

## **The complaint**

Mr M is unhappy with how he's been treated by Kensington Mortgage Company Limited. He believes Kensington overstated the balance of the mortgage when it transferred to another lender, and is unhappy with fees and charges added to the account.

## **What happened**

Mr M originally took a buy-to-let mortgage with another lender in late 2005. He originally borrowed around £88,000 over a term of 25 years, with repayments on an interest only basis.

The mortgage transferred to Kensington around April 2020. And was then transferred to another lender (who I'll call lender B), around February 2023.

In May 2023, Mr M complained to lender B that he was being asked to repay more than the original capital amount he'd borrowed. He also raised concerns about a dispute he'd had with the original lender to do with insurance premiums added to the loan. Lender B didn't uphold the complaint. It said it could see that Mr M hadn't always made the contractual payments, and this explained why the balance was higher than when the mortgage was originally taken out. It also said all fees and charges had been charged correctly.

Mr M referred his concerns to the Financial Ombudsman Service. An Investigator explained to Mr M that the complaint had been referred outside of the six-month time limit that applies, such that we couldn't consider the merits of the complaint.

Mr M then complained to Kensington that it had overstated the balance of the mortgage when it was transferred to Lender B, and that he hadn't been paid £50 costs relating to court action involving the original lender. Kensington responded to say that the balance of the account was correct, but that it couldn't see that the £50 (plus an additional, related £25) had been paid to Mr M. It said it would pay a total of £225, comprising the original £75 plus £150 in compensation to reflect any distress and inconvenience caused by the amounts not being paid when they should have been. Mr M remained unhappy and referred the matter to the Financial Ombudsman Service.

An Investigator here said they were satisfied the balance transferred to Lender B was correct, and that the total payment of £225 was a fair way for Kensington to put things right in relation to costs awarded not having been paid. But they also said that Mr M could raise a complaint to Kensington about fees, charges and interest added to the account in the previous six years, including any to do with buildings insurance.

Mr M then complained to Kensington about fees and charges he said had been wrongfully accrued/applied. But he also mentioned again that the balance transferred to Lender B had been too high, and he said he still hadn't received a payment from Kensington.

Kensington didn't uphold the complaint. It said no fees and charges had been applied in the six years leading up to the account being transferred to Lender B. And that the fees that had contributed to the balance of the mortgage being higher than when it began, had been

applied more than six years prior (but it also said all fees and charges had been applied in line with the Tariff of Fees). In terms of the £225 it had agreed to pay, it said it had sent Mr M a form to complete, for it to be able to make the payment. It attached another form for Mr M to complete.

Mr M asked the Financial Ombudsman Service to consider the matter. An Investigator here issued an assessment saying that the concern to do with the balance of the mortgage had been dealt with in a previous complaint, and we wouldn't look at the same issue again.

In terms of fees and charges, the Investigator said we could only look back six years from when Mr M made the complaint. And Kensington had provided information to show there hadn't been any fees and charges added to the account during that time.

Mr M disagreed. In summary, he said the complaints against Kensington and Lender B were separate, and the Financial Ombudsman Service hadn't previously considered the matter against Kensington.

He also said that we seemed to be applying the six-year rule for litigation, which he said should work both ways in that Kensington shouldn't be allowed to pursue charges levied more than six years prior.

### **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 overall outcome as the Investigator, for broadly the same reasons. 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 first decide what I can and should consider, in terms of the complaint issues raised. And then (in relation to what I am considering), 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 the submissions from both sides in full, I will continue to keep in mind all the points that have been made, insofar as they relate to this complaint.

### **Complaint points that I'm not considering**

#### Fees and charges

The rules that govern the time limits for whether a complaint falls within the jurisdiction of the Financial Ombudsman Service are set out in the FCA's Handbook, details of which can be found online. The relevant rule in this case, DISP 2.8.2 R, says:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service....:

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received; unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2R....was as a result of exceptional circumstances; or....

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2R.... have expired....”

Kensington hasn't consented to us looking into the complaint about any fees and charges added more than six years before the complaint was raised, and there is no suggestion of any exceptional circumstances applying.

Each time any fees or charges are added to an account, that is (for the purpose of the time limit rules) a new 'event'. As such, the complaint about fees and charges added to the account within the last six years are ones I can consider because, by definition, the complaint about any such fees and charges has been raised within six years of the 'event'.

In order to go back further than six years, I would need to find that Mr M only became aware (or ought reasonably to have become aware) of cause for complaint about fees and charges added more than six years back, within three years of making his complaint. However, I don't find that to be the case. I say this because Mr M would've received annual statements setting out the fees, charges and interest added to the account in the twelve months preceding each statement. I've seen for example the annual statement sent in December 2016, which includes details of the fees added to the account balance.

Mr M would reasonably have known at the time he received the annual statements, if he had reason to doubt the accuracy or fairness of any of the fees applied. As such, the three-year part of DISP 2.8.2R doesn't extend time, and I can only consider any fees and charges added in the six years leading up to the complaint, so from November 2018.

In terms of the question Mr M has raised about the mortgage lender not being able to pursue charges added to the account more than six years ago, I'm not aware of any rule preventing a lender from pursuing such charges. Regardless, the point doesn't affect my analysis in terms of how far back I'm able to look.

#### The account balance when the mortgage was transferred to Lender B

In response to the Investigator's view, Mr M said the Financial Ombudsman Service had never investigated his complaint against Kensington, so it was wrong to say it had been dealt with previously.

However, a complaint against Kensington about the account balance when the mortgage was transferred to Lender B, was considered by a different Investigator, under a different complaint reference (ending F3K4). The Investigator in that case, after reviewing annual statements and a comprehensive transaction history, concluded that the balance transferred to lender B hadn't been inflated and was correct.

Under our rules, we can dismiss a complaint that is within our jurisdiction in certain circumstances. One of the circumstances is where the subject matter of the complaint has previously been considered by the Financial Ombudsman Service, and no new material evidence likely to affect the outcome has subsequently become available to the complainant. This is because to consider the same complaint issue more than once would seriously impair the effective operation of the Financial Ombudsman Service. We need to focus our

resources on issues that haven't previously been considered. It's also important for all parties, for there to be finality to issues that are brought to this Service.

There is no suggestion of any new evidence having become available to Mr M, so as we've previously considered this complaint issue against Kensington, I find that it wouldn't be appropriate to consider the same issue again.

### **The complaint point I can consider**

Although Kensington is no longer the mortgage holder, a complaint about fees and charges was made to it, and responded to. On that basis, I've considered the complaint about fees and charges, against Kensington.

Further to what I've already set out, I can only consider any fees and charges added to the account in the six years leading up to the complaint having been made to Kensington. Having reviewed transactions on the account, I'm satisfied that no fees or charges were added to the account in the six years leading up to November 2024.

As such, there are no fees or charges for me to evaluate in terms of accuracy or fairness. In terms of interest charged during this period, this was payable under the terms of the mortgage.

I realise Mr M will be disappointed by my decision, and that he will likely feel that his core complaint issue hasn't been considered. But for the reasons explained, I can only consider a complaint against Kensington about fees and charges going back six years. His concerns relate to fees and charges from before then, but I can't consider those.

### **My final decision**

My final decision is that I don't uphold the part of Mr M's complaint about Kensington Mortgage Company Limited, that I've considered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 July 2025.

Ben Brewer  
**Ombudsman**