- In relation to the agreement being fraudulent, this was raised previously and the Financial Ombudsman Service already looked into the matter in 2016.

Kensington issued a further final response letter dated 6 August 2024 about the refund of £254.73 made to Mr L on 6 November 2023. They said this was a refund by Mars Capital as Mr L's mortgage was transferred to them.

Kensington said that Mr L's account was transferred to Mars Capital and his account was redeemed before this transfer took place. Mr L did redeem his mortgage but there were fees added after redemption which are now outstanding. The court has already decided that Mr L needs to repay this.

Kensington have acknowledged that Mr L was given incorrect information on how to make his payments following on from the outcome of the court hearing. They said he has since been given the correct information on where to make these payments.

Mr L brought his complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. He explained to Mr L that part of the complaint he made was that he was unhappy with the outcome of the court hearing. The investigator explained that our service wouldn't be able to consider that point as the subject matter had been subject to court proceedings where a decision had been made on the merits. So he said we would be dismissing that part of the complaint.

The investigator also explained that the complaint about the mortgage being fraudulent was already previously addressed by our service in 2016 – so again he explained we would not be able to look into that for him.

He explained that he would be able to consider the complaint points regarding the payments Mr L needed to make to the mortgage and about the refund from Mars Capital. He then gave his opinion on the merits of these complaint points and agreed there had been some confusion but thought the amount that Kensington had offered of £400 was fair and reasonable in the circumstances. He also said that the refund from Mars Capital was in relation to funds that Mr L overpaid when he redeemed his mortgage in 2020. Overall, he was satisfied with the amount of redress that Kensington had offered.

Mr L didn't agree with this. He made the following comments:

- Mr L raised numerous points in relation to the court issues and why he believes that Kensington has committed fraud and perjury.
- He said seven letters were sent to his solicitor about the refund but they were never received. Kensington confirmed they had his contact details so why didn't they send them direct to him?
- Mr L is disputing the refund of £253 from Mars Capital as he doesn't believe they ever paid this to him.
- The loan was sold to Mars Capital and they made a mistake with the reference number so he couldn't pay the £150 that was agreed.
- Mr L would like our service to look into the whole mortgage as he believes it's fraudulent and this was never mentioned in any of the court hearings.

As Mr L disagreed with the investigator, he asked for the complaint to be reviewed by an Ombudsman, so it's been passed to me to decide.

I have already issued a decision to Mr L letting him know which parts of his complaint I am able to consider. I explained that I would be able to look into his complaint regarding the refund and the issue he had trying to make payments to Kensington.

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.

Payments to the mortgage

I have taken a look at the court order and it was determined that Mr L would pay Kensington £150 per month towards the outstanding balance. I don't think there is any doubt here that there was some confusion surrounding these payments and where they should be sent. Mr L

appears to have been given incorrect information of where to pay this so the payment of £150 was returned. I think this did cause Mr L upset and distress as he said he worried that he wasn't complying with the court order. But I can't see that this was a deliberate act on Kensington's part to stop Mr L from complying with the court order.

Mr L said that the payments sent to Kensington was because of a different issue other than that of an incorrect reference number, but I'm not persuaded that there is any more to this. It's evident that Kensington gave Mr L incorrect information, and they gave him the right information afterwards in order for him to make the payments and they were then successfully received and allocated to his account. They offered him £400 to recognise this error which I think is fair.

Refund

Mr L redeemed his loan with Kensington in October 2020 and at this time, it looks like too much was paid so a refund was due to him. But this didn't get refunded to Mr L until November 2023 as Kensington weren't able to obtain Mr L's account details for the refund. I'll explain more on that below.

Even though Mr L's loan was redeemed in 2020, I can see that there were fees added after this date which meant that there was an outstanding balance to be repaid – which is what the court order was about.

The refund of £254.73 came from Mars Capital because the account had by this time, been transferred to them from Kensington. And as explained, this appears to be because Mr L overpaid money when his loan was redeemed in 2020. But as we now know, fees were added after which have now left an outstanding balance.

I can see that there have been multiple letters sent from Kensington to the solicitor to find out Mr L's bank details so that this money could be paid back to him and Mr L questions why Kensington didn't contact him instead.

Having looked at the contact notes that Kensington have provided, there were multiple attempts to contact the solicitor to arrange a refund and these attempts were made in 2020 and 2021. Mr L disputes that any contact was attempted but having looked at everything – I don't agree.

The solicitor was dealing with the redemption of the mortgage at the time so I can't say that this wasn't a reasonable request for it to go to the solicitor instead of Mr L. Eventually, this refund was sent to Mars Capital who then sent this to Mr L. I'm not persuaded that Kensington acted unfairly as they did attempt to contact Mr L's solicitor in order to arrange the refund for the amount that was overpaid on redemption.

As mentioned above, Kensington have offered to pay £400 for the inconvenience to Mr L and I think this is reasonable in all the circumstances of what has happened here and in line with what our service would award.

Mr L made comments (as above) about the mortgage being fraudulent and he has raised the same points that I have already addressed above. Mr L has said that Kensington are committing fraud by misrepresentation. He has mentioned letters from 2020 and 2021 which were in relation to the refund of £253– which was given back to him. Mr L also believes that Kensington gave him wrong information of where to make his payments to and that they did this deliberately and it had nothing to do with incorrect reference numbers. He strongly believes that this was done on purpose as they didn't want to accept the judgement or be connected to the court case. As I have already mentioned, I do not believe that this is the case so I have nothing further to add to this.

When we look at complaints about misrepresentation, we consider the appropriate remedy is to place the consumer in the position they would be in if the incorrect information hadn't been given. Mr L is already in the position he would have been in as he now has the right

information to be able to pay the £150 per month and the refund of £254.73 has been given back to him. There is nothing else that needs to be done here and I'm not in a position to comment on anything specifically linked to the court hearing.

I know that Mr L will be disappointed with my decision, but I won't be asking Kensington to do anything further.

My final decision

For the reasons given above, Kensington Mortgage Company Limited should pay Mr L £400 if they haven't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 9 April 2025.

Maria Drury
Ombudsman